No. _____

IN THE SUPREME COURT OF THE UNITED STATES

Sunna Sepetu, Petitioner

v.

United States of America

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

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

In *Global-Tech Appliances, Inc. v. SEB S.A.*, 563 U.S. 754, 769 (2011), the Court held that "willful blindness" has "two basic requirements: (1) the defendant must subjectively believe that there is a high probability that a fact exists and (2) the defendant must take deliberate actions to avoid learning of that fact." The Court emphasized that the second prong requires "deliberate steps" or "active efforts" to avoid knowledge. *Id.* at 768 n.8, 770.

This case presents an important question that has divided the courts of appeals since *Global-Tech*:

Whether willful blindness requires evidence that a defendant deliberately acted to avoid learning of a fact the defendant believed was highly probable, rather than evidence that a defendant merely failed to investigate suspicious circumstances.

PARTIES TO THE PROCEEDINGS

Petitioner, defendant-appellant below, is an individual, Sunna Sepetu.

Respondent is the United States of America.

In addition to Sunna Sepetu and the United States of America, Nafis Quaye was a party in both the trial court and the court of appeals.

RELATED CASES

United States v. Sepetu, No. 1:22-CR-00046-SE-1, U.S. District Court for the District of New Hampshire. Judgment entered on July 8, 2024.

United States v. Sepetu, No. 24-1650, U.S. Court of Appeals for the First Circuit. The court issued its opinion on May 15, 2026, and denied Sepetu's timely Petition for Rehearing and Rehearing En Banc on August 4, 2026.

TABLE OF CONTENTS

QUESTION PRESENTED i

TABLE OF AUTHORITIES v

PETITION FOR WRIT OF CERTIORARI 1

OPINIONS BELOW 1

JURISDICTION 1

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED 1

INTRODUCTION 2

STATEMENT OF THE CASE 4

REASONS FOR GRANTING THE PETITION 8

I. *Global-Tech* set forth a two-part standard that distinguishes willful blindness from deliberate indifference, recklessness, or negligence by requiring "deliberate actions." 8

II. The Fifth and Seventh Circuits require specific evidence supporting deliberate avoidance, while the Sixth, Eighth, Tenth, and Eleventh Circuits have likewise given independent effect to the *Global-Tech* second prong. 10

III. Other circuits, including the First Circuit in the decision below, permit non-investigation itself to supply the second prong, thereby collapsing *Global-Tech*'s two prongs into a single analysis. 15

IV. How to apply the second prong of *Global-Tech* is a question that is both important and recurring. 17

V. This case is an appropriate vehicle for clarifying the willful blindness doctrine and the two-part requirement of *Global-Tech* 20

CONCLUSION 21

APPENDIX A – Opinion of the United States Court of Appeals for the First Circuit (May 15, 2026) 1a

APPENDIX B – Transcript Excerpts from Jury Trial Day 7 – Afternoon Session (March 27, 2024) 30a

APPENDIX C – Order of the United States Court of Appeals for the First Circuit (Aug. 4, 2026).....37a

TABLE OF AUTHORITIES

Cases

Alsina-Ortiz v. Laboy, 400 F.3d 77 (1st Cir. 2005) 9, 17

Global-Tech Appliances, Inc. v. SEB S.A., 563 U.S. 754 (2011) ..... passim

Lavira v. Att'y Gen. of the United States, 478 F.3d 158 (3d Cir. 2007) 9

League of Women Voters of Ohio v. Brunner, 548 F.3d 463 (6th Cir. 2008) 10

Pierre v. Gonzales, 502 F.3d 109 (2d Cir. 2007) 9

Ragbir v. United States, 950 F.3d 54 (3d Cir. 2020) 9

Rehaif v. United States, 588 U.S. 225 (2019) 19

SEB S.A. v. Montgomery Ward & Co., 594 F.3d 1360 (Fed. Cir. 2010) 9

Thelemaque v. Ashcroft, 363 F. Supp. 2d 198 (D. Conn. 2005) 9

United States v. Agrawal, 97 F.4th 421 (6th Cir. 2024) 9, 11

United States v. Alston-Graves, 435 F.3d 331 (D.C. Cir. 2006) 18

United States v. Araiza-Jacobo, 917 F.3d 360 (5th Cir. 2019) ..... passim

United States v. Azubike, 564 F.3d 59 (1st Cir. 2009) 15, 16

United States v. Brooks, 681 F.3d 678 (5th Cir. 2012) 9

United States v. Clay, 832 F.3d 1259 (11th Cir. 2016) 9

United States v. Dambelly, 714 F. App'x 87 (2d Cir. 2018) 17

United States v. Detling, No. 22-10630, 2023 WL 6060576 (11th Cir. Sept. 18, 2023) 11

