

No. 25-105

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**In the Supreme Court of the United States**

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BRIAN BELAND, and DENAE BELAND,  
Petitioners,

v.

UNITED STATES OF AMERICA,  
Respondent.

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

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**BRIEF FOR HUANG TIANGE  
AS AMICUS CURIAE IN SUPPORT OF  
THE PETITIONERS**

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## QUESTIONS PRESENTED

1. Is a taxpayer's Fourth and/or Fifth Amendment Constitutional Rights violated when the IRS civil revenue agent conducts a criminal investigation under the guise of a civil tax audit?

2. Should the civil IRS revenue agent be required to transfer the case over to the IRS Criminal Investigations Division once they have established firm indications of fraud like their manual and *United States v. Peters* 153 F.3d 445 (CA7 1998), as well as many other cases requires, in order to safeguard the taxpayers Fourth and Fifth Amendment Constitutional Rights?

3. If the civil IRS agents establish firm indications of fraud during a civil tax audit, and they do not refer the case to the IRS Criminal Investigations Division as required, should all evidence obtained from that point forward be suppressed?

## TABLE OF CONTENTS

Questions Presented .....	i
Table of Authorities.....	iv
Interest of Huang Tiange.....	1
Summary of the Arguments.....	1
Arguments .....	5
I. Certiorari is Warranted because the Indictment Was Procured Through the Government’s Knowing Use of False Testimony, A Structural Error That Vitiates the Entire Prosecution .....	5
II. The Prosecutor’s Undisclosed, Adverse Personal and Financial History With the Defendant, and the District Court’s Refusal To Remedy It, Presents A Fundamental Question of Due Process.....	8
III. The Government’s Trial Opening Statement was Designed To Inflame the Jury and Prejudice the Belands by Focusing On Their Lifestyle. ....	11
IV. Clear Judicial Bias Deprived the Belands of a Fair Trial. ....	16

V. The Ninth Circuit’s Decision Sets a Dangerous Precedent Enabling Government’s Trampling of Civil Rights.....	19
A. This Case Presents the Ideal Vehicle to Resolve the Longstanding Disagreement Among the Circuits on the <i>Tweel/Grunewald</i> Doctrines.....	19
B. The District Court’s Factual Findings Compel Suppression Under a Proper Reading of the Fourth and Fifth Amendments. ....	21
VI. The Conviction Relied On Inaccurate and Untruthful Testimony From Government Witnesses.....	22
Conclusion .....	24

## TABLE OF AUTHORITIES

### Cases

<i>Bank of Nova Scotia v. United States</i> , 487 U.S. 250 (1988).....	7
<i>Berger v. United States</i> , 295 U.S. 78 (1935).....	5, 9
<i>Caperton v. A. T. Massey Coal Co., Inc.</i> , 556 U.S. 868 (2009).....	18
<i>Frazier v. Cupp</i> , 394 U.S. 731, 736 (1969).....	12
<i>Giglio v. United States</i> , 405 U.S. 150 (1972).....	23, 24
<i>Griffin v. Illinois</i> , 351 U.S. 12 (1956).....	15
<i>Liteky v. United States</i> , 510 U.S. 540 (1994).....	18
<i>Marbury v. Madison</i> , 1 Cranch 137 (1803).....	2, 3
<i>Napue v. Illinois</i> , 360 U.S. 264 (1959).....	23, 24
<i>Norton v. Shelby Cnty.</i> , 118 U.S. 425 (1886).....	3

<i>United States v. Dinitz</i> , 424 U.S. 600 (1976).....	12
<i>United States v. Grunewald</i> , 987 F.2d 531 (CA8 1993) .....	20
<i>United States v. Mitchell</i> , 172 F.3d 1104 (CA9 1999) .....	15
<i>United States v. Peters</i> , 153 F.3d 445 (CA7 1998) .....	20, 22, 23
<i>United States v. Tweel</i> , 550 F.2d 297 (CA5 1977) .....	19
<i>United States v. Williams</i> , 504 U.S. 36 (1992).....	11
<i>Viereck v. United States</i> , 318 U.S. 236 (1943).....	16
<i>Young v. United States ex rel. Vuitton et Fils S.A.</i> , 481 U.S. 787 (1987).....	10

### **Constitutional Provisions, Statutes, and Rules**

U.S. Const., Amdt. V .....	5-6
26 U.S.C. § 7206 .....	14
26 U.S.C. § 7212 .....	14
28 U.S.C. § 528 .....	10

