26-5111

No. ________

IN THE SUPREME COURT OF THE UNITED STATES

RICHARD BOGGS,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent

ORIGINAL

FILED
JUL 13 2026
OFFICE OF THE CLERK
SUPREME COURT, U.S.

On Petition for Writ of Certiorari to the

United States Court of Appeals for the Fourth Circuit

Case No. 25-6347

D.C. No.: 3-22-cr-00221 (SC Columbia.)

PETITION FOR WRIT OF CERTIORARI

Richard Boggs Petitioner, Pro Se

655H Fairview Rd. 246

Simpsonville, South Carolina 29680

STATEMENT OF THE ISSUES PRESENTED

Issue 1. Under *Moore et ux. v. United States,* 602 U.S. 572 (2024) the income tax is an ***indirect*** tax under Article I, Section 8, clause 1 of the U.S. Constitution and cannot be enforced as the non-apportioned direct tax that was assessed by the IRS (See Appendices E and F) and enforced by the lower courts.

Issue 2. Under *Moore, all direct* taxes are constitutionally required to be apportioned to the "*several States*" for payment in proportion to the census.

Issue 3. The federal personal income tax is **not** a *non-apportioned* direct tax on income under authority of the 16th Amendment.

Issue 4. Under the Supreme Court decisions taken in *Moore et ux. v. U.S.*, 602 U.S. 572, (2024), the federal courts ***lack*** the *subject matter jurisdiction* to enforce crimes against individual defendants based on a ***direct*** *tax* on income under an alleged authority of the IRS to assess tax *directly* and **without** *limitation* under the 16th Amendment.

Issue 5. ***Fatally lacking*** a constitutionally granted *subject matter jurisdiction* to enforce a *direct* tax on *income* against an individual *person,* the judgment and conviction of the Defendant are **void *ab initio***.

Issue 6. The United States is not a statutorily defined 'person' eligible to receive restitution as a 'victim' under the Title 18 restitution statutes, and is not constitutionally entitled to restitution from an individual defendant for a tax obligation premised on a non-apportioned direct tax that the Constitution requires to be apportioned among the several States: and

Issue 7. The *stare decisis* doctrine is **violated** by the lower courts' decisions.

PARTIES, AND LIST OF DIRECTLY RELATED PROCEEDINGS, TO THIS PROCEEDING

Petitioner Richard Boggs is the Defendant-Appellant in all proceedings below, including in the United States District Court for the District of South Carolina, Columbia Division, Case No. 3-22-cr-00221, and in the United States Court of Appeals for the Fourth Circuit, Case No. 25-6347.

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

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- Appendix F: IRS Training Website Teaching the Federal Income Tax **IS A DIRECT TAX.**
    - (https://apps.irs.gov/app/understandingTaxes/teacher/whys_thm04_les04.jsp)
- Appendix G: DOJ Criminal Resource Manual (CRM) Excerpts.

CERTIFICATE OF COMPLIANCE

CERTIFICATE OF SERVICE

CONSTITUTIONAL AND STATUTORY AUTHORITIES INVOLVED

- U.S. Const. Art. I, §2, cl. 3: 'Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers.'

- U.S. Const. Art. I, §8, cl. 1: 'The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises...'

- U.S. Const. Art. I, §9, cl. 4: 'No Capitation, or other direct, Tax shall be laid, unless in Proportion to the Census or enumeration herein before directed to be taken.'

- U.S. Const. Amend. XVI: 'The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.'

- 18 U.S.C. §3231: 'The district courts of the United States shall have original jurisdiction, exclusive of the courts of the States, of all offenses against the laws of the United States.'

- 26 U.S.C. §7201: 'Any person who willfully attempts in any manner to evade or defeat any tax imposed by this title or the payment thereof shall... be guilty of a felony...'

- Fed. R. Crim. P. Rule 7(c) – The Indictment and the Information: '(c) Nature and Contents. (1) *In General.* The indictment or information must be a plain, concise, and definite written statement of the essential facts constituting the offense charged and must be signed by an attorney for the government.'

- Fed. R. Crim. P. Rule 52(b) – Plain Error. '(b) Plain Error. A plain error that affects substantial rights may be considered even though it was not brought to the court's attention.'

TABLE OF CASE AUTHORITIES

Constitutional and Statutory Provisions

OPINIONS BELOW

The Order and Judgment of the Fourth Circuit, entered 02/24/2026, is reproduced at Appx. A. It is unpublished and may be cited for persuasive value under Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

The Order of the Fourth Circuit denying Petitioner's Petition for Rehearing and Petition for Rehearing En Banc, entered 06/29/2026, is reproduced at Appx. B. That order states that no member of the panel and no judge in regular active service requested that the court be polled on the en banc petition.

The district court's ORDERs are reproduced at Appx. C.

The Sentencing Transcript, 06/23/23, ECF No. 190, is reproduced in relevant part at Appx. D.

JURISDICTION

The Fourth Circuit entered its Order and Judgment on 02/24/2026. Petitioner timely filed a Petition for Rehearing and Rehearing En Banc on 03/05/2026. The Fourth Circuit denied both petitions by Order entered 06/29/2026. (Appx. B) This Court has jurisdiction under 28 U.S.C. §1254(1). Under Supreme Court Rule 13.3, the 90-day period runs from 06/29/2026. This petition is timely.

STATEMENT OF THE CASE

Appellant Boggs argues under this Supreme Court's decisions taken in *Moore et ux. v. United States,* 602 U.S. 572 (2024), hereinafter *"Moore",* and under the new federal income tax law enacted by Congress as of January 1, 2018, that the federal personal income tax is an ***indirect*** tax under authority of Article I, Section 8, clause I, and that the federal district court therefore *fatally lacked* the *subject matter jurisdiction* to enforce the IRS assessment of a *non-apportioned* <u>*direct*</u> tax on his *income*, or any crimes alleged against an individual defendant like Boggs (with respect to such *direct* and *unlimited* taxation of his own personal income) because, under *Moore,* this court specifically holds that 1) "*Taxes on income are* ***indirect*** *taxes*", and that 2) "<u>*direct* taxes</u> must be *apportioned* among the *States*" for payment *in proportion* to the last census, regardless of the adoption of the 16th Amendment in 1913.

Therefore, the conviction and judgment against him for failing to pay a non-apportioned, unavoidable, ***directly assessed*** tax on his own personal income are ***void ab initio*** for ***lack*** of a constitutionally granted *subject matter jurisdiction* of the district court to enforce a *non-apportioned directly assessed* tax on income against an individual defendant, rather than the constitutionally required "*several States*" to whom all direct taxes must be apportioned for payment in proportion to the last census. Const. Art. I, §2, cl.3 and Art. I, §9, cl.4.

