

No. _____

In the Supreme Court of the United States

CATHERINE ELIZABETH CHOLLET, ET AL.,
Petitioners,

v.

UNITED STATES OF AMERICA,
Respondent.

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

PETITION FOR WRIT OF CERTIORARI

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OCTOBER MMXXVI

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QUESTION PRESENTED

In *Abouammo v. United States*, 608 U. S. 597 (2026), decided two days after the judgment below, this Court held that venue lies only where the offense’s conduct elements occurred—“the acts that the prosecution must prove to secure a conviction.” *Id.*, at 603. Venue for a standalone offense “must be based on the conduct that [the statute] itself proscribes, not on the conduct another law does.” *Id.*, at 607.

Petitioners, two Missouri tax attorneys, prepared the charged returns in Missouri and filed them from Missouri. Yet the Fourth Circuit upheld venue in North Carolina for their convictions under 26 U. S. C. § 7206(2). It relied on what taxpayers, an insurance agent, and his office manager did there, and on acts that furthered a separately charged conspiracy.

Should the petition be granted, the judgment vacated, and the case remanded for further consideration in light of *Abouammo*?

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PARTIES TO THE PROCEEDING

Petitioners, and defendants-appellants below are Michael Elliot Kohn and Catherine Elizabeth Chollet.

Respondent, and plaintiff-appellee below is the United States of America.

Other parties below is defendant-appellant David Shane Simmons. He is not a party to the instant proceeding.

United States District Court (WDNC):

United States v. Simmons, Kohn, and Chollet,
Nos. 5:22-cr-00060-KDB-SCR-1, -2, and -3
(Nov. 14, 2024) (judgments)

United States Court of Appeals (CA4):

United States v. Chollet, No. 24-4634; *United States v. Kohn*, No. 24-4635; *United States v. Simmons*, No. 24-4636 (consolidated) (June 9, 2026) (judgment entered; opinion amended)

United States v. Chollet, No. 24-4634; *United States v. Kohn*, No. 24-4635; *United States v. Simmons*, No. 24-4636 (consolidated) (July 8, 2026) (rehearing denied)

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INTRODUCTION

Petitioners prepared every charged tax return in Missouri. They filed every one from Missouri. Yet they were tried, convicted, and sentenced in North Carolina.

To keep venue there, the Fourth Circuit made two moves. First, it looked past what petitioners did and toward what others did: taxpayers who gathered their own records, an insurance agent who obtained life-insurance policies, and his office manager, who emailed tax information to Missouri. Second, it counted acts that furthered the broader scheme—registering partnerships, executing entity and bank-account documents—even though the government charged that scheme separately, as a conspiracy.

Two days later, this Court decided *Abouammo*. Venue, the Court held, follows the conduct elements of the charged offense—not the effects of that conduct elsewhere, and not the overt acts that would locate a conspiracy. 608 U.S., at 603–607. Both of the Fourth Circuit’s moves are hard to square with that holding.

The Fourth Circuit has never applied *Abouammo* to this case. It denied rehearing without opinion. And the stakes are concrete: Kohn’s 84-month sentence exceeds the 60-month maximum on the only count that would survive a contrary venue ruling. The Court should grant, vacate, and remand.

OPINIONS BELOW

The Fourth Circuit’s amended opinion is reported at 178 F. 4th 834, and is reproduced in the Appendix at

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App. 1–28. The district court’s order denying petitioners’ motions for judgment of acquittal (App. 29–42; C. A. J. A. 3043–3049) is unreported.

JURISDICTION

The Fourth Circuit’s judgment was entered on June 9, 2026. The Fourth Circuit denied rehearing on July 8, 2026. App. 60. This Court has jurisdiction under 28 U. S. C. § 1254(1).

**CONSTITUTIONAL AND STATUTORY
PROVISIONS INVOLVED**

U. S. Const., Art. III, § 2, cl. 3

“The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.”

U. S. Const., Amdt. VI

“In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.”

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

“If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined under this title or imprisoned not more than five years, or both. “If, however, the offense, the object of which is the conspiracy, is a misdemeanor only, the punishment for such conspiracy shall not exceed the maximum punishment provided for such misdemeanor.”

18 U. S. C. §3237(a). Offenses begun in one district and completed in another

“(a) Except as otherwise expressly provided by enactment of Congress, any offense against the United States begun in one district and completed in another, or committed in more than one district, may be inquired of and prosecuted in any district in which such offense was begun, continued, or completed.

“Any offense involving the use of the mails, transportation in interstate or foreign commerce, or the importation of an object or person into the United States is a continuing offense and, except as otherwise expressly provided by enactment of Congress, may be inquired of and prosecuted in any district from, through, or into which such

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commerce, mail matter, or imported object or person moves.”

26 U. S. C. §7206, in relevant part:

“Any person who—

[. . .]

(2) Aid or assistance.—Willfully aids or assists in, or procures, counsels, or advises the preparation or presentation under, or in connection with any matter arising under, the internal revenue laws, of a return, affidavit, claim, or other document, which is fraudulent or is false as to any material matter, whether or not such falsity or fraud is with the knowledge or consent of the person authorized or required to present such return, affidavit, claim, or document; or

[. . .]

shall be guilty of a felony and, upon conviction thereof, shall be fined not more than \$100,000 (\$500,000 in the case of a corporation), or imprisoned not more than 3 years, or both, together with the costs of prosecution.” 26 U. S. C. §7206

Fed. Rule Crim. Proc. 18:

“Unless a statute or these rules permit otherwise, the government must prosecute an offense in a district where the offense was committed. The court must set the place of trial within the district with due regard for the convenience of the defendant, any victim, and the witnesses, and the prompt administration of justice.”

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STATEMENT**I. Petitioners prepared and filed every charged return in Missouri.**

Michael Kohn and his daughter, Catherine Chollet, are tax attorneys. They lived and practiced law in St. Louis, Missouri, in the Eastern District of Missouri. App. 4; C. A. J. A. 1429–1438. Their codefendant, David Simmons, was an insurance broker who lived and worked in Jefferson, North Carolina. App. 4.

A grand jury in the Western District of North Carolina indicted all three. Count 1 charged a conspiracy to defraud the United States, 18 U. S. C. §371, built around a tax plan the government called the “Gain Elimination Plan.” App. 4–7. The remaining counts charged petitioners under 26 U. S. C. §7206(2) with aiding and assisting the preparation of false returns:

“Counts 2–12 charged both petitioners in connection with the returns of four clients.

Counts 18–22 charged Kohn, and Counts 21–22 also charged Chollet, in connection with Simmons’s own returns.” C. A. Br. 6; App. 6–7.

Three of the four clients lived in the Western District of North Carolina. The fourth, Damian Novak (Counts 10–12), lived in Minnesota. App. 16–17; C. A. Br. 35.

Where the returns were prepared and filed is undisputed. The Fourth Circuit said so plainly: “Kohn and Chollet prepared the tax returns in Missouri and filed them from there.” App. 16. No return went to an IRS service center in the Western District of North Carolina. C. A. Br. 33.

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II. The district court found venue through petitioners’ “agents” in North Carolina.

Petitioners moved for acquittal on venue twice: at the close of the government’s case and again after the verdict. App. 29–30, 35–36; C. A. J. A. 2841, 2882, 2921, 2957, 3043–3049. The district court sent venue to the jury. It instructed the jury to “decide whether an act was committed by a defendant, or caused to be committed, in furtherance of the preparation of [sic] filing of the false tax return at issue, including whether a tax return was signed in, filed in, or mailed from the Western District of North Carolina.” App. 13.

The jury found venue proper and convicted on every count. In denying petitioners’ renewed motions, the district court reasoned that “Kohn and Chollet effectively used Simmons, and his office manager Brandi Davis . . . , as their agents in collecting tax information from the clients.” So, the court concluded, “even if Kohn and Chollet completed the actual tax preparation in Missouri,” the jury could find that the defendants “either took specific actions in this District to aid or assist in the preparation of a false tax return or caused those actions to take place.” App. 14 (quoting C. A. J. A. 3048).

The court sentenced Kohn to 84 months’ imprisonment and Chollet to 48 months’ imprisonment. It also ordered more than \$22.5 million in restitution. App. 7.

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III. The Fourth Circuit combined others' conduct with scheme-related acts.

On appeal, petitioners argued that venue must be proved for each count and as to each defendant, based on that defendant's own essential conduct in the district. They contended that the government proved no act by either of them in North Carolina in preparing or presenting any charged return. And they explained that the client-side acts the government invoked were the conduct of uncharged parties, which cannot establish venue. C.A. Br. 31–36; Reply Br. 18–21.

The government offered two theories. First, tax information traveled to petitioners' Missouri firm, either directly or through Simmons's North Carolina office. Gov't C.A. Br. 78–79 (citing *United States v. Pace*, 314 F.3d 344, 351–352 (CA9 2002), and *United States v. Barrett*, 153 F.Supp.3d 552, 563 (EDNY 2015)). Second, “WDNC-based actions in furtherance of the GEP scheme”—including Simmons's insurance applications and the filing of partnership forms in North Carolina—supplied venue. Gov't C.A. Br. 79–80 (citing *United States v. Stein*, 429 F.Supp.2d 633, 644 (SDNY 2006)). For Counts 18–22, the government had only one theory: that Simmons's tax information was “emailed from Simmons's office to TKP.” Gov't C.A. Br. 77, 79.

The Fourth Circuit affirmed. It recited the *Cabralles* and *Rodriguez-Moreno* framework, along with its own holding in *United States v. Hirschfeld*, 964 F.2d 318, 321 (CA4 1992), that under §7206(2) “any such conduct constitutes a continuation of the offense

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and forms a basis for establishing venue.” App. 15. It then pointed to five facts, many of them about people other than petitioners:

Simmons, “who was instrumental in implementing the scheme,” was located in the district, and “from his office in the Western District of North Carolina, Simmons actively assisted in procuring and transmitting information from the clients and obtaining insurance policies that were a necessary part of the GEP.”

Petitioners “procured information from their clients directly or through Simmons in North Carolina.”

Petitioners sent clients “signature forms for them to sign in creating limited partnerships and bank accounts that were part of the scheme,” and “even registered some of the limited partnerships in North Carolina.”

Petitioners sent clients drafts of their returns for approval before filing.

The out-of-district client “dealt with Kohn through Simmons in North Carolina,” “providing information to Simmons for transmission to Kohn and Chollet.” App. 16–17.

From that combined record, the court concluded that the evidence “amply supports a finding that some conduct elements of Kohn and Chollet’s crimes took place in North Carolina.” App. 17.

What the court did not do matters as much. It did not analyze venue count by count or petitioner by petitioner. It did not separately address Counts 18–22, which involve no client at all. And it never asked

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whether venue could rest on the acts of the taxpayers, Simmons, or his office manager—or on scheme-related acts that are not themselves aiding or assisting in the preparation of a charged return.

