



**FOR IMMEDIATE RELEASE**

**Media Inquiries:** Judy Pino, 202-869-5218

**NCLA Skewers IRS Efforts to Avoid Court Scrutiny of Its Unlawful Crypto Data Collection Practices**

*James Harper v. Charles P. Rettig, et al.*

**Washington, DC (January 19, 2021)** – The New Civil Liberties Alliance, a nonpartisan, nonprofit civil rights group, filed a [Memo in Opposition](#) to IRS’s Motion to Dismiss today in the U.S. District Court for the District of New Hampshire in the case of *Harper v. Rettig, et al.* The Internal Revenue Service (IRS) seeks to dismiss the case of NCLA client and cryptocurrency holder, James Harper, who is suing the agency—and several unknown individual IRS agents in their personal capacity—over violations of his Fourth and Fifth Amendment constitutional rights.

Mr. Harper had contracted with third-party virtual currency exchanges to protect his private information against unlawful government intrusion. Despite his efforts to ensure his records were properly safeguarded, IRS brazenly gathered sensitive information about Mr. Harper’s use of virtual currency from the third-party exchanges without a lawful subpoena. NCLA contends that IRS’s attempt to avoid the Court’s jurisdiction is a misguided effort to avoid a significant constitutional challenge to IRS’s unlawful data collection practices.

Mr. Harper is one of 10,000 virtual currency owners who received a [letter](#) from IRS in 2019 informing him the agency had obtained his financial records related to ownership of bitcoin. In this case, IRS violated the Fourth Amendment by issuing an informal demand for Mr. Harper’s financial records from a third party, even though it lacked any particularized suspicion that he had violated any law.

Notably, IRS does not dispute in its motion to dismiss that it acquired Mr. Harper’s information without a lawful subpoena. IRS’s sole argument in defense of its attack on Mr. Harper’s Fourth Amendment claim is its assertion that Mr. Harper “does not have an expectation of privacy in his financial information.” However, the Fourth Amendment significantly constrains the types of searches IRS may conduct, particularly where a person has contracted with an exchange to keep his information private.

Mr. Harper is also entitled under the Fifth Amendment’s Due Process Clause to a notice and an opportunity to protect his private information from unreasonable searches and seizures. IRS concedes that it did not comply with this bare minimum due-process requirement.

**NCLA released the following statements:**

“When you enter into a third-party agreement, the reasonable expectation is that the third party and the government will respect contractual rights. But the IRS agents in this case departed from cherished Constitutional principles that prohibit peeking into a person’s private papers without first obtaining a judicially-approved subpoena. Not only did IRS demand *and* seize Mr. Harper’s private information, but it is unlawfully holding on to that data without *any* judicial process. NCLA will right these wrongs.”

— **Caleb Kruckenberg, Litigation Counsel, NCLA**

“This motion to dismiss shows how IRS requires law-abiding citizens to jump through numerous procedural hoops to even have their day in court. At the same time IRS tries to claim in the same motion that it would be impossible for them and their agents to abide by the Constitution to obtain Mr. Harper’s private financial information. Assuredly, the Constitution does not protect IRS from Mr. Harper’s suit. It protects Mr. Harper from IRS’s illegal surveillance.”

— **Adi Dynar, Litigation Counsel, NCLA**

**ABOUT NCLA**

NCLA is a nonpartisan, nonprofit civil rights group founded by prominent legal scholar Philip Hamburger to protect constitutional freedoms from violations by the Administrative State. NCLA’s public-interest litigation and other pro bono advocacy strive to tame the unlawful power of state and federal agencies and to foster a new civil liberties movement that will help restore Americans’ fundamental rights.

###