No. 15-102

In the Supreme Court of the United States

ROBERT A. POLITTE, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

DONALD B. VERRILLI, JR.
Solicitor General
Counsel of Record
CAROLINE D. CIRAOLO
Acting Assistant Attorney General
THOMAS J. CLARK
RANDOLPH L. HUTTER
Attorneys
Department of Justice
Washington, D.C. 20530-0001
SupremeCtBriefs@usdoj.gov
(202) 514-2217

QUESTIONS PRESENTED

1. Whether the district court, in considering petitioners' contention that certain properties held by them were not subject to federal tax liens, was authorized to determine whether petitioners were the alter egos of a delinquent taxpayer.

2. Whether an "inequitable result" should be deemed to exist under California alter-ego law when the alter-ego determination is used to determine liability for a corporation's unpaid federal tax.

3. Whether a court of appeals should review a district court's state-law alter-ego determination de novo.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 4a-8a) is not published in the Federal Reporter but is reprinted in 587 Fed. Appx. 406. The opinion of the district court (Pet. App. 16a-46a) is unreported but is available at 2012 WL 965996.

JURISDICTION

The judgment of the court of appeals was entered on December 3, 2014. Petitioners' separate petitions for rehearing were denied on February 17, 2015 (Pet. App. 1a-3a). On May 13, 2015, Justice Kennedy extended the time within which to file a petition for a writ of certiorari to and including July 19, 2015 (a Sunday), and the petition was filed on July 20, 2015. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. Petitioners Robert A. Politte and Joan M. Politte, a married couple, operated automobile repair shops in and around San Diego, California, as franchisees of Midas, Inc. Pet. App. 18a-19a. In 1994, the Polittes formed RAJMP, Inc., an S-corporation, to own and operate their Midas shops. *Ibid.*; see Gov't C.A. Br. 5. Robert Politte was RAJMP's chief executive officer and director, and Joan Politte was its secretary. The couple owned 74% of the company's outstanding stock, and other Politte family members owned the remaining shares. Pet. App. 18a-19a.

In 1996, the Polittes formed petitioner TRKSS, LLC, to operate three additional Midas franchise shops in the San Diego area. Pet. App. 19a; see Gov't C.A. Br. 6. Robert Politte was TRKSS's chief executive officer, and he and his wife were its sole members. Pet. App. 18a.

RAJMP and TRKSS were not operated as separate entities. They had the same principal place of business and shared the same management team, including Richard Evans, who was the chief financial officer of both RAJMP and TRKSS until November 2005. Pet. App. 18a-19a. They had essentially identical operations. *Id.* at 19a. They shared the same American Express account, paid each other's expenses, and frequently exchanged funds without written documentation. *Id.* at 21a. TRKSS had no employees of its own and leased all of its workers from RAJMP without any written employee-lease agreement. *Ibid.*; see *ibid.* (noting that employees were regularly transferred between the RAJMP and TRKSS shops).

Robert Politte was closely involved with the management of RAJMP, TRKSS, and his Midas shops.

Pet. App. 19a. He lived in Colorado, but he conducted business meetings in San Diego and telephoned his management team multiple times each day. *Id.* at 19a-20a. He also signed company checks and directed Evans on handling accounting and other financial matters, including the payment and allocation of expenses and the accounting treatment of salaries and capital assets. *Id.* at 19a-20a, 22a.

The Polittes caused RAJMP to pay many of their personal expenses over a period of years, in effect treating the company's assets as their own. Pet. App. 22a-23a & n.3. For example, RAJMP paid more than $800,000 for remodeling the Polittes' Colorado home, and more than $85,000 for luxury vehicles driven by Joan Politte in Colorado. *Id.* at 22a-23a. More than $630,000 of RAJMP funds were used to pay the expenses of other businesses owned by the Polittes and their son. *Id.* at 23a-24a. Tens of thousands of dollars of RAJMP funds (and an even greater amount of TRKSS funds) went to pay the college expenses of the Polittes' children. *Ibid.* The Polittes also used RAJMP's money to fund family vacations to Hawaii and Mexico, claiming that those vacations constituted "shareholder meetings" even though no formal meetings were held, no agendas were made, and no minutes were recorded. *Id.* at 25a.