IV. This Court decided *Abouammo* two days later, and the Fourth Circuit denied rehearing without opinion.

Two days after the Fourth Circuit ruled, this Court decided *Abouammo*. It held that venue lies only where the offense’s conduct elements occurred, and that conduct relevant to a different offense cannot supply venue for a standalone crime. 608 U.S., at 602–607.

Petitioners promptly sought rehearing, explaining that *Abouammo* undermined the panel’s venue analysis. On July 8, 2026, the Fourth Circuit denied rehearing without opinion. App. 60.

REASONS FOR GRANTING THE PETITION

The Fourth Circuit upheld venue on two premises: that other people’s conduct in North Carolina could place petitioners’ crimes there, and that acts furthering the overall scheme could do the same. *Abouammo*, decided two days later, calls both premises into serious question. Petitioners do not ask this Court to decide on plenary review how *Abouammo* applies to § 7206(2). They ask only that the Fourth Circuit decide that question first, with *Abouammo* in hand.

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I. *Abouammo* is an intervening decision that satisfies both conditions for a GVR.

A GVR is appropriate where “intervening developments . . . reveal a reasonable probability that the decision below rests upon a premise that the lower court would reject if given the opportunity for further consideration, and where it appears that such a redetermination may determine the ultimate outcome of the litigation.” *Lawrence v. Chater*, 516 U.S. 163, 167 (1996) (*per curiam*); see *Wellons v. Hall*, 558 U.S. 220, 225 (2010) (*per curiam*). An intervening decision of this Court is the classic example.

Both conditions are met. *Abouammo* came down two days after the panel ruled, so the panel had no chance to consider it. Petitioners invoked *Abouammo* on rehearing, but the Fourth Circuit denied rehearing without opinion; it has never applied *Abouammo*’s analysis to these counts. As Part III shows, the decision below rests on premises *Abouammo* undermines. And as Part IV shows, a contrary venue ruling would require vacatur of petitioners’ §7206(2) convictions and resentencing.

II. *Abouammo* confines venue to the place where the defendant performed the offense’s conduct elements.

Abouammo reaffirmed a two-step inquiry. Absent a statutory venue provision, a court “must initially identify the conduct constituting the offense”—“the things a defendant must do to violate the statute at issue”—and then “ascertain the ‘location’ of those ‘criminal acts.’” 608 U.S., at 602–603 (quoting

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United States v. Rodriguez-Moreno, 526 U. S. 275, 279 (1999)). The inquiry “remains one into the place of the crime’s conduct elements—the acts that the prosecution must prove to secure a conviction.” *Id.*, at 603.

Three further points in *Abouammo* bear directly on this case.

First, effects do not establish venue—even when the effect is the arrival of something the defendant sent. The Court relied on *United States v. Johnson*, 323 U. S. 273 (1944), where venue was proper only where the defendant mailed an illegal denture, not where it was received. As the Court explained, “[i]t was immaterial that the illegal denture traveled on to Delaware—as it is that Abouammo’s false invoice reached California.” 608 U. S., at 605.

Second, a standalone offense cannot borrow the conspiracy venue rule, “which allows trial wherever an overt act furthering the conspiracy has taken place.” *Id.*, at 606 (citing *Whitfield v. United States*, 543 U. S. 209, 218 (2005)). Because the statute in *Abouammo* defined an independent crime, “venue for it must be based on the conduct that [the statute] itself proscribes, not on the conduct another law does.” *Id.*, at 607.

Third, venue is no technicality. The Constitution “twice safeguards the defendant’s venue right,” reflecting the Founders’ hostility to “the unfairness and hardship involved when an accused is prosecuted in a remote place.” *Id.*, at 602 (quoting *United States v. Cabrales*, 524 U. S. 1, 6 (1998), and *United States v. Cores*, 356 U. S. 405, 407 (1958)).

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III. The decision below rests on premises that *Abouammo* undermines.**A. The Fourth Circuit placed petitioners' crimes in North Carolina by pointing to what other people did there.**

Abouammo asks what “a defendant must do to violate the statute.” 608 U. S., at 603. A preparer violates § 7206(2) by willfully aiding, assisting, procuring, counseling, or advising the preparation of a false return. Petitioners did that work in Missouri. The Fourth Circuit acknowledged as much: they prepared the returns there and filed them from there. App. 16.

So the court looked to others. It relied on what Simmons did “from his office,” on the clients’ gathering and sending of their own information, and on the out-of-district client’s practice of routing information through Simmons. App. 16–17. The district court was more explicit still. It treated Simmons and his office manager as petitioners’ “agents” and found venue because petitioners “caused those actions to take place.” App. 14, 35–36.

None of those acts is something petitioners “must do” to violate § 7206(2). A taxpayer who assembles and sends his own information is not performing petitioners’ offense. Neither is an insurance agent who obtains life-insurance policies. At most, these acts are the means by which information reached petitioners in Missouri, or the effects in North Carolina of work petitioners did in Missouri. Whether, and when, another person’s acts can supply venue for a substantive offense is a question that *Abouammo*’s

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conduct-focused analysis makes newly significant. The Fourth Circuit has never addressed it.

To be sure, the government will argue that some act by petitioners themselves amounted to “procuring” in the district. Perhaps the Fourth Circuit would agree. But it made no such determination. And because it rested on the combined conduct of petitioners and others, nothing in its opinion shows that it would have found venue on petitioners’ own conduct alone.

B. The Fourth Circuit relied on acts in furtherance of the scheme—conspiracy reasoning that *Abouammo* rejects for standalone offenses.

The Fourth Circuit also relied on three scheme-related acts: petitioners’ sending of “signature forms . . . in creating limited partnerships and bank accounts that were part of the scheme”; the registration of “some of the limited partnerships in North Carolina”; and Simmons’s procurement of “insurance policies that were a necessary part of the GEP.” App. 16. None of those acts is aiding or assisting in the preparation of a charged return. Each is an act in furtherance of the alleged scheme.

The government said as much. It argued below that “[t]hese WDNC-based actions in furtherance of the GEP scheme provide an additional basis for venue.” Gov’t C.A. Br. 80. That is the conspiracy overt-act rule by another name. And *Abouammo* held that the rule cannot be imported into a standalone offense. 608 U.S., at 606–607.

Section 7206(2) is a standalone offense. The government charged the scheme separately, as a §371

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conspiracy in Count 1, and petitioners do not challenge venue on that count here. Venue for the § 7206(2) counts therefore “must be based on the conduct that [§ 7206(2)] itself proscribes, not on the conduct another law does.” *Id.*, at 607.

C. Whether petitioners’ own communications into North Carolina suffice is a question the Fourth Circuit should answer first.

The Fourth Circuit also noted that petitioners exchanged emails with North Carolina clients and sent them draft returns for approval. App. 16–17. But does a preparer who drafts a return in Missouri, and sends it from Missouri, commit conduct “in” the recipient’s district? *Abouammo* speaks to exactly that question. In *Johnson*, the crime was committed where the defendant acted; where his package arrived was “immaterial.” 608 U. S., at 605.

The government will respond that advising is communicative and so occurs where the advice is received. Whatever the merits of that argument, the Fourth Circuit has not considered it under *Abouammo*. It should do so in the first instance.

Venue must also be established for each count. *United States v. Smith*, 452 F. 3d 323, 335 (CA4 2006); *United States v. Bowens*, 224 F.3d 302, 308 (CA4 2000). Petitioners argued below that the government elicited no testimony tying any act in the district to the preparation of any particular charged return. C. A. Br. 33–36. The Fourth Circuit did not address that argument. Instead, it pooled the evidence across all counts and both petitioners to find that

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“some conduct elements” occurred in North Carolina. App. 17.

Nor does the government’s assertion that petitioners traveled to the district to meet with Simmons and clients fill the gap. Gov’t C.A. Br. 80. The Fourth Circuit did not rely on that assertion, and the cited testimony ties no visit to the preparation of any charged return.

D. Counts 18–22 rest entirely on a third party’s email from North Carolina.

Counts 18–22 charge petitioners with aiding and assisting the preparation of Simmons’s own returns. The Fourth Circuit’s venue discussion addresses only the client returns. It never mentions these counts. App. 15–17.

The government’s only theory for these counts was that Simmons’s office manager emailed his tax information from North Carolina to petitioners’ Missouri firm. Gov’t C.A. Br. 77, 79. That theory rests on *Pace* and *Barrett*, which located venue where the taxpayer provided information. After *Abouammo*, it is doubtful at best that a taxpayer’s—or his employee’s—transmission of information from a district is the preparer’s conduct in that district.

These counts account for five of Kohn’s convictions and two of Chollet’s. At a minimum, they warrant consideration on remand.

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E. The venue instruction let the jury find venue on the very theories *Abouammo* undermines.

The jury was told it could find venue if “an act was committed by a defendant, or caused to be committed, in furtherance of the preparation of [sic] filing of the false tax return at issue, including whether a tax return was signed in” the district. App. 13.

That instruction opened three doors: the overt-act standard (“in furtherance”), the acts of others (“caused to be committed”), and the taxpayers’ own signatures (“signed in”). No one can assume, then, that the jury’s venue finding rests on petitioners’ own § 7206(2) conduct.

Petitioners did not challenge the instruction on appeal. But whether an error is plain is judged “at the time of appellate consideration.” *Henderson v. United States*, 568 U.S. 266, 279 (2013); see *Johnson v. United States*, 520 U.S. 461, 468 (1997). *Abouammo* bears on that question too, and the Fourth Circuit should have the chance to consider it.

IV. A new venue ruling could change the outcome: Kohn’s 84-month sentence exceeds the maximum on the only count that would remain.

If venue was improper on a § 7206(2) count, the conviction on that count cannot stand. The remedy is vacatur, with the possibility of retrial in a proper district. *Smith v. United States*, 599 U.S. 236 (2023). Here, the consequences would be substantial.

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Start with Kohn. Each §7206(2) count carries a maximum of three years' imprisonment. 26 U.S.C. §7206(2). The §371 conspiracy count carries a maximum of five years. 18 U.S.C. §371. Kohn's 84-month sentence therefore necessarily depends on his 16 §7206(2) convictions. Vacate those, and he must be resentenced on a single count with a 60-month ceiling.

Chollet stands convicted on 13 §7206(2) counts and one conspiracy count. Vacating the §7206(2) counts would leave a single conviction and require resentencing.

A redetermination of venue thus “may determine the ultimate outcome of the litigation.” *Lawrence*, 516 U.S., at 167.

**V. The Fourth Circuit should apply
Abouammo to §7206(2) in the first instance.**

The government may argue that §7206(2)'s multiple verbs give it broader venue than 18 U.S.C. §1519, the statute at issue in *Abouammo*, and that *Abouammo* described its holding as “discrete and narrow.” 608 U.S., at 607 (quoting *Travis v. United States*, 364 U.S. 631, 635 (1961)). Those arguments go to how *Abouammo* applies to §7206(2). They are arguments for the Fourth Circuit on remand, not reasons to deny a GVR.