S. Ct. R. 37.2.....	1
---------------------	---

**Other Authorities**

ABA Standards for Criminal Justice, Prosecution Function and Defense Function, Standard 3-5.5 (3d ed. 1993).....	12-13
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IRM 25.1.2.2 .....	20
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## **INTEREST OF HUANG TIANGE**

Huang Tiange submits this amicus in support of petitioners Brian and Denae Beland.<sup>1</sup> This case interests Huang Tiange, as it does with every constituent under the jurisdiction of the United States Constitution, on the issues of structural integrity pertaining to an individual's Fifth and Sixth Amendment rights.

## **SUMMARY OF THE ARGUMENTS**

This Court should grant certiorari in this case. This is not a case about tax law, it is not a sob story complaining about a conviction; it is about the fundamental corruption of the criminal justice process. The criminal investigation, the indictment, the prosecution, and the trial were all tainted by a cascade of government misconduct that the lower courts failed to remedy. The record reveals a prosecution initiated by a deliberately false statement, by an overzealous federal law enforcement officer who admitted to presenting information in a biased way, pursued by a prosecutor with an undisclosed and “incredible” conflict of interest, and overseen by a judge who abdicated his duty to ensure fairness. Allowing these convictions to

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<sup>1</sup> This brief is authored and funded by amicus Huang Tiange personally. No counsel for any party authored this brief, in whole or in part. No person or entity other than amicus contributed monetarily to its preparation or submission. Notification pursuant to and as required by S. Ct. R. 37.2 has been given to all petitioners and the Solicitor General.



stand would sanction a chilling model of “justice” where the ends justify any means, no matter how unconstitutional.

First, and most grievously, this entire prosecution was born of a lie. The government prosecuted a case out of knowingly false statements she heard him, he who heard from that other guy from that gal. It is distinctively comedic at best. However, inappropriate for criminal investigations and prosecution.

The indictment was secured only after an IRS official, by his own sworn admission, knowingly included a false statement in the formal criminal referral that the Belands had “confessed to them about their scheme.” The IRS agent admitted this was an intentional “overreach” designed to induce the Criminal Investigation Division to accept the case. This fabrication was then laundered into sworn testimony before the grand jury, where another federal agent attributed a fabricated confession to Denae Beland. This knowing use of false testimony to obtain an indictment is a structural error that taints the entire proceeding and violates the core principles of due process. Certiorari is essential to reaffirm that an indictment obtained by fraud is no indictment at all, a position consistent affirmed and deeply rooted in and with the tradition of this court. *Marbury v. Madison*, 1 Cranch 137 (1803), *also*

*Norton v. Shelby Cnty.*, 118 U.S. 425 at 426 (1886) (“An unconstitutional act is not a law”)<sup>2</sup>

Second, the prosecution was conducted by an Assistant U.S. Attorney who had a prior, adverse financial history with the defendant, Brian Beland. This undisclosed conflict, which the district court itself described as “incredible,” created an unacceptable appearance of a personal vendetta. When confronted with this blatant conflict, the district court threw up its hands, accepting the prosecutor’s “incredible” claim that she simply forgot about the defendant and denying a new trial. The judiciary’s role is to guard against such conflicts, not to rubber-stamp them. This Court must intervene to clarify the due process requirements for a disinterested prosecutor and to correct a lower court’s manifest failure to enforce them.

Third, the trial court’s passivity in the face of the prosecutor’s conflict was part of a larger pattern of judicial bias that favored the government at every turn. From ignoring the IRS’s documented harassment of a pregnant woman to allowing the fruits of an unconstitutional “covert criminal investigation” into evidence, the court consistently failed to act as a neutral arbiter, depriving the Belands of a fair trial.

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<sup>2</sup> Consistent with the judicial principles and precedents set forth, especially in *Marbury* and *Norton*, it is deeply rooted in this Court’s tradition, to interpret and conclude an illegally obtained criminal indictment is no indictment.

Fourth, this case is the ideal vehicle this Court to set clear rules on when evidence must be suppressed after the IRS unconstitutionally uses its civil audit powers to conduct a criminal investigation. The district court found that the IRS had “firm indications of fraud” and that its failure to refer the case to its criminal division prejudiced Petitioners’ constitutional rights. The Ninth Circuit’s refusal to suppress the resulting evidence highlights a conflict among the circuits that leaves taxpayers across the country with unequal constitutional protections.