United States v. Giovannetti, 919 F.2d 1223 (7th Cir. 1990) 3, 14

United States v. Goffer, 721 F.3d 113 (2d Cir. 2013) 9

United States v. Hale, 857 F.3d 158 (4th Cir. 2017) 9

United States v. Hansen, 791 F.3d 863 (8th Cir. 2015) 11

United States v. Heredia, 483 F.3d 913 (9th Cir. 2007) 18

United States v. Hester, 880 F.2d 799 (4th Cir. 1989) 17

United States v. Lara-Velasquez, 919 F.2d 946 (5th Cir. 1990) 12

United States v. Lozano, 711 F. App'x 934 (11th Cir. 2017) 11

United States v. Macias, 786 F.3d 1060 (7th Cir. 2015) 3

United States v. Mikaitis, 33 F.4th 393 (7th Cir. 2022) 9, 14

United States v. Olla, 754 F. App'x 168 (4th Cir. 2018) 17

United States v. Onque, 665 F. App'x 189 (3d Cir. 2016) 17

United States v. Parker, 872 F.3d 1 (1st Cir. 2017) 9, 16

United States v. Peterson, 244 F.3d 385 (5th Cir. 2001) 11, 13

United States v. Ramos-Atondo, 732 F.3d 1113 (9th Cir. 2013) 3, 16

United States v. Sepetu, 176 F.4th 104 (1st Cir. 2026) 1

United States v. Sharp, 879 F.3d 327 (8th Cir. 2018) 9

United States v. Sorensen, 801 F.3d 1217 (10th Cir. 2015) 9, 11

United States v. Willis, 277 F.3d 1026 (8th Cir. 2002) 10

United States v. Yi, 704 F.3d 800 (9th Cir. 2013) 9

Statutes

18 U.S.C. § 1956 ..... 1, 4

18 U.S.C. § 3231 1

28 U.S.C. § 1254 1

28 U.S.C. § 1291 1

35 U.S.C. § 271 8

PETITION FOR WRIT OF CERTIORARI

Sunna Sepetu respectfully petitions the Court for a writ of certiorari to review the judgment of the United States Court of Appeals for the First Circuit affirming the judgment of conviction against her.

OPINIONS BELOW

The opinion of the court of appeals appears at Appendix 1a–29a to the petition and is reported at *United States v. Sepetu*, 176 F.4th 104 (1st Cir. 2026).

JURISDICTION

The First Circuit issued its opinion on May 15, 2026. App. 1a–29a.[1] Sepetu timely filed a Petition for Rehearing and Rehearing En Banc, and the First Circuit denied that petition on August 4, 2026. *See* App. 37a. This Court has jurisdiction under 28 U.S.C. § 1254(1). The First Circuit had jurisdiction under 28 U.S.C. § 1291. The district court had jurisdiction pursuant to 18 U.S.C. § 3231.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The relevant portion of the federal money laundering statute, 18 U.S.C. § 1956(a)(1), provides:

> Whoever, knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity, conducts or attempts to conduct such a financial transaction which in fact involves the proceeds of specified unlawful activity—
> …
> (B) knowing that the transaction is designed in whole or in part—
> (i) to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity …

[1] Citations to "App." refer to the appendix to this petition. Citations to "JA" refer to the joint appendix filed in the court of appeals.

> shall be sentenced to a fine of not more than $500,000 or twice the value of the property involved in the transaction, whichever is greater, or imprisonment for not more than twenty years, or both.

INTRODUCTION

This case presents an opportunity for this Court to resolve a circuit split regarding application of the second prong of the willful blindness standard. As this Court explained in *Global-Tech Appliances, Inc. v. SEB S.A.*, 563 U.S. 754 (2011), the willful blindness doctrine permits a factfinder to conclude that a defendant acted knowingly—that is, with the mental state explicitly required by numerous federal criminal statutes—if he or she (1) "subjectively believe[s] that there is a high probability that a fact exists" *and* (2) takes "deliberate actions to avoid learning of that fact." *Id.* at 769. That two-part standard distinguishes willful blindness, on the one hand, from other similar—but distinct and less culpable—mental states such as deliberate indifference, recklessness, or negligence, on the other.

The courts of appeals are divided over how to apply the second prong of *Global-Tech*. In the fifteen years since *Global-Tech* was decided, the lower courts have reached this issue numerous times, the question has had sufficient time to percolate, and a circuit split has emerged. The Fifth and Seventh Circuits explicitly require specific evidence supporting deliberate avoidance, and the Sixth, Eighth, Tenth, and Eleventh Circuits join them in giving independent effect to the second prong. As the Fifth Circuit explained in *United States v. Araiza-Jacobo*, 917 F.3d 360 (5th Cir. 2019), the second prong is often dispositive: "in many cases, the propriety of a deliberate ignorance instruction depends upon evidence that the

defendant purposely contrived to avoid learning of the illegal conduct." *Id.* at 366. Without such evidence, the risk is an analysis that will "dilute" or "water down" the *mens rea* requirement. *Id.* at 366–67. The Seventh Circuit has likewise stressed that the second prong of *Global-Tech* requires specific evidence that a defendant acted to avoid knowledge: in *United States v. Macias*, 786 F.3d 1060, 1063 (7th Cir. 2015, the court concluded that a defendant involved in "shady dealings" was not willfully blind where he did not "act to avoid learning the truth." *Id.* at 1063 (quoting *United States v. Giovannetti*, 919 F.2d 1223, 1228 (7th Cir. 1990)).