Abouammo teaches that venue depends on “the nature of the [specific] crime charged.” *Ibid.* (quoting *Travis*, 364 U.S., at 635). Applying that teaching here requires three distinctions the Fourth Circuit never drew: between petitioners' conduct and the conduct of others, between conduct §7206(2) proscribes

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and conduct §371 proscribes, and between acts and their effects. It also requires drawing those distinctions count by count. The Fourth Circuit should have the chance to do that work with *Abouammo* in hand.

CONCLUSION

The petition for a writ of certiorari should be granted, the judgment of the court of appeals vacated, and the case remanded for further consideration in light of *Abouammo v. United States*, 608 U.S. 597 (2026).

Respectfully submitted.

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[Filed: Jun. 9, 2026]

PUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 24-4634

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

CATHERINE ELIZABETH CHOLLET, a/k/a Liza
Chollet,

Defendant - Appellant.

No. 24-4635

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

MICHAEL ELLIOT KOHN,

Defendant - Appellant.

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No. 24-4636

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

DAVID SHANE SIMMONS, a/k/a Shane Simmons,

Defendant - Appellant.

Appeals from the United States District Court for the Western District of North Carolina, at Statesville. Kenneth D. Bell, District Judge. (5:22-cr-00060-KDB-SCR-2; 5:22-cr-00060-KDB-SCR-1; 5:22-cr-00060-KDB-SCR-3)

Argued: May 6, 2026

Decided: June 9, 2026

Amended: June 9, 2026

Before NIEMEYER, THACKER, and RUSHING, Circuit Judges.

Affirmed by published opinion. Judge Niemeyer wrote the opinion, in which Judge Thacker and Judge Rushing joined.

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ARGUED: Justin Gelfand, MARGULIS GELFAND LLC, St. Louis, Missouri; Karl Walter Dickhaus, DICKHAUS LAW PARTNERSHIP, L.P., St. Louis, Missouri, for Appellants. Todd Alan Ellinwood, UNITED STATES DEPARTMENT OF JUSTICE, Washington, D.C., for Appellee. **ON BRIEF:** Richard Lamb Brown, Jr., LAW OFFICES OF RICHARD BROWN, Monroe, North Carolina, for Appellant David Simmons. A. Tysen Duva, Assistant Attorney General, Jennifer Hodge, Deputy Assistant Attorney General, S. Robert Lyons, Katie Bagley, Joseph B. Syverson, Tax Section, Criminal Division, UNITED STATES DEPARTMENT OF JUSTICE, Washington, D.C.; Russ Ferguson, United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Charlotte, North Carolina, for Appellee.

NIEMEYER, Circuit Judge:

Michael Kohn, Catherine Chollet, and David Simmons were convicted of conspiracy to defraud the government and assisting in the preparation of false and fraudulent tax returns. On appeal of their judgments, they raise numerous issues challenging their convictions, including claims that the government violated the Appointments Clause of the U. S. Constitution in prosecuting the crimes; that venue in the Western District of North Carolina was improper; that the tax returns were technically true, as the calculations followed the tax forms; and that the district court

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made erroneous evidentiary rulings, among other challenges.

For the reasons given herein, we reject the defendants' challenges and affirm.

I

Michael Kohn and his daughter Catherine Chollet were tax attorneys and partners in The Kohn Partnership, LLP, a law firm in St. Louis, Missouri. David Simmons was an insurance broker residing in Jefferson, North Carolina, who worked closely with Kohn, Chollet, and The Kohn Partnership in assisting in the preparation of income tax returns on behalf of clients in various states, including North Carolina.

Years ago, the defendants designed and began marketing and implementing a "tax planning strategy" that they called the "Gain Elimination Plan" (GEP), under which well-to-do clients could reduce their taxable income with deductions for business expenses paid to limited partnerships that were created particularly for each client and that would be mostly owned by a charitable organization. In concept, as the limited partnership would provide the client with intellectual property and business management services, the client would pay the limited partnership royalties and fees, which the client would then deduct as business expenses on the client's income tax return.

Under the GEP's design, the defendants would form a client-specific limited partnership of which the client would own one to two percent. A preexisting charitable organization, usually the Inter-National Foundation Corporation, would own the remainder. The clients would, at least in concept, pay royalties or

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management service fees to the limited partnership and then deduct those amounts as business expenses on their income tax returns. In addition, the defendants told each client that the limited partnership would need to insure the income stream to it and thus that the client would need to purchase a life insurance policy on the life of the client. Simmons, as an insurance broker, would obtain the policies, and he would share his commissions with Kohn and Chollet. To reduce further expense to the client, the defendants advised clients that the GEP had a limited life and that the client could cancel the insurance policy and buy out the charity's interest in the limited partnership for "next to nothing."

As the government proved at trial, however, the charitable organizations never agreed to become a partner in the limited partnerships. Indeed, no partnership agreements were ever signed by the clients and the charitable organization, and thus no limited partnerships existed. Moreover, the limited partnerships never provided intellectual property or management services to the clients, and the clients never made any payments of royalties and fees to the limited partnerships. Despite the absence of any economic transactions, the defendants assisted the clients in claiming an arbitrary amount of business expense deductions that were false and not based on any payments made. With the fabricated deductions, the clients were able to reduce their taxable income and the amount of taxes that they paid to the IRS. The defendants offered the GEP in this form to clients for over 11 years, resulting in their clients' illegally

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avoiding the payment of, in the aggregate, over \$22 million dollars in income taxes.

Moreover, to obtain the life insurance policy for the limited partnerships, Simmons provided false personal and financial information about the clients to the insurance companies, and he and Kohn then coached the clients on how to answer questions about their applications. Simmons received a commission on each policy in an amount representing about 90 percent of the first year's premium and then shared about \$1.1 million of those commissions with Kohn and Chollet.

In view of the absence of limited partnerships and of any payments made by the clients to the limited partnerships, the government asserted that the GEPs, as implemented, lacked economic substance and thus were fraudulent.

In addition to assisting in the preparation of such false tax returns for her clients, Chollet also used the same fraudulent GEP for herself, reducing her taxable income in the amount of \$350,000 over the period of five tax years.

Finally, Kohn and Chollet also prepared Simmons' tax returns on which Simmons underreported his income over several years, causing a loss to the IRS of over \$480,000 in taxes.

After a two-week trial, the jury convicted all three defendants of conspiracy to defraud the federal government, in violation of 18 U. S. C. §371; Kohn on 16 counts of assisting in the filing of false tax returns, in violation of 26 U. S. C. §7206(2); Chollet on 13 counts of assisting in the filing of false returns, in violation of

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§ 7206(2); and Simmons on 11 counts of assisting in the filing of false returns, in violation of § 7206(2), and on 5 counts of filing false tax returns, in violation of § 7206(1).

The district court sentenced Kohn to 84 months' imprisonment, Simmons to 60 months' imprisonment, and Chollet to 48 months' imprisonment, and it imposed a term of three years' supervised release for each. The court also ordered the defendants to pay the United States over \$22.5 million dollars in restitution.

From the district court's judgments dated November 14, 2024, the defendants filed these appeals.

II

The defendants contend first that their prosecution was not properly authorized by an “officer” of the United States; that the error was structural, in violation of the Appointments Clause of the U. S. Constitution and the Federal Vacancies Reform Act, 5 U. S. C. § 3345 *et seq.*; and therefore that their indictment should have been dismissed. *See NLRB v. SW Gen., Inc.*, 580 U. S. 288, 293, 297–98 (2017); *Probst v. Saul*, 980 F. 3d 1015, 1021 (4th Cir. 2020). Particularly, they maintain that their criminal tax prosecution “had to be authorized by the Assistant Attorney General, Tax Division” (AAG-Tax) but that, at the time of their prosecution, “there was no AAG-Tax.” Instead, “the Executive Branch has circumvented the Appointments Clause and the Federal Vacancies Reform Act . . . by unilaterally installing ‘heads’ of the Tax Division.” Then, they set forth the record on which they base their argument:

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For purposes of this appeal, the following facts of record are beyond dispute: the Tax Division did not have an AAG-Tax; [David] Hubbert [who allegedly authorized the prosecution] was *not* the [Deputy] AAG, Criminal at the time he authorized this prosecution; [Stuart] Goldberg *was* the [Deputy] AAG, Criminal at the time this prosecution was authorized but Goldberg did *not* authorize this prosecution.

The defendants thus assume that David Hubbert authorized this prosecution, not Stuart Goldberg, whom they say was the one who should have authorized it under Tax Division Directive No. 138. But, in contradiction of this concession that DAAG Goldberg had the authority to authorize the prosecution, they contend that the delegation of authority to DAAG Goldberg under Tax Division Directive No. 138 violated 28 C.F.R. §0.70, which, they argue, prohibited the AAG-Tax from redelegating authority to a DAAG.

While there was an initial motions proceeding in the district court in which the court was informed that David Hubbert had authorized the prosecution, on reconsideration and with the benefit of additional information, the court found that “Goldberg was the Acting DAAG, Criminal at the time this prosecution was authorized” and that he had “authorized this prosecution as required by Directive 138.” The defendants then pivoted to attacking the validity of Directive 138 on the ground that it violated 28 C.F.R. §0.70, which, they contend, placed the authority to prosecute them only in the AAG-Tax, not the DAAG, Criminal of the Tax Division.

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The defendants’ arguments fail on at least two fundamental levels. First, documents in the record demonstrate that Acting DAAG Stuart Goldberg in fact authorized the prosecution of the defendants in this case on November 7, 2022. And while DAAG Goldberg was the *Acting* DAAG, Criminal at the time, he was, as Acting DAAG, nonetheless authorized to approve the defendants’ prosecution. And second, the delegation by the AAG-Tax in Tax Division Directive No. 138 was not prohibited by any language in 28 C.F.R. §0.70.

The Appointments Clause of the Constitution authorizes the President, “with the Advice and Consent of the Senate, [to] appoint . . . all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law.” U.S. Const. art. II, §2, cl. 2. Such “Law” provides that the President must appoint an Attorney General with the advice and consent of the Senate, *see* 28 U.S.C. §503, and again, with the advice and consent of the Senate, must appoint 11 Assistant Attorneys General (AAGs) to “assist the Attorney General in the performance of his duties,” *id.* §506. At the time this case was initiated, one of those AAGs was designated as the head of the Tax Division (*i.e.*, the AAG-Tax), although the office was vacant. Moreover, the “functions” of the Department of Justice are also “vested” in the Attorney General, *id.* §509, and the Attorney General is authorized to delegate those functions to “*any other officer, employee, or agency of the Department of Justice,*” *id.* §510 (emphasis added).

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Section 0.70 of Title 28 of the Code of Federal Regulations (as in effect before December 10, 2025) assigned a list of functions to the AAG-Tax, including, subject to a few exceptions not applicable here, all “[c]riminal proceedings arising under the internal revenue laws.” 28 C.F.R. §0.70(b). By Tax Division Directive No. 138, the AAG-Tax, acting under the authority of 28 C.F.R. §0.70, then delegated to the “Deputy Assistant Attorney General, Criminal (‘DAAG, Criminal’)” most of the “powers and authority of the AAG with respect to criminal proceedings,” including the “[p]rosecution of an attorney for criminal conduct committed in the course of acting as an attorney,” but reserved to himself authority over a few specific matters, including “[a]ction in . . . [a] subpoena of an attorney for information relating to the attorney’s representation of a client.”

