No. 21-728

In the Supreme Court of the United States

PEDRO DINO CEDADO NUÑEZ, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether the provision of the Maritime Drug Law Enforcement Act (MDLEA), 46 U.S.C. 70501 *et seq.* that states that "the term 'vessel without nationality' includes" three types of vessels, 46 U.S.C. 70502(d)(1), sets out the exclusive list of "vessel[s] without nationality."

ADDITIONAL RELATED PROCEEDINGS

United States Court of Appeals (11th Cir.):

United States v. *Cedado Nuñez*, No. 19-12409 (Sept. 17, 2019) (interlocutory appeal)

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OPINION BELOW

The order of the court of appeals (Pet App. 1a-27a) is reported at 1 F.4th 976.

JURISDICTION

The judgment of the court of appeals was entered on June 17, 2021. By an order of March 19, 2020, which has now been lifted, this Court extended the deadline for all petitions for writs of certiorari to 150 days from the date of the lower court judgment or order denying a timely petition for rehearing. The petition for a writ of certiorari was filed on November 12, 2021. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a jury trial, petitioners were convicted of conspiring to distribute and to possess with intent to distribute cocaine on board a vessel subject to the

jurisdiction of the United States, in violation of 46 U.S.C. 70506(b); and possessing with intent to distribute cocaine on board a vessel subject to the jurisdiction of the United States, in violation of 46 U.S.C. 70503(a)(1). Pet. App. 5a, 8a. The district court sentenced petitioners Angel Castro Garcia, Manely Enriquez, and Mike Castro Martinez to 188 months of imprisonment, to be followed by five years of supervised release. Garcia Judgment 2-3; Enriquez Judgment 2-3; Martinez Judgment 2-3. It sentenced petitioner Pedro Dino Cedado Nuñez to 152 months of imprisonment, to be followed by five years of supervised release. Nuñez Judgment 2-3. The court of appeals affirmed. Pet. App. 1a-27a.

1. The Maritime Drug Law Enforcement Act (MDLEA), 46 U.S.C. 70501 *et seq.*, makes it unlawful for any person to possess a controlled substance with the intent to distribute it, or to attempt or conspire to do the same, "on board" "a vessel subject to the jurisdiction of the United States." 46 U.S.C. 70503(a) and (e)(1); see 46 U.S.C. 70506(b). Congress enacted the MDLEA because it found that "trafficking in controlled substances aboard vessels is a serious international problem, is universally condemned, and presents a specific threat to the security and societal well-being of the United States." 46 U.S.C. 70501. Congress accordingly provided that the MDLEA would apply to any "vessel subject to the jurisdiction of the United States," 46 U.S.C. 70503(e)(1), "even though the act is committed outside the territorial jurisdiction of the United States," 46 U.S.C. 70503(b).

The MDLEA defines "a vessel subject to the jurisdiction of the United States" to include, *inter alia*, "a vessel without nationality." 46 U.S.C. 70502(c)(1)(A). And Section 70502(d)(1) provides as follows:

> (1) IN GENERAL.—In this chapter, the term "vessel without nationality" includes—
>
> (A) a vessel aboard which the master or individual in charge makes a claim of registry that is denied by the nation whose registry is claimed;a vessel aboard which the master or individual in charge fails, on request of an officer of the United States authorized to enforce applicable provisions of United States law, to make a claim of nationality or registry for that vessel; and
>
> (B) a vessel aboard which the master or individual in charge 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) (capitalization altered).

In the following subsection, the MDLEA further provides that "[a] claim of nationality or registry under this section includes only":

> (1) possession on board the vessel and production of documents evidencing the vessel's nationality as provided in article 5 of the 1958 Convention on the High Seas;
>
> (2) flying its nation's ensign or flag; or
>
> (3) a verbal claim of nationality or registry by the master or individual in charge of the vessel.