In addition, although RAJMP purported to lease from the Polittes several of the properties on which it conducted business, the Polittes did not observe business formalities with respect to the landlord-tenant relationship. Pet. App. 25a. RAJMP did not always pay the rent that was due to the Polittes, and the Polittes never sought to recover the missing amounts. *Ibid.*

2. In 1998, RAJMP stopped paying its employment taxes, and in 2005 the company ceased doing business. See Pet. App. 24a. In May 2007, the Internal Revenue Service (IRS) recorded notices of federal tax lien seeking to collect RAJMP's unpaid employment-tax liabilities and naming TRKSS and the Polittes as alter egos and nominees of RAJMP. C.A. Supp. App. (U.S. C.A. Supp. E.R.) 1-9; see Pet. App. 17a; 26 U.S.C. 6321 (imposing a lien in the amount of unpaid tax "upon all property and rights to property, whether real or personal, belonging to [the] person" who has neglected to pay the tax); 26 U.S.C. 6331(a) (stating that "it shall be lawful for the Secretary to collect" a tax unpaid after demand "by levy upon all property and rights to property (except such property as is exempt * * *) belonging to such person or on which there is a lien provided in this chapter for the payment of such tax"). The lien notices showed assessed and unpaid employment-tax liabilities totaling more than $9 million. C.A. Supp. App. 1-9.

In 2007, TRKSS sold the assets of its three stores to Midas and obtained from the IRS a certificate discharging those assets from the federal tax lien in return for paying the IRS $1,349,325.50 from the proceeds of the sale. C.A. App. (Robert Politte's E.R.) 1528-1530, ¶¶ 33-43. The same year, the Polittes sold two San Diego condominiums and obtained a certificate discharging those properties from the federal tax lien in return for paying the IRS $343,987.03 from the sales proceeds. *Id.* at 1530-1531, ¶¶ 44-48.

3. a. Petitioners filed a complaint in federal district court under 26 U.S.C. 7426(a)(4) seeking refunds of the amounts paid. See Pet. App. 30a; 26 U.S.C. 7426(a)(4) ("If a certificate of discharge is issued to

any person * * * with respect to any property, such person may * * * bring a civil action against the United States in a district court of the United States for a determination of whether the value of the interest of the United States (if any) in such property is less than the value determined by the Secretary."). Petitioners alleged that the United States in fact had no interest in (*i.e.*, that the federal tax lien created by RAJMP's non-payment of employment taxes did not extend to) the TRKSS assets and the two condominiums that had been sold to make the payments for which refunds were sought. Pet. App. 30a. The district court explained that, because "[f]ederal tax liens encumber property held by the taxpayer's nominee or alter-ego," *id.* at 28a, the dispositive question was "whether [petitioners] are the nominees or alter-egos of RAJMP," *id.* at 31a.

b. Following a bench trial, the district court ruled in favor of the United States, finding that petitioners were the alter egos and nominees of RAJMP. Pet. App. 46a.

As to alter-ego liability, the district court relied on California law. See Pet. App. 37a-38a (stating that "California case law is instructive" because state law and federal common law are "virtually identical" in this area). The court explained that, under California alter-ego doctrine, "two general requirements" exist: (1) unity of interest and ownership, and (2) "an inequitable result" from treating "acts * * * as those of the corporation alone." *Id.* at 38a (citation omitted). The court found that the Polittes and their companies had unity of interest and ownership because they had commingled funds and diverted corporate funds without authorization, the stock of RAJMP was controlled

by a single family, TRKSS and RAJMP shared offices and employees, the Polittes controlled both companies, and formalities were not followed in business dealings between the Polittes and their companies. *Id.* at 42a-43a. The court also found that failure to treat petitioners as alter egos of RAJMP would lead to an inequitable result, on the ground that "[w]here the creditor is the United States and the debt sought to be satisfied by invocation of the alter-ego doctrine is a federal tax liability," the "inequitable result" requirement "can be deemed satisfied." *Id.* at 45a.

As to nominee liability, under which property in the hands of a "nominee" is deemed to belong to a taxpayer that "treated and viewed the property as [its] own," the district court applied federal common law. Pet. App. 32a-33a. The court explained that a determination of "nominee status" is based on factors including whether the nominee paid inadequate consideration for property, whether the transferor and nominee have a close relationship, and whether the parties to a property transfer failed to record the conveyance. *Id.* at 33a-34a. Based on the "totality of the circumstances," the court found all of those factors satisfied here. *Id.* at 36a; see *id.* at 37a.

4. The court of appeals affirmed the district court's holding that petitioners were RAJMP's alter egos. Pet. App. 4a-8a.[1] The court did not reach the question whether petitioners were also RAJMP's nominees. *Id.* at 8a.