Finally, prosecutorial misconduct during the proceedings. The government’s prosecution was a masterclass in prejudice, focusing not on the elements of the charged offenses but on the defendants’ lifestyle, spending habits, and wealth. This was a calculated strategy to inflame the jury and secure a conviction based on class bias rather than on the evidence.

As aforementioned, the government’s misconduct in this case was not limited to the opening statement. It began with the earlier grand jury proceedings, where the government presented false and misleading testimony to secure an indictment. But it was in the opening statement that the government laid bare its strategy: to paint the defendants as greedy and extravagant, and to convince the jury that they were the type of people who would commit tax fraud.

This type of misconduct is a grave threat to the integrity of the criminal justice system. As

Justice Sutherland observed in *Berger v. United States*, 295 U.S. 78, 88 (1935), the prosecutor's interest "in a criminal prosecution is not that it shall win a case, but that justice shall be done." In this case, patently, all agencies of the government's sole focus were to win the case, regardless of whether the accused committed any wrongdoing. It was never about "that justice shall be done". When the government resorts to inflammatory and prejudicial tactics, it abdicates its responsibility to seek justice and instead becomes a partisan advocate for conviction.

This is a case of exceptional national importance. It is about whether the government can knowingly make up a case from its imagination, lie to its own agents and to a grand jury to initiate a prosecution, whether a prosecutor can pursue a case against a person with whom she has a personal financial conflict, and whether courts must police this misconduct. The Court should grant certiorari to correct these profound errors and restore integrity to the process.

## ARGUMENTS

### **I. Certiorari is Warranted because the Indictment Was Procured Through the Government's Knowing Use of False Testimony, A Structural Error That Vitiates the Entire Prosecution**

The Fifth Amendment guarantees that no person shall be held to answer for an infamous crime

“unless on a presentment or indictment of a Grand Jury.” This protection is not a mere formality; it is a bulwark against unfounded and oppressive prosecutions. That bulwark was demolished in this case. The record unequivocally shows that the government initiated this prosecution based on a lie and then presented that lie as sworn testimony to the grand jury to secure an indictment. This is not a harmless error; it is a structural flaw that renders the entire proceeding a nullity.

The genesis of this prosecution is a deliberately false statement made by IRS Fraud Technical Advisor Jaymal Damodar. In the formal Form 2797 referring the Belands’ civil audit for criminal prosecution, Damodar wrote: “Furthermore, sources have revealed to the service that the taxpayer confessed to them about their scheme.” (E.D.Cal.Doc. 113-1, at 2). Years later, during an evidentiary hearing, Damodar admitted under oath that this was false. He conceded his “overreaching was that [he] presented this false information to convince someone in authority to accept this case for criminal prosecution.” (E.D.Cal.Doc. 113-1, at 4). He further admitted this was not a mere mistake; it was an intentional fabrication he never corrected until confronted by defense counsel seven years later. (E.D.Cal.Doc. 113-1, at 3).

This foundational lie was then laundered through the investigative process and presented, under oath, to the grand jury. Special Agent Jason Lamb, relying on Damodar’s tainted referral, testified that Denae Beland had met with a CPA,

Terrie Prod'hon, and confessed to fabricating her tax returns. Lamb told the grand jurors that when Prod'hon asked for documentation, Denae Beland replied, "We can't do that. We just came up with it." (E.D.Cal.Doc. 113-4, at 38).

This testimony was devastatingly prejudicial and entirely false. Testifying under oath, CPA Terrie Prod'hon squarely refuted the government's narrative. She was asked directly if she reported to the IRS that "Denae Beland confessed a tax scheme that she was involved with." Her answer: "Absolutely not." (Doc. 113-3, at 7). She unequivocally denied that Denae Beland had asked her to fabricate expenses or had insinuated that she wanted help creating false reports. (Doc. 113-3, at 11, 13). The district court itself later acknowledged this fabrication, stating, "I agree the IRS tried to twist this around into a statement that they made up their numbers, but Ms. Prod'hon never said they made up the numbers." (E.D.Cal.Doc. 113, at 6). The knowing presentation of false testimony to a grand jury is a flagrant violation of due process that strikes at the integrity of the judicial process. This Court has long recognized that dismissal of an indictment is an appropriate remedy for such misconduct, particularly where it "substantially influenced the grand jury's decision to indict" or where there is "grave doubt that the decision to indict was free from the substantial influence of such violations." *Bank of Nova Scotia v. United States*, 487 U.S. 250, 256 (1988).

