DEBRA ANN LIVINGSTON, *Chief Judge*, concurring in part and dissenting in part:

The Court's decision today is a victory for Muriel Bescond. But our Circuit's law is a silent loser. In its effort to remedy what the majority perceives as a case of prosecutorial overreach, the majority creates a new class of interlocutory appeals that will greatly disserve the interests of justice when applied to the substantial number of cases in which foreign-based defendants are charged with violating our laws and harming our people. In doing so, the majority departs from our sister circuits to create a novel rule of appellate jurisdiction. Even if I thought the majority's approach to the fugitive disentitlement doctrine were sound—and I do not—I cannot conclude that Congress has given us appellate jurisdiction to consider interlocutory appeals of fugitive disentitlement orders. I must therefore respectfully dissent from the majority's conclusion that we may review such an order today.[1]

I

As my colleagues do, I start with the statute that governs our appellate jurisdiction. It states, in relevant part, that "[t]he courts of appeals . . . shall have

[1] Having concluded that we lack appellate jurisdiction entirely, I agree with the majority that we lack pendent appellate jurisdiction to review Bescond's additional arguments. Maj. Op. 21–23.

jurisdiction of appeals from all final decisions of the district courts of the United States." 28 U.S.C. § 1291. This rule, known as the final judgment rule, is "crucial to the efficient administration of justice." *Flanagan v. United States*, 465 U.S. 259, 264 (1984). "Finality as a condition of review is an historic characteristic of federal appellate procedure" and Congress, "from the very beginning has, by forbidding piecemeal disposition on appeal of what for practical purposes is a single controversy, set itself against enfeebling judicial administration." *See Cobbledick v. United States*, 309 U.S. 323, 324–25 (1940) (noting that a version of the final judgment rule can be traced back to the first Judiciary Act).

The interest in prohibiting review of non-final orders, as the Supreme Court observed in 1940, is "especially compelling in the administration of criminal justice" where "encouragement of delay is fatal to the vindication of the criminal law." *Id*. at 325. The policy arguments in favor of the final judgment rule in criminal cases, moreover, have only become stronger over time, as the criminal dockets of the federal courts have expanded. *See Flanagan*, 465 U.S. at 264. The prompt resolution of criminal cases benefits both the prosecution, which otherwise, as time passes, may find its "ability to meet its burden of proof . . .

greatly diminish," and also criminal defendants, who generally "have a strong interest in speedy resolution of the charges . . . ." *Id.* at 264.

The collateral order doctrine, first articulated in *Cohen v. Beneficial Indus. Loan Corp.*, 337 U.S. 541 (1949), is a narrow exception to the final judgment rule for a "limited category of cases falling within" its strictures. *Flanagan*, 465 U.S. at 265 (quoting *United States v. Hollywood Motor Car Co.*, 458 U.S. 263, 265 (1982)). Under this doctrine, courts of appeals may review orders only when they "(1) conclusively resolve a disputed question that (2) is an important issue completely separate from the merits of the action, and that (3) would be effectively unreviewable on appeal from a final judgment." *United States v. Magassouba*, 544 F.3d 387, 400 (2d Cir. 2008). "Because of the compelling interest in prompt [criminal] trials," this exception is applied "with the utmost strictness in criminal cases." *Flanagan*, 465 U.S. at 265.

To date, in the 70-plus years since *Cohen* was decided, the Supreme Court has recognized only four types of orders in criminal cases that satisfy these demanding requirements: orders denying motions to dismiss on double jeopardy grounds; orders denying such motions brought under the Speech or Debate Clause; orders denying motions to reduce bail; and orders involving the forced

administration of antipsychotic medication. *See Flanagan*, 465 U.S. at 265–66 (listing the first three of these exceptions); *see also Sell v. United States*, 539 U.S. 166, 176–77 (2003) (recognizing the fourth). This is a short list. And as Judge Sutton recently observed, "the Supreme Court has cautioned us time, time, and time again not to expand the collateral order club's 'selective . . . membership.'" *United States v. Martirossian*, 917 F.3d 883, 887 (6th Cir. 2019) (alteration in original) (citations omitted) (quoting *Will v. Hallock*, 546 U.S. 345, 350 (2006)).

