

1 E. MARTIN ESTRADA
United States Attorney
2 LINDSEY GREER DOTSON
Assistant United States Attorney
3 Chief, Criminal Division
MATTHEW J. KLUGE (PABN 204285)
4 Assistant Chief, Tax Division
PETER J. ANTHONY (NYBN 4940912)
5 Trial Attorney, Tax Division
150 M Street N.E., Room 2.206
6 Washington, D.C. 20002
Telephone: (202) 305-3301
7 Facsimile: (202) 514-9623
E-mail: Matthew.J.Kluge@usdoj.gov
8 JAMES C. HUGHES (CABN 263878)
Assistant United States Attorney
9 1100 United States Courthouse
312 North Spring Street
10 Los Angeles, California 90012
Telephone: (213) 894-2579
11 Facsimile: (213) 894-6269
E-mail: James.Hughes2@usdoj.gov
12

Attorneys for Plaintiff
13 UNITED STATES OF AMERICA

14 UNITED STATES DISTRICT COURT

15 FOR THE CENTRAL DISTRICT OF CALIFORNIA

16 UNITED STATES OF AMERICA,

17 Plaintiff,

18 v.

19 ROGER KEITH VER,

20 Defendant.
21
22

No. CR 24-CR-00103-MWF

GOVERNMENT'S OPPOSITION TO
DEFENDANT'S MOTION TO DISMISS THE
INDICTMENT

Hearing Date: February 10, 2025

Hearing Time: 1:30 p.m.

Location: First Street
Courthouse,
Courtroom 5A

23 Plaintiff United States of America, by and through its counsel
24 of record, the United States Attorney for the Central District of
25 California; Matthew J. Kluge, Assistant Chief, Tax Division; Peter J.
26 Anthony, Trial Attorney, Tax Division; and Assistant United States
27 Attorney James C. Hughes, hereby files its Opposition to Defendant's
28 Motion to Dismiss.

This Opposition is based upon the attached memorandum of points and authorities, the files and records in this case, the Declaration of IRS Special Agent Jeremiah Haynie, and such further evidence and argument as the Court may permit.

Dated: January 13, 2025

Respectfully submitted,

E. MARTIN ESTRADA
United States Attorney

LINDSEY GREER DOTSON
Assistant United States Attorney
Chief, Criminal Division

/s/

MATTHEW J. KLUGE (PABN 204285)
Assistant Chief, Tax Division

PETER J. ANTHONY (NYBN 4940912)
Trial Attorney, Tax Division

JAMES C. HUGHES
Assistant United States Attorney

Attorneys for Plaintiff
UNITED STATES OF AMERICA

TABLE OF CONTENTS

<u>DESCRIPTION</u>	<u>PAGE</u>
TABLE OF AUTHORITIES.....	ii
MEMORANDUM OF POINTS AND AUTHORITIES.....	1
I. INTRODUCTION.....	1
II. BACKGROUND.....	3
A. Factual Background.....	3
B. Procedural History.....	7
C. Expatriation and the Tax Code.....	7
1. The Exit Tax.....	8
2. Expatriation Statement.....	10
III. STANDARD OF REVIEW.....	10
IV. THE COURT SHOULD APPLY THE FUGITIVE DISENTITLEMENT DOCTRINE...	10
A. Ver Is a Fugitive.....	11
B. The Equities Support Application of the Doctrine.....	12
V. MERITS ARGUMENTS.....	14
A. The Exit Tax Is Constitutional.....	15
1. The Tax Falls Within Congress' Taxing Power.....	15
2. The Tax Does Not Violate Due Process.....	24
B. Ver's Void-For-Vagueness Challenge Fails.....	30
1. Unconstitutional Vagueness is a High Bar.....	30
2. The Charges as Applied Are Not Vague.....	31
3. Ver Had Notice.....	35
4. Scierter Requirements Eliminate Any Vagueness Concern.....	36
C. Ver's "Selective Quotation" Argument Is Meritless.....	36
VI. CONCLUSION.....	39

TABLE OF AUTHORITIES

DESCRIPTION

PAGE

CASES

<i>Afroyim v. Rusk</i> , 387 U.S. 253 (1967)	27, 28
<i>Bank of Nova Scotia v. United States</i> , 487 U.S. 250 (1988)	38
<i>Barclay & Co. v. Edwards</i> , 267 U.S. 442 (1924)	29
<i>Best Life Assur. Co. of California v. Commissioner</i> , 281 F.3d 828 (9th Cir. 2002)	21
<i>Brushaber v. Union Pac. R. Co.</i> , 240 U.S. 1 (1916)	16, 29
<i>Chiles v. United States</i> , 843 F.2d 367 (9th Cir. 1987)	29
<i>Conforte v. Commissioner</i> , 692 F.2d 587 (9th Cir. 1982)	10
<i>Cottage Sav. Ass'n v. Commissioner</i> , 499 U.S. 554 (1991)	22, 23
<i>Crow v. Commissioner</i> , 85 T.C. 376 (1985)	19
<i>Dep't of State v. Munoz</i> , 602 U.S. 899 (2024)	25
<i>Diedrich v. Commissioner</i> , 457 U.S. 191 (1982)	22
<i>Eisner v. Macomber</i> , 252 U.S. 189 (1920)	21
<i>Estate of Elkins v. Commissioner</i> , 767 F.3d 443 (5th Cir. 2014)	32
<i>Flint v. Stone Tracy Co.</i> , 220 U.S. 107 (1911)	17, 18
<i>Helvering v. Griffiths</i> , 318 U.S. 373 (1943)	21
<i>Hylton v. United States</i> , 3 U.S. (3 Dall.) 171 (1796)	15, 16, 17
<i>In re Assets of Martin</i> , 1 F.3d 1351 (3d Cir. 1993)	11
<i>In re Han Yong Kim</i> , 571 F. App'x 556 (9th Cir. 2014)	11
<i>In re Hijazi</i> , 589 F.3d 401 (7th Cir. 2009)	13
<i>Kashem v. Barr</i> , 941 F.3d 358 (9th Cir. 2019)	35
<i>Kawashima v. Holder</i> , 565 U.S. 478 (2012)	36
<i>Knowlton v. Moore</i> , 178 U.S. 41 (1900)	17, 18
<i>L'Association des Américains Accidentels v. Dep't of State</i> , 656 F.Supp.3d 165 (D.D.C. 2023)	26
<i>Loper Bright Enters. v. Raimondo</i> , 603 U.S. 369 (2024)	34

TABLE OF AUTHORITIES (CONTINUED)

<u>DESCRIPTION</u>	<u>PAGE</u>
<i>MacLaughlin v. All. Ins. Co. of Philadelphia</i> , 286 U.S. 244 (1932)	22
<i>Maehr v. Dep't of State</i> , 5 F.4th 1100 (10th Cir. 2021)	26
<i>Marr v. United States</i> , 268 U.S. 536 (1925)	23
<i>Mastro v. Rigby</i> , 764 F.3d 1090 (9th Cir. 2014)	12
<i>McFadden v. United States</i> , 576 U.S. 186 (2015)	36
<i>Molinaro v. New Jersey</i> , 396 U.S. 365 (1970)	13
<i>Moore v. United States</i> , 36 F.4th 930 (9th Cir. 2022)	20
<i>Moore v. United States</i> , 602 U.S. 572 (2024)	passim
<i>Murphy v. I.R.S.</i> , 493 F.3d 170 (D.C. Cir. 2007)	19
<i>Murray v. The Charming Betsy</i> , 6 U.S.(2 Cranch) 64 (1804)	26
<i>Nat'l Fed'n of Indep. Bus. v. Sebelius</i> , 567 U.S. 519 (2012) ...	15, 16, 17, 18
<i>Nat'l Standard Co. v. Commissioner</i> , 80 T.C. 551 (1983)	33
<i>Ortega-Rodriguez v. United States</i> , 507 U.S. 234 (1993)	12, 13
<i>Parretti v. United States</i> , 143 F.3d 508 (9th Cir. 1998)	12, 13
<i>Patton v. Brady</i> , 184 U.S. 608 (1902)	17
<i>Richards v. Sec'y of State</i> , 752 F.2d 1413 (9th Cir. 1985)	27
<i>San Antonio Indep. Sch. Dist. v. Rodriguez</i> , 411 U.S. 1 (1973)	28
<i>Savorgnan v. United States</i> , 338 U.S. 491 (1950)	26
<i>Schuster v. United States</i> , 765 F.2d 1047 (11th Cir. 1985)	11
<i>Screws v. United States</i> , 325 U.S. 91 (1945)	36
<i>Shanks v. Dupont</i> , 28 U.S. (3 Pet.) 242 (1830)	28
<i>Skilling v. United States</i> , 561 U.S. 358 (2010)	30
<i>Smith v. United States</i> , 94 U.S. 97 (1876)	12
<i>Sze v. Johnson</i> , 172 F. Supp. 3d 112 (D.D.C. 2016)	26
<i>Thomas v. United States</i> , 192 U.S. 363 (1904)	16, 17

TABLE OF AUTHORITIES (CONTINUED)

<u>DESCRIPTION</u>	<u>PAGE</u>
<i>Tiger Eye Trading, LLC v. Commissioner</i> , 138 T.C. 67 (2012).....	33
<i>Tyler v. United States</i> , 281 U.S. 497 (1930).....	16, 17, 18
<i>United States v. \$671,160.00 in U.S. Currency</i> , 730 F.3d 1051 (9th Cir. 2013).....	11, 12
<i>United States v. Al Mudarris</i> , 695 F.2d 1182 (9th Cir. 1983).....	37
<i>United States v. Bescond</i> , 24 F.4th 759 (2d Cir. 2021).....	13
<i>United States v. Buckley</i> , 689 F.2d 893 (9th Cir. 1982).....	10
<i>United States v. Bundy</i> , 968 F.3d 1019 (9th Cir. 2020).....	36
<i>United States v. Catino</i> , 735 F.2d 718 (2d Cir. 1984).....	11
<i>United States v. Chung Cheng Yeh</i> , No. CR 10-00231 WHA, 2013 WL 2146572 (N.D. Cal. May 15, 2013).....	11
<i>United States v. Fisher</i> , 607 F. App'x 645 (9th Cir. 2015).....	36
<i>United States v. Fritz</i> , 852 F.2d 1175 (9th Cir. 1988).....	38
<i>United States v. Gonzalez</i> , 300 F.3d 1048 (9th Cir. 2002).....	12
<i>United States v. Harris</i> , 705 F.3d 929 (9th Cir. 2013).....	32
<i>United States v. Isgro</i> , 974 F.2d 1091 (9th Cir. 1992).....	37
<i>United States v. James</i> , 333 F.2d 748 (9th Cir. 1964).....	21
<i>United States v. Jensen</i> , 93 F.3d 667 (9th Cir. 1996).....	10
<i>United States v. Jinian</i> , 725 F.3d 954 (9th Cir. 2013).....	36
<i>United States v. Juvenile Male</i> , 670 F.3d 999 (9th Cir. 2012).....	29
<i>United States v. Kearns</i> , 5 F.3d 1251 (9th Cir. 1993).....	37
<i>United States v. Lee</i> , 455 U.S. 252 (1982).....	29
<i>United States v. Lucero</i> , 989 F.3d 1088 (9th Cir. 2021).....	30, 31, 32
<i>United States v. Martirossian</i> , 917 F.3d 883 (6th Cir. 2019)....	11, 12
<i>United States v. Mead</i> , 533 U.S. 218 (2001).....	34
<i>United States v. Mfrs. Nat. Bank of Detroit</i> , 363 U.S. 194 (1960)...	17
<i>United States v. Murguia-Oliveros</i> , 421 F.3d 951 (9th Cir. 2005)....	13