Here, the false testimony cannot be viewed as harmless. The fraudulent "confession" was the root of

the criminal inquiry and the centerpiece of the government's presentation to the grand jury, offered to corroborate what was otherwise a circumstantial case based on disputed expense records. It served to erase any doubt the grand jurors may have had about the Belands' intent. To tell a grand jury that a defendant flatly confessed to "just com[ing] up with" the numbers is to guarantee an indictment.

The government cannot be permitted to build a prosecution on a foundation of its own deliberate falsehoods. That allowance by itself dismantles the judicious element from the legal system.

To allow this tainted indictment to stand would render the grand jury a mere tool of the executive branch, rather than a protective shield for the citizenry. This Court has the perfect vehicle in this case and should address these issues, including reaffirming the fundamental principle that an indictment procured through the government's deceit is void from its inception.

**II. The Prosecutor's Undisclosed, Adverse Personal and Financial History With the Defendant, and the District Court's Refusal To Remedy It, Presents A Fundamental Question of Due Process.**

A fair trial requires a disinterested prosecutor. In this case, that requirement was egregiously violated. The lead AUSA, Veronica Alegria, had previously engaged defendant Brian Beland to secure a home loan while the indictment against him was

pending—a transaction that ultimately failed. This prior, adverse financial relationship was never disclosed to the defense or the court. When the conflict finally came to light post-trial, the district court acknowledged the prosecutor’s explanation was “incredible” yet refused to grant a new trial, thereby sanctioning a situation that reeks of impropriety and vindictive prosecution.

The facts are stark. In March 2020, while the Belands were under federal indictment by the U.S. Attorney’s Office in Sacramento, AUSA Alegria, who was preparing to join that very office, applied for a home loan through Brian Beland. (Mot. for New Trial, E.D.Cal.Doc. 182). Over a ten-day period, she and Mr. Beland exchanged over 60 text messages and 60 emails.

The loan Mr. Beland arranged ultimately “fell through because the lender suspended funding.” (Gov’t Opposition, E.D.Cal.Doc. 196, at 2). Nine months later, AUSA Alegria was assigned to lead the prosecution against Mr. Beland and his wife.

This history creates, at a minimum, a powerful appearance of a conflict of interest. A prosecutor who has had a failed business dealing with a defendant—particularly a stressful one like a home mortgage application during a pandemic—cannot be considered a disinterested party. As this Court has stated, a prosecutor must “govern impartially.” *Berger v. United States*, 295 U.S. 78, 88 (1935). The potential for personal animus or a desire to “settle a score,” consciously or unconsciously, is



simply too great. The situation is rife with the potential for a personal, financial, or political conflict of interest, or “the appearance thereof,” which federal law and regulations seek to prevent. 28 U.S.C. § 528; *see Young v. United States ex rel. Vuitton et Fils S.A.*, 481 U.S. 787 (1987).

What transforms this error into a constitutional crisis is the district court’s handling of it. After the conflict was discovered, AUSA Alegria submitted a declaration stating that from January 2021 until June 2023, she “did not remember having any personal interaction with” Mr. Beland. (Doc. 196-1, at 3). In its order denying the new trial, the district court accepted this remarkable claim, but only by explicitly noting its implausibility:

AUSA Alegria acknowledges in her Declaration that she and her husband interacted with Brian Beland by name through emails, texts and phone calls for a ten-day period in March of 2020... The court will accept her representations, as incredible as they may seem, as an officer of the court.

District Court Order Denying MNT,  
E.D.Cal.Doc. 197, at 6.

A court that finds a prosecutor’s explanation for a blatant conflict of interest “incredible” has an absolute duty to do more than shrug its shoulders. By accepting a facially incredible claim, the court signaled that it was unwilling to police the

boundaries of prosecutorial ethics and effectively held that even a conflict that beggars belief is insufficient to warrant relief. This is a complete abdication of the judicial role.

The district court's decision creates a dangerous precedent: so long as a conflicted prosecutor claims amnesia—no matter how implausibly—courts must look the other way. This cannot be the standard. This Court should grant certiorari to clarify that a defendant's right to a disinterested prosecutor is a core component of due process that requires rigorous enforcement by the judiciary, not passive acceptance of “incredible” excuses.