True, this Court has gone beyond these exceptions. *See, e.g.*, *United States v. Doe*, 49 F.3d 859, 865 (2d Cir. 1995) (holding that order allowing the government to try a juvenile as an adult is immediately appealable). Yet we, too, have more often declined invitations to create ever more appealable collateral orders. *See, e.g.*, *United States v. Robinson*, 473 F.3d 487, 490–92 (2d Cir. 2007) (holding that the "district court's denial of a motion to strike a death penalty notice" is not an appealable collateral order); *United States v. Aliotta*, 199 F.3d 78, 81 (2d Cir. 1999) (holding that motion to dismiss an indictment on double jeopardy grounds *after* a guilty plea is not reviewable). Indeed, in a case much like Bescond's, we held that the collateral order doctrine did *not* permit review of the denial of a pretrial motion to dismiss an indictment charging failure to report for induction even though the

defendant affirmed: (1) that he was neither a citizen, national, nor resident alien of the United States subject to the Universal Military Training and Service Act; (2) that the government had papers in its possession showing as much; and (3) that he should not have to travel thousands of miles from his home in Thailand in order to have the indictment quashed. *United States v. Golden*, 239 F.2d 877, 879–81 (2d Cir. 1956). The majority dismisses *Golden* in a footnote, pointing out that we rejected the applicability of the doctrine "in four words." Maj. Op. at 18 n.5. But that may be all it takes when there's no authority to the contrary and the Supreme Court has so often made clear its "stern reluctance to allow interlocutory review in criminal cases." *United States v. Wallach*, 870 F.2d 902, 906 (2d Cir. 1989) (discussing Supreme Court authority); *see also Hollywood Motor Car Co.*, 458 U.S. at 270 (noting threat of "ever-multiplying exceptions" to final judgment rule in criminal cases).

Nevertheless, the majority today adds one more exception to the list, holding that this Court has jurisdiction under the collateral order doctrine to review orders "disentitling a foreign citizen who has remained at home abroad." Maj. Op. at 12. In doing so, it creates a split with our sister circuits who have held fugitive disentitlement orders—and specifically involving, as here, a foreign

citizen located abroad—are *not* immediately appealable. *See Martirossian*, 917 F.3d at 887; *United States v. Shalhoub*, 855 F.3d 1255 (11th Cir. 2017). For the reasons set forth below, our sister circuits have the better of this argument. We thus err in creating this circuit split and should instead conclude that we lack appellate jurisdiction to review the district court's order.

II

A

As discussed, an order must satisfy three conditions to be eligible for interlocutory review as a collateral order: (1) it must conclusively resolve a disputed question; (2) that question must be important and completely separate from the merits; and (3) that question must be unreviewable as part of an appeal from a final judgment. *Magassouba*, 544 U.S. at 400.

The majority holds that this Court has jurisdiction "to review an order disentitling a foreign citizen who has remained at home abroad—in this case, without evasion, stealth, or concealment." Maj. Op. at 12. But at the very start—before even turning to the narrow circumstances in which an interlocutory order qualifies as collateral—the majority's very framing of the "disputed question"

opens the door to the piecemeal appellate adjudication of criminal cases brought against foreign-based defendants who are not citizens of the United States.

To be sure, the majority's holding suggests that it does not, in effect, entitle *each* and *every* foreign citizen indicted in federal court to the substantial delay associated with consideration of a fugitive disentitlement order so long as the defendant is outside the United States and declines to appear. But this is an illusion. Because the majority is wholly silent on which foreign defendants its formula covers and how this formula is to apply, its new exception to the final judgment rule portends significant future delays in many criminal cases involving foreign-based defendants—precisely the sort of consequence Congress sought to avert with the final judgment rule.

Consider a foreign citizen charged with committing a cybercrime in the United States. Does such a person "remain[] at home abroad," entitling him to review of a disentitlement order, so long as the indictment affirmatively alleges that he acted from outside the United States? If the indictment is silent or unclear on this question, may he obtain discovery to pursue it? What if he regularly visits—even owns property in the United States—but is not alleged to have himself committed any act here in connection with the crime? Does such a person

"remain at home"—a result which would be in some tension with Congress's judgment in 28 U.S.C. § 2466 that a district court may properly disentitle an individual from pursuing a claim in a civil forfeiture action that is proceeding in parallel to a pending criminal case when that person has "decline[d] to enter or reenter the United States to submit to its jurisdiction." And what if our hypothetical defendant commissions *others* to undertake serious crimes within the United States? Does such a person "remain at home"? All this is left for resolution in future cases that likely will come to us through dilatory interlocutory appeals.

