No. 16-1149

In the Supreme Court of the United States

PAUL M. DAUGERDAS, PETITIONER

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether petitioner's sentence was substantively unreasonable on the ground that the district court imposed a sentence based on judicial fact-finding regarding conduct of which petitioner was acquitted by the jury.

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OPINION BELOW

The opinion of the court of appeals (Pet. App. 1a-34a) is reported at 837 F.3d 212.

JURISDICTION

The judgment of the court of appeals was entered on September 21, 2016. A petition for rehearing was denied on December 20, 2016 (Pet. App. 66a-67a). The petition for a writ of certiorari was filed on March 20, 2017. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a jury trial in the United States District Court for the Southern District of New York, petitioner was convicted on one count of conspiracy to defraud the United States and to commit tax evasion and mail fraud, in violation of 18 U.S.C. 371; four counts of tax evasion, in violation of 26 U.S.C. 7201 and 18 U.S.C. 2; one count

of corruptly endeavoring to obstruct the administration of the internal revenue laws, in violation of 26 U.S.C. 7212(a); and one count of mail fraud, in violation of 18 U.S.C. 1341 (Supp. V 2005) and 18 U.S.C. 1342. Pet. App. 2a. The district court sentenced petitioner to 180 months of imprisonment, three years of supervised release, and $164,737,500 in forfeiture. *Ibid.* The court of appeals affirmed. *Id.* at 1a-34a.

1. Over the course of about a decade, petitioner designed tax shelters using methods intended to deceive the Internal Revenue Service (IRS) about the shelters' operation. Pet. App. 3a-8a. The shelters that petitioner developed involved financial transactions designed to create purported losses that could be used to reduce tax liabilities. *Id.* at 4a. Because petitioner and his colleagues designed the shelters to generate purported losses, none of the shelters generated meaningful investment returns. *Id.* at 5a. For instance, of the about 60 individuals who used one of the shelters, only two made a profit, and one of those clients' profit was one dollar. *Ibid.* Once petitioner's fees were taken into account, there was no possibility that any of the clients would have realized a profit from any of the transactions. *Id.* at 6a.

Under the "economic substance" rule, transactions that have no purpose other than avoiding tax consequences cannot create legitimate tax losses under the Internal Revenue Code. Pet. App. 11a. Nevertheless, petitioner and his colleagues issued opinion letters to clients who purchased shelters that petitioner developed, representing that the transactions involved in the shelters were likely legal under current federal income tax law and falsely stating that the clients were entering into the shelters for substantial non-tax business purposes. *Id.* at 4a-5a. Such "more-likely-than-not" letters

"protect clients from the IRS's imposition of a financial penalty in the event that the IRS does not permit the losses generated by the shelter to reduce the client's tax liability." *Ibid.*

As a fee, petitioner typically charged clients three to five percent of the tax loss purportedly generated by the shelters. Trial Tr. (Tr.) 2233, 2264, 2482-2484, 2600, 2633. From 1993 to 2001, petitioner earned over $100 million in income from the sale of the shelters he developed. He used several of the tax shelters he developed to offset that income and paid only $7315 in personal income taxes during that period. Pet. App. 8a.

2. A federal grand jury indicted petitioner on one count of conspiracy to defraud the United States, to commit tax evasion, and to commit mail fraud, in violation of 18 U.S.C. 371; ten counts of client tax evasion, in violation of 26 U.S.C. 7201 and 18 U.S.C. 2; three counts of personal tax evasion, in violation of 26 U.S.C. 7201; one count of corruptly endeavoring to obstruct the IRS, in violation of 26 U.S.C. 7212(a); and one count of mail fraud, in violation of 18 U.S.C. 1341 (Supp. V 2005) and 18 U.S.C. 1342.[1] Pet. App. 9a.

During a nearly eight-week trial, the government presented evidence that petitioner knew that the shelters he developed lacked economic substance and that petitioner's clients purchased the shelters solely for tax advantages. Pet. App. 4a-8a, 10a-15a. In addition, the government presented evidence that petitioner's opinion letters regarding the shelters included false state-

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[1] In 2011, petitioner and several co-defendants were convicted following a jury trial on all counts of a materially similar indictment, but the district court granted a new trial based on a juror's misconduct. Pet. App. 8a; Gov't C.A. Br. 2-3.

ments. *Id.* at 4a-8a, 15a-17a. The government also presented evidence that petitioner participated in a scheme to illegally backdate a number of transactions in order to allow clients to claim losses in earlier tax years. *Id.* at 6a-8a, 15a-17a.