### **III. The Government's Prosecution was Designed To Later Inflamm the Jury and Prejudice the Belands by Focusing On Their Lifestyle.**

The Court has long recognized the critical role of the grand jury in our criminal justice system. As an independent body of citizens, the grand jury is intended to serve as a check on the power of the government, ensuring that no person is subjected to the ordeal of a criminal trial unless there is probable cause to believe that a crime has been committed. *See United States v. Williams*, 504 U.S. 36, 47 (1992). But when the government undermines the independence of the grand jury by presenting false or misleading testimony, it transforms this vital check on its power into a rubber stamp for its own charging decisions.

That is precisely what happened in this case. The government's case against the Belands was built on a foundation of falsehoods, beginning with the testimony of Special Agent Jason Lamb before the grand jury. Lamb's testimony was riddled with inflammatory and prejudicial comments about the defendants' lifestyle, which were designed to paint them as greedy and extravagant and to convince the grand jury that they were the type of people who would commit tax fraud. This misconduct continued at trial, where the government's opening statement was a thinly veiled appeal to class bias and prejudice. The government's strategy was clear: to secure a conviction not on the basis of the evidence, but by inflaming the passions of the jury and convincing them that the defendants were undeserving of their wealth and success. This type of misconduct is a grave threat to the integrity of the criminal justice system and cannot be tolerated.

The purpose of an opening statement is to state what evidence will be presented, to make it easier for the jurors to understand what is to follow, and to relate parts of the evidence and testimony to the whole; it is not an occasion for argument. *United States v. Dinitz*, 424 U.S. 600, 612 (1976) (Burger, C.J., concurring). An opening statement should provide an outline of the case, and its scope is limited to the evidence that will be presented at trial. *Frazier v. Cupp*, 394 U.S. 731, 736 (1969). It is improper for a prosecutor to use an opening statement to inflame the passions of the jury or to introduce prejudicial and irrelevant information. As the ABA Standards for Criminal Justice state, a

prosecutor's opening statement "should be confined to a statement of the issues in the case and the evidence the prosecutor intends to offer which the prosecutor believes in good faith will be available and admissible." ABA Standards for Criminal Justice, Prosecution Function and Defense Function, Standard 3-5.5 (3d ed. 1993).

The government's opening statement in this case was a textbook example of what an opening statement should not be. The government's focus on the defendants' lifestyle was designed to inflame the jury and prejudice them against the defendants. The government's opening statement was a litany of irrelevant and prejudicial information about the defendants' spending habits. These comments were not designed to outline the evidence that would be presented at trial, but to paint a picture of the defendants as greedy and extravagant, and to convince the jury that they were the type of people who would commit tax fraud.

In the government's opening statement, the prosecutor made a series of inflammatory and prejudicial comments about the defendants' lifestyle, which are not relevant to the charges in the indictment. The prosecutor began by stating that "Brian Beland made a lot of money, over \$1.1 million" and that he "developed a technique to pay very little taxes on that money." (Opening Statements Transcripts at 2-3). The prosecutor then went on to list a number of expensive items that the defendants had purchased, including custom shades, wine barrel tables, wine racks, a custom wine bottle

from Silver Oak Winery, tropical blue patio furniture, and Corinthian fire water bowls. *Id.* The prosecutor also mentioned that the defendants had taken vacations to Hawaii, Europe, and Mexico. *Id.* They were presented in a manner intended to inflame and cause prejudice against the defendants, rather than a statement of the facts.

The indictment in this case charges the defendants with making and subscribing a false tax return, in violation of 26 U.S.C. § 7206(1), and with corruptly endeavoring to impede the due administration of the internal revenue laws, in violation of 26 U.S.C. § 7212(a). The elements of a false return offense are willfulness and the falsity of the return. The defendant's spending habits are not an element of either of these offenses.

A review of the grand jury testimony of Special Agent Jason Lamb reveals that the government's focus on the Belands' lifestyle began long before the trial. In his testimony before the grand jury, Special Agent Lamb made a number of inflammatory and prejudicial comments about the defendants' spending habits, which were clearly designed to inflame the passions of the grand jury and to secure an indictment. For example, Special Agent Lamb testified that the Belands had purchased a 2014 Mercedes-Benz GL450, garage cabinets, a home safe, and had taken lavish vacations to Maui. (Grand Jury Testimony of Jason Lamb, Exhibit 29, 18, 23, 35). This testimony was completely irrelevant to the charges in the

indictment, and it served no purpose other than to prejudice the grand jury against the defendants.