46 U.S.C. 70502(e).

2. On December 24, 2018, the crew of a United States Coast Guard airplane spotted a small homemade boat on a known drug-trafficking route in waters of the high seas between the Dominican Republic and Puerto Rico. Pet. App. 2a-3a. The guardsmen found the boat

suspicious because it was carrying a large number of fuel containers, lacked a visible name or registration number, and had no navigation lights. *Id.* at 3a. They reported the suspicious boat to a nearby Coast Guard cutter, which detached a smaller boat to investigate. *Ibid.*

When the cutter's boat arrived within 20 or 30 feet of the suspicious boat, which was on the verge of sinking, the guardsmen shined a spotlight and saw "frantic" activity as those on board threw items into the water. Pet. App. 2a-3a. The guardsmen observed six bales in the water tied together and to a seventh bale that was still inside the boat. *Id.* at 3a. They also observed a dozen 30-gallon fuel containers on board the suspicious boat. *Ibid.*

Petitioners were the only four men on that boat. Pet. App. 4a. A Coast Guard officer asked them "who was the master, who was in charge," but nobody answered. *Ibid.* The officer asked who piloted the boat, and one man answered that they all took turns. *Ibid.* The men said they were traveling from the Dominican Republic to Dorado, Puerto Rico. *Ibid.*

The guardsmen searched the boat and found that the serial number had been scratched off its motor and that the boat contained no recreational equipment and only a few personal items. Pet. App. 4a. The guardsmen gathered up the bales, which contained about 180 kilograms of cocaine. *Id.* at 4a-5a. They took petitioners aboard the cutter and eventually brought them to Mobile, Alabama, where petitioners were interviewed by an agent from the Department of Homeland Security. Petitioners explained that someone had offered them $5000 to take the boat to Puerto Rico and admitted that they knew they were transporting drugs. *Id.* at 4a-5a.

Petitioner Martinez laughed when the agent asked if their boat had a captain and claimed that the four men decided together to turn back toward the Dominican Republic when their engine had sputtered. *Id.* at 5a.

3. A federal grand jury in the Southern District of Alabama returned a superseding indictment charging petitioners with conspiring to distribute and to possess with intent to distribute cocaine on board a vessel subject to the jurisdiction of the United States, in violation of 46 U.S.C. 70506(b); and possessing with intent to distribute 182 kilograms of cocaine on board a vessel subject to the jurisdiction of the United States, in violation of 46 U.S.C. 70503(a)(1). Superseding Indictment 1-2.

Before trial, the government moved for a determination that the boat was a "covered vessel," 46 U.S.C. 70503(e), over which the United States had substantive statutory jurisdiction under the MDLEA. Pet. App. 6a; see 46 U.S.C. 70504(a) (stating that such jurisdictional issues under the MDLEA "are preliminary questions of law to be determined solely by the trial judge"). The district court found that the boat was covered as a "stateless vessel." Pet. App. 37a; see *id.* at 36a-46a. It explained that the vessel was intercepted in international waters; that it had no flag, no registration documents, and that no other indicia of nationality; and nobody on the boat claimed nationality or registry of the vessel. *Id.* at 37a.

After the submission of evidence at trial, petitioners moved for judgment of acquittal, asserting insufficient evidence of jurisdiction. Pet. App. 8a, 30a-32a. The district court denied the motion. *Id.* at 8a, 32a. The jury found petitioners guilty on both counts of the indictment. *Id.* at 8a. The district court sentenced petitioners Garcia, Martinez, and Enriquez to 188 months of

imprisonment, to be followed by five years of supervised release. Garcia Judgment 2-3; Martinez Judgment 2-3; Enriquez Judgment 2-3. It sentenced Nuñez to 152 months of imprisonment, to be followed by five years of supervised release. Nuñez Judgment 2-3.

4. The court of appeals affirmed, Pet. App. 1a-27a, agreeing with the district court that the United States had substantive statutory jurisdiction over petitioner's boat, *id.* at 9a-18a. The court observed that, under the MDLEA, "[a] 'vessel is subject to the jurisdiction of the United States' if it is," among other things, "'a vessel without nationality.'" *Id.* at 10a (quoting 46 U.S.C. 70502(c)(1)(A). The court further observed that 46 U.S.C. 70502(d)(1) "describes three ways to establish that a vessel lacks nationality when the government encounters the master or individual in charge of the vessel," but "does not list every circumstance in which a vessel lacks nationality." Pet. App. 10a.

The court of appeals explained that Section 70502(d)(1) "uses the word 'includes'" to introduce a list of vessels that lack nationality, and that term "ordinarily introduces only examples," rather than an exhaustive list. Pet. App. 10a-11a (citing Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* § 15, at 132-133 (2012)); see 46 U.S.C. 70502(d)(1) ("In this chapter, the term 'vessel without nationality' includes—"). The court also identified a "material variation" in Congress's use of "the phrase 'includes *only*' in the next subsection," "confirm[ing] that the three circumstances enumerated in [S]ection 70502(d)(1) provide only examples of when a vessel lacks nationality, not an exhaustive list." Pet. App. 11a (emphasis added); see 46 U.S.C. 70502(e).