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[1] In response to petitions for rehearing and rehearing en banc, the court of appeals modified its opinion slightly while denying the petitions. Pet. App. 2a-3a; see *id.* at 3a (stating that no judge had requested a vote on the petitions for rehearing en banc). The description in the text is of the opinion as modified.

The court of appeals stated that the "evidence supported the district court's finding that a 'unity of interest and ownership' existed between" the Polittes and RAJMP, Pet. App. 7a, and between RAJMP and TRKSS, *id.* at 8a. The court of appeals also held that the district court did not "err in finding that an 'inequitable result' would follow from an adherence to the corporate form." *Ibid.*; see *id* at 7a. As to the Polittes, the court explained that it would be "inequitable" to prevent recovery of RAJMP's debt from the Polittes "[g]iven that RAJMP had profits to 'lend' to the Polittes by virtue of its failure to pay its employment taxes." *Id.* at 7a. As to TRKSS, the court explained that an "inequitable result" followed from the fact that "RAJMP transferred funds to TRKSS for non-RAJMP purposes, such as the financing of TRKSS operations," without "maintaining formalities and, for the most part, without repayment." *Id.* at 8a.

ARGUMENT

The decision of the court of appeals is correct and does not conflict with any decision of this Court or another court of appeals. Further review is not warranted.

1. Petitioners contend (Pet. 12-16) that the decision below conflicts with this Court's decision in *Grupo Mexicano de Desarrollo, S.A.* v. *Alliance Bond Fund, Inc.*, 527 U.S. 308, 318-327 (1999) (*Grupo Mexicano*). In petitioners' view, *Grupo Mexicano* dictates the conclusion that district courts lack any equitable authority to determine whether a person or entity is the alter ego of a corporation that has incurred tax liabilities. That argument lacks merit.

Petitioners' briefs in the courts below did not cite *Grupo Mexicano* or make any argument that the

district court had "exceeded its authority" by deciding the alter-ego issue. Pet. 12.[2] Nor did the Ninth Circuit or the district court address any issue relating to the federal courts' power to make an alter-ego determination. See Pet. App. 5a-8a. Review is thus barred under this Court's "traditional rule * * * preclud[ing] a grant of certiorari" when "the question presented was not pressed or passed upon below." *United States* v. *Williams*, 504 U.S. 36, 41 (1992) (citation and internal quotation marks omitted); see *Cutter* v. *Wilkinson*, 544 U.S. 709, 718 n.7 (2005) (stating that this Court is one of review rather than "first view").

In any event, there is no conflict between *Grupo Mexicano* and the court of appeals' decision to uphold the district court's "finding that [petitioners] were RAJMP's alter egos." Pet. App. 8a. In *Grupo Mexicano*, this Court ruled that a district court has no authority, in the absence of statutory authorization, "to issue a preliminary injunction preventing the defendant" in an action for money damages "from transferring assets in which no lien or equitable interest is claimed." 527 U.S. at 310; see *id.* at 333. The Court explained that the equitable powers granted to federal courts under the Judiciary Act of 1789 encompassed only the limited "authority to administer in equity suits the principles of the system of judicial remedies which had been devised and was being administered by the English Court of Chancery at the time of the separation of the two countries." *Id.* at 318 (quoting

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[2] Petitioner TRKSS argued in the court of appeals that the district court should not have allowed the "equitable remedy" of alter-ego liability without requiring the government to first pursue "adequate legal remedies." TRKSS C.A. Br. 39-40. That argument is distinct from the one presented here.

Atlas Life Ins. Co. v. *W.I. Southern, Inc.*, 306 U.S. 563, 568 (1939)) (internal quotation marks omitted). Based on a detailed historical analysis, the Court concluded that a "preliminary injunction preventing [defendants] from disposing of their assets pending adjudication of [plaintiffs'] contract claim for money damages" was "historically unavailable from a court of equity" and therefore is not a permissible exercise of a district court's inherent equitable powers. *Id.* at 333; see *id.* at 319-332.

Nothing about that conclusion is inconsistent with the Ninth Circuit's decision in this case. The government did not seek a preliminary injunction against petitioners to prevent them from dissipating assets that might ultimately be awarded as money damages. And this Court in *Grupo Mexicano* did not discuss the history of alter-ego liability or a district court's power to decide that one individual or other entity is the alter ego of another.