The courts have long recognized the danger of allowing the government to introduce evidence of a defendant's wealth or lifestyle in a criminal case. The Ninth Circuit has explained that evidence of a defendant's financial status is generally inadmissible to prove motive because its probative value is slight and it is likely to be "unfairly prejudicial." See *United States v. Mitchell*, 172 F.3d 1104, 1108 (CA9 1999), also *Griffin v. Illinois*, 351 U.S. 12 (1956) ("There can be no equal justice where the kind of trial a man gets depends on the amount of money he has.")<sup>3</sup>. In this case, the government's focus on the defendants' lifestyle, before the grand jury and at trial, was a deliberate attempt to prejudice the jury against them. The government's message was clear: the defendants were rich, and therefore they must be guilty. This is

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<sup>3</sup> Although not directly addressing the instant issues raised, the principle from *Griffin* can be extended to argue, consistent with this Court's deeply rooted emphasis on judicial tradition and precedents, against the admission of evidence that promotes class-based prejudice. The logic is as follows:

1. The Constitution guarantees a fair trial, which must be free from verdicts based on prejudice or bias.
2. If a prosecutor introduces evidence of a defendant's wealth (or poverty) not for a legitimate purpose, but to encourage the jury to decide the case based on animosity toward the rich (or contempt for the poor), the prosecutor is inviting a verdict based on the "amount of money he has."
3. This creates a "different kind of trial" for the defendant based purely on their economic status, which is exactly what *Griffin* forbids.

the very definition of class bias, and it has no place in a criminal trial.

The government's misconduct in this case was not a harmless error. The government's opening statement tainted the trial from the very beginning, and it is impossible to say with any certainty that the jury was not influenced by the government's inflammatory and prejudicial comments. When a prosecutor's misconduct is so pervasive and prejudicial as to deny the defendant a fair trial, the conviction must be reversed. *See Viereck v. United States*, 318 U.S. 236, 248 (1943) ("[W]e are not to indulge in nice calculations as to the amount of prejudice arising from the error."). The government's misconduct in this case was not an isolated incident, but a deliberate strategy to secure a conviction by any means necessary. This Court should not countenance such misconduct.

The government's misconduct in this case is a stark reminder of the importance of an independent and impartial prosecutor. When the government's lawyer is not a "disinterested seeker after justice" but an "interested party to the controversy," the integrity of the entire system is at risk. The government's misconduct in this case tainted the trial from the very beginning, and it is a meritorious question for this Court to review.

#### **IV. Clear Judicial Bias Deprived the Belands of a Fair Trial.**

A fair trial requires a neutral and detached judge. In this case, the district court judge abandoned that role, demonstrating a persistent bias in favor of the government that deprived the Belands of due process, creating a violation of their Sixth Amendment right to a fair trial. This bias is most evident in the court's willful blindness to the prosecutor's glaring conflict of interest and its passive acceptance of the IRS's egregious misconduct during the audit.

The single most compelling evidence of judicial bias is the trial court's handling of the prosecutor's conflict of interest. A judge's core function is to ensure fairness. Confronted with a situation it openly described as "incredible," a neutral judge would have, at minimum, held an evidentiary hearing to explore the conflict's scope and its potential prejudice. Instead, the court summarily denied relief, accepting the prosecutor's unbelievable story while simultaneously acknowledging its implausibility. This is not the action of a neutral arbiter; it is the action of a court determined to uphold a conviction regardless of the deeply compromised process that produced it.

This dereliction was not an isolated incident but part of a broader pattern of favoritism. As detailed in Belands' petition in this case, the IRS conducted its audit with shocking hostility and a callous disregard for the Belands' circumstances. Agents refused to reschedule a meeting despite being provided with doctor's notes explaining that Denae Beland was in the first trimester of a high-risk



pregnancy and that stress could harm the unborn child. (Pet.5). They later issued an administrative summons demanding her appearance just six days after her known due date, a tactic clearly designed to harass and intimidate. (Pet.8). On the one-year birthday of Belands' son, the IRS raided their home with guns drawn, with the agent in charge emailing the auditor, "Today is her son's 1 year birthday, so we ruined it." (Pet.3).