Additionally, Appellant argues that the United States is not a statutorily defined 'person' eligible to receive restitution as a 'victim' under the Title 18 restitution statutes, and therefore not constitutionally entitled to restitution from an individual defendant for an alleged tax obligation premised on a direct non-apportioned tax that the Constitution requires, as a direct tax, to be apportioned for payment among the "*several States*".

ISSUE ARGUMENTS

Issue 1 - Under *Moore et ux. v. United States*, 602 U.S. 572 (2024) the income tax is an ***indirect*** tax under Article I, §8, clause 1 of the Constitution.

In 2024, in *Moore et ux. v. United States*, it is definitively declared by this Supreme Court that "*Taxes on income are indirect taxes under authority of Article I, Section 8, clause 1 of the Constitution*", and that "*...indirect taxes are the familiar federal taxes imposed on activities or transactions. That category of taxes includes duties, imposts, and excise taxes,* **as well** as *income taxes. U. S. Const., Art. I, §8, cl. 1; Amdt. 16.*"

Additionally, in 2017 the U.S. Congress declared in the Constitutional Authority Statement for the new (now current) income tax law passed by Congress in December of that year, that the constitutional authority for the income tax laws is granted under Article I, Section 8, clause 1 of the U.S. Constitution, not the 16th Amendment.

Therefore, the income tax is an ***indirect*** tax under authority of Article I, §8, in the form of an *Impost, Duty,* or *Excise* where the amount of tax owed is ***measured*** by the amount of "income" received or realized. The income tax is **not** an unlimited, non-apportioned, direct tax under the 16th Amendment.

The scope of authority of the three *indirect* powers to tax[1] that are granted under Article I, §8, clause 1 of the U.S. Constitution has been fixed in law since 1911.

> "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 within the country, upon licenses to pursue certain occupations, and upon corporate privileges ... the requirement to pay such taxes involves the exercise of the privilege and if business is not done in the manner described no tax is payable...it is the privilege which is the subject of the tax and not the mere buying, selling or handling of goods." Cooley, Const. Lim., 7th ed., 680." *Flint v. Stone Tracy Co.,* 220 U.S. 107, 151, 31 S.Ct. 342, 349 (1911)

Imposts tax foreign persons, foreign imports, and in foreign places (territories, possessions, foreign countries under treaty); Duties tax exported goods; and Excises tax the manufacture, sale or consumption of **commodities**

[1] By impost, duty, and excise.

within the country, **licenses** to pursue certain occupations, and **corporate privileges.** None of these powers tax the labors of American citizens in the fifty states.

The original income tax legislation was enacted as an Impost in the form of a tariff, *i.e.*: the Underwood-Simmons Tariff Act of Oct. 3, 1913, within which this court declared in *Brushaber,* 240 U.S. 1 at 21, that: "2. The act provides for **collecting the tax at the source**, that is, makes it the duty of corporations, etc., to **retain and pay** the sum of the tax". **Indirect** taxation is often implemented through <u>*collection of taxes*</u>.

Under Article I, Section 8, "*income*" is not the *subject* of the constitutionally authorized indirect taxation, that being the *impost, duty,* or *excise* taxation authorized. The role "income" plays in ***indirect*** taxation that is authorized is that of the '*yardstick*'. "*Income*" is the <u>*yardstick*</u> that ***measures*** the amount of tax that is owed on the federally taxable earnings derived from the taxable *activities* and *transaction(s)* conducted by the *person,* that were made subject to the payment of an ***indirect*** *impost, duty,* or *excise* tax. "*Income*" is the yardstick mechanism by which the amount of the *impost, duty,* or *excise* tax owed, is *measured.*

> "Evidently Congress adopted the income as the <u>measure</u> of the tax to be imposed with respect to the doing of business in corporate form because it desired that the excise should be imposed, approximately at least, with regard to the amount of benefit presumably derived by such corporations from the current operations of the government. In *Flint v. Stone Tracy Co.* 220 U.S. 107, 165, 55 S. L. ed. 107, 419, 31 Sup. Ct. Rep. 342, Ann. Cas. 1912 B. 1312, it was held that Congress, in exercising the right to tax a <u>legitimate *subject* of taxation</u> as a

> franchise or privilege, was not debarred by the Constitution from measuring the taxation by the total income, although derived in part from property which, considered by itself, was not taxable. It was reasonable that Congress should fix upon gross income, without distinction as to source, as a convenient and sufficiently accurate index of the importance of the business transacted." *Stratton's Independence, Ltd. v. Howbert,* 231 U.S. 399, at 416 – 417 (1913)

Issue 2 - Under *Moore, a*ll *direct* taxes are required by the Constitution to be apportioned to the "*several States*" for payment in proportion to the census.

Additionally, with respect to all *direct* taxation authorized under the U.S. Constitution, this Supreme Court holds in *Moore* that the *"Constitution requires that direct taxes be apportioned among the States"* for payment. And *"To be apportioned, direct taxes must be imposed 'in Proportion to the Census or Enumeration.' U.S. Const., Art. I, §9, cl. 4; see also §2, cl. 3. In other words, direct taxes must be apportioned among the States according to each State's population."* *Moore, supra*

This court held consistently the same in *Steward Machine* in 1937.

> "'The Congress shall have power to lay and collect taxes, duties, imposts, and excises.' Art. 1, § 8. If the tax is a direct one, it shall be apportioned according to the census or enumeration. If it is a [indirect] duty, impost, or excise, it shall be uniform throughout the United States. Together, these classes include every form of tax appropriate to sovereignty. *Cf. Burnet v. Brooks,* 288 U. S. 378, 288 U. S. 403, 288 U. S. 405; *Brushaber v. Union Pacific R. Co.,* 240 U. S. 1,

240 U. S. 12." *Steward Mach. Co. v. Collector*, 301 U.S. 548 (1937), at 581"

This is conclusive. All directly assessed taxes must be apportioned to the "*several States*" for payment in proportion to the last census regardless of the adoption of the 16th Amendment in 1913.

The unavoidable, non-apportioned *direct* tax on income that the IRS assessed on Boggs, and that he was convicted of evading and defeating, was **not** apportioned to the "*several States*" for payment as constitutionally required; and no *indirect* tax (*impost, duty,* or *excise*) was alleged by the plaintiff United States, or by evidence at trial, as being owed by Boggs.

His conviction was therefore ***ultra vires*** for the *fatal lack* of a granted subject matter jurisdiction of the district court that can lawfully be taken to enforce a <u>directly assessed</u> tax on income against an individual defendant, or to convict an individual defendant for failing to pay, evading, or defeating such non-apportioned direct tax on his *person* or "income".

