ORIGINAL

CASE NO. 26-582

IN THE SUPREME COURT OF THE UNITED STATES

Adolfo S. Montero,
Petitioner

v.

Commissioner of Internal Revenue,
Respondent

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

Petition for Writ of Certiorari

Proceeding Pro-Se
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QUESTIONS PRESENTED

1. The federal income tax is an indirect excise. ***Brushaber*** *v. Union Pacific R.R. Co.*, 240 U.S. 1, 16–17 (1916); ***Moore*** *v. United States*, 144 S. Ct. 1680, 1688 (2024). An excise must attach to a privilege. ***Flint*** *v. Stone Tracy Co.*, 220 U.S. 107, 151 (1911). ***Howard*** *v. Commissioners of the Sinking Fund of City of Louisville*, 344 U.S. 624, 630 (1953), identifies the privilege as ***"working for or doing business with the United States,"*** and *United States v. City and County of* ***Denver***, 573 F. Supp. 686, 691–92 (D. Colo. 1983), adopts that identification as *"the definition of income tax adopted by the Congress."* **Whether the tax may be enforced against a citizen without the government proving any nexus to that privilege, where the administrative record affirmatively shows no such nexus and the government introduced no contrary evidence.**

2. Whether a court of appeals may affirm on a forty-two-year-old circuit precedent — ***Parker*** *v. C.I.R.*, 724 F.2d 469 (5th Cir. 1984) — that attributes to ***Brushaber*** a holding ***Brushaber*** expressly rejected, while never citing, distinguishing, or otherwise engaging ***Brushaber***, ***Flint***, ***Howard***, ***Denver***, or the supervening unanimous decision in ***Moore***, contrary to ***Rodriguez de Quijas*** *v. Shearson/American Express, Inc.*, 490 U.S. 477, 484 (1989), and ***Agostini*** *v. Felton*, 521 U.S. 203, 237 (1997) — and where the panel was warned in writing, before it ruled, that this was the error it was about to commit.

3. Whether any judicial remedy remains available to a citizen when lower courts decline, across multiple dockets and multiple years, to engage controlling precedent that this Court itself applied on the merits less than two years earlier, and the resulting petitions are resolved without explanation at every level.

4. Whether a court of appeals Clerk's Office denies due process when it blocks a timely-transmitted petition for rehearing on a factually false and documentarily disprovable pretext, issuing no case-identified notice and no opportunity to cure — and whether the subsequent denial, without a word of explanation, of a motion asking a judge to recognize that the petition was timely filed cures that deprivation or completes it.

PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT

Corporate Disclosure Statement

Petitioner Adolfo S. Montero is a natural person. He represents no corporation or other entity, and no corporation or subsidiary has any interest in this proceeding. Rule 29.6 accordingly requires no disclosure.

Parties

Petitioner: Adolfo S. Montero, pro-se.
Respondent: Commissioner of Internal Revenue.
Counsel below, United States Court of Appeals for the Fifth Circuit (No. 26-60167): Richard L. Parker, U.S. Department of Justice, Tax Division, Appellate Section, Post Office Box 502, Washington, D.C. 20044, Richard.L.Parker@usdoj.gov.

Counsel below, United States Tax Court (Docket No. 10107-24L): K. Lyn Hillman; Barrett D. Cappadonna; Sheila R. Pattison, Office of Chief Counsel, Internal Revenue Service.

STATEMENT OF RELATED PROCEEDINGS

Pursuant to Rule 14.1(b)(iii), Petitioner identifies the following directly related proceedings. Their number and their uniformity are themselves part of what this petition asks the Court to examine.

- ***Montero*** *v. Comm'r*, No. 10107-24L (U.S. Tax Court) (tax year 2020) — decision entered 11/25/2025 (Toro, J.); Rule 162 motion to vacate denied.
- ***Montero*** *v. Comm'r*, No. 26-60167 (5th Cir.) — judgment entered 06/10/2026 *(the judgment under review)*; motion for leave to file petitions for rehearing out of time and to recall the mandate denied without explanation.
- ***Montero*** *v. Comm'r*, No. 26-60172 (5th Cir.) (tax year 2016; Tax Court Agency No. 7697-20) — rehearing and rehearing en banc denied 09/04/2026, in a single unreasoned sentence.
- ***Montero*** *v. Comm'r*, No. 26-60162 (5th Cir.) — principal brief timely transmitted 05/11/2026, declared untimely by the Clerk's Office, reinstated only after Petitioner telephoned the Clerk's Office.
- ***Montero*** *v. Comm'r*, No. 26-60342 (5th Cir.) — appeal blocked by the Clerk's Office by invocation of a 2010 monetary sanction that this same circuit had declined to enforce on 02/20/2025 in No. 24-60302.
- ***Montero*** *v. Comm'r*, No. 24-60190 (5th Cir. Oct. 15, 2024), 2024 WL 4491604; ***Montero*** *v.*

Comm'r, No. 24-60302 (5th Cir. Dec. 9, 2024), 2024 WL 5105532; ***Montero** v. Comm'r*, 354 F. App'x 173 (5th Cir. 2009).

- ***Montero** v. United States*, No. 21-925 (U.S.) — certiorari denied 02/22/2022; rehearing denied.
- ***Montero** v. Comm'r*, No. 24-1039 (U.S.) — certiorari denied 04/28/2025.
- ***Montero** v. United States*, No. 11-310 (U.S.) — certiorari denied 10/31/2011.
- ***Montero** v. Comm'r*, No. 25-42 (U.S.) — certiorari denied 10/06/2025.

TABLE OF CONTENTS

QUESTIONS PRESENTED i

PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT ii

Corporate Disclosure Statement ii

Parties ii

STATEMENT OF RELATED PROCEEDINGS iii

TABLE OF CONTENTS v

TABLE OF APPENDICES vi

TABLE OF AUTHORITIES vii

Constitutional Provisions vii

Statutes, Regulations, and Rules vii

Cases viii

Other Authorities x

OPINIONS BELOW 1

JURISDICTION 1

Timing 1

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED 3

INTRODUCTION 5

STATEMENT OF THE CASE 7

REASONS FOR GRANTING THE WRIT 11

Part I: The Privilege-Nexus Chain Is the Question No Court Below Has Addressed 11

Part II: The Panel Committed the Precise Rodriguez de Quijas / Agostini Error It Was Warned Against 18

Part III: This Case Satisfies Rule 10 on Two Independent Grounds 24

Part IV: The §6702 Penalty Rests on No Valid Statutory Predicate 27

Part V: The Sanctions Punish the Presentation of Unoverruled Authority 28

Part VI: Where the Remedy Goes When No Court Will Answer 31

Part VII: The Clerk's Office Pattern Independently Denies Due Process 32

CONCLUSION 35

TABLE OF APPENDICES

- Appendix **A** — Per Curiam Opinion, ***Montero v. Comm'r***, No. 26-60167 (5th Cir. June 10, 2026)..A1-A2
- Appendix **B** — Judgment, ***Montero v. Comm'r***, No. 26-60167 (5th Cir. June 10, 2026).....A3
- Appendix **C** — Order Denying Motion for Leave to File Petitions for Rehearing Out of Time and to Recall the Mandate, No. 26-60167 (5th Cir. Aug 17, 2026) A4
- Appendix **D** — Tax Court Decision, Docket No. 10107-24L (Toro, J., Nov. 25, 2025).....A5-A18
- Appendix **E** — Tax Court Order Denying Rule 162 Motion to Vacate, Docket No. 10107-24L.....A19
- Appendix **F** — Order Denying Rehearing and Rehearing En Banc, ***Montero v. Comm'r***, No. 26-60172 (5th Cir. Sept. 4, 2026) A20
- Appendix **G** — Excerpts, Principal Brief for Appellant, No. 26-60167 (5th Cir. May 11, 2026)

*(the **Rodriguez de Quijas** / **Agostini** warning, and the **Brushaber**–**Flint**–**Howard**–**Denver**–**Moore** argument as presented to the panel)*A21-A29