In stating the general principle that district courts' inherent equitable powers are limited, this Court did not determine whether or how that principle might apply to a decision in a tax case about alter-ego liability. Such a determination would involve consideration of (*inter alia*) whether a decision on the alter-ego issue amounts to an equitable "remedy" within the meaning of *Grupo Mexicano*; whether (if so) a court of equity at the relevant point in history would have "administered" that remedy or an analogous one, 527 U.S. at 318; and whether federal tax statutes authorize an inquiry into alter-ego liability, see 26 U.S.C. 6321 (covering "all property and rights to property, whether real or personal, belonging to [the] person" who has not paid a tax); 26 U.S.C. 6331; 527 U.S. at

318-319; cf. *id.* at 325-326 (distinguishing *United States* v. *First National City Bank*, 379 U.S. 378 (1965), because that case involved "powers under the statute authorizing issuance of tax injunctions").

Although this Court has not considered the potential implications of *Grupo Mexicano* for alter-ego determinations in tax cases, it has recognized that a federal tax lien extends to the assets of a delinquent taxpayer's alter ego. In *G.M. Leasing* v. *United States*, 429 U.S. 338 (1977), the Court explained that, "[i]f petitioner was [the delinquent taxpayer's] alter ego," it would "then follow that the Service could properly regard petitioner's assets as * * * property subject to the lien under [26 U.S.C.] 6321, and the Service would be empowered, under [26 U.S.C.] 6331, to levy upon assets held in petitioner's name in satisfaction of [the] income tax liability." *Id.* at 351 (citing *Griffiths* v. *Commissioner*, 308 U.S. 355 (1939), and *Higgins* v. *Smith*, 308 U.S. 473, 476 (1940)). That rule is now firmly established. See, *e.g.*, *Shades Ridge Holding Co.* v. *United States*, 888 F.2d 725, 728 (11th Cir. 1989) (citing *G.M. Leasing* and explaining that "[p]roperty of the nominee or alter ego of a taxpayer is subject to the collection of the taxpayer's tax liability"), cert. denied, 494 U.S. 1027 (1990); *United States* v. *Scherping*, 187 F.3d 796, 801 (8th Cir. 1999) (same), cert. denied, 528 U.S. 1162 (2000).

Although petitioners suggest in passing that federal tax liens cannot extend to property held by persons other than the delinquent taxpayer (see Pet. 13), they make no effort to defend that proposition, which flies in the face of *G.M. Leasing*. Rather, petitioners dispute the authority of *the district court* in this case to "grant equitable relief" based on the court's alter-ego

determination. Pet. 12 (capitalization omitted). Petitioners themselves invoked the district court's jurisdiction, however, arguing that they were entitled to refunds because the United States actually had no interest in the properties that the IRS had found to be subject to tax liens. See Pet. App. 30a. As the district court correctly recognized, because "[f]ederal tax liens encumber property held by the taxpayer's nominee or alter ego," *id.* at 28a, the proper disposition of petitioners' refund claims required the court to determine "whether [petitioners] are the nominees or alter-egos of RAJMP," *id.* at 31a.

2. Petitioners argue (Pet. 16-28) that the court of appeals erroneously deemed "the Internal Revenue Service [to] stand in a special, more advantageous position than other creditors of the corporation" (Pet. i) with respect to the "inequitable result" prong of an alter-ego inquiry under California law. The court of appeals did not rely on any such presumption, however, and its discussion of California alter-ego law does not warrant this Court's review.

a. The courts below accepted petitioners' argument that the alter-ego determination in this case is governed by California law. See, *e.g.*, Pet. App. 6a-7a; see also *Fourth Inv. LP* v. *United States*, 720 F.3d 1058, 1067-1068 (9th Cir. 2013) (concluding that state law rather than federal common law is applicable). The district court concluded that, "[w]here the creditor is the United States and the debt sought to be satisfied * * * is a federal tax liability, the second general requirement" of alter-ego liability under California law, "inequitable result, can be deemed satisfied." Pet. App. 45a. The court of appeals, however, did not rely on similar reasoning. In concluding that

alter-ego liability was appropriate to prevent an "inequitable result" in this case, that court explained that "RAJMP had profits to 'lend' to the Polittes by virtue of its failure to pay employment taxes," and that RAJMP had "transferred funds to TRKSS for non-RAJMP purposes" without "maintaining formalities and * * * without repayment." *Id.* at 7a-8a. That analysis cannot give rise to any of the various consequences that petitioners claim (*e.g.*, Pet. 21-24, 26-28) will flow from a legal rule that favors the IRS. The second question set forth in the petition therefore is not presented by this case.

b. Petitioners assert (Pet. 17-18) that the court of appeals failed to enforce what they contend is a California-law rule that an inequitable result cannot exist in the absence of fraud or bad faith. But whether bad faith is an element of a state-law alter-ego finding is distinct from the question that petitioners have posed about whether the IRS stands in a specially privileged position.