On the other hand, in the case below, the First Circuit held that once suspicious circumstances are established under the first prong of *Global-Tech*, the failure to investigate those circumstances suffices to meet the "deliberate actions" requirement. App. 21a. Indeed, the court acknowledged that the relevant evidence might "completely overlap[]." *See* App. 20a. Several other circuits, most notably the Ninth Circuit in *United States v. Ramos-Atondo*, 732 F.3d 1113 (9th Cir. 2013), have likewise concluded that "[a] failure to investigate can be a deliberate action." *Id.* at 1119.

Such reasoning drains the second prong of *Global-Tech* of independent force because it collapses the two-part analysis into a single question: has the government offered proof from which a factfinder can infer a high probability of wrongdoing? If so, in the First Circuit, the failure to investigate those suspicious circumstances supplies the necessary evidence for the second prong of *Global-Tech*,

but that same defendant could not be subjected to a willful-blindness instruction in other circuits, such as the Fifth or Seventh.

This conflict requires resolution. Numerous federal statutes require that the government prove knowledge. Willful-blindness instructions are frequently given and upheld, but such instructions should reach only conduct that is sufficiently culpable to warrant treating a defendant the same as one who acts with knowledge. The *Global-Tech* standard—if the two prongs are applied rigorously—strikes that balance by requiring both something close to knowledge (awareness of a high probability of wrongdoing) *and* culpable conduct (deliberate avoidance). Unless courts give specific meaning to the second prong, however, the distinction between willful blindness and other more careless and less culpable mental states—deliberate indifference, recklessness, or negligence—collapses, because the first prong of *Global-Tech* alone does not suffice to differentiate between these mental states.

This case provides an excellent vehicle for resolving this split. The question presented is a pure issue of law that was squarely addressed by the First Circuit.

This Court should grant review.

STATEMENT OF THE CASE

Petitioner Sunna Sepetu and co-defendant Nafis Quaye were convicted of conspiracy to commit money laundering in violation of 18 U.S.C. § 1956(h) and 18 U.S.C. § 1956(a)(1)(B)(i) (Count VI). App. 7a–8a.

The government alleged that Quaye used various businesses to launder the proceeds of a "romance scam" perpetrated by Samuel Ansah against a Texas woman, Maryann Schirmer. *Id.* at 2a–5a. From 2014 to 2019, Schirmer wired Ansah, known to her as "Shawn Walker," more than three million dollars at his request. *Id.* at 4a–5a.

Quaye represented that he ran a business that bought cars, computers, and other items that he shipped to customers overseas. *Id.* at 3a. To operate his business, Quaye asked a series of friends or family members to register businesses and open business bank accounts; Quaye then directed the flow of funds from these accounts. *Id.* The last entity and bank account were opened by Sepetu, who by that time was romantically involved with Quaye, for a company eventually known as Logitech. *Id.* at 3a–4a.[2]

Most of the funds in the Logitech account came from Schirmer, who wired $827,000 to the account from August 2018 to April 2019. *Id.* at 5a; JA.2041–43. At Quaye's direction, Sepetu wired large sums out of the account. App. 5a. The

[2] The only account that Sepetu opened that was involved with the transactions at issue at trial was the Logitech account. Because she was briefly connected to two Easy Soft accounts, the First Circuit's references to "Easy Soft" can obscure which conduct involved Sepetu. Quaye operated a business called Easy Soft years before Sepetu's involvement. *See* App. 2a; JA.717–18, 729–32, 737. The substantial Easy Soft transactions described in the opinion, the 2015 "Shawn Walker" email to an Easy Soft account confirming a transfer, and the Santander compliance inquiry concerning an Easy Soft account all involved some version of that earlier business. *See* App. 5a–6a; JA.103–07, 110–11, 203–05, 1457–59; *see also* JA.243–44 (government agent affirming lack of connection between Sepetu and Easy Soft accounts "with lots of traffic in and out"). Sepetu later briefly opened two accounts for a separate entity bearing the name Easy Soft; those accounts were short-lived—they were open for two months and "no wires went in" and "no wires went out." *See* App. 3a–4a & n.1; JA.243.

government was able to confirm that some of the businesses to which funds were wired were legitimate entities. *See* JA.191–92, 300–02.

In addition to making wire transfers from the account, Sepetu also made some cash withdrawals. App. 4a–6a. Quaye used his business accounts for personal purchases. *Id.* at 6a. With his permission, Sepetu made some personal purchases using the Logitech account. *Id.*

Sepetu was not connected to the romance scam, Ansah, or his family; she did not communicate with Schirmer, Ansah, or "Walker." *Id.* at 5a. There was no evidence that she was aware of transactions in, or Quaye's dealings with, any accounts other than the Logitech account she managed. *See* JA.243–44.

Before the government investigation began, Sepetu in private communications asked Quaye basic questions about the business and displayed her lack of knowledge: she messaged him that she wanted to talk about filing business taxes; she asked, "What's the estimated gross income a year of the business," noting, "I have no idea." App. 7a; *see also* JA.2186–87, 2239.