Thus, by delegation and subdelegation, the DAAG, Criminal or Acting DAAG, Criminal had authority to authorize criminal prosecutions arising under the Internal Revenue Code, including the prosecution of any “attorney for criminal conduct committed in the course of acting as an attorney.”

On November 7, 2022, Acting DAAG, Criminal Stuart Goldberg, who had been designated to his position in the Tax Division by Attorney General Merrick Garland, specifically authorized the prosecution of the defendants for the crimes charged in the indictment returned against them on November 16, 2022.

In view of these delegations and subdelegations, and the authorization of the Acting DAAG, Criminal, we reject the defendants’ contention that their

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prosecution was not properly authorized and therefore in violation of the Appointments Clause.

Nonetheless, the defendants fall back on their argument that Acting DAAG Stuart Goldberg did not have authority to authorize the prosecution because his authority to do so derived from Tax Division Directive No. 138, which, they argue, was inconsistent with 28 C.F.R. §0.70(b). They contend that Tax Division Directive No. 138 was an unlawful delegation because 28 C.F.R. §0.70 directed that the AAG-Tax “conduct[], handle[], or supervise[]” “[c]riminal proceedings arising under the internal revenue laws.” While the regulation does indeed confer such authority on the AAG-Tax, there is no language that requires him to carry out those responsibilities *personally* and that prevents him from delegating functions to subordinates. Not only would the defendants’ interpretation be highly impracticable in light of the nationwide workload, but it would also be inconsistent with the broad authority to delegate given generally to the Attorney General, *see* 28 U. S. C. §510, and with the authority to redelegate that is recognized under administrative law. Indeed, it is well-established that we will “approv[e] [a] broad subdelegation of authority within administrative agencies where [the] subdelegation is in keeping with the nature of statutory duties and with Congress’ intent.” *House v. S. Stevedoring Co.*, 703 F.2d 87, 88 (4th Cir. 1983); *see also* 28 U. S. C. §510 (authorizing the Attorney General generally to delegate functions to “any other officer, employee, or agency of the Department of Justice”).

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The defendants contend further that the delegation made by Tax Division Directive No. 138 violates the Appointments Clause because it permits a principal officer of the government “to delegate his authority to an inferior officer by way of an internal policy directive.” But they have provided no authority for such a proposition. Indeed, §510 authorizes the Attorney General, a principal officer, to delegate functions to “employee[s],” not necessarily officers at all.

In sum, the prosecution of the defendants for the crimes charged in their indictment was approved by the Acting DAAG, Criminal Stuart Goldberg, who was authorized by explicit delegation to do so. We conclude that there was no violation of the Appointments Clause or the Federal Vacancies Reform Act, nor was there an inappropriate approval of the prosecution.

III

The defendants Kohn and Chollet next contend that the government failed to establish that the Western District of North Carolina was an appropriate venue in which to prosecute the crimes charged under 26 U.S.C. §7206(2) because the government failed to prove that they committed any conduct element in that district. They assert that they practiced law at The Kohn Partnership located in the Eastern District of Missouri and that they lived there as well. Thus, they maintain that “all acts taken by Kohn and/or Chollet — if any — in the preparation and presentation of the tax returns at issue were taken there.” As they summarize their venue argument:

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[A]ll tax returns were submitted to the IRS from St. Louis, Missouri, and the Government never established they were sent to a service center in the Western District of North Carolina (because that did not happen). Thus, the Government bore the burden of establishing *some act* of Kohn and/or Chollet that aided or assisted in procuring, counseling, or advising *the preparation or presentation* of each tax return at issue as to each count in the Western District of North Carolina — and the Government did not meet its burden.

Thus, they argue that we must reverse all their convictions under § 7206(2).

The district court submitted the issue to the jury, instructing it that, in assessing whether the government had established venue for the 7206(2) counts by a preponderance of the evidence, the jury had to “decide whether an act was committed by a defendant, or caused to be committed, in furtherance of the preparation of filing of the false tax return at issue, including whether a tax return was signed in, filed in, or mailed from the Western District of North Carolina.” Following the jury’s verdict finding venue to be proper, Kohn and Chollet renewed a motion for judgment of acquittal on the § 7206(2) counts, arguing that the evidence was insufficient to support the jury’s finding that venue was proper in the Western District of North Carolina. The court, however, denied the defendants’ motion, finding that the government’s evidence was sufficient to allow the jury to find that venue in the Western District of North Carolina was proper. The court stated:

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[T]he Government’s evidence showed that Kohn and Chollet effectively used Simmons, and his office manager Brandi Davis . . . , as their agents in collecting tax information from the clients associated with Counts 2–12, all but one of whom lived in this District. The taxpayer who was not a resident of this District testified that he often worked through Simmons’ office (which was located in this District) for tax-related matters because he had trouble getting in touch with Kohn. Thus, even if Kohn and Chollet completed the actual tax preparation in Missouri, there is ample evidence for the jury to have concluded that the Defendants either took specific actions in this District to aid or assist in the preparation of a false tax return or caused those actions to take place.

We thus must decide whether the evidence was sufficient for the jury to find by a preponderance of the evidence that a conduct element of § 7206(2) was committed in the Western District of North Carolina, and we will affirm whenever, “viewing the evidence in the light most favorable to the government, any rational trier of fact could have found venue by a preponderance of the evidence.” *United States v. Sterling*, 860 F.3d 233, 241 (4th Cir. 2017).

The Constitution provides that “[t]he Trial of all Crimes . . . shall be held in the State where the said Crimes shall have been committed,” U.S. Const. art. III, § 2, and it guarantees “an impartial jury of the State and district wherein the crime shall have been committed,” *id.* amend. VI; *see also* Fed. R. Crim. P.

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18 (“Unless a statute or these rules permit otherwise, the government must prosecute an offense in a district where the offense was committed”). And when a crime is committed in more than one State, Congress has provided that “any offense against the United States begun in one district and completed in another, or committed in more than one district, may be . . . prosecuted in any district in which such offense was begun, continued, or completed.” 18 U. S. C. §3237(a).

The controlling analysis for determining where a crime was committed begins with the identification of “the act or acts constituting [the crime].” *United States v. Cabrales*, 524 U. S. 1, 6–7 (1998) (cleaned up). And once the “essential conduct elements” of the crime are identified, the second step is discerning where they were committed. *United States v. Rodriguez-Moreno*, 526 U. S. 275, 279–80 (1999). Venue is then proper in *any* district where *any* conduct element of the crime was committed. *See id.* at 281–82; *see also* 18 U. S. C. §3237(a).

The offense at issue here makes it a crime to willfully (1) *aid* or (2) *assist in* or (3) *procure*, (4) *counsel*, or (5) *advise* the preparation or presentation of a false tax return. 26 U. S. C. §7206(2). As such, we have recognized that “any such conduct constitutes a continuation of the offense and forms a basis for establishing venue.” *United States v. Hirschfeld*, 964 F.2d 318, 321 (4th Cir. 1992). In *Hirschfeld*, the defendant had read §7206(2) “too narrowly” by focusing “only on where the return was prepared, mailed, and filed.” *Id.* As we explained, “[t]he prohibition by its own

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terms reaches conduct which consists of *aiding* and *assisting* in the preparation of a false return.” *Id.*

The record here shows that even though Kohn and Chollet resided and worked in Missouri, they aided, assisted, counseled, and advised their clients in the Western District of North Carolina in preparing and presenting false tax returns on their behalf. All of the clients involved in this prosecution, with the exception of Damian Novak, lived and worked in the Western District of North Carolina.

Indeed, the evidence showed that not only were most of Kohn and Chollet’s clients located in the Western District of North Carolina, so too was Simmons, who was instrumental in implementing the scheme. The government’s evidence showed that from his office in the Western District of North Carolina, Simmons actively assisted in procuring and transmitting information from the clients and obtaining insurance policies that were a necessary part of the GEP. And while Kohn and Chollet prepared the tax returns in Missouri and filed them from there, they procured information from their clients directly or through Simmons in North Carolina and advised their clients in North Carolina about their returns. The record contains numerous emails showing the exchanges of information, and Kohn and Chollet sent their clients in North Carolina signature forms for them to sign in creating limited partnerships and bank accounts that were part of the scheme. They even registered some of the limited partnerships in North Carolina. Moreover, Kohn and Chollet sent their clients in North Carolina drafts of the tax returns to receive their

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approval before filing them. The one client who did not live in North Carolina testified that he dealt with Kohn through Simmons in North Carolina because Kohn was hard to reach, providing information to Simmons for transmission to Kohn and Chollet.

The conduct elements of § 7206(2) include “aid[ing],” “assist[ing],” “procur[ing],” “counsel[ing],” and “advise[ing]” the preparation of false tax returns, and we conclude that the evidence in the record amply supports a finding that some conduct elements of Kohn and Chollet’s crimes took place in North Carolina. Because some conduct elements of § 7206(2) took place in the Western District of North Carolina, venue for the prosecution of those crimes properly lay there. *See* 18 U. S. C. § 3237(a).

IV

The defendants also contend that the “total income” lines on their clients’ tax returns were “literally truthful” and that therefore they could not have been convicted of aiding in the filing of *false* tax returns. *See Bronston v. United States*, 409 U. S. 352, 359–62 (1973); *United States v. Good*, 326 F. 3d 589, 590 (4th Cir. 2003). They point out that the indictment charged them with willfully aiding and assisting in the preparation of tax returns “which were false and fraudulent” by reporting “false items” on the “total income” lines, knowing that “the amounts on [those] lines . . . were substantially understated.” Yet, the defendants argue, the “total income” lines on the tax returns were literally truthful as they accurately followed the tax form’s instruction to include there a calculation of the amounts listed on preceding lines. One type of

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1040 form, for example, stated on line 22, “Combine the amounts . . . for lines 7 through 21” and advised, “This is your total income.” They argue that, because the “total income” lines on the various forms represented an *accurate* calculation of the referenced antecedent lines, the “total income” line was literally true and therefore could not support a charge of advising the preparation of a *false* income tax return. See *United States v. Reynolds*, 919 F.2d 435, 437 (7th Cir. 1990) (recognizing and applying the literal truth defense). Therefore, they argue, the district court erred in refusing to grant their motions for judgments of acquittal on the §7206(2) counts.

The district court rejected the defendants’ argument, reasoning that “their assertion that 1+2=3 is ‘literally true’ holds no water when the evidence was sufficient to prove beyond a reasonable doubt that ‘1’ and ‘2’ were the result of fabricated deductions and fees.”

