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In NCLA Win Against IRS, First Circuit Rules Taxpayers Can Indeed Take the Agency to Court

James Harper v. Charles P. Rettig, in His Official Capacity as IRS Comm’r, IRS & John Doe IRS Agents 1-10

Washington, DC (August 19, 2022) – A three-judge panel of the U.S. Court of Appeals for the First Circuit has unanimously [ruled](#) in *Harper v. Rettig* that taxpayer James Harper can take the Internal Revenue Service (IRS) to federal court for gathering private financial information about his use of virtual currency from third-party exchanges without a lawful subpoena.

IRS has, until now, successfully prevented federal courts from asserting jurisdiction over a significant constitutional challenge to the agency’s unlawful data-collection practices. The First Circuit ruled that the U.S. District Court for the District of New Hampshire erred in its March 2021 [decision](#) granting IRS’s motion to dismiss Mr. Harper’s Fourth and Fifth Amendment challenge based on an alleged lack of jurisdiction. The district court did not have the 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, which seeks to set aside IRS’s illegal information gathering, is likewise not a suit brought to enjoin a tax’s assessment or collection, so it is not subject to the AIA’s limits on court jurisdiction.

Judge Kermit Lipez, writing for the majority, rejects IRS’s argument that the AIA bars Mr. Harper’s suit because it seeks to restrain activities related to the assessment or collection of taxes. He notes that *CIC Services* provides clarity that “information gathering” is a “phase of tax administration procedure that occurs before assessment [or] collection.” Judge Lipez concludes that since IRS’s activities against Mr. Harper “clearly fall within the category of information gathering ... the [AIA] is not an applicable exception to the United States’ waiver of sovereign immunity.” Indeed, as the Supreme Court explained in *CIC Services*, where, as here, there is no “tax penalty” at issue, then the case is a “cinch,” and “the suit c[an] proceed.”

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 took the data of Mr. Harper and thousands of other cryptocurrency holders from virtual-currency exchanges without reasonable suspicion and without providing a pre-data-collection notice and opportunity to contest IRS’s dragnet operation. In ruling that the district court has subject-matter jurisdiction, the First Circuit has ensured that the IRS can be held accountable for this violation of Harper’s Fourth and Fifth Amendment constitutional rights.

NCLA released the following statements:

“The appeals court’s decision upholds a basic tenet of our justice system: every citizen claiming the government is violating his constitutional rights is entitled to his day in court. The IRS sought to deny that right, arguing that allowing people to object to its collecting personal data would unduly hamper tax-collection efforts. The court rightly rejected that argument. Efficient tax collection must never be permitted to trump constitutional rights.”

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

“The bad news is the federal government recently passed a law that could lead to hiring over 86,000 new IRS agents. The good news is that courtesy of the First Circuit’s ruling, brave individual taxpayers like Mr. Harper may now sue the Internal Revenue Service—and its new agents—when it tramples their constitutional rights.”
— **Mark Chenoweth, President and General 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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