

## USG opposition to Motion to Dismiss Notes

**(Pg. 12-13)** “He relinquished his U.S. citizenship for all non-tax purposes in February 2014 when he became a Kittitian citizen, and did so for tax purposes in March.”

- so the expatriation has two separate dates? What does this mean?
- states that Ver was a high net worth person who performed one of four triggering acts (need clarity on what this means?) referenced also in the indictment para 13-14
  - I think also referenced in the indictment para 18 pg. 6 — it cites “the earliest of four events”
- claims Ver did not correct appraiser 2’s “wildly inaccurate valuation of his companies including their bitcoin (pg. 13)

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

**Ver’s input on ^ is:** “This is all nonsense too. The accountants knew all the personal and corporate bitcoins were in the same several wallets. The global trade volume was less than \$10M per day for all the bitcoins traded in the entire world, so the appraisal values of the companies and their bitcoins were very reasonable. I had no idea what percent they wanted to record as mine personally vs company bitcoins, and I had no opinion since I owned 100% of the companies too. When they asked me to pick a number, I chose the nice round number of 25,000”

- “Employee 1, a MemoryDealers employee, provided the appraisals to Return Preparer 2-the companies’ outside accountant-for his input.” (Pg. 14)
- accuses Ver of lying that he believed that he had given his girlfriend all of his bitcoin years earlier, however he never decided to do this. The lawyers and accountants decided to do this (pg. 14)
- Goes on to claim that “ver then filed a gift tax return in may 2016 falsely claiming he had gifted 25,000 bitcoins to his girlfriend in November 2011. (*Id.* ¶ 27(e)(xxix).) And yet all the while, he had continued to spend them. In fact, just a few months before he expatriated, Ver donated over \$1 million worth of bitcoins to charity and claimed a tax deduction for it.” (Pg. 15 L1-7)
  - Then as a result, ver’s expatriation related tax returns filed in may 2016 misrepresented his bitcoin holdings
  - Ver’s 2014 8854 did not report any personally owned bitcoins and underreported the values of his companies (pg 15)
  - Ver’s 2014 1040NR Form “did not report or pay tax on any gain from the constructive sale of any personally owned bitcoins and substantially underreported gains from the constructive sales of the companies.” (Pg 15)
- claims Ver misrepresented and concealed income he received in 2017 from distributions of his companies bitcoin to him
- **Ver’s response to this ^:** “As far as I and my accountants were concerned, there was no transfer of company bitcoins to me personally this year, and we already have 100% proof that I told them I sold bitcoin this year. They informed me that it wasn’t taxable or reportable in the USA, so I followed their instructions.”
- the doc claims “When Return Preparer 1 asked if he had received any income or distributions from the companies during 2017, Ver lied and said he had not.” (Pg 15)
- **Ver’s response to this:** “This wasn’t a lie. I hadn’t received any distributions from the companies that year.”
  - The USG footnote states: “It is irrelevant that Ver and Return Preparer 1 later discussed Ver’s bitcoin sales on U.S exchanges,

(see Br. at 10), as the taxable event was the distribution of the bitcoins, not their sale.”

- the doc claims that because of this Ver’s 2017 1040 NR did not report any gain or pay any tax related to these distributions (pg. 16)

### **Facts of the case (according to the USG):**

“All told, the false statements and material omissions on Ver’s 2014 and 2017 returns caused at least a \$48 million tax loss to the U.S.” (pg. 16)

“A grand jury returned an indictment on February 15, 2024, charging Ver with three counts of mail fraud, in violation of 18 U.S.C. § 1341; two counts of tax evasion, in violation of 26 U.S.C. § 7201; and three counts of filing false tax returns, in violation of 26 U.S.C. § 7206(1).” (Pg. 16)

Ver arrested in Spain on April 26, 2024

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### 1. The Exit Tax (pg. 17)

- loss of US citizenship does not on its own necessarily trigger the exit tax. Instead it is governed by different standards
- The Immigration and Nationality Act (INA) governs when a person loses citizenship for all purposes other than tax, this includes committing certain acts such as obtaining citizenship in another country (that does not allow dual citizenship?) or enlisting in a foreign army that is engaged in hostilities with the US, etc.