We agree with the district court and find that the defendants’ argument is too clever by half. While the defendants followed the forms’ instructions and accurately calculated the “total income” based on the amounts they had entered on other lines, that accurate calculation did not make the entry in the “total income” line true — it was an accurate arithmetical calculation, deducting the listed business expenses from income to arrive at “total income,” but the deductions were fabricated and therefore false, making the “total income” line also false. In short, an accurate *calculation* does not render the total true when the components themselves are false. See *United States*

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v. *Crockett*, 435 F. 3d 1305, 1315 (10th Cir. 2006) (recognizing that because the total income line, alleged as false in the indictment, was “derived arithmetically from the other lines, the understatement of . . . wage and salary income automatically caused . . . [the] total income [line] to be understated”).

The defendants’ reliance on *Reynolds* does not help them. In *Reynolds*, the defendant was charged with providing a false return because line 7 on his return was false. The defendant pointed out, however, that the veracity of line 7 depended directly on “the accuracy of his entry on line 1,” and line 1 instructed him to include all “wages, salaries, and tips,” which he had listed “exactly as it appeared on the forms W-2,” despite the fact that he also had non-W-2 income. 919 F. 2d at 437. The *Reynolds* court applied the “literal truth” defense because line 7 depended on line 1, and the amount entered on line 1 was literally true. But contrary to the defendants’ argument here, the *Reynolds* court did not indicate that as long as the sums were correctly *computed*, then line 7 was “literally true,” providing a defense to a § 7206 charge. Rather, the court reasoned that line 7 was true because it “depend[ed] on the accuracy of [the] entry on line 1,” and line 1 was indeed “literally correct,” as it included all W-2 income, as instructed. *Id.*

Here, the “total income” line was not true because it depended on lines that included deductions for business expenses that were fabricated. The circumstances here are fundamentally different from those presented in *Reynolds*.

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At bottom, we conclude that the district court did not err in denying the defendants' motions for judgments of acquittal based on the literal truth defense.

V

As to the defendants' remaining arguments, we conclude that they are not persuasive and do not merit extensive discussion.

A

First, the defendants contend that the district court impermissibly allowed the government to amend the indictment by redacting parentheticals identifying — incorrectly, in a few instances — the line numbers on the tax returns where the “total income” amounts were reported. The defendants argue that this was a constructive amendment that impermissibly broadened the basis for conviction and that “the error [was] fatal and reversible *per se*.” (Citing *United States v. Whitfield*, 695 F. 3d 288, 307 (4th Cir. 2012)).

We disagree. The redactions of the line-number references did not broaden the possible bases for conviction so as to amount to an impermissible amendment. See *United States v. Burfoot*, 899 F. 3d 326, 338 (4th Cir. 2018) (explaining that a defendant's Fifth Amendment right to a grand jury is violated “when the indictment is effectively altered to change the elements of the offense charged, such that the defendant is actually convicted of a crime other than that charged in the indictment” (cleaned up)). Here, both before and after the redactions, the indictment alleged that the “total income” items on the relevant tax returns were false, and all that was removed from

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the indictment was the line number where the “total income” was entered. That in no way broadened the potential basis for conviction.

B

Second, the defendants argue that the district court abused its discretion in admitting expert testimony through a lay witness. IRS Special Agent Robert Elias testified as a lay witness about his undercover engagement with the defendants during the government’s investigation. The defendants maintain that although Special Agent Elias was never qualified as an expert under Federal Rule of Evidence 702, he “repeatedly offered opinions rooted in accounting, tax law, and forensic analysis.” The defendants, however, only raised this objection once when Elias was asked, “[a]s a CPA,” whether it was his “understanding that insurance premiums normally are not deductible,” and he was allowed to respond, “Yes. As a CPA, certified public accountant, that would be my understanding, that they are not deductible normally.” On appeal, however, the defendants raise several other instances that they claim were improper opinions, including (1) Elias’s testimony explaining that “a P & L is . . . a profit and loss statement,” which shows “how much you make” and “[w]hat your expenses are”; (2) his testimony that Kohn’s statement to him that “he [Kohn] could amend the 1120-S [corporate return] without input from the other partner” struck him “as very odd” because, for a partnership, “both partners have to agree to the return and what’s going to go on it”; and (3) Elias’s statement explaining to the jury the

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difference between a Form 1120-S corporate return and a partnership return.

Federal Rule of Evidence 701 permits a lay witness to give opinion testimony in certain circumstances. Specifically, it provides that “[i]f a witness is not testifying as an expert, testimony in the form of an opinion is limited to one that is: (a) rationally based on the witness’s perception; (b) helpful to clearly understanding the witness’s testimony or to determining a fact in issue; and (c) not based on scientific, technical, or other specialized knowledge within the scope of Rule 702.” Fed. R. Evid. 701; *see also United States v. Johnson*, 617 F. 3d 286, 292–93 (4th Cir. 2010).

In this case, while we recognize that perhaps a few statements may have crossed slightly into the territory of expert testimony, any such testimony was clearly harmless. *First*, the defendants have not attempted to satisfy the plain-error standard applicable to those portions of Elias’s testimony to which they did not make an objection below. *Second*, the potentially problematic statements were extremely limited and perhaps even justified under Rule 701. *Third*, it seems clear that Special Agent Elias — an IRS agent for more than 20 years who had previously earned a CPA license and was currently pursuing a doctorate degree in accounting — could have been qualified as an accounting expert under Rule 702. *See United States v. Smith*, 640 F. 3d 358, 366 (D.C. Cir. 2011) (concluding that error was harmless in part because the witness “would have qualified as an expert and testified about the slang conversations under Rule 702”); *United States v. DeLoach*, No. 99-4441, 2000 WL 274972, at

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*3 (4th Cir. Mar. 14, 2000) (per curiam) (“[W]e find that even if the court erred by admitting it as lay testimony, the error was harmless because [the witness] could have been certified as an expert under Rule 702”). And *fourth* and finally, an IRS agent who was duly qualified as an expert witness at trial under Rule 702 did indeed make many of the same points that Special Agent Elias made, rendering the arguably impermissible testimony cumulative.

C

Third, Kohn argues that the district court abused its discretion in admitting at trial evidence of Kohn’s previous guilty plea of endeavoring to obstruct the due administration of the internal revenue laws, in violation of 26 U. S. C. § 7212(a).

One of the allegations in the indictment was that in promoting the GEP to clients, Kohn not only misrepresented his educational background, but also told clients false and incomplete information about his previous guilty plea, bragging that it showed that he would go to great lengths in representing and protecting his clients. Prior to trial, Kohn filed a motion in limine to exclude any evidence of the conviction, but the district court denied the motion, ruling that the government “may ask . . . witnesses whether they were comforted or lulled into working with the Defendants” by misrepresentations about Kohn’s prior conviction.

In light of the court’s ruling on the motion in limine, Kohn’s counsel told the jury during his opening statement that “[y]ou may learn over the course of this trial that 22 years ago. Mr. Kohn made the biggest

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mistake of his life, and he accepted responsibility for it. He pled guilty to impeding or obstructing the IRS for conduct that occurred 26 to 30 years ago . . .” Kohn and the government subsequently agreed to a stipulation for describing that conviction, and the court specifically advised the jury of its limited use, emphasizing that it was “very important[]” that the jury “not conclude from this evidence that Mr. Kohn has bad character in general or that because . . . he did commit similar acts, that he is more likely to have committed this crime with which he is currently charged.” Thereafter, three former clients and the undercover IRS special agent provided testimony about Kohn’s statements regarding his prior conviction, and the government also introduced a letter from Kohn to a client about the conviction.

Kohn now contends that the district court abused its discretion in admitting the stipulation, arguing that it was inadmissible under Federal Rule of Evidence 404(b), and that, in any event, it was unduly prejudicial under Rule 403.

We conclude that the district court did not abuse its discretion. First, it would appear that Kohn waived this issue by raising the fact of his conviction preemptively in his opening statement to the jury and in entering into a stipulation with the government as to how to describe it for the jury. *Cf. Ohler v. United States*, 529 U. S. 753, 760 (2000) (holding “that a defendant who preemptively introduces evidence of a prior conviction on direct examination may not on appeal claim that the admission of such evidence was error”).

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But even if it were not waived, Kohn’s challenge lacks merit. The evidence of his prior conviction was not freestanding but directly tied to the representations he made about that conviction to clients when marketing the GEP at issue in the current case. This made the prior conviction relevant, intrinsic evidence. Similarly, the district court did not abuse its discretion in concluding that the evidence was not unfairly prejudicial under Rule 403. Indeed, Kohn’s counsel noted below that the whole point of the stipulation was to “reduce the danger of prejudice on the balance,” and the stipulation was followed by a strongly worded cautionary instruction given by the court.

D

Fourth, Simmons argues that the district court abused its discretion in failing to give a reliance-on-counsel instruction, as he had requested. In rejecting Simmons’s request, the court explained that “there was virtually no evidence of Mr. Simmons’s reliance on specific advice based upon what’s required, [*i.e.*,] full disclosure of all relevant facts and the specific advice rendered and evidence that that advice was followed.” Nonetheless, the court did give the jury a more general good-faith instruction.

In challenging the court’s decision, Simmons points to an email from Kohn about the treatment of a single-member LLC on Simmons 2016 tax return, as well as testimony regarding checks that Simmons had sent to Kohn that purported to be for “legal advice that The Kohn Partnership provided for Gain Elimination Plan clients.” This evidence, however, falls far short of demonstrating that the district court abused its

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discretion in finding an inadequate evidentiary basis, given the more extensive requirements for asserting the defense. *See United States v. Butler*, 211 F.3d 826, 833 (4th Cir. 2000). Moreover, a defense of advice of counsel must necessarily fail where counsel acted as an accomplice to the crime. *See United States v. West*, 392 F.3d 450, 456–57 (D.C. Cir. 2004); *United States v. Bush*, 626 F.3d 527, 539 (9th Cir. 2010). Finally, we are satisfied that any error would be harmless in light of the good-faith instruction that the court did provide. *See United States v. Mallory*, 988 F.3d 730, 739 (4th Cir. 2021).

E

Fifth and finally, the defendants argue that the evidence was insufficient to support a conviction for conspiracy to defraud the government. They argue that “the Government charged that the defendants attempted to defraud the IRS by use of the GEP” but then failed to prove that the GEP was illegal. Principally, they point to the testimony of the government’s expert witness, who acknowledged that such plans “can be completely legal.” And if it was legal, they contend, the government failed to show that they conspired to commit an illegal act.

It appears that although the defendants raised other grounds in support of their motions for a judgment of acquittal, they failed to make this argument before the district court, at least explicitly, thereby waiving it. *See United States v. Chong Lam*, 677 F.3d 190, 200 (4th Cir. 2012). But even if they had somehow preserved it with their more general Rule 29 motions, the argument lacks merit.

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The defendants emphasize repeatedly that the government’s expert witness testified that a GEP “can be completely legal.” But this argument fails to recognize that the expert witness’s full answer was that GEP plans “can be completely legal . . . *if they have economic substance.*” She testified further that the plans implemented by the defendants in this case *lacked economic substance.* In short, the government never argued nor attempted to prove that the GEP, as a concept, was illegal. Rather, it argued and proved that the plan, as implemented, involved the fabrication of business expenses to lower clients’ taxable income and that therefore, lacking any real economic substance, it was fraudulent.