Issue 3 - The federal personal income tax is **not** a *non-apportioned* direct tax on income under authority of the 16th Amendment.

Under *Moore* the federal personal income tax is an ***indirect*** tax. And this court also held in *Moore* that all <u>*direct*</u> taxes must be *apportioned* to the "*several States*" for payment in proportion to the last census. Therefore the income tax is not the *"non-apportioned direct tax under the 16th Amendment"* that was wrongfully relied upon by the IRS in making the assessment of tax owed based solely on the direct taxation of that income, nor by the trial court in failing to fully identify the subject matter jurisdiction that could be taken sufficient to allow that court to try and convict Boggs for *attempting to evade or defeat,* and *failing to pay,* a non-apportioned, unavoidable, *direct* tax on his person and or income that, as a direct tax, can only be constitutionally enforced against the "*several States*", and not individual defendants.

A subject matter jurisdiction to enforce direct taxation against individual defendants cannot be taken by the federal courts under the Constitution, or the 16th Amendment which "*confers no new power of taxation*". *Stanton v. Baltic Mining Co.*, 240 U.S. 103, 112-113 (1916). Nor may jurisdiction be taken under authority of just a single statute, like Title 18 U.S.C. Section 3231, without first establishing a proper constitutional foundation for the statute's application in the case, *i.e.*: fully disclosing the constitutional nature and specific type of tax allegedly at issue and alleged owed.

> "... in a long and venerable line of our cases. "Without jurisdiction the court cannot *proceed* at all in any cause. Jurisdiction is power to *declare* the law, and when it ceases to exist, the only function remaining to the court is that of announcing the fact and dismissing

the cause." *Ex parte McCardle,* 7 Wall. 506, 514 (1869). ... The requirement that jurisdiction be established as a threshold matter "spring[s] 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). *Steel Co., aka Chicago Steel & Pickling Co. v. Citizens for a Better Environment,* No. 96-643, 90 F.3d 1237 (1998)

Issue 4. Under the Supreme Court decisions taken in *Moore et ux. v. U.S.*, 602 U.S. 572, (2024), the federal courts ***lack*** the *subject matter jurisdiction* to enforce crimes against individual defendants based on a <u>*directly assessed*</u> *tax* on income under an *erroneously* alleged authority of the 16th Amendment to tax *directly* and without *limitation.*

Because the federal income tax is an *indirect* tax under Article I, Section 8, the federal courts *fatally lack* the *subject matter jurisdiction* necessary and required to allow those courts to enforce claims for, or criminal charges based on, an alleged failure to pay a *non-apportioned* <u>*direct*</u> *tax.* No alleged "crimes" with respect to such non-apportioned, direct, and unlimited taxation may be prosecuted in federal courts because no such direct and unlimited tax on persons, or income, *constitutionally e*xists, and no *power* to *lay, collect*, or *enforce* a "*non-apportioned direct tax*" on income is ever granted to Congress by the Constitution or the 16th Amendment, regardless of its adoption in 1913. All direct taxes must still be *apportioned* to the *several States* for payment in *proportion* to each State's population, *Moore, supra.*

Therefore, no direct tax on income can be enforced against an individual *person,* like Boggs, rather than against the "*several States*" as constitutionally required of all direct taxes and taxation, *Moore supra.*

> "Federal courts are courts of limited jurisdiction. They possess only power authorized by <u>Constitution and statute</u>, 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)

> "It is well established that federal courts are courts of limited jurisdiction, possessing only that power authorized by the <u>Constitution and statute</u>." *Hudson v. Coleman,* 347 F.3d 138, 141 (6th Cir. 2003)

> "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. See, *e. g., Louisville & Nashville R. Co. v. Mottley,* 211 U. S. 149 (1908)." *United States v. Cotton,* 535 U.S. 625, 630 (2002);

Issue 5. Fatally *lacking* a constitutionally granted *subject-matter jurisdiction* to enforce a *non-apportioned direct* tax on *income* against an individual *person,* the judgment and conviction of the Defendant are **void *ab initio***.

In re-affirming in *Moore* the decisions taken in *Brushaber* and *Baltic Mining* in (1916) and in *Steward Machine* in 1937, this court establishes 110 years of undisturbed *precedent* that income taxes are *indirect* taxes under authority of *Article* I, Section 8, clause 1, and that therefore the federal personal income tax is **not** a *non-apportioned direct* tax on *income* under authority of the 16th Amendment as erroneously claimed by the DOJ and IRS.

The *Moore* decision exposes the "*non-apportioned direct tax under the 16th Amendment*" holding made in all U.S. Circuit Courts to take jurisdiction for more than 40 years as a completely ***fatal erroneous*** argument because this Court re-asserts and re-affirms in *Moore* the original decisions on income taxation taken in *Brushaber* and *Baltic Mining* in 1916, establishing that the federal personal income tax is an *indirect* tax under Article I, Section 8 and is **not** a *direct* tax of any form.

Therefore, *fatally* ***lacking*** the subject-matter jurisdiction to enforce a directly assessed tax upon an individual defendant (instead of the "*several States*"), the district court conducted the entire criminal trial of the Defendant ***ultra vires,*** and the conviction and judgment are therefore both ***void ab initio*** and must be *overturned.*

> "Courts are constituted by authority and they cannot go beyond that power delegated to them. If they act beyond that authority, and certainly in contravention of it, their judgements and orders are regarded as nullities; they are not voidable, but simply void, and this even prior to reversal." *Williamson v. Berry*, 8 HOW. 945, 540 12 L. Ed. 1170, 1189 (1850).

> When rule providing for relief from void judgments is applicable, "relief is not a discretionary matter; it is mandatory." *Orner. v. Shalala*, 30 F.3d 1307 (Cob. 1994). "A judgment is void if the court that rendered it lacked jurisdiction of the subject matter, or of the parties, or acted in a manner inconsistent with due process." Fed. Rules Civ. Proc., Rule 60(b)(4),28 U.S.C.A., U.S.C.A. Const. Amend. 5 - *Klugh v. U.S.*, 620 F.Supp. 892 (D.S.C. 1985).

Thus, the federal courts would therefore appear to have no legal option left in this case except to ***overturn*** the ***ultra vires*** conviction of the Defendant, ***set aside*** the verdict, ***vacate*** the judgment, and order the conviction and the judgment declared **void *ab initio*** for ***lack*** of a constitutionally granted *subject-matter jurisdiction* of the district court that can be taken to enforce a ***directly assessed*** tax on income against an individual defendant. The Principles of Law at work are clear and well known in every legal forum:

> Black's Law Dictionary, Sixth Edition, P. 1522; *ultra vires*. An act performed without any authority to act on the subject. *Haslund v. City of Seattle*, 86 Wash.2d 6O7, 547, P.2d 1221, 1230. Acts beyond the scope of the powers of a corporation as defined by its charter or laws of state of incorporation. *State ex rel. v. Holston Trust Company*, 168 Tenn. 546, 79 S.W.2d 1012, 1016.