Moreover, it is not even clear, to me, that the majority's new exception to the final judgment rule will remain limited to fugitive disentitlement orders. The majority says that foreign citizens who "remain at home" are entitled to collateral review of a district court's disentitlement order because, *inter alia*, the order unconstitutionally burdens their right to defend themselves by "impos[ing] a penalty for staying home." Maj. Op. at 14. This is incorrect, as discussed below. But starting from this faulty premise, what happens in the event that a fugitive disentitlement order is, as here, overturned on appeal and the district court, on remand, determines that a motion to dismiss the indictment should be denied *on the merits*—or that such a motion cannot be decided before trial? The trial cannot

proceed in the defendant's absence. *See Crosby v. United States*, 506 U.S. 255, 262 (1993) (noting that Rule 43 of the Federal Rules of Criminal Procedure "prohibits the trial in absentia of a defendant who is not present at the beginning of the trial"); *see also Degen v. United States*, 517 U.S. 820, 826 (1996) (noting that where dual citizen of U.S. and Switzerland remained in Switzerland and had not returned to face drug charges, "[t]he criminal trial cannot begin until he returns"). But such a defendant will surely claim that the harms visited by virtue of the pending indictment are no less severe than the fugitive disentitlement order itself—so that interlocutory review of his motion to dismiss is also imperative, lest he be penalized for staying home. Given the reasoning in the majority opinion, by what principle would this argument be rejected? The Supreme Court warned in *Hollywood Motor Car Co.*, that when the collateral order doctrine is misunderstood, the "policy against piecemeal appeals in criminal cases" is in constant danger of being "swallowed by ever-multiplying exceptions." 458 U.S. at 270. Here, the majority's misunderstanding of the doctrine, as next set forth, sets the stage for this very result.

B

Regardless of how the issue is framed—whether a foreign citizen remains at home (with or without evasion), tours the world, or hides in a cave, we lack appellate jurisdiction to consider a fugitive disentitlement order under the collateral order doctrine. To be sure, there may be circumstances in which such orders may properly be the subject of mandamus relief. But as to the collateral order doctrine's three-part test, the district court's order satisfies neither the second nor third requirements.[2] Bescond's case presents neither an important issue completely separate from the merits nor an issue that is effectively unreviewable on appeal from a final judgment. Accordingly, the majority errs in entertaining this appeal.

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[2] In his opinion for the Sixth Circuit, Judge Sutton suggested that fugitive disentitlement orders might not even meet the first of the three requirements. *United States v. Martirossian*, 917 F.3d 883, 887 (6th Cir. 2019). Judge Sutton reasoned that because the district court in that case held a motion to dismiss in abeyance until Martirossian submitted to the jurisdiction of the court, there was no final resolution of the motion. *Id.* Similarly here, the district court's determination that Bescond is a fugitive and should be disentitled would no doubt be revisited if Bescond were to appear. The government has conceded, however, that the question of whether Bescond is a fugitive was finally resolved by the district court. *See* 15A Charles A. Wright, Arthur R. Miller, & Edward H. Cooper, Federal Practice & Procedure § 3911.1 (2d ed. Supp. 2020) ("[A] disposition ordinarily should be held final for purposes of collateral order appeal when the district judge believes that it has been finally resolved for purposes of whatever proceedings remain . . . ."). Accordingly, I do not further address this point.

1

The majority asserts that the order here satisfies the second requirement of the collateral order test—that the issue appealed be an important issue completely separate from the merits—on the theory that "[d]isentitlement heavily burdens Bescond's exercise of the due process right to defend herself in court." Maj. Op. at 13. I disagree. As the Supreme Court has explained, a question is "important" for the purposes of the collateral order doctrine when it is "weightier than the societal interests advanced by the ordinary operation of final judgment principles." *Digit. Equip. Corp. v. Desktop Direct, Inc.*, 511 U.S. 863, 879 (1994). It is separate from the merits when collateral to the issue of guilt or innocence. *United States v. Gold*, 790 F.2d 235, 238 (2d Cir. 1986). Here, the order fails on *both* counts.

As to importance, the four appealable collateral orders the Supreme Court has recognized all protect constitutional rights.[3] The majority, cognizant of this, argues that disentitlement burdens Bescond's due process right to defend herself in court. Maj. Op. at 13. But this is simply incorrect. Bescond is perfectly able to

[3] And not just any constitutional right will do. *See, e.g.*, *United States v. Hollywood Motor Car Co.*, 458 U.S. 263, 268–69 (1982) (holding that denial of motion to dismiss based on claim of prosecutorial vindictiveness is not appealable before trial); *United States v. MacDonald*, 435 U.S. 850, 857 (1978) (rejecting argument that claims based on Sixth Amendment right to speedy trial are immediately appealable).

defend herself in court if and when she is subject to the court's jurisdiction. But no party has a due process right to insist on that jurisdiction for rulings favorable to herself while at the same time making clear her refusal to comply with any *unfavorable* result. Here, Bescond sought dismissal of the indictment and also discovery from the government, despite showing no willingness to abide by any order contrary to her interests. J. App'x at 44. The fugitive disentitlement doctrine itself exists to prevent this manner of nonmutual litigation. *See Gao v. Gonzales*, 481 F.3d 173, 176 (2d Cir. 2007).