The court of appeals then determined that petitioners' boat was a "vessel without nationality" within the term's well-developed meaning in international law. Pet. App. 11a (brackets omitted). The court explained that under customary international law, any nation may grant ships the right to sail under its flag. *Ibid.* If a nation does so, that affiliation is ordinarily exhibited through some combination of the vessel carrying official documents, flying the nation's flag, and being entered into a national registry of vessels. *Id.* at 11a-12a. The court observed that petitioner's vessel "offered none of these customary signs of nationality." *Id.* at 12a. It had no documents, flew no flag, and had no name or identifying numbers that would permit registration; and "[n]o one on the vessel verbally claimed that it had any nationality." *Ibid.*

The court of appeals also found it "hard to see how a boat" that could not make a "claim of nationality" in any of the exclusive ways such a claim must be made—namely, the possession and production of on-board documents identifying the vessel's nationality; the flying of a nation's flag; or "'a verbal claim of nationality or registry by the master or individual in charge of the vessel,'"—"could be anything other than a vessel without nationality." Pet. App. 12a-13a (quoting 46 U.S.C. 70502(e)(3)). And here, petitioners' boat not only lacked documents or a flag, but also any identifiable "master or individual in charge who could make a verbal claim of registry," in light of the evidence that petitioners "were equals" and that no particular person was in charge. *Id.* at 13a. The court of appeals rejected petitioners' contention that "their equality means * * * that they were *all* in charge or that they took turns being in charge." *Ibid.* The court explained that this understanding was

inconsistent with maritime law, under which the term "'individual in charge' refers to someone with authority over the vessel's personnel, not someone with temporary control of navigation." *Ibid.* And the court further observed that "the record * * * fails to support" petitioners' contention because none of them "claimed to be in charge during the interception" itself. *Id.* at 14a.

The court of appeals also rejected petitioner's related contention that their boat could not be a "vessel without nationality" because Section 70502(d)(1) specifies that a vessel lacks nationality when a master or individual in charge fails to make a claim of nationality "'on request of an officer of the United States,'" and no request for a claim of nationality was made by the Coast Guard officers during the encounter. Pet. App. 15a (citation omitted); see *id.* at 14a-15a. The court explained that because "[S]ection 70502(e) makes clear that only a master or individual in charge can make a verbal claim of registry," the requirement that U.S. officers must request a claim "applies only when the master or individual in charge is aboard the vessel." *Id.* at 15a. And it reiterated that "here, no one was in charge" and found that in those circumstances, "the Coast Guard was not required to ask the crew" for a claim of nationality. *Ibid.*

The court of appeals accepted "that the only other circuit to consider a similar set of facts reached the opposite conclusion," but found its reasoning unsound. Pet. App. 17a (citing *United States* v. *Prado*, 933 F.3d 121, 130-132 & n.5 (2d Cir. 2019)). The court observed, in particular, that the Second Circuit had "fail[ed] to grapple with the non-exhaustive nature of the examples in [S]ection 70502(d)(1) or to consider the possibility

that a vessel may not have a master or individual in charge." *Id.* at 18a.

ARGUMENT

Petitioners renew their claim (Pet. 24-32) that 46 U.S.C. 70502(d)(1) provides the exclusive list of circumstances in which a vessel can be deemed "without nationality" and thus subject to the jurisdiction of the United States under the MDLEA. The court of appeals correctly rejected that claim and its decision does not conflict with any decision of this Court. And while petitioners assert a shallow conflict between the decision below and the Second Circuit's decision in *United States* v. *Prado*, 933 F.3d 121 (2019), *Prado* involved different facts, and any conflict does not warrant this Court's review. The petition should be denied.

1. a. Congress enacted the MDLEA to combat international drug smuggling on the seas and explicitly provided that the statute's prohibitions continue to apply "even though the act is committed outside the territorial jurisdiction of the United States." 46 U.S.C. 70503(b); see 46 U.S.C. 70501. In enacting the statute, Congress emphasized that "trafficking in controlled substances aboard vessels is a serious international problem" that is "universally condemned." 46 U.S.C. 70501. Accordingly, the MDLEA prohibits certain extraterritorial drug-trafficking crimes upon vessels subject to the jurisdiction of the United States, 46 U.S.C. 70503(a), one type of which is a "vessel without nationality," 46 U.S.C. 70502(c)(1)(A). Vessels without nationality are considered to be "international pariahs * * * [and] have no internationally recognized right to navigate freely on the high seas." *United States* v. *Marino-Garcia*, 679 F.2d 1373, 1382 (11th Cir. 1982), cert. denied, 458 U.S. 1114 (1983).