> Black's Law Dictionary, Sixth Edition, P. 1574: Void judgment. One which has no legal force or effect, invalidity of which may be asserted by any person whose rights are affected at any time and at any place directly or collaterally. *Reynolds v. Volunteer State Life Ins. Co.*, Tex.Civ.App., 80 S.W.2d 1087, 1092.[2]

> "A void order, that is, one entered by a court which lacks jurisdiction over parties, the subject matter, or lacks inherent power to enter the particular judgment, or an order procured by fraud can be attacked at any time, in any court, either directly or collaterally, provided the party is properly before court." *People ex. re. Brzica v. Village of Lake Barrington,* 644 N.E.2d 66 (Ill.App.2 Dist. 1994).

> "A void judgment is "one <u>in which rendering court</u> lacked subject matter jurisdiction over dispute or jurisdiction over the parties, or acted in manner inconsistent with due process of law or <u>otherwise acted unconstitutionally in entering judgment</u>." U.S.C.A. Const. Amend. 5, *Hays v. Louisiana Dock Co.*, 452 N.E.2d 1383 (Ill App. 5 Dist. 1983).

> "A void judgment is one that has been procured by extrinsic or collateral fraud, or entered by a court that did not have jurisdiction over the subject matter or the parties." *Rook v. Rook*, 233 Va. 92, 95, 353 S.E.2d 756, 758 (1987).

The district court clearly lacked the *subject-matter jurisdiction* necessary to enforce a *non-apportioned <u>directly</u> assessed income tax* against the Petitioner as a defendant. By the trial court's *fatal lack* of subject-matter jurisdiction, the conviction of the Defendant must be overturned, and his conviction made ***void ab initio.***

Issue 6. The "United States" is not the statutorily defined *person* that can be a "victim" who is eligible for restitution, and restitution may not be used by the United States to recover from an individual, who cannot be ordered to pay, a ***direct*** tax which must be *apportioned* to the *several States* for payment.

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 the term *'person'* in a federal statute does not include the sovereign 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 taxation statutes[2]. The Department of Justice's own guidance acknowledges that governmental units themselves are excluded from the 'person' definition under Title 18[3], and that 'some financial losses are not eligible for restitution, such as state or federal taxes, interest, penalties or fines.' A restitution order payable to the IRS for federal income taxes lacks statutory foundation under the *Cooper Corp.* canon.

This ***statutory*** definition of the term "*person*", that does exist in the two Titles, <u>does **not** include the "United States"</u> in either definition, and the statute in Title 18 only applies under Title III of the Omnibus Crime Control and Safe Streets Act, not restitution matters. Therefore, absent specific inclusion by the restitution statutes themselves, the United States is **not** a statutory "*person*" who can be a "*victim*" that is *eligible* for restitution in a

[2] Title 26 USC §7701(a)(1) does not include the United States as a "person".

[3] Title 18 USC §2510(6), defining 'person', is a definitional provision that applies within the federal wiretapping statutes of Title 18 under Title III of the Omnibus Crime Control and Safe Streets Act. It is not directly applicable to the restitution statutes, but never-the-less, does not include the "United States" as a statutory "person" and is the only statute in the Title that defines the term.

personal income tax case disputing an uncollected and or unpaid directly assessed tax on income.

The DOJ Criminal Resource Manual, CRM 1000-1499 provides: "*The term "person" is defined in 18 U.S.C. § 2510(6) to mean any individual person as well as natural and legal entities. It specifically includes United States and state agents. According to the legislative history, "(o)nly the* ***governmental units*** *themselves* ***are excluded****." S.Rep. No. 1097, 90th Cong., 2d Sess. 90 (1968). [cited in JM 9-60.200]*". (See Appx. G) (*emphasis added)*

The DOJ Criminal Resource Manual further provides, regarding "*The Restitution Process*", that:

> In federal court, a convicted offender may be ordered to reimburse victims for financial losses incurred due to the offender's crime. This reimbursement is called "*restitution*," and it may be ordered for lost income, property damage, counseling, medical expenses, funeral costs or other financial costs directly related to the crime. **Some financial losses are not eligible for restitution, such as state or federal taxes, interest, penalties or fines**; expenses for private legal representation relating to personal or business legal issues raised by the crime; fees for tax advisors, accountants, or other professionals; and legal expenses for the civil recovery of financial losses. Losses for "pain & suffering" are also not eligible for restitution. (*emphasis added)*

Thus, not only is the United States **not** a "*person*" who can be a "*victim*" who is eligible for restitution under the language of the statutes, but "*federal taxes*" are **not *eligible*** for recovery by restitution orders. Therefore, the United States is not legally entitled to any restitution payments in this case.

Finally, under the U.S. Constitution, the United States is *irrefutably* **not** eligible for restitution from individuals for any ***directly assessed*** tax, which taxes must be *apportioned* to the *several States* for payment, *Moore, supra,* U.S. Const. Art. I, §2, cl. 3 and Art. I, §9, cl. 4. The restitution *Order* in this case is void and should be vacated.

Issue 7. The doctrine of *stare decisis* is **violated** by the courts' decisions.

The legal doctrine of *stare decisis* establishes that the federal district and circuit courts are duty bound to follow the Supreme Court's most recent rulings and holdings in similar disputes. Vertical *stare decisis* binds the lower courts to strictly follow and adhere to the decisions of the higher courts within the same jurisdiction, e.g., a federal court of appeal must follow the decisions of the U.S. Supreme Court, the federal court of last resort. BLACK'S LAW DICTIONARY (10th ed. 2014)

In this case the decisions of the lower courts ignore and **violate** the most recent decisions of the Supreme Court taken in *Moore* regarding the ***indirect*** constitutional nature of the federal personal income tax, and the constitutional requirement for all *direct* taxes to be *apportioned* to the "*several States*" for payment in *proportion* to the last census. This honorable Court should now restore the missing constitutional order that is required within our system of taxation under the U.S. Constitution, where all indirect taxation must be (geographically) uniform and all direct taxes must be proportionately apportioned to the *several States* for payment.

