

No. 23-6910

IN THE SUPREME COURT OF THE UNITED STATES

JEFFRI DÁVILA-REYES, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

ELIZABETH B. PRELOGAR
Solicitor General
Counsel of Record

NICOLE M. ARGENTIERI
Principal Deputy Assistant
Attorney General

JOHN-ALEX ROMANO
Attorney

Department of Justice
Washington, D.C. 20530-0001
SupremeCtBriefs@usdoj.gov
(202) 514-2217

QUESTIONS PRESENTED

The Maritime Drug Law Enforcement Act (MDLEA), 46 U.S.C. 70601 et seq., establishes criminal penalties for drug-related activities on board "a covered vessel," which is defined to include "a vessel subject to the jurisdiction of the United States." 46 U.S.C. 70503(a) and (e)(1). The questions presented are:

1. Whether a finding that a vessel is subject to the jurisdiction of the United States is a prerequisite to a district court's exercise of Article III subject-matter jurisdiction, not just regulatory jurisdiction, over a criminal prosecution under the MDLEA.

2. Whether the course of litigation limited the court of appeals to a single potential basis for finding that petitioner's MDLEA conviction was within Congress's constitutional authority.

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OPINIONS BELOW

The opinion of the en banc court of appeals (Pet. App. 1a-82a) is reported at 84 F.4th 400. An opinion of the court of appeals panel (Pet. App. 41a-82a) is reported at 23 F.4th 153. An earlier opinion of the court of appeals panel is reported at 937 F.3d 57. The order of the district court (Pet. App. 83a-84a) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on October 5, 2023. On December 28, 2023, Justice Jackson extended the time within which to file a petition for a writ of certiorari to and

including February 5, 2024. On February 7, 2024, Justice Jackson further extended the time to and including March 4, 2024, and the petition was filed on that date. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a guilty plea in the United States District Court for the District of Puerto Rico, petitioner was convicted of conspiring to possess with intent to distribute five kilograms or more of cocaine on board a vessel subject to the jurisdiction of the United States, in violation of 46 U.S.C. 70503(a)(1), 70504(b)(1), and 70506(a) and (b). See Am. Judgment 1. He was sentenced to 120 months of imprisonment, to be followed by five years of supervised release. See id. at 2-3. A court of appeals panel initially affirmed, see 937 F.3d 57, but subsequently granted panel rehearing, vacated the district court's judgment, and remanded the case with instructions to dismiss, see Pet. App. 41a-82a. The court of appeals then granted rehearing en banc and again affirmed the district court's judgment. See id. at 1a-41a.

1. The Maritime Drug Law Enforcement Act (MDLEA), 46 U.S.C. 70501 et seq., makes it unlawful for any person "on board a covered vessel" to possess a controlled substance with the intent to distribute it, or to attempt or conspire to do so. 46 U.S.C. 70503(a); see 46 U.S.C. 70506(b). The term "'covered vessel'" is defined to include a "vessel subject to the jurisdiction of the

United States," 46 U.S.C. 70503(e) (1), which in turn is defined to include a "vessel without nationality," 46 U.S.C. 70502(c) (1) (A). The term "vessel without nationality" is then defined to "include[]," inter alia, "a vessel aboard which the master * * * makes a claim of registry and for which the claimed nation of registry does not affirmatively and unequivocally assert that the vessel is of its nationality." 46 U.S.C. 70502(d) (1) (C).

The MDLEA provides that "[j]urisdiction of the United States with respect to a vessel" is "not an element of an offense." 46 U.S.C. 70504(a). Instead, "[j]urisdictional issues * * * are preliminary questions of law to be determined solely by the trial judge." Ibid.

2. In October 2015, the United States Coast Guard intercepted a vessel in international waters approximately 30 nautical miles southeast of San Andrés Island, Colombia. See Pet. App. 4a. The Coast Guard had seen the vessel's crew throwing packages into the water and had seen a cloud of white powder escaping from one of the packages. See ibid.