TABLE OF AUTHORITIES (CONTINUED)

<u>DESCRIPTION</u>	<u>PAGE</u>
<i>United States v. Nat'l Dairy Prods. Corp.</i> , 372 U.S. 29 (1963).....	30
<i>United States v. Phellis</i> , 257 U.S. 156 (1921).....	23
<i>United States v. Ptasynski</i> , 462 U.S. 74 (1983).....	15
<i>United States v. Rodgers</i> , 461 U.S. 677 (1983).....	29
<i>United States v. Rogers</i> , 751 F.2d 1074 (9th Cir. 1985).....	36
<i>United States v. Shaheen</i> , 445 F.2d 6 (7th Cir. 1971).....	28
<i>United States v. Shalhoub</i> , 855 F.3d 1255 (11th Cir. 2017).....	11
<i>United States v. Stanzione</i> , 391 F. Supp. 1201 (S.D.N.Y. 1975) ..	11, 14
<i>United States v. Terabelian</i> , 105 F.4th 1207 (9th Cir. 2024).....	13
<i>United States v. Williams</i> , 504 U.S. 36 (1992).....	38
<i>United States v. Williams</i> , 553 U.S. 285 (2008).....	30, 31, 32
<i>Weiss v. Stearn</i> , 265 U.S. 242 (1924).....	23
<i>Yin v. United States</i> , 31 F.2d 738 (9th Cir. 1929).....	28
<u>STATUTES</u>	
18 U.S.C. § 1341.....	7
19 U.S.C. § 2432.....	27
26 U.S.C. § 7201.....	7
26 U.S.C. § 7206(1).....	7
8 U.S.C. § 1481.....	8, 24, 25
Expatriation Act of 1907, Pub. L. No. 59-193, 34 Stat. 1228.....	28
Foreign Investors Tax Act of 1966, Pub. L. 89-809, 80 Stat. 1539....	7
Health Insurance Portability and Accountability Act of 1996, Pub. L. 104-191, 110 Stat. 1936.....	8
I.R.C. § 1221.....	33
I.R.C. § 1256.....	21
I.R.C. § 1259.....	22

TABLE OF AUTHORITIES (CONTINUED)

<u>DESCRIPTION</u>	<u>PAGE</u>
I.R.C. § 1272.....	22
I.R.C. § 1296.....	22
I.R.C. § 1361.....	23
I.R.C. § 301.....	31, 35
I.R.C. § 305.....	22
I.R.C. § 317.....	35
I.R.C. § 467.....	22
I.R.C. § 475.....	21
I.R.C. § 6039G.....	8, 14, 31, 34
I.R.C. § 877.....	7
I.R.C. § 877A.....	passim
Income Tax Act, R.S.C. 1985, c.1, § 128.1.....	27
<u>OTHER AUTHORITIES</u>	
1 Mertens Law of Fed. Income Tax'n § 5:5 (Mar. 2023).....	28
2024 Instructions for Form 8854, IRS.gov, https://www.irs.gov/instructions/i8854	11
Andrew Appleby, <i>No Migration Without Taxation: State Exit Taxes</i> , 60 HARV. J. ON LEGIS. 55 (2023)	35
David Voreacos & Olga Kharif, <i>'Bitcoin Jesus' Fights IRS Tax Evasion Case From Spanish Island</i> , Bloomberg (November 13, 2024), https://www.bloomberg.com/news/articles/2024-11-13/- bitcoin-jesus-fights-irs-tax-evasion-case-from-spanish- island	2
Fed. R. of Crim. P. 12(b) (1).....	11
Kuntz & Peroni, <i>U.S. Int'l Tax, Nondiscrimination Clauses</i> , 2000 WL 530244 (2024).....	24
Letter 6174, (6-2019), I.R.S. (July 16, 2019), https://www.irs.gov/pub/notices/letter_6174.pdf	4
S. Rep. No 110-1 (2007).....	31

TABLE OF AUTHORITIES (CONTINUED)

<u>DESCRIPTION</u>	<u>PAGE</u>
Treasury Inspector General for Tax Administration, <i>More Enforcement and a Centralized Compliance Effort Are Required for Expatriation Provisions</i> , Oversight.gov (Sept. 20, 2020), https://www.oversight.gov/sites/default/files/documents/reports/2020-09/202030071fr.pdf	10
U.S. Const., Art. I, § 8.....	18
U.S. Const., Art. I, § 9.....	18

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Defendant Roger Ver was indicted by a grand jury on tax-related charges for concealing critical information and lying to avoid paying nearly \$50 million in taxes. That is the core of this case.

As alleged, Ver was an early and avid promoter of bitcoins, which Ver praised for "mak[ing] it so incredibly easy for people to hide their incomes or evade taxes." Ver, either personally or through his two U.S. companies, began acquiring bitcoins in 2011.

In February 2014, Ver obtained citizenship in St. Kitts and renounced his U.S. citizenship a month later. Given his wealth, Ver's renouncement triggered an obligation to file expatriation-related tax returns and pay tax on any gain from the constructive sale of all of his property, including his bitcoins.

By February 2014, Ver and his companies owned approximately 131,000 bitcoins: 73,000 owned by Ver through his companies and 58,000 owned by Ver personally. Bitcoins were trading between \$782 and \$960 across several large exchanges. Thus, Ver's total bitcoin holdings were worth, absent discounts, at least \$102.4 million. The companies' bitcoins were worth at least \$57 million; Ver's were worth at least \$45 million.

Yet, Ver's tax returns claimed that his companies owned bitcoins worth only \$1.4 million and that Ver himself owned none. Contrary to the revisionist history in Ver's brief, it was Ver's lies and concealment that account for the enormous gulf between the value of Ver's bitcoin holdings and what he reported to the IRS. Indeed, the indictment outlines numerous instances where Ver's advisors requested Ver provide them with the foundational information of how many

1 bitcoins Ver owned—and numerous instances where Ver either refused to
2 tell them or lied.

3 In addition, the indictment alleges that in 2017, Ver took
4 personal ownership of his companies' bitcoins, which he had been
5 advised could trigger U.S. tax consequences to him. He later sold
6 many of them for over \$200 million. Yet, when his accountant asked
7 him point blank whether he had received any property or distributions
8 from the companies, Ver lied and said no. The accountant then
9 prepared a tax return incorporating that lie, which Ver signed under
10 penalties of perjury.

11 Now, while Ver sits on the Mediterranean island of Mallorca¹
12 contesting his extradition to the U.S., Ver has moved to dismiss the
13 indictment against him on three grounds: (1) the tax imposed upon
14 some high-net-worth or high-income individuals who relinquish their
15 U.S. citizenship is unconstitutional, (2) the charges are void for
16 vagueness due to purported uncertainty in bitcoins' tax treatment,
17 and (3) the indictment supposedly selectively quotes from certain
18 communications.

19 Ver does not raise a single legal or factual ground that
20 warrants dismissal. And given Ver's status as a constructive
21 fugitive, this Court should decline to rule on his motion at this
22 time and then, only after Ver has been extradited, deny it.
23
24
25
26

27 ¹ See David Voreacos & Olga Kharif, 'Bitcoin Jesus' Fights IRS
28 Tax Evasion Case From Spanish Island, Bloomberg (November 13, 2024),
<https://www.bloomberg.com/news/articles/2024-11-13/-bitcoin-jesus-fights-irs-tax-evasion-case-from-spanish-island>.

1 **II. BACKGROUND**

2 **A. Factual Background**

3 An early bitcoin investor, Ver began acquiring bitcoins in 2011
4 for himself and his two companies, MemoryDealers and Agilestar.
5 (Indictment ¶¶ 6-7.) By early 2014, Ver controlled—either directly or
6 through his companies—approximately 131,000 bitcoins, most of which
7 Ver acquired for less than \$32 each. (*Id.* ¶ 27(e)(i).) By February
8 2014, the bitcoin price shot up and was trading on large exchanges
9 for between \$782 and \$960. (*Id.*) From the start, Ver was an avid
10 promotor of bitcoins, even earning the moniker “Bitcoin Jesus.” (*Id.*
11 ¶ 6.)

12 Ver touted one aspect of bitcoins: how they allow people to hide
13 their income and evade their taxes. For example, in February 2016—
14 just a few months *before* Ver filed his expatriation-related returns—
15 Ver gave a speech at “Anarchapulco,” an annual “anarcho-capitalist”
16 convention, where he said bitcoin makes tax evasion “incredibly
17 easy”:

18 Bitcoin completely undermines the power of every
19 single government...to tax people's income, to
20 control them in any way....

21 Bitcoin [] makes it so incredibly easy for people
22 to hide their income or evade taxes...

23 Ex 1. ¶ 6 (Declaration of Jeremiah Haynie). Ver then gleefully
24 recounted how multiple people had contacted him asking for advice
25 about how to use bitcoin to evade their taxes, including one
26 “panicked” friend who told Ver “I need you to show me how to hide my
27 bitcoin so that I don’t have to pay taxes on it.” (*Id.*)

28 As his bitcoin portfolio grew, Ver expatriated. (Indictment ¶¶
17-18). He relinquished his U.S. citizenship for all non-tax purposes

1 in February 2014 when he became a Kittitian citizen, and did so for
2 tax purposes in March. (*Id.*) As explained below, as a high-net-worth
3 individual who performed one of four triggering acts, Ver's
4 relinquishment had tax consequences. (*Id.* ¶¶ 13-14.) Ver hired
5 professionals—lawyers, accountants, and appraisers—to advise him on
6 those consequences. (*Id.* ¶¶ 15-16.) But when these professionals
7 repeatedly sought information from Ver regarding his bitcoins, Ver
8 hid that information from them. (*Id.* ¶¶ 27(e)(iv), (vi), (xvi), (xx)-
9 (xxii).)²

10 Ver also did not correct Appraiser 2's, an appraiser Ver hired,
11 wildly inaccurate valuations of the companies, including their
12 bitcoins, even after being alerted of an issue with them. (*Id.* ¶¶
13 27(e)(viii)-(xiv).) Relying on the company's records, Appraiser 2
14 included a value of MemoryDealers' bitcoins at around \$1.3 million
15 and Agilestar's at \$113,582. (*Id.* ¶ 27(e)(x).) These figures would
16 have been clearly inaccurate to Ver. Collectively, the companies
17 possessed approximately 73,000 bitcoins. (*Id.* ¶ 27(e)(i).) Thus,
18 Appraiser 2's valuation of the companies treated the bitcoins as
19 being worth only about \$19 each, which amounted to a 98% discount
20 from bitcoins' price on the open market. Put another way, Appraiser 2
21
22

23 ² Ver claims that the IRS offered "amnesty" in 2019 to taxpayers
24 who had not reported their cryptocurrency gains but not to him. (Ver
25 Brief at 3 n.1 ("Br.").) That press release does nothing of the sort,
26 only announcing that certain taxpayers would receive so-called
27 "educational letters" about the taxation of virtual currency. Two of
28 them included a warning that if the taxpayer did "not accurately
report [their] virtual currency transactions, [they] may be subject
to future civil and criminal enforcement activity." *E.g.*, Letter
6174, (6-2019), I.R.S. (July 16, 2019),
https://www.irs.gov/pub/notices/letter_6174.pdf. Only those taxpayers
who had not yet filed a tax return were to receive the letter without
the warning.