In December 2018, border agents stopped Sepetu and questioned her about two large wire-transfer receipts in her possession. JA.90–93. She voluntarily returned for a February 2019 interview, where she said that Logitech was her home-based business shipping goods overseas, but explained that her friend handled much of the business and that she was learning as she went. App. 4a; JA.140–41, 145–46, 260. At the government's request, she later produced four

months of bank statements and three invoices from Quaye that did not specifically reference Logitech. App. 7a; JA.147, 149.

Sepetu testified at trial and denied knowledge of any unlawful activity. App. 8a.

Over both defendants' objections, the district court instructed the jury that it could infer knowledge from willful blindness.

> In deciding whether a defendant acted knowingly, you may infer that the defendant had knowledge of a fact if you find that he or she deliberately closed his or her eyes to a fact that otherwise would have been obvious to him or her. In order to infer such knowledge, you must find that two things have been established. First, that the defendant was aware of a high probability of the fact in question. Second, that the defendant consciously and deliberately avoided learning of the fact. That is to say, the defendant willfully made himself or herself blind to the fact. It is entirely up to you to determine whether he or she deliberately closed his or her eyes to the fact, and if so, what inference, if any, should be drawn. However, it is important to bear in mind that mere negligence or mistake in failing to learn the fact or legal requirement is not sufficient. There must be deliberate effort to remain ignorant of the fact.

App. 18a–19a; *see also* App. 34a–35a. Sepetu argued that the evidence showed no deliberate effort to avoid knowledge and therefore did not support the instruction. App. 32a.

The jury found both Quaye and Sepetu guilty. *Id.* at 8a.

The First Circuit affirmed the convictions, holding with respect to willful blindness that "[t]he government was not required to show that Defendants actively shut down conversations or expressly refused information; their refusal to investigate red flags sufficed to establish willful blindness." App. 21a.

REASONS FOR GRANTING THE PETITION

Global-Tech articulated a two-part standard that distinguishes willful blindness from deliberate indifference, recklessness, or negligence by requiring proof that a defendant engaged in "deliberate actions" or "active efforts." The decision has led to what is now a well-developed circuit split: at least six circuits—and particularly the Fifth and Seventh Circuits—require specific evidence supporting deliberate avoidance. However, several other circuits, including the First Circuit below, have concluded that non-investigation of suspicious circumstances suffices to show willful blindness. The First Circuit's approach effectively collapses the *Global-Tech* analysis into a single inquiry that eliminates the clear line between willful blindness, on the one hand, and reckless and careless mental states, on the other. This case provides an excellent vehicle for resolving this issue and ensuring that conviction under a criminal statute that requires proof of knowledge does not depend on geographic happenstance.

I. *Global-Tech* set forth a two-part standard that distinguishes willful blindness from deliberate indifference, recklessness, or negligence by requiring "deliberate actions."

A "willfully blind defendant is one *who takes deliberate actions* to avoid confirming a high probability of wrongdoing and who can almost be said to have actually known the critical facts." *Glob.-Tech Appliances, Inc. v. SEB S.A.*, 563 U.S. 754, 769 (2011) (emphasis added).[3] Willful blindness requires evidence of both a

[3] *Global-Tech* is a civil case construing the knowledge required for patent infringement liability under 35 U.S.C. § 271(b). However, the Court's analysis of willful blindness rested squarely on criminal law. *See* 563 U.S. at 766–68 & nn.7, 9. Accordingly, the courts of appeals have broadly

subjective belief and conduct that renders that belief culpable: "(1) the defendant must subjectively believe that there is a high probability that a fact exists and (2) the defendant must take deliberate actions to avoid learning of that fact." *Glob.-Tech*, 563 U.S. at 769; *see also id.* at 768 n.8 (referring to "parties who … take deliberate steps to remain ignorant").

This Court in *Global-Tech* specifically rejected the lower court's formulation that "deliberate indifference" alone was sufficient: "in demanding only 'deliberate indifference' to that risk, the Federal Circuit's test does not require *active efforts* … to avoid knowing." *Id.* at 770 (emphasis added); *cf. SEB S.A. v. Montgomery Ward & Co.*, 594 F.3d 1360, 1377 (Fed. Cir. 2010) (Federal Circuit concluded that "the standard of deliberate indifference of a known risk is not different from actual knowledge, but is a form of actual knowledge").[4] Those "active efforts"—captured by