- Appendix **H** — Combined Petition for Panel Rehearing and Rehearing En Banc, No. 26-60167 *(transmitted July 26, 2026; never docketed)*A30-A32
- Appendix **I** — IRS account transcript for tax year 2020 *("Statutory Employee: Not Statutory Employee")*; Dell Technologies Form W-2 for 2020; Petitioner's Form 4852 ..... A33-A35
- Appendix **J** — Documentary evidence of timely transmission and the Clerk's false rejection of the Combined Petition for Rehearing *(Gmail transmission records; Clerk's automated rejection notice; contrast exhibit showing genuine multi-attachment display)* A36-A38
- Appendix **K** — Internal Revenue Manual *"Argument 44"* notation and IRS Notice 2010-33, as relied upon and as later substituted A39-A40

TABLE OF AUTHORITIES

Constitutional Provisions

U.S. Const. art. I, §2, cl. 3 3
U.S. Const. art. I, §8, cl. 9 3
U.S. Const. art. I, §9, cl. 4 4
U.S. Const. amend. V 4
U.S. Const. amend. VIII 31
U.S. Const. amend. XVI 4,11,15,24

Statutes, Regulations, and Rules

4 U.S.C. §§105–110 (Buck Act) 5,14,17
26 U.S.C. §3401(a) 4,16,22

26 U.S.C. §3401(c) 4
26 U.S.C. §3401(d) 4
26 U.S.C. §3402(p)(3) 4,16
26 U.S.C. §501(c)(3) 27
26 U.S.C. §6673(a)(1) 1,4,9,28
26 U.S.C. §6702 1,4,8,27-28
26 U.S.C. §7701(c) 4,15
28 U.S.C. §1254(1) 3
26 C.F.R. §31.3401(a)-3 4,16
26 C.F.R. §31.3402(p)-1 4,16
26 C.F.R. §31.6051-1(b) 4,8,16,28
I.R.S. Notice 2010-33, 2010-17 I.R.B. 609 27-28
FRAP 27(b) 33
FRAP 40 2
FRAP 41(b) 35
Fed. R. Civ. P. 69(a) 33
5th Cir. R. 40.2.2 34
5th Cir. R. 47.5.4 23
Rule 10 24,26
Rule 13 3,35
Rule 14.1 ..... iii,5

Cases

Agostini *v. Felton*, 521 U.S. 203 (1997) i,10,18,24
Brushaber *v. Union Pacific R.R. Co.*, 240 U.S. 1 (1916) i,5-7,9-14,19-21,24-25,29,35
Central Illinois *Public Service Co. v. United States*, 435 U.S. 21 (1978) 22
Chambers *v. NASCO, Inc.*, 501 U.S. 32 (1991) 32
Christiansburg *Garment Co. v. EEOC*, 434 U.S. 412 (1978) 30
Commissioner v. ***American Metal*** *Co.*, 221 F.2d 134 (2d Cir. 1955) 25
United States v. ***Collins***, 920 F.2d 619 (10th Cir. 1990) 25

Crain *v. Commissioner*, 737 F.2d 1417 (5th Cir. 1984) 23
Davis *v. United States*, 742 F.2d 171 (5th Cir. 1984) 23
Denton *v. Hernandez*, 504 U.S. 25 (1992) 29
Flint *v. Stone Tracy Co.*, 220 U.S. 107 (1911) i,6,9-10,12-13,19-21,29,35
Gonzalez *v. County of Hidalgo*, 489 F.2d 1043 (5th Cir. 1973) 16
Howard *v. Commissioners of the Sinking Fund of City of Louisville*, 344 U.S. 624 (1953)i,5-10,13-14,16-17,19,23-24,29,35,37
Jefferson County *v. Acker*, 527 U.S. 423 (1999) 5,9,14,29,35
Johnson *v. Zerbst*, 304 U.S. 458 (1938) 16
Marbury *v. Madison*, 5 U.S. (1 Cranch) 137 (1803)31
Marks *v. Commissioner*, 947 F.2d 983 (D.C. Cir. 1991) 27
Montero *v. Comm'r of Internal Revenue*, 354 F. App'x 173 (5th Cir. 2009) iv
Montero *v. Comm'r of Internal Revenue*, No. 24-60190, 2024 WL 4491604 (5th Cir. Oct. 15, 2024) iii,29
Montero *v. Comm'r of Internal Revenue*, No. 24-60302, 2024 WL 5105532 (5th Cir. Dec. 9, 2024) iv,33
Montero *v. Comm'r of Internal Revenue*, No. 26-60167 (5th Cir. June 10, 2026) ii-iii,2
Montero *v. Comm'r of Internal Revenue*, No. 26-60172 (5th Cir. Sept. 4, 2026) iii,1,6,10,23
Moore *v. United States*, 144 S. Ct. 1680 (2024)i,5-7,9-10,13-15,19-21,23-25,29,31,35-37
Neitzke *v. Williams*, 490 U.S. 319 (1989)..... 23,29
Parker *v. C.I.R.*, 724 F.2d 469 (5th Cir. 1984)..... i-ii,6,10,14,17,19-21,23,25
Peck & Co. *v. Lowe*, 247 U.S. 165 (1918) 12

Pollock *v. Farmers' Loan & Trust Co.*, 157 U.S. 429 (1895) 11,15
Rodriguez de Quijas *v. Shearson/American Express, Inc.*, 490 U.S. 477 (1989) .. i,6,10,18-19,21,24
Rowan *Companies, Inc. v. United States*, 452 U.S. 247 (1981) 22
SEC v. ***Chenery*** *Corp.*, 318 U.S. 80 (1943) 28
South Carolina v. ***Baker***, 485 U.S. 505 (1988) 12
Southern Pacific *Co. v. Lowe*, 247 U.S. 330 (1918) 22
Springer *v. United States*, 102 U.S. 586 (1881) 11,35
Stanton *v. Baltic Mining Co.*, 240 U.S. 103 (1916) 12,20,35
Taft *v. Bowers*, 278 U.S. 470 (1929) 12
United States v. City and County of ***Denver***, 573 F. Supp. 686 (D. Colo. 1983) i,5-10,12-13,16-17,19,23-24,29,35,37
United States v. County of ***Allegheny***, 322 U.S. 174 (1944) 22
United States v. ***Francisco***, 614 F.2d 617 (8th Cir. 1980) 25
United States v. ***King Mountain*** *Tobacco Co.*, 899 F.3d 954 (9th Cir. 2018) 13,21
Washington State Dep't of Social & Health Servs. v. Guardianship Estate of ***Keffeler***, 537 U.S. 371 (2003) 15
Winkler *v. United States*, 230 F.2d 766 (1st Cir. 1956) 25

Other Authorities

F. Morse **Hubbard**, Legislative Draftsman, U.S. Treasury Dep't, 89 Cong. Rec. 2580 (1943) 12
Black's Law Dictionary (5th ed. 1979) *("excise")* 13

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Fifth Circuit is **unpublished** and reproduced at Appendix A. The accompanying Judgment is reproduced at Appendix B. The Fifth Circuit's order denying Petitioner's Motion for Leave to File the Petitions for Rehearing Out of Time and to Recall the Mandate — entered **without explanation** — is reproduced at Appendix C. The decision of the United States Tax Court (Toro, J.), Docket No. 10107-24L, is reproduced at Appendix D, and the Tax Court's order denying Petitioner's Rule 162 Motion to Vacate is reproduced at Appendix E. For the reasons explained in Question 2 and Part II.G below, Petitioner also submits, as evidence that the **non-engagement** at issue **is systemic** rather than confined to this docket, the Fifth Circuit's 09/04/2026 order denying rehearing and rehearing en banc in the related case No. **26-60172**, reproduced at Appendix F.