When questioned, the vessel's master claimed that the vessel was of Costa Rican nationality. See Pet. App. 4a. But he "did not provide the members of the Boarding Team any Costa Rican registration documents, and the Boarding Team did not identify any further indicia of Costa Rican nationality." Id. at 4a-5a (internal quotation marks and footnote omitted). The Coast Guard

contacted the government of Costa Rica, which was unable to confirm that the vessel was registered with that country. See id. at 5a.

Having determined that the vessel was without nationality, the Coast Guard searched it. See Pet. App. 5a. After finding trace amounts of cocaine on the vessel, it arrested petitioner and the other crew members. See ibid.

3. A federal grand jury in the District of Puerto Rico indicted petitioner for conspiring to possess with intent to distribute five kilograms or more of cocaine on board a vessel subject to the jurisdiction of the United States, in violation of 46 U.S.C. 70503(a)(1), 70504(b)(1), and 70506(a) and (b), and possessing with intent to distribute five kilograms or more of cocaine on board a vessel subject to the jurisdiction of the United States, in violation of 46 U.S.C. 70503(a)(1) (2015), 70504(b)(1) (2015), and 70506(a) (2015). See Indictment 1-2. The indictment alleged that the vessel was subject to the jurisdiction of the United States under 46 U.S.C. 70502(c)(1)(A), the provision covering "vessel[s] without nationality." Ibid.; see Indictment 1.

In accordance with a plea agreement, petitioner pleaded guilty to the conspiracy count and the government dismissed the possession count. See Am. Judgment 1; Pet. App. 7a. In the plea agreement, petitioner "knowingly and voluntarily waive[d] the right to appeal the judgment and sentence in this case, provided

that [petitioner] is sentenced in accordance with the terms and conditions set forth in the Sentence Recommendation provisions of this Plea Agreement," under which the government agreed to recommend 120 months of imprisonment. Plea Agreement 5; see id. at 4-5. The district court subsequently sentenced petitioner to 120 months of imprisonment. See Am. Judgment 2; Plea Agreement 4.

4. Notwithstanding his appeal waiver, petitioner challenged his conviction in the court of appeals. See Pet. App. 7a. He argued, inter alia, that the application of the MDLEA to his vessel exceeded Congress's authority under the Felonies Clause to "define and punish * * * Felonies committed on the high Seas." U.S. Const. Art. I, § 8, Cl. 10; see 937 F.3d at 62. Specifically, he argued that "Congress's authority under the Felonies Clause is limited by the principles of international law," 937 F.3d at 62, and that Congress had departed from the international-law definition of stateless vessels in 46 U.S.C. 70502(d)(1)(C), which defines a "'vessel without nationality'" to include "a vessel aboard which the master * * * makes a claim of registry and for which the claimed nation of registry does not affirmatively and unequivocally assert that the vessel is of its nationality," ibid.

a. A panel of the court of appeals initially affirmed. See 937 F.3d 57. The court asserted "discretion to disregard the appellate waiver," because it was considering an appeal filed by one of petitioner's codefendants and did not see any prejudice to

the government if it considered “the same issues” in petitioner’s appeal. Id. at 61. The court also took the view that petitioner’s guilty plea did not in itself foreclose his challenge to the MDLEA’s constitutionality. See ibid. But the court rejected petitioner’s Felonies Clause claim on the merits, observing that it had previously determined that the MDLEA’s definition of vessels without nationality comports with international law. See id. at 62 (citing United States v. Cardales, 168 F.3d 548, 553 (1st Cir. 1999)).