During closing summations, the government detailed the evidence that petitioner had committed tax fraud, mail fraud, and obstruction of the IRS through the use of tax shelters to fraudulently claim losses from transactions that lacked economic substance. See, *e.g.*, Tr. 7289-7293, 7295-7328, 7553-7572. In addition, the government noted that petitioner's participation in fraudulent backdating could support convictions on the conspiracy, mail fraud, and obstruction charges, even if the jury rejected the government's theory that the tax shelters lacked economic substance. Pet. App. 80a; Tr. 7339-7340. The government did not argue that petitioner's participation in backdating was sufficient to support convictions for tax evasion, nor did it argue that petitioner could be convicted of substantive tax evasion or conspiracy to commit tax evasion unless the tax shelters lacked economic substance. Pet. App. 80a.

The district court instructed the jury that, in order to convict petitioner on conspiracy to commit tax evasion and substantive tax evasion, the jury had to find the existence of a substantial tax deficiency for the year or years at issue. Tr. 7668-7669, 7677-7678. The court instructed the jury that showing a substantial tax deficiency required proof that the tax shelters lacked economic substance—in other words, that "the relevant taxpayer had no genuine business purpose for engaging in a transaction in question apart from the creation of the tax deduction" and that "there was no reasonable possibility that the transaction would result in a profit."

Tr. 7678-7679. The court further instructed the jury that in order to prove the willfulness element of the tax-evasion charges, the government had to prove that petitioner "was aware that tax deductions based on transactions lacking economic substance were prohibited," that he knew "that the tax shelters, in fact, lacked economic substance," and that he "knew that the relevant taxpayer had no genuine business purpose apart from the creation of a tax deduction for entering into the tax shelter." Tr. 7685.

The jury convicted petitioner of conspiring to defraud the IRS, Pet. App. 9a, with the jury specifically finding that the government had proved each of the charged objects of the conspiracy: defrauding the United States, tax evasion, and mail fraud, Tr. 7807. In addition, the jury convicted petitioner on four client tax-evasion counts, the obstruction count, and the mail fraud count. Pet. App. 9a. The jury acquitted petitioner on six additional client tax-evasion counts and the three personal tax-evasion counts. *Ibid.*

At sentencing, the district court found that the tax loss caused by petitioner's offenses exceeded $400 million. Pet. App. 58a. The court disagreed with petitioner's contention that the court should consider only petitioner's backdating conduct in calculating the loss amount on the ground "that the jury convicted [petitioner] only of the very limited conduct of fraudulently backdating transactions." *Id.* at 59a. The court "rejected th[e] argument" that the jury had convicted petitioner only of that conduct. *Ibid.* Instead, the court concluded, the jury's "verdict demonstrates that [petitioner] was convicted of the broad tax shelter conspiracy alleged in the indictment," not simply backdating. *Id.* at 60a. In any event, the court added that it was well-settled that courts may

find relevant conduct as part of the sentencing process, under a preponderance-of-the-evidence standard, even if "jurors could not find those facts beyond a reasonable doubt." *Id.* at 61a.

After determining the loss amount and applying enhancements for the use of sophisticated means, leadership role, and petitioner's encouraging others to violate the IRS laws, the district court determined that the Sentencing Guidelines recommended a sentence of 696 months of imprisonment. Pet. App. 58a. After argument from the parties, the court imposed a below-Guidelines term of imprisonment of 180 months. *Id.* at 38a. The court stated that its sentence was appropriate in light of the objectives of general and specific deterrence, and also took account of the fact that petitioner had been acquitted on several counts at trial. 6/25/14 Sent. Tr. (Sent. Tr.) 71-72.

3. The court of appeals affirmed. Pet. App. 1a-34a. On appeal, petitioner challenged the sufficiency of the evidence to support his convictions for substantive tax evasion. *Id.* at 2a. Petitioner argued that that although the district court required the jury to find "that the tax shelters lacked economic substance and that [petitioner] knew it" in order to convict on those counts, the evidence was insufficient for a jury to find those facts. Pet. C.A. Br. 31; see *id.* at 27-55. The court of appeals, however, found sufficient evidence that petitioner knowingly violated the economic-substance rule. Pet. App. 10a-15a.