1 effectively valued the two companies as if they held only 1,758
2 bitcoins, not 73,000.

3 Employee 1, a MemoryDealers employee, provided the appraisals to
4 Return Preparer 2-the companies' outside accountant-for his input.
5 (*Id.* ¶ 27(e)(xi).) In response, Return Preparer 2 questioned the
6 bitcoins' valuations, and instructed them to clarify with Appraiser 2
7 "if the Bitcoin values are market value on the dates of valuation."
8 (*Id.*) He further explained that the "value should be: the total
9 Bitcoins x the Average Market Price on Date of Valuation." (*Id.*)
10 Employee 1 shared this response with Ver, but Ver raised no
11 objection. (*Id.* ¶ 27(e)(xii)-(xiii).)³ Instead, the valuations were
12 provided unchanged to Law Firm 1 and incorporated into Ver's returns.
13 (*Id.* ¶ 27(e)(xiv).)

14 As for Ver's personal bitcoin holdings, Ver told Appraiser 2
15 that he owned approximately 25,000 bitcoins himself. (*Id.* ¶
16 27(e)(xxvi).) For this to be true, it would mean Ver believed that of
17 his 131,000 bitcoins, his companies held 106,000, with a market value
18 of \$82 million, an even larger discrepancy from the \$1.4 million
19 value Appraiser 2 assigned them. (*Id.* ¶ 22.) Ver was thus well aware
20 that Appraiser 2's conclusions were wrong.

21 After years of repeatedly telling his advisors that he
22 personally owned bitcoins, Ver changed course, providing a new lie
23 that he believed he had given his girlfriend all his bitcoins years
24 earlier. Ver told Lawyer 1: "[p]erhaps it will be easier for tax
25 reporting requirements if I gave all my bitcoins to my partner (not
26

27 ³ Ver's discussion of the nature of the bitcoin markets in his
28 brief, e.g. Br. at 5, is irrelevant considering Ver's
misrepresentations and concealments about the number of bitcoins he
and his companies owned.

1 legally married wife) in Japan?" (*Id.* ¶ 27(e)(xxvii).) Subsequently,
2 Ver filed a gift tax return in May 2016, falsely claiming he had
3 gifted 25,000 bitcoins to his girlfriend in November 2011. (*Id.* ¶
4 27(e)(xxix).) And yet all the while, he had continued to spend them.
5 In fact, just a few months before he expatriated, Ver donated over \$1
6 million worth of bitcoins to charity and claimed a tax deduction for
7 it. (*Id.* ¶ 11.)

8 Unsurprisingly then, Ver's expatriation-related tax returns,
9 filed in May 2016, drastically misrepresented his bitcoin holdings.
10 Ver's 2014 Initial and Annual Expatriation Statement (Form 8854) did
11 not report any personally owned bitcoins and underreported the values
12 of his companies. (*Id.* ¶ 27(g).) His 2014 U.S. Nonresident Alien
13 Income Tax Return (Form 1040NR) did not report or pay tax on any gain
14 from the constructive sale of any personally owned bitcoins and
15 substantially underreported gains from the constructive sales of the
16 companies. (*Id.* ¶ 27(f).)

17 Ver also misrepresented and concealed income he received in 2017
18 from distributions of his companies' bitcoins to him. On June 19,
19 2017, Ver instructed Employee 1 to "close out" the bitcoin balance,
20 which caused the removal of all bitcoins as assets from his
21 companies' financial records. (*Id.* ¶ 27(i)(iv).) Ver later
22 transferred tens of thousands of bitcoins to exchange accounts in his
23 name and sold them. (*Id.* ¶ 27(vi).) He then transferred approximately
24 \$240 million to Bahamian bank accounts under his control. (*Id.*)

25 Ver concealed these bitcoin distributions from Return Preparer
26 1. (*Id.* ¶ 27(vii).) When Return Preparer 1 asked if he had received
27 any income or distributions from the companies during 2017, Ver lied
28

1 and said he had not.⁴ (*Id.*) Thus, Ver's 2017 Form 1040NR did not
2 report any gain or pay any tax related to these distributions. (*Id.*
3 ¶ 27(viii).)

4 All told, the false statements and material omissions on Ver's
5 2014 and 2017 returns caused at least a \$48 million tax loss to the
6 U.S. (*Id.* ¶ 27(j)).⁵

7 **B. Procedural History**

8 A grand jury returned an indictment on February 15, 2024,
9 charging Ver with three counts of mail fraud, in violation of 18
10 U.S.C. § 1341; two counts of tax evasion, in violation of 26 U.S.C. §
11 7201; and three counts of filing false tax returns, in violation of
12 26 U.S.C. § 7206(1).

13 At the government's request, Ver was arrested in Spain on April
14 26, 2024. (Ex. 1 ¶ 5.) Since then, Ver has resisted the government's
15 extradition request. (*Id.*) In October 2024, a Spanish court granted
16 the request. (*Id.*) Ver appealed. (*Id.*) Ver is not currently detained.
17 (*Id.*)

18 **C. Expatriation and the Tax Code**

19 For nearly sixty years, Congress has imposed a tax on certain
20 individuals who relinquish their U.S. citizenship. See Foreign
21 Investors Tax Act of 1966, Pub. L. 89-809, 80 Stat. 1539 (codified at
22 I.R.C. § 877). In 1996, Congress added a requirement that any U.S.
23 citizen who gives up their citizenship must provide the government
24

25 ⁴ It is irrelevant that Ver and Return Preparer 1 later
26 discussed Ver's bitcoin sales on U.S. exchanges, (see Br. at 10), as
27 the taxable event was the distribution of the bitcoins, not their
sale.

28 ⁵ Bizarrely, even though the indictment specifically alleges how
much tax Ver did not pay, Ver repeatedly claims otherwise, (Br. at 1,
2, & 12).

1 with information detailing their "income, assets, and liabilities."
2 See Health Insurance Portability and Accountability Act, Pub. L. 104-
3 191, 110 Stat. 1936 (now codified at I.R.C. § 6039G). Finally, in
4 2008, Congress replaced the tax under section 877 with the current
5 regime, which resides in section 877A of the Code. These provisions
6 generally require the payment of an "exit tax" by certain high-income
7 or high-net-worth expatriates and the filing of an expatriation
8 statement.

9 1. The Exit Tax

10 Loss of U.S. citizenship does not, on its own, trigger the tax
11 and is instead governed by different standards. The Immigration and
12 Nationality Act ("INA") governs when an individual loses U.S.
13 citizenship for all purposes other than tax. See 8 U.S.C. §§ 1481-89.
14 One loses citizenship under the INA by committing certain acts,
15 including obtaining citizenship in another country or enlisting in a
16 foreign army that is engaged in hostilities against the U.S. *Id.* §
17 1481.

18 By contrast, under the Tax Code, an individual is still
19 considered a U.S. citizen for tax purposes until the earliest of four
20 events:

- 21 • Renouncing one's citizenship before a U.S. diplomatic or
22 consular officer,
- 23 • Providing the State Department with a signed statement of
24 voluntary relinquishment of U.S. nationality,
- 25 • The State Department issues a certificate of loss of
26 nationality, or
27 nationality, or
28

- A court enters an order canceling a naturalized citizen's citizenship.

I.R.C. §§ 877A(g)(4), 7701(50). Until one of these events occurs, an expatriate continues to be treated as a U.S. citizen for tax purposes and does not owe the exit tax.

Once an individual relinquishes citizenship for tax purposes, section 877A imposes a tax only if they are a "covered expatriate." *Id.* § 877A(a). A "covered expatriate" is defined narrowly. Other than someone who fails to file the requisite certification, it only applies to an individual whose:

- Average annual net income tax (not income) exceeds \$124,000 [in 2004 dollars, adjusted for inflation], or
- Net worth on the expatriation date for tax purposes is greater than \$2,000,000.

In other words, *only* high-income or high-net-worth expatriates may owe a tax, and even then, some do not.⁶

In determining the amount of such tax, if any, all property of a covered expatriate is treated as having been sold on the day before the expatriation date for the property's fair market value. *Id.* § 877A(a)(1). A tax is owed if there is a gain above \$600,000 (in 2008 dollars, adjusted for inflation). *Id.* § 877A(a)(3). Conversely, if

⁶ According to a recent report, less than 12% of all expatriates satisfied either requirement. See Treasury Inspector General for Tax Administration, *More Enforcement and a Centralized Compliance Effort Are Required for Expatriation Provisions*, Oversight.gov (Sept. 20, 2020), <https://www.oversight.gov/sites/default/files/documents/reports/2020-09/202030071fr.pdf>.

1 there is a loss, the taxpayer can use those losses to offset their
2 other income if otherwise allowed. *Id.* § 877A(a)(2)(B).

3 Even then, covered expatriates have the option of deferring, for
4 any reason, the payment of the exit tax with respect to any property
5 until after such property is disposed of, so long as a bond is
6 posted. *Id.* § 877A(b).

7 2. Expatriation Statement

8 In addition to the exit tax, expatriates must provide a
9 statement that details, among other things, their “income, assets,
10 and liabilities.” *Id.* § 6039G. They use Initial and Annual
11 Expatriation Statement (Form 8854), to satisfy this requirement.⁷

12 **III. STANDARD OF REVIEW**

13 Though he does not cite it, Ver presumably filed this motion
14 under Federal Rule of Criminal Procedure 12(b)(1). Importantly, such
15 motions are not vehicles to weigh the strength or weakness of the
16 government’s evidence. See *United States v. Jensen*, 93 F.3d 667, 669
17 (9th Cir. 1996). And “[t]he allegations of the indictment are
18 presumed to be true.” *United States v. Buckley*, 689 F.2d 893, 897
19 (9th Cir. 1982).

20 **IV. THE COURT SHOULD APPLY THE FUGITIVE DISENTITLEMENT DOCTRINE**

21 Under the fugitive disentitlement doctrine, a party “who seeks
22 to invoke the processes of the law while flouting them has no
23 entitlement to call upon the resources of the Court for determination
24 of his claims.” *Conforte v. Commissioner*, 692 F.2d 587, 589 (9th Cir.
25 1982) (cleaned up). Courts exercise their discretion under this
26

27 ⁷ See 2024 Instructions for Form 8854, IRS.gov,
28 <https://www.irs.gov/instructions/i8854> (last visited January __,
2025).

1 doctrine to deny pretrial relief—including motions to dismiss.⁸
2 **Because Ver is a fugitive**, the Court should decline to rule on his
3 motion until he is extradited.

4 **A. Ver Is a Fugitive**

5 Ver insists that he cannot be considered a fugitive under the
6 doctrine. (Br. at 13 n.9.) But “a defendant need not be present in
7 and leave a jurisdiction to become a fugitive; the mere refusal to
8 report for prosecution can constitute constructive flight,” *United*
9 *States v. Martirossian*, 917 F.3d 883, 890 (6th Cir. 2019), including
10 when one resists extradition, *Schuster v. United States*, 765 F.2d
11 1047, 1050 (11th Cir. 1985). See also *United States v. Shalhoub*, 855
12 F.3d 1255, 1263 (11th Cir. 2017); *In re Assets of Martin*, 1 F.3d
13 1351, 1356 (3d Cir. 1993); *United States v. Catino*, 735 F.2d 718, 722
14 (2d Cir. 1984).

