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NCLA Contests Motion to Dismiss Suit Challenging IRS’s Unlawful Collection of Cryptocurrency Data

James Harper v. Charles P. Rettig, in His Official Capacity as IRS Commissioner, et al.

Washington, DC (February 7, 2023) – James Harper stands among thousands of victims of an extensive, unlawful Internal Revenue Service fishing expedition, whereby IRS seized financial records from a cryptocurrency exchange through abuse of a “John Doe” summons without notifying account holders or allowing them to contest the summons. Today, the New Civil Liberties Alliance, which represents the Plaintiff in *Harper v. Rettig*, filed a [response](#) to IRS’s Motion to Dismiss the lawsuit. NCLA argues that IRS violated Mr. Harper’s statutory, Fourth, and Fifth Amendment rights by seizing his documents without probable cause to believe he had under-reported his income or failed to pay tax and by denying him procedural due process to contest the seizure.

In November 2016, IRS issued a third-party summons to Coinbase, a large cryptocurrency exchange, demanding that the company turn over the financial records of hundreds of thousands of unnamed customers. This massive trove of documents included not only customer identification information but also records of customer account activity and periodic statements of account. On August 9, 2018, IRS sent a threatening form letter to Mr. Harper stating, “We have information that you have or had one or more accounts containing virtual currency but may not have properly reported your transactions involving virtual currency.” That threat was apparently empty. In the ensuing 4-1/2 years, Harper has received no follow-up correspondence. IRS’s silence is unsurprising, given that Harper’s 2013-2015 tax returns properly reported his income from Coinbase cryptocurrency transactions.

Congress adopted the Tax Reform Act of 1976 to protect taxpayers from IRS overreach related to third-party summonses. The Act imposes several requirements that IRS must fulfill before it may obtain documents from a third-party recordkeeper using a John Doe summons. NCLA asserts that IRS failed to satisfy those prerequisites here. The legislative history of the Act confirms that Congress sought to limit the IRS’s use of John Doe summonses to uncovering the identity of taxpayers, not to obtaining their financial records. *Harper* has revealed that IRS now claims a far more expansive John Doe summons authority than Congress bestowed.

In addition to its statutory shortcomings, IRS violated Mr. Harper’s property interests and liberty interests in the privacy of his financial records, which contain a history of his transactions over a three-year period. By using a John Doe summons, IRS denied him an opportunity to raise the full range of objections routinely available to taxpayers whose identity is known to IRS. In August 2022, a three-judge panel of the U.S. Court of Appeals for the First Circuit unanimously [ruled](#) that Mr. Harper could take IRS to federal court for gathering private financial information about his use of virtual currency from third-party exchanges without a lawful subpoena.

The U.S. District Court for the District of New Hampshire should now deny IRS's Motion to Dismiss and address the agency's alarming information-gathering practices.

NCLA released the following statement:

“The Supreme Court has long held that ‘the fundamental requirement’ of the constitutional right to due process of law is that the government may not deprive citizens of their liberty interests or property interests without providing them with a hearing at which they can object to that deprivation. IRS violated that fundamental due-process requirement in this case. It seized Mr. Harper’s financial records without giving him a right to object, or even letting him know what it was doing.”

— **Rich Samp, Senior Litigation Counsel, NCLA**

For more information visit the case page [here](#) and watch the case video [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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