The court of appeals also rejected petitioner's contention "that his sentence was substantively unreasonable because it was based primarily on conduct for which he was acquitted—his participation in a massive $400 million tax fraud." Pet. App. 32a. Petitioner had argued on appeal that the district court should have

considered only petitioner's involvement in backdating because, in petitioner's view, that was the only conduct for which he was convicted. Pet. C.A. Br. 132 & n.27; see *id.* at 130 (contending that district court erred because its tax-loss calculations relied on "acquitted conduct"). The court of appeals rejected that argument on the ground that consideration of acquitted conduct in determining a defendant's sentence did not render the sentence substantively unreasonable. Pet. App. 32a.[2]

ARGUMENT

Petitioner seeks to renew (Pet. 4-8, 19-33) his substantive reasonableness claim, contending that his sentence violated the Fifth and Sixth Amendments because it relied on judge-found facts regarding loss amount that petitioner asserts were inconsistent with the jury's verdict. Petitioner's challenge lacks merit and implicates no conflict among the courts of appeals. And this case would be an inappropriate vehicle for considering petitioner's legal arguments, because the district court rejected petitioner's argument that it was relying on acquitted conduct, and because petitioner cannot demonstrate that his sentence would be substantively unreasonable in the absence of the challenged findings. This Court has recently and repeatedly denied petitions raising similar as-applied challenges and the same result is warranted here.

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[2] The court of appeals also rejected petitioner's additional sufficiency challenges, a claim of constructive amendment, a challenge to an evidentiary ruling, a challenge to a prosecutor's statements during rebuttal, a challenge to certain jury instructions, and a claim of procedural unreasonableness at sentencing. Pet. App. 15a-32a. In addition, it upheld the district court's forfeiture order. *Id.* at 32a-34a.

1. Petitioner seeks to renew (Pet. 4-8, 19-33) his challenge to his sentence on substantive reasonableness grounds, contending that his sentence violates the Fifth and Sixth Amendments because the district court relied on facts that were found by the judge but, in petitioner's view, were rejected by the jury. That argument lacks merit. This Court's decisions in *United States* v. *Booker*, 543 U.S. 220 (2005), and related cases establish that after a jury returns a conviction, a judge may engage in fact-finding regarding relevant offense conduct or characteristics in determining an appropriate sentence, so long as the resulting sentence falls at or below the statutory maximum for the offenses at issue.

This Court explained the permissibility of such fact-finding in *Booker*. It noted that judges had traditionally made factual findings about defendants' actual conduct, even when not proved to a jury, and used those findings to determine the appropriate sentence. See, *e.g.*, 543 U.S. at 250-251. This practice, it reaffirmed, was constitutionally permissible, because "when a trial judge exercises his discretion to select a specific sentence within a defined range, the defendant has no right to a jury determination of the facts that the judge deems relevant." *Id.* at 233. *Booker* explained that the constitutional problem with the mandatory Sentencing Guidelines in the Sentencing Reform Act of 1984, Pub. L. No. 98-473, Tit. II, ch. II, 98 Stat. 1987, was that the Sentencing Guidelines "required," rather than merely "recommended * * * the selection of particular sentences in response to differing sets of facts." 543 U.S. at 233. Accordingly, this Court held that the Sixth Amendment defect in the mandatory Sentencing Guidelines was cured by excising the provisions that made the Guidelines mandatory,

while leaving in place the provisions that require computation of Sentencing Guidelines ranges through judicial fact-finding and consideration of the resulting sentencing ranges. See *id.* at 249-265.

Booker and subsequent cases make clear that judicial fact-finding under the now-advisory Sentencing Guidelines regime is permissible even though, in many cases, such fact-finding may play a role in supporting the substantive reasonableness of particular sentences. See *Booker*, 543 U.S. at 261-263. *Booker* made clear that the Sentencing Guidelines framework could be rendered constitutional by making the Guidelines advisory —while leaving in place the requirements that judges determine the applicable Guidelines range by making findings about the "real conduct that underlies the crime of conviction," *id.* at 250 (emphasis omitted); consider the sentencing recommendations that result, *id.* at 259; and then select sentences that are substantively reasonable in light of the objectives set forth in 18 U.S.C. 3553(a) (2000 & Supp. IV 2004), 543 U.S. at 259-260. The Court thus stated that "everyone agrees that the constitutional issues presented by these cases would have been avoided entirely if Congress had omitted from the [Sentencing Reform Act of 1984] the provisions that make the Guidelines binding on district judges." *Id.* at 233.