JURISDICTION

Timing

On 11/25/2025, the United States Tax Court (Toro, J.) entered a decision in Docket No. **10107-24L** sustaining a $5,000 penalty against Petitioner under 26 U.S.C. §6702 for tax year 2020 and imposing an additional $25,000 sanction under 26 U.S.C. §6673(a)(1). Petitioner timely filed a Rule 162 Motion to Vacate on 12/13/2025, tolling the time to appeal. The Tax Court denied that motion, and Petitioner timely filed his Notice of Appeal on 03/14/2026. On 06/10/2026, the Fifth Circuit entered its per curiam opinion and Judgment affirming the Tax

Court in No. **26-60167**. Petitioner timely transmitted a Combined Petition for Panel Rehearing and Rehearing En Banc to the Clerk's pro-se filing e-mail address on Sunday, 07/26/2026, at 4:40 p.m. — within the deadline under FRAP[1] 40, which fell on Saturday, 07/25/2026, and was accordingly extended to Monday, 07/27/2026. One minute after transmission, an automated Clerk's Office system rejected the filing on the premise that it *"contain[ed] more than one attachment."* Petitioner's transmission records show a single PDF attachment.[2] No case-identified deficiency notice was ever sent; the rejection notice bore **no case number** and was auto-categorized as promotional mail. Petitioner discovered the rejection only on 08/09/2026, when the Clerk's own docket showed that no rehearing petition had been entered.[3]

Petitioner filed a Motion for Leave to File the Petitions Out of Time and to Recall the Mandate on 08/16/2026, attaching **documentary proof** of timely transmission. Before filing it, Petitioner telephoned the Clerk's Office and asked a case manager to confirm that the motion would be placed before a judge rather than disposed of administratively — a

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[1] *"FRAP"* is used throughout for the Federal Rules of Appellate Procedure.

[2] Petitioner's transmission records showing a single attachment, a contrast exhibit showing how the same mail client displays a genuine multi-attachment message, and the Clerk's automated rejection notice, are reproduced at Appendix J.

[3] Transmissions to the Clerk's pro-se filing address routinely take days to reach the docket. The absence of a docket entry therefore signals nothing, and a case-identified deficiency notice — which never issued — is the only mechanism by which a pro-se filer learns a document has been refused.

confirmation he sought because, in the separate appeal No. **26-60342**, a motion of his had been denied by the Clerk's Office without any judge ever ruling on it. He was told the Leave to File would go to a judge. It did, and it was denied without comment or explanation.

Because no petition for rehearing was ever entertained by the Fifth Circuit, through no fault of Petitioner's, the tolling provision of this Court's Rule 13.3 did not operate to extend the certiorari period beyond the ordinary ninety days measured from the 06/10/2026 judgment. Petitioner preserves, in Question 4, his position that the certiorari clock should have run from a proper disposition of the timely-transmitted rehearing petition — a disposition the **Clerk's own error** made impossible. To remove any question of timeliness under either computation, Petitioner computes the deadline conservatively from the earlier of the two possible triggering dates. Under Rule 13.1, ninety days from 06/10/2026 is 09/08/2026, a Tuesday and not a federal holiday, so Rule 30.1 requires no adjustment. This Petition is **timely filed** on 09/08/2026. Statutory jurisdiction is conferred by 28 U.S.C. §1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Constitution, Article I, §2, cl. 3: *"Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers [...]."*

U.S. Constitution, Article I, §8, cl. 9: *"The Congress shall have Power To lay and collect Taxes,*

Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States."

U.S. Constitution, Article I, §9, cl. 4: *"No Capitation, or other direct, Tax shall be laid, unless in Proportion to the Census or Enumeration herein before directed to be taken."*

Sixteenth Amendment: *"The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration."*

Fifth Amendment: *"No person shall be [...] deprived of life, liberty, or property, without due process of law [...]."*

26 U.S.C. §3401(a), (c), (d) — the statutory definitions of *"wages," "employee,"* and *"employer."*

26 U.S.C. §7701(c) — *"The terms 'includes' and 'including' when used in a definition contained in this title shall not be deemed to exclude other things otherwise within the meaning of the term defined."*

26 U.S.C. §3402(p)(3), **26 C.F.R. §31.3401(a)-3**, and **26 C.F.R. §31.3402(p)-1** — the ***"deeming"*** provisions permitting remuneration that does not factually satisfy §3401(a) to be treated as statutory §3401(a) *"wages"* under a voluntary withholding agreement.

26 C.F.R. §31.6051-1(b) — the **reporting rule** for remuneration without a nexus privilege and not subject to withholding.

26 U.S.C. §6702; 26 U.S.C. §6673(a)(1) — the penalty provisions applied below.

4 U.S.C. §§105–110 (Buck Act) — the mechanism by which income taxation reaches persons within federal areas.

The pertinent text of each provision is set out above. Because the full text of these statutes and regulations is lengthy and publicly available, Petitioner has not reproduced it in the Appendix. **See Rule 14.1(f).**

INTRODUCTION

This case turns on two authorities that no court below has ever cited, distinguished, or acknowledged: ***Howard*** and ***Denver***. Together they supply the one thing ***Brushaber*** and ***Moore*** establish is constitutionally required but do not themselves name: the specific privilege to which the federal income tax excise attaches. ***Howard*** named it — *"the privilege of working for or doing business with the United States."*[4] ***Denver*** adopted that identification as *"the definition of income tax adopted by the Congress."*[5] This Court confirmed ***Howard***'s characterization on the merits in ***Jefferson County***.[6]

Neither the Tax Court nor the Fifth Circuit has ever mentioned **any of them**, despite all three being placed squarely before them, repeatedly, across multiple dockets and multiple years. That silence is not oversight. It is the tell.

Petitioner **warned** the Fifth Circuit, **in writing**, before it ruled, that affirming on the authority of

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[4] ***Howard*** at 630 (Douglas, J., dissenting, joined by Black, J.).

[5] ***Denver*** at 691–92 & Fn. 12 *(citing **Howard**)*.

[6] ***Jefferson County*** *(holding a license fee of the character at issue in **Howard** to be an "income tax" within the meaning of the Buck Act, 4 U.S.C. §§105–110).*

Parker, while ignoring the supervening and irreconcilable decision in ***Moore***, would repeat the error this Court corrected in ***Rodriguez de Quijas*** — a case in which this Court reversed the Fifth Circuit, by name, for treating a controlling decision of this Court as though a conflicting circuit precedent had silently displaced it. The panel did it anyway. It cited ***Parker*** and three of its own unpublished, non-precedential dispositions. It did not cite ***Brushaber***, ***Flint***, ***Howard***, ***Denver***, or ***Moore***. It did not distinguish them. It did not explain why they do not control. **It said nothing about them at all** — in an opinion that nonetheless labeled Petitioner's arguments *"frivolous"* and affirmed a $25,000 sanction on top of the underlying penalty.

If this were an isolated docket, silence might be coincidence. **It is not.** The same **pattern recurs** across every proceeding in this record: three identical same-day boilerplate Tax Court decisions sustaining penalties in three factually distinct proceedings for three different tax years; a judge who conceded on the record that pay records prove only that money changed hands — ***"that's nothing, the issue is whether it is taxable"*** — and then ruled as though he had never said it;[7] and, most tellingly, a companion case, No. 26-60172, in which a rehearing petition raising these same authorities *did* reach a three-judge panel and was still **denied** in a single **unreasoned sentence.**

This petition also documents something this Court has not previously been asked to confront in

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[7] Statement of **Foley**, J., in Tax Court No. **22454-21** *(tax year 2017)*, at the remote proceeding of 01/13/2023; transcript filed in that docket as Exhibit A-01 to Petitioner's Motion for Reconsideration, **Doc. 56** (12/04/2023)

Petitioner's cases: a Fifth Circuit Clerk's Office that blocked the very rehearing petition that would have preserved these arguments for ordinary appellate review — on a pretext its own records disprove — gave no case-identified notice and no opportunity to cure, and then denied, without one word, the motion asking a judge rather than the Clerk to fix it. That is why this petition's certiorari clock runs, out of an abundance of caution, from the panel's 06/10/2026 judgment **rather than** from any rehearing disposition.

Petitioner asks for what he has asked for in every filing: that this Court's own unoverruled **precedent** be **applied to the facts** of this case. ***Moore*** does not itself name the privilege — ***Howard*** and ***Denver*** do that. What ***Moore*** did, unanimously and less than two years before the ruling under review, was reaffirm the foundation the privilege requirement rests on: that income taxes are **indirect**, that ***Brushaber*** remains good law, and that Congress has laid no apportioned tax since the Civil War. ***Moore*** left ***Brushaber***'s excise characterization exactly where it found it. If the Fifth Circuit's treatment of ***Brushaber***, ***Howard***, ***Denver***, and ***Moore*** stands uncorrected — after that court was expressly warned, in writing, that it was **repeating** a named and condemned error — then the excise classification, and the privilege nexus that follows from it, will exist nowhere **except** in the United States Reports.