REASONS FOR GRANTING THE PETITION

1. *Moore* Abrogated the Circuit Courts' Holdings, Creating a Direct Conflict in the Circuit Courts' Precedents That the Full Court Declined to Resolve En Banc

A. Moore and the Circuit Courts State and Hold to Irreconcilable Constitutional Propositions

The U.S. Circuit Courts of Appeal have all held that the 'sixteenth amendment authorizes a **direct nonapportioned** tax on United States citizens throughout the nation.'[4] But *Moore* held income taxes are '**indirect** taxes' under Article I, §8. 602 U.S. at 582-83. The *Moore* Court stated in its Syllabus:

> '(a) Article I of the Constitution affords Congress broad power to lay and collect taxes. That power includes direct taxes — those imposed on persons or property — and indirect taxes — those imposed on activities or transactions. Direct taxes must be apportioned among the States according to each State's population, while indirect taxes are permitted without apportionment but must be uniform throughout the United States. Taxes on income are indirect taxes, and the Sixteenth Amendment confirms that taxes on income need not be apportioned.' *Moore v. United States*, 602 U.S. 572 (2024), Syllabus p. 2.

[4] See Appendix E – IRS/DOJ Frivolous Arguments publication excerpt

Moore's reasoning traces to *Brushaber* and *Stanton v. Baltic Mining* in 1916, 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. 1 at 18-19, and in *Stanton* the court also declared that the Amendment 'conferred no new power of taxation,' 240 U.S. 103 at 112. The circuit courts have inverted these holdings by reading *Brushaber* as authorizing an unlimited, unavoidable **direct** nonapportioned tax on all earnings. The circuit court decisions (direct tax) and *Moore* decision (indirect tax) cannot be reconciled. Only this Court's intervention can resolve the dire constitutional conflict.

Notably, three Justices wrote separately in *Moore* to signal concern about the broader implications of income tax doctrine. Justice Thomas, joined by Justice Gorsuch, dissented and would have held that the Sixteenth Amendment requires realization 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 presents. Petitioner submits that these unresolved questions are now directly presented.

B. The En Banc Denial Confirms the Circuit Will Not Self-Correct

Petitioner presented the *Moore* indirect/direct taxation conflict and question to the full Fourth Circuit in the en banc petition. Not a single active judge requested consideration of the question. (Appx. B) The Fourth Circuit has institutionally declined to identify or address whether previous precedential holdings of a direct non-apportioned tax survive *Moore* in the 4th Circuit. Every §7201 prosecution brought in the circuit under the direct-tax theory now rests on a constitutionally erroneous foundation that the court has declined to acknowledge or correct, to be in accord with *Moore* and the doctrine of *stare decisis*. Plain Error under F. R. Crim. P. Rule. 52(b).

As the 10th Circuit's precedent of *United States v. Collins,* 920 F.2d 619 (10th Cir. 1990), hereinafter *Collins,* was invoked and cited in this case in the "*Government's Sentencing Memorandum*" (Appx. D), it will be used hereinafter to refer collectively to all U.S. Circuit Courts of Appeal decisions (Appx. E), holding that the federal income tax is a "*non-apportioned direct tax under the 16th Amendment*", and to the IRS' assessment in this case of an unavoidable, non-apportioned, direct tax on Boggs' income without an identified, established, or evidenced, basis in any indirect taxation by *impost, duty*, or *excise* that applied to those earnings to require a tax be paid.

C. The Fourth Circuit's §3231 Analysis Is Constitutionally Insufficient

The trial court effectively held that Title 18 U.S.C. Section 3231 alone supplies jurisdiction regardless of the constitutional taxing theory underlying the prosecution. (ECF 207 pg 9) But this Court has held:

> "[A]s regards all courts of the United States inferior to this tribunal, two things are necessary to create jurisdiction... The <u>Constitution must have given to the court the capacity to take it,</u> and an act of Congress must have supplied it. ... To the extent that such action is not taken, the power lies dormant. *The Mayor* v. *Cooper,* 6 Wall. 247, 252 (1868) (emphasis added); accord, *Christianson* v. *Colt Industries Operating Co.,* 486 U. S. 800, 818 (1988); *Firestone Tire & Rubber Co.* v. *Risjord,* 449 U S 368, 379-380 1981); *Kline* v. *Burke Construction Co.,* 260 U. S. 226, 233-234 (1922); *Case of the Sewing Machine Companies,* 18 Wall. 553, 577-578, 586-587 (1874); *Sheldon* v. *Sill,* 8 How. 441, 449 (1850); *Cary* v. *Curtis,* 3 How. 236, 245 (1845); *McIntire* v. *Wood,* 7 Cranch 504, 506 (1813)." *Finley v. United States, 490* U.S. 545 (1989).

> "Since lack of jurisdiction of a federal court touching the subject matter of the litigation cannot be waived by the parties, we must upon this appeal examine the contention; and, if we conclude that the District Court lacked jurisdiction of the cause, direct that the bill be dismissed." *United States v. Griffin,* 303 U.S. 226, 229 (1938)

Section 3231 is statutory. It cannot confer subject matter jurisdiction over a taxing power that the Constitution does not authorize. The *Collins* decision (and all the other circuit courts' "*direct-tax*" decisions), and the IRS in making the assessment of tax, specifically invoke the Sixteenth Amendment — not §3231 — as the constitutional authority for the income tax to be applied to individuals as a non-apportioned, unlimited, unavoidable, direct tax on all of the "income" of all *persons*. The government premised this prosecution on the direct tax that was assessed by the IRS simply based on the Defendant's earning money, and which assessment was not based on his conducting a federally taxable activity or transaction that was subject to **indirect** federal taxation by *impost, duty*, or *excise*, and the record is bereft of any such foundational evidence of a conducted taxable activity or transaction sufficient to support the claim that a tax was owed by the Defendant.

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

The Tenth Circuit has already cited *United States v. Cromar*, 2025 WL 2502143 (10th Cir. Sept. 2, 2025), citing *Collins* as precedent for rejecting *Moore*-based jurisdictional challenges of subject matter. See Tenth Circuit Order and Judgment in *United States v. Walcott,* No. 25-1024 (10^{th} Cir.) (Dec 4, 2025) at pg. 6. At least two unpublished circuit decisions now reject *Moore*-based challenges to criminal tax jurisdiction without engaging the *Moore* indirect/direct jurisdictional conflict. This pattern is foreclosing the constitutional question for all future criminal tax defendants in America.

Petitioner requests this Court consider consolidating this petition with, or holding it pending the resolution of, any related cases.

2. <u>The Fourth Circuit's Jurisdictional Analysis is Constitutionally Deficient and Conflicts with This Court's Decisions</u>

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, 494 (1943). Whether a tax was legitimately constitutionally imposed is a threshold constitutional question. A criminal conviction for evading a tax mischaracterized as a direct unapportioned Sixteenth Amendment tax, when the Constitution authorizes **only** an **indirect** Article I tax, rests on a legally deficient foundation regardless of §3231's general grant of criminal jurisdiction.