“By contrast, under the tax code, a person is still considered a US citizen for tax purposes until the earliest of four events:

- Renouncing one’s citizenship before a U.S. diplomatic or consular officer,
- Providing the State Department with a signed statement of voluntary relinquishment of U.S. nationality,
- The State Department issues a certificate of loss of nationality, or

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

“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.” (Pg. 18)

Once an individual relinquishes citizenship for tax purposes, section 877A imposes a tax only if they are a “covered expatriate.” (Pg. 18)

(Other than someone who fails to file requisite certification) A “covered expatriate is defined as someone 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.” (Pg. 18)

So therefore, typically, only high income or high net worth expatriates may owe and exit tax and even then, some do not.

- for the purposes of calculating the tax, all of the property of a covered expatriate must be treated as having been sold on the day before expatriation for the properties fair market value
- A tax is owed if there is a gain above 600,000 USD
- The person then must also file an expatriation statement including income assets and liabilities (pg. 19)

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- doc claims that Ver is a fugitive, Ver claims that he is not and is exercising his legal rights (pg. 19)
- The doc argues that “fugitive disentitlement doctrine, a party “who seeks to invoke the processes of the law while flouting them has no entitlement to call upon the resources of the Court for determination of his claims.” (Pg. 19)
- Claims that ver's refusal to enter the US after learning of the indictment against him makes him a fugitive according to United States v. \$671,160.00 in U.S. Currency, 730 F.3d 1051, 1056 (9th Cir. 2013) (pg. 20)

## B. The Equities Support Application of the Doctrine (fugitive doctrine)

Explains why it should be imposed (pg. 21)

- claims that if the court rules against Ver, the court cannot enforce its ruling while he remains a fugitive
- Claims the court need not commit time and resources to resolving claims that Ver has waived by his absence (pg. 21)
- Thirdly claims that invoking the doctrine would deter Ver from further flight (pg. 22)

Claims “Only when he learned he was under investigation, did he cease traveling here.” (Pg. 22)

**Ver's response ^:** “Because that was what my lawyers told me to do. I very rarely traveled to the USA before that anyhow.”

- the government requests that his requests (motion to dismiss) is considered by the court only after his extradition not prior (pg. 23) —> I think this is the purpose of invoking the Fugitive Doctrine

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Ver's motion to dismiss is based on three arguments

— first, that the exit tax is an unconstitutional direct tax that violated the right to expatriate, second, the charges rest on impermissibly vague statutory foundations because the regulations on taxing of crypto was unsettled

- the USG in the footnotes claims: “Notably, these first two arguments, if accepted, would not result in a dismissal of the indictment. At most, it would only 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.” (Pg. 23)

— the third, the indictment was secured through selective quotations

The USG claims: “First, the exit tax is a familiar indirect tax that falls squarely within Congress' taxing powers. Second, indictments cannot be unconstitutionally vague solely because they involve bitcoins. And finally,

Ver's allegation of "selective quotation" twists the facts, overlooks the role of the grand jury, and does not come close to meeting the extremely high standard for dismissal for due process violations." (Pg. 23)

A. The Exit Tax is Constitutional (pg. 24)

1. The tax falls within congress' taxing power

- Ver argues that the exit tax is an unapportioned direct tax that falls outside the 16th amendment and the USG claims he is wrong about this.
  - The USG lays out a detailed, technical argument about this on pgs. 24-33?
- USG argues that the exit tax cannot be direct because it falls outside both categories of direct taxes recognized by the supreme court

USG claims "And it is 'plainly not a tax on the ownership of land or personal property.' Id. It taxes the act of expatriation, not property ownership." (Pg.25)

**Ver's response to this:** "If you own no property, you owe no tax. This is clearly a tax on property ownership."

"Just as Congress may impose a tax based on foregoing health insurance, it may also impose a tax based on foregoing U.S. citizenship." (Pg. 27) —> Ver notes/asks — wasn't this found to be unconstitutional?

- expatriation involves a transfer of property (usg claims) (pg. 28)

"When Ver expatriated, his assets effectively transferred from Ver-the-U.S.-citizen to Ver-the-Kittitian-citizen." (Pg. 28)

(Background info:) "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." (Pg. 32)

2. The tax does not violate due process (pg. 33)

- Goes on to counter Ver's argument to this. Provides a technical detailed legal argument pgs. 33-39

- also argues that expatriation is not a fundamental right, like Ver claims (pg. 34)
- then advises the court not to take the extraordinary step of treating expatriation like a fundamental right (pg. 36)
- Claims under common law there is no fundamental right to expatriation (pg. 37)
- “Likewise, the government has a compelling interest in ensuring that the tax code does not incentivize US citizens to expatriate to evade US taxes” (pas 38-39)