The district court was presented with this evidence of a government agency run amok. Instead of acting as a check on this abuse of power, the court sanctioned it. It accepted the government's narrative and showed no concern for the agents' coercive tactics. A judge's temperament and rulings can reveal deep-seated favoritism. *See Liteky v. United States*, 510 U.S. 540, 555 (1994). Here, the district court's consistent deference to the government, from the audit abuses to the "incredible" prosecutorial conflict, created an atmosphere where a fair trial was impossible.

This Court's decision in *Caperton v. A. T. Massey Coal Co., Inc.*, 556 U.S. 868 (2009), establishes that due process is violated when "the probability of actual bias on the part of the judge or decisionmaker is too high to be constitutionally tolerable." *Id.* at 872. While *Caperton* involved financial influence, its core principle applies here. The cumulative effect of the judge's failure to police the prosecutor's conflict and his indifference to the IRS's campaign of harassment created an objective probability of bias that cannot be tolerated. The

Petitioners did not receive a trial before a neutral arbiter; they faced a tribunal that appeared to have pre-judged their case in the government's favor. Certiorari should be granted to reaffirm that the constitutional guarantee of a fair trial is an empty promise without an unbiased judge.

**V. The Ninth Circuit's Decision Sets a Dangerous Precedent Enabling Government's Trampling of Civil Rights.**

This case presents a critical, outcome-determinative question of constitutional law on which the circuits are deeply divided: When does an IRS civil audit become a "covert criminal investigation" requiring suppression of evidence gathered in violation of the Fourth and Fifth Amendments? The district court made factual findings that place this question in stark relief, making this case an ideal vehicle for its resolution. The Ninth Circuit's refusal to suppress the evidence, despite the district court's finding of constitutional prejudice, sanctions the government's use of administrative power as a subterfuge for a criminal probe and leaves taxpayers' rights perilously uncertain.

**A. This Case Presents the Ideal Vehicle to Resolve the Longstanding Disagreement Among the Circuits on the *Tweel*/*Grunewald* Doctrines.**

For decades, federal courts have grappled with the doctrine established in *United States v. Tweel*, 550 F.2d 297 (CA5 1977), which prohibits the

government from gaining consent to a search (i.e., an audit) by “deceit, trickery or misrepresentation.” *Id.* at 299. The central issue is what the government must do when a civil audit uncovers “firm indications of fraud.” The IRS’s own manual requires the civil agent to suspend the audit and refer the case to the Criminal Investigation Division (CI). IRM 25.1.2.2. The failure to do so, while continuing to gather information from the unsuspecting taxpayer using civil summons power, raises serious constitutional questions.

The circuits are split on how to analyze this scenario. The Ninth Circuit, following the test articulated in *United States v. Grunewald*, 987 F.2d 531 (CA8 1993), requires the defendant to prove by clear and convincing evidence that “the IRS affirmatively and intentionally misled the defendant.” (Appendices to the Petition, “Pet.App.” at 10). This standard is exceptionally difficult to meet, as it requires proof of an agent’s subjective intent and an “affirmative” lie, essentially immunizing agents who mislead through strategic silence and the pretense of a routine civil audit.

In contrast, other circuits have adopted a more realistic and protective standard. The Seventh Circuit, for example, has held that “if a revenue agent continues to conduct a civil audit after developing ‘firm indications of fraud,’ a court may justifiably conclude that the agent was in fact conducting a criminal investigation under the auspices of a civil audit.” *United States v. Peters*, 153 F.3d 445, 451-52 (CA7 1998). Under this view, the

misrepresentation is inherent in the act of continuing a civil examination once its purpose has fundamentally changed. An agent who knows she is building a criminal case but continues to act as a civil auditor is, by her conduct, affirmatively misrepresenting the nature of the investigation.

This split has significant real-world consequences. A taxpayer's Fourth and Fifth Amendment rights now depend entirely on the judicial circuit in which she resides. This Court should grant certiorari to resolve this entrenched conflict and establish a uniform, national standard that provides meaningful protection against the government using civil authority as a constitutional Trojan horse.