Judge Lipez concurred. See 937 F.3d at 64-70. He agreed that circuit precedent foreclosed petitioner’s constitutional challenge, but criticized that precedent as inconsistent with international law. See id. at 70.

b. The court of appeals subsequently granted panel rehearing, vacated the district court’s judgment, and remanded the case with instructions to dismiss. See Pet. App. 41a-82a. For the same reasons given in the original opinion, the court again concluded that neither the plea agreement’s appeal waiver nor the guilty plea itself foreclosed petitioner’s Felonies Clause claim. See id. at 46a-50a. And on the merits, the panel observed that its initial opinion had relied on circuit precedent undermined by the en banc court’s subsequent decision in United States v. Aybar-Ulloa, 987 F.3d 1 (1st Cir.), cert. denied, 141 S. Ct. 2714 (2021). See Pet. App. 44a. The panel then took the view that Congress’s

power under the Felonies Clause is limited by international law, see id. at 58a-71a, and that the MDLEA's definition of vessels without nationality is broader than the definition of stateless vessels under international law, see id. at 71a-80a.

Judge Howard concurred in the result. See Pet. App. 81a-82a. He would not have resolved petitioner's constitutional claim and would instead have reversed on the ground that "the agreed facts do not support the statelessness claim charged by the government." Id. at 81a.

5. The court of appeals granted rehearing en banc and reinstated the affirmance of petitioner's conviction. Pet. App. 1a-41a.

The court of appeals assumed without deciding that petitioner could raise his constitutional claim on appeal despite his appeal waiver and guilty plea. See id. at 11a n.9, 15a-16a. But the court observed that petitioner's Felonies Clause challenge to 46 U.S.C. 70502(d)(1)(C) did not undermine his indictment, because it did not exclusively rely on that provision in alleging that he was smuggling drugs aboard a vessel without nationality. See id. at 415-417. And the court explained that petitioner's alternative fact-based Felonies Clause argument -- that "even if the indictment is unassailable, the conviction[] cannot stand because the nature of the post-indictment record is such that it shows that the conviction[] violates the Felonies Clause," id. at 16a -- was

reviewable only for plain error, which he could not show. Id. at 18a-26a.

The court of appeals disagreed with petitioner's theory that his Felonies Clause claim implicated the district court's subject-matter jurisdiction, and would thus be entitled to de novo review irrespective of whether he had adequately preserved it. See Pet. App. 11a-15a. The court acknowledged that the MDLEA prohibited drug trafficking only aboard a "vessel subject to the jurisdiction of the United States," 46 U.S.C. 70503(e)(1), but observed that "the term 'jurisdiction' is notoriously malleable," Pet. App. 12a (brackets and citation omitted), and explained that the MDLEA was using the term to refer to "the regulatory jurisdiction that Congress is asserting through the MDLEA" rather than to the "subject matter jurisdiction of courts," id. at 13a. The court emphasized that the statute refers to the jurisdiction of the United States over "vessels," rather than to the jurisdiction of courts over actions. See ibid. And the court pointed to other uses of the term "jurisdiction of the United States" in the statute that "clearly [do] not refer[] to the jurisdiction of a court." Ibid.

The court of appeals then found no clear or obvious error in the application of the MDLEA to petitioner based on the facts that he had admitted when he pleaded guilty. Pet. App. 19a-23a. The court observed that, irrespective of any constitutional challenge

to Section 70502(d)(1)(C)'s specific definition of "'vessel without nationality,'" the statute's "use of the word 'includes' in § 70502(d)(1) makes clear that 'the listed examples' set forth in that section 'do not exhaust the scope of'" that term. Id. at 17a (quoting United States v. Matos-Luchi, 627 F.3d 1, 4 (1st Cir. 2010)). And it determined that, because petitioner's vessel "was not authorized to fly the flag of any state," it "was 'without nationality' under [the MDLEA] -- and stateless under international law -- for reasons independent of the vessel being the kind of vessel that § 70502(d)(1)(C) describes." Id. at 18a; see id. at 17a-18a.

The court of appeals rejected petitioner's contention that the course of litigation in this case limited the court's review of his Felonies Clause claim solely to Section 70502(d)(1)(C), irrespective of whether his conviction would be constitutional on other grounds. See Pet. App. 23a-26a. The court observed, among other things, that the plea agreement "mirrored the indictment," which in turn "alleged no facts that impliedly made it dependent on § 70502(d)(1)(C) alone." Id. at 24a.