In any event, review of the separate bad-faith issue is not warranted. As petitioners explain (Pet. 20), the court in *Tamko Roofing Products, Inc.* v. *Smith Engineering Co.*, 450 F.3d 822 (8th Cir 2006), which applied California alter-ego law in a case involving collection of a private judgment debt, see *id.* at 825, 827-828, asserted that California law required "some evidence of bad faith conduct" to support a finding of inequitable result, *id.* at 828. But this Court does not ordinarily resolve disputed state-law issues even when a circuit conflict exists. See Stephen M. Shapiro et al., *Supreme Court Practice* 244 (10th ed. 2013) ("As to questions controlled by state law, * * * conflict among the circuits is not of itself a reason for granting

a writ of certiorari.") (quoting *Ruhlin* v. *New York Life Ins. Co.*, 304 U.S. 202, 206 (1938)); *id.* at 243, 262. Rather, the responsibility for definitively articulating the requirements for alter-ego liability under California law rests with the California Supreme Court. And the other court of appeals decisions on which petitioners rely (Pet. 24-26) do not apply California law.

The Ninth Circuit's understanding of California alter-ego law was a reasonable one. See *United States* v. *Durham Lumber Co.*, 363 U.S. 522, 527 (1960); *Huddleston* v. *Dwyer*, 322 U.S. 232, 237 (1944). The California courts have explained that there is no "litmus test" for determining when one person or entity is the alter ego of another, *Mesler* v. *Bragg Mgmt. Co.*, 702 P.2d 601, 606 (Cal. 1985); see *Automotriz Del Golfo De Cal. S.A.* v. *Resnick*, 47 Cal. 2d 792, 796 (Cal. 1957), and that bad faith or fraudulent intent are not preconditions of an alter-ego determination, see, *e.g.*, *Gordon* v. *Aztec Brewing Co.*, 203 P.2d 522, 527 (Cal. 1949) ("It is not necessary that the plaintiff prove actual fraud. It is enough that the recognition of the two entities as separate would result in an injustice."); *Misik* v. *D'Arco*, 130 Cal. Rptr. 3d 123, 130 (Cal. Ct. App. 2011) ("Application of the *alter ego* doctrine does not depend upon pleading or proof of fraud.") (citations omitted); *Toho-Towa Co.* v. *Morgan Creek Prods., Inc.*, 159 Cal. Rptr. 3d 469, 481 n.5 (Cal. Ct. App. 2013). The decision below is consistent with those rulings.

3. Petitioners contend (Pet. 29-36) that the court below departed from the approach taken by other circuits by reviewing the district court's alter-ego determination for clear error. No conflict on the standard-of-review issue exists.

The court of appeals recited the clear-error standard of review, see Pet. App. 6a, because the questions it addressed were largely factual ones. Because the court accepted the test for alter-ego liability on which all parties agreed, see *id.* at 6a-7a, and did not adopt a legal rule under which non-payment of tax always constitutes an inequitable result, see pp. 11-12, *supra*, the court focused its analysis on what the district court had found as fact and what "the record demonstrate[d]." Pet. App. 7a; see *id.* at 8a.

The court of appeals did not limit its inquiry, however, to determining whether it had a "definite and firm conviction that a mistake ha[d] been committed." *Easley* v. *Cromartie*, 532 U.S. 234, 242 (2001). Rather, the court decided, for reasons somewhat different from those given by the district court, that the facts before it were sufficient to establish petitioners' liability for RAJMP's debts under California alter-ego law. See, *e.g.*, Pet. App. 7a ("Given that RAJMP had profits to 'lend' to the Polittes by virtue of its failure to pay its employment taxes, it would be 'inequitable' to prevent the IRS from recovering some portion of those taxes from the Polittes.").[3]

The Ninth Circuit has made clear in other cases that de novo review is appropriate when one person's