15 Though the Ninth Circuit has yet to address constructive flight
16 in the fugitive disentitlement context,⁹ it has done so in the civil
17 forfeiture context. There, a fugitive is someone who fails to “enter
18 or reenter the United States in order to avoid criminal prosecution
19 once he [learns] that . . . a warrant for his arrest [has] issued.”
20 *United States v. \$671,160.00 in U.S. Currency*, 730 F.3d 1051, 1056
21 (9th Cir. 2013) (cleaned up). Thus, the fact that Ver was outside the
22 U.S. when he was indicted is irrelevant. His knowledge of the charges
23
24

25 ⁸ See, e.g., *United States v. Chung Cheng Yeh*, No. CR 10-00231
26 WHA, 2013 WL 2146572, at *3 (N.D. Cal. May 15, 2013); *United States*
v. Stanzone, 391 F. Supp. 1201, 1202 (S.D.N.Y. 1975).

27 ⁹ See *In re Han Yong Kim*, 571 F. App'x 556, 557 (9th Cir. 2014)
28 (finding no clear error in district court's application of doctrine
to foreign national who constructively fled by refusing to
voluntarily return).

1 against him and his refusal to submit to this Court's jurisdiction
2 makes him a fugitive. See *id.* at 1056-57.

3 **B. The Equities Support Application of the Doctrine**

4 The fugitive disentitlement doctrine is equitable. *United States*
5 *v. Gonzalez*, 300 F.3d 1048, 1051 (9th Cir. 2002). The doctrine
6 advances several important interests. First, it "prevent[s] the entry
7 of unenforceable judgments against absent criminal defendants."
8 *Mastro v. Rigby*, 764 F.3d 1090, 1095 (9th Cir. 2014). Second, it
9 avoids wasting resources on defendants who effectively waived their
10 opportunity to participate in the judicial process by flouting the
11 Court's authority. *E.g.*, *Martirossian*, 917 F.3d at 890. Finally, it
12 deters flight and promotes efficient, dignified judicial proceedings.
13 *Ortega-Rodriguez v. United States*, 507 U.S. 234, 242 (1993). These
14 equitable considerations support applying it here.

15 First, if the court rules against Ver, its ruling is
16 unenforceable while he remains a fugitive. Courts have long declined
17 to entertain motions in such circumstances. *Ortega-Rodriguez*, 507
18 U.S. at 239-40; accord *Smith v. United States*, 94 U.S. 97, 97 (1876).
19 If Ver wants to challenge his indictment, "[a]ll he has to do is show
20 up." *Martirossian*, 917 F.3d at 890. But until he does, any adverse
21 ruling would amount to an advisory opinion that Ver can merely ignore
22 from the safety of another hemisphere. *Id.*

23 Second, the Court need not commit time and resources to
24 resolving claims that Ver has waived by his absence. See *Parretti v.*
25 *United States*, 143 F.3d 508, 511 (9th Cir. 1998). Flight is
26 "inconsistent with the pursuit of judicial remedies" and "constitutes
27 a voluntary waiver" of a defendant's claims while he remains a
28 fugitive. *United States v. Murguia-Oliveros*, 421 F.3d 951, 954 (9th

1 Cir. 2005). Ver's refusal to submit to the Court's jurisdiction thus
2 "disentitles [him] to call upon the resources of the Court for
3 determination of his claims." *Molinaro v. New Jersey*, 396 U.S. 365,
4 366 (1970) (per curiam).

5 Third, most importantly, applying the doctrine here would deter
6 Ver from further flight. *Ortega-Rodriguez*, 507 U.S. at 242. Given his
7 vast financial resources and access to an oceanworthy yacht he
8 purchased in Spain after his arrest there, (Ex. 1 ¶¶ 7-8), Ver could
9 flee Spain. Entertaining Ver's pre-arraignment motion and ruling
10 against him could incentivize him to do so. See *Parretti*, 143 F.3d at
11 510-11.

12 In contrast, when courts have declined application of the
13 doctrine, those decisions rested on considerations not present here.
14 In *In re Hijazi*, 589 F.3d 401 (7th Cir. 2009), the Seventh Circuit
15 declined to apply the doctrine because Hijazi-unlike Ver-challenged
16 the indictment on jurisdictional grounds, had virtually no ties to
17 the U.S., and because his extradition was impossible due to a lack of
18 an extradition treaty with Kuwait. *Id.* at 407; see also *United States*
19 *v. Bescond*, 24 F.4th 759, 773 (2d Cir. 2021) (declining to apply the
20 doctrine because "Bescond's presence abroad is unrelated to the
21 American prosecution...."). Ver, by contrast, owned two U.S.-based
22 businesses and until he learned he was under investigation traveled
23 to the U.S. frequently. (Ex. 1 ¶ 9.) Only when he learned he was
24 under investigation, did he cease traveling here. (*Id.*)

25 In sum, Ver's pre-arraignment motion-made from a safe distance-
26 presents exactly the sort of "heads I win, tails you lose" scenario
27 that the doctrine seeks to prevent. *United States v. Terabelian*, 105
28 F.4th 1207, 1218 (9th Cir. 2024). Ver "is willing to enjoy the

1 benefits of a legal victory, but is not at all prepared to accept the
2 consequences of an adverse holding." *Stanzione*, 391 F. Supp. at 1202.
3 So long as he refuses to answer the indictment in the U.S., he should
4 not get to challenge it from Spain. Applying the doctrine now would
5 not bar the Court from ever considering his arguments. The government
6 only requests that the Court entertain them post-extradition.

7 **V. MERITS ARGUMENTS**

8 Ver offers three reasons why he should not have to face his
9 criminal charges. First, he asserts that the exit tax is an
10 unconstitutional direct tax that violates the right to expatriate.
11 Second, he claims his charges rest on impermissibly vague statutory
12 foundations because the tax treatment of cryptocurrency was
13 unsettled.¹⁰ Third, Ver alleges that the government secured the
14 indictment through selective quotation. Specifically, he accuses the
15 government of selectively quoting from documents and failing to
16 present purportedly exculpatory evidence to the grand jury.

17 These arguments quickly fall apart. First, the exit tax is a
18 familiar indirect tax that falls squarely within Congress' taxing
19 powers. Second, indictments cannot be unconstitutionally vague solely
20 because they involve bitcoins. And finally, Ver's allegation of
21 "selective quotation" twists the facts, overlooks the role of the
22 grand jury, and does not come close to meeting the extremely high
23 standard for dismissal for due process violations. As Ver advances no
24

25
26 ¹⁰ Notably, these first two arguments, if accepted, would not
27 result in a dismissal of the indictment. At most, it would only
28 result in the dismissal of counts 4 and 6, as these are the only
counts predicated solely on the exit tax. Counts 1, 2, and 7 also
relate to Ver's violation of his obligation to report his assets
under I.R.C. § 6039G. Counts 3, 5, and 8 do not concern the exit tax
at all.

1 viable ground to dismiss any of his charges, if the Court reaches the
2 merits of Ver's arguments, it should deny his motion.

3 **A. The Exit Tax Is Constitutional**

4 1. The Tax Falls Within Congress' Taxing Power

5 Ver argues that the exit tax is an unapportioned direct tax that
6 falls outside the Sixteenth Amendment. Ver is wrong.

7
8 a. *The exit tax is an indirect tax that need not be
apportioned*

9 Congress enjoys broad "[p]ower [t]o lay and collect Taxes,
10 Duties, Imposts and Excises." U.S. Const., Art. I, § 8, cl. 1. These
11 taxes take one of two forms: direct or indirect. *Moore v. United*
12 *States*, 602 U.S. 572, 582 (2024). Direct taxes must be apportioned
13 among the states according to each state's population. U.S. Const.,
14 Art. I, § 9, cl. 4. But apportionment is difficult to achieve, so
15 virtually all federal taxation occurs through indirect methods. See
16 *Moore*, 602 U.S. at 582 ("Congress has not enacted an apportioned tax
17 since the Civil War."). Indirect taxes need only be "uniform
18 throughout the United States." U.S. Const. Art. I, § 8, Cl. 1. This
19 is a low bar. An indirect tax that applies without "actual geographic
20 discrimination" generally passes muster. *United States v. Ptasynski*,
21 462 U.S. 74, 85 (1983).

22 The Supreme Court has defined direct taxes extremely narrowly to
23 include only two types of taxes: capitations¹¹ and taxes on real and
24 personal property. *Nat'l Fed'n of Indep. Bus. v. Sebelius*, 567 U.S.
25 519, 571 (2012). All other levies fall under the broad umbrella of
26

27
28 ¹¹ Capitations refer to taxes paid by every person "without regard
to property, profession, or any other circumstance." See *Hylton v.*
United States, 3 U.S. (3 Dall.) 171, 180 (1796) (opinion of Chase, J.).

1 indirect taxes. See *Brushaber v. Union Pac. R. Co.*, 240 U.S. 1, 13
2 (1916). Unlike direct taxes, indirect taxes take many forms. See
3 *Moore*, 602 U.S. at 582-83. Congress can lay indirect taxes on a wide
4 range of "activities or transactions." *Id.* at 582. These include
5 "customs and excise duties imposed on importation, consumption,
6 manufacture, and sale of certain commodities, privileges, particular
7 business transactions, vocations, occupations, and the like." *Thomas*
8 *v. United States*, 192 U.S. 363, 370 (1904). The Supreme Court has
9 "long interpreted those categories of taxes broadly." *Moore*, 602 U.S.
10 at 603 (Jackson, J., concurring). Here, the exit tax falls squarely
11 within Congress's indirect taxing power.

12 *b. Section 877A creates an indirect tax*

13 The exit tax is an indirect duty, impost, or excise tax and thus
14 need not be apportioned. Like most indirect taxes, the tax is "laid
15 upon the happening of an event." *Tyler v. United States*, 281 U.S.
16 497, 502 (1930). It is triggered upon the occurrence of one of the
17 specified acts of expatriation. I.R.C. § 877A. As detailed above,
18 *supra* II.C., Congress devoted a considerable portion of the statute's
19 text to articulating the specific chain of events that must occur
20 before one becomes subject to the tax. See generally *id.*

21 By its nature, the exit tax cannot be direct—it falls outside
22 both categories of direct taxes the Supreme Court recognizes. See
23 *Sebelius*, 567 U.S. at 571. It is not a capitation because it is not
24 "paid by every person, without regard to property, profession, or any
25 other circumstance.'" *Id.* (quoting *Hylton*, 3 U.S. (3 Dall.) at 175
26 (opinion of Chase, J.)) (emphasis in original). And it is "plainly
27 not a tax on the ownership of land or personal property." *Id.* It
28 taxes the act of expatriation, not property ownership.

