

No. 25-6931

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**IN THE  
SUPREME COURT OF THE UNITED STATES**

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UNITED STATES OF AMERICA

Respondent - Plaintiff/Appellee

v.

Paul Kenneth Cromar

Petitioner - Defendant/Appellant

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Rule 44 Rehearing of Denial of Petition for Writ of  
Certiorari to the United States Court of Appeals for the Tenth Circuit

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**RULE 44 REHEARING**

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Paul Kenneth Cromar #13871081  
FCI – Florence  
P.O. Box 6000  
Florence, CO 81226

## **GROUNDS FOR RULE 44 REHEARING**

1. Does *Moore v United States*, 602 U.S. 572 (2024) abrogate *United States v. Collins*, 920 F.2d 619, 629 (10th Cir. 1990) as invocable precedent in the 10<sup>th</sup> Circuit to criminally enforce at trial under the 16<sup>th</sup> Amendment a non-apportioned direct income tax on Cromar?
2. If so, the district court cannot lawfully take a subject matter jurisdiction under the 16<sup>th</sup> Amendment, as it did, to enforce against Cromar the non-apportioned direct tax on his income it asserted was owed by him thereunder.

## **PARTIES TO THE PROCEEDING**

Petitioner Paul Kenneth Cromar was the Defendant-Appellant in all proceedings.

Respondent is the United States of America, Plaintiff-Appellee in all proceedings.

## **CONSTITUTIONAL AUTHORITIES**

U.S. Const. Art. I, §2, cl. 3

U.S. Const. Art. I, §8, cl. 1

U.S. Const. Art. I, §9, cl. 4

U.S. Const. Amend. XVI

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United State v. Cromar

**JURISDICTION**

Petitioner's Petition for Writ of Certiorari was denied on March 30, 2026.

This Petition under Rule 44 was filed within 25 days of that denial.

**REASONS FOR GRANTING THE PETITION**

**I. Moore Contradicts Collins, Creating a Direct Conflict in the 10<sup>th</sup> Circuit**

***A. Collins and Moore State Irreconcilable Constitutional Propositions***

In this case, citing *United States v. Collins*, 920 F.2d 619 (10th Cir. 1990), the district court held that the 'sixteenth amendment authorizes a direct nonapportioned tax on United States citizens throughout the nation.' 920 F.2d at 629, and erroneously asserted its jurisdiction over the criminal prosecution of Cromar, thereunder.

In Moore in June, 2024, this court held the opposite, *i.e.*: that income taxes are 'indirect taxes' under Article I, §8. 602 U.S. at 582-83. The conflict is irreconcilable. In Moore the court holds that indirect taxes are "those imposed on activities or transactions"; that "**Direct taxes must be apportioned** among the States according to each State's population"; and that "**Taxes on income are indirect taxes**" 602 U.S. 572, Syllabus.

But while the indirect tax on income need not be apportioned, it may **not** be directly imposed; nor laid without indirect basis in a taxable activity or transaction subject to some impost, duty, or excise tax, Moore, *supra*, as done to Cromar, who is currently serving a 72 month sentence for failing to pay an unlimited direct tax.

Moore's reasoning traces to *Brushaber*, which established that the Sixteenth Amendment 'prevented the income tax from being taken out of the class of indirect taxation to which it inherently belonged,' 240 U.S. at 18-19, and *Stanton v. Baltic Mining*, which confirmed that the Amendment 'conferred no new power of taxation,' 240 U.S. at 112, **neither** direct **nor** indirect. Collins erroneously inverted these holdings by reading *Brushaber* as authorizing a new, unlimited, unavoidable, direct, nonapportioned tax on all earnings as 'income'. Collins and Moore cannot be reconciled. Only this Court can resolve Moore's intervening jurisdictional conflict.

Moore provides the intervening circumstance of a substantial or controlling effect of a new precedent, with respect to the erroneous invocation of Collins by the court to take jurisdiction over the trial of Cromar, for a direct tax. Notably, three Justices wrote separately in Moore to signal concern about the broader implications of income tax doctrine. Justices Thomas and Gorsuch dissented and would have held that the tax requires realization of income as a constitutional prerequisite — a position directly in tension with a prosecution for evading a tax whose constitutional basis was never established on the record. Justice Barrett, joined by Justice Alito, concurred in the judgment but wrote separately to emphasize that the majority's holding is expressly narrow and leaves open foundational questions about the

constitutional definition of income and the scope of Congress's taxing power. These concurrences signal that at least four members of the current Court recognize that Moore did not resolve, and deliberately left open, the constitutional questions this case squarely presents.

