No. 14-1179

In the Supreme Court of the United States

MARKUS BRENT STANLEY, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether the court of appeals correctly upheld the district court's determination that petitioner had acted "willfully," within the meaning of Section 523(a)(1)(C) of the Bankruptcy Code, 11 U.S.C. 523(a)(1)(C), in attempting to evade his 1998 through 2004 income tax liabilities.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 2a-16a) is not published in the *Federal Reporter* but is reprinted at 595 Fed. Appx. 314. The opinion of the district court (Pet. App. 17a-43a) is not published in the *Federal Supplement* but is available at 2013 WL 4508410.

JURISDICTION

The judgment of the court of appeals was entered on December 12, 2014. The petition for a writ of certiorari was filed on March 12, 2015. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. Under Section 727 of the Bankruptcy Code, a Chapter 7 debtor is generally discharged from all debts that arose before the filing of his bankruptcy

petition. 11 U.S.C. 727(b). Under Section 523(a)(1)(C) of the Code, however, a debtor is not discharged "from any debt * * * for a tax * * * with respect to which the debtor made a fraudulent return or willfully attempted in any manner to evade or defeat such tax." 11 U.S.C. 523(a)(1)(C). This case concerns the standard for determining whether a debtor acted "willfully" within the meaning of Section 523(a)(1)(C).

2. Petitioner is a doctor of osteopathic medicine. Pet. App. 3a. During the years at issue, his primary practice areas were emergency room care and family medicine. *Ibid.* As a practicing physician, petitioner had a "very handsome income stream." *Id.* at 40a. For example, petitioner earned $329,000 in 2009. *Id.* at 32a.

Beginning in 1998 and continuing for the next decade, petitioner "ignored essentially all of the tax obligations and deadlines required by law." Pet. App. 29a. As relevant here, petitioner filed late returns for the 1998, 1999, 2000, and 2003 tax years; he reported the wrong taxable income for the 1998, 1999, 2000, 2001, and 2003 tax years; and he failed to pay his tax liabilities in full from 1998 forward. *Id.* at 26a. By 2013, petitioner owed more than $1.3 million in delinquent taxes, penalties, and interest. *Ibid.*

During the period that his tax debt was mounting, petitioner engaged in a number of financial transactions that transferred or depleted his assets. In 2005, petitioner guaranteed a purchase mortgage note of approximately $196,000 for a home bought in a foreclosure sale, but he had title to the home placed solely in the name of his wife, who testified that the transaction's purpose was to avoid a potential judgment in a malpractice suit against petitioner. Pet. App. 28a-29a.

In 2006, petitioner guaranteed a second mortgage note in the amount of $50,000, but title to the home remained solely in his wife's name. *Id.* at 29a. Petitioner also made "numerous cash withdrawals" from his wholly owned corporation, and he "made intermittent payments to his wife" from the corporation's account as well, even though she "did no work" for the corporation and "was not otherwise entitled to receive the payments." *Id.* at 31a.

Petitioner further depleted his assets by making expenditures on luxury items. For example, petitioner purchased an Indian Chief motorcycle, a 2003 Jaguar, a $35,000 Jeep Wrangler, and a $35,000 Infiniti during the relevant time period. Pet. App. 30a. Two years after purchasing the 2003 Jaguar, petitioner traded it in for a newer model. *Ibid.* In 2004, petitioner bought a $16,000 ring and an expensive necklace for his wife. *Ibid.* And "during [his] long period of nonpayment [of taxes]," petitioner made "approximately eight trips outside of the country, primarily to Mexico, at a minimum cost of $3,000 each." *Ibid.*

During the period when petitioner repeatedly violated federal income tax requirements, he generally complied with his other financial obligations. Petitioner "managed to make timely payments on the[] two mortgages through the years and maintain ownership of th[e] residence" titled in his wife's name. Pet. App. 29a. He was also "able to make timely payments [on] and avoid repossession" of the Jaguars. *Id.* at 30a. Petitioner also paid certain state and county taxes during the relevant period. See *id.* at 41a.

In 2005, following negotiations with the Internal Revenue Service (IRS), petitioner entered into an installment agreement regarding his tax debt. Pet.

App. 31a. Under the agreement, petitioner was scheduled to pay $100 per month from April 2005 to July 2005, and $5000 per month thereafter. *Ibid.*[1] Petitioner also agreed that his corporation would withhold income taxes from his compensation. *Id.* at 31a-32a & n.10, 39a. Petitioner subsequently failed, however, to make the required payments under the agreement, with the exception of one $100 payment in April 2005 and one $5000 payment in August 2005. *Id.* at 31a. In addition, petitioner breached his agreement to have his corporation withhold his income taxes. *Id.* at 31a-32a.