1 Taxes of this kind are nothing new. Since the Founding, Congress
2 has passed—and the Supreme Court has upheld—indirect taxes aimed at
3 specific events or activities. See *Hylton*, 3 U.S. (3 Dall.) at 180
4 (1796) (tax on carriages that applied to use of the carriage and not
5 the property itself); *Knowlton v. Moore*, 178 U.S. 41, 56 (1900)
6 (estate tax, with death as the operative event); *Patton v. Brady*, 184
7 U.S. 608, 623 (1902) (tax on tobacco held for sale but not yet sold);
8 *Thomas*, 192 U.S. at 370–71 (tax on contracts for sales of stock);
9 *Flint v. Stone Tracy Co.*, 220 U.S. 107, 151 (1911) (corporate tax
10 based on “privilege of doing business in a corporate capacity”),
11 *overruled on other grounds by Garcia v. San Antonio Metro. Transit*
12 *Auth.*, 469 U.S. 528 (1985); *United States v. Mfrs. Nat. Bank of*
13 *Detroit*, 363 U.S. 194, 198 (1960) (tax paid on insurance policy,
14 where the taxable event was the “maturing of the beneficiaries’ right
15 to the proceeds upon the death of the insured”); *Sebelius*, 567 U.S.
16 at 571 (tax on decision to not obtain health insurance).

17 Ver ignores this line of cases and insists, without analysis,
18 that indirect taxes must involve the transfer, use, or enjoyment of
19 the taxed property. (Br. at 14.) This is incorrect. While indirect
20 taxes certainly include those levied on transfers of property, they
21 also include taxes “laid upon the happening of an event, as
22 distinguished from its tangible fruits.” *Tyler*, 281 U.S. at 502
23 (emphasis added). Congress “undoubtedly may impose” indirect taxes
24 irrespective of any transfer, use, or enjoyment of the taxed
25 property. *Id.*; accord *Knowlton*, 178 U.S. at 56 (“[Whereas d]irect
26 taxes bear immediately upon persons, upon the possession and
27 enjoyment of rights; indirect taxes are levied upon the happening of
28 an event or an exchange.”). Such taxes survive review “even when

1 predicated on something that, if taxed on its own, might require
2 apportionment or even be nontaxable." *Moore*, 602 U.S. at 603
3 (Jackson, J. concurring).

4 The Supreme Court has consistently upheld indirect taxes aimed
5 at specified acts or events—distinct from any transfer, use, or
6 enjoyment of the taxed property. In the estate tax context, the Court
7 views death as the operative event, not the transfer of the
8 decedent's property to a successor. See *Tyler*, 281 U.S. at 502;
9 *Knowlton*, 178 U.S. at 81-83 (rejecting the theory that excise taxes
10 include only taxes that can be "shift[ed]," such as from a
11 manufacturer or retailer to a consumer). Likewise, the Court has
12 upheld corporate income taxes as indirect taxes on "the actual doing
13 of business in a certain way." *Flint*, 220 U.S. at 150. Congress may
14 even tax *inaction*. See *Sebelius*, 567 U.S. at 571. In *Sebelius*, the
15 Supreme Court upheld a tax, labeled a "shared responsibility
16 payment," laid on people who did not obtain health insurance. *Id.* The
17 Court found the payment was not a direct tax, explaining that "[t]he
18 whole point of the shared responsibility payment is that it is
19 triggered by specific circumstances—earning a certain amount of
20 income but not obtaining health insurance." *Id.*

21 Just as Congress may impose a tax based on foregoing health
22 insurance, it may also impose a tax based on foregoing U.S.
23 citizenship. See *id.* at 571-74. Like the shared responsibility
24 payment in *Sebelius*, the exit tax applies to a specific circumstance—
25 here, certain acts of expatriation. I.R.C. § 877A. And because it is
26 not a capitation or a naked levy on land or personal property, it
27 cannot be a direct tax. See *Sebelius*, 567 U.S. at 571. Instead, the
28

1 exit tax falls squarely within Congress's broad indirect taxing
2 power. See *id.*

3 *c. Expatriation involves a transfer of property*

4 Even under Ver's flimsy theory that indirect taxes require some
5 transfer, use, or enjoyment of property, section 877A is still an
6 indirect tax. Expatriation fundamentally changes the status of an
7 expatriate's assets. "The United States was historically and
8 continues to be virtually unique in taxing its citizens, wherever
9 resident, on their worldwide income, solely by reason of their
10 citizenship." *Crow v. Commissioner*, 85 T.C. 376, 380 (1985). By
11 contrast, nonresident noncitizens are taxed only on income earned in
12 the U.S. See Kuntz & Peroni, U.S. Int'l Tax, Nondiscrimination
13 Clauses, ¶ C4.20, 2000 WL 530244, at *3 (2024). Thus, in substance,¹²
14 when a citizen expatriates and leaves the U.S., his assets follow
15 him. Like a decedent's estate—where the decedent's assets transfer
16 automatically to a separate taxable entity upon his death—
17 expatriation effectively transfers the expatriate's assets from a
18 U.S. citizen who ceases to exist to a non-U.S. citizen who is newly
19 born. *Cf. Murphy v. I.R.S.*, 493 F.3d 170, 185 (D.C. Cir. 2007) (tax
20 on "involuntary conversion" of "human capital" into a personal injury
21 damages award was an indirect tax).

22 When Ver expatriated, his assets effectively transferred from
23 Ver-the-U.S.-citizen to Ver-the-Kittitian-citizen. Those assets
24 ceased to be further taxable by the U.S. unless earned here. This
25 presents the sort of transfer of property that Ver claims,

27 ¹² "It is a black-letter principle that, in construing and
28 applying the tax laws, courts generally follow substance over form." *Mazzei v. Commissioner*, 998 F.3d 1041, 1054 (9th Cir. 2021) (cleaned up).

1 incorrectly, indirect taxes require. Thus, even accepting his
2 argument's flawed premise, section 877A would still lay an indirect
3 tax.

4 *d. Even if the exit tax is a direct tax, it still*
5 *passes constitutional muster*

6 Under the Sixteenth Amendment, even unapportioned direct taxes
7 are constitutional if they are income taxes. Ver contends the exit
8 tax is not a tax on income because there must be a realization event.
9 (Br. at 15.) But that is not the law.

10 In *Moore v. United States*, the Ninth Circuit was clear that
11 "whether the taxpayer has realized income does not determine whether
12 a tax is constitutional" and that "the Supreme Court has made clear
13 that realization of income is not a constitutional requirement." 36
14 F.4th 930, 936 (9th Cir. 2022), *aff'd*, 602 U.S. 572 (2024). Ver
15 attempts to reframe this decision as merely recognizing that
16 realization can occur even if someone else other than the taxpayer
17 realized the income. (Br. at 15-16.) But it cannot be true that both
18 "realization is not a constitutional requirement," as the Ninth
19 Circuit held, and that realization by someone *is* a requirement. *Id.*
20 *Moore* thus forecloses Ver's realization theory.

21 Ver's three attempts to escape *Moore*'s on-all-fours holding all
22 fail. First, to justify this purported "core rule" he cites a two-
23 justice concurrence and the dissent in the Supreme Court's *Moore*
24 decision. Yet, the five-justice majority made clear that it was not
25 deciding or addressing the realization issue. 602 U.S. at 588 n.3.
26 Thus, whatever value they do hold, the concurrence and the dissent
27 carry no force of law.

1 Second, Ver relies heavily on *Eisner v. Macomber*, 252 U.S. 189
2 (1920). (Br. at 13, 15.) But *Macomber* was “promptly and sharply
3 criticized” and limited to its facts. *Helvering v. Griffiths*, 318
4 U.S. 373, 375 (1943). The Ninth Circuit has also held that to the
5 extent *Macomber* “purported to offer a comprehensive definition of the
6 term income as used in the Sixteenth Amendment, it has been
7 discarded,” *United States v. James*, 333 F.2d 748, 752 (9th Cir.
8 1964), a view shared by many courts, see *Moore*, 602 U.S. at 602 & n.1
9 (Jackson, J. concurring) (collecting cases). It is no wonder then
10 that Justice Jackson warned that “any litigant seeking to sustain her
11 case on the basis of *Macomber* would have to bring back from the dead
12 its Court-created limit on Congress’s power.” *Moore*, 602 U.S. at 602.

13 Third, Ver also contends that the Ninth Circuit’s rejection in
14 *Moore* of a realization requirement was mere dicta. (Br. 16 n.10.) But
15 Ver fails to explain why, instead attacking the reasoning of the
16 Ninth Circuit’s holding (which was correct for the reasons stated
17 above). If anything, it was an alternative holding which remains
18 binding Circuit precedent. See *Best Life Assur. Co. of California v.*
19 *Commissioner*, 281 F.3d 828, 834 (9th Cir. 2002) (“[W]here a decision
20 rests on two or more grounds, none can be relegated to the category
21 of obiter dictum.”) (citation omitted).

22 Regardless, if the type of strict realization requirement
23 advocated by Ver were accepted, it would call into question numerous
24 other provisions of the Tax Code where Congress imposes taxes on
25 assets constructively sold at the end of a taxable year, including
26 regulated futures contracts, I.R.C. § 1256(a) and (b); securities
27 held by securities dealers, I.R.C. § 475(a); certain assets held by
28 life-insurance companies, I.R.C. § 817A(b); and certain stock in

1 passive foreign investment companies, I.R.C. § 1296(a). And Congress
2 taxes holders of discounted debt instruments on imputed interest
3 payments, even though no interest was actually paid, I.R.C. §
4 1272(a)(1)—a factor that drives prices in bond markets. Other
5 examples abound. See, e.g., I.R.C. § 305(c) (treating certain
6 transactions, such as “a change in redemption price,” as deemed
7 distributions to shareholders); I.R.C. § 467(a) (taxing lessors on
8 accrued rental payments, even if the payments are not made during the
9 taxable year); I.R.C. § 1259 (taxing persons on gains based on “a
10 constructive sale of an appreciated financial position”).

11 e. *Even if realization is required, it is satisfied*
12 Assuming arguendo, realization is a requirement, it is satisfied
13 here. The Supreme Court has long recognized that realization is not
14 equivalent to cash being placed in a taxpayer’s hand. *Diedrich v.*
15 *Commissioner*, 457 U.S. 191, 195 (1982). Realization may occur “by a
16 variety of indirect means” that result in a taxpayer being “placed in
17 a better position.” *Id.* Thus, when a gain has accrued, Congress is
18 entitled to “choose the moment of its realization and the amount
19 realized, for the incidence and the measurement of the
20 tax.” *MacLaughlin v. All. Ins. Co. of Philadelphia*, 286 U.S. 244, 250
21 (1932); see 1 Mertens Law of Fed. Income Tax’n § 5:5 (Mar. 2023)
22 (realization can occur by statute).

23 The Supreme Court’s decision in *Cottage Saving Ass’n v.*
24 *Commissioner* is instructive. 499 U.S. 554, 565 (1991). There, the
25 Court held that realization occurs when a change causes a property
26 owner to “enjoy legal entitlements that are different in kind or
27 extent.” *Id.* at 565. In so holding, it looked towards a trio of
28 decisions from the 1920s about corporate reorganizations. *Id.* at 562–

65 (discussing *United States v. Phellis*, 257 U.S. 156 (1921); *Weiss v. Stearn*, 265 U.S. 242 (1924); *Marr v. United States*, 268 U.S. 536 (1925)). In all three, shareholders of a corporation received shares in a newly formed corporation that was to hold the same property and conduct the same business as the old ones. *Id.* In *Phellis* and *Marr*, however, the new corporations were formed in different states such that the shareholders' shares had "different rights and powers in the same corporation." *Id.* at 565. As such, the Supreme Court held, "as long as the property entitlements are not identical, their exchange will allow both the Commissioner and the transacting taxpayer easily to fix the appreciated or depreciated values of the property relative to their tax bases." *Id.*

Similarly here, the act of expatriating and the transfer of Ver's property from Ver-the-U.S.-Citizen to Ver-the-nonresident-alien changed his legal relationship to his property. For example, consider his ownership of MemoryDealers and Agilestar. Before expatriation, both were S-Corporations that were not separate taxpayers. A distribution of property, such as bitcoins, would only be taxed once to the shareholder. After expatriation, by operation of law, their legal relationship changed. Both companies became C-Corporations, see I.R.C. § 1361(a)(2), and were separate taxpayers. Thus, a distribution of those same bitcoins could result in both the corporations and Ver owing tax. Ver's entitlements vis-a-vis the corporations and their property are not the same, allowing "both the Commissioner and the transacting taxpayer easily to fix the appreciated or depreciated values of the property relative to their tax base." *Cottage Sav.*, 499 U.S. at 565.