STATEMENT OF THE CASE

During 2020, Petitioner worked for Dell Technologies Inc. He timely filed a Form 1040 for tax year 2020 reporting no taxable **statutory** *"wages"* from Dell,

and corrected Dell's Form W-2 on a Form 4852. The legal basis for that correction is 26 C.F.R. §31.6051-1 itself: paragraph **(a)** governs the reporting of payments that ***are* subject** to withholding, and paragraph **(b)** governs payments that **are *not***. Dell reported under paragraph (a) notwithstanding Petitioner's continuous, uncontested exemption from federal withholding in effect since 2010. Paragraph **(b)** was the applicable rule, and the Form 4852 was the means of conforming the W-2 report to it. The IRS's own account transcript for the year at issue codes Petitioner as *"Statutory Employee:* ***Not Statutory Employee.***" App. I. Dell's own Form W-2 left the statutory-employee box **unmarked**. No lock-in letter altering the withholding exemption existed for tax year 2020.

The IRS nonetheless assessed a $5,000 penalty under 26 U.S.C. §6702, citing an internal, unpublished Internal Revenue Manual notation *("Argument 44")* rather than any position on the Secretary's published list under I.R.S. Notice **2010-33**. Published positions were supplied only afterward – by the Tax Court, in its decision – and neither fits his return. App. K; App. D.

Petitioner petitioned the Tax Court and framed the dispute at the constitutional level it has always occupied: the federal income tax is an **indirect excise** that cannot attach **without a nexus** to the privilege identified in ***Howard*** and ***Denver*** — ***"working for or doing business with the United States"*** — a nexus the government has never attempted to prove in any proceeding involving Petitioner. In a companion proceeding, Petitioner's own supervisor at Dell testified under oath, and **without rebuttal**, that his work was not federally

funded, was not tied to any federal project, and involved no federal privilege of any kind.[8]

On 11/25/2025, Judge Emin Toro entered a decision sustaining the $5,000 penalty and imposing an additional $25,000 sanction under 26 U.S.C. §6673(a)(1) — the same day, and in materially identical language, as two companion decisions in Petitioner's other pending cases for different tax years. The decision says as much on its face: the court recited Petitioner's litigation history *"as we also do in an Order and Decision filed today in Docket no. 7697-20 and in Docket no. 9936-24L."* App. D. None of the three cited ***Brushaber***, ***Flint***, ***Howard***, ***Denver***, or ***Moore***. The court declined to reach the argument at all, stating that it would *"not waste additional judicial resources by refuting Mr. Montero's arguments in this Order."* App. D. Its treatment of the *"Argument 44"* defect is taken up in Part IV, *infra*. Petitioner's timely Rule 162 Motion to Vacate was denied, and this appeal followed.

On appeal, Petitioner's Principal Brief placed the constitutional **taxonomy** squarely before the panel: ***Brushaber*** classifies the income tax as an indirect excise; ***Flint*** confirms that excises attach to privileges; ***Howard*** and ***Denver*** name the privilege; ***Jefferson County*** confirms ***Howard***'s characterization; and ***Moore***, unanimously, reaffirms the chain less than two years before the panel ruled.

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[8] Trial testimony of Petitioner's manager Eileen Guo, given under oath and **unrebutted**, in the related Tax Court proceeding *(Entry **42** on 01/15/24 case:**10587-22**)*, establishing that Petitioner's work was not federally funded, was not performed on any federal project, and involved no federal privilege. The government cross-examined and offered no contrary evidence.

App. G. The brief further warned the panel, expressly and in advance, that continued reliance on ***Parker*** in the face of the supervening ***Moore*** decision would repeat the error for which this Court **reversed** this same circuit in ***Rodriguez de Quijas***, and it offered three lawful alternatives. Part II.D, *infra.*

On 06/10/2026, the panel affirmed in four paragraphs, citing only ***Parker*** and three prior unpublished, non-precedential Montero dispositions, and characterizing Petitioner's argument — which he has disavowed in every filing across every docket[9] — as the claim that *"his salary from Dell is not taxable income."* App. A. The panel did not cite ***Brushaber***, ***Flint***, ***Howard***, ***Denver***, ***Moore***, ***Rodriguez de Quijas***, or ***Agostini***. It said **nothing** about any of them. It did not identify a different privilege; it did not deny the excise classification; it **did not reach the question at all.**

Petitioner's timely-transmitted Combined Petition for Rehearing was then blocked from the docket by the Clerk's rejection, and his motion asking a judge to correct that error was **denied without explanation.** In the companion case arising from the same 11/25/2025 order sequence — No. 26-60172, tax year 2016 — a rehearing petition *did* reach a three-judge panel, and on 09/04/2026 was denied in a

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[9] Every prior disposition the Fifth Circuit invokes as a history of frivolous filings — district court and Tax Court alike — rests on **some variant of *"wages are not income,"*** a proposition Petitioner has **never advanced** and has expressly **disavowed** throughout. The label was nonetheless carried forward from disposition to disposition, each court treating it as an adjudication of the argument actually presented. Petitioner placed this before this Court in Nos. 21-925 and 24-1039; it **continues uncorrected.**

single **unreasoned sentence**. App. F; Part II.G, *infra*.

REASONS FOR GRANTING THE WRIT

Part I: The Privilege-Nexus Chain Is the Question No Court Below Has Addressed

A. The Constitutional Taxonomy Is Binary

The Constitution recognizes **two classes** of federal taxation and **no third**. As ***Brushaber*** explained, quoting ***Pollock***: *"the Constitution recognizes the two great classes of* ***direct and indirect*** *taxes, and lays down two rules by which their imposition must be governed, namely: The rule of apportionment as to direct taxes, and the rule of uniformity as to duties, imposts, and excises."*[10] Duties and imposts, by definition, concern imports, exports, and foreign commerce. A tax on payments received for labor performed **in Texas** is therefore, by elimination, either a direct tax requiring apportionment or an excise requiring a privilege. There is no other place for it to sit.

B. This Court Has Placed the Income Tax in the Excise Class and Kept It There

Springer held an income tax to be *"an excise or duty, and not a direct tax."*[11] ***Brushaber*** resolved the classification directly: *"taxation on income was* ***in its nature an excise*** *entitled to be enforced as such."* [12] The Sixteenth Amendment did not alter that classification. It *"conferred* ***no new power of***

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[10] ***Brushaber*** at 16 (quoting ***Pollock***).
[11] ***Springer*** at 602.
[12] ***Brushaber*** at 16–17.

taxation,"[13] it *"does not extend the taxing power to new or excepted subjects,"*[14] it *"confers no power upon Congress to define and tax as income without apportionment something which theretofore could not have been properly regarded as income,"*[15] and its ***"sole purpose** [...] was to remove the apportionment requirement for whichever incomes were otherwise taxable."*[16] Reading it otherwise *"would cause one provision of the Constitution to destroy another."*[17] This is not a litigant's gloss. The Treasury Department's own legislative draftsman told Congress the same thing: the income tax ***"is an excise** tax with respect to certain activities and **privileges** which is measured by reference to the income which they produce. The income is not the subject of the tax; it is the basis for determining the amount of tax."*[18]

C. Flint Supplies the Corollary That Makes the Classification Operative

Flint establishes what makes the excise classification meaningful rather than semantic: *"the requirement to pay such taxes involves the **exercise of privileges.**"*[19] An excise is not a tax on existing; it is a tax on the exercise of something specific. Black's Law Dictionary, as ***Denver*** noted, defines an excise

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[13] ***Stanton*** at 112.
[14] ***Peck & Co.*** at 172–73.
[15] ***Taft*** at 481.
[16] ***Baker*** at 522–23 Fn. 13.
[17] ***Brushaber*** at 11–12.
[18] F. Morse **Hubbard**, Legislative Draftsman, U.S. Treasury Dep't, 89 Cong. Rec. 2580 (1943).
[19] ***Flint*** at 151.

as a tax on *"the enjoyment of a privilege."*[20] The Ninth Circuit reaffirmed ***Flint***'s privilege-nexus principle as recently as 2018.[21] Justice Jackson cited ***Flint*** as current authority for that principle in 2024.[22]

D. Howard and Denver Supply the One Thing Brushaber and Flint Do Not: Which Privilege

Neither ***Brushaber*** nor ***Flint***, standing alone, identifies which privilege the federal income tax reaches. ***Howard*** does: *"The Congress has not yet granted local authorities the right to tax* ***the privilege of working for or doing business with the United States.***"[23] Three decades later, the District Court for the District of Colorado in ***Denver*** adopted that identification as authoritative, holding that a local occupational tax fell outside ***"the definition of income tax adopted by the Congress."***[24]

Petitioner states plainly what the government has never had to concede because no court has ever made it respond: ***Howard***'s formulation appears in a separate opinion. That fact does not dispose of it, for three reasons.