### ***B. The Summary Denial Confirms the Circuit Will Not Self-Correct***

Petitioner presented the Moore/Collins, direct/indirect tax conflict to the Tenth Circuit which declined to address whether Collins survived Moore as controlling precedent. Every §7201 prosecution brought in the 10th Circuit under the Collins direct-taxation theory now relies on a constitutionally infirm claim that this Court has exposed in Moore as erroneous but inexplicably declines to address or correct for Cromar who is overdue for one honest jurisdictional ruling in this case asserting the lack of a direct tax on income.

### ***C. The Courts' Analysis Is Constitutionally Insufficient and Defective***

The district court specifically held that the 16<sup>th</sup> Amendment supplied its jurisdiction to tax Cromar directly and without limitation. But this Supreme Court has held:

'[A]s regards all courts of the United States inferior to this tribunal, two things are necessary to create jurisdiction... The Constitution must have given to the court the capacity to take it, and an act of Congress must have supplied it.' *Finley v. United States*, 490 U.S. 545, 548 (1989).

"Federal courts are courts of limited jurisdiction. They possess only power authorized by Constitution and statute, which is **not to be expanded by judicial decree**. It is to be presumed that a cause lies outside this limited jurisdiction, and the burden of establishing the contrary rests upon the party asserting jurisdiction." *Kokkenen v. Guardian Life Ins. Co. of America*, 511 US 375 (1994)

Section 3231 is statutory. It cannot confer a subject matter jurisdiction the Constitution does not authorize. The 16<sup>th</sup> Amendment does not contain the word 'direct' to authorize a direct tax, but the Collins decision invoked by the trial court specifically affirms the Sixteenth Amendment as the constitutional basis for the income tax as a direct tax. The government premised this entire prosecution of Cromar on Collins. The record in the district court clearly reflects this fact as the trial court repeatedly asserted its jurisdiction to tax Cromar directly under Collins.

But Moore completely abrogates Collins as an invocable or applicable precedent. The courts may not retroactively recharacterize now the jurisdictional basis relied on under Collins for 35 years, nor should they be ignoring the most recent SCOTUS rulings and decisions taken.

#### ***D. Cromar Citation Underscores the Need for This Court's Review***

Recently in *U.S. v. Walcott*, No. 25-1024 (10<sup>th</sup> Cir.), the Tenth Circuit cited this case, *Cromar*, as precedent for rejecting Moore based jurisdictional challenges to a direct tax. At least two unpublished decisions now reject Moore's applicability to criminal tax cases without addressing the obvious, irreconcilable, Collins/Moore, direct/indirect taxation conflicts.

This pattern is foreclosing the constitutional question for all future criminal tax defendants in the federal courts. Petitioner requests this Court consider consolidating this petition with *Walcott*, No. 25-1024 (10<sup>th</sup> Cir.) to resolve the jurisdictional question still posed by the rebellious 10<sup>th</sup> Circuit Court.

## **II. The Jurisdictional Analysis Is Deficient and Now Conflicts with This Court's Most recent Holdings**

### ***A. The Nature of the Tax Is an Essential Constitutional Element of §7201***

IRC §7201 requires as its first element a 'tax imposed by this title.' *Spies v. United States*, 317 U.S. 492, 496 (1943). Whether a tax was constitutionally imposed is a **threshold constitutional** question. A criminal conviction for evading a tax mischaracterized as a 'non-apportioned direct tax under the Sixteenth Amendment', rests on a fatally defective foundation.

"Whether the tax is to be classified as an 'excise' is in truth not of critical importance. If not that, it is an 'impost' ..., or a 'duty' .... **A capitation or other 'direct' tax it certainly is not.**" *Steward Machine Co. v. Collector*, 301 U.S. 548 (1937), at 581-2

### ***B. The Indirect Tax Holding Has Substantive Consequences for §7201 Prosecutions***

Under the correct constitutional framework, "income" is the *measure* of the **indirect** taxation, and is **not** the subject of taxation. The subject is the specific taxable activity or transactions conducted, that were subjected to indirect federal taxation by impost, duty, or excise.

“Duties and imposts are terms commonly applied to levies made by governments on the importation or exportation of commodities. Excises are taxes laid upon the manufacture, sale or consumption of commodities... upon licenses to pursue certain occupations, and upon corporate privileges... it is the privilege which is the subject of the tax.” *Flint v. Stone Tracy Co.*, 220 U.S. 107, 151 (1911).