1 Moreover, section 877A explicitly allows a taxpayer to defer the
2 tax until disposition, a quintessential realization event. I.R.C. §
3 877A(b)(1). Although there are some conditions, the option to defer
4 payment until the time that the taxpayer receives the economic value
5 satisfies the type of realization contemplated by some Supreme Court
6 justices. *Moore*, 602 U.S. at 611 (Barrett, J., concurring)
7 (“realization may take many forms” and “a rigid definition does not
8 capture them all”).

9 2. The Tax Does Not Violate Due Process

10 Ver’s argument that section 877A unconstitutionally burdens the
11 right to expatriate fails. First, section 877A imposes no burden on
12 it; it merely eliminates any tax *benefit* from expatriation to certain
13 expatriates. Second, the right of these citizens to expatriate tax-
14 free is not a fundamental right protected by the Fifth Amendment’s
15 Due Process Clause. Third, the statute withstands any level of
16 scrutiny.

17 a. *Section 877A does not burden expatriation*

18 Ver paints the tax as some multi-million-dollar tax imposed on
19 all expatriates. But that is inaccurate. It is only imposed upon
20 those who expatriate *and* are high-net-worth or high-income
21 individuals. Furthermore, no tax is owed unless the gain from the
22 constructive sale exceeds a high threshold. So, to the extent the tax
23 is a burden, it only burdens a small subset.

24 It also imposes no burden on expatriation as such. The INA
25 provides the statutory right to expatriate by specifying several
26 mechanisms for individuals to expatriate—none of which is conditioned
27 on paying the tax. 8 U.S.C. § 1481(a) *et seq.* Further, nothing
28

1 precludes the State Department from issuing a Certificate of Loss of
2 Nationality ("CLN") based on the failure to pay the tax. See *id.*

3 And the separate tax that section 877A imposes is essentially
4 "tax neutral." It only imposes taxes that would have been imposed had
5 the taxpayer remained a U.S. citizen and disposed of their
6 property. See I.R.C. § 877A(a)(1) & (2). In fact, it imposes a lower
7 tax, because it exempts \$600,000 (adjusted for inflation) in gain.
8 See *id.* § 877A(a). At most, it changes only *the timing* of recognition
9 of that gain, and, even then, expatriates may defer payment. See *id.*
10 § 877A(b).

11 Furthermore, legislative history confirms Congress did not
12 intend to punish or deter citizens from expatriating. The Senate
13 Report states:

14 The Committee does not believe that the Internal
15 Revenue Code should be used to stop U.S. citizens
16 and residents from relinquishing citizenship or
17 terminating residency; however, the Committee also
18 does not believe that the Code should provide a
19 tax incentive for doing so. In other words, to the
20 extent possible, an individual's decision to
21 relinquish citizenship or terminate residency
22 should be tax-neutral.

23 S. Rep. No 110-1, at 43 (2007).

24 Section 877A thus does not burden the right to expatriate.

25 *b. Expatriation is not a fundamental right*

26 Ver's claim that expatriation is a fundamental constitutional
27 right is wrong. The Due Process Clause affords heightened protection
28 for certain enumerated or implied rights. *Dep't of State v. Munoz*,
602 U.S. 899, 910 (2024); *Washington v. Glucksberg*, 521 U.S. 702, 720
(1997) (collecting cases). The Constitution is silent on
expatriation, so Ver must be asserting an implied right.

1 Contrary to Ver's argument, "the Supreme Court has not
2 recognized that the right to abandon one's citizenship constitutes a
3 constitutional right." *Sze v. Johnson*, 172 F. Supp. 3d 112, 121
4 (D.D.C. 2016) (emphasis in the original), *aff'd sub nom, Sze v.*
5 *Kelly*, 2017 WL 2332592 (D.C. Cir. 2017) (per curiam); *see also*
6 *L'Association des Américains Acc. v. Dep't of State*, 656 F. Supp. 3d
7 165, 179 (D.D.C. 2023)

8 Ver misleadingly suggests, (Br. at 17), that the Supreme Court
9 found such a right in *Glucksberg* and *Savorgnan v. United States*, 338
10 U.S. 491 (1950). But *Glucksberg* only concerned assisted suicide, not
11 expatriation. 521 U.S. 702. In *Savorgnan*, while the Court stated in
12 dicta that, traditionally, the U.S. has supported the right of
13 expatriation, it also recognized there was a "common-law prohibition
14 of expatriation without the consent of the sovereign." 338 U.S. at
15 497.¹³ It would be inconsistent with the concept of a fundamental
16 constitutional right to require congressional consent before citizens
17 could exercise it.

18 Ver also mischaracterizes *Murray v. The Charming Betsy*, 6 U.S.(2
19 Cranch) 64 (1804) and *Maehr v. Dep't of State*, 5 F.4th 1100 (10th
20 Cir. 2021). Regarding *The Charming Betsy*, he quotes from counsel's
21 argument, not the Court's opinion, which begins 20 pages later and
22 explicitly declined to decide whether expatriation was possible. *Id.*
23 at 115-20. As to *Maehr*, Ver claims to be referencing the court's
24 holding. But he actually cites to a concurrence. The majority said
25 nothing about expatriation. *Id.* at 1119-22.

26
27 ¹³ Ver quotes from the Preamble to the 1868 Act. (See Br. at 17.)
28 As *Savorgnan* made clear, the Preamble was just Congress's
"declaration of policy", and the Act sought to "apply especially to
immigrants into the United States." 338 U.S. at 498 & n.11.

1 Finally, Ver relies on dicta from *Richards v. Sec'y of State*,
2 752 F.2d 1413 (9th Cir. 1985). (See Br. at 17.) In that pre-
3 *Glucksberg* case, the panel quoted the 1868 Act's Preamble and cited
4 *Afroyim v. Rusk*, 387 U.S. 253 (1967), for the proposition that the
5 right to voluntary expatriation was "placed" "on a constitutional
6 footing." *Id.* at 1422. Ver quotes from an errant phrase used only
7 once by the panel to describe appellant's argument. See *id.* That off-
8 the-cuff remark should not be construed as creating a fundamental
9 right on par with freedom of speech or marriage rights. Also, the
10 panel did none of the careful and rigorous analysis *Glucksberg* later
11 required when recognizing new constitutional rights, as discussed
12 below.

13 Moreover, the panel's dicta misconstrued *Afroyim*, which involved
14 the interpretation of the Fourteenth Amendment's Citizenship Clause,
15 not the Fifth Amendment's Due Process Clause. 387 U.S. at 268.
16 *Afroyim* simply held that there is a right against *involuntary*
17 expatriation and said nothing about the right to expatriate
18 *voluntarily*. See *id.*; also *Sze*, 172 F. Supp. 3d at 121.¹⁴

19 This Court should not take the extraordinary step of
20 recognizing-for the first time-a fundamental right to expatriation.
21 The Supreme Court has cautioned courts to "exercise the utmost care"

24 ¹⁴ Ver references 19 U.S.C. § 2432(a), which denies trade
25 benefits to countries that impose burdensome emigration taxes. But
26 this provision concerns emigration (changing locality), not
27 expatriation (changing citizenship). Further, if it were as Ver
28 claims, then the statute would require denying trade benefits to
countries like Canada, which impose an exit tax. See Income Tax Act,
R.S.C. 1985, c.1, § 128.1(4)(b); see also Andrew Appleby, *No
Migration Without Taxation: State Exit Taxes*, 60 HARV. J. ON LEGIS. 55,
66 (2023) ("many nations have implemented national level exit
taxes").

1 before “break[ing] new ground” in identifying unenumerated rights.
2 *Glucksberg*, 521 U.S. at 720.

3 To do so, this Court would need to engage in a lengthy
4 historical analysis, which Ver does not address. Such an analysis
5 first requires a “careful description” of the asserted fundamental
6 liberty interest, *id.*, which may demonstrate that a court need not
7 decide whether a broad right exists, *e.g.*, *San Antonio Indep. Sch.*
8 *Dist. v. Rodriguez*, 411 U.S. 1, 37 (1973). Here, Ver’s asserted
9 liberty interest is the right for similarly situated high-net-worth
10 individuals to expatriate tax-free. (Br. at 17-19.) Then, it requires
11 analyzing whether such a right is “deeply rooted in the Nation’s
12 history and tradition.” *Glucksberg*, 521 U.S. at 720-21. Here, it is
13 not.

14 First, as discussed above, under the common law there was no
15 right to renounce one’s citizenship without the consent of the
16 government. *Afroyim*, 387 U.S. at 258; see also *Shanks v. Dupont*, 28
17 U.S. (3 Pet.) 242, 246 (1830).

18 Congress gave such consent for the first time in the
19 Expatriation Act of 1907, Pub. L. No. 59-193, 34 Stat. 1228. This
20 statute “prescribe[d] the only means by which the expatriation of a
21 native-born American citizen may be accomplished.” *Yin v. United*
22 *States*, 31 F.2d 738, 739 (9th Cir. 1929). What is then “deeply
23 rooted” in this Nation’s history and tradition is that Congress can
24 prescribe whether and under what circumstances one can expatriate.¹⁵

25
26
27 ¹⁵ Also, the writ of *ne exeat republica*, which forbids a citizen
28 from leaving the country, demonstrates that, historically, there have
been limits on a citizen’s right to leave, including to ensure the
collection of their tax debts. See *United States v. Shaheen*, 445 F.2d
6, 9-10 (7th Cir. 1971).

1 Recognizing a fundamental right here would also conflict with
2 longstanding Supreme Court authority recognizing that the Due Process
3 Clause "is not a limitation upon the taxing power conferred upon
4 Congress." *Brushaber*, 240 U.S. at 24 (collecting cases). Were it
5 otherwise, the Constitution would "conflict with itself by
6 conferring, upon the one hand, a taxing power, and taking the same
7 power away, on the other, by the limitations of the due process
8 clause." *Id.* The Due Process Clause thus only limits taxes that are
9 either takings-in-disguise or fail rational basis review. *Id.* at 24-
10 25; accord *Barclay & Co. v. Edwards*, 267 U.S. 442, 450 (1924); see
11 also *Chiles v. United States*, 843 F.2d 367, 370-71 (9th Cir. 1987)
12 (citing *Brushaber*, rejecting claim that tax unduly impinged
13 constitutional right to interstate travel).

14 In sum, there is no fundamental right to expatriate deeply
15 rooted in the Nation's history and tradition. This Court should not
16 now create one.