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applied *Global-Tech* to criminal cases involving willful blindness. *See, e.g.*, *United States v. Parker*, 872 F.3d 1, 14 (1st Cir. 2017); *United States v. Goffer*, 721 F.3d 113, 127–28 (2d Cir. 2013); *United States v. Hale*, 857 F.3d 158, 168 (4th Cir. 2017); *United States v. Brooks*, 681 F.3d 678, 702–03 & n.19 (5th Cir. 2012); *United States v. Agrawal*, 97 F.4th 421, 435 (6th Cir. 2024); *United States v. Mikaitis*, 33 F.4th 393, 398–99 (7th Cir. 2022); *United States v. Sharp*, 879 F.3d 327, 333–36 (8th Cir. 2018); *United States v. Yi*, 704 F.3d 800, 804–05 (9th Cir. 2013); *United States v. Sorensen*, 801 F.3d 1217, 1233 (10th Cir. 2015); *see also Ragbir v. United States*, 950 F.3d 54, 65 n.29 (3d Cir. 2020) ("*Global-Tech* did not promulgate a new test; rather, it stated already settled law"); *United States v. Clay*, 832 F.3d 1259, 1313 (11th Cir. 2016) (*Global-Tech* was a civil case concerning patent infringement and "did not abrogate, conflict with, or preclude the district court from giving the … pattern charge in this case").

[4] The Federal Circuit was not the only court of appeals prior to *Global-Tech* to treat deliberate indifference and willful blindness as substantially equivalent standards. *See, e.g.*, *Alsina-Ortiz v. Laboy*, 400 F.3d 77, 82 (1st Cir. 2005) ("Willful blindness and deliberate indifference are not mere negligence; these concepts are directed at a form of scienter in which the official culpably ignores or turns away from what is otherwise apparent."); *Pierre v. Gonzales*, 502 F.3d 109, 118 (2d Cir. 2007) (quoting *Thelemaque v. Ashcroft*, 363 F. Supp. 2d 198, 215 (D. Conn. 2005) (stating that "concepts such as deliberate indifference, reckless disregard or willful blindness might well suffice in certain circumstances" to establish specific intent)); *Lavira v. Att'y Gen. of the United States*, 478 F.3d 158, 171 (3d Cir. 2007) (noting that "[o]ur criminal law jurisprudence … bolsters the view that a finding of specific intent could be based on deliberate ignorance or willful blindness," and defining "deliberate ignorance" as a defendant being "subjectively aware of the high probability of the fact in

Global-Tech's second-prong requirement of "deliberate actions"—distinguish willful blindness from mere deliberate indifference.

The second prong also distinguishes willful blindness from other less culpable mental states. The Court's requirements "give willful blindness an appropriately limited scope that surpasses recklessness and negligence." *Glob.-Tech*, 563 U.S. at 769. "[A] reckless defendant is one who merely knows of a substantial and unjustified risk of such wrongdoing, and a negligent defendant is one who should have known of a similar risk but, in fact, did not." *Id.* at 770 (citation omitted). In other words, suspicious circumstances—whether a defendant is subjectively aware of them (but is reckless) or should have been aware of them (but is negligent)—are not sufficient alone to establish that a defendant was willfully blind.

II. The Fifth and Seventh Circuits require specific evidence supporting deliberate avoidance, while the Sixth, Eighth, Tenth, and Eleventh Circuits have likewise given independent effect to the *Global-Tech* second prong.

Courts of appeals in the Fifth and Seventh Circuits have explicitly held, consistent with *Global-Tech*, that willful blindness requires distinct proof of "deliberate actions" to avoid knowledge. *E.g.*, *United States v. Araiza-Jacobo*, 917 F.3d 360, 366–67 (5th Cir. 2019) (despite "sufficient evidence on prong one" of *Global-Tech*, willful blindness instruction was improper where "there is virtually no evidence to support the second prong of the inquiry—whether Araiza-Jacobo

question"); *League of Women Voters of Ohio v. Brunner*, 548 F.3d 463, 476 (6th Cir. 2008) (declining to reach argument that the "the proper scienter requirement is, alternatively, knowledge, willful blindness, or deliberate indifference"); *United States v. Willis*, 277 F.3d 1026, 1031–32 (8th Cir. 2002) (referring to a "willful blindness or deliberate indifference instruction").

engaged in a 'purposeful contrivance to avoid learning of the illegal conduct'" (quoting *United States v. Peterson*, 244 F.3d 385, 395 (5th Cir. 2001) (citation omitted))); *United States v. Macias*, 786 F.3d 1060, 1062 (7th Cir. 2015) (reversing conviction because evidence did not show "deliberate actions" to avoid knowledge). Courts of appeals in the Sixth, Eighth, Tenth, and Eleventh Circuits have likewise applied the second prong as an independent requirement that must be met by proof of deliberate action. *See United States v. Agrawal*, 97 F.4th 421, 434 (6th Cir. 2024) (willful blindness instruction not supported where "government identifies nothing to suggest that Agrawal deliberately avoided learning whether she made false statements to the Department"); *United States v. Hansen*, 791 F.3d 863, 868–69 (8th Cir. 2015) (separately analyzing the evidence for each prong of the *Global-Tech* analysis); *United States v. Sorensen*, 801 F.3d 1217, 1234 (10th Cir. 2015) (identifying specific steps defendant took to avoid "obtaining actual knowledge of his obligations" (citation omitted)); *United States v. Lozano*, 711 F. App'x 934, 941 (11th Cir. 2017) (pointing to specific actions the defendant took to avoid "learning more about the nature of his tasks"); *see also United States v. Detling*, No. 22-10630, 2023 WL 6060576, at *2 (11th Cir. Sept. 18, 2023) (failure to instruct jury that it must find defendant "took deliberate steps to avoid the knowledge" as part of willful blindness instruction was error).

