No. _____

In the
Supreme Court of the United States

Saud Alessa,

Petitioner,

v.

United States of America,

Respondent.

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

Petition for a Writ of Certiorari

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Question Presented for Review

Congress, in creating criminal liability for tax law violations, made an exception to the general rule that ignorance of the law is no excuse. When the government prosecutes someone for violating the civil tax code, the government must prove willfulness—that the tax law was objectively clear, the defendant knew what was required, and they intentionally and voluntarily violated the law regardless. *Cheek v. United States*, 498 U.S. 192, 199–200 (1991).

The question presented is:

Whether the district court can preclude a defendant from presenting evidence about the complexity in the civil tax code to defend against the government's allegation that he willfully violated the law.

Related Proceedings

The prior proceedings for this case are found at: *United States v. Alessa*, No. 22-10107, Dkt. 81 (9th Cir. Dec. 16, 2024), and *United States v. Alessa*, No. 22-10107, 2024 WL 4211519 (9th Cir. Sept. 17, 2024).

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Petition for Writ of Certiorari

Saud Alessa petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit.

Opinions Below

The Ninth Circuit's decision affirming Petitioner Alessa's convictions is not published in the Federal Reporter but is reprinted at: *United States v. Alessa*, No. 22-10107, 2024 WL 4211519 (9th Cir. Sept. 17, 2024). Appx. B, p. 2a. The Ninth Circuit's denial of the petition for panel or en banc rehearing is unpublished and not reprinted: *United States v. Alessa*, No. 22-10107, Dkt. 81 (9th Cir. Dec. 16, 2024). Appx. A, p. 1a. The district court's final judgment is unpublished and not reprinted: *United States v. Alessa*, No. 3:19-cr-10-MMD-WGC-1, Dkt. 496 (D. Nev. Apr. 27, 2022). Appx. C, p. 9a.

Jurisdiction

The Ninth Circuit entered its final order denying panel or en banc rehearing on December 16, 2024. Appx. A, p. 1a. This Court's jurisdiction is invoked under 28 U.S.C. § 1254(a). This petition is timely per Supreme Court Rule 13.1.

Constitutional and Statutory Provisions Involved

U.S. Const. amend. V:

> "No person shall . . . be deprived of life, liberty, or property, without due process of law.

18 U.S.C. § 371, Conspiracy to commit offense or to defraud United States:

> If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to

> effect the object of the conspiracy, each shall be fined under this title or imprisoned not more than five years, or both.

26 U.S.C. § 7201, Attempt to evade or defeat tax:

> Any person who willfully attempts in any manner to evade or defeat any tax imposed by this title or the payment thereof shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, shall be fined not more than $100,000 ($500,000 in the case of a corporation), or imprisoned not more than 5 years, or both, together with the costs of prosecution.

26 U.S.C. § 7206(1), Fraud and false statements:

> Any person who—
>
> > (1) Declaration under penalties of perjury.--Willfully makes and subscribes any return, statement, or other document, which contains or is verified by a written declaration that it is made under the penalties of perjury, and which he does not believe to be true and correct as to every material matter; * * *
>
> shall be guilty of a felony and, upon conviction thereof, shall be fined not more than $100,000 ($500,000 in the case of a corporation), or imprisoned not more than 3 years, or both, together with the costs of prosecution.

Introduction

Tax law is different. The tax code is exceedingly complicated, even for experts. It is all too easy to mistakenly violate its provisions. And that is especially the case for small business owners and independent contractors, as opposed to salaried employees. For these reasons, Congress, in creating criminal liability for tax law violations, made an exception to the general rule that ignorance of the law is no excuse. *Cheek v. United States*, 498 U.S. 192, 199–200 (1991). When the government prosecutes someone for violating the civil tax code, the government must prove willfulness—that the tax law was objectively clear, the defendant knew

what was required, and they intentionally and voluntarily violated the law regardless. Criminal prosecutions are "an inappropriate vehicle for pioneering interpretations of tax law." *United States v. Garber*, 607 F.2d 92, 100 (5th Cir. 1979) (en banc).