“Congress adopted the income as the measure of the tax to be imposed with respect to the doing of business in corporate form... measuring the taxation by the total income.” *Stratton's Independence, Ltd. v. Howbert*, 231 U.S. 399, 416-17 (1913).

A legitimate prosecution for evading an indirect tax must identify the specific activity or transaction(s) conducted by the defendant, to which the indirect tax attaches. The Collins theory — that income is directly taxable without regard to the lack of subjectivity to any impost, duty, or excise — is constitutionally wrong.

The Plaintiff United States never identified in the record the specific taxable activity or transactions conducted by the defendant that were constitutionally subject to indirect taxation, giving rise to the obligation Petitioner allegedly evaded.

The Defendant's motions pursuing that full disclosure of the court's subject matter jurisdiction were summarily denied by the trial court, which erroneously invoked Collins to foreclose the issue.

### *C. The Motion Denials Prevented a Test of Constitutionality*

This Court held in *Russell v. United States*, 369 U.S. 749, 763-64 (1962), that an indictment must inform the defendant of the specific offense with sufficient

particularity. The summary denial of the Defendant's pre-trial motions addressing the lack of jurisdiction of the court, ensured the Collins error would control results.

The conviction was therefore rendered without it being disclosed, with constitutional precision, what specific indirect form of taxation allegedly applied to Cromar's earnings, *i.e.*: what the alleged taxable activity or transaction was, to which any indirect impost, duty, or excise tax attached.

### **III. The Intervening Authority Was Unavailable Before Moore**

#### ***A. The Tenth Circuit Applied the Wrong Standard***

The argument that Moore abrogated Collins was not legally available before June 20, 2024. Collins was binding Tenth Circuit precedent since 1990. A defendant before Moore could not have argued at trial that Collins was abrogated by a Supreme Court decision that would not be issued until after his trial was concluded June 4, 2024. The district court ignored Cromar's post trial pleadings to correct the **fatal** jurisdictional error exposed by Moore.

Moore provides the intervening jurisdictional circumstances and authority to overturn the Collins based convictions of Cromar. This court should apply its own decisions in Moore to this instant case, *i.e.*: "Income taxes are indirect taxes under Article I, §8", and direct taxes must be apportioned to the "*several States*" in proportion to the last census. Why won't this court apply its own decisions here?

#### ***B. The Martinez Principle Supports Relief***

*Martinez v. Ryan*, 566 U.S. 1 (2012), established that inadequate post-conviction proceedings may excuse procedural error in fundamental constitutional claims. The ground here was not undiscovered — it was unavailable. The trial court’s rulings were applied mechanically to foreclose a constitutional challenge that would only be precedentially arguable after *Moore*. This conflicts with the equitable principles this Court has long recognized as supporting relief in circumstances of genuine constitutional error and supervening authority.

#### **IV. The Collins Error Infected Every Stage: the Prosecution, Sentencing, and Restitution**

##### ***A. The First Element of §7201 Was Never Constitutionally Established***

IRC §7201 requires a tax due and owing as its first element. *Spies*, 317 U.S. at 496. That element requires a valid constitutional tax obligation of an indirect tax, as impost, duty, or excise, on realized gain from a specific, federally taxable activity or transaction. The plaintiff never identified for any year charged, the specific federally taxable activity or transactions allegedly conducted by Cromar, giving rise to any indirect tax obligation in his name. It relied on the erroneous *Collins* theory that all earnings from all sources are directly taxable as ‘income’ without limitation. Under *Moore*, that theory is constitutionally erroneous. The first element of a §7201 prosecution was never constitutionally established on the record.

***B. The Sentencing Record Demonstrates the Collins Error With \$723,028.65 in Quantified Consequences***

The sentencing hearing record makes concrete what the Collins error cost Petitioner. Restitution of \$723,028.65 was calculated under the Collins “direct tax” methodology — treating all earnings as directly taxable without identifying any specific taxable activity or transactions, ever conducted by Cromar.

***C. The Restitution Order Is the Collins Error Made Concrete.  
The United States Is Not a 'Person' Eligible to Receive Restitution***

The restitution order is constitutionally infirm on two independent grounds. First, every dollar was calculated under the Collins direct-tax methodology: the amounts coming only from testimony treating all earnings as directly taxable “income” under the Sixteenth Amendment; the amounts from a gross-income formula that by design fails to identify a specific federally taxable activity or transaction conducted to which an indirect tax might attach. A restitution order calculated entirely on a constitutionally erroneous, unlimited, direct tax, is itself constitutionally infirm.