First, ***Denver*** did not cite ***Howard*** as persuasive commentary. It adopted the formulation as an act of statutory construction, giving it operative content independent of ***Howard***'s internal posture.

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[20] ***Denver*** at 691 Fn. 11 *(quoting Black's Law Dictionary (5th ed. 1979) (defining "excise" as a tax on the enjoyment of a privilege)).*

[21] ***King Mountain*** *(applying* ***Flint****'s privilege-nexus principle).*

[22] ***Moore*** at 1706–07 (Jackson, J., concurring) *(citing* ***Flint****).*

[23] ***Howard*** at 630 (Douglas, J., dissenting, joined by Black, J.).

[24] ***Denver*** at 691–92 & Fn. 12 *(citing* ***Howard****).*

Second, this Court itself confirmed ***Howard***'s characterization on the merits in ***Jefferson County***, holding that a license fee of the kind at issue in ***Howard*** is an *"income tax"* within the meaning of the Buck Act.[25] The Buck Act, 4 U.S.C. §§105–110, is the mechanism by which Congress extended income taxation to persons within federal areas — which is to say, the statutory expression of precisely the federal nexus ***Howard*** described. Petitioner neither resides nor works within any federal area, and the government **has never contended otherwise.** *Third*, and dispositively on this record: **an excise must tax some privilege**, or it is not an excise. No court below has named a different privilege, and none has placed the tax in any other constitutional class. ***Parker*** does declare it frivolous to call the income tax an excise — but that declaration is **the blatant misrepresentation at issue**, not an answer to it. ***Brushaber*** held in terms that *"taxation on income was in its nature* ***an excise*** *entitled to be enforced as such," supra*; ***Moore*** reaffirmed ***Brushaber*** unanimously and left that characterization **undisturbed**; and the tax is plainly neither a duty nor an impost. A court that neither names a privilege nor assigns the tax to a different class has not distinguished the chain. **It has declined to engage it.**

E. Moore Reaffirms the Entire Chain, Unanimously, in 2024

Moore confirms every link above less than two years before the ruling under review. Every opinion — majority, both concurrences, and dissent — treats

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[25] *Supra* Fn. 6.

income taxes **as indirect**. The majority held: *"income taxes are indirect taxes,"* and that the Sixteenth Amendment *"expressly confirmed what had been the understanding of the Constitution before* ***Pollock****: Taxes on income — including taxes on income from property — are indirect taxes that need not be apportioned."*[26] The Court further observed that *"Congress has not enacted an apportioned tax* ***since the Civil War.***"[27] That observation is dispositive of the alternative: if the income tax were a constitutionally direct tax, it would have required apportionment, and no apportioned tax exists.

F. The Statutory Scheme Is Built to Match

Petitioner does not rest on the statutory scheme, and treats it here **only as corroboration**. But the harmonization is **exact**, and it is why the courts below have preferred a straw man to the actual argument.

Section 3401(a) does not tax remuneration generally; it defines *"wages"* by reference to services performed by an *"employee"* for an *"employer,"* and §3401(c) defines *"employee"* in terms of officers and employees of the United States, a State, or a political subdivision, and officers of corporations. The definitional term ***"includes"*** in §7701(c) does not convert those enumerations into the ordinary dictionary meanings of the words; unlisted items brought in under *"includes"* must share **the defining characteristics** of the enumerated ones — the long-standing rule of ***ejusdem generis***. ***Keffeler*** at 384–85. The enumerated characteristic

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[26] ***Moore*** at 1688.

[27] ***Moore*** at 1687.

here is a federal or governmental **nexus** — the **exact** same nexus *Howard* and *Denver* identify. That is also why the ***"deeming"*** regulations exist. Section 3402(p)(3) and 26 C.F.R. §31.3401(a)-3 permit payments that are *not* §3401(a) wages to be treated as though they were, under a voluntary agreement — with 26 C.F.R. §31.3402(p)-1 identifying the Form W-4 as that agreement. The regulation would be **wholly superfluous** if every payment for labor were already statutory wages. The deeming mechanism is a **contractual substitute** for the factual privilege nexus; it cannot manufacture the nexus **where none exists**, and it cannot operate at all where, as here, **no withholding agreement was in effect.** And a contract cannot be read as a waiver of constitutional protection unless the signatory knowingly relinquished a known right. *Johnson* at 464; *Gonzalez* — a decision of the very circuit whose panel **declined to address it.**

G. The Government Never Proved the Nexus — Because It Never Tried

Under this chain, the government was **required** to establish that Petitioner's Dell payments arose from ***"the privilege of working for or doing business with the United States."*** It offered nothing.

- The IRS's own transcript for tax year 2020 codes Petitioner as *"**Not** Statutory Employee."* App. I.
- Dell's own Form W-2 left the statutory-employee box **unmarked**. App. I.
- Dell reported under 26 C.F.R. §31.6051-1**(a) rather than** paragraph **(b)**, the provision governing payments not subject to withholding; the

Form 4852 conformed the report to paragraph **(b)**. App. I.

- Petitioner's supervisor at Dell testified under oath, **without rebuttal**, that his work carried no federal funding, no federal project, and no federal privilege.[28]
- Petitioner neither resides nor works within any federal area, so the Buck Act does not reach him.

The government introduced **no contrary evidence** at any stage of any proceeding. It did not argue that **some other privilege** was exercised. It did not undertake to defend the proposition — implicit in ***Parker***, and never stated openly by anyone — that an excise may be enforced with no privilege at all. **It said nothing**, and the panel below said nothing about Toro's saying nothing.

H. What the Silence Costs

Across every proceeding in this record — three same-day Tax Court decisions, a four-paragraph appellate opinion, and a one-sentence rehearing denial in the companion case — ***Howard*** and ***Denver*** are **never mentioned**. Not distinguished. Not rebutted. Not written into any court record **at any level.**

Petitioner does not ask this Court to treat that silence as an admission. He asks it to notice what the silence means procedurally: on this record, there **exists no judicial statement** — none — identifying what privilege the government says Petitioner exercised, or explaining **why an excise may be enforced without one**. The consequence is not that this Court has nothing to do. It is that the courts below have left for review something of an entirely

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[28] *Supra* Fn. 8.

different character than a judgment on the merits. The column that should hold their legal analysis **is empty**. What overflows instead is the other column: a $5,000 penalty, a $25,000 maximum sanction, and a frivolity label — imposed on a litigant for citing decisions of this Court, by courts that never said one word about those decisions. What is reviewable here is **not their reasoning, because there is none**. It is **their conduct**. That is the first reason to grant the writ.

Part II: The Panel Committed the Precise Rodriguez de Quijas / Agostini Error It Was Warned Against

A. The Rule, Stated Without Qualification

*"If a precedent of this Court has direct application in a case, yet appears to rest on reasons rejected in some other line of decisions, the Court of Appeals should **follow the case which directly controls**, leaving to this Court the prerogative of overruling its own decisions."*[29] ***Agostini*** reaffirmed that rule in the same terms: it is for this Court alone to determine that one of its precedents has been superseded.[30]

B. This Is the Circuit Rodriguez de Quijas Reversed

The Fifth Circuit is not a stranger to this error. In ***Rodriguez de Quijas*** *v. Shearson/Lehman Bros.*, 845 F.2d 1296 (5th Cir. 1988), that circuit declined to follow ***Wilko*** *v. Swan*, a then-controlling precedent of this Court, on the view that later decisions had drained it of force. This Court granted review and

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[29] ***Rodriguez de Quijas*** at 484.

