No. 23M_____

In the Supreme Court of the United States

CHRISTOPHER HADSELL,

Petitioner,

–v–

UNITED STATES OF AMERICA, the Department of Treasury by its agency, the Internal Revenue Service,

Respondent.

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

Unopposed Motion to Direct Clerk to File Petition for Writ of Certiorari

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To the Honorable Elena Kagan, Associate Justice of the Supreme Court of the United States and Circuit Justice for the Ninth Circuit, pursuant to U.S. Sup. Ct. R., rule[1] 22:

I. THIS MOTION IS UNOPPOSED

Petitioner, Christopher Hadsell ("**Hadsell**"), spoke with Ms. Bethany Hauser, Attorney (Appellate Section, Tax Division, Department of Justice)

[1] Subsequent references to the U.S. Sup. Ct. Rules of Court will be designated "**Rule**".

for the United States of America, the Department of Treasury by its agency, the Internal Revenue Service ("**IRS**").

Ms. Hauser stated that IRS does not oppose this motion.

II. THIS CASE IS CERTWORTHY

A. THERE IS A CIRCUIT SPLIT BETWEEN THE NINTH CIRCUIT VERSUS THE SECOND AND TENTH CIRCUITS

This case is certworthy because it presents an intractable and developed circuit split based upon a recurring question that only this Court can resolve.

i. INTRACTABLE ISSUES

There are three issues that are inextricably intertwined and that exacerbate each other thus making them intractable ("a riddle, wrapped in a mystery, inside an enigma"):

a. Definition of IRS "Collections"

IRS' collection activities have murky boundaries because the U.S. Code, Federal Regulations, and federal case law are devoid of useful IRS "collection activities" definitions.

b. The Treasury Offset Program

The Treasury Offset Program ("**TOP**") is a federal collections program that collects debts from taxpayers' federal-tax refunds for specific programs; thus, the cases are often called "tax-intercept" cases.

Two well-known programs include student-loan debt collection[2], and the misnomered family-support debt collection. It is misnomered because the collections primarily result in payments, ***not*** to needy families, but to reimburse primarily the TANF program and the federal treasury.

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[2] Which recently darkened this Court's doors with *Biden v. Nebraska* (2023) 600 U.S. 477 and *Dep't of Educ. v. Brown* (2023) 600 U.S. 551.

I) TOP Is The Primary Source of the Circuit Split

The Ninth Circuit has determined that TOP is part of IRS' collections. Therefore, the Ninth Circuit holds that the U.S. Government's waiver of sovereign immunity under 26 U.S.C.[3] §7433 is swallowed up by §6402(g). Thus, federal courts lack subject matter jurisdiction ("**SMJ**') to hold IRS liable for its violations of law, *Oatman v. Dep't of Treasury-Irs* (9th Cir. 1994) 34 F.3d 787, 788.

Contrastingly, the Second and Tenth Circuits hold that TOP is ***not*** part of IRS' collections because such activities occur only after assessment and collection are completed. Therefore, these circuits do ***not*** create a lack of SMJ, (*Nelson v. Regan* (2d Cir. 1984) 731 F.2d 105, 109, *Rucker v. Secretary of Treasury* (10th Cir. 1984) 751 F.2d 351, 355-356); accordingly, such tax-intercept cases proceed.

c. IRS' Automated Collection System Is Computer-Programmed to Violate the Law

This case applies to tax-intercept cases generally, but specifically involves family-support tax intercepts.

Here, it is undisputed that IRS has violated the ***federal*** laws that limit family-support tax-intercepts collections. Specifically, 42 U.S.C. §§608(a)(3) and 664(a)(1) combine to provide that: i) a State must obtain an assignment of the obligor parent's payments to the State from the family-support recipients, ii) the State must ***certify*** to the Department of Health and Human Service ("**HHS**") ***an amount*** of overdue family support, because iii) any tax intercept collections are limited to the amount of TANF payments the family actually received.

Here, it is undisputed that Hadsell provided his family with well over

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[3] Subsequent undesignated section references shall be to Title 26 of the U.S. Code.

$3.5 million during the 2011-2021 timeframe for his family-support obligations. Therefore, i) his family never received TANF payments; ii) a fortiori, California never received any assignment of payments from his family; nor iii) did California ever certify ***any*** amount of family-support arrearages to HHS.

Thus, as this case demonstrates, IRS hides behind its Automated Collection System ("**ACS**")—a computerized system that is programmed to ignore ***all*** of the required legal elements discussed *supra*.

If it were just this case, this Court is not in the business of correcting wrongly decided cases.

The issue here is that, based upon the Office of Child Support Enforcement's[4] annual reports to Congress, Hadsell is one among ***m***illions of taxpayers, involving ***b***illions of dollars, ***annually*** (see accompanying Writ of Certiorari, Pet.App.73a, Exhibit 4, line 25, "**Hadsell Cert.**").

So, why haven't such egregious actions been held to account? Because the average tax intercept is about $1,816, and almost exclusively affects the nation's poorest individuals. Given the dollar amount, no lawyer can accept such a case for essentially indigent litigants. For perspective, it costs over $3,000 merely to have this Court's required 40 certiorari booklets printed.

d. Conclusion

Combining: i) the amorphous nature of what constitutes IRS' collections, ii) the circuit split over whether TOP is part of IRS' collections or not, and that iii) IRS' ACS computers are programmed to ignore the legal requirements before tax intercepts can be lawfully executed, makes these issues intractable.

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[4] Part of the Administration for Children & Families, a division within the U.S. Department of Health & Human Services.

The issues are recurring daily, and are large scale—involving ***m***illions of taxpayers and ***b***illions of dollars.

