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**Media Inquiries:** [Ruslan Moldovanov](mailto:ruslan.moldovanov@ncla.org), 202-869-5237

## **NCLA Returns to First Circuit Asking It to Confront IRS's Illegal Confiscation of Cryptocurrency Data**

*James Harper v. Daniel Werfel, in His Official Capacity as IRS Commissioner, et al.*

**Washington, DC (February 1, 2024)** – The Internal Revenue Service unlawfully seized financial records of New Civil Liberties Alliance client James Harper and thousands of others from a cryptocurrency exchange through abuse of a “John Doe” summons, without notifying account holders so they could contest the summons. IRS took Mr. Harper’s documents without any individualized suspicion to believe he had under-reported his income or failed to pay tax, and it denied him procedural due process to challenge the seizure. NCLA has filed a reply [brief](#) in *Harper v. Werfel*, urging the U.S. Court of Appeals for the First Circuit to rule that these actions violated Mr. Harper’s statutory, Fourth, and Fifth Amendment rights. NCLA filed the opening [brief](#) on October 13, 2023.

In November 2016, IRS issued a third-party summons demanding that the Coinbase cryptocurrency exchange turn over financial records concerning hundreds of thousands of unnamed customers, including customer identification information, account activity records, and periodic account statements. 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.” Mr. Harper has received no follow-up correspondence to that empty threat in the subsequent 5 years. 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, but IRS failed to satisfy those prerequisites here. The legislative history of the Act confirms that Congress sought to limit IRS’s use of John Doe summonses to only uncovering the *identities* of taxpayers, not obtaining their financial records. *Harper v. Werfel* has revealed that IRS now claims a far more expansive John Doe summons authority than Congress bestowed.

To make matters worse, 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 First Circuit panel 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. However, the U.S. District Court for the District of New Hampshire dismissed Mr. Harper’s subsequent lawsuit against IRS in May 2023, incorrectly ruling that he had failed to state a claim. The First Circuit should reverse that decision, remand the lawsuit to the district court, and address the agency’s egregious violations of Americans’ rights.

**NCLA released the following statements:**

“IRS has been improperly using John Doe summonses as fishing expeditions, allowing them to gather personal information on thousands of taxpayers without any suspicion of wrongdoing. This practice needs to stop; it violates both the Constitution and statutory restrictions imposed by Congress.”

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

“IRS’s claim to unfettered authority to sweep up records concerning millions of transactions by thousands of Coinbase customers—all without any individualized suspicion of wrongdoing—is a recipe for a financial panopticon that Congress never authorized and the Constitution would never permit.”

— **Sheng Li, 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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