Nor does the district court labelling Bescond a fugitive raise a due process concern, much less an "important" one.[4] Bescond has no "more of a freestanding right not to be labeled a fugitive, than a criminal defendant has a freestanding right not to be labeled a defendant." *Martirossian*, 917 F.3d at 887 (quoting *Shalhoub*, 885

[4] In suggesting otherwise, the majority largely sidesteps the question whether foreign citizens outside of the United States possess due process rights at all. Yet the Supreme Court has noted that "it is long settled as a matter of American constitutional law that foreign citizens outside U. S. territory do *not* possess rights under the U. S. Constitution." *Agency for Int'l Dev. v. All. for Open Soc'y Int'l, Inc.*, 140 S. Ct. 2082, 2086 (2020) (emphasis added). Instead, "foreign citizens *in the United States* may enjoy certain constitutional rights" including "the right to due process in a criminal trial." *Id.* This authority makes clear that any rights Bescond can claim under the Constitution will attach only when she travels to the United States to defend herself against the charges she faces. Nevertheless, even assuming *arguendo* that the Due Process Clause applies to Bescond while she remains in France, the interests identified by the majority are insufficient to provide us with jurisdiction to hear her appeal at this time.

F.3d at 1261–62). And even assuming *arguendo* that deeming her a fugitive implicates a constitutionally protected interest in her reputation, "'[w]here a person's good name . . . is at stake,' due process requires only notice and an opportunity to be heard" and Bescond, like the defendant in *Shalhoub*, "enjoys a right to appear in court, to defend [herself] against the indictment, and to clear [her] name if she prevails." *Shalhoub*, 855 F.3d at 1261–62 (quoting *Wisconsin v. Constantineau*, 400 U.S. 433, 437 (1971)).[5] Thus, contrary to the majority's conclusion, Bescond has failed to raise an issue of importance of more substantial weight than the societal interests furthered by the final judgment rule.

To be clear, this is not to deny the harms attendant on being charged with crimes, including, here, the necessity of travel to defend against the charge. But the argument that this case presents a due process problem proves too much. If Bescond's situation raised such a concern, then the entire fugitive disentitlement doctrine would be on unsure constitutional footing, which it is not. For Bescond suffers no impairment of her ability to defend herself in court that distinguishes

[5] Moreover, Bescond actively *litigated* the issue of her fugitivity in the district court, a fact which even further undercuts the majority's claim that her due process rights are somehow at stake.

her from many other foreign citizens (or, for that matter, Americans) for whom the majority does not even *purport* to fashion an exception to the final judgment rule.

Consider a hypothetical defendant alleged to have committed fraud while on a business trip to the United States who then returns home to France before being indicted. This defendant, under traditional principles, would qualify as a fugitive upon his refusal to reenter the United States—and despite any claim on his part that the allegations in the indictment regarding his conduct in the United States are untrue. *See Collazos v. United States*, 368 F.3d 190, 199 (2d Cir. 2004). The majority does not purport to extend its new exception to the final judgment rule to this defendant and would not permit him to seek interlocutory review of any disentitlement determination because he did not "remain at home."

Bescond, in contrast, is not alleged in the indictment to have herself acted within the United States as part of the conspiracy with which she is charged. But the majority offers no explanation—none—how this fact affects her due process right to present a defense so as to distinguish her disentitlement order from our hypothetical defendant's, and thus to establish her order's importance. The majority emphasizes the burdens posed by Bescond's location abroad and analogizes these burdens to the right against excessive bail and the liberty interest

at risk when a court enters an order of commitment. Maj. Op at 13–16. But Bescond is not detained. Further, any pretrial detention she might be subject to upon arrival in the United States, just as our hypothetical defendant's, would be pursuant to the guarantees of the Constitution, including any permissible appeals of collateral orders. Maj. Op. at 13. Assuming the majority does not mean to suggest there is a serious procedural deficiency with our ordinary treatment of defendants who primarily reside abroad yet commit criminal acts within the United States, it is difficult to see why Bescond's interest in avoiding these procedures rises to the level of importance sufficient to justify an immediate appeal.