Judges Lipez, Thompson, and Monetalcalvo dissented. See Pet. App. 28a-41a. In their view, the course of litigation required the court to specifically address the constitutionality of Section 70502(d)(1)(C) -- not any other potential basis for finding petitioner's vessel stateless -- in order to affirm petitioner's

conviction, and would have reversed “based on the analysis set forth in the panel majority opinion.” Id. at 41a.

ARGUMENT

Petitioner renews his contention (Pet. 20-26) that the MDLEA’s provision defining the term “vessel subject to the jurisdiction of the United States,” 46 U.S.C. 70502(c), limits the subject-matter jurisdiction of the federal courts. The court of appeals correctly rejected that contention. And although courts of appeals disagree on the classification of that provision, this case would be an unsuitable vehicle for resolving the disagreement because the answer to the question presented would not affect the outcome.

Petitioner also renews his contention (Pet. 26-33) that, in light of the course of the proceedings in this case, the court of appeals could not affirm his conviction without directly addressing the constitutionality of Section 70502(c). The court of appeals correctly rejected that fact-bound contention, and its decision does not conflict with any decision of this Court or any other court of appeals. Further review is unwarranted.

1. a. This Court’s precedents distinguish limits on a federal court’s subject-matter jurisdiction from other types of legal rules. See, e.g., Wilkins v. United States, 598 U.S. 152, 157 (2023). Objections to a court’s exercise of subject-matter jurisdiction, unlike other legal contentions, may be raised at any

time and are not subject to ordinary principles of waiver and forfeiture. See id. at 157-158.

Here, petitioner contends (Pet. 20-26) that the district court lacked subject-matter jurisdiction over his criminal prosecution -- and thus seeks to overcome his appeal waiver, see Plea Agreement 5; the waiver of claims that is inherent in an unconditional guilty plea, see Class v. United States, 583 U.S. 174, 180 (2018); and the plain-error rule, see Fed. R. Crim. P. 52(b). But in 18 U.S.C. 3231, Congress vested federal district courts with "original jurisdiction, exclusive of the courts of the States, of all offenses against the laws of the United States." Ibid. Section 3231's "sweeping language" grants federal district courts subject-matter jurisdiction over "the full range of federal prosecutions for violations of federal criminal law." Turkiye Halk Bankasi A.S. v. United States, 598 U.S. 264, 269 (2023). And as the court of appeals correctly recognized, that grant of subject-matter jurisdiction encompasses petitioner's prosecution under the MDLEA. See Pet. App. 12a.

Contrary to petitioner's contention, a district court's finding under the MDLEA that a vessel is "subject to the jurisdiction of the United States," 46 U.S.C. 70502(c)(1), is not a prerequisite to its exercise of subject-matter jurisdiction. "Jurisdiction, this Court has observed, is a word of many, too many, meanings." Wilkins, 598 U.S. at 156 (citation omitted).

The word "jurisdiction" can refer to, among other things, subject-matter jurisdiction, see id. at 157; personal jurisdiction, see International Shoe Co. v. Washington, 326 U.S. 310, 316 (1945); remedial jurisdiction, see Biden v. Texas, 597 U.S. 785, 801 (2022); and legislative jurisdiction, see Strate v. A-1 Contractors, 520 U.S. 438, 454 (1997). Here, the word "jurisdiction," as used in the phrase "vessel subject to the jurisdiction of the United States," 46 U.S.C. 70502(c)(1), does not mean subject-matter jurisdiction. The statute refers to the jurisdiction "of the United States," not "of a federal district court." And it refers to jurisdiction over a "vessel," not over a "case." The statute thus uses the word "jurisdiction" to identify the class of vessels that the United States has the authority to regulate (legislative jurisdiction), not the class of cases that a federal district court has the authority to adjudicate (subject-matter jurisdiction). See Pet. App. 13a.