> "Whether the tax is to be classified as an "excise" is in truth not of critical importance. If not that, it is an "impost" (*Pollock v. Farmers' Loan & Trust Co.*, 158 U. S. 601, 158 U. S. 622, 158 U. S. 625; *Pacific Insurance Co. v. Soble,* 7 Wall. 433, 74 U. S. 445), or a "duty" (Veazie Bank v. Fenno, 8 Wall. 533, 75 U. S. 546, 75 U. S. 547; *Pollock v. Farmers' Loan & Trust Co.*, 157 U. S. 429, 157 U. S. 570; *Knowlton v. Moore,* 178 U. S. 41, 178 U. S. 46). A capitation or other "direct" tax it certainly is not." *Steward Mach. Co. v. Collector*, 301 U.S. 548 (1937), at 581-2

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

Under the correct constitutional framework, *income* is the **measure** of the *indirect* tax (of the form *impost, duty,* or *excise*) *Stratton's Independence, supra.* "Income" is not the subject of the taxation, which is the specific taxable activity or transaction conducted by the *person*, subject to taxation by *impost, duty*, or *excise.*

A prosecution for evading an indirect tax must identify the specific activity or transaction to which the indirect tax (as *impost, duty,* or *excise)* attaches. The *Collins* (circuit courts'/IRS')/**direct**-tax theory — that all individual income is directly taxable without identifying any specific transaction or federally taxable activity — is constitutionally wrong. The government never identified the specific taxable activity or transactions conducted, allegedly giving rise to the tax obligation that the Petitioner allegedly evaded. The *Motion to Void Judgment* that was summarily denied (Appx. C – ECF No. 255) by the district court would have compelled that required full disclosure of the subject matter jurisdiction of the court taken, by compelling the disclosure of the underlying constitutional foundation for the claim that a specific tax was owed. The Motion was denied without explanation, or establishment of a sufficient jurisdiction for the court to lawfully proceed under thereafter.

C. The Motion Denial Prevented Constitutional Testing

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,** referencing required compliance with Fed. R. Crim. P. Rule 7(c). The *Motion to Void Judgment* denial (Appx. C – ECF No. 255) ensured the direct-tax error never surfaced in the record of the action. The conviction was secured without the Defendant/Petitioner ever being told, with constitutional precision, what specific form of federal taxation was being applied to his earnings, direct, or indirect as *impost*, *duty*, or *excise*.

3. <u>The Procedural Default Ruling Cannot Stand Where the Ground Was Unavailable Until *Moore* Was Decided</u>

A. The Fourth Circuit Applied No Standard

The Fourth Circuit applied no test or standard in its affirmation of the trial court's conviction and judgment. The argument that *Moore* abrogated the direct taxation of income that has been erroneously upheld in the various U.S. Circuit Courts of Appeal for over 45 years, as well as the invalidity of the IRS' assessment of a **direct** tax (on income), was not available to argue before June 20, 2024, when *Moore* was decided. The circuit court precedents were the binding precedent. (Appx. E)

A defendant before June of 2024 could not have argued that a "*non-apportioned direct tax*" had been abrogated by a Supreme Court decision that would not be issued until 2024, but never-the-less the fatal jurisdictional error requires correction, *Cotton, supra.*

B. The En Banc Denial Provides Independent Support

The full Fourth Circuit declined to be polled on the *Moore* indirect/direct tax constitutional question, and the argument was not available under the state of circuit law at the time of the prior trial proceedings.

C. The Martinez Principle Supports Relief

Martinez v. Ryan, 566 U.S. 1 (2012), established that inadequate post-conviction proceedings may excuse procedural default of fundamental constitutional claims. The ground here was not merely undiscovered — it was legally unavailable. The district court's summary denial of the *Motion to Void*

Judgment (Appx. C – ECF No. 255) was applied mechanically to foreclose a constitutional challenge that could only be articulated after *Moore* was issued. The constitutional conflicts and errors were not addressed.

That conflicts with the equitable principles this Court has long recognized as supporting relief in circumstances of <u>genuine constitutional error</u>.

4. <u>The Direct-Tax Error Infected Every Stage: Prosecution, Sentencing, Restitution, and Collection</u>

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 494. That element requires a valid constitutional tax obligation — an ***indirect*** tax, as ***impost, duty,*** or ***excise***, on realized gain from a specific, federally taxable, activity or transaction. The government never identified for any year charged, the specific federally taxable activities or transactions allegedly conducted by Boggs giving rise to any indirect tax obligation in his name. It relied on the direct-tax theory that all income from all sources is directly taxable without limitation as declared in *Collins* (and the other circuit precedents) (Appx. E) and as routinely assessed as the standard method of operation by the IRS (Appx. F). Under *Moore*, that theory is constitutionally erroneous and incorrect. The first element of §7201 was never constitutionally established on this criminal case record.

B. The Restitution Order is the Direct-tax Error Made Concrete — The United States is Not a Statutory 'Person' Eligible to Receive Restitution

The restitution order is constitutionally infirmed on two independent grounds. First, every dollar alleged owed was calculated under the erroneous direct-tax methodology: the amounts from IRS assessments treating all income as directly taxable under the Sixteenth Amendment; the amounts were calculated from a gross-income formula that by design identifies no specific federally taxable activity or transactions subject to tax but merely assumes subjectivity to the direct taxation of all earnings, as well as a wrongfully assumed, alleged 'liability' for tax which also does **not** exist in statute. A restitution order calculated entirely on a constitutionally erroneous taxing theory of an unlimited non-apportioned directly assessed tax on individual's (or their income), for which no liability is specified in statute that applies to the person or the tax, is itself both constitutionally infirm and violative of law.

> "If <u>any question of fact</u> or <u>liability be conclusively presumed</u> against him, this is not due process of law." Black's Law Dictionary 500 (6th ed. 1990); accord, *U.S. Department of Agriculture v. Murry*, 413 U.S. 508 [93 S.Ct. 2832, 37 L.Ed.2d 767] (1973); *Stanley v. Illinois*, 405 U.S. 645 [92 S.Ct. 1208, 31 L.Ed.2d 551] (1972)

Second, the United States is not a statutorily defined 'person' eligible to receive restitution as a 'victim' under any Title 18 statute, including §§3556, 3663, 3663A, and §3563(b)(2), etc., *i.e.*: the restitution statutes.