Any argument that the Sixth Amendment is violated on an "as applied" basis when a particular sentence is substantively reasonable based in part on judicial findings of fact is not compatible with *Booker* and *Rita* v. *United States*, 551 U.S. 338 (2007). *Booker* and *Rita* recognize that under the advisory Guidelines framework, judicial assessments of offense characteristics and real conduct would often be critical to the calcula-

tion of the recommended sentence and to the reasonableness of the sentence ultimately imposed. Indeed, the Court discussed how fact-finding about offense characteristics would be critical in cases involving extortion, bank robbery, and mail fraud, on questions such as use of a weapon, injury in the course of an offense, leadership role, and extent of monetary loss. *Booker*, 543 U.S. at 252-254; see *Rita*, 551 U.S. at 352, 354. Findings about such characteristics often significantly increase the recommended sentencing range under the Sentencing Guidelines that trial judges must consider, and appellate courts may presume reasonable. *Rita*, 551 U.S. at 347-356.

Petitioner contends that the district court's loss calculations were constitutionally impermissible because the court relied on losses from petitioner's knowing participation in a fraudulent scheme involving transactions that lacked economic substance, while, in petitioner's view, the jury acquitted petitioner of that conduct. See Pet. i, 18-33; see also Pet. App. 32a (describing substantive-reasonableness argument pressed below). But the Fifth and Sixth Amendments do not preclude sentencing courts from finding facts under a preponderance standard as prescribed by the Sentencing Guidelines when a defendant was acquitted of the conduct under a higher standard of proof. As this Court explained in *United States* v. *Watts*, 519 U.S. 148 (1997) (per curiam), which addressed judicial fact-finding by a preponderance-of-the-evidence standard under the Sentencing Guidelines, "a jury's verdict of acquittal does not prevent the sentencing court from considering conduct underlying the acquitted charge, so long as that conduct has been proved by a preponderance of the evidence." *Id.* at 157. The Court found it "well established" in pre-Sentencing

Guidelines practice "that a sentencing judge may take into account facts introduced at trial relating to other charges, even ones of which the defendant has been acquitted." *Id.* at 152 (citation omitted). And as *Watts* explained, a jury's determination that a litigant failed to prove a fact beyond a reasonable doubt does not have preclusive effect in contexts in which a lower standard of proof applies. See *id.* at 156 ("[A]n acquittal in a criminal case does not preclude the Government from relitigating an issue when it is presented in a subsequent action governed by a lower standard of proof.") (citation omitted).

2. The question presented does not implicate any conflict among the courts of appeals. The courts of appeals have uniformly rejected as-applied challenges that claimed constitutional error as a result of judicial fact-finding at sentencing.[3] In addition, every court of appeals with criminal jurisdiction has held since *Booker* that a district court may consider acquitted conduct for

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[3] See *United States* v. *Crosby*, 397 F.3d 103, 109 n.6 (2d Cir. 2005), cert. denied, 549 U.S. 915 (2006), abrogated on other grounds by *United States* v. *Lake*, 419 F.3d 111, 113 n.2 (2d Cir. 2005); *United States* v. *Grier*, 475 F.3d 556, 565-566 (3d Cir.) (en banc), cert. denied, 552 U.S. 848 (2007); *United States* v. *Benkahla*, 530 F.3d 300, 312 (4th Cir. 2008), cert. denied, 555 U.S. 1120 (2009); *United States* v. *Hernandez*, 633 F.3d 370, 373-374 (5th Cir.), cert. denied, 564 U.S. 1010 (2011); *United States* v. *McCormick*, 401 Fed. Appx. 29, 33-34 (6th Cir. 2010); *United States* v. *Ashqar*, 582 F.3d 819, 825 (7th Cir. 2009), cert. denied, 559 U.S. 974 (2010); *United States* v. *Garcia-Gonon*, 433 F.3d 587, 593 (8th Cir. 2006); *United States* v. *Treadwell*, 593 F.3d 990, 1017-1018 (9th Cir.), cert. denied, 562 U.S. 916 and 562 U.S. 973 (2010); *United States* v. *Redcorn*, 528 F.3d 727, 745-746 (10th Cir. 2008); *United States* v. *Smith*, 741 F.3d 1211, 1226-1227 & n.5 (11th Cir. 2013), cert. denied, 135 S. Ct. 704 (2014); *United States* v. *Settles*, 530 F.3d 920, 923 (D.C. Cir. 2008), cert. denied, 555 U.S. 1140 (2009).

