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District Court Ruling Would Permit IRS to Violate Constitutional Rights with Impunity

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

Washington, DC (March 23, 2021) – Today, the U.S. District Court for the District of New Hampshire granted the Internal Revenue Service’s (IRS) [motion to dismiss](#) the case of *James Harper v. Charles P. Rettig, et al.* The district court’s flawed decision would ensure that no matter how many constitutional rights the IRS violates, Americans may not hold the agency accountable. The New Civil Liberties Alliance, a nonpartisan, nonprofit civil rights group, represents James Harper in the lawsuit against IRS for violating his Fourth and Fifth Amendment constitutional rights by issuing a demand for his financial records from a third party without reasonable suspicion—let alone probable cause—that he violated any law.

The Fourth Amendment significantly constrains the types of searches IRS may conduct, particularly where a person, like Mr. Harper, has contracted with a digital asset exchange to keep his information private. Mr. Harper is also entitled under the Fifth Amendment’s Due Process Clause to receive notice and have an opportunity to protect his private information from IRS subpoenas *before* they are executed. IRS never disputed that it violated key limits on its ability to gather information through its subpoena process. And it collected Mr. Harper’s sensitive financial information, along with data for thousands of other innocent people, solely because of their lawful possession of digital currencies.

In this case, the court wrongly applied the Anti-Injunction Act (AIA), which bars suits over “the assessment or collection of any tax.” Mr. Harper has already paid all applicable taxes and never disputed the amount he owed, and his lawsuit was instead a challenge to IRS’s violation of his constitutional rights. Mr. Harper is one of 10,000 virtual currency owners who received a [letter](#) from IRS in 2019 informing him that the agency had obtained his financial records related to his ownership of bitcoin. Despite his efforts to ensure his records were properly safeguarded, IRS brazenly gathered sensitive information about Mr. Harper’s use of digital currency from one or more third-party exchanges without a lawful subpoena.

NCLA released the following statements:

“Today’s decision would mean that IRS is immune from suit over its wrongdoing in every conceivable circumstance. The court’s decision is legally unjustifiable, and it should be swiftly reversed on appeal.”

— **Caleb Kruckenberg, NCLA Litigation Counsel**

“The district court’s ruling screams for a reversal from the court of appeals. It is wrong to hold that Mr. Harper, who has fully paid his taxes and does not seek a refund, cannot seek the court’s help in securing an entirely separate right to keep his private information private from a grasping government.”

— **Adi Dynar, NCLA Litigation Counsel**

For more information visit case summary page [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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