Saud Alessa, a door-to-door vacuum salesman, did not pay taxes on money he generated but did not collect. The money was deposited directly into the bank account of his long-term domestic partner, Jackie Hayes. Alessa did not have access to or control over these bank accounts. Whether Alessa owed taxes on this money is a complicated legal issue. But that issue was not before the trial court or Ninth Circuit. Instead, the issue was whether the government could prove Alessa *willfully* violated the law—that the tax law was objectively clear, that he knew he was required to pay taxes on money he could not access and did not control, and that he intentionally and voluntarily withheld that money from the federal government.

The Ninth Circuit failed to appreciate this difference and, like the district court, failed to hold the government to its burden. In doing so, the Ninth Circuit split from decisions of the Fourth and Fifth Circuits and misapplied this Court's precedent. This Court's review is thus appropriate. *See* Sup. Ct. R. 10(c).

Statement of the Case

I. The government charged Alessa with four felonies after he provided unpaid assistance to his partner's vacuum-sales business.

Saud Alessa worked for several years selling Kirby vacuums as an independent contractor. He worked through J&L Distributing, a company owned by codefendant Jeffrey Bowen. J&L would hold sales meetings and help with logistics.

But because Alessa was not an employee, the company did not direct his day-to-day employment activities and did not withhold his taxes. Like many of the independent contractors he worked with, Alessa accrued a debt to the IRS. After receiving notice from the IRS of the debt in 2006, Alessa left the workforce.

While Alessa stayed home with his young children, his long-term partner Jackie Hayes increased her role at J&L. A few years later, Alessa began assisting with vacuum sales, eventually resuming team leader responsibilities. But under her Kirby independent dealer agreement, the money earned from those sales went to Hayes, along with extra commissions when Hayes became an inside distributor trainee. Hayes used some of the money for business expenses—which increased substantially as an inside distributor trainee. Alessa was not paid directly for any of his work for Hayes's business. Alessa was not even listed on Hayes's bank accounts. Consistent with that arrangement, and based on advice from enrolled agent David Levine, in 2012 and 2013 Alessa filed tax returns showing no income from 2008 through 2012.

In 2013, Alessa filed for bankruptcy, reporting tax and credit card debt, no income, and support from Hayes for living expenses. Because Alessa reported no income, the Office of the U.S. Trustee investigated. As part of its investigation, the Office subpoenaed documents and testimony from Bowen and Hayes. Around this same time, Hayes left Alessa and moved out of state. No longer able to work under Hayes's contracts, Alessa began working directly for Bowen, reporting $7,748 in income in 2013 and $103,369 in 2014.

In 2018, five years after Alessa filed for bankruptcy, the government charged Alessa, Hayes, and Bowen with conspiracy to defraud the United States under 18 U.S.C. § 371. Alessa was also charged with tax evasion, 26 U.S.C. § 7201, and two counts of making and subscribing false tax returns, 26 U.S.C. § 7206(1).

II. After the district court rejected Alessa's attempts to introduce evidence on complexities in tax law, he was convicted.

To support his defense theory, Alessa proffered two experts, Professor Patricia Cain and Forensic Accountant Jeffrey Smith. Cain was proffered to testify about assignment of income, explaining to the jury the law was unclear about whether the money paid to Hayes and under her control was Alessa's income. And Smith, besides rebutting the government's expert testimony and summaries, would testify to anomalies in the government's investigation, ways Alessa could have legally resolved his tax debt with the proper advice, rules, and regulations on independent contractors, and rules and regulations for the attribution of money to Hayes.

The district court limited Smith's testimony and precluded Cain's testimony entirely. For Cain, the court stated its role was to instruct the jury on assignment of income, and Alessa could not rely on uncertainty in the law to undermine willfulness unless he presented evidence he was aware of that uncertainty. Similarly, the court ruled Smith could not testify about subjective intent, the reasonableness of different beliefs, the availability of legal means to reduce tax debt, and principles on attributing income to a third party.

Alessa was convicted on all four counts and sentenced to 13 months' imprisonment, followed by 3 years' supervised release.

III. The Ninth Circuit affirmed.

The Ninth Circuit recognized that each charge against Alessa "required proof of willfulness." Appx. B, p. 2a. "Willfulness 'requires the Government to prove that the law imposed a duty on the defendant, that the defendant knew of this duty, and that he voluntarily and intentionally violated that duty.'" Appx. B, p. 2a (quoting *Cheek*, 498 U.S. at 201). But the court held Alessa's proffered expert testimony irrelevant to the willfulness issue, absent evidence Alessa knew that the law was unsettled. Appx. B, p. 4a.