sentencing purposes.[4] Moreover, this Court has recently and repeatedly denied challenges to judicial fact-finding that supported a sentence's substantive reasonableness[5] and challenges to the constitutionality of sentencing judges' consideration of acquitted conduct.[6]

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[4] See *United States* v. *Gobbi*, 471 F.3d 302, 313-314 (1st Cir. 2006); *United States* v. *Vaughn*, 430 F.3d 518, 526-527 (2d Cir. 2005), cert. denied, 547 U.S. 1060 (2006); *United States* v. *Ciavarella*, 716 F.3d 705, 735-736 (3d Cir. 2013), cert. denied, 134 S. Ct. 1491 (2014); *United States* v. *Grubbs*, 585 F.3d 793, 798-799 (4th Cir. 2009), cert. denied, 559 U.S. 1022 (2010); *United States* v. *Farias*, 469 F.3d 393, 399-400 & n.17 (5th Cir. 2006), cert. denied, 549 U.S. 1272 (2007); *United States* v. *White*, 551 F.3d 381, 386 (6th Cir. 2008) (en banc), cert. denied, 556 U.S. 1215 (2009); *United States* v. *Waltower*, 643 F.3d 572, 574-578 (7th Cir.), cert. denied, 565 U.S. 1019 (2011); *United States* v. *High Elk*, 442 F.3d 622, 626 (8th Cir. 2006); *United States* v. *Mercado*, 474 F.3d 654, 656-658 (9th Cir. 2007), cert. denied, 552 U.S. 1297 (2008); *United States* v. *Magallanez*, 408 F.3d 672, 683-685 (10th Cir.), cert. denied, 546 U.S. 955 (2005); *United States* v. *Siegelman*, 786 F.3d 1322, 1332-1333 & n.12 (11th Cir. 2015), cert. denied, 136 S. Ct. 798 (2016); *United States* v. *Jones*, 744 F.3d 1362, 1368-1370 (D.C. Cir.), cert. denied, 135 S. Ct. 8 (2014).

[5] See, *e.g.*, *Krum* v. *United States*, 137 S. Ct. 41 (2016) (No. 15-8875); *Hebert* v. *United States*, 137 S. Ct. 37 (2016) (No. 15-1190); *Smith* v. *United States*, 135 S. Ct. 704 (2014) (No. 13-10424); *Jones* v. *United States*, 135 S. Ct. 8 (2014) (No. 13-10026); *Garcia* v. *United States*, 565 U.S. 1160 (2012) (No. 11-6626); *Culberson* v. *United States*, 562 U.S. 1289 (2011) (No. 10-7097); *Taylor* v. *United States*, 562 U.S. 1181 (2011) (No. 10-5031); *Gibson* v. *United States*, 559 U.S. 906 (2010) (No. 09-6907); *Magluta* v. *United States*, 556 U.S. 1207 (2009) (No. 08-731); *Marlowe* v. *United States*, 555 U.S. 963 (2008) (No. 07-1390); *Bradford* v. *United States*, 552 U.S. 1232 (2008) (No. 07-7829); *Alexander* v. *United States*, 552 U.S. 1188 (2008) (No. 07-6606).

[6] See, *e.g.*, *Soto-Mendoza* v. *United States*, 137 S. Ct. 568 (2016) (No. 16-5390); *Montoya-Gaxiola* v. *United States*, 137 S. Ct. 371 (2016) (No. 15-9323); *Davidson* v. *United States*, 137 S. Ct. 292 (2016) (No. 15-9225); *Krum*, *supra*; *Bell* v. *United States*, 137 S. Ct.

3. a. This case would be an unsuitable vehicle for considering petitioner's constitutional arguments. While petitioner asserts that the district court's loss calculations violated his constitutional rights in part because those calculations depended on conduct of which petitioner was acquitted, the court expressly found that argument to rest on a misunderstanding of the jury's verdict. Pet. App. 58a-60a. In particular, the court "reject[ed] th[e] argument" that the jury had convicted petitioner "only of the very limited conduct of fraudulently backdating transactions," *id.* at 59a, and concluded instead that "[t]he verdict demonstrates that [petitioner] was convicted of the broad tax shelter conspiracy alleged in the indictment," *id.* at 60a; see also *id.* at 64a.[7]