Congress provided that the term "'vessel without nationality' *includes*" a vessel "aboard which the master or individual in charge" either (A) makes a claim of registry that is denied by the nation where registry is claimed; (B) fails to make a claim of registry on request of an officer of the United States; or (C) makes a claim of registry that is not unequivocally and affirmatively confirmed by the claimed nation. 46 U.S.C. 70502(d)(1) (emphasis added). Congress's use of the term "includes" to introduce a list of vessels that lack nationality indicates that the list is not exhaustive. See *Christopher* v. *SmithKline Beecham Corp.*, 567 U.S. 142, 162 (2012) (use of the verb "includes" instead of "means" "makes clear that the examples enumerated in the text are intended to be illustrative, not exhaustive"); *Burgess* v. *United States*, 553 U.S. 124, 131 n.3 (2008) (same); *United States* v. *Rosero*, 42 F.3d 166, 170 (3d Cir. 1994) (Alito, J.) (the term "includes" indicates that categories of vessels that lack nationality in MDLEA "are merely parts or components of the entire set of vessels without nationality").

Separately, using markedly different language, Congress identified three exclusive means by which a vessel may assert a claim of nationality or registry. 46 U.S.C. 70502(e). It provided that such a claim under the MDLEA "*includes only*—" (A) "possession" and "production" of registration documents; (B) flying an "ensign or flag"; or (C) a verbal claim of nationality "by the master or individual in charge of the vessel." *Ibid.* (emphasis added). Particularly when read together, those neighboring provisions of Section 70502 make clear a vessel may lack nationality under Section 70502(d) for the reasons set forth in the statute or for other reasons, but a vessel may claim nationality only in three specific

ways. See *Rosero*, 42 F.3d at 170 (contrast between "includes" in subsection defining vessels without nationality and "only includes" in subsection on claims of nationality "dispels any suggestion that the drafters sloppily used the term 'includes'"); *United States* v. *Matos-Luchi*, 627 F.3d 1, 4 (1st Cir. 2010) ("That the listed examples do not exhaust the scope of [S]ection 70502(d) is confirmed by Congress's contrasting use of the phrase 'includes only' in [Section 70503(e)].").

Accordingly, as courts of appeals have recognized the phrase "vessel without nationality" to include not only the examples specifically identified in Section 70502(d), but also those vessels that are considered stateless under international law. See *Matos-Luchi*, 627 F.3d at 4 ("At the very least, Congress intended to include in [S]ection 70502(d), in addition to the specific examples given, those vessels that could be considered stateless under customary international law."); *Rosero*, 42 F.3d at 171 (explaining that the concept of a vessel without nationality "has a reasonably developed meaning under international law" and the residual category of vessels without nationality "are those that would be regarded as without nationality or stateless under international law"); *cf. Sekhar* v. *United States*, 570 U.S. 729, 733 (2013) (when a term "is obviously transplanted from" another source "it brings the old soil with it") (citation omitted).

b. In this case, the court of appeals correctly determined that petitioners were aboard a vessel without nationality under the MDLEA. Because the vessel lacked any registration documents or a flag, and no occupant identified himself as the "master" or "individual in charge" and made a verbal claim of nationality, the vessel could not make a "claim of nationality" in any of the

exclusive ways in which such a claim must be made under the statute. 46 U.S.C. 70502(e). Petitioners' refusal to identify a master did not itself exempt the vessel, which lacked any evident nationality, from classification as a "vessel without nationality." While the statute defines that term to "include[]" a vessel in which the "master" or "individual in charge" fails to make a verbal claim of nationality upon the request of officers of the United States, 46 U.S.C. 70502(d)(1)(B), petitioners' own conduct in refusing to identify a master stymied the guardsmen from completing such a request, see Pet. App. 4a, with the result that the nationality of the vessel, if any, was unidentifiable As the court of appeals explained—and petitioners do not dispute—petitioners' vessel would have been considered stateless under international law in these circumstances because it "offered none of the[] customary signs of nationality," and the same is true under the MDLEA. *Id.* at 12a.