17 c. *Section 877A passes rational basis and strict*
18 *scrutiny*

19 Because the right to expatriate tax-free is not a fundamental
20 right, section 877A need only bear a "reasonable relation to a
21 legitimate state interest." *United States v. Juvenile Male*, 670 F.3d
22 999, 1012 (9th Cir. 2012). Regardless, section 877A would also
23 satisfy strict scrutiny because it is narrowly tailored to further a
24 compelling government interest. See *Juvenile Male*, 670 F.3d at 1012.

25 Maintaining a sound tax system is a compelling government
26 interest. See *United States v. Rodgers*, 461 U.S. 677, 711 (1983);
27 *United States v. Lee*, 455 U.S. 252, 260 (1982). Likewise, the
28 government has a compelling interest in ensuring that the tax code

1 does not incentivize U.S. citizens to expatriate to evade their U.S.
2 taxes. And the exit tax is narrowly tailored. It is tax-neutral,
3 provides a substantial exemption, and permits deferred payment. Thus,
4 it satisfies rational basis review or strict scrutiny.

5 **B. Ver's Void-For-Vagueness Challenge Fails**

6 Ver presents a confusing hodgepodge of irrelevant facts and
7 arguments to claim that the indictment should be dismissed because it
8 is unconstitutionally vague. Nowhere does he identify the specific
9 statute he believes is vague. Instead, he appears to argue that the
10 entire Tax Code is unconstitutionally vague as applied to
11 cryptocurrency. (See Br. at 27.) But the actual charged crimes are
12 not vague, nor are the specific underlying tax rules. Ver's claims
13 are nothing more than an attempt to recast willfulness arguments,
14 which are inappropriate here, into constitutional ones and should
15 therefore be rejected.

16 1. Unconstitutional Vagueness Is a High Bar

17 Acts of Congress enjoy "strong presumptive validity," *United*
18 *States v. Nat'l Dairy Prods. Corp.*, 372 U.S. 29, 32 (1963), and
19 courts must "construe, not condemn, Congress' enactments," whenever
20 possible. *Skilling v. United States*, 561 U.S. 358, 403 (2010). A
21 criminal law is void only "if it is so vague that it fails to give
22 ordinary people fair notice of the conduct it punishes, or so
23 standardless that it invites arbitrary enforcement." *United States v.*
24 *Lucero*, 989 F.3d 1088, 1101 (9th Cir. 2021). "What renders a statute
25 vague is not the possibility that it will sometimes be difficult to
26 determine whether the incriminating fact it establishes has been
27 proved; but rather the indeterminacy of precisely what that fact is."
28 *United States v. Williams*, 553 U.S. 285, 306 (2008). Indeed, "perfect

1 clarity and precise guidance have never been required.” *Id.* at 308.
2 So long as there is some standard, it does not matter how “time-
3 consuming, difficult, and expensive to determine whether” something
4 falls within that standard. *Lucero*, 989 F.3d at 1102. Finally, in
5 determining whether a statute is vague, a court should look to prior
6 judicial decisions. *Id.* at 1102 n.11.

7 2. The Charges as Applied Are Not Vague

8 Ver demands that the indictment be dismissed because there was
9 not precise guidance on the overall taxation of bitcoins. (See Br. at
10 19.) Not only has no court required such precision, but the operative
11 statutes offer the necessary standards to ensure a person of ordinary
12 intelligence had fair notice that (1) upon expatriation bitcoins had
13 to be reported to the IRS and that a tax had to be paid on any gain,
14 and (2) that the distribution of bitcoins could constitute a taxable
15 dividend.

16 Ver does not argue that a person of ordinary intelligence did
17 not have notice that lying to cheat another of money, evading one's
18 taxes, or lying on a tax return were prohibited. Instead, he asserts
19 that the charges are vague because it had not been definitively
20 established that bitcoins were “property” under the Tax Code, upon
21 which the exit tax must be paid, because they could be foreign
22 currency. (See Br. at 19.) But this argument rests on an entirely
23 false dichotomy—foreign currency is property under the Tax Code. See
24 *infra* V.B.2.a. Either way, bitcoins are clearly subject to the exit
25 tax.

26 Relying solely on section 877A, Ver ignores sections 6039G and
27 301, the other operative tax provisions here, see *supra* 14 n.10,
28

1 which use different language and are an independent reason to deny
2 Ver's motion. Nevertheless, each provision will be discussed in turn.

3 a. Section 877A is clear

4 Section 877A lays out plain rules for when expatriates owe the
5 exit tax, on what property, and how to calculate it.¹⁶ Under those
6 rules, as described above, "all *property* of a covered expatriate
7 shall be treated as sold on the day before the expatriation date for
8 its fair market value." I.R.C. § 877A(a)(1) (emphasis added). "Fair
9 market value" is such a well-established concept in the law that it
10 is a standard that "truly is ubiquitous," *Estate of Elkins v.*
11 *Commissioner*, 767 F.3d 443, 449 (5th Cir. 2014). As the Supreme Court
12 and the Ninth Circuit have made clear, in such circumstances, there
13 is no constitutional concern even if there is some difficulty in
14 application. *Williams*, 553 U.S. at 306; *Lucero*, 989 F.3d at 1101.

15 That leaves the definition of "property" in I.R.C. § 877A.
16 Because this is an as-applied challenge, this Court only need
17 consider whether Ver had fair notice that his conduct was unlawful—in
18 other words, that bitcoins could be property. *See United States v.*
19 *Harris*, 705 F.3d 929, 932 (9th Cir. 2013). They clearly were.

20 Ver tries to muddy the waters by pointing to three so-called
21 "ideal analogs" for the treatment of bitcoins-foreign currency, non-
22 currency capital assets, and financial instruments-and suggesting
23 that their tax treatment under the exit tax may vary. (See Br. at 23-
24 25.) Unfortunately for Ver, the law is clear: each constituted
25 "property" under the Code and thus were subject to the exit tax.
26
27

28 ¹⁶ Ver does not argue that the provisions that determine whether
one is a covered expatriate are unconstitutionally vague.

1 First, Ver asserts that bitcoins might be foreign currency. (See
2 Br. at 22-24.) This is irrelevant, as “foreign currency is generally
3 considered to be ‘property’ for Federal income tax purposes.” *Nat’l*
4 *Standard Co. v. Commissioner*, 80 T.C. 551, 558 (1983), *aff’d*, 749
5 F.2d 369 (6th Cir. 1984); *accord Tiger Eye Trading, LLC v.*
6 *Commissioner*, 138 T.C. 67, 83 n.22 (2012), *aff’d in part, rev’d in*
7 *part on other grounds by Logan Trust v. Commissioner*, 616 F. App’x
8 426 (D.C. Cir. 2015).

9 Second, Ver claims that bitcoins might be non-currency capital
10 assets, which he describes as “property, other than foreign
11 currency.” (Br. at 24.) But a non-currency capital asset is also
12 “property” under the Code. See I.R.C. § 1221 (“[T]he term ‘capital
13 asset’ means property held by the taxpayer.”). Thus, it is subject to
14 the exit tax. Ver’s discussion of the differing accounting treatments
15 is irrelevant because they only apply when one sells “part of [their]
16 holdings,” (Br. at 24), while the exit tax requires one to value the
17 entirety.

18 Third, Ver hypothesizes that bitcoins might be treated as a
19 single financial instrument that could impact the computation of its
20 tax basis and holding period.¹⁷ Whatever the import or foundation of
21 this argument, it nevertheless remains irrelevant. Ver was not
22 indicted for miscalculating the holding period or tax basis of his
23 bitcoins. He was indicted because he lied about and concealed the
24 number and value of his bitcoins. Any purported ambiguity in
25 computing the basis or holding period for bitcoins is irrelevant if
26 one, like Ver, conceals the truth about how many bitcoins they own.

27
28 ¹⁷ He does not argue that it is unclear whether a “financial
instrument” is “property.”

1 In addition, Ver's arguments regarding IRS Notice 2014-21 are
2 unavailing. He argues that the Notice treats bitcoin as "property and
3 not virtual¹⁸ currency." (Br. at 25.) But the Notice does not state
4 that property and foreign currency are mutually exclusive, which is
5 consistent with the law discussed *supra* that recognizes foreign
6 currency as a type of property.

7 Ver's remaining arguments as to the Notice's validity are thus
8 irrelevant and regardless fail. Ver suggests the Notice could not
9 have guided him because it was issued after he expatriated. (See Br.
10 at 21, 25.) But the relevant charged crimes were not consummated
11 until at least 2016, when he filed his false expatriation-related tax
12 returns. Thus, he had the requisite notice when he filed his returns
13 two years after Notice 2014-21 issued.

14 And Ver's claim, (Br. at 26-27), that *Loper Bright Enters. v.*
15 *Raimondo*, 603 U.S. 369 (2024), undermined the Notice is wrong. *Loper*
16 *Bright* altered the deference given to agency regulations, *id.* at 412-
17 13, but the Notice is not a regulation, so it was not given *Chevron*
18 deference in any event. See *United States v. Mead*, 533 U.S. 218, 226-
19 27 (2001).

20 b. Sections 6039G and 301 are clear

21 In moving to dismiss, Ver appears to have forgotten that his
22 obligation to file a Form 8854 comes from an entirely different
23 provision of the Code. And that provision does not use the "property"
24 standard of which he complains. Rather, section 6039G requires
25 expatriates to file a statement detailing their "income, assets, and
26

27
28 ¹⁸ It appears from context that Ver's reference to "virtual
currency" is a typographical error and he intended to say "foreign
currency."

1 liabilities." Having made no argument that this provision is
2 unconstitutionally vague, Ver's motion to dismiss these counts should
3 be denied outright. Regardless, the standard for determining what
4 constitutes an "asset," and specifically whether bitcoins were
5 assets, is clear. In fact, Ver repeatedly describes bitcoin as an
6 "asset" in his brief. (See Br. at 7, 10, 20, 21, 22, 26 & n.36.)

7 Additionally, counts 3, 5, and 8 charge conduct unrelated to the
8 exit tax. Instead, they allege that Ver lied to his return preparer
9 about receiving hundreds of millions of dollars' worth of his
10 companies' bitcoins in 2017, which resulted in Ver filing a false tax
11 return. The distribution would have constituted a taxable dividend,
12 defined as "a distribution of property (as defined in section
13 317(a))." I.R.C. § 301(a). Section 317(a) defines "property" broadly
14 as "money, securities, and any other property." Once again, Ver's
15 false property-versus-foreign currency distinction is irrelevant
16 because the statute plainly applies to both.

17 3. Ver Had Notice

18 Ver's protestations about the uncertainty of the taxation of
19 bitcoins are purely hypothetical, as the indictment makes clear that
20 Ver understood precisely what the rules required of him. He simply
21 chose to break them. The indictment outlines numerous instances where
22 either Ver was advised that he had to report and pay tax on his and
23 his companies' bitcoin holdings or that demonstrate Ver understood he
24 was required by law to do so. (See, e.g., Indictment ¶¶ 27(b)(ii),
25 (b)(v), (e)(ii), (e)(iv), (e)(vii), (e)(xvi), (e)(xxii), (e)(xxv).)
26 Since he had actual notice, it strongly weighs against finding the
27 statutes vague as applied to him. See *Kashem v. Barr*, 941 F.3d 358,
28 373 (9th Cir. 2019).