The long-established canon of statutory construction holds that the term '*person*' in a federal statute does **<u>not</u>** include the United States absent a clear congressional expression specifically including it, which does not exist. *United States v. Cooper Corp.*, 312 U.S. 600 (1941).

Congress has not expressed an intention to include the United States as a '*person*' in Title 18[5], nor in the restitution statutes, nor in the Title 26 taxation statutes[6].

The Department of Justice's own guidance from the DOJ Criminal Resource Manual, Section 1048, acknowledges that governmental units themselves are **excluded** from the statutory definition of a '*person*' under Title 18 and, by omission, from the restitution statutes as well, and that 'some financial losses are **not eligible** <u>for restitution</u>, such as <u>state or federal taxes, interest, penalties or fines</u>.' A restitution order, payable to the IRS for federal income taxes, ***fatally lacks*** statutory foundation under the *Cooper Corp.* canon.

Additionally, even accepting the direct-tax premise arguendo, a non-apportioned direct tax on income cannot be constitutionally enforced against an individual. Under Art. I, §2, cl. 3 and Art. I, §9, cl. 4 — as *Moore* confirms

[5] Title 18 USC §2510(6), defining 'person', is a definitional provision that applies within the federal wiretapping statutes of Title 18 under Title III of the Omnibus Crime Control and Safe Streets Act. It is not directly applicable within the restitution statutes or process, but never-the-less, does <u>not</u> include the "United States" as a statutory "*person*" and is the only definition of the term '*person*' that is provided in the Title.

[6] Title 26 USC §7701(a)(1) also does not include the "United States" as a "*person*".

in its reaffirmation of said constitutional limitations, *i.e.*: all direct taxes must be apportioned among the "*several States*" in proportion to their population under the last census. A restitution obligation premised on a direct tax that the Constitution requires to be assessed and enforced only against the "*several States*" cannot lawfully be enforced against an individual defendant like Boggs.

C. The $10,000 Fine Extends the Direct-taxation Theory Error

At sentencing, the district court imposed a $10,000 fine on Boggs that further perpetuates the direct-tax error independently of the criminal judgment. A chain of instruments, each link of which derives from the unconstitutional direct-tax error, cannot impose fines or other collection instruments based on ungranted, and thus unenforceable, taxing power, *i.e.* a *non-apportioned direct tax.*

A fatal constitutional defect in the underlying taxing theory is a constitutional defect in every instrument derived from that erroneous foundation, and is thus *fruit of the poisonous tree,* as the *non-apportioned direct* taxation of individual *persons* is constitutionally prohibited, *Moore, supra.*

5. <u>The Conviction and All Derived Instruments Are Void for Lack of Constitutional Subject Matter Jurisdiction</u>

A court lacking subject matter jurisdiction cannot proceed in the action to try, convict, sentence, fine, render judgment, or order restitution, lacking that required subject matter jurisdiction. This Court has consistently held:

> 'Without jurisdiction the court cannot proceed at all in any cause. Jurisdiction is power to declare the law, and when it ceases to exist, the only function remaining to the court is that of announcing the fact and dismissing the cause.' *Ex parte McCardle,* 7 Wall. 506, 514 (1869).

> 'The requirement that jurisdiction be established as a threshold matter spring 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). (*emphasis added)*

The criminal prosecution of the Petitioner was expressly premised on an unconstitutional direct-tax and taxing theory that *Moore* confirms does not actually exist as law or valid constitutional taxing theory. The Constitution does **not** authorize a *non-apportioned direct tax* on income that is to be enforced against the individuals earning the income; it authorizes only the indirect taxation of specific, federally taxable activities and transactions, by *impost*, *duty*, or *excise* taxation. The government never identified any such taxable activities or transactions that were allegedly conducted by Boggs to properly establish the *taxability* of his evidenced earnings. The court that allowed the trial and jury conviction and then imposed sentence and ordered restitution be paid by Boggs, did so under an erroneous claim to a nonexistent constitutional foundation and authority to tax individuals directly and without limitation. Again, *Plain Error* under F. R. Crim. P. Rule 52(b).

Under the authorities above, the conviction and all instruments derived from it are void. Defects in subject matter jurisdiction require correction at any, and every, stage of the proceedings, *Cotton, supra.*

6. This Case Presents Questions of National Importance That the Fourth Circuit is Entrenching Through Unpublished Decisions

A. The Scope of Moore in Criminal Tax Prosecutions

Numerous §7201 and §7206 prosecutions are brought annually under the erroneous direct-tax theory framework — premised on the erroneous theory that the Sixteenth Amendment authorizes a direct non-apportioned income tax on all individual persons and their earnings. *Moore* directly contradicts that theory. The question of whether *Moore's* characterization of income taxes as indirect Article I taxation affects the constitutional validity of this prosecution, and of all such tax prosecutions — and thereby what the government must identify to establish the first element of §7201 under the correct ***indirect*** constitutional taxation framework — has enormous national importance affecting all past, pending and future criminal tax cases in every district and circuit court in the country.

B. The Trial Record Demonstrates Why National Guidance Is Urgent

The trial record in this case demonstrates that failing to resolve the indirect/direct income-tax question – properly determined under *Moore* – yields profound, erroneous constitutional consequences. The circuit courts' continued refusal to apply *Moore* and adhere to the doctrine of *stare decisis* further compounds these errors.

The circuit courts' 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 assessments, and in collection proceedings to enforce restitution. At every stage, the direct-tax error produces incorrect results that a constitutionally correct indirect-taxation methodology would not produce if properly applied. The $10,000 fine, being treated as a restitution order — calculated on the erroneous direct-tax methodology, locked in by a circuit court wearing 'blinders', and ultimately extended in this case through that fine as a direct tax, illustrates exactly why this Court's guidance is needed.

C. *The Tenth and Fourth Circuit Courts are Entrenching Error Through Unpublished Decisions*

The Tenth Circuit has now decided at least two cases — *Walcott* and *Cromar* — and the Fourth Circuit in this instant case, have all rejected *Moore*-based challenges through unpublished authority without engaging the *Collins/Moore*, direct/indirect tax, conflict. The government will cite these decisions against every future criminal tax defendant in the federal courts who raises a *Moore*-based challenge. The constitutional question is being suppressed through accumulated unpublished authority rather than resolved through proper deliberative, focused, review. That is precisely the kind of circuit-level *plain error* this Court's certiorari jurisdiction exists to correct.

D. The Coram Nobis and Procedural Default Questions Have National Significance

The Fourth Circuit's procedural summary *affirmation* of the judgment without review or analysis in this case raises again the unresolved question of national importance: whether a supervening Supreme Court decision that clarifies constitutional law applicable to a completed criminal conviction constitutes sufficient cause to overcome defective trial proceedings where the Petitioner has exhausted all other possible remedies. This Court has not addressed this question. Resolution of it would provide needed guidance to lower courts nationwide on the proper scope of judicial relief following the Supreme Court's intervention by supervening constitutional authority.