Second, the United States is not a statutorily defined “person” eligible to receive restitution as a “victim” under the Title 18 restitution statutes, §§3556, 3663, 3663A, and §3563(b)(2). The long-established canon of construction holds that “person” in a federal statute does not include the “United States” absent clear congressional expression. *United States v. Cooper Corp.*, 312 U.S. 600 (1941).

Congress has not expressed that intention in the Title 18 restitution statutes, nor in the Title 26 statutes<sup>1</sup>. The DOJ's own guidance acknowledges that governmental units themselves are excluded from the definition of the term "person", and that "some financial losses are not eligible for restitution, such as state or federal taxes, interest, penalties or fines." A restitution order for an individual to pay a non-apportioned direct tax to the United States as a victimized "person", lacks statutory foundation under Cooper Corp. and lacks constitutional foundation under Moore.

Under Art. I, §2, cl. 3 and Art. I, §9, cl. 4, and Moore, all direct taxes must be apportioned among the States in proportion to their population. A restitution obligation premised on a direct tax that the Constitution requires to be enforced against the "*several States*" cannot be constitutionally enforced against an individual defendant.

A chain of instruments, each link of which derives from the Collins constitutional direct-tax **error** cannot produce valid collection instruments. A constitutional defect and error in the underlying taxing theory and jurisdiction of the court, is a constitutional defect in every act and instrument derived from that error. It is all *fruit of the poisonous tree*.

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<sup>1</sup> Title 26 USC §7701(a)(1).

## V. The Conviction and All Derived Instruments Are Void for Lack of a Granted Constitutional Subject Matter Jurisdiction

A court lacking subject matter jurisdiction cannot proceed to try a defendant.

“The requirement that jurisdiction be established as a threshold matter springs from the nature and limits of the judicial power of the United States and is inflexible and without exception.” *Mansfield, C. & L.M.R. Co. v. Swan*, 111 U.S. 379, 382 (1884).

“For a court to pronounce upon the constitutionality of a state or federal law when it has no jurisdiction to do so is, by very definition, for a court to act ultra vires.” *Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83, 84 (1998).

“Subject-matter jurisdiction, because it involves a court's power to hear a case, can never be forfeited or waived. Consequently, defects in subject-matter jurisdiction require correction regardless of whether the error was raised in district court.” *United States v. Cotton*, 535 U.S. 625, 630 (2002).

The prosecution of Cromar was expressly premised on a constitutional taxing theory that Moore exposes as **erroneous**. The 16<sup>th</sup> Amendment does not authorize a non-apportioned direct tax on income that can be enforced against individuals; it authorizes only the indirect taxation of specific, federally taxable activities and transactions, by impost, duty, or excise. The evidence and testimony never identified any such taxable activity or transactions of Cromar.

The court that convicted Cromar, imposed sentence, imprisoned, and ordered restitution be paid, did so on a constitutionally erroneous and **invalid** jurisdictional claim. Under the controlling authorities recited herein, the conviction of Cromar for

evading a direct tax on his own income, and all the instruments derived from it, are null and void.

## **VI. This Case Presents Questions of National Importance That the Tenth Circuit Is Entrenching Through Unpublished Decisions**

### ***A. The Scope of Moore in Criminal Tax Prosecutions***

Hundreds of §7201 and §7206 prosecutions are brought annually under the Collins direct-tax claim (or similar decisions of other circuit courts) — premised on the theory that the Sixteenth Amendment authorizes a non-apportioned direct tax on the earnings of all individuals as federally taxable “income”. Moore directly contravenes that direct application and operation.

The question of whether Moore's characterization of income tax as indirect, Article I, taxation affects the constitutional validity of such direct-tax prosecutions — and what the government must identify to establish the first element of a §7201 prosecution under the correct constitutional framework of indirect taxation, — has enormous national importance and real consequences affecting all pending and future tax cases in every court in America.

This honorable court should enforce the Constitution, as already decided in Moore, regardless of the political consequences or legal repercussions that may result.