**B. The District Court's Factual Findings  
Compel Suppression Under a Proper  
Reading of the Fourth and Fifth  
Amendments.**

This case is the perfect vehicle to resolve the split because of the district court's explicit factual findings. After a multi-day evidentiary hearing, the court found that the Petitioners had proven two of the three *Grunewald* prongs: (1) "at least by April of 2015 there were firm indications of fraud in this case," and (2) "the IRS's conduct resulted in prejudice to the defendants' constitutional rights." (Pet.App.13-14). This is a stunning judicial finding of government overreach and constitutional harm.

Yet, the court denied suppression based solely on the second prong, finding no "clear and convincing

evidence that the IRS affirmatively and intentionally misled the defendant.” (Pet.App.14). This result demonstrates the constitutional inadequacy of the Ninth Circuit’s standard. The district court found that the government had crossed the constitutional line by April 2015, that it failed to follow its own procedures for protecting taxpayers’ rights, and that this failure prejudiced the Belands. Nevertheless, because the agents did not utter a specific magic-words lie, such as “this is not a criminal case,” the unconstitutionally obtained evidence was allowed in.

This cannot be the law. As the Seventh Circuit recognized in *Peters*, when an agent has firm indications of fraud and continues to use civil audit tools, she “affirmatively misrepresent[s] the nature of [the] investigation.” 153 F.3d at 452. The deceit is the pretense itself. The government should not be permitted to benefit from its agents’ failure to follow mandatory procedures designed to protect constitutional rights. The district court found that the Rubicon to a criminal investigation had been crossed. Allowing the government to use the fruits of its journey after that point eviscerates the protections of the Fourth and Fifth Amendments. This Court should grant the petition to correct this dangerous precedent.

## **VI. The Conviction Relied On Inaccurate and Untruthful Testimony From Government Witnesses.**

It is a bedrock principle of due process that the government may not knowingly use false testimony

to obtain a conviction. *Napue v. Illinois*, 360 U.S. 264 (1959). This duty extends to correcting testimony that, while not outright perjury, creates a false impression. *Giglio v. United States*, 405 U.S. 150 (1972). In this case, the government built its prosecution on a foundation of misleading testimony from its own agents, who portrayed a covert criminal investigation as a routine civil audit, thereby violating its duty of candor to the court and the jury.

The entire government case at trial was predicated on a false narrative. The jury was told a story of a standard IRS audit that uncovered fraud. However, the district court found as a matter of fact that by April 2015—long before the crucial August 2015 interview where the government obtained key statements—the IRS already had “firm indications of fraud.” (Pet.App.13). Therefore, when the IRS agents testified about their continued investigation after that date, their characterization of their work as a mere civil “examination” was profoundly misleading. They were not simply civil auditors trying to determine a tax deficiency; they were, as the *Peters* court would describe them, “in fact conducting a criminal investigation.” 153 F.3d at 451.

The government knew the true nature of its investigation. It knew its agents were leaving the jury with a false impression of the audit’s timeline and purpose. Yet it did nothing to correct the record. This is not a simple matter of witness credibility to be sorted out by the jury. This is a due process violation where the prosecution knowingly presents a distorted picture of the facts to secure a conviction.

The government's obligation under *Napue* and *Giglio* is not merely to avoid suborning perjury, but to ensure that a trial is a search for truth, not a contest of dueling narratives where its own is fundamentally false.

The government's reliance on this false narrative demonstrates the lengths to which it went to convict the Belands. This conduct, especially when viewed in light of the prosecutorial and judicial misconduct that pervaded the trial, underscores the need for this Court's intervention. Certiorari should be granted to reaffirm the government's absolute duty to correct testimony that it knows is misleading and to ensure that convictions are based on truth, not on a sanitized and deceptive account of government action.

## CONCLUSION

The litany of errors in this case strikes at the heart of our criminal justice system. A prosecution initiated by a government official's admitted falsehood, pursued by a prosecutor whose impartiality is "incredible," overseen by a judge who abdicated his role as a neutral arbiter, built upon evidence from an unconstitutional covert investigation, and secured through a misleading narrative—these are not the hallmarks of justice. They are warning signs that the constitutional guardrails meant to protect citizens from the immense power of the state have failed at every level.

The core issue presented is not the violation of the law. It is about upholding the Fourth, Fifth, and Sixth Amendment rights of an accused person. In this case, the government knew they had begun a case out of a lie. The government obtained a search warrant to obtain materials, based on findings stemming from their lie. And subsequently obtained an indictment and conviction from the same. Although not rare, but these incidents are detrimental to the integrity of American justice.

This Court should grant certiorari.

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