Additionally, Chollet argues that there was no testimony to establish that she joined the alleged conspiracy. But, as the district court concluded, there was evidence that Chollet prepared a number of the returns at issue and reviewed others. The testimony showed that Kohn and Chollet worked as a team. Chollet also used the GEP to shelter her own income. And she was recorded telling the undercover IRS agent that he could have confidence in plan because “the IRS never really comes in and has a global look at what you’re doing. . . . They’re never going to see the moving pieces of the plan as a whole between different taxpayers.”

We thus reject the defendants’ arguments of insufficient evidence.

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* * *

For the reasons given, we affirm the judgments of the district court.

AFFIRMED

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[Filed: Aug. 2, 2024]

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF
NORTH CAROLINA
STATESVILLE DIVISION
CRIMINAL ACTION NO.
5:22-CR-00060-KDB-SCR**

**UNITED STATES OF
AMERICA**

v.

**MICHAEL ELLIOT KOHN,
CATHERINE ELIZABETH
CHOLLET, AND DAVID
SHANE SIMMONS,**

Defendants.

ORDER

THIS MATTER is before the Court on the Defendants’ Motions for Judgment of Acquittal or, in the Alternative, Motions for a New Trial (Doc. Nos. 211–13). In their motions, the Defendants ask the Court to set aside the guilty on all counts verdict rendered by the jury on April 25, 2024. The Court has carefully considered these motions and the parties’ briefs. For the reasons discussed below, the Court will **DENY** the motions.

I. LEGAL STANDARD

Rule 29 of the Federal Rules of Criminal Procedure states that, “[a]fter the government closes its evidence

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or after the close of all the evidence, the court on the defendant's motion must enter a judgment of acquittal of any offense for which the evidence is insufficient to sustain a conviction." Fed. R. Crim. P. 29(a). "A defendant may move for a judgment of acquittal . . . within 14 days after a guilty verdict or after the court discharges the jury, whichever is later." *Id.* "If the jury has returned a guilty verdict, the court may set aside the verdict and enter an acquittal." *Id.*

"A judgment of acquittal based on the insufficiency of evidence is a ruling by the court that as a matter of law the government's evidence is insufficient 'to establish factual guilt' on the charges in the indictment." *United States v. Alvarez*, 351 F.3d 126, 129 (4th Cir. 2003) (quoting *Smalis v. Pennsylvania*, 476 U.S. 140, 144, 106 S. Ct. 1745, 90 L. Ed. 2d 116 (1986)). "The test for deciding a motion for a judgment of acquittal is whether there is substantial evidence (direct or circumstantial) which, taken in the light most favorable to the prosecution, would warrant a jury finding that the defendant was guilty beyond a reasonable doubt." *United States v. MacCloskey*, 682 F.2d 468, 473 (4th Cir. 1982). Moreover, the jury, not the reviewing court, assesses the credibility of the witnesses and resolves any conflicts in the evidence presented. *United States v. Wilson*, 118 F.3d 228, 234 (4th Cir. 1997). Consequently, a court must deny a defendant's Rule 29 motion and accept the jury's verdict if, "after viewing the evidence in the light most favorable to the government, any rational trier of fact could have found the elements of the offense beyond a reasonable doubt." *United States v. United Med. & Surgical*

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Supply Corp., 989 F. 2d 1390, 1402 (4th Cir. 1993) (citing *Jackson v. Virginia*, 443 U. S. 307, 319, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979)).

II. FACTS AND PROCEDURAL HISTORY

In November 2022, the Defendants were indicted by a grand jury and charged with conspiracy to defraud the United States (all Defendants) (Count 1), in violation of 18 U. S. C. §371; aiding and assisting in the preparation of false tax returns (all Defendants) (Counts 2–12), in violation of 26 U. S. C. §7206(2); filing a false return (Simmons) (Counts 13–17), in violation of 26 U. S. C. 7206(1); and aiding and assisting in the filing of false tax returns (Kohn and Chollet) (Counts 18–23), in violation of 26 U. S. C. §7206(2). *See* Doc. No. 1. Kohn and Simmons were also charged with wire fraud, in violation of 18 U. S. C. §1343, but that charge was dismissed before trial. *See* Doc. Nos. 1, 60, 61.

After numerous pretrial motions, the case went to trial on April 15, 2024. The Government presented evidence that the Defendants engaged in a scheme to defraud the United States by promoting, marketing, and selling to clients an unlawful tax scheme known as the Gain Elimination Plan (“GEP”).¹ Defendants used the GEP to reduce the taxable income of clients by fraudulently inflating business expenses through fictitious

¹ In its Response to these motions, the Government provided a lengthy and comprehensive review of the evidence presented at trial that the Court finds to be accurate. *See* Doc. No. 215 at 4–33. The Court will accordingly provide only a short summary of the evidence here.

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royalties and management fees. These fictitious royalties and management fees were paid, on paper, to a limited partnership largely owned by a charitable organization. According to the Government’s evidence, these fictitious fees were then used to prepare false tax returns for the Defendants’ clients. *Id.* at ¶ 2. Further, Defendants advised their clients that the GEP limited partnership was required to obtain life insurance on their behalf in order to cover the income allocated to, but not received by, the charitable organization. Simmons sold the necessary insurance plans to many of these clients and shared the substantial commissions he received with Kohn and Chollet.

The jury returned a guilty verdict on all counts on April 25, 2024. Now before the Court are Defendants’ motions for acquittal, which the Government opposes.

III. DISCUSSION

The Defendants allege a number of errors infected their trial such that acquittal should be entered, or a new trial granted. Because many of the grounds for their motions overlap (and in some places appear to be copied verbatim from each other’s motions), the Court will address the common arguments before the individual ones.

A. Literal Truth

The Defendants each assert that the guilty verdicts rendered by the jury for Counts 2–12 (and 18–22 between Kohn and Chollet) must be reversed under a “literal truth” defense. In short, they contend that because the numbers on the tax forms themselves add up to the total income listed, the tax returns were

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“literally true.” However, their assertion that $1+2=3$ is “literally true” holds no water when the evidence was sufficient to prove beyond a reasonable doubt that “1” and “2” were the result of fabricated deductions and fees.

Moreover, the Government has persuasively demonstrated that *United States v. Reynolds*, 919 F.2d 435 (7th Cir. 1990), the case Defendants rely on, is distinguishable based on changes to the tax forms themselves and the holding in a case from the Third Circuit that cabined the defense dramatically to a situation inapplicable here. See Doc. No. 215 at 34–35; *United States v. Gollapudi*, 130 F.3d 66 (3d Cir. 1997). Thus, the Court finds that both factually and legally, the Defendants’ assertion that the total income line on their tax returns was “literally true” is incorrect. Accordingly, no jury instruction needed to be given on this defense.

B. “Amendment” of the Indictment

During trial, the Court allowed the Government to amend the indictment by redacting the line number references for Counts 2–22. An impermissible “constructive amendment,” or fatal variance, “occurs when the court ‘broadens the possible bases for conviction beyond those presented by the grand jury.’” *United States v. Burfoot*, 899 F.3d 326, 338 (4th Cir. 2018) (quoting *United States v. Floresca*, 38 F.3d 706, 710 (4th Cir. 1994)); *United States v. Allmendinger*, 706 F.3d 330, 339 (4th Cir. 2013) (noting “it is the *broadening* [of the bases for the defendant’s conviction] that is important—nothing more.” (quoting *Floresca*, 38 F.3d at 711) (emphasis in original)). Effectively, the

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Court may not allow the indictment to be amended in such a way that it “change[s] the elements of the offense charged, such that the defendant is actually convicted of a crime other than that charged in the indictment.” *Id.* (quoting *United States v. Randall*, 171 F. 3d 195, 203 (4th Cir. 1999)). An amendment accordingly violates a defendant’s rights “when the variance either “surpris[es the defendant] at trial and hinder[s] the preparation of his defense, or ... expos[es] him to the danger of a second prosecution for the same offense.” *United States v. Redd*, 161 F. 3d 793, 795 (4th Cir. 1998) (quoting *United States v. Fletcher*, 74 F. 3d 49, 53 (4th Cir. 1996)) (alterations in original).

Here, no such broadening occurred. In the original indictment, each count listed the tax return charged, the approximate filing date, the false item or items on that form, and the (incorrect/false) amount reported. *See* Doc. No. 1 at 14–17. For every count, the false item or items reported was the total income, which was then further identified by the line number. *Id.* The Government, however, cited the wrong line number for certain counts and so the Court allowed the line numbers to be redacted. However, no changes were made to the tax return charged, filing date, false item alleged (which for all remained the total income), or the amount reported for that false item. This change to fix typographical errors did not broaden the basis for any count because those counts still charged the same line and amount reported on that line on the same tax returns.

Moreover, Defendants were not surprised at trial nor were their preparations of their defense hindered.

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See United States v. Redd, 161 F. 3d 793, 795 (4th Cir. 1998). As the Government points out, Kohn was prepared to file a 32-page motion – with embedded images of tax returns showing the total income line – immediately upon the close of the Government’s case, making clear that he was familiar with the charging language and lines charged. *See* Doc. No. 215 at 40. Kohn even concedes that he “is not objecting to his notice,” but is instead “objecting to what the jury was allowed to consider in their deliberations.” Doc. No. 225 at 3. However, as explained above, the jury was not allowed to consider anything new or broader than the original charges. Instead, the jury was allowed to consider the offenses as charged, merely without a typographical error.

C. Venue

Defendants also, as they have previously, claim that this District is the improper venue for this trial and so the Court must grant a judgment of acquittal as to Counts 2–12 and 18–22. “While 26 U. S. C. § 7206(2), which is involved here, does not expressly identify where the tax violation is deemed to have occurred, the prohibitive language focuses on the conduct of any person who ‘aids or assists in, or procures, counsels, or advises the preparation’ of a false return.” *United States v. Hirschfeld*, 964 F. 2d 318, 321 (4th Cir. 1992). “Thus, any such conduct constitutes a continuation of the offense and forms a basis for establishing venue.” *Id.* (citing *United States v. Griffin*, 814 F. 2d 806, 810 (1st Cir. 1987)).

As explained by the Government in its Response, the Government’s evidence showed that Kohn and

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Chollet effectively used Simmons, and his office manager Brandi Davis (“Davis”), as their agents in collecting tax information from the clients associated with Counts 2–12, all but one of whom lived in this District. The taxpayer who was not a resident of this District testified that he often worked through Simmons’ office (which was located in this District) for tax-related matters because he had trouble getting in touch with Kohn. Thus, even if Kohn and Chollet completed the actual tax preparation in Missouri, there is ample evidence for the jury to have concluded that the Defendants either took specific actions in this District to aid or assist in the preparation of a false tax return or caused those actions to take place.

As for Counts 18–22, the same reasoning applies. Simmons resided and worked in this District and evidence showed that Davis sent Simmons’ tax information to The Kohn Partnership meaning that Kohn and Chollet knowingly caused acts to occur in this District so they could prepare Simmons’ tax returns which contained the fraudulent deductions and understated income.² Thus, venue existed in the Western District of North Carolina to try this case.

