APPENDIX

APPENDIX A

IN THE CIRCUIT COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

Civil Action 17-CV-00022