### ***B. The Sentencing Record Demonstrates Why National Guidance Is Urgent***

The sentencing record in this case demonstrates the practical consequences of leaving the Collins/Moore question unresolved. The Collins direct-tax methodology — treating all gross income as directly taxable without identifying any specific taxable activity or transactions subject to federal taxation by impost, duty, or excise — is used not only at prosecution but at sentencing to calculate tax loss, at the IRS to make civil assessment claims, and in all collection and enforcement proceedings.

At every stage, the Collins error produces incorrect results in the courts, that a constitutionally correct indirect-taxation methodology would not produce. Cromar's \$723,028.65 restitution amount — calculated on the Collins direct-tax methodology is erroneous and illustrates exactly why this Court's correction is necessary.

### ***C. The Tenth Circuit Is Entrenching Error Through Unpublished Decisions***

The Tenth Circuit has now decided at least two cases — Walcott and Cromar — rejecting Moore-based challenges through unpublished authority without engaging the Collins/Moore, direct/indirect taxation conflict. The government will cite these erroneous decisions against every future criminal tax defendant in the circuit who raises a Moore-based challenge.

The constitutional question is being suppressed through accumulated unpublished authority rather than being properly resolved through deliberative

review by the courts. That is precisely the kind of circuit-level error this Court's certiorari jurisdiction exists to correct.

## VII. The GVR Alternative

Even without full review, a GVR is appropriate. The Tenth Circuit affirmed **without**: (1) addressing whether Moore abrogated Collins on the constitutional point upon which the prosecution was expressly premised; (2) engaging the Collins/Moore, direct/indirect taxation conflict that the lower courts declined to examine; (3) addressing the sentencing record using the Collins-premised restitution for a direct-tax methodology; and (4) explaining why any bar applies where the argued grounds were unavailable at trial; and (5) engaging Moore's indirect-tax characterization's consequences for §7201 prosecutions.

A GVR directing the Tenth Circuit to engage these questions on a complete record without requiring this Court to resolve them here, is appropriate when a lower court affirmed without adequately considering supervening or intervening SCOTUS authority. That is precisely the case here.


## CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that this honorable Court rehear the matter under Rule 44 to apply the controlling decisions already taken in *Moore*, *Brushaber*, *Baltic Mining*, *Stone Tracy*, *Steward Machine*, *Spies*,

*Russell, and Cooper.* In the alternative, Petitioner requests that this Court consolidate this case with *United States v. Walcott*, No. 25-1024 (10<sup>th</sup> Cir.), or any other pending cases presenting the same jurisdictional questions about the effect of *Moore* on income tax prosecutions premised on an erroneous direct-tax theory.

This is necessary for justice to be rendered given that: (1) Moore directly contradicts the Collins holding upon which the jurisdiction of the court, and the entire prosecution of Cromar, was expressly premised; (2) the Tenth Circuit affirmed without addressing that conflict; making it perfectly clear that this Court is the only forum that can resolve the irreconcilable jurisdictional conflict that now exists in every court in the nation addressing the income tax laws.

Respectfully submitted,

©  
by:  TM  

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Paul Kenneth Cromar #13871081, *Pro Se*

**UNITED STATES SUPREME COURT**

Case No.: **25-6931**

United States of America,  
Respondent - Appellee,

v.

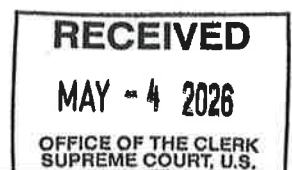
Paul Kenneth Cromar,  
Petitioner - Appellant.

**Rule 44 Certification  
of Intervening Circumstances  
and Good Faith**

1. Comes now Petitioner/Defendant Paul Kenneth Cromar, a federal prison inmate, *pro se*, who hereby files with this honorable court this Certification that the Rule 44 Rehearing Petition grounds addressed in the attached Rehearing Petition are limited to the intervening circumstance of an applicable Supreme Court ruling of substantial and controlling effect that was made after the criminal trial of Cromar was conducted.

2. I further certify that the Petition for Rehearing is presented in good faith and for true, legal, factual, cause, and not for the purpose of delaying any legal proceeding or delaying the execution of any *Order* of any court.

Respectfully submitted this day, April 27<sup>th</sup>, 2026.



Paul Kenneth Cromar, *pro se*, #13871081

CERTIFICATE OF SERVICE

I, Paul Kenneth Cromar, certify that a true copy of the attached *Petition for Rule 44 Rehearing* has been served via Certified Mail to the following:

TRINA A. HIGGINS, United States Attorney (#7349)  
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Apr 27, 2026