In May 2009, petitioner filed a Chapter 7 bankruptcy petition. Pet. App. 4a. In January 2011, the bankruptcy court granted petitioner a Chapter 7 discharge. *Ibid.*

3. The government subsequently commenced this suit in federal district court to reduce to judgment the income tax assessments against petitioner for 1998 through 2010.

a. The district court granted summary judgment to the government with respect to petitioner's 2005 to 2010 tax liabilities, which the court determined were either post-petition liabilities unaffected by the bankruptcy discharge or priority taxes excepted from discharge because they had accrued within three years preceding the petition date. Pet. App. 45a, 56a (citing 11 U.S.C. 507(a)(8)(i) and 523(a)(1)(A)). The court ordered a bench trial on the question whether peti-

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[1] Petitioner represented to the IRS that he "would not have sufficient income to initially pay more than $100 per month" from April 2005 to July 2005, even though "he took [a] vacation to Cancun, Mexico, at the cost of over $3,000 in March of 2005." Pet. App. 31a n.10.

tioner's 1998 to 2004 tax liabilities were non-dischargeable under 11 U.S.C. 523(a)(1)(C) because petitioner had "willfully attempted in any manner to evade or defeat [those] tax[es]." Pet. App. 56a. The court observed that the evidence in the case suggested that petitioner "undertook calculated maneuvers to prevent the IRS from collecting his unpaid tax liabilities," *id.* at 51a, but the court ruled that a trial was warranted so that it could make factual findings regarding whether petitioner had acted "willfully," *id.* at 54a.

b. After a trial, the district court determined that petitioner's 1998 to 2004 tax liabilities were not discharged under 11 U.S.C. 523(a)(1)(C) because petitioner had willfully attempted to evade or defeat those taxes. Pet. App. 17a-43a. The court observed that Section 523(a)(1)(C) "contains a conduct requirement and a mental state requirement." *Id.* at 33a. The conduct requirement was satisfied, the court explained, because petitioner had filed his tax returns late, reported the wrong taxable income, and failed to pay his tax liabilities in full for over a decade. See *id.* at 33a-34a. The court also observed that petitioner had exhibited "evasive and fugitive behavior" by defaulting on his installment agreement with the IRS, and that his "failure to withhold employee taxes from [his corporation] while at the same time making unreported payments to his wife and withdrawing thousands of dollars in cash from [the corporation's] operating account" constituted "an active attempt to avoid paying federal income taxes." *Id.* at 32a; see *id.* at 42a.

The district court further held that petitioner's attempt to evade or defeat taxes was willful. As the

court explained, a debtor's conduct qualifies as "willful" when "the debtor '(1) had a duty to pay taxes under the law, (2) knew he had that duty, and (3) voluntarily and intentionally violated that duty.'" Pet. App. 35a (quoting *United States* v. *Coney*, 689 F.3d 365, 376 (5th Cir. 2012)). After reviewing the "staggering amount of documentation" in the case, *id.* at 25a, the court concluded that the willfulness standard was satisfied because petitioner had been aware of his duty to pay taxes yet had made a deliberate choice to evade or defeat that obligation. *Id.* at 39a.

The district court recognized that petitioner had asserted as a defense "that he suffer[s] from type II bipolar disorder," which allegedly "rendered him unable to" form the mental state that Section 523(a)(1)(C) requires. Pet. App. 25a. The court found, however, that petitioner's assertion that his "bipolar disorder * * * rendered him incapable of paying taxes" was "contrary to the evidence" for at least four reasons. *Id.* at 41a. First, the court cited petitioner's "mental capacity to avoid other potential liabilities," *id.* at 42a, such as by placing title to his home solely in his wife's name and "structur[ing] his mortgage * * * to avoid the possibility of judgment liens * * * from damage suits against him," *id.* at 29a. Second, the court noted petitioner's "participat[ion] in * * * complex financial transactions" and compliance with other financial obligations. *Id.* at 42a. The court stated that petitioner's "consistent election not to pay taxes over a long period of time when other financial requirements were being met[] belie[d] the suggestion that this decision not to pay was anything other than willful." *Id.* at 39a; see *ibid.* (finding that petitioner had "purposefully subordinated his income tax obliga-