Context confirms that interpretation. The MDLEA prohibits drug trafficking aboard a "covered vessel," 46 U.S.C. 70503(a), and then defines "'covered vessel'" to include a "vessel subject to the jurisdiction of the United States," 46 U.S.C. 70503(e)(1). The applicable statutory provision thus "does not speak to a court's authority, but only to a party's * * * obligations," EPA v. EME Homer City Generation, L.P., 572 U.S. 489, 512 (2014), indicating that the requirement is not a restriction on the court's

subject-matter jurisdiction. In addition, “[o]ther sections of Title 46 * * * also use the phrase ‘jurisdiction of the United States’ in contexts that make clear that those sections are not referring to the power of courts to adjudicate disputes.” Pet. App. 13a; see, e.g., 46 U.S.C. 2101(49)(c) (“port or place subject to the jurisdiction of the United States”); 46 U.S.C. 2301 (“waters subject to the jurisdiction of the United States”); see also United States v. Prado, 933 F.3d 121, 143 n.12 (2d Cir. 2019) (collecting additional examples). The phrase “jurisdiction of the United States” presumably bears the same meaning in the provision at issue here. See Pet. App. 13a.

At all events, a statutory provision limits a federal court’s subject-matter jurisdiction only if Congress “clearly states” that it does. Wilkins, 598 U.S. at 157 (citation omitted). Congress did not clearly state that the MDLEA’s definition of “vessel[s] subject to the jurisdiction of the United States,” 46 U.S.C. 70502(c)(1), limits the general grant of subject-matter jurisdiction over criminal cases, 18 U.S.C. 3231. It therefore cannot be construed to have that effect.

b. Petitioner’s contrary arguments (Pet. 22-26) lack merit. Petitioner stresses (Pet. 22) that “Congress used the word ‘jurisdiction[].’” But this Court has rejected the proposition that every use of the word “jurisdiction” necessarily refers to a federal court’s subject-matter jurisdiction. See, e.g., Biden,

597 U.S. at 801 (“It is true that [the statute] uses the phrase ‘jurisdiction or authority[.]’ * * * [But] the question whether a court has jurisdiction to grant a particular remedy is different from the question whether it has subject matter jurisdiction over a particular class of claims.”) (citation omitted); Reed Elsevier, Inc. v. Muchnick, 559 U.S. 153, 163-164 (2010) (“The word ‘jurisdiction,’ as used here, * * * says nothing about whether a federal court has subject-matter jurisdiction.”).

Petitioner also notes (Pet. 23, 25) that, under the MDLEA, “[j]urisdiction of the United States with respect to a vessel * * * is not an element of the offense” but rather a “preliminary question[] of law to be determined solely by the trial judge.” 46 U.S.C. 70504(a). But judges resolve a wide range of preliminary legal issues unrelated to subject-matter jurisdiction, including “improper venue” and “improper joinder.” Fed. R. Crim. P. 12(b)(3)(A)(i), (B)(iv). Congress’s decision to treat a vessel’s status as a preliminary legal issue for the trial judge thus does not prove that the issue concerns subject-matter jurisdiction. If anything, it cuts the other way: had Congress viewed the requirement as an issue of subject-matter jurisdiction, it would automatically be a “preliminary question[] of law,” without any need for a statutory provision to specify as much.

Finally, petitioner contends (Pet. 26) that his position promotes international comity “by ensuring jurisdiction is

verified independently by the court in each case, regardless of whether the parties detect the issue.” But that argument is “difficult to reconcile” with the provision of the MDLEA stating that “‘a failure to comply with international law does not divest a court of jurisdiction and is not a defense.’” Prado, 933 F.3d at 147 (quoting 46 U.S.C. 70505). Congress, moreover, did not need to rely on courts or defendants “to protect the Nation’s interest in its foreign relations.” Ibid. “If a particular prosecution would cause undesirable friction with a foreign nation because of Coast Guard transgressions on another nation’s maritime sovereignty, the government can simply drop the prosecution without need for the defendant to serve as a protesting ambassador, and without need for the court’s approval to achieve a diplomatic objective.” Ibid.

c. Although petitioner correctly observes (Pet. 20-22) that the first question presented has produced disagreement in the courts of appeals, he overstates the extent of that disagreement. Two courts of appeals, the First and Second Circuits, have recognized that a district court’s exercise of subject-matter jurisdiction in an MDLEA case does not depend on a vessel’s status. In United States v. Prado, the Second Circuit explained that “the MDLEA’s reference [to jurisdiction] poses the question whether its prohibition on drug possession extends to the vessel in question -- not whether a prosecution under the statute falls within the

subject matter jurisdiction of the federal courts.” 933 F.3d at 133; see id. at 132-151. And in the decision below, the First Circuit “conclude[d] that the Second Circuit’s reasoning is persuasive.” Pet. App. 12a; see id. at 12a-15a.

Two other courts of appeals, the Fifth and D.C. Circuits, have taken a different view. In United States v. Bustos-Useche, 273 F.3d 622 (2001), cert. denied, 535 U.S. 1071 (2002), the Fifth Circuit concluded that “the district court’s preliminary determination [of a vessel’s status] is a prerequisite to the court’s jurisdiction” and that a defendant who has pleaded guilty accordingly is “not foreclosed from raising the issue on appeal.” Id. at 626. And in United States v. Miranda, 780 F.3d 1185 (2015), the D.C. Circuit concluded that a vessel’s status “relates to the subject-matter jurisdiction of the district courts” and that the “entry of unconditional guilty pleas thus could not waive the question whether the pertinent vessels are ‘subject to the jurisdiction of the United States’ within the meaning of the MDLEA.” Id. at 1196.

Contrary to petitioner’s contention (Pet. 20-21), however, the Eleventh Circuit did not decide the issue in either United States v. Tinoco, 304 F.3d 1088 (2002), cert. denied, 538 U.S. 909 (2003), or United States v. De La Garza, 516 F.3d 1266 (2008), cert. denied, 556 U.S. 1151 (2009). In Tinoco, the defendants in an MDLEA prosecution claimed that the Constitution required a jury,

rather than the trial judge, to determine whether their vessel was "subject to the jurisdiction of the United States." 304 F.3d at 1095. In rejecting that claim, the Eleventh Circuit stated that the provision now codified at 46 U.S.C. 70504 "creates an additional statutory requirement of subject matter jurisdiction * * * above and beyond the general jurisdictional requirement imposed upon district courts by 18 U.S.C. § 3231." Tinoco, 304 F.3d at 1104 n.18; see id. at 1105-1106, 1110 n.21. But in De La Garza, the Eleventh Circuit acknowledged, yet saw "no need to decide" in that case, the government's argument that Tinoco's statement was "incorrect" "dict[um]." Id. at 1271 n.3. The Eleventh Circuit thus has "never decided" the first question presented, but has instead "explicitly left the issue unresolved." Prado, 933 F.3d at 146.

d. This case would be an unsuitable vehicle for addressing the first question presented. Even if the Court were to agree with petitioner that his challenge to his conviction implicates the district court's subject-matter jurisdiction, he would not be entitled to relief. See Supervisors v. Stanley, 105 U.S. 305, 311 (1882) (explaining that this Court does not review to "decide abstract questions of law * * * which, if decided either way, affect no right" of the parties). The sole substantive claim discussed in the petition for a writ of certiorari (at 4, 8, 12-17) concerns Congress's authority under the Felonies Clause. And

that claim rests on an unsound premise: that the Felonies Clause precludes Congress from exceeding customary-international-law limits on each nation's territorial jurisdiction. See, e.g., Pet. App. 3a.

Although “[l]egislation is presumptively territorial and confined to limits over which the law-making power has jurisdiction,” Sandberg v. McDonald, 248 U.S. 185, 195 (1918), that principle “represents a canon of construction, or a presumption about a statute’s meaning, rather than a limit upon Congress’s power to legislate,” Morrison v. National Australia Bank, Ltd., 561 U.S. 247, 255 (2010). Because federal statutes form part of the “supreme Law of the Land,” while customary international law does not, U.S. Const. Art. VI, Cl. 2, it is the federal statute that prevails in case of conflict. Cf. Head Money Cases, 112 U.S. 580, 597-599 (1884) (explaining that a later-enacted federal statute prevails over a conflicting treaty); 46 U.S.C. 70505 (expressly providing that “[a] failure to comply with international law * * * is not a defense” in an MDLEA case).

Nothing in the text of the Felonies Clause suggests that it departs from those ordinary constitutional principles and instead renders Congress’s authority to “define and punish * * * Felonies committed on the high Seas,” U.S. Const. Art. I, § 8, Cl. 10, contingent on international law. And in any event -- as the Ninth Circuit has explained in another case and as the government

explained below -- the relevant provision of the MDLEA fully comports with applicable principles of international law. See United States v. Marin, 90 F.4th 1235, 1241-1243 (2024); Gov't C.A. Supp. En Banc Br. 11-16.

2. This Court should also decline to review petitioner's fact-bound assertion that the constitutionality of Section 70502(d)(1)(C) was the only permissible ground for affirming his conviction.

As discussed above, the MDLEA's substantive provisions apply on board a "covered vessel." 46 U.S.C. 70503(a). A "covered vessel" includes a "vessel subject to the jurisdiction of the United States." 46 U.S.C. 70503(e). A "vessel subject to the jurisdiction of the United States" includes a "vessel without nationality," 46 U.S.C. 70502(c)(1)(A). And "the term 'vessel without nationality,'" in turn, "includes" various types of vessels, such as "a vessel aboard which the master * * * makes a claim of registry and for which the claimed nation of registry does not affirmatively and unequivocally assert that the vessel is of its nationality." 46 U.S.C. 70502(d)(1)(C).

The court of appeals has recognized -- and petitioner does not dispute -- that the "listed examples" "do not exhaust the scope" of the term "vessel without nationality," that the term also includes any vessel that is stateless under international law, and that petitioner's vessel was stateless under

international law. Pet. App. 17a (citation omitted); see id. at 17a-18a. Petitioner errs in arguing (Pet. 26-33) that the government's filings in the district court locked it into relying on one of the listed categories and precluded it from arguing that petitioner's vessel was subject to the MDLEA regardless of whether it fit within those categories. As the court of appeals observed, the plea agreement and indictment cited a provision referring to vessels without nationality in general, 46 U.S.C. 70502(c)(1)(A), "and alleged no facts that impliedly made [them] dependent on [one of the listed categories] alone." Pet. App. 24a. And the government's other filings "did not purport at any point to commit the government to relying only on [one of the listed categories]." Id. at 25a.

Petitioner does not contend that the court of appeals' assessment of the record in this case conflicts with the decisions of other courts of appeals. Although petitioner asserts (Pet. 29, 32) that the government denied "due process" and undermined "the integrity of the plea-bargaining process," those assertions rest on the premise that the government improperly switched theories on appeal. Thus, at bottom, petitioner's challenge boils down to a disagreement with the court of appeals' reading of the plea agreement and the government's other filings in the district court. That case-specific issue -- which the court described as "narrow" and "record-based," Pet. App. 3a -- does not warrant this Court's

review. See United States v. Johnston, 268 U.S. 220, 227 (1925) (“We do not grant a certiorari to review evidence and discuss specific facts.”); Sup. Ct. R. 10 (“A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law.”).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

ELIZABETH B. PRELOGAR
Solicitor General

NICOLE M. ARGENTIERI
Principal Deputy Assistant
Attorney General

JOHN-ALEX ROMANO
Attorney

MAY 2024