7. <u>The GVR Alternative</u>

Even without full merits review, a GVR is appropriate. The Fourth Circuit affirmed without: (1) adequately addressing whether *Moore* abrogated the direct-tax theory upon which the assessment of tax and the criminal prosecution of Boggs was premised and predicated, **nor** did it address the erroneous direct-tax precedents of the various circuit courts (Appx. E) on the constitutional point upon which the prosecution was based, *i.e.*: as an unlimited and unavoidable direct tax on income under the 16th Amendment; (2) engaging the indirect/direct (the *Moore/Collins*) tax conflict that the full court declined to examine en banc; (3) the direct-tax premised fine/restitution methodology; and (4) engaging *Moore's* indirect-tax characterization's consequences for §7201 prosecutions.

A GVR directs the Fourth Circuit to engage these questions on a complete record without requiring this court to resolve them here. This Court issues GVR orders routinely when a lower court affirms without adequately considering supervening Supreme Court authority. That is precisely the case here.

8. <u>Practical Considerations Cannot Override Constitutional Limits</u>

It may be argued that apportionment of income taxes is impractical. But constitutional constraints often impose administrative burdens. The difficulty of compliance does not justify abandoning the Constitution's requirements.

Indeed, the framers were aware that direct taxes would be difficult to administer and therefore intended them to be used sparingly and with political accountability.

The federal income tax, as operationally assessed and enforced currently, is a direct tax within the meaning of Article I. The Sixteenth

Amendment does not eliminate the apportionment requirement for such taxes but merely clarifies Congress's authority to tax income without regard to its source. To preserve the Constitution's structure and original meaning, this Court should again hold, as it did in *Brushaber, Stanton, Steward Machine,* and *Moore*, that such <u>*directly assessed*</u> income taxes must be apportioned among the states and not enforced against individuals.

CONCLUSION

Without a fully granted *subject matter jurisdiction* of the trial court over the specific criminal charges laid against the Defendant, the district court may not proceed with trial or conviction and judgment. That required subject matter jurisdiction was never properly and fully established or identified on the record of the action in the trial court. The record is bereft of a constitutional power to tax that was allegedly relied upon to charge the Defendant. The defect must be corrected, *Cotton, supra.*

The conviction and judgment was therefore secured against defendant Boggs by what can now clearly be seen to be constitutional ***plain error,*** because the federal courts do not possess the specific *subject matter jurisdiction* **necessary** and **required** to act with respect to any alleged charged failure of the Defendant to pay a "***non****-apportioned* <u>*direct*</u> *tax*", which tax the Constitution and the Supreme Court in *Moore* say does **not** constitutionally exist as a granted power to tax, and which therefore cannot be operationally imposed, assessed, collected, or enforced in or through the federal courts.

The conviction of the Defendant and the judgement rendered by the district court was therefore wrongful, constitutionally erroneous, and rendered by a court that fatally lacked the subject matter jurisdiction to entertain the action as presented and argued by the plaintiff United States under the inapplicable and misapplied statutes relied upon which cannot be used in the U.S. courts to enforce direct taxation against individuals.

> A court may not render a judgment which transcends the limits of its authority, and a judgment is void if it is beyond the powers granted to the court by the law of its organization, even where the court has jurisdiction over the parties and the subject matter. Thus, if a court is authorized by statute to entertain jurisdiction in a particular case only, and undertakes to exercise the jurisdiction conferred in a case to which the statute has no application, the judgment rendered is void. The lack of statutory authority to make particular order or a judgment is akin to lack of subject matter jurisdiction and is subject to collateral attack. 46 Am. Jur. 2d, Judgments § 25, pp. 388-89.

The wrongful and erroneous conviction of Boggs must be *overturned* because the judgment under which it was rendered is ***void ab initio*** where there is **no** subject matter jurisdiction of the federal courts that can lawfully be taken to allow them to enforce a "*non-apportioned <u>direct</u> tax on income*" against an individual defendant, Const. Art. I, §8, cl.1 and Art. I, §9, cl.4; *Moore, supra.*

> "The statutory and <u>(especially) constitutional</u> elements of jurisdiction are an essential ingredient of separation and equilibration of powers, restraining the courts from acting at certain times, and even restraining them from acting permanently regarding certain subjects. See *United States* v. *Richardson,* 418 U.S. 166, 179 (1974); *Schlesinger*

> v. *Reservists Comm. to Stop the War,* 418 U.S. 208, 227 (1974). For a court to pronounce upon the meaning or 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., aka Chicago Steel & Pickling Co. v. Citizens for A Better Environment,* No. 96-643, 90 F.3d 1237 (1998)

The enforcement against individuals of an unlimited, non-apportioned, unavoidable, *direct* tax on their *person* or their "income", is constitutionally prohibited and always has been. *Brushaber, Stanton, Steward Machine,* and *Moore supra.* The conviction of Boggs is therefore void and must be overturned, and the judgment vacated.

REQUESTED RELIEF

For the foregoing reasons, Petitioner respectfully requests this Court grant the petition for writ of certiorari, vacate the judgment of the United States Court of Appeals for the Fourth Circuit, and remand for further proceedings consistent with the constitutional principles established in *Moore v. United States, Brushaber v. Union Pacific Railroad Co., Stanton v. Baltic Mining Co., Flint v. Stone Tracy Co., Helvering v. Taylor, Russell v. United States, and United States v. Cooper Corp.*

In the alternative, Petitioner requests that this Court consolidate this case with any other pending case in this Court presenting the same or related constitutional questions about the effect of *Moore et ux v. United States* on criminal income tax prosecutions premised on the erroneous non-apportioned direct-tax theory.

In the further alternative, Petitioner requests that this Court issue a GVR order — granting certiorari, vacating the Fourth Circuit's judgment, and remanding for reconsideration — given that: (1) *Moore v. United States* irreconcilably contradicts the direct taxation and unavoidable direct tax that was assessed by the IRS and upon which the prosecution was entirely premised; (2) the Fourth Circuit affirmed without addressing the obvious conflict therein, reflected in the trial record; and (3) the full Fourth Circuit declined to be polled on the constitutional question, confirming that this Supreme Court is the only forum that can resolve the obvious constitutional conflict that currently exists in today's income tax enforcement system.

Any further relief deemed just and proper in the interests of justice and constitutional fidelity.

Respectfully submitted,

Richard Boggs
Petitioner, Pro Se

Additional material from this filing is available in the Clerk's Office.