

IS A NON-UNITED STATES CITIZEN WHO REFUSES TO LEAVE HIS HOME COUNTRY TO FACE FCPA CHARGES A FUGITIVE FROM JUSTICE?

September 30, 2014 | [FCPA, The GEE Blog](#)



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South Korean citizen Han Young Kim has petitioned the United States Supreme Court for certiorari to resolve a circuit split regarding whether a non-United States citizen who refuses to come to the United States to face Foreign Corrupt Practices Act charges is a fugitive from justice. Kim argues that because he lives in South Korea and did not flee the United States to South Korea, he should not be considered a fugitive. The government's position that Kim is a fugitive because he refuses to submit to extradition has kept Kim from having an opportunity to seek judicial review of his indictment or from attempting to reach a settlement, since the government will not negotiate with fugitives. The Ninth Circuit Court of Appeals denied Kim's petition for writ of mandamus, upholding the District Court's ruling that because Kim refused to come to the United States after learning of the charges in South Korea, he had constructively fled from justice. The Ninth Circuit determined that because there is a circuit split, with no ruling from the Supreme Court, the District Court's order could not be "clearly erroneous." Kim argues that the correct interpretation was adopted by the Seventh Circuit Court of Appeals in *In re Hijazi*, 589 F.2d 718 (7th Cir. 2009). The Seventh Circuit reasoned that where a defendant did not live in the United States and remained in his home country, "[h]e therefore did not flee from the jurisdiction or from any restraints placed on him." In urging the Supreme Court to grant certiorari, Kim has pointed to the government's expansion of extraterritorial criminal and civil enforcement actions to argue the issue will arise with increasing frequency. The increasing international scope of FCPA prosecutions and the more active role other countries are playing in anti-corruption efforts raises the stakes for global companies, including for corporate officers who might otherwise have a limited connection with the United States.

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