The Supreme Court's decision in *Degen* does not alter this conclusion. *Degen* involved the question whether a district court "may strike the filings of a claimant in a forfeiture suit and grant summary judgment against him for failing to appear in a related criminal prosecution." 517 U.S. at 821. The Court held that disentitlement in these circumstances was unjustified. Critical to that conclusion, however, was the Court's recognition that the claimant's absence created no risk of delay or frustration in adjudicating the forfeiture matter or in enforcing the judgment because "the court's jurisdiction over the property [was] secure." *Id.* at 825. In such circumstances, because "[t]he dignity of a court derives from the

respect accorded its judgments," disentitlement was unnecessary to protect this "substantial" dignitary interest. *Id*. at 828.[6] But *Degen* is not this case. The district court, on remand, will have *no* ability to enforce any judgment adverse to Bescond, even as it is instructed to proceed. *Degen* thus fails to support the argument that Bescond's disentitlement raises an important due process concern.

Moreover, even if Bescond *had* identified an issue of sufficient importance to outweigh the substantial societal interests reflected in the final judgment rule, she has still failed to show that this issue is sufficiently distinct from the merits. To satisfy the demanding strictures of the collateral order doctrine, an interlocutory ruling must represent not only an important issue, but one "*completely* separate from the merits of the action." *Magassouba*, 544 F.3d at 400 (emphasis added). And here, as in *Martirossian*, "[c]onsiderable overlap . . . exists between the arguments underlying [this] interlocutory appeal and the merits of the case." 917 F.3d at 888. Martirossian argued that he was not a fugitive from the United States "because he

[6] Notably, Congress has since taken the opposite view and granted the district courts broad authority to disentitle absent claimants in forfeiture cases pending simultaneously with a criminal prosecution, notwithstanding that judgments against a *res* may be enforced in the absence of the claimant. See 28 U.S.C. § 2466. This action by a coordinate branch itself charged with upholding the Constitution suggests that concerns about the harshness of disentitlement do *not* have a constitutional dimension.

ha[d] never traveled to the country and his targeted conduct occurred abroad." *Id*. For similar reasons, he argued that the money laundering statute that he was alleged to have violated didn't apply to him. In such circumstances, the Sixth Circuit concluded that the issues pressed by Martirossian in his interlocutory appeal were "not sufficiently distinct from the merits of the action to warrant mid-case review" pursuant to the collateral order doctrine. *Id.* at 887.

So too here. The majority observes that disentitlement "bears not on whether [Bescond] violated the [Commodities Exchange Act ("CEA")] [*i.e.*, the merits of the case], but rather on her ability to defend herself." Maj. Op. at 16. True, a decision on disentitlement does not *entail* a certain resolution of the merits: "[W]e can . . . decide one issue without deciding the other." *Id.* at 21. But there is undeniably "considerable overlap," both as to the relevant facts and "in the arguments underlying" the two issues here, *Martirossian*, 917 F.3d at 888, so that the disentitlement issue is not "completely separate" from the merits, as the collateral order doctrine requires, *Magassouba*, 544 F.3d at 400.

Bescond argues that she does not qualify as a fugitive from the United States because she is "a French citizen with virtually no connection to the United States," Appellant's Br. at 1, and the indictment does not charge her with performing any

acts within the country. But as in *Martirossian*, this argument is intertwined with her argument that the statute she is alleged to have violated—in Bescond's case, Section 9(a)(2) of the CEA—does not apply to her and, indeed, that her prosecution "rests upon an unquestionably impermissible extraterritorial application" of this provision. Appellant's Br. at 4. This latter claim goes to the merits, may generally be incapable of resolution before trial, and should not be decided prematurely in the context of addressing a defendant's refusal to appear.[7] As in *Martiorossian*, "[a] defendant does not increase his rights to an appeal" of a pretrial motion to dismiss by declining to appear. *Id.* at 888.