tions to pleasurable pursuits"). Third, the court noted petitioner's "ability to function as a physician," finding it "implausible" that petitioner could "practice his demanding profession, and yet was unable to meet his tax obligations." *Id.* at 40a. Fourth, the court deemed it significant that petitioner had "voluntarily paid taxes, including a small portion of his federal income taxes," which demonstrated that his bipolar disorder did not continuously "affect[] his ability to pay taxes" during the relevant period. *Id.* at 42a. Because the court could not conclude that petitioner had "made logical decisions for his personal benefit and gratification and yet suffered impulsive motivations which centered on his election not to pay taxes," it ruled that his bipolar disorder did not prevent his evasive conduct from qualifying as willful. *Id.* at 40a.

c. The court of appeals affirmed the district court's determination that petitioner had willfully attempted to evade or defeat his taxes under Section 523(a)(1)(C). Pet. App. 8a-13a. The court observed that petitioner did "not contest that he satisfied the conduct requirement," instead arguing only that his bipolar disorder "prevented him from forming the requisite 'willful' mental state." *Id.* at 9a. Applying the "three pronged test to determine willfulness"—that a "debtor (1) had a duty to pay taxes under the law, (2) knew that he had that duty, and (3) voluntarily and intentionally violated that duty," *ibid.* (citation omitted)—the court found that the district court's determination of willfulness "was not clearly erroneous." *Id.* at 8a.

The court of appeals noted that, "[d]uring the period in which he neglected his tax obligations, [petitioner] entered into several fairly complicated real estate

transactions wherein he put the property in his wife's name," Pet. App. 11a; petitioner "purchased a number of luxury items during th[at] time," including vehicles and jewelry, *ibid.*; petitioner "made numerous cash withdrawals from [his] corporation, which he turned over to his wife, although she did not do any work for the corporation," *id.* at 12a; petitioner "turn[ed] a blind eye to his federal income tax obligations yet simultaneously and timely servic[ed] other debts," including his mortgage, the loans he obtained on his vehicles, and other tax liabilities, *id.* at 11a-12a (brackets and citation omitted); petitioner failed to have his corporation withhold income taxes, *id.* at 12a; and petitioner breached his installment agreement with the IRS shortly after entering into it, *ibid.* The court found that those actions taken together "indicate[d] [petitioner's] willfulness." *Ibid.*

The court of appeals further affirmed the district court's determination that petitioner's bipolar disorder did not prevent him from acting "willfully" in attempting to evade or defeat his taxes. Pet. App. 8a. The court of appeals noted that petitioner "was able to continue to practice medicine and monitor his other debts," which was "evidence of a corresponding ability to form a willful mindset to evade tax obligations." *Id.* at 12a-13a. "In light of [petitioner's] demonstrated ability to continue his medical practice, tend to many of his other financial obligations, and participate in complex financial transactions, compounded by the length of time at issue (over a decade) and [the] evidence that [petitioner] would have had periods when he exhibited no symptoms of bipolar disorder during this span," the court found that "the district court did not clearly err when it concluded that [petitioner]

voluntarily and intentionally attempted to evade his tax obligations." *Id.* at 13a.

ARGUMENT

Petitioner contends (Pet. 11-19) that the court of appeals erred in upholding the district court's finding that he acted willfully within the meaning of 11 U.S.C. 523(a)(1)(C). The court of appeals' decision is correct, and the district court's fact-bound conclusion that petitioner's actions were willful and within his control does not warrant review. Petitioner further asserts (Pet. 12-16) that there is disagreement among the courts of appeals regarding Section 523(a)(1)(C)'s mental-state requirement. This case is an unsuitable vehicle for resolving any such disagreement, however, because petitioner agrees with the standard that the courts below adopted, and disputes only how that standard applies to the facts of his case. In any event, petitioner's actions satisfy Section 523(a)(1)(C)'s mental-state requirement under any plausible standard. Finally, petitioner's equal protection argument (Pet. 19-29) was neither pressed nor passed upon below and therefore provides no basis for this Court's review.