[30] ***Agostini*** at 237.

announced the rule quoted above **precisely because the court of appeals had proceeded that way.** Justice Stevens, writing separately, described the court of appeals' course as *"an indefensible brand of* ***judicial activism.***"[31] Petitioner cites that phrase for what it is — a separate opinion's characterization — and notes that the majority's disposition rested on the same premise: that the choice to set aside a **controlling precedent** of this Court is not a court of appeals' to make.

The panel below repeated the pattern yet again, with ***Brushaber***, ***Flint***, ***Howard***, ***Denver***, and ***Moore*** standing in for ***Wilko***, and ***Parker*** standing in for the intervening circuit authority this Court's precedent **was supposed to control.**

C. Parker's Four Documented Departures from Brushaber

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[31] ***Rodriguez de Quijas*** at 486 *(Stevens, J., dissenting)* (characterizing the Fifth Circuit's refusal to follow Wilko v. Swan in the decision under review, 845 F.2d 1296 (5th Cir. 1988)).

Parker is the sole merits authority the panel cited. It does not merely read ***Brushaber*** differently. It attributes to ***Brushaber*** a holding ***Brushaber*** **expressly rejected**, in four independent respects:

Parker's Assertion	The Actual Holding of ***Brushaber*** / ***Moore***
"[T]he sixteenth amendment provided the needed constitutional basis for the imposition of a direct non-apportioned income tax."[32]	***Brushaber***: *"taxation on income was in its nature* ***an excise*** *entitled to be enforced as such."*[33] ***Moore***: *"income taxes are indirect taxes."*[34]
The Sixteenth Amendment was enacted *"for the express purpose of providing for a direct income tax."*[35]	***Brushaber*** held the Amendment's purpose was to prevent that very reclassification, which would *"cause one provision of the Constitution to destroy another."*[36] ***Stanton***: *"conferred no new power of taxation."*[37]
Flint is *"pre-sixteenth amendment"* and	***Moore*** (Jackson, J., concurring) cites ***Flint*** as current authority for the excise/privilege principle in

[32] ***Parker*** at 471.
[33] ***Brushaber*** at 16–17.
[34] ***Moore*** at 1688.
[35] ***Parker*** at 471.
[36] ***Brushaber*** at 11–12.
[37] ***Stanton*** at 112.

Parker's Assertion	The Actual Holding of ***Brushaber*** / ***Moore***
must be read in that light.[38]	2024.[39] The Ninth Circuit applied it in 2018.[40]
Congress may tax income *"without the need [...] to classify it* ***as an excise tax*** *applicable to specific categories of activities."*[41]	No decision of this Court, before or after ***Parker***, so holds. ***Brushaber***'s entire analysis is devoted to **establishing the opposite**.

The relevant question is not whether this Court agrees with Petitioner. It is whether a court of appeals may rest an affirmance, and a $25,000 sanction, on a 1984 circuit decision whose four operative premises a unanimous 2024 decision of this Court **forecloses — without engaging that decision whatsoever.**

D. Petitioner's Explicit, Contemporaneous Warning

Petitioner's Principal Brief did not merely cite these authorities. It told the panel, in advance and in writing, that affirming on ***Parker*** while ignoring ***Moore*** would repeat the ***Rodriguez de Quijas*** error by name, and it offered three lawful alternatives: follow the controlling chain, distinguish it on the facts, or certify the question. App. G. The panel took **none of them.** It is one thing for a court to commit this error unawares. It is another to commit it **after**

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[38] ***Parker*** at 472.

[39] ***Moore*** at 1706–07 (Jackson, J., concurring) *(citing* ***Flint****).*

[40] ***King Mountain*** *(applying* ***Flint****'s privilege-nexus principle).*

[41] ***Parker*** at 472.

being told, in writing, exactly what error it was about to commit — and then to **harshly sanction** the litigant who gave the warning.

E. The Straw Man Substitutes for Engagement, and This Court's Own Precedent Refutes It

The panel characterized Petitioner's position as the claim that *"his salary from Dell is not taxable income."* Petitioner has disavowed that proposition, and the many variants of it, **in every filing in every docket** since 2011.[42] He has never disputed that §3401(a) *"wages"* are taxable **when the statutory definition is satisfied**; the definition itself makes them so. His argument is the narrower one: the government must **establish the privilege nexus** before the §3401(a) *"wages"* definition is satisfied at all.

The distinction is not Petitioner's invention. It is this Court's decree. *"Wages usually are income, but many items qualify as income and yet clearly are not wages [...] Decided cases have made the distinction between wages and income and have refused to equate the two in withholding or similar controversies."* ***Central Illinois*** at 25, 27; accord ***Rowan***. And this Court has long declined *"the broad contention [...] that all receipts — everything that comes in — are income."* ***Southern Pacific*** at 335. Even ***Allegheny***, which permits taxation of personal advantages flowing from a government relationship, locates the taxable advantage in the government relationship — **which is the nexus**, not its absence.

Falsely recasting the argument as *"wages are not income"* permits a court **to avoid** the comparison

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[42] *Supra* Fn. 9.

Neitzke requires rather than perform it. A claim is not frivolous *"merely because the court disagrees with it."*[43] Part V, *infra.*

F. Citing Prior Unpublished Dispositions Is Not Review

The panel's only support beyond ***Parker*** was a string of its own prior unpublished dispositions — which under 5th Cir. R. 47.5.4 **carry no precedential weight**, and which on their own text never engaged ***Moore***, ***Howard***, or ***Denver*** either. A court cannot discharge the obligation to engage controlling authority **by citing its own prior failures to do so**. Nor does ***Crain*** fill the gap: ***Crain***'s statement that some arguments need not be met with *"somber reasoning"* presupposes that the argument has already been established as frivolous. It cannot itself perform that determination. The same is true of ***Davis***, which rests on ***Parker*** and repeats its premises without independent analysis: a chain of citations back to a single 1984 decision **does not become engagement** with this Court's authority by being repeated.

G. The Companion Case Forecloses the Innocent Explanation

Any suggestion that the panel simply never saw these arguments — that the Clerk's rejection of the rehearing petition explains the silence — is foreclosed by No. 26-60172. There, a rehearing petition raising the same authorities in the same posture ***did*** **reach** a three-judge panel. On 09/04/2026, that panel **denied rehearing** in a single sentence and denied rehearing en banc solely

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[43] ***Neitzke*** at 325.

because no judge requested a poll — again with no engagement of ***Brushaber***, ***Howard***, ***Denver***, ***Moore***, or the ***Rodriguez de Quijas*** / ***Agostini*** argument. App. F.

Two dispositions, side by side: one petition blocked before any judge could see it, the other seen by three judges and **silently denied**. The pattern does not depend on the Clerk's error. It survives it.

Part III: This Case Satisfies Rule 10 on Two Independent Grounds

A. Rule 10(c): Conflict With Decisions of This Court

The decision below *"has decided an important federal question in a way* ***that conflicts with relevant decisions of this Court.***" Rule 10(c). The panel affirmed on the authority of a circuit decision holding that the Sixteenth Amendment authorized *"a [constitutionally] direct non-apportioned income tax"* and that Congress need not classify the income tax *"as an excise tax applicable to specific categories of activities."* Both propositions are **irreconcilable** with ***Brushaber*** and with ***Moore***, decided unanimously two years ago. That is a conflict on the face of the opinions, requiring no factual development to see.[44]

B. Rule 10(a): Conflict Among the Circuits

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[44] What aggravates the conflict is that the panel was handed this comparison, in writing, before it ruled — and **answered by reaffirming the inversion** and sanctioning the litigant who supplied it.

The conflict is not confined to the Fifth Circuit. The courts of appeals have divided on what ***Brushaber*** holds:

Court	Treatment of ***Brushaber***
Winkler (1st Cir. 1956)	Consistent with ***Brushaber***'s excise classification
American Metal (2d Cir. 1955)	Tax *"sustained as an **excise tax**"*
Parker (5th Cir. 1984)	***Brushaber*** supplied the basis for *"a direct non-apportioned income tax"*; and Congress may tax income *"without the need [...] to classify it as an excise tax applicable to specific categories of activities"* — the direct negation of the First and Second Circuit position stated above
Francisco (8th Cir. 1980)	Same, reached on a truncated, out-of-context excerpt of ***Brushaber***
Collins (10th Cir. 1990)	Same pattern of misrepresentation, carried forward without independent analysis

A tax that reaches every working citizen in the United States should not mean one thing in the First and Second Circuits **and the opposite** in the Fifth and Eighth. Petitioner raised this division in No. 24-1039, with a fuller circuit-by-circuit analysis; ***Moore*** has since intervened and resolved the underlying question in this Court, which makes the persistence of the division after ***Moore*** the **more remarkable**, not the less.