2

Finally, Bescond has not identified an important issue completely severable from the merits that is also, as the third requirement of the collateral order doctrine requires, "effectively unreviewable on appeal from a final judgment." *Magassouba*, 544 F.3d at 400. This "test is satisfied only where the order at issue involves 'an

[7] *Prime International*, relied on by the majority, makes clear that the premature adjudication of extraterritoriality questions is unwise. It observes that "many cases present a mixed bag of both domestic and foreign components" and even when a statute does not apply extraterritorially, the law may still be violated where there is a "domestic application" of the statute. *Prime Int'l Trading, Ltd. v. BP P.L.C.*, 937 F.3d 94, 102 (2d Cir. 2019), *cert. denied*, 141 S. Ct. 113 (2020). This inquiry requires courts to "evaluate whether the domestic activity involved implicates the 'focus' of the statute," an issue that may not be apparent on the face of the indictment. *Id.*

asserted right the legal and practical value of which would be destroyed if it were not vindicated before trial.'" *Midland Asphalt Corp. v. United States*, 489 U.S. 794, 799 (1989) (quoting *United States v. MacDonald*, 435 U.S. 850, 860 (1978)). Bescond has identified no such right.

To be sure, as with Martirossian, Bescond's "status as a fugitive [will] become moot if [she] submits to the jurisdiction of the federal courts." *Martirossian*, 917 F.3d at 888. But as Judge Sutton recognized in *Martirossian*, this "is true for anyone unwilling to answer an indictment or arrest warrant. And yet that claim alone has never warranted an interlocutory appeal." *Id.*; *see also id.* at 887 (noting absence of "freestanding right not to be labeled a fugitive"); *Shalhoub*, 855 F.3d at 1261–62 (rejecting argument that labelling a defendant a fugitive is sufficient to justify interlocutory appeal). The majority identifies no persuasive reason that it should warrant such an appeal here.

The majority asserts that it is "Bescond's right to mount a defense [that] can be vindicated now or never." Maj. Op. at 17. But this asserted right is simply not of the character of those rights that the Supreme Court has recognized to merit review pursuant to the collateral order doctrine, lest they be lost forever. Consider *Abney v. United States*, 431 U.S. 651 (1977). In *Abney*, the Court permitted

interlocutory appeal of an order denying a pretrial motion to dismiss an indictment on double jeopardy grounds precisely because the Double Jeopardy Clause protects "the right not to be tried twice for the same offense"—so that if a criminal defendant is not to be deprived of that right *completely*, his challenge to the indictment *must* be reviewable before a second trial takes place. *Hollywood Motor Car Co.*, 458 U.S. at 266; *see also Abney*, 431 U.S. at 662.

The supposed due process right on which Bescond relies is not of this sort: it is "not one that must be upheld prior to trial if it is to be enjoyed at all." *Hollywood Motor Car Co.*, 458 U.S. at 270. As the Supreme Court has explained, "[i]t is always true . . . that 'there is value . . . in triumphing before trial, rather than after it.'" *Lauro Lines s.r.l. v. Chasser*, 490 U.S. 495, 499 (1989) (alteration in original) (quoting *MacDonald*, 435 U.S. at 860 n.7). But the Supreme Court "has declined to find the costs associated with unnecessary litigation to be enough to warrant allowing the immediate appeal of a pretrial order." *Id.*; *see also Richardson-Merrell Inc. v. Koller*, 472 U.S. 424, 431 (1985) (noting "possibility that a ruling may be erroneous and may impose additional litigation expense is not sufficient to set aside the finality requirement imposed by Congress"). Bescond may mount a defense at any time, simply by submitting to the jurisdiction of the district court. If Bescond is correct

and the indictment charges an impermissible extraterritorial violation of the CEA, this is a claim that she can pursue both in the district court and, if necessary, on appeal. Granted, disentitlement prevents Bescond from litigating her claims from a location of her choice, but the third requirement for an appealable collateral order requires more than the convenience of an early dismissal of the charges from a convenient locale. Bescond has simply failed to articulate any basis on which she is entitled to an interlocutory appeal.

* * *

I have no doubt that the final judgment rule imposes costs on litigants who must await a final judgment to have their positions vindicated on appeal. But Congress and the Supreme Court have both told us that any benefits from immediate appellate review in individual cases are substantially outweighed by the costs of piecemeal adjudication overall, which include both delay and outright frustration of the adjudicative process. Bescond contends that in the aftermath of this Court's decision in *Prime International,* the charges against her are a clear case of prosecutorial overreach. We do not reach the merits of this contention because we lack jurisdiction to do so. But we similarly lack jurisdiction over the issue that the majority *does* reach. I fear that our decision today will prove yet again the

wisdom of the Supreme Court's instruction, which the majority fails to heed, that the collateral order exception to the finality rule is to be narrowly construed, and most especially in criminal cases. Concluding that this appeal should be dismissed in its entirety, I respectfully dissent.