1. a. The court of appeals correctly affirmed the district court's judgment that petitioner had "willfully" attempted to evade or defeat taxes. Section 523(a)(1)(C) contains a conduct requirement (that a debtor "attempt[] in any manner to evade or defeat" his taxes), and a mental-state requirement (that he engage in that conduct "willfully"). See 11 U.S.C. 523(a)(1)(C). Petitioner concedes that his actions—including his failure to file timely returns, his underreporting of income, his failure to pay his full tax liabilities for more than a decade, the breach of his

installment agreement with the IRS, and his transfer and depletion of assets—satisfied Section 523(a)(1)(C)'s conduct requirement. Pet. App. 9a, 11a-12a; see Pet. i (questions presented limited to Section 523(a)(1)(C)'s mental-state requirement). Thus, the only question is whether petitioner "willfully" engaged in that conduct.

As the court of appeals and the district court explained, an attempt to evade or defeat taxes is willful under Section 523(a)(1)(C) when "the debtor (1) had a duty to pay taxes under the law, (2) knew that he had that duty, and (3) voluntarily and intentionally violated that duty." Pet. App. 9a, 35a (quoting *United States* v. *Coney*, 689 F.3d 365, 374 (5th Cir. 2012)). In the courts below, petitioner did not dispute that he knew he had a legal duty to pay taxes. See *id.* at 9a-10a, 35a. The lower courts correctly found that petitioner had voluntarily and intentionally violated that duty by making a "consistent election not to pay taxes over a long period of time when other financial requirements were being met," "purposefully subordinat[ing] his income tax obligations to pleasurable pursuits," and engaging in "evasive and fugitive behavior" such as transferring assets to his wife and defaulting on his installment agreement with the IRS. *Id.* at 32a, 39a.

The lower courts also correctly held that petitioner's bipolar disorder did not prevent him from forming the mental state that Section 523(a)(1)(C) requires. As the district court explained, petitioner's assertion that his attempted tax evasion was beyond his control was "contrary to the evidence." Pet. App. 41a. Specifically, petitioner's argument was inconsistent with the evidence showing that petitioner (1) "had the mental

capacity to avoid other potential liabilities," such as his decision to place title to his home solely in his wife's name to avoid a potential malpractice judgment, *id.* at 29a, 42a; (2) successfully participated in other financial transactions and complied with other financial obligations, *id.* at 29a, 39a, 41a-42a; (3) "had the capacity to practice a demanding profession which involves issues of life and death" throughout the period that he attempted to evade or defeat taxes, *id.* at 40a, 42a; and (4) voluntarily paid other tax obligations, *id.* at 41a-42a. Because "the district court did not clearly err" when it relied on that evidence to conclude that petitioner had sufficient control over his behavior to act willfully, the court of appeals correctly upheld "the district court's finding that [petitioner] willfully attempted to evade his federal income taxes" under Section 523(a)(1)(C). *Id.* at 13a.

b. Petitioner argues (Pet. 10-11) that the lower courts erred by "refus[ing] to consider the totality of the impairment that bipolar disorder wreaks on an individual's mind." That fact-bound challenge does not warrant this Court's review. See Sup. Ct. R. 10 ("A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law."); *United States* v. *Johnston*, 268 U.S. 220, 227 (1925) ("We do not grant * * * certiorari to review evidence and discuss specific facts.").

In any event, petitioner's argument lacks merit. Far from refusing to consider this issue, the district court "pa[id] particular attention to the effects of [petitioner's] bipolar disorder." Pet. App. 34a. Based on "thousands of pages of documents and the four days of testimony," the court found it "implausible"

that petitioner's disorder had prevented him from acting "willfully" in his attempt to evade or defeat his tax liabilities. *Id.* at 41a. Although petitioner asserts that he is "unable to conform his conduct to the requirements of the law," Pet. 18, the district court rejected that argument because it was "contradicted by the facts," Pet. App. 42a, and petitioner identifies no clear error in the court's analysis.[2]

2. Petitioner argues (Pet. 9) that this Court's review is warranted because "the circuit courts have been inconsistent in their interpretation of the 'willful' standard" under Section 523(a)(1)(C). Six circuits, including the court of appeals in this case, have held that a debtor acts "willfully" within the meaning of Section 523(a)(1)(C) when the debtor "(1) had a duty to pay taxes under the law, (2) knew that he had that duty, and (3) voluntarily and intentionally violated that duty." Pet. App. 9a (quoting *Coney*, 689 F.3d at 374); see *Vaughn* v. *United States* (*In re Vaughn*), 765 F.3d 1174, 1181 (10th Cir. 2014), petition for cert. pending, No. 14-921 (filed Jan. 27, 2015); *Gardner* v. *United States* (*In re Gardner*), 360 F.3d 551, 558 (6th Cir. 2004); *United States* v. *Fretz* (*In re Fretz*), 244 F.3d 1323, 1330 (11th Cir. 2001); *United States* v. *Fegeley* (*In re Fegeley*), 118 F.3d 979, 984 (3d Cir. 1997); *In re Birkenstock*, 87 F.3d 947, 952 (7th Cir.

