

**STROOCK****Via CM/ECF**

June 17, 2021

Patrick N. Petrocelli  
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ppetrocelli@stroock.comHon. 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 33132Re: United States v. Weir et al., Case No. 20-11188-X*Letter Response to 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:

The First Circuit's main holding in *United States v. Aybar-Ulloa*, 987 F.3d 1 (1st Cir. 2021), has no application here. The Court held that "the United States could exercise jurisdiction over the *stateless* vessel upon which [defendant] was found." *Id.* at 7 (emphasis added); *id.* at 13 (Court's holding does not apply to "large majority of vessels"). Petitioners were onboard a Jamaican-flagged vessel, not a stateless vessel.

Other parts of the decision support Petitioners' arguments. The First Circuit, for example, rejected a due process challenge to defendant's drug trafficking conviction. According to the Court, defendant received "fair warning" sufficient to satisfy due process because "drug trafficking has long been regarded as a serious crime by nearly all nations." *Id.* at 14. Unlike drug trafficking, Petitioners were convicted of making a false statement about their destination during a boarding. This conduct does not have a long history of being regarded as a serious crime by nearly all nations. Petitioners thus did not receive the "fair warning" required by the Due Process Clause. *Id.* at 14 ("Fundamental principles of customary international human rights law, and requirements of due process under United States law, may well still apply in circumstances not present in this appeal."); Opening Br. at 18-19; Reply at 3-4, 16-19.

Similarly, Judge Barron's concurring opinion recognized that [t]here is a fair amount of support for the contention that Article I's Define and Punish Clause is impliedly limited by the law of nations in ways that constrain Congress's authority to rely on that Clause to subject

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foreign nationals to our criminal laws for conduct that they engage on while they are on *foreign* vessels – even when those vessels are on the high seas.” 987 F.3d at 15 (Barron, J., concurring). This is one of the issues raised here. Reply at 27. It was left open by *Aybar-Ulloa*.

Otherwise, the Court, unlike the government here, did not rely on the protective principle to support defendant’s conviction. 987 F.3d at 3. And nothing in the decision suggests that criminalizing false statements about a vessel’s destination is necessary and proper to implement any treaty.

Respectfully submitted,

/s/ Patrick N. Petrocelli

Patrick N. Petrocelli

cc: Respondent’s Counsel (via CM/ECF)