² Kohn’s argument that venue does not exist based on the collection of data for the preparation of tax returns in this District because the Government “also alleges that Kohn completely made up numbers on the tax return and that the total income line was false and not based in reality” is unpersuasive. Doc. No. 225 at 4. The Government presented evidence at trial that while the Defendants prepared the client’s tax returns, they deducted fictitious royalties and/or management fees as expenses in order to reduce their client’s tax obligations. It is those deductions that the Government proved were fabricated, not every

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D. Conspiracy Count (Simmons & Chollet)

Both Simmons and Chollet argue that the evidence did not support a conviction on Count 1 (Conspiracy to Defraud the United States). “The test for deciding a motion for a judgment of acquittal is whether there is substantial evidence (direct or circumstantial) which, taken in the light most favorable to the prosecution, would warrant a jury finding that the defendant was guilty beyond a reasonable doubt.” *United States v. MacCloskey*, 682 F.2d 468, 473 (4th Cir. 1982).

Here, there was substantial evidence from which the jury could find that the Government established the charged conspiracy existed and that Simmons and Chollet participated in it. There was evidence that Simmons not only acted as an agent for Chollet and Kohn by collecting tax documents, but also that he helped clients acquire the life insurance policies necessary for the GEP plan (often including falsehoods in his cover letters to insurance companies to help clients purchase these plans such as by saying one client’s business was projected to grow by 500% in value over the next five years, which the client testified was entirely false). The Government’s evidence further showed that he then split those commissions with

single input or document incorporated into the tax return. For that reason, the Government charged the Defendants based on the “total income” line on the tax returns rather than every single line on each return. Because this same explanation also addresses Chollet’s argument that the Government changed its theory mid-trial, the Court need not address her argument separately.

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Kohn and Chollet despite representing in his annual compliance forms that he did not share commissions.

There was also evidence that Chollet, for her part, helped prepare the fraudulent tax returns and shared in the insurance commissions split among the Defendants. Many of the clients involved in the GEP worked with Kohn and Chollet or just Chollet. *See, e.g.*, Doc. No. 215 at 23–27 (evidence from clients Novak, Rose, Alepra, and Snow). Thus, substantial evidence existed sufficient to warrant a jury to find the Defendants guilty on Count 1.³

E. Jury Instruction-Related Objections

1. Reliance on Advice of Counsel Instruction (Simmons)

Simmons argues the Court committed reversible error in declining to use a proffered jury instruction on the reliance on advice of counsel defense. To assert the advice of counsel defense, a defendant must establish that there was both “full disclosure of all pertinent facts to an [attorney], and a good faith reliance on the [attorney’s] advice.” *United States v. Shareef*,

³ Because Simmons and Chollet were both convicted by the jury of Conspiracy to Defraud the United States, they may be held liable “for the substantive offenses committed by other members of the conspiracy when the offenses are during and in furtherance of the conspiracy.” *United States v. Aramony*, 88 F.3d 1369, 1379 (4th Cir. 1996) (citing *Pinkerton v. United States*, 328 U.S. 640, 646–47 (1946)). Thus, the Court need not address their respective arguments that they must be acquitted on Counts for which they allege only their other co-conspirators were active participants. *See* Doc. No. 212 at 6; Doc. No. 213 at 11.

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852 F. App'x 92, 95 (4th Cir. 2021) (quoting *United States v. Powell*, 680 F.3d 350, 356 (4th Cir. 2012)) (alterations adopted). These elements include the assumption that “the advice was sought and received before taking action” and that defendants “in good faith sought the advice of a professional whom they considered competent.” *Dallman*, 433 F. Supp. 3d at 810 (quoting *United States v. O'Connor*, 158 F. Supp. 2d 697, 727–28 (E.D. Va. 2001)). To receive the jury instruction, a defendant must demonstrate that he made the requisite disclosure and relied on the advice in good faith. See *United States v. Lugo*, 131 F. App'x 901, 905 (4th Cir. 2005) (citing *United States v. Butler*, 211 F.3d 826, 833 (4th Cir. 2000)).

Simmons made no such showing. In his motion, he states only that the Court should have allowed him to introduce a 2005 opinion letter from the law firm Greenberg-Traug, which was not created for or in connection with Simmons or his attorneys/the other Defendants in this case (and was excluded on hearsay grounds) and an email showing that he had received that opinion letter from his attorney, Chollet. See Doc. No. 212 at 32–33. However, he did not at trial make any showing that he disclosed pertinent facts to his attorneys, let alone complete disclosure of those facts, or that he sought in good faith to rely on their advice. Instead, he argues now that there was full disclosure of the pertinent facts because the Defendants were the only people who knew the facts and there “is no requirement that the defendant himself be the person who makes that full disclosure.” Doc. No. 226 at 4. However, as explained above, that very

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requirement *does* exist. *See Lugo*, 131 F. App'x at 905 (“A defendant must demonstrate that *he* made full disclosure of all pertinent facts to counsel and relied on counsel’s advice in good faith.”) (emphasis supplied)). Further, again, he presented no evidence (and none was presented) that he relied on the advice in good faith, notwithstanding his own knowledge related to the scheme. Thus, the reliance defense is inapplicable, and any related jury instruction unwarranted.

2. Authorization (Chollet)

In her motion, Chollet states that she presented evidence warranting an authorization instruction. However, the evidence did not support such an instruction. Merely working alongside or for a co-conspirator does not create an authorization defense. Moreover, evidence was introduced that Chollet had her own mastery and understanding of the plan and accordingly prepared tax returns for several clients using the GEP. She even used the plan herself. Moreover, Chollet herself notes that she earned an L.L.M. degree in Tax, meaning she had the knowledge to understand the plan’s illegality. *See* Doc. No. 213 at 12. Also, there was no evidence presented that she was merely following instructions from Kohn without an understanding of the plan or its potential consequences. As such, the request for an authorization instruction lacked an appropriate foundation and was properly denied.

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F. Kohn's Individual Objections Regarding his Prior Conviction

At trial, the Court allowed the Government to admit a Stipulation agreed upon by the parties about Kohn's 2002 plea agreement related to charges of tax fraud to show that the explanations he gave his clients regarding the circumstances surrounding his conviction were false, which the Government argued was probative of his intent, knowledge, and lack of mistake. The Court addressed this issue pretrial and again during trial and it need not do so in detail for a third time here. For the reasons previously given by this Court, this objection is denied as is Kohn's objection regarding the validity of his prior conviction. Having reviewed Kohn's argument and the applicable case law, the Court disagrees that his prior conviction should be deemed unconstitutional in light of the later-decided *Marinello v. United States*, 138 S. Ct. 1101 (2018), particularly given the evidence presented was not introduced to prove he had previously been convicted of a crime, but to show that he lied to clients to entice them to participate in the GEP.

Moreover, Chollet's argument that this evidence concerning Kohn unfairly prejudiced her is unpersuasive. At no point did the Government argue that the conviction involved Chollet nor was that inference made by other evidence. Lastly, the Court notes that it issued a limiting instruction regarding this evidence, informing the jury of the limited purpose for which the evidence could be considered.

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G. Chollet’s Objection Regarding the Impeachment of Damian Novak

In her Motion, Chollet claims that she was prejudiced by the Court restricting her attorney from pursuing a line of impeachment against Damian Novak, one of her former clients. However, she presents no new arguments for the Court to consider in her motion and so the Court need not revisit its prior ruling on this issue.

H. New Trial Motions

Defendants each ask the Court to award them a new trial should the Court decline to reverse the jury verdict. However, finding that the grounds stated above are insufficient to warrant a judgment of acquittal, the Court will not award a new trial because the interests of justice do not so require. *See* Fed. R. Cr. P. 33(a).

IV. ORDER**NOW THEREFORE IT IS ORDERED THAT:**

1. Defendants’ Motions for Judgment of Acquittal or, in the Alternative, Motions for a New Trial (Doc. Nos. 211–13) are **DENIED**.

SO ORDERED.

Signed: August 2, 2024

/s/ Kenneth D. Bell

Kenneth D. Bell

United States District Judge

Appendix C

[Filed: Nov. 15, 2024]

UNITED STATES DISTRICT COURT
Western District of North Carolina

UNITED STATES OF AMERICA	)	JUDGMENT IN A
V.	)	CRIMINAL CASE
CATHERINE ELIZA- BETH CHOLLET	)	(For Offenses Committed
	)	On or After November 1,
	)	1987)
	)	Case Number:
	)	DNCW522CR000060-002
	)	USM Number: 37110-510
	)	Phil Stackhouse
	)	Defendant's Attorney

THE DEFENDANT:

- ☐ Pleaded guilty to count(s).
- ☐ Pleaded nolo contendere to count(s) which was accepted by the court.
- ☒ Was found guilty on count(s) 1; 2–12; 21–22 after a plea of not guilty.

ACCORDINGLY, the court has adjudicated that the defendant is guilty of the following offense(s):

Title and Section	Nature of Of- fense	Date Of- fense Con- cluded	Counts
18 U. S. C. §371	Conspiracy to Defraud the United States	11/16/2022	1

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Title and Section	Nature of Of- fense	Date Of- fense Con- cluded	Counts
26 U. S. C. § 7206(2)	Aiding and As- sisting in the Filing of False Tax Returns	9/22/2021	2–12
26 U. S. C. § 7206(2)	Aiding and As- sisting in the Filing of False Tax Returns	10/15/2020	21–22

The Defendant is sentenced as provided in pages 2 through 8 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984, United States v. Booker, 125 S.Ct. 738 (2005), and 18 U. S. C. § 3553(a).

- ☐ The defendant has been found not guilty on count(s).
- ☐ Count(s) (is)(are) dismissed on the motion of the United States.

IT IS ORDERED that the Defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay monetary penalties, the defendant shall notify the court and United States attorney of any material change in the defendant's economic circumstances.

Cite as: App. to Pet. for Cert.

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Date of Imposition of Sentence: 11/13/2024

Signed: November 14, 2024

/s/ Kenneth D. Bell

Kenneth D. Bell

United States District Judge

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IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of FORTY-EIGHT (48) MONTHS AS TO COUNT 1 AND THIRTY-SIX (36) MONTHS TO AS TO EACH OF COUNTS 2-12 AND 21-22; ALL COUNTS TO BE SERVED CONCURRENT TO EACH OTHER FOR A TOTAL TERM OF FORTY-EIGHT (48) MONTHS.

■ The Court makes the following recommendations to the Bureau of Prisons:

1. Placed in FCI Greenville if possible, consistent with the needs of BOP.
 2. Participation in the Federal Inmate Financial Responsibility Program.
 3. Participation in any available mental health treatment programs as may be recommended by a Mental Health Professional.
 4. Participation in any available substance abuse treatment program and, if eligible, receive benefits of 18:3621(e)(2).
 5. Defendant shall support all dependents from prison earnings.
- The Defendant is remanded to the custody of the United States Marshal.
- The Defendant shall surrender to the United States Marshal for this District:
- As notified by the United States Marshal.
- At ____ on ____.