As the court of appeals also explained, those aboard a stateless vessel that flies no flag and carries no registration documents cannot circumvent the MDLEA and avoid being subject to the jurisdiction of the United States through the simple expedient of disclaiming that the vessel has any master who can be called upon to make a claim. See Pet. App. 15a; see *United States* v. *Cabezas-Montano*, 949 F.3d 567, 588-590 (11th Cir.), cert. denied, 141 S. Ct. 162, and 141 S. Ct. 814 (2020); *United States* v. *De la Cruz*, 443 F.3d 830, 832 (11th Cir. 2006) (per curiam). Instead, a vessel that refuses to assert any nationality at all is "without nationality" under both international and U.S. law. See Pet. App. 12a (citing H. Meyers, *The Nationality of Ships* 177-178 (1967)).

c. Petitioners nonetheless contend (Pet. 24-32) that their boat does not qualify as a "vessel without nationality" under the MDLEA on the theory that the list of examples in Section 70502(d) is exhaustive, and a vessel that has no flag or registration documents and no discernable master or individual in charge cannot be considered stateless unless—perhaps—the Coast Guard asks the boat's passengers to make a claim of nationality. Their arguments for an easily invoked MDLEA loophole do not withstand scrutiny.

Petitioners invoke (Pet. 25) the presumption against extraterritoriality and argue that Congress must make a "clear[] statement" that a vessel is covered. In general, United States law governs only domestically and as such, "[a]bsent clearly expressed congressional intent to the contrary, federal laws will be construed to have only domestic application." *RJR Nabisco, Inc.* v. *European Community*, 579 U.S. 325, 335 (2016). But here, Congress provided the requisite clear statement that the MDLEA applies outside of the United States because Section 70503(b) provides that the criminal penalties of the MDLEA apply "even though the act is committed outside the territorial jurisdiction of the United States." To the extent that petitioners would require Congress to include multiple clear statements, their view is unfounded.

Petitioners argue (Pet. 25-27) that the MDLEA's structure indicates that the definition of "vessel without nationality" is exhaustive because the statutory scheme is "detailed" and "multilayered." But their argument fails to reconcile Congress's use of "includes" to introduce a list of stateless vessels in Section 70502(d)(1)—in contrast to its use of "includes only" in the next subsection—other than to assert that the plain

language of the statute can be overcome by other canons of interpretation (Pet. 30). And petitioners' attempt to intermingle diverse canons of construction to deem a list of examples "exhaustive" where Congress introduced the list with "includes" is misguided. See *Matos-Luchi*, 627 F.3d at 4; *Rosero*, 42 F.3d at 170. By its plain terms, Section 70502(d) explains that the term "vessel without nationality[] * * * includes" certain types of boats, not (like the next subsection) that it "includes *only*" the enumerated examples. 46 U.S.C. 70502(d).

Petitioners' contention (Pet. 28) that Congress could not have intended for courts to interpret the term "vessel without nationality" against the background of customary international law because it did not reference the Convention on the High Seas, *done* Apr. 29, 1958, 13 U.S.T. 2312, 450 U.N.T.S. 11, as it did in other provisions of the MDLEA is likewise misplaced. Petitioners offer no sound reason why the statute's occasional reference to an international treaty that explicitly addresses the statute's subject matter should preclude courts from interpreting terms in the statute under well-established principles of customary international law—particularly when the statute itself eschews a complete definition. Here, the court of appeals pointed to the 1958 Convention on the High Seas in addition to treatises for the proposition, already reflected in the statute, that a vessel must disclose its nationality in some way to avoid being deemed stateless. Pet. App. 11a-12a. That analysis of customary practices to interpret the statutory term "vessel without nationality" is not the type of speculative judicial rewriting of a statute that petitioners suggest must be avoided (Pet. 16, 27).

2. Petitioners contend (Pet. 11-20) that the court of appeals' decision in this case conflicts with the Second

Circuit's decision in *Prado*, *supra*. But *Prado* involved significant facts not present here, and any conflict between those decisions does not warrant this Court's review.

