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June 16, 2021

Hon. Beverly B. Martin
Hon. Robin S. Rosenbaum
Hon. Robert J. Luck
United States Court of Appeals
for the Eleventh Circuit
Room 1212
James Lawrence King Federal Justice Building
99 N.E. 4th Street
Miami, Florida 33132
By CM/ECF

Re: **United States v. Weir et al., Case No. 20-11188-X**

*Letter Notice of Supplemental Authority Pursuant to Fed. R. App. P. 28(j) and
Eleventh Circuit I.O.P.—6*

Dear Judge Martin, Judge Rosenbaum, and Judge Luck:

Since briefing was complete in this case, scheduled for argument in Miami on June 30, the *en banc* First Circuit affirmed the prosecution of a foreign national for his extraterritorial violation of the Maritime Drug Law Enforcement Act in international waters. *United States v. Aybar-Ulloa*, 987 F.3d 1 (1st Cir.), *cert. denied*, 2021 WL 2194943 (U.S. 2021), and did so while expressly “not rely[ing] on the protective principle,” *id.* at 3 (*see* Government’s Br. at 43; *contra* Petitioners’ Initial Br. at 18).

Although *Aybar-Ulloa* addressed jurisdiction to prosecute offenses on stateless vessels, the court considered the impact of international treaties in authorizing the assertion of jurisdiction and prosecution of offenses on vessels, *id.* at 9-13, including treaty provisions that “overcome the presumption of exclusive flag-state jurisdiction,” *id.* at 12.

The First Circuit equated jurisdiction over stateless vessels on the high seas with a flag-nation’s territorial jurisdiction over its own vessels. *Id.* at 7. Thus, without resolving whether “Congress’s power under the Define and Punish Clause is cabined by international law,” the court held that the prosecution before it did “not exceed any such limitation.” *Id.* at 14-15.

Here, the government (Br. at 30-31 and 38-42) has similarly addressed the impact of the international and bilateral treaties under which Jamaica exercised its territorial flag-jurisdiction over Petitioners’ vessel to authorize the Coast Guard boarding and general application of United States law as part of negotiated, joint drug-interdiction efforts. In support of such operations, Jamaica “granted [the Coast Guard] authorization to board and search [Petitioners’] vessel” and “waive[ed] its primary right to exercise jurisdiction over the vessel ... and crew to *the extent necessary for the enforcement of United States law*” (CV15-1:1-2) (emphasis added).

The First Circuit noted that “nothing in our reasoning forecloses a successful claim of diplomatic protection by a foreign state, should a foreign state make such a petition on behalf of its national,” *id.* at 14, echoing this Court’s recognition that “Congress has determined that [such questions are] to be dealt with diplomatically and not by the courts,” *United States v. Hernandez*, 864 F.3d 1292, 1304 (11th Cir. 2017).

Respectfully submitted,

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cc: Petitioners’ Counsel (by CM/ECF)