Reasons for Granting the Petition

"The Constitution guarantees criminal defendants a meaningful opportunity to present a complete defense." *Crane v. Kentucky*, 476 U.S. 683, 690 (1986) (citation and internal quotation marks omitted). "This right includes, at a minimum, the right to put before a jury evidence that might influence the determination of guilt." *United States v. Stever*, 603 F.3d 747, 755 (9th Cir. 2010) (citation, ellipses, and internal quotation marks omitted); *see also Chambers v. Mississippi*, 410 U.S. 284, 302–03 (1973).

Alessa attempted to vindicate this right by presenting expert testimony about complexities in the tax law that he stood accused of willfully violating. By denying Alessa the ability to present this evidence, the district court violated Alessa's right to present a complete defense. In affirming, the Ninth Circuit split with the decisions of at least two other circuits and misapplied this Court's precedent

concerning the willful standards for tax prosecutions, justifying this Court's review. *See* Sup. Ct. R. 10(c).

The question presented is also of exceptional importance to federal courts and defendants because criminal tax liability is solely the purview of federal courts. This liability exposes defendants to up to five years in prison. In Fiscal Year 2023, individuals convicted of a tax offense with no prior criminal history—like Alessa—were sentenced to a mean average prison term of 13 months. U.S. Sent. Comm'n, *Sourcebook of Federal Sentencing Statistics Fiscal Year 2023, Table 27–Sentence Length in Each Criminal History Category by Type of Crime* (2024).[1] Thousands of defendants will serve prison sentences for tax offenses and bear the felony conviction and its collateral consequences. This Court's review is therefore necessary to preserve defenses to criminal tax liability.

I. The Ninth Circuit's decision deepens a circuit split.

The Ninth Circuit ruled Alessa's proffered expert testimony was irrelevant absent evidence he knew of complexities in the law. This reasoning conflicts with decisions from at least two other circuits.

In *Garber*, 607 F.2d 92, the Fifth Circuit addressed an analogous situation to the one here. The defendant was convicted of knowingly misstating her income tax, after omitting money she received from selling blood plasma. *Id.* at 93. At that time, it was unsettled whether funds from selling "bodily functions or products"

[1] Available at https://www.ussc.gov/sites/default/files/pdf/research-and-publications/annual-reports-and-sourcebooks/2023/Table27.pdf.

constituted taxable income. *Id.* at 94–97. But the district court rejected the defense's proffered expert, who would have testified about that uncertainty in the law. *Id.* at 95.

The Fifth Circuit reversed. The court distinguished between the purely legal question of the *amount* of tax due, and "reasonable doubt in the law that a tax *was* due," for which expert testimony was appropriate. *Id.* (emphasis added). The court did not find it necessary to resolve the purely legal question, explaining "[a] tax return is not criminally fraudulent simply because it is erroneous." *Id.* Instead, the government must prove a willful violation of the tax code, and "the unresolved nature of the law is relevant to show that defendant may not have been aware of a tax liability or may have simply made an error in judgment." *Id.* at 97–98. Crucially, the Fifth Circuit held, "the relevance of a dispute in the law does not depend on whether the defendant actually knew of the conflict." *Id.* at 98; *see also United States v. Harris*, 942 F.2d 1125, 1131–32, 1135 (7th Cir. 1991) (citing *Garber* favorably); *but see United States v. Burton*, 737 F.2d 439, 444 (5th Cir. 1984) (reading *Garber* narrowly to apply to "those few cases where the legal duty pointed to is so uncertain as to approach the level of vagueness").