The Fifth and Seventh Circuits have stated explicitly that the second prong of *Global-Tech* is distinct from the first and requires specific evidence that a defendant took deliberate actions to avoid knowledge. In *United States v. Araiza-*

Jacobo, 917 F.3d 360 (5th Cir. 2019), the court of appeals stressed that a willful blindness instruction risks "dilut[ing] the *mens rea* requirement to a weak '*should* have known' standard, which eviscerates the law's requirement that the defendant acted 'knowingly.'" *Id.* at 366; *see also id.* (emphasizing that such instruction creates risk that jury will convict based on "negligent or reckless ignorance rather than intentional ignorance").

To avoid such dilution, the second prong of *Global-Tech* must be applied rigorously. Evidence of actual knowledge and evidence supporting the first prong of *Global-Tech* will frequently overlap: "the same evidence that will raise an inference that the defendant had actual knowledge of the illegal conduct ordinarily will also raise the inference that the defendant was subjectively aware of a high probability of the existence of illegal conduct." *Id.* (quoting *United States v. Lara-Velasquez*, 919 F.2d 946, 952 (5th Cir. 1990)). For precisely that reason, "in many cases, the propriety of a deliberate ignorance instruction depends upon evidence that the defendant *purposely contrived to avoid learning of the illegal conduct*—the second prong of the deliberate ignorance test." *Id.* (emphasis added) (quoting *Lara-Velasquez*, 919 F.2d at 952).

In *Araiza-Jacobo*, the Fifth Circuit expressly agreed with the government that the evidence was sufficient to establish "subjective awareness of a high probability of the existence of illegal conduct." *Id.* The defendant was "street savvy," had been repeatedly warned by a friend about bringing goods from Mexico, changed his story when asked about phone calls, and attempted to misdirect border agents.

Id. at 367. But the instruction should not have been given because "[t]here [was] virtually no evidence to support the second prong of the inquiry"—whether the defendant engaged in a "'purposeful contrivance to avoid learning of the illegal conduct.'" *Id.* (citing *Peterson*, 244 F.3d at 395 (citation omitted)). Relying on evidence of suspicion risks "water[ing] down the *mens rea* requirement of the charged crimes." *See id.*; *see also id.* ("The government cannot convict Araiza-Jacobo for what he should have known—that is, for negligence, carelessness, or foolishness—but only by proving beyond a reasonable doubt that he 'knowingly and intentionally' committed the proscribed conduct.").

The Seventh Circuit has likewise stressed the need for evidence that a defendant acted to avoid knowledge. In *United States v. Macias*, 786 F.3d 1060 (7th Cir. 2015), the defendant knowingly agreed, for generous compensation, to transport illicit cash from the United States to Mexico. *Id.* at 1061. He claimed, however, that he believed the money came from human smuggling rather than drug trafficking. *Id.* Despite the obviously suspicious circumstances, he did not investigate what was being smuggled and therefore did not test the explanation he had been given. *See id.*

The Seventh Circuit explained that "[a]n ostrich instruction should not be given unless there is evidence that the defendant engaged in behavior that could reasonably be interpreted as having been intended to shield him from confirmation of his suspicion that he was involved in criminal activity." *Id.* It should not have been given in *Macias*, because such instruction is appropriate only when a

defendant, "knowing or strongly suspecting that he is involved in shady dealings, *takes steps to make sure* that he does not acquire full or exact knowledge of the nature and extent of those dealings." *Id.* at 1062 (emphasis added) (quoting *United States v. Giovannetti*, 919 F.2d 1223, 1228 (7th Cir. 1990)). Macias may have lacked curiosity, but "he did nothing to prevent the truth from being communicated to him." *Id.* at 1063 (quoting *Giovannetti*, 919 F.2d at 1228) Most importantly, "[h]e did not *act* to avoid learning the truth." *Id.* (emphasis added) (quoting *Giovannetti*, 919 F.2d at 1228).

Applying this standard in *United States v. Mikaitis*, 33 F.4th 393 (7th Cir. 2022), the Seventh Circuit confirmed that deliberate avoidance requires more than a failure to investigate. Referring to the willful blindness standard, the court noted that "[p]rong 1 is rarely at issue on appeal," but rather, "[p]rong 2 is the controversy." Id. at 398. In *Mikaitis*, the court affirmed the decision to give a deliberate-avoidance instruction because the record contained "specific, deliberate action" to avoid learning the relevant facts. *See id.* at 399. The defendant, a physician, went to a medical clinic through a side door, going directly to a specific location without looking "anywhere in the clinic": he avoided looking anywhere he might see an unlicensed person consulting with a patient, and he avoided the front desk and file storage. *Id.*; *see also id.* at 401 ("As the doctor with his name on the wall and his license and DEA number on the line, he had heightened obligations to inquire."). The deliberate actions the defendant took were concrete mechanisms for

limiting what he would encounter, not merely a failure to conduct a more searching inquiry.