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- The Defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:
 - As notified by the United States Marshal; defendant shall not be designated to surrender for service prior to January 3, 2025.
 - ☐ Before 2 p.m. on ____.
 - ☐ As notified by the Probation Office.

RETURN

I have executed this Judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this
Judgment.

United States Marshal

By: _____
Deputy Marshal

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SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of THREE (3) YEARS AS TO COUNT 1 AND ONE (1) YEAR AS TO EACH OF COUNTS 2–12 AND 21–22; ALL COUNTS TO BE SERVED CONCURRENT TO EACH OTHER FOR A TOTAL TERM OF THREE (3) YEARS.

□ The condition for mandatory drug testing is suspended based on the court's determination that the defendant poses a low risk of future substance abuse.

CONDITIONS OF SUPERVISION

The defendant shall comply with the mandatory conditions that have been adopted by this court.

1. The defendant shall not commit another federal, state, or local crime.
2. The defendant shall not unlawfully possess a controlled substance.
3. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the Court (unless omitted by the Court).
4. The defendant shall cooperate in the collection of DNA as directed by the probation officer (unless omitted by the Court).

The defendant shall comply with the discretionary conditions that have been adopted by this court and any additional conditions ordered.

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5. The defendant shall report to the probation office in the federal judicial district where he/she is authorized to reside within 72 hours of release from imprisonment, unless the probation officer instructs the defendant to report to a different probation office or within a different time frame.
6. The defendant shall report to the probation officer in a manner and frequency as directed by the Court or probation officer.
7. The defendant shall not leave the federal judicial district where he/she is authorized to reside without first getting permission from the Court or probation officer.
8. The defendant shall answer truthfully the questions asked by the probation officer. However, defendant may refuse to answer a question if the truthful answer would tend to incriminate him/her of a crime. Refusal to answer a question on that ground will not be considered a violation of supervised release.
9. The defendant shall live at a place approved by the probation officer. The probation officer shall be notified in advance of any change in living arrangements (such as location and the people with whom the defendant lives). If advance notification is not possible due to unanticipated circumstances, the defendant shall notify the probation officer within 72 hours of becoming aware of a change or expected change.

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10. The defendant shall allow the probation officer to visit him/her at any time at his/her home or any other reasonable location as determined by the probation office, and shall permit the probation officer to take any items prohibited by the conditions of his/her supervision that the probation officer observes.
11. The defendant shall work full time (at least 30 hours per week) at lawful employment, actively seek such gainful employment or be enrolled in a full time educational or vocational program unless excused by the probation officer. The defendant shall notify the probation officer within 72 hours of any change regarding employment or education.
12. The defendant shall not communicate or interact with any persons he/she knows is engaged in criminal activity, and shall not communicate or interact with any person he/she knows to be convicted of a felony unless granted permission to do so by the probation officer.
13. The defendant shall notify the probation officer within 72 hours of being arrested or questioned by a law enforcement officer.
14. The defendant shall not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).

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15. The defendant shall not act or make any agreement with a law enforcement agency to act as a confidential informant without first getting the permission of the Court.
16. The defendant shall refrain from excessive use of alcohol and shall not unlawfully purchase, possess, use, distribute or administer any narcotic or controlled substance or any psychoactive substances (including, but not limited to, synthetic marijuana, bath salts) that impair a person's physical or mental functioning, whether or not intended for human consumption, or any paraphernalia related to such substances, except as duly prescribed by a licensed medical practitioner.
17. The defendant shall participate in a program of testing for substance abuse. The defendant shall refrain from obstructing or attempting to obstruct or tamper, in any fashion, with the efficiency and accuracy of the testing. The defendant shall participate in a substance abuse treatment program and follow the rules and regulations of that program. The probation officer will supervise the defendant's participation in the program (including, but not limited to, provider, location, modality, duration, intensity) (unless omitted by the Court).
18. The defendant shall not go to, or remain at any place where he/she knows controlled substances are illegally sold, used,

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distributed, or administered without first obtaining the permission of the probation officer.

19. The defendant shall submit to a search if the Probation Officer has a reasonable suspicion that the defendant has committed a crime or a violation of a condition of supervised release. Such a search may be conducted by a U. S. Probation Officer, and such other law enforcement personnel as the probation officer may deem advisable, without a warrant or the consent of the defendant. Such search may be of any place where evidence of the above may reasonably be expected to be found, including defendant's person, property, house, residence, vehicle, communications or data storage devices or media or office.
20. The defendant shall pay any financial obligation imposed by this judgment remaining unpaid as of the commencement of the sentence of probation or the term of supervised release in accordance with the schedule of payments of this judgment. The defendant shall notify the court of any changes in economic circumstances that might affect the ability to pay this financial obligation.
21. The defendant shall support all dependents including any dependent child, or any person the defendant has been court ordered to support.

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22. The defendant shall participate in transitional support services (including cognitive behavioral treatment programs) and follow the rules and regulations of such program. The probation officer will supervise the defendant's participation in the program (including, but not limited to, provider, location, modality, duration, intensity). Such programs may include group sessions led by a counselor or participation in a program administered by the probation officer.
23. The defendant shall follow the instructions of the probation officer related to the conditions of supervision.

ADDITIONAL CONDITIONS:

24. The defendant shall participate in a mental health evaluation and treatment program and follow the rules and regulations of that program. The probation officer, in consultation with the treatment provider, will supervise the defendant's participation in the program (including, but not limited to, provider, location, modality, duration, and intensity). The defendant shall take all mental health medications as prescribed by a licensed health care practitioner.
25. The defendant shall not engage in an occupation, business, profession, or volunteer activity that would require or enable the defendant to prepare taxes without the prior approval of the probation officer.

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26. The defendant shall not communicate, or otherwise interact, with David Shane Simmons or any other victim or witness of the instant offense, aside from her father, Michael Kohn, either directly or through someone else, without first obtaining the permission of the probation officer.
27. The defendant shall provide access to any financial information as requested by the probation officer and shall authorize the release of any financial information. The probation office may share financial information with the U. S. Attorney's Office.
28. The defendant shall file tax returns with the Internal Revenue Service as required by law and provide the United States Probation Office with proof of same.
29. The defendant shall cooperate with the Internal Revenue Service to pay all outstanding taxes, interest, and penalties.

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CRIMINAL MONETARY PENALTIES

The defendant shall pay the following total criminal monetary penalties in accordance with the Schedule of Payments.

ASSESSMENT	RESTITUTION	FINE
\$1,400.00	\$22,515,615.00	\$0.00

☐ The determination of restitution is deferred. Any motion for restitution must be filed within __ days of the date of this order. Failing such filing, restitution amount becomes \$0.00.

INTEREST

The defendant shall pay interest on any fine or restitution of more than \$2,500.00, unless the fine or restitution is paid in full before the fifteenth day after the date of judgment, pursuant to 18 U. S. C. §3612(f). All of the payment options on the Schedule of Payments may be subject to penalties for default and delinquency pursuant to 18 U. S. C. §3612(g).

■ The court has determined that the defendant does not have the ability to pay interest and it is ordered that:

- The interest requirement is waived.
- ☐ The interest requirement is modified as follows:

COURT APPOINTED COUNSEL FEES

☐ The defendant shall pay court appointed counsel fees.

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RESTITUTION PAYEES

The defendant shall make restitution to the following payees in the amounts listed below:

<u>NAME OF PAYEE</u>	<u>AMOUNT OF RESTITU-</u> <u>TION ORDERED</u>
IRS-RACS	\$22,515,615.00

■ Joint and Several Restitution is Ordered as follows:

- Defendant and Co-Defendant Names and Case Numbers (*including defendant number*) if appropriate:
 - Michael Elliot Kohn, 5:22CR00060-001
 - David Shane Simmons, 5:22CR00060-003
- Associated Defendant Name(s) and Case Number(s) (*including defendant number*) if appropriate:
- Court gives notice that this case may involve other defendants who may be held jointly and severally liable for payment of all or part of the restitution ordered herein and may order such payment in the future.

The victims' recovery is limited to the amount of their loss and the defendant's liability for restitution ceases if and when the victim(s) receive full restitution. Any payment not in full shall be divided proportionately among victims.

Pursuant to 18 U.S.C. §3364(i), all nonfederal victims must be paid before the United States is paid.

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SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties shall be due as follows:

- A ☒ Lump sum payment of \$1,400.00 due immediately, balance due
 - ☐ Not later than _____
 - ☒ In accordance ☐ (C), ☒ (D) below; or
- B ☐ Payment to begin immediately (may be combined with ☐ (D) below); or
- C ☐ Payment in equal **monthly** installments of **\$50.00** to commence **60 days** after the date of this judgment; or
- D ☒ In the event the entire amount of criminal monetary penalties imposed is not paid prior to the commencement of supervision through the Financial Responsibility Program, payments shall be made in equal **monthly** installments of **\$375.00** to commence **60 days** after release from imprisonment to a term of supervision. The U.S. Probation Officer shall pursue collection of the amount due, and may request to modify a payment schedule if appropriate 18 U. S. C. §3572.

Special instructions regarding the payment of criminal monetary penalties:

- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court costs:

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- The defendant shall forfeit the defendant's interest in the following property to the United States

Unless the court has expressly ordered otherwise in the special instructions above, if this judgment imposes a period of imprisonment payment of criminal monetary penalties shall be due during the period of imprisonment. **All criminal monetary penalty payments are to be made to the United States District Court Clerk, 401 West Trade Street, Room 1301, Charlotte, NC 28202**, except those payments made through the Bureau of Prisons' Inmate Financial Responsibility Program. All criminal monetary penalty payments are to be made as directed by the court.

The Defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) AVAA assessment, (5) fine principal, (6) fine interest, (7) community restitution, (8) JVTA assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.

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STATEMENT OF ACKNOWLEDGMENT

I understand that my term of supervision is for a period of ____ months, commencing on _____.

Upon a finding of a violation of probation or supervised release, I understand that the court may (1) revoke supervision, (2) extend the term of supervision, and/or (3) modify the conditions of supervision.

I understand that revocation of probation and supervised release is mandatory for possession of a controlled substance, possession of a firearm and/or refusal to comply with drug testing.

These conditions have been read to me. I fully understand the conditions and have been provided a copy of them.

(Signed) _____ Date: _____
Defendant

(Signed) _____ Date: _____
U. S. Probation Office/
Designated Witness

Appendix D

[Filed: Jul. 8, 2026]

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 24-4634 (L)
(5:22-cr-00060-KDB-SCR-2)

UNITED STATES OF AMERICA
Plaintiff - Appellee

v.

CATHERINE ELIZABETH CHOLLET, a/k/a Liza
Chollet

Defendant - Appellant

O R D E R

The court denies the petition for rehearing and rehearing en banc. No judge requested a poll under Fed. R. App. P. 40 on the petition for rehearing en banc.

Entered at the direction of the panel: Judge Niemeyer, Judge Thacker, and Judge Rushing.

For the Court

/s/ Nwamaka Anowi, Clerk