## B. Ver’s Void-for-Vagueness Challenge Fails (pg. 39)

- claims Ver presents confusing facts and arguments to claim the indictment should be dismissed because it is unconstitutionally vague

1. Unconstitutional vagueness is a high bar

2. The charges as applied are not vague (pg. 40)

- the defense requests the indictment be dismissed as there was no precise guidance on the overall taxation of bitcoin at the time

USG claims: “Not only has no court required such precision, but the operative statutes offer the necessary standards to ensure a person of ordinary intelligence had fair notice that (1) upon expatriation bitcoins had to be reported to the IRS and that a tax had to be paid on any gain, and (2) that the distribution of bitcoins could constitute a taxable dividend.” (Pg. 40)

- USG also claims that Ver asserts the charges are vague because it had “not been definitively established that bitcoins were ‘property’ under the Tax Code, upon which the exit tax must be paid, because they could be foreign currency”
- USG counters this point stating that foreign currency is property under the tax code and either way, bitcoins are subject to the exit tax (more detailed explanations follow on pgs 41-

USG claims: “ ‘Fairmarket value’ is such a well-established concept in the law that it is a standard that ‘truly is ubiquitous,’” (pg. 41)

**Ver’s response to this:** “It seems it would be impossible for the fair market value to be more than the global trade volume.”

USG claims — “First, Ver asserts that bitcoins might be foreign currency.” (Pg. 42) and then provides counter explanations to this claim

USG claims — “Second, Ver claims that bitcoins might be non-currency capital assets, which he describes as “property, other than foreign currency.” (Pg. 42) and then provides counter explanations to this claim

USG claims — “Third, Ver hypothesizes that bitcoins might be treated as a single financial instrument that could impact the computation of its tax basis and holding period.” (pg. 42) and then provides counter explanations to this claim

The USG also claims “He was indicted because he lied about and concealed the number and value of his bitcoins.” (Pg. 42)

**Ver’s response to this:** “I didn’t conceal the value of my Bitcoins. I hired the best professionals I could find to help figure it out.”

They also claim “like Ver, concealed the truth how many bitcoins they own” (pg. 42)

**Ver’s response to this:** “This isn’t relevant if I owned more than 10 times the global daily trade volume.”

USG says “Ver’s remaining arguments as to the Notice’s validity are thus irrelevant and regardless fail. Ver suggests the Notice could not have guided him because it was issued after he expatriated. (See Br. at 21, 25.) But the relevant charged crimes were not consummated until at least 2016,” (pg. 43)

**Ver’s response to this:** “But the flings would have relied on accounting practices already completed BEFORE the guidance was released. This gave us no way of going back and reconstructing previous transactions before the guidance was released.”

USG says: “Additionally, counts 3, 5, and 8 charge conduct unrelated to the exit tax. Instead, they allege that Ver lied to his return preparer about receiving hundreds of millions of dollars’ worth of his companies’ bitcoins in 2017, which resulted in Ver filing a false tax return.” (Pg. 44)

Ver’s response: “Intersting that they are still arguing this after we recently showed them 100% proof that I informed them of this sale.”



### 3. Ver had notice (pg. 44)

- claims Ver's arguments on the uncertainty of the taxation of bitcoins was hypothetical and that the indictment makes clear that Ver knew what the rules were
- the USG claims: "The indictment outlines numerous instances where either Ver was advised that he had to report and pay tax on his and his companies' bitcoin holdings or that demonstrate Ver understood he was required by law to do so." (Pg. 44)

**Ver's response:** "And ignores that the final decision from my professionals was that I didn't need to report or pay taxes on those bitcoin sales."

### 4. Scierter Requirements Eliminate Any Vagueness Concern

"The three criminal statutes charged here are specific intent crimes, which eliminates any potential vagueness concerns." (Pg. 45)

### C. Ver's "Selective Quotation" Argument is Meritless

USG claims: "Here, there was no misconduct by the government, let alone the kind of flagrant misbehavior necessary to justify dismissal."

**Ver's response:** "We even caught Kludge lying to the court in Spain about things!"

- US claims grand jury was not misled, USG stands behind the indictment

US claims: "The fact that the advice Ver received from his advisors changed over time does not render the indictment's allegation either incomplete or inaccurate."

Ver's response: "I followed the most current advice at the time of the filings."

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Includes attachment from Jeremiah Haynie a special agent for cyber crimes with the IRS — the attachment is a declaration in support of the USG opposition of the motion to dismiss

- on or about Oct. 29, 2024: spain approved the US extradition request, ver appealed that decision which remains pending (at that time Jan 13, 2025)