This Court should conclude—as these courts of appeals have concluded—that Global-Tech means what it says: the second prong requires proof of deliberate actions and active efforts to avoid knowledge.

III. Other circuits, including the First Circuit in the decision below, permit non-investigation itself to supply the second prong, thereby collapsing *Global-Tech*'s two prongs into a single analysis.

In this case, the First Circuit concluded that the evidence was sufficient to show a "conscious course of deliberate ignorance." App. 20a. The court held explicitly that the government need not prove "that Defendants actively shut down conversations or expressly refused information." App. 21a. Rather, their "refusal to investigate red flags sufficed to establish willful blindness." *Id.* In reaching that conclusion, the court acknowledged that the evidence that supported both knowledge and willful blindness could "completely overlap." App. 20a (quoting *United States v. Azubike*, 564 F.3d 59, 68 (1st Cir. 2009)).

With respect to Sepetu, the court pointed to large transfers from Schirmer into the Logitech account, and swift transfers out of that account, *see id.* at 11a–12a, the absence of legitimate business records, *id.* at 13a–14a, and Sepetu's statements to agents that Logitech was her business, *id.* at 14a. Those circumstances might permit an inference that she recognized a possibility, or even a high probability, that Quaye had misrepresented the nature of Logitech's operations. Those facts therefore supported prong one. What, then, established

prong two? The panel's answer was merely that she failed adequately to investigate those warning signs. But if mere non-investigation completes the second prong analysis whenever the circumstances generating the first are sufficiently suspicious,the second prong performs no independent work.

The panel's holding marks a significant expansion of the willful blindness doctrine even within the First Circuit. Until now, First Circuit cases had not squarely required the court to decide whether non-investigation alone satisfies the second prong because prior cases involved concrete avoidance evidence. *See, e.g.*, *United States v. Parker*, 872 F.3d 1, 15 (1st Cir. 2017) ("[t]he government offered direct evidence that he consciously averted his eyes to the group's illegal escapades," such as his post-arrest statement that he "didn't want to know about nothing" and the fact that the defendant left the room when another individual went to the car to bring guns into the apartment); *Azubike*, 564 F.3d at 67 (when another person began "discussing the contents of the briefcase, referring to it in coded language, defendant asked him to stop, saying, 'Don't say nothing more, don't say anything'"). The decision below expressly dispensed with comparable proof.

Several courts of appeals have reached conclusions similar to the First Circuit, holding that suspicious circumstances and a failure to investigate those suspicious circumstances are enough to establish willful blindness. The Ninth Circuit has held that "[a] failure to investigate can be a deliberate action." *See United States v. Ramos-Atondo*, 732 F.3d 1113, 1119 (9th Cir. 2013). Unpublished decisions from the Second, Third, and Fourth Circuits reflect a similar approach.

See United States v. Dambelly, 714 F. App'x 87, 88 (2d Cir. 2018) ("The absence of evidence that Dambelly actively did something to avoid knowledge does not make the District Court's conscious-avoidance instruction erroneous. No such evidence was required. A conscious-avoidance instruction may be given even when the defendant has taken no active measures to avoid learning of criminal activity."); *United States v. Onque*, 665 F. App'x 189, 197 (3d Cir. 2016) ("A jury could infer from Mashon Onque's failure to investigate these transactions, as well as her participation in other, similar transactions involving Ricks, that she suspected that the transactions were probably fraudulent and did not wish to have her suspicions confirmed through inquiry."); *United States v. Olla*, 754 F. App'x 168, 171 (4th Cir. 2018) ("failures to act or investigate can constitute deliberate actions taken to avoid learning facts").[5]

IV. How to apply the second prong of *Global-Tech* is a question that is both important and recurring.

The conflict is significant and warrants resolution. Despite their "problematic" nature, willful blindness instructions "are now commonly given and commonly upheld." *United States v. Alston-Graves*, 435 F.3d 331, 337, 338 (D.C. Cir.

[5] The post-*Global-Tech* divergence to some extent tracks preexisting differences in the circuits' understanding of willful blindness. Before *Global-Tech*, several of the courts that now permit non-investigation to establish deliberate avoidance had treated willful blindness as closely equivalent to the "deliberate indifference" standard ultimately rejected in *Global-Tech*. *See, e.g.*, *Alsina-Ortiz v. Laboy*, 400 F.3d 77, 82 (1st Cir. 2005) (conflating "willful blindness" and "deliberate indifference"); *United States v. Hester,* 880 F.2d 799, 803 n.4 (4th Cir. 1989) ("[T]he [Supreme] Court has indicated general acceptance of the proposition that awareness of 'a high probability' that a fact exists may properly be equated with 'knowledge' in the interpretation of criminal statutes." (citation omitted)). Thus, in some instances, the decisions permitting non-investigation itself to satisfy the second prong preserve, at least in application, features of the more permissive pre-*Global-Tech* formulations that *Global-Tech* rejected.

