

STROOCK**Via CM/ECF**

June 23, 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:

In *United States v. Nunez*, No. 19-14191, 2021 WL 2470303 (11th Cir. June 17, 2021), this Court held it had jurisdiction under the MDLEA over a stateless drug smuggling vessel that lacked nationality. *Id.* at *6. Unlike in *Nunez*, Petitioners' vessel was not stateless, Petitioners were not smuggling drugs, and the government did not assert jurisdiction under the MDLEA. (Doc. 4-4 [A-61-62].)

Instead of arguing that *Nunez* actually applies, the government uses its letter to reference a 2019 article's claim that a "flag State may ... consent to enforcement actions by other States." Allen, *The Peacetime Right of Approach and Visit and Effective Security Council Sanctions Enforcement at Sea*, 95 Int'l L. Stud. 400, 413 (2019). Of course, this Court has refused to rely on a foreign state's consent alone to support extraterritorial jurisdiction over federal crimes. *United States v. Davila-Mendoza*, 972 F.3d 1264 (11th Cir. 2020); *United States v. Bellaizac-Hurtado*, 700 F.3d 1245 (11th Cir. 2012). And the suggestion that a foreign nation's consent can authorize Congress "to proscribe ... conduct under Article 1, Section 8, Clause 10 of the Constitution ... is without merit." *Bellaizac-Hurtado*, 700 F.3d at 1262 (Barkett, J., concurring).

The government's letter also incorrectly asserts that "the record establishes [this] was an MDLEA enforcement boarding." The record establishes no such thing. The government admitted that "nothing" was on Petitioners' vessel, it lacked "a witness" who could testify

Hon. Beverly B. Martin
Hon. Robin S. Rosenbaum
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June 23, 2021

otherwise, and it would have “required a miracle” for the government to prove Petitioners were transporting drugs. (Doc. 4-11 at 23:8-12, 24:2-7 [A-124-125].)

Similarly, the government’s references to protective and universal jurisdiction are inapplicable. Protective jurisdiction only applies “if [the proscribed conduct] has a potentially adverse effect and is generally recognized as a crime by nations that have reasonably developed legal systems.” *United States v. Gonzalez*, 776 F.2d 931, 939 (11th Cir. 1985). Neither requirement is met here. Opening Br. at 33-34; Reply at 11-13. And the government conceded that “[u]niversal jurisdiction is neither implicated nor claimed by § 2237.” U.S. Br. at 50; Opening Br. at 33-34. It cannot reverse course now through a supplemental authority letter.

Respectfully submitted,

/s/ Patrick N. Petrocelli

Patrick N. Petrocelli

cc: Respondent’s Counsel (via CM/ECF)