No. _____

IN THE SUPREME COURT OF THE UNITED STATES

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EDWARD DELOACH,

Petitioner,

- v -

UNITED STATES OF AMERICA,

Respondent.

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

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QUESTION PRESENTED FOR REVIEW

If a defendant is convicted for attempting and conspiring to file a false lien under 18 U.S.C. §1521, but the document he submitted to a federal agency was not a lien, and was not filed, does a district court err when it increases the defendant's Sentencing Guidelines offense level under U.S.S.G. §2A6.1(b)(2), which applies when a "defendant is convicted under 18 U.S.C. §1521 and the offense involved more than two false liens or encumbrances?"

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OPINION BELOW

On December 2, 2024, the Ninth Circuit filed an unpublished opinion affirming Edward Deloach's convictions for attempting and conspiring to file a false lien under 18 U.S.C. §1521 and his 70-month sentence. *See United States v. Deloach*, 2024 WL 4926790 (9th Cir. 2024) (attached in appendix).

JURISDICTION

After the Ninth Circuit filed its opinion affirming on December 2, 2024, Deloach did not seek rehearing. This petition is timely under Supreme Court Rule 13 and this Court has jurisdiction under 28 U.S.C. §1254(1).

RELEVANT SENTENCING GUIDELINES PROVISION

United States Sentencing Guideline §2A6.1 provides, in relevant part:

(b) Specific Offense Characteristics

* * *

(2) If . . . the defendant is convicted under 18 U.S.C. § 1521 and the offense involved more than two false liens or encumbrances, increase by 2 levels.

STATEMENT OF THE CASE

Edward Deloach was charged with federal drug offenses in September 2019. When he grew frustrated because he could not bail out of custody, he lashed-out by having his friend submit forms to the Internal Revenue Service. The forms named five officials connected to Deloach's drug prosecution as fiduciaries for Deloach's tax matters, and claimed the fiduciaries owed Deloach an accruing debt for his detention. The IRS rejected the forms.

The forms didn't have anything to do with filing a lien against the named officials' property. Nor did anything Deloach did violate 18 U.S.C. §1521, which prohibits (a) filing a false lien, (b) "against" an official's property, (c) which notices a debt and thereby encumbers the property, and

(d) is publicly-available so it can be discovered by others (*e.g.*, a potential buyer). But the prosecutors wanted to punish Deloach so they concocted a theory that he attempted and conspired to file false liens under §1521. The jury convicted on that dubious theory and the Ninth Circuit affirmed those convictions. *See Deloach*, 2024 WL 4926790, *1.

During the sentencing proceedings, the district court imposed a two-level upward adjustment to the Sentencing Guidelines' offense-level under U.S.S.G. §2A6.1(b)(2), which applies if the defendant "is convicted under 18 U.S.C. § 1521 *and* the offense involved more than two false liens or encumbrances . . . ." (Emphasis added.) The Ninth Circuit affirmed that increase, stating, "Deloach contends that the district court misapplied the adjustment because there were no actual liens filed. But, as noted above, Section 2A6.1(b)(2) does not require that the offense involve valid liens." *Deloach*, 2024 WL 4926790, *2. The only thing "noted above" was the court's conclusion that the jury could convict of attempt and conspiracy offenses under §1521 even though the documents involved were not filed and were nothing like liens. But as the Guideline itself makes clear, a conviction is not enough for the adjustment to apply – there must be a "convict[ion] under 18 U.S.C. § 1521 *and* the offense involved more than two false liens or encumbrances . . . ." (Emphasis added.)

REASONS FOR ALLOWING THE WRIT

Section 2A6.1(b)(2) states, "[i]f . . . the defendant is convicted under 18 U.S.C. §1521 *and* the offense involved more than two false liens . . . increase by 2 levels." (Emphasis added.) As an initial matter, the plain language makes clear that a valid conviction under §1521 is not enough for the Guideline to apply, the offense must also involve actual liens. But none of Deloach's offenses "involved" anything like a lien – they involved IRS forms that noticed a fiduciary relationship. Thus, under the plain language of §2A6.1(b)(2) the adjustment doesn't apply. *See United States v.*

Cruz-Gramajo, 570 F.3d 1162, 1167 (9th Cir. 2009) ("plain meaning of unambiguous language in a guideline provision controls") (quotation omitted).

That conclusion is supported by two related canons of statutory construction. *See United States v. Martinez*, 870 F.3d 1163, 1166 (9th Cir. 2017) (guidelines "text is interpreted using the ordinary tools of statutory interpretation") (quotation omitted).

First, "where Congress includes particular language in one section of a statute but omits it in another section . . . it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion." *Russello v. United States*, 464 U.S. 16, 23 (1983) (quotation and citation omitted).

Second, "a word is understood by the associated words." *United States v. Lacy*, 119 F.3d 742, 748 (9th Cir. 1997).

With those principles in mind, the wording in an adjustment found close-by in §2A6.1(b)(1) is telling. It applies "[i]f the offense involved *any conduct evidencing an intent* to carry out" a threat. (Emphasis added.) In contrast, section 2A6.1(b)(2) applies only if the offense "involved" more than two liens, not if the defendant's "conduct evidenc[ed] an intent" to file more than two liens.

In light of that difference, and the plain language of §2A6.1(b)(2), it is evident the district court erred when it applied the multiple liens adjustment and the Ninth Circuit affirmed.

The Court should grant this petition to resolve this "important question of federal law that has not been, but should be, settled by this Court." S. Ct. R. 10(c).

CONCLUSION

Deloach requests that the Court grant this petition for a writ of certiorari.

Respectfully submitted,

/s/ Todd W. Burns

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