2006); *see also United States v. Heredia*, 483 F.3d 913, 924 n.16 (9th Cir. 2007) (en banc) (explicitly overruling cases that suggest instruction should rarely be given). Knowledge is a required element of innumerable federal criminal statutes, yet this common-law doctrine fundamentally alters the scope of liability for criminal offenses. *See Glob.-Tech*, 563 U.S. at 772 (Kennedy, J., dissenting) ("Willful blindness is not knowledge; and judges should not broaden a legislative proscription by analogy.").

This Court should intervene to ensure that this commonly-invoked standard is applied uniformly and appropriately. At present, the circuits' differing approaches produce unequal criminal liability. A defendant who encounters suspicious circumstances but does not prevent the truth from reaching her likely would not be subject to a willful blindness instruction under *Macias* or *Araiza-Jacobo*. But that same non-investigation is sufficient in several other circuits including, now, the First Circuit.

Allowing evidence of suspicious circumstances to suffice for both the first and second prongs of *Global-Tech* waters down the *scienter* requirement. As the Fifth Circuit pointed out in *Araiza-Jacobo*, the government generally relies on the same evidence to establish actual knowledge or suspicion (that is, the subjective belief that there is a high probability that a fact exists). If that same evidence *also* suffices to meet the second prong of *Global-Tech*, then the willful blindness standard simply functions to reduce the government's burden: proving suspicious circumstances—a

standard even *lower* than the "deliberate indifference" standard this Court rejected in *Global-Tech*—is all the government would need to do to prove knowledge.

Allowing evidence of suspicious circumstances to suffice for both the first and second prongs of *Global-Tech* also obscures the line between willful blindness, on the one hand, and deliberate indifference, recklessness, or even negligence, on the other. If the government proves suspicious circumstances, it has provided enough evidence to prove negligence, recklessness, deliberate indifference, or willful blindness. But distinguishing those respective mental states—and in particular, distinguishing a criminally culpable mental state from some form of carelessness—requires applying the second *Global-Tech* prong. 563 U.S. at 769. Without requiring proof of "deliberate actions" as an element of willful blindness, the distinction between these various mental states collapses, and defendants who were merely reckless, deliberately indifferent—or even negligent—could improperly be found willfully blind.

As this Court has emphasized, "a basic principle that underlies the criminal law" is "the importance of showing what Blackstone called 'a vicious will.'" *Rehaif v. United States*, 588 U.S. 225, 231 (2019) (citation omitted). This Court recognized in *Global-Tech* that willful blindness is a basis for treating a defendant as having knowledge because a defendant who suspects a fact *and* deliberately prevents its confirmation may be nearly as culpable as one who actually knows it. *Glob.-Tech*, 563 U.S. at 766–70. But that equivalence depends on both requirements. Awareness of a high probability supplies the near-knowledge; deliberate avoidance supplies the

defendant's purposeful effort to remain short of confirmation. A rule under which awareness of warning signs plus insufficient inquiry establishes both requirements does not identify a defendant who "can almost be said to have actually known." *Id.* at 769. It identifies a defendant who encountered suspicious circumstances and responded inadequately.

This Court should grant review to restore independent force to *Global-Tech*'s second requirement and to hold that a failure to investigate suspicious circumstances, without evidence of conduct reasonably understood as intended to avoid confirmation, does not establish willful blindness. In the fifteen years since *Global-Tech* was decided, the courts of appeals have had the opportunity to reach this issue repeatedly and have reached different results. The question has had sufficient time to percolate and develop, and a split has emerged. Only this Court can definitively clarify the scope of the second *Global-Tech* prong and resolve the disagreement among the lower courts.

V. This case is an appropriate vehicle for clarifying the willful blindness doctrine and the two-part requirement of *Global-Tech*.

First, this issue was preserved below. App. 18a. Petitioner objected at trial to the willful-blindness instruction on the ground that the evidence did not establish conscious and deliberate avoidance. App. 32a. The First Circuit reached and rejected that argument. App.18a–21a.

Second, the panel's reasoning presents the conflict in explicit terms. The lower court did not merely conclude that the record contained enough evidence under an ambiguous standard. It held that the government need not prove an active

shutdown of communications or express refusal of information because "refusal to investigate red flags sufficed." *Id.* at 21a.

Third, the disputed rule was material to the judgment and outcome below. Sepetu expressly preserved her objection and the First Circuit expressly rejected it. Willful blindness was material to the court's disposition. The court did not hold that any error in submitting willful blindness to the jury would necessarily be harmless because the jury found actual knowledge. *See id.* at 18a–21a. In its sufficiency holding, the court likewise did not rest exclusively on actual knowledge, but concluded that the evidence established that defendants "knew—or at least remained willfully blind to—the illegal source of the transfers." *Id.* at 17a.

This Court should grant the petition.

CONCLUSION

To resolve a well-developed circuit split regarding application of the second prong of the willful blindness standard set forth in *Global-Tech Appliances, Inc. v. SEB S.A.*, 563 U.S. 754 (2011), and for all the foregoing reasons, this Court should grant this petition for a writ of certiorari.

Respectfully submitted,



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