In *Prado*, the Second Circuit concluded that the United States had not established that a "go-fast" boat in international waters between Nicaragua and Costa Rica was a "vessel without nationality," where the Coast Guard officers who boarded the vessel did not make any request of the master or individual in charge for a claim of nationality, and the officers "destroyed the vessel without having secured a vessel identification number (or other means of identifying the vessel)." 933 F.3d at 130. The court stated that "[t]o establish statelessness in the absence of a claim of registry, the United States officers must make a request of the master or person in charge for a claim of registry." *Id.* at 132. In a footnote, the court concluded that "[t]he government's evidence show[ing] that none of the three defendants identified himself as the master * * * did not prevent the officers from making the inquiry" because the officers "could have asked all three persons" on the boat. *Id.* at 131 n.5. The court ultimately concluded that "[b]ecause of the Coast Guard's failure to follow statutorily prescribed steps that might have established statelessness at least to the satisfaction of the MDLEA's standards, followed by the Coast Guard's destruction of the vessel, it became virtually impossible for the government to demonstrate" that the boat was subject to U.S. jurisdiction under the MDLEA. *Ibid.*

Because the Second Circuit based its conclusion that the government had not demonstrated that the vessel in *Prado* was stateless in part on the fact that the Coast Guard had destroyed the vessel without providing

satisfactory evidence that the boat lacked an identification number or other means of establishing its nationality, it is not clear that *Prado* squarely conflicts with the decision below. Unlike in *Prado*, this case involved no contention that the boat might have contained information establishing its nationality. To the contrary, "the serial number had been filed off [the boat's] outboard motor," and the court of appeals observed that the boat "flew no flag, and it had no name or identifying numbers that would permit entry into a national registry." Pet. App. 4a, 12a. And, while some of the language in *Prado* suggests that the Second Circuit was of the view that a boat may not be considered stateless unless the government asks its occupants for a claim of nationality and is rebuffed, the Second Circuit would have ample reason to consider that language dictum in a future case where—as here—the vessel in question indisputedly lacks any other indicia of nationality.

As the court of appeals in this case observed, the Second Circuit did not analyze the text of Section 70502(d)(1) or explain why it thought the list provided in that section exhaustively described all vessels without nationality notwithstanding Congress's use of "includes" to introduce the list. Pet. App. 17a. Moreover, the Second Circuit simply assumed, in a footnote, that at least one of a boat's passengers must be the master or individual in charge, such that—where no occupant of a vessel claims authority—Section 70502(d)(1)(B) requires the government to ask every person on the boat for a claim of registry. That analysis fails to account for a scenario like this case, where the boat's passengers affirmatively claim that *none* of them is the master or individual in charge—that they take turns piloting the boat and make decisions together. *Id.* at 4a-5a. Indeed,

in this case, had the Coast Guard made an inquiry of each petitioner and each remained silent, they would likely continue to argue that Section 70502(d)(1)(B) was not satisfied because none of them was the master or individual in charge. The Second Circuit, if it confronts a situation like the one here, may join the court below in rejecting such an end-run around the statute.

As petitioners acknowledge, the only other courts of appeals to address the question presented have agreed that the examples of "vessel[s] without nationality" in Section 70502(d)(1) are not exhaustive. See Pet. 17-20 (citing *Matos-Luchi*, 627 F.3d at 4, and *Rosero*, 42 F.3d at 169-170). Particularly given the lopsided status of any conflict, the outlier *Prado* decision does not present a sound basis for further review here.

3. Finally, petitioners err in asserting (Pet. 21-23) that the court of appeals' decision threatens the United States' foreign relations. Petitioners' contention assumes that the court of appeals' decision will result in the United States exercising jurisdiction over vessels claimed by foreign countries. See, *e.g.*, Pet. 32 (stating that the MDLEA strikes a balance between the United States' interest in fighting drug trafficking with foreign nations' interest in retaining sovereignty). That assumption is unwarranted because the court of appeals looked to established international law to determine whether the vessel should be considered stateless. See Pet. App. 11a-12a. Even now, petitioners do not affirmatively claim that their homemade boat was registered by a foreign nation or that it was anything other than stateless, and no other country has raised concerns about petitioners' prosecution. See D. Ct. Doc. 110, at 5 (June 17, 2019). Nor do petitioners explain how this case would come out differently if they had each been

asked to make a claim of nationality for the vessel. Petitioners' attempt to overturn their convictions through an unsubstantiated suggestion that their prosecution—for trafficking cocaine on the high seas in a homemade boat with no flag, no registration documents or identifying information, and four occupants refusing to identify a master and failing to make a claim of nationality—offends the sovereignty of a foreign nation does not warrant further review.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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