4. Scienter Requirements Eliminate Any Vagueness Concern

The three criminal statutes charged here are specific intent crimes, which eliminates any potential vagueness concerns. See *Kawashima v. Holder*, 565 U.S. 478, 483 (2012) (false returns); *United States v. Fisher*, 607 F. App'x 645, 647 (9th Cir. 2015) (evasion); *United States v. Jinian*, 725 F.3d 954, 960 (9th Cir. 2013) (mail fraud). Indeed, "[a] scienter requirement in a statute alleviates vagueness concerns, narrows the scope of its prohibition and limits prosecutorial discretion." *McFadden v. United States*, 576 U.S. 186, 197 (2015) (cleaned up). This is because the specific intent elements "relieve the statute[s] of the objection"-which Ver has pressed here-"that it punishes without warning an offense of which the accused was unaware." *Screws v. United States*, 325 U.S. 91, 101-02 (1945).

C. Ver's "Selective Quotation" Argument Is Meritless

Lastly, relying on a tortured characterization of the indictment, Ver seeks dismissal by claiming it relies on "selective quotation" of certain communications. The indictment does nothing of the sort.¹⁹

In extremely rare circumstances, a district court may dismiss an indictment based on egregious due process violations, or when it finds dismissal is warranted under its supervisory powers. See *United States v. Bundy*, 968 F.3d 1019, 1030 (9th Cir. 2020). These grounds are extraordinarily narrow. See *United States v. Isgro*, 974 F.2d

¹⁹ Ver's claim of interference with his attorney-client privilege is a red herring. The government did no such thing, and regardless, the Ninth Circuit has foreclosed the argument. *United States v. Rogers*, 751 F.2d 1074, 1079 (9th Cir. 1985) ("[I]nducement of a violation of an [attorney's] ethical obligation of confidentiality . . . does not warrant dismissal of an indictment that results from that investigation.").

1 1091, 1097 (9th Cir. 1992). "One challenging an indictment carries a
2 difficult burden." *United States v. Al Mudarris*, 695 F.2d 1182, 1185
3 (9th Cir. 1983).

4 Dismissal on constitutional grounds requires a finding of
5 pervasive and systemic misconduct that undermines and infringes upon
6 the grand jury's independent judgment and impartiality. See *Isgro*,
7 974 F.2d at 1095. The misconduct must be "grossly shocking" and so
8 "outrageous as to violate the universal sense of justice." *United*
9 *States v. Kearns*, 5 F.3d 1251, 1254 (9th Cir. 1993). Similarly,
10 dismissal under a court's supervisory powers requires "flagrant
11 misbehavior" by the government and "substantial prejudice" to the
12 defendant. *Id.* at 1253.

13 Here, there was no misconduct by the government, let alone the
14 kind of **flagrant misbehavior necessary to justify dismissal**. Nothing
15 in Ver's motion suggests that the grand jury was misled. The
16 government stands behind the allegations in the indictment, and Ver's
17 exhibits only demonstrate their accuracy.

18 Attempting to carry his "difficult burden," Ver identifies four
19 allegations in the 26-page indictment that supposedly evidence a
20 pattern of "selective presentation." But they do not.

21 The first involves paragraph 27(c), which alleges a conversation
22 that occurred in December 2013. In "support," Ver points to an email
23 from April 2013. Ver must be aware that December and April are
24 different such that the indictment could not possibly "misleadingly"
25 summarize a December 2013 conversation by not incorporating
26 **statements made eight months earlier.**

27 The second involves paragraph 27(e)(vi), which summarizes an
28 email exchange between Ver and his advisors in August 2015. In

1 "support," Ver once again offers a completely different document from
2 a different month. And the very exhibit he attaches establishes the
3 allegation's accuracy. (See Ver's Ex. 4 at 1.) Ver highlights an
4 email he received in October 2015. The fact that the advice Ver
5 received from his advisors changed over time does not render the
6 indictment's allegation either incomplete or inaccurate. Moreover,
7 nothing suggests that the grand jury did not review the October 2015
8 email. To the contrary, Ver's so-called exculpatory email is
9 referenced in paragraph 27(e) (xvii).

10 In the last two, Ver does not present any purported misquotation
11 or misrepresentation but only muses that the "full communications"
12 show Ver "grappling with questions that were impossible to answer."
13 (Br. at 31.) Putting aside that during the same time Ver said he had
14 answers to these supposedly "impossible" questions, (e.g., Indictment
15 ¶ 27(e) (xix)), such musings provide no basis for dismissal.

16 To the extent Ver's motion can be read as arguing the government
17 failed to present exculpatory evidence, it is black letter law that
18 he "has no right to have exculpatory evidence presented" to the grand
19 jury. *United States v. Fritz*, 852 F.2d 1175, 1178 (9th Cir. 1988).

20 Nor is dismissal appropriate under the Court's supervisory
21 powers. See *United States v. Williams*, 504 U.S. 36, 52 (1992). Where
22 a defendant's claim is simply that the grand jury was presented with
23 unreliable, incomplete, or misleading information, this constitutes
24 an impermissible challenge to the adequacy or quality of the evidence
25 presented that cannot result in dismissal. *Id.* at 54-55; *Bank of Nova*
26 *Scotia v. United States*, 487 U.S. 250, 261 (1988) ("[A]n indictment
27 valid on its face is not subject to such a challenge.").

1 **VI. CONCLUSION**

2 In sum, when appropriate, Ver's motion should be denied.

3 Dated: January 13, 2025

Respectfully submitted,

4 E. MARTIN ESTRADA
5 United States Attorney

6 LINDSEY GREER DOTSON
7 Assistant United States Attorney
8 Chief, Criminal Division

9 /s/

10 MATTHEW J. KLUGE (PABN 204285)
Assistant Chief, Tax Division
11 PETER J. ANTHONY (NYBN 4940912)
Trial Attorney, Tax Division

12 JAMES C. HUGHES
13 Assistant United States Attorney

14 Attorneys for Plaintiff
15 UNITED STATES OF AMERICA
16
17
18
19
20
21
22
23
24
25
26
27
28

L.R. 11-6.2 Certificate of Compliance

The undersigned, counsel of record for the United States of America, certifies that this brief contains 10,449 words, which complies with the government's contemporaneously filed, unopposed application requesting an enlarged word limit of 10,500 words.

Dated: January 13, 2025

/s/

MATTHEW J. KLUGE (PABN 204285)
Assistant Chief, Tax Division

EXHIBIT 1

1 E. MARTIN ESTRADA
United States Attorney
2 LINDSEY GREER DOTSON
Assistant United States Attorney
3 Chief, Criminal Division
MATTHEW J. KLUGE (PABN 204285)
4 Assistant Chief, Tax Division
PETER J. ANTHONY (NYBN 4940912)
5 Trial Attorney, Tax Division
150 M Street N.E., Room 2.206
6 Washington, D.C. 20002
Telephone: (202) 305-3301
7 Facsimile: (202) 514-9623
E-mail: Matthew.J.Kluge@usdoj.gov
8 JAMES C. HUGHES (CABN 263878)
Assistant United States Attorney
9 1100 United States Courthouse
312 North Spring Street
10 Los Angeles, California 90012
Telephone: (213) 894-2579
11 Facsimile: (213) 894-6269
E-mail: James.Hughes2@usdoj.gov
12

Attorneys for Plaintiff
13 UNITED STATES OF AMERICA

14 UNITED STATES DISTRICT COURT

15 FOR THE CENTRAL DISTRICT OF CALIFORNIA

16 UNITED STATES OF AMERICA,

17 Plaintiff,

18 v.

19 ROGER KEITH VER,

20 Defendant.

No. CR 24-CR-00103-MWF

DECLARATION OF IRS SPECIAL AGENT
JEREMIAH HAYNIE IN SUPPORT OF
GOVERNMENT'S OPPOSITION TO
DEFENDANT'S MOTION TO DISMISS

21
22 I, Jeremiah Haynie, pursuant to 18 U.S.C. § 1746, declare as
23 follows:

24 1. I am over the age of 18 and competent as to the matters set
25 forth in this declaration.

26 2. I am employed as a Special Agent with the Internal Revenue
27 Service, Criminal Investigation ("IRS-CI"). I have been a Special
28 Agent with IRS-CI, working on financial and tax-related

1 investigations, for approximately twenty-three years. I am currently
2 assigned to the Washington, D.C. Field Office's Cybercrimes Unit,
3 which specializes in investigations of financial and tax crimes
4 involving the use of the internet, including the use of
5 cryptocurrencies.

6 3. I am the lead IRS-CI Special Agent assigned to the criminal
7 investigation of Roger Keith Ver.

8 4. Ver is a well-known investor in and promoter of
9 cryptocurrency. Through this investigation, I am familiar with Ver's
10 appearance and voice.

11 5. Ver was arrested in Barcelona, Spain, on April 26, 2024, at
12 the request of the United States government. Since then, Ver has
13 resisted extradition to the United States from Spain. On or about
14 October 29, 2024, a Spanish court granted the United States'
15 extradition request; Ver then appealed that decision, which remains
16 pending. Ver is currently not detained in Spain.

17 6. During the investigation, I obtained and reviewed a video
18 posted on YouTube on or about February 13, 2017, on a channel named
19 "Anarchapulco," titled "Roger Ver at Anarchapulco 2016." ("The
20 video"). According to its website, Anarchapulco 2016 occurred in
21 February 2016. The video is available at
22 <https://www.youtube.com/watch?v=rGC7EeR-rAw> and was last accessed on
23 January 10, 2025. Based on a review of its website, I know that
24 Anarchapulco is an annual "anarcho-capitalist" convention held in
25 Acapulco, Mexico. The video shows Ver giving a speech at the
26 convention and stating:

1 Bitcoin completely undermines the power of every
2 single government...to tax people's income, to
3 control them in any way....
4 Bitcoin [] makes it so incredibly easy for people
5 to hide their income or evade taxes...

6 (The video at 1:18-1:56). The video also shows Ver recounting
7 how multiple people contacted him asking for advice about how to use
8 bitcoin to evade their taxes, including one "panicked" friend who
9 told Ver "I need you to show me how to hide my bitcoin so that I
10 don't have to pay taxes on it." (The video at 2:06-3:34).

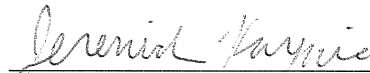
11 7. During the investigation, I obtained and reviewed evidence
12 indicating that Ver has substantial financial resources. Among other
13 things, this evidence includes a letter dated November 10, 2023,
14 from a representative of Ver indicating that Ver's net worth is
15 greater than \$1 billion.

16 8. After he was arrested in Barcelona, Spain, in April 2024,
17 Ver purchased a nearly \$70 million, oceanworthy yacht in Spain.

18 9. As part of this investigation, I reviewed Ver's individual
19 income tax returns, which he signed under penalties of perjury, for
20 multiple years. Per information on those returns, prior to December
21 2017, Ver frequently traveled to the United States. On average, for
22 the years 2012 through 2017, Ver spent 55 days in the United States
23 annually. In or about December 2017, Ver learned of the
24 investigation when the government served several subpoenas,
25 including a subpoena to the law firm that prepared Ver's
26 expatriation-related tax returns. Since learning of the
27 investigation, Ver has not traveled to the United States.
28

1 I declare under penalty of perjury under the laws of the United
2 States that the foregoing is true and correct to the best of my
3 knowledge and memory.

4
5 Executed on January 13, 2025, at East Lansing, Michigan.

6
7 

8 JEREMIAH HAYNIE

9 Special Agent

10 Internal Revenue Service, Criminal
11 Investigation