The Fifth Circuit in *Garber* relied on a Fourth Circuit decision reaching a similar conclusion, *United States v. Critzer*, 498 F.2d 1160 (4th Cir. 1974). In *Critzer*, the defendant intentionally underreported income. *Id.* at 1160. But it was unsettled whether the income was taxable, with the government "in dispute with itself" on the issue. *Id.* Like the Fifth Circuit in *Garber*, the Fourth Circuit avoided deciding the legal issue. *Id.* at 1161. It was enough that the taxability of the income

"is so uncertain that even co-ordinate branches of the United States Government plausibly reach directly opposing conclusions." *Id.* Thus, "[a]s a matter of law," willfulness was lacking, and "defendant's actual intent [was] irrelevant." *Id.* "Even if she had consulted the law and sought to guide herself accordingly, she could have had no certainty as to what the law required." *Id.*; *see also United States v. Mallas*, 762 F.2d 361, 363–64 (4th Cir. 1985).

Other circuits disagree. The Sixth Circuit addressed the issue in *United States v. Curtis*, 782 F.2d 593 (6th Cir. 1986). The defendant in *Curtis* failed to report some transactions from his wholesale meat retail business. *Id.* at 594. The court rejected *Garber*'s reasoning for several reasons: (1) *Garber*'s holding contradicted prior circuit cases requiring evidence on the defendant's state of mind to negate willfulness; (2) *Garber*'s holding, in the Sixth Circuit's view, "distorts the role of expert witnesses and the purpose of their testimony"; and (3) "*Garber* requires the jury to assume part of the judge's responsibility to rule on questions of law." *Id.* at 599–600.

The Second Circuit reached a similar conclusion in *United States v. Ingredient Tech. Corp.*, 698 F.2d 88 (2d Cir. 1983). The Second Circuit rejected application of *Garber* because the evidence in the case before it "indicated a subjective belief in the *un* lawfulness of the conduct." *Ingredient Tech. Corp.*, 698 F.2d at 97. And the Second Circuit additionally reasoned that, under its precedent, "opposing opinions of law" were not factual questions for the jury. *Id.*

Because the Ninth Circuit's decision below deepens the Circuit split on whether a district court can preclude a defendant from presenting evidence about

the complexity in the civil tax code to defend against the government's allegation that he willfully violated the law, review by this Court is necessary.

II. Additionally, in splitting from the Fourth and Fifth Circuits, the Ninth Circuit misapplied this Court's precedent.

The Fourth Circuit in *Critzer* and Fifth Circuit in *Garber* align with this Court's precedent. Both cases rely heavily on *James v. United States*, 366 U.S. 213 (1961). *See Garber*, 607 F.2d at 98–99; *Critzer*, 498 F.2d at 1162–63. In *James*, the Court considered embezzled funds not reported as taxable income. The Court in prior years had held embezzled money does not constitute taxable income, *CIR v. Wilcox*, 327 U.S. 404 (1946), then, six years after, that extorted money does constitute taxable income, *Rutkin v. United States*, 342 U.S. 130 (1952). The *James* Court held *Rutkin* had effectively overruled *Wilcox*. *James*, 366 U.S. at 217–21. Nevertheless, the Court reversed the petitioner's conviction because, at the time of the alleged crime, the law was uncertain. *Id.* at 221–22.

As the Fifth Circuit noted in *Garber*, "neither *James* nor the cases following *James* required actual reliance on *Wilcox* to negate willful intent." *Garber*, 607 F.2d at 98–99; *see also Critzer*, 498 F.2d at 1162–63. Therefore, both the Fourth and Fifth Circuits held that uncertainty in a tax law may preclude a finding of "willfulness" regardless of whether a defendant knows of such uncertainty. *Garber*, 607 F.2d at 99; *Critzer*, 498 F.2d at 1162–63.

This Court continues to uphold the exception for criminal tax liability that ignorance of the law is an available defense. *Cheek*, 498 U.S. at 199–200; *see also Ratzlaf v. United States*, 510 U.S. 135, 146–49 (1994). The government must prove

willfulness—that the tax law was objectively clear, the defendant knew what was required, and they intentionally and voluntarily violated the law regardless. *Id.*

The Ninth Circuit's opinion below erodes the defenses available to criminal tax liability, by not allowing a defendant to present evidence that recognized uncertainties in tax law show his belief that no taxes were owed was reasonable. This Court's review is therefore necessary to preserve its defenses to criminal tax liability.

Conclusion

Because the Ninth Circuit's opinion limiting defenses against tax fraud deepens a circuit split and conflicts with this Court's precedent, this Court should grant the petition for writ of certiorari.

Dated this 13th day of March, 2025.

Respectfully submitted,

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