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June 17, 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 finished in this case, scheduled for argument in Miami on June 30, the Second Circuit affirmed the prosecution of foreign nationals inside Colombia for conspiring to violate the Maritime Drug Law Enforcement Act (“MDLEA”) with those on board a stateless vessel on the high seas, deeming the prosecution to be “rationally related to the legitimate end of prosecuting MDLEA conspirators who are on the high seas.” *United States v. Alarcon Sanchez*, 972 F.3d 156, 167-69 (2d Cir. 2020). *See* Government’s Brief at 24 (arguing that § 2237 prosecutions are rationally related to implementation of Congressional powers).

Although this Circuit has refused to engraft a nexus requirement onto Congress's High Seas Clause authority, the Second Circuit required a nexus to "ensure[] [against] arbitrary or fundamentally unfair" prosecutions of defendants "subject to Colombia's jurisdiction and laws" and not on the high seas, like Petitioners. *Id.* at 168-69.

In finding those defendants' prosecution not to be arbitrary or unfair, the court cited the conspiracy's use of a "U.S.-registered vessel" and "procur[ement of] false visas in the United States" in order to "cause[] harm to the very U.S. interests animating the MDLEA." *Id.* (cleaned up). Moreover, the conspirators "were aware that their scheme to transport cocaine on the high seas was illegal and could result in their criminal prosecution somewhere." *Id.* (cleaned up).

Even if adopted for the first time by this Court, the Second Circuit's nexus requirement was satisfied here. Obstructing the United States Coast Guard officers' treaty-negotiated enforcement of an otherwise valid United States law (the MDLEA), through false statements stipulated to "influence the United States' decision-making process on what action to take" during the boarding (CRDE:59:2; CRDE:63:2), is an "activity [aimed at] caus[ing] harm ... to U.S. ... interests." *Id.* Section 2237(e)(3) defines a vessel subject to the jurisdiction of the United States, allowing United States prosecution, and Petitioners were on both treaty and statutory notice that Jamaica could waive its primary, territorial flag-jurisdiction and authorize the application of United States law, resulting in their United States prosecution for violating 18 U.S.C. § 2237. *See* Government's Br. at 36-37.

Respectfully submitted,

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cc: Petitioners' Counsel (by CM/ECF)