C. Rule 10(a): Departure From the Accepted and Usual Course of Judicial Proceedings

Rule 10(a) also reaches a lower court that *"has **so far departed** from the accepted and usual course of judicial proceedings [...] as to call for an **exercise of this Court's supervisory power.**"* That clause fits this record precisely, and it is the ground on which the several parts of this petition converge:

- Three materially identical, same-day decisions disposing of three factually distinct proceedings for three different tax years;
- A merits affirmance and a $25,000 sanction resting on a single 1984 circuit decision and three non-precedential orders, with **no mention** of the five controlling authorities briefed;
- A stated **mischaracterization of the litigant's argument** that the litigant had expressly disavowed in the very brief before the court;
- A rehearing petition kept off the docket by the Clerk's Office on a pretext the Clerk's own records disprove, with **no notice** and **no opportunity to cure**; and
- A motion asking a judge to correct that, **denied without any justification** or even a single word of explanation.

Any one of these might be absorbed as the ordinary friction of litigation. Together, in a single case, they describe a proceeding that did not occur in the usual course — and an **impropriety** that reaches the tenets the system is built on. That a court states the reasons for what it does; that a party is heard before he is bound; that the docket reflects what was actually decided, and by whom; that a litigant is answered rather than labeled. None of these is a

procedural courtesy. They are what separates **adjudication from disposition**, and each of them failed here.

Part IV: The §6702 Penalty Rests on No Valid Statutory Predicate

Independent of the constitutional question, the $5,000 penalty fails on its own terms.

Section 6702 penalizes a return reflecting a position that *"the Secretary has identified as frivolous under subsection (c)."* 26 U.S.C. §6702(a)(2)(A). Subsection (c) requires the Secretary to *"prescribe (and periodically revise) a list of positions which the Secretary has identified as being frivolous."* That list is published; it is I.R.S. **Notice 2010-33**. The requirement is not a formality — it is the entire mechanism by which citizens are given notice of what they may not assert.

The IRS assessed this penalty on the basis of an internal Internal Revenue Manual (IRM) notation designated ***"Argument 44."*** App. K. That notation is not a citation to the published list, and it does not describe anything Petitioner asserted. Read as a reference to the list, it fails on its own terms: the position appearing at number 44 concerns the use of a *"corporation sole"* or an entity claiming exemption under §501(c)(3) to place income beyond the reach of tax. Petitioner is a natural person. He formed no entity, claimed no 501(c)(3) exemption of any kind, and asserted nothing bearing **the least resemblance to that position**. Read instead as a purely internal designation, it is not the Secretary's identification of a frivolous position at all; the IRM's provisions are *"directory rather than mandatory"* and lack the force of law. ***Marks*** at 986 Fn. 1. On either

reading, the statutory predicate §6702(a)(2)(A) requires, is absent.

Neither the assessing agency nor the Commissioner ever invoked positions 1(e) and 22 in this proceeding. They enter the record for the first time in the Tax Court's own decision, which held that the Manual code *"is a position identified as frivolous by positions (1)(e) and (22) of Notice 2010-33,"* and that §6702(a)(2)(A) *"requires only that the position be identified as frivolous by the Secretary, and there is no requirement that Form 8278 cite the applicable position from Notice 2010-33."* App. D.

That is precisely what ***Chenery*** forbids: *"an administrative order cannot be upheld unless the grounds upon which the agency acted in exercising its powers were those upon which its action can be sustained."* ***Chenery*** at 95. A reviewing court may not supply the identification the statute requires the Secretary to have published in advance. And neither **substituted position fits** Petitioner's 2020 return, which reported the correction that 26 C.F.R. §31.6051-1(b) itself **mandates** for remuneration **not subject** to withholding.

The court's own footnote shows the reach that reconstruction required: the Manual is now ordered alphabetically, and the entry is *"argument 'ar,' which is the 44th item on the list."* App. D. The panel affirmed without mentioning §6702(c), Notice 2010-33, *"Argument 44,"* or ***Chenery***.

Part V: The Sanctions Punish the Presentation of Unoverruled Authority

The panel affirmed the maximum sanction available under 26 U.S.C. §6673(a)(1) — $25,000 — on top of the underlying $5,000 penalty. It did so without a

case-specific frivolity determination, resting instead on Petitioner's **litigation history**: that he *"is no stranger to making frivolous arguments"* and *"has been repeatedly warned."*[45]

Every one of those warnings, **without exception**, was addressed to the proposition that *"wages are not income."*[46] None was addressed to the **argument** Petitioner **actually made** here, which rests on the **excise** classification and the **privilege nexus** that classification requires. The warnings the panel counted were **warnings about something else.**

Three decisions of this Court define what the label requires, and none was satisfied.

Under ***Neitzke***, an appeal is frivolous only where *"none of the legal points are* ***arguable on their merits,"*** and a claim is frivolous only where it *"lacks an* ***arguable basis either in law or in fact."***[47] Arguments resting on ***Brushaber***, ***Flint***, ***Howard***, ***Denver***, ***Jefferson County***, and ***Moore*** — none overruled, none distinguished by any court below — are **arguable by definition.** A court may hold them wrong. It cannot hold them unarguable without saying why, and no court has said why. The court below **sidestepped** the requirement by intentionally **misrepresenting the argument**: the comparison ***Neitzke*** demands was performed against a position Petitioner **never took.**

Under ***Denton***, facts may be dismissed as frivolous only if *"clearly baseless,"* meaning *"fanciful," "fantastic,"* or *"delusional."*[48] The facts here are an

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[45] App. A (quoting ***Montero*** *v. Comm'r*, No. 24-60190, 2024 WL 4491604, at *1 (5th Cir. Oct. 15, 2024)).

[46] *Supra* Fn. 9.

[47] ***Neitzke*** at 325.

[48] ***Denton*** at 32–33.

IRS transcript, a Form W-2, a Form 4852, and unrebutted sworn testimony. Whatever else they are, they are documents in the record whose **authenticity** the government never contested. Under ***Christiansburg***, *"meritless"* means *"groundless or without foundation, rather than simply that the plaintiff has ultimately lost his case,"* and a court must *"resist the understandable temptation to engage in post hoc reasoning by concluding that, because a plaintiff did not ultimately prevail, his action must have been unreasonable or without foundation."*[49] Affirming a maximum sanction on the ground that the litigant has lost before is that reasoning, stated openly. And the **error compounds**: each prior loss the panel counted was itself entered **against the straw man** rather than against the argument presented, *supra*. The history is not a record of a litigant repeatedly answered on the merits. It is a record of the **same substitution, repeated** — and now cited as its own justification.

The consequence is not abstract. Across the related dockets, Petitioner's cumulative penalty and sanction exposure for presenting this constitutional argument now approaches $100,000. A citizen who cites six **unoverruled decisions** of this Court, receives **no engagement with any of them**, and is **fined for having cited them**, has not been given due process. He has been given escalating fines **calculated to deter** any further filing that would expose the **privilege-nexus requirement** — which is to say, a price on the assertion of a constitutional argument.[50]

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[49] ***Christiansburg*** at 421–22.

[50] Petitioner notes, without separately presenting the question, that a monetary exaction imposed not to compensate the court

Part VI: Where the Remedy Goes When No Court Will Answer

Petitioner does not ask this Court to explain its certiorari denials, and he does not contend that a denial signals agreement with the courts below. He asks it to notice a narrower and **more troubling asymmetry**. In ***Moore***, this Court took up the direct/indirect taxation question and **resolved it on the merits**, in a majority opinion with two concurrences and a dissent, each **engaging the taxonomy in detail**. Two years later, a court of appeals affirmed a penalty and a maximum sanction against a citizen **invoking that very decision** — without citing it. When the citizen sought rehearing, the petition was kept off the docket. When he asked a judge to correct that, the request was denied **without a word**. In the companion case where a rehearing petition did reach a panel, it was **denied in one sentence**.