The district court's rejection of petitioner's characterization of the jury's verdict is well-grounded in the record. The jury instructions at petitioner's trial made clear that the jury could not convict petitioner of conspiracy to commit tax evasion and substantive tax evasion unless the jury found that the tax shelters petitioner marketed lacked economic substance and that petitioner knew as much. See Tr. 7668-7669, 7677-7681, 7685-7686 (jury instructions). While the jurors acquitted petitioner on some tax-evasion counts, they convicted petitioner on other tax-evasion counts and found that

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37 (2016) (No. 15-8606); *Siegelman* v. *United States*, 136 S. Ct. 798 (2016) (No. 15-353); *Roman-Oliver* v. *United States*, 135 S. Ct. 753 (2014) (No. 14-5431); *Jones*, *supra*; *Ciavarella* v. *United States*, 134 S. Ct. 1491 (2014) (No. 13-7103).

[7] The district court also recognized that the jury had acquitted petitioner of certain substantive counts, and imposed a sentence of imprisonment substantially below the range recommended by the Guidelines in part to give effect to those acquittals. Sent. Tr. 71-72.

petitioner had engaged in conspiracy to commit tax evasion. Given the presumption that jurors follow their instructions, see, *e.g.*, *Shannon* v. *United States*, 512 U.S. 573, 585 (1994); *Richardson* v. *Marsh*, 481 U.S. 200, 206, 211 (1987), the district court reasonably concluded that the jury's verdict reflected a determination that petitioner knowingly violated the economic-substance rule. And the court reasonably relied on the verdict itself, rather than the post-trial statements of several individual jurors that appeared to impeach the verdict, to determine the verdict's factual and legal significance. See Pet. App. 60a (concluding that petitioner's "view of the verdict would allow post [t]rial juror statements to trump the verdict itself") (brackets in original).[8] In sum, since the district court correctly found that its sentencing calculations did not rest on acquitted conduct, petitioner's case would be a poor vehicle for addressing a constitutional challenge to courts' consideration of such conduct.

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[8] Petitioner's challenge also rests on a misreading of the record insofar as petitioner contends that the district court relied at sentencing on arguments that the government "disavow[ed] * * * at trial," Pet. 23; see, *e.g.*, Pet. i. Far from disavowing its tax-shelter theory in its arguments to the jury, the government's summations detailed the tax-shelter fraud evidence. See, *e.g.*, Tr. 7289-7293, 7295-7328, 7553-7572. The government also noted that the backdating allegations provided an alternative ground for finding petitioner guilty on the conspiracy, mail fraud, and obstruction charges, even if the jury rejected the government's theory that the tax shelters lacked economic substance. Pet. App. 80a; see Tr. 7339-7340. But the government did not argue that backdating alone constituted tax evasion, and it relied solely on the economic-substance test to support the tax-evasion charges. Pet. App. 80a.

b. Petitioner's case would also be a poor vehicle for considering an as-applied constitutional challenge to judicial fact-finding because petitioner cannot demonstrate that his 180-month sentence would have been substantively unreasonable in the absence of the loss calculations to which petitioner raised a constitutional challenge. Cf. *Rita*, 551 U.S. at 373-374 (Scalia, J., concurring in part and concurring in the judgment) (reasoning that no as-applied Sixth Amendment violation occurs unless a defendant can demonstrate that his sentence would have been unreasonable absent a judge-found fact). Petitioner was convicted of offenses that exposed him to a total maximum term of imprisonment of 58 years. See Presentence Investigation Report (PSR) ¶¶ 132-133. And while petitioner's sentence would have been an above-Guidelines sentence if the district court used the loss amount advocated by petitioner, petitioner cannot demonstrate that the sentence would have been unreasonable for conduct that included using skills as an attorney and accountant to defraud the government for private gain.[9]

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[9] If the district court utilized petitioner's preferred loss amount, see Pet. 27, the recommended range of imprisonment under the Sentencing Guidelines would likely have been 97 to 121 months of imprisonment, in view of the application of enhancements for the use of sophisticated means, leadership role, and encouraging others to violate the IRS laws. See Sent. Tr. 4 (finding these enhancements applicable); Sentencing Guidelines §§ 2T1.1, 2T1.9, 2T4.1, 3B1.1 (2013); Sentencing Guidelines Ch. 5, Pt. A (2013); see also PSR ¶¶ 68-77, 79, 132-133 (applying November 2013 Sentencing Guidelines).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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