III. THIS CASE INVOLVES IMPORTANT CONSTITUTIONAL ISSUES, AND REQUIRES INTERPRETATION OF TAX LAW TO ENSURE NATIONWIDE UNIFORMITY

This case raises important questions under the U.S. Const. that the courts below determined adversely to Hadsell:

This case raises 1st Amendment rights for access to the courts for redress of grievances since the courts here dismissed the case for lack of SMJ.

This case raises 4th and 5th Amendment rights because the courts violated Hadsell's substantive due process rights since it violated the law to seize his tax refund, and violated his right to just compensation when it provided no compensation for a taking that benefited the TANF program, and/or the treasury.

This case also raises the issue of uniform tax-law interpretation because tax law is applied nationally and therefore cannot be applied differently based merely upon one's residence within a circuit-court's jurisdiction.

IV. THIS CASES RAISES A TAX-LAW ISSUE OF FIRST IMPRESSION

This case involves a "credit election" whereby a taxpayer "elects" to have his/her tax refund converted into an estimated tax payment for a succeeding tax year.

To avoid the government's having to pay interest on funds received before a tax is assessed, §6513(b)(2) provides that estimated tax payments become actual tax payments on the due date of the succeeding year's tax return.

Here, three months after Hadsell's estimated tax payment became an

actual tax payment[5], IRS applied tax-refund-intercept law to a ***tax payment***, ***not*** a ***tax refund***.

Any legitimate interpretation of the law would prevent such an action. However, there is no case law on this issue. Therefore, Hadsell respectfully requests that the Court resolve the issue.

V. MOTION TO DIRECT THE CLERK TO FILE PETITION FOR WRIT OF CERTIORARI

Hadsell timely filed a Petition for Rehearing regarding the United States Court of Appeals for the Ninth Circuit's ("**9th Cir**") Judgment dated 7/10/23. Subsequently, the 9th Cir altered the date to 10/20/23.

Ordinarily, the time required to address a Petition for Rehearing makes it impossible to file a Writ of Certiorari within 90 days of the entry of the judgment sought to be reviewed, Rule 13.1.

Instead, Rule 13.3 resolves the impossible filing deadline with the legal fiction that the, "time to file the petition for a writ of certiorari... runs from the date of the denial of rehearing..." rather than the date of the judgment under review. Rule 13.3 also makes clear that the legal-fiction date does, "***not*** [run] from the date of the mandate...", *id.*, (emphasis added).

Here, subsequent to a motion for rehearing, the 9th Cir's 10/20/23 Mandate altered the date of the judgment sought to be reviewed, "The judgment of this Court, entered July 10, 2023, takes effect this date [10/20/23].", Hadsell Cert., Pet.App.63a.

Fed. Rules App. Proc., rule 41(a) does ***not*** require a circuit court to alter the date of the judgment under review in a mandate. Here, for whatever reason, the 9th Cir decided to alter the judgment date.

Hadsell filed the Hadsell Cert. within 90 days of 10/20/23 on 1/18/23—

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[5] Indeed, three months after Hadsell had filed his succeeding-year tax return, and relied upon his credit election as taxes paid.

based on the actual date of the judgment under review.

Notwithstanding, because a petition for rehearing had been filed, the law clerks of this Court, in a letter dated 1/23/24, denied Hadsell's filing as out of date pursuant to Rule 13.3 on the basis that the 9th Cir's 10/12/23 denial of the petition for rehearing requires a filing date of 1/10/24.

Hadsell refiled his petition on 2/11/24 with a cover letter stating his reliance on the judgment under review's 10/20/23 actual date.

It appears that the law clerks rejected Hadsell's 2/11/24 filing, but in return shipment, 22 booklets were lost, five were damaged beyond repair, and the Clerk's letter was lost, Exhibit 1, "**Damaged Shipment**", p. 10.

Therefore, Hadsell telephoned and spoke with the Clerk and her supervisor (on 2/26-27/24) regarding why the clerks relied upon the fictional rehearing-denial date rather than the actual judgment-under-review date.

The response was that the 9th Cir could not alter this Court's Rules. Hadsell agrees. He is merely requesting that the proper rule of the judgment under review's date be applied.

At an impasse, the clerks kindly suggested filing this motion.

Based upon the judgment under review's 10/20/23 date, Hadsell respectfully requests that Your Honor direct the Clerk to file the timely submitted Hadsell Cert.

VI. ALTERNATIVELY, MOTION TO DIRECT THE CLERK TO FILE PETITION FOR WRIT OF CERTIORARI OUT OF TIME

As discussed *supra*, Hadsell relies upon Rule 13.1 as the basis for his timely filing.

Alternatively, pursuant to Rule 13.5, Your Honor may extend the time to file the Hadsell Cert. for up to 60 days.

However, since the second submission was damaged, Hadsell merely

needs the time required to reprint the booklets.

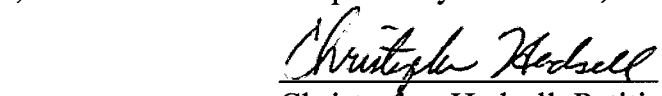
Therefore, Hadsell prays for an extension of 14 calendar days from the date this motion is entered, plus 4 calendar days for time to receive the motion in the U.S. Postal Service mail.

VII. CONCLUSION

For the foregoing reasons, Hadsell respectfully requests that Your Honor enter an order to direct the Clerk to file the Hadsell Cert. as either timely filed pursuant to Rule 13.1, or alternatively, as an extension of time pursuant to Rule 13.5

Dated: March 1, 2024

Respectfully submitted,



Christopher Hadsell, Petitioner

SUPPORTING DOCUMENTS

Exhibit 1

Damaged Shipment