"It is emphatically the province and duty of the judicial department to say what the law is."[51] The Framers vested the judicial power in courts, gave their judges tenure during good behavior and protected compensation, and bound them by oath to the Constitution, for one reason above all: **so that the Constitution would be enforced** against the government by a body **owing the government nothing**. A court that declines to apply the Constitution when a citizen invokes it, and fines him for the invoking, does not merely **fail to discharge that office. It inverts it**. Federal courts retain the

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for waste **but to deter a litigant** from returning with an argument no court has yet addressed sits uneasily with the **Excessive Fines Clause**. U.S. Const. amend. VIII.

[51] ***Marbury*** at 177.

inherent authority to correct abuses of the judicial process.[52] Those principles are **not self-executing.** They depend on some court, at some point, saying what the law is in a case where a party has asked. On this record, **no court has, at any level.** That is the structural problem this petition presents. It is not that Petitioner has lost — litigants lose. It is that the question he raised has never been answered by anyone, and that the ordinary mechanism for obtaining an answer, the petition for rehearing, was closed to him by the Clerk's Office of the court that **owed him the answer.** A constitutional right for which no forum will supply a ruling is not a right that has been rejected. It is a right that has been **placed beyond review** — and placing a constitutional claim beyond review, by the act of the very court that owed the ruling, is a **denial of due process** in the most complete sense the term admits.

Part VII: The Clerk's Office Pattern Independently Denies Due Process

A. Incident One — No. 26-60162: A Timely Brief Declared Untimely

On 05/11/2026, Petitioner e-mailed three principal briefs — including the brief in this case — to the Clerk's pro-se filing e-mail address within minutes of one another, each a single, properly captioned PDF, each with transmission confirmation. A Clerk's order in No. 26-60162 later declared the brief there **untimely.** Petitioner's motion to reinstate, supported by sworn proof of timely transmission, was met not with a ruling but **with further resistance** from the Clerk's Office, until Petitioner telephoned; a

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[52] ***Chambers*** at 44.

different clerk then verified the timely transmission on the spot, and the case was **reinstated without further motion**. The documentary record was never in doubt. What determined the outcome was whether Petitioner happened to reach someone else, other than the compromised clerk, willing to look at it.

B. Incident Two — No. 26-60342: The Clerk as Collections Agent

In No. 26-60342, the Clerk's Office suddenly blocked Petitioner's appeal by invoking an $8,000 sanction from a 2010 matter — a sanction this same circuit had declined to enforce in its 02/20/2025 disposition in No. 24-60302, and which a case manager had previously confirmed was **no longer a filing prerequisite**. Petitioner's filings had been accepted on that understanding. Then, with **no intervening event** appearing anywhere on the **docket**, they were suddenly no longer accepted. That reversal **did not come by motion** from opposing counsel, briefed and decided by a judge, as **FRAP 27(b)** contemplates for a request that **disposes of an appeal**. No motion was filed. None was served on Petitioner. **No judge ruled**. A change of that consequence, **adverse to a party**, made **without any motion** and appearing **nowhere** on the docket, is not explicable **as a clerical act**. It indicates **ex parte contact** between the Clerk's Office and opposing counsel, and Petitioner has never been told otherwise.

A money judgment that is not a fee owed to the court is enforced, **if at all, by writ of execution** under Fed. R. Civ. P. **69(a)**, through adversarial process — **not by the Clerk conditioning access** to the appellate docket. The only sums a circuit clerk may properly require as a condition of filing are the

court's own fees and sanctions payable to the court. Opposing counsel has statutory means of collecting an award; **improperly manipulating the Clerk's docket intake** is not one of them.

C. Incident Three — This Case: The Rejection the Records Disprove

As set out in the Jurisdiction section, Petitioner's timely Combined Petition for Rehearing, App. H, was rejected one minute after transmission on the stated ground that it contained **more than one attachment**. The transmission records show one attachment, and a contrast exhibit shows how the same mail client displays a genuine multi-attachment message. App. J. No case-identified notice issued; the rejection **bore no case number** and was routed to promotional mail. Petitioner learned of it only when the docket showed **nothing had been entered.**

The Clerk's Office later suggested that the combined filing was defective because 5th Cir. R. 40.2.2 requires panel and en banc rehearing petitions to be filed as separate documents. That is a **curable formatting defect**, and it is not the ground stated in the rejection. A litigant cannot be defaulted on a requirement the court never identified to him, in his case, in time to satisfy it.

The Clerk's own notice states that a filer *"must contact the Clerk's Office before sending a corrected document"* — a promise of notice and cure that presupposes the filer knows a filing has been rejected in an identified case. Petitioner was given neither.

D. The Consequence: A Compressed Certiorari Clock and a Lost Rehearing

Because the rehearing petition never reached the docket, the mandate issued under FRAP 41(b) as though no timely petition existed, and the tolling this Court's Rule 13.3 would otherwise supply did not operate. This petition was therefore computed and filed within ninety days of the 06/10/2026 judgment rather than from a rehearing disposition. The Clerk's error **cost Petitioner both the rehearing itself** and weeks of the **time allotted to prepare** this petition.

E. Relief Requested on This Question

Petitioner respectfully requests that this Court, in addition to the relief sought below, direct that any request bearing on Petitioner's cases in the Fifth Circuit — whether by Respondent, its counsel, or the Clerk's Office on its own initiative — be presented by motion on the docket and **resolved by a judge rather than administratively**, and that the suspect pattern documented in this Part be further examined by whatever means this Court deems appropriate.

CONCLUSION

The constitutional character of the federal income tax as an **indirect excise**, and the **privilege** to which it attaches, are not close questions on this record. ***Springer***, ***Brushaber***, ***Stanton***, ***Flint***, ***Howard***, ***Denver***, ***Jefferson County***, and ***Moore*** answer them **without conflict** among themselves, and the government has never attempted to prove that Petitioner exercised the privilege those decisions require. The IRS's own transcript says **he did not.**

His supervisor testified under oath that **he did not. Nothing in the record says otherwise.**

The Fifth Circuit's affirmance rests on a single 1984 circuit decision whose four operative premises this Court's unanimous 2024 decision **forecloses** — entered after Petitioner warned the panel in writing that proceeding that way would **repeat an error** this Court corrected in that same circuit. A companion case decided while this petition was being prepared shows that a rehearing petition reaching a full panel **receives the same silence.** And the Clerk's Office that should have preserved this record for ordinary review kept it off the docket instead, on a ground its own records disprove. When Petitioner moved to have **the timely filing recognized**, a judge did rule — and denied the motion **without a syllable of explanation.** In the separate appeal No. 26-60342, Petitioner **never reached a judge at all**; the Clerk's Office disposed of the matter itself. Between the two, every avenue by which the error might have been corrected was closed: one silently, one administratively.

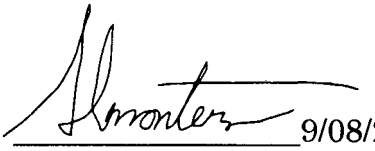
Petitioner asks this Court to grant the writ. In the alternative, Petitioner respectfully submits that the judgment below should be vacated and the case remanded for reconsideration in light of ***Moore*** — a disposition that would require this Court to decide nothing beyond the proposition that **a court of appeals must engage a controlling decision of this Court** before affirming a penalty and a maximum sanction **against the litigant who cited it.**

If certiorari is denied without any of the foregoing being addressed, Petitioner respectfully submits that this Court should **at minimum direct that the**

relevant agencies afford him an administrative determination **that engages these unrefuted authorities**, and the **privilege-nexus question**, on the merits. Absent that, Petitioner will continue to present these authorities and the record of their treatment in the **ordinary public forums** available to any citizen — accurately, and without embellishment — so that **the excise classification** reaffirmed in ***Moore***, and **concisely clarified** in ***Howard*** and ***Denver***, does not remain a proposition that exists **solely** in the **United States Reports and nowhere else.**

For the foregoing reasons, the Petition for Writ of Certiorari should be granted.

Respectfully Submitted,



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