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[2] Petitioner contends (Pet. 16-18) that the lower courts erroneously applied "a M'Naghten-type standard for insanity" in determining whether he acted willfully, rather than considering whether he had the "capacity to * * * conform his * * * conduct to the requirements of the law." But the lower courts expressly considered whether petitioner's bipolar disorder prevented him from controlling his behavior; they determined that he could conform his conduct to the law's requirements and simply chose not to do so. See Pet. App. 8a, 12a, 41a.

1996). The Ninth Circuit, in contrast, recently disagreed with those decisions "[t]o the extent" that they did not require that the debtor have a "specific intent to evade the tax." *Hawkins* v. *Franchise Tax Bd.*, 769 F.3d 662, 669 (2014). The Ninth Circuit suggested that such a specific intent is akin to a "bad purpose." *Id.* at 667. For two basic reasons, any disagreement between the court below and the Ninth Circuit regarding Section 523(a)(1)(C)'s mental-state requirement does not warrant this Court's review.

a. Petitioner did not argue in the court of appeals that Section 523(a)(1)(C)'s willfulness element requires a showing of purpose to evade, nor did he argue that he lacked any such purpose. Indeed, petitioner appears to agree with the three-part standard the court applied to evaluate his conduct. See Pet. 12 ("In order to establish willfulness the Government must prove the debtor: (1) had a duty under the law, (2) knew he had that duty, and (3) voluntarily and intentionally violated that duty.") (citation and internal quotation marks omitted). Petitioner's objection to the court's analysis centers not on the proper legal standard for willfulness, but on the factual finding that his bipolar disorder did not prevent him from forming the requisite mental state when he attempted to evade or defeat taxes. Because petitioner has not preserved an argument that Section 523(a)(1)(C)'s willfulness element requires any more culpable intent than a voluntary and intentional violation of a known duty to pay taxes, this case is not an appropriate vehicle to review that issue.

The district court's findings easily satisfy the legal standard that petitioner concedes to be appropriate. The court found that petitioner had "purposefully

subordinated his income tax obligations to pleasurable pursuits" and had made an intentional "election not to pay taxes" at the same time as he "service[d] all of his other debts, many of which arose from non-necessities, such as vacations, expensive vehicles, motorcycles, and jewelry." Pet. App. 39a. The court specifically rejected petitioner's "suggestion that his bipolar disorder controlled his ability to willfully evade his taxes." *Id.* at 42a. The court found that suggestion to be contradicted by petitioner's "admi[ssion] that he had the mental capacity to avoid other potential liabilities," his "participat[ion] in other complex financial transactions," his ability to work "as a family physician and emergency room doctor," and his "voluntar[y] [payment of] taxes, including a small portion of his federal income taxes." *Ibid.* Petitioner thus acted "willfully" when he engaged in "evasive and fugitive behavior" that constituted an "active attempt to avoid paying federal income taxes." *Id.* at 32a.

b. Various passages in the Ninth Circuit's opinion in *Hawkins* frame the court's decision as a gloss on the statutory term "willfully." See, *e.g.*, 769 F.3d at 666 ("The key question in this case is the meaning of the word 'willful' in the statute."); *id.* at 666-667 ("[T]he 'fresh start' philosophy of the Bankruptcy Code argues for a stricter interpretation of 'willfully' than an expansive definition."). To the extent that the Ninth Circuit adopted an understanding of the statutory term "willfully" that is more demanding than the three-part test that other circuits have used, its decision is erroneous. This Court has made clear that the willfulness element of criminal tax evasion under 26 U.S.C. 7201 does not "require[] proof of any motive other than an intentional violation of a known legal

duty." *United States* v. *Pomponio*, 429 U.S. 10, 12 (1976) (per curiam); accord *Cheek* v. *United States*, 498 U.S. 192, 201 (1991). There is no sound reason to require a greater willfulness showing under Section 523(a)(1)(C). To the contrary, when the word "willfully" is used in civil statutes, it typically imposes a *less* demanding mental-state requirement than when the same term is used in the criminal law. See, *e.g.*, *Safeco Ins. Co. of Am.* v. *Burr*, 551 U.S. 47, 56-58 & n.9 (2007).