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[3] Petitioners contend (Pet. 32-33) that the court of appeals "ignored" several issues relating to petitioner Joan Politte that they characterize as legal ones. But the Ninth Circuit was not required to discuss each point raised in the three separate briefs that petitioners had filed in the court of appeals, and the court did inquire into whether Joan Politte had exercised "control" over RAJMP for purposes of an alter-ego determination. See Pet. App. 7a ("Although Robert exercised more control than Joan, Joan nevertheless served as corporate secretary and signed checks on behalf of RAJMP.").

status as another's alter ego turns on disputed questions of law. In *Towe Antique Ford Foundation* v. *I.R.S.*, 999 F.2d 1387 (9th Cir. 1993), for example, the Ninth Circuit concluded—relying on *Wolfe* v. *United States*, 798 F.2d 1241 (9th Cir. 1986), cert. denied, 482 U.S. 927 (1987), the same decision cited by the court of appeals here, see Pet. App. 6a—that "[w]hether the district court was required to make a finding of fraud before it could pierce the corporate veil is a question of law which we review de novo." 999 F.2d at 1393 (citing *Wolfe*, 798 F.2d at 1243 n.1); see *Wolfe*, 798 F.2d at 1243 n.2 ("Because the question whether [appellant] was the alter ego of his corporation is essentially factual, it is *generally* reviewed under the clearly erroneous standard.") (emphasis added); see also, *e.g.*, *Firstmark Capital Corp.* v. *Hempel Fin. Corp.*, 859 F.2d 92, 93 (9th Cir. 1988).

The standard of review applied by the Ninth Circuit is thus consistent with the standard applied by other courts of appeals to district courts' alter-ego determinations. See *Tamko Roofing Prods.*, 450 F.3d at 827 ("We review the district court's factual findings in support of its alter ego determination for clear error, while reviewing its legal conclusions de novo."); *Hollowell* v. *Orleans Reg'l Hosp., LLC*, 217 F.3d 379, 385 (5th Cir. 2000) (stating that issues of law are reviewed de novo but that "[t]he question of whether to pierce the corporate veil is primarily one of fact and therefore a very deferential standard of review applies"); *United States* v. *Fidelity Capital Corp.*, 920 F.2d 827, 836 (11th Cir. 1991) (clear-error review of factual findings and *de novo* review of application of law to facts; noting that "[r]esolution of the alter ego issue is heavily fact-specific") (citation and internal

quotation marks omitted); see also, *e.g.*, *Taylor Steel, Inc.* v. *Keeton*, 417 F.3d 598, 604 (6th Cir. 2005) ("We review the factual findings of the district judge * * * for clear error, and the legal findings *de novo.*"); *United States* v. *Wetterer*, 210 F.3d 96, 106 (2d Cir. 2000) (legal conclusion reviewed de novo, and factual findings for clear error; noting that the "alter ego question depends upon the totality of the facts") (citation omitted); *Ragan* v. *Tri-Cnty. Excavating, Inc.*, 62 F.3d 501, 506 (3d Cir. 1995) (clear-error review for factual findings and plenary review of legal conclusions drawn from the facts).

Although these cases have arisen in a variety of contexts and some differences exist in the wording used to describe the applicable standard, the approaches taken by the various courts of appeals are not meaningfully different in practice. And given the facts correctly recounted by the court of appeals—including the Polittes' "substantial control" over the taxpayer's operations, their regular draws "on corporate funds to finance personal expenses," and the relationship between the Polittes' ability to use company monies in that fashion and RAJMP's failure to pay its tax liabilities, Pet. App. 7a—there is no plausible reason to suppose that the outcome of this case would have been different if the Ninth Circuit had applied a more demanding standard of review.

4. The district court's decision in favor of the government rested not only on its alter-ego ruling but also on an independently sufficient ground: the conclusion that petitioners were the "nominees" of RAJMP. See Pet. App. 32a-37a; *id.* at 32a (explaining that a party is a nominee of the taxpayer if property in which the taxpayer has an interest has been placed in

the nominee's hands as "a sort of legal fiction") (citation and internal quotation marks omitted); Gov't C.A. Br. 74 n.19. Although the court of appeals did not reach the nominee issue, see Pet. App. 8a, the district court's conclusion is a sound one, resting on well-supported factual findings that transfers of property from RAJMP to petitioners took place without adequate consideration or observation of business formalities. See *id.* at 33a-37a. The existence of that alternative ground of decision provides a further reason for the Court to deny review.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

DONALD B. VERRILLI, JR.
Solicitor General
CAROLINE D. CIRAOLO
Acting Assistant Attorney General
THOMAS J. CLARK
RANDOLPH L. HUTTER
Attorneys

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