No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

LUIS CHAVEZ,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for Writ of Certiorari
to the United States Court of Appeals
for the Ninth Circuit

PETITIONER'S APPLICATION TO EXTEND TIME TO FILE PETITION FOR WRIT OF CERTIORARI

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To the Honorable Elena Kagan, as Circuit Justice for the United States Court of Appeals for the Ninth Circuit:

Pursuant to this Court's Rules 13.5, 22, 30.2, and 30.3, Petitioner Luis Chavez respectfully requests that the time to file its Petition for Writ of Certiorari in this matter be extended for 60 days.

The Court of Appeals issued its opinion on January 17, 2024, (Appendix ("App.") A), and denied rehearing *en banc* on February 26, 2024, (App. B). Absent an extension of time, the Petition for Writ of Certiorari would be due on May 27, 2024. This application is timely made as it is being filed more than ten days before that date. See S. Ct. R. 13.5. The present 60-day request seeks an extension up to and including July 26, 2024. Respondent does not oppose the present request. In support of this request, Petitioner submits the following—

1. Petitioner challenges the constitutionality of 46 U.S.C. § 70502(d)(1)(C) of the Maritime Drug Law Enforcement Act ("MDLEA") under which he was convicted. This section specifically confers jurisdiction to the United States to prosecute the occupants of a stateless vessel transporting narcotics in the open seas. The challenged section of MDLEA deems a vessel stateless when its master makes a claim of registry which the claimed nation does not affirmatively confirm.

2. This is an issue of exceptional importance. MDLEA was enacted pursuant to Congress' authority under the Define and Punish Clause, which empowers Congress

"[t]o define and punish Piracies and Felonies committed on the High Seas, and Offences against the Law of Nations." *U.S. Const. art. I., § 8, cl. 10*. Piracies, felonies on the high seas, and offences against the law of nations were all deeply established international-law concepts at the time of the Framing. The clause's original and persisting understanding is that it incorporates limits of customary international law on a nation's authority to criminalize conduct beyond its shores. *See Banco Nacional de Cuba v. Sabbatino*, 376 U.S. 398, 451, n.13 (1964) (White, J., dissenting) (noting that the language of the Define and Punish Clause shows the Framers' belief that "the law of nations is a part of the law of the land"). As they embarked on drafting a constitution, the Framers saw a federal system capable of upholding international law as an imperative for the United States to achieve equal status in the community of nations. *See United States v. Aybar-Ulloa*, 987 F.3d 1, 26 (1st Cir. 2021) (Barron, J., concurring) ("The founding generation was attentive to the strictures of the law of nations.").

3. The challenged definition of statelessness is not coextensive with customary international law, thus exceeding the scope of Congress's power under the Define and Punish Clause. A finding of "statelessness" because of a claimed nation's assertion that it cannot confirm nor deny registry, like the one here, oversteps customary international law.

4. Under international law, "if a vessel claims a particular nationality and the country claimed as flag accepts the situation, then the nationality of the vessel can be

established." T. McDorman, *Stateless Fishing Vessels, International Law and the U.N. High Seas Fisheries Conference*, 25 J.Mar. L. & Com. 531, 533 (1994). But if "the vessel's claimed State of nationality denies that such is the case," then international law considers that vessel stateless. That is, international law requires an affirmative denial from the claimed nation before the vessel is deemed stateless. Accordingly, Petitioner contends that the section of MDLEA under which his vessel was deemed stateless - because of his claimed country's statement that it neither could confirm nor deny the nationality - is unconstitutional because it is inconsistent with customary international law, which itself serves as the boundaries of Congress' authority under the Define and Punish Clause.

5. With this, Petitioner challenges the Ninth Circuit's panel ruling in the underlying matter. The panel did not decide whether the Define and Punish Clause is limited by customary international law. But held that because international law does not specifically mention instances in which a claimed country does not confirm nor deny nationality, the challenged section survives under the *Lotus* principle (*S.S. Lotus* (1927), PCIJ (Ser.A) No. 9).

6. Petitioner's counsel is unable to complete the petition for writ of certiorari by the current due date of May 27, 2024. Counsel is a solo-practitioner whose practice is mostly defined by CJA court-appointed cases in the Southern District of California, as well as CJA appointed cases with the Ninth Circuit Court of Appeals. He has about a dozen open cases at the district court level, including *United States v. Figueroa-*

Chavez, 23cr1670-JLS, set for trial on June 3, 2024, and *United States v. Olmedo-Villa*, 24cr0043-JES, previously tried in the first week of April and set for retrial in July, and a host of other cases in different stages. Counsel believes that an extension of 60 days would allot him enough time to research the relevant legal and factual issues and prepare a petition that fully addresses the important and far-reaching issues raised by the decision below and frames those issues in a manner that will be most helpful to the Court.

Wherefore, for the foregoing reasons, Petitioner hereby requests that an extension of time to and including July 26, 2024, be granted within which he may file a petition for writ of certiorari.

Dated: May 9, 2024

s/*Martin G. Molina*

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