Other portions of the Ninth Circuit's opinion in *Hawkins* suggest, however, that the court's main practical concern was with Section 523(a)(1)(C)'s distinct conduct requirement, not with the word "willfully" standing alone. Thus, the court stated that "[a] narrow interpretation of 'willfully' is also in accord with case precedent that generally except tax debts from discharge under § 523(a)(1)(C) only when the conduct amounting to attempted tax evasion is of a type likely to be accompanied by an evasive motivation." 769 F.3d at 667. The *Hawkins* court also distinguished various decisions of other circuits on the ground that "most of the cases involve intentional acts or omissions designed to evade taxes, such as criminal structuring of financial transactions to avoid currency reporting requirements; concealing assets through nominee accounts; concealing ownership in assets; and failing to file tax returns and pay taxes." *Id.* at 669 (citations omitted). That analysis suggests that what the *Hawkins* court found lacking was sufficient proof of evasive conduct.[3]

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[3] Although the government continues to believe that the record in *Hawkins* was sufficient to support the non-dischargeability determinations made by the bankruptcy court and district court in

There is no reason to suppose that the Ninth Circuit would find the government's proof of evasive conduct to be similarly inadequate in *this* case. To the contrary, the Ninth Circuit in *Hawkins* observed that conduct similar to petitioner's would constitute an "intentional act[] or omission[] designed to evade taxes" and so trigger Section 523(a)(1)(C)'s exception to discharge. 769 F.3d at 669 (stating that "concealing assets through nominee accounts * * * ; concealing ownership in assets * * * ; and failing to file tax returns and pay taxes" would constitute willful conduct). Because petitioner would not be entitled to a discharge of his tax liabilities under the Ninth Circuit's approach, this case does not implicate any disagreement among the courts of appeals regarding Section 523(a)(1)(C).

3. Petitioner contends (Pet. 19-29) that a denial of discharge under Section 523(a)(1)(C) "amounts to a violation of his Equal Protection rights" because he has bipolar disorder. Petitioner urges (Pet. 20-21) the Court to overrule *City of Cleburne* v. *Cleburne Living Center, Inc.*, 473 U.S. 432 (1985), and "rais[e] persons with mental disabilities to the status of a quasi-protected class, such that statutes like [Section 523(a)(1)(C)] must be found substantially related to an

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that case, the Solicitor General has decided that the government will not file a petition for a writ of certiorari in *Hawkins*. The Ninth Circuit's decision is interlocutory, and the case has been remanded for further proceedings through which the government may yet be able to establish to the court of appeals' satisfaction that Hawkins's tax debt is non-dischargeable. See 769 F.3d at 669-670. And, to the extent that the Ninth Circuit's holding is understood to rest on the perceived inadequacy of the government's proof of evasive conduct, the decision in *Hawkins* does not squarely conflict with any ruling of another circuit.

important government interest." But unlike the law at issue in *Cleburne*, which expressly distinguished between persons who had mental disabilities and those who did not, see *id.* at 436 & n.3, Section 523(a)(1)(C) "is admittedly facially neutral," Pet. 20. See Pet. 21 (acknowledging that, "[i]n contrast to cases such as *Cleburne*, [petitioner] was not denied a right *because* of his disability, but was rather denied a right *regardless* of his disability"). Particularly given the district court's findings that petitioner was mentally capable both of fulfilling his tax obligations and of forming the intent that Section 523(a)(1)(C) requires, the application to petitioner of that facially neutral law raises no serious constitutional concern.

In any event, petitioner did not press his current equal protection argument in the court of appeals, and the court did not address the claim.[4] Because this Court's "traditional rule * * * precludes a grant of certiorari * * * when the question presented was not pressed or passed upon below," petitioner's equal protection argument provides no basis for this Court's review. *United States* v. *Williams*, 504 U.S. 36, 41 (1992) (citation and internal quotation marks omitted).

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[4] Petitioner "briefly argue[d]" in the court of appeals "that the Government's attempt to collect his outstanding tax liabilities amounts to 'overt class discrimination' and 'tax profiling' in violation of the Due Process and Equal Protection Clauses." Pet. App. 13a n.2. But petitioner based that argument on his "social status, education and earning ability," not on his bipolar disorder. Pet. C.A. Br. 13. The court of appeals declined to consider the claim because petitioner had "fail[ed] to brief [it] in any meaningful sense." Pet. App. 14a n.2. Petitioner does not renew a "tax profiling" equal protection claim in this Court.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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