

Via CM/ECF

June 21, 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:

Relying on *United States v. Alarcon Sanchez*, 972 F.3d 156 (2d Cir. 2020), the government continues to advance the false narrative that Petitioners' convictions bear some relationship to the MDLEA, drug trafficking, or obstruction. They do not. Reply at 10-13. The Second Circuit's decision that charging land-based co-conspirators under the MDLEA is "rationally related to the legitimate end of prosecuting MDLEA conspirators who are on the high seas" has no application to Petitioners. 972 F.3d at 167. Petitioners did not conspire to violate the MDLEA or obstruct an MDLEA investigation. As the government admitted, it "would have required a miracle" to prove the drug charges initially made. Doc. 4-11 at 24:4-7 [A-125]. The government did not try to do so.

Alarcon Sanchez further confirms, contrary to the government's argument on appeal, that Petitioners' convictions violate the Due Process Clause because Petitioners lack a nexus to the United States. U.S. Br. at 52; Reply at 20-22. The Second Circuit rejected defendant's due process argument because he conspired "to ship over 500 kilograms of cocaine on the high seas, using a U.S.-registered vessel and procuring false visas in the United States." 972 F.3d at 169. These U.S. connections are absent here. Petitioners were onboard a Jamaican-flagged vessel traveling towards Haiti. They were not transporting drugs, and their only so-called "connection" to the United States was their non-consensual interaction, at gunpoint, with the Coast Guard.

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The government's claim that Petitioners stipulated that their false statement "influence[d] the United States' decision-making process" is demonstrably false. Petitioners' stipulated that information about "the destination of a vessel ... *can* influence the United States' decision-making process." Doc. 4-4 [A-62] (emphasis added). They did not stipulate, and the government did not establish, that *Petitioners' specific false statements* actually, or reasonably could have, influenced the Coast Guard in this case. Reply at 20-22.

Petitioners' convictions violated the Due Process Clause because Petitioners lacked notice that making a false statement about their vessel's destination subjected them to criminal prosecution somewhere. Section 2237(a)(2)(B) is a crime unique to the United States and Petitioners have no connection to the United States.

Respectfully submitted,

/s/ Patrick N. Petrocelli

Patrick N. Petrocelli

cc: Respondent's Counsel (via CM/ECF)