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NCLA Appeals to First Circuit Over IRS’s Unlawfully Seizing Cryptocurrency Data of Thousands

James Harper v. Charles P. Rettig, in His Official Capacity as IRS Comm’r, IRS, and 10 John Doe IRS Agents

Washington, DC (July 15, 2021) – In August 2019, James Harper received a [letter](#) from the Internal Revenue Service (IRS) accusing him of not having “properly reported” his “transactions involving virtual currency.” A [press release](#) followed shortly thereafter stating, “Taxpayers should take these letters very seriously” and “correct past errors.” Mr. Harper, one of more than 10,000 cryptocurrency holders who received such a letter, filed a lawsuit challenging IRS’s questionable information-gathering practices.

The New Civil Liberties Alliance, a nonpartisan, nonprofit civil rights group, has filed an [opening brief](#) in *James Harper v. Charles P. Rettig, et al.* in the U.S. Court of Appeals for the First Circuit, arguing that IRS took Mr. Harper’s data without reasonable suspicion and without a judicial warrant. NCLA contends IRS violated his Fourth and Fifth Amendment constitutional rights by obtaining his private financial information from virtual-currency exchanges without following statutory limitations on its power to issue subpoenas.

NCLA argues the U.S. District Court for the District of New Hampshire erred in its [March 2021](#) decision granting IRS’s motion to dismiss. It was mistaken that a waiver of sovereign immunity is necessary; sovereign immunity does not divest federal courts of their subject-matter jurisdiction in suits for specific nonmonetary relief against IRS alleging that the government actors acted unconstitutionally or without statutory authority.

The district court ruled without benefit of the Supreme Court’s May 2021 decision in [CIC Services, LLC v. IRS](#), which concluded that the Anti-Injunction Act (AIA) does not prohibit a suit “seeking to set aside an information-reporting requirement that is backed by both civil tax penalties and criminal penalties.” Mr. Harper’s suit, brought to set aside IRS’s illegal information gathering, is not a suit brought to enjoin a tax’s assessment or collection.

Mr. Harper requests declaratory and injunctive relief, including an order expunging his private financial information from IRS’s records if it was obtained in violation of the Constitution or the statute. The First Circuit should conclude that the district court has subject-matter jurisdiction, decide that Mr. Harper has stated a claim upon which relief can be granted, and either rule in his favor or else remand the case to the trial court for a decision on the merits.

NCLA released the following statements:

“After *CIC*, it is not sufficient for IRS to claim that the information it possesses ‘may culminate in the assessment or collection of taxes.’ By that logic, nearly all information that comes into IRS’s possession—whether obtained by following proper procedures or otherwise—could culminate in the assessment or collection of taxes. But the Fourth and Fifth Amendments to the Constitution do not contain an IRS exception.”

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

“Earlier this year, the Supreme Court held that IRS cannot block lawsuits challenging the constitutionality of its behavior by hiding behind the Anti-Injunction Act. Unfortunately, that decision came out after the district court allowed IRS to abuse the law in just that way. According to the Supreme Court, though, this case is a ‘cinch,’ and the First Circuit should swiftly reinstate this lawsuit.”

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

For more information visit the case page [here](#) or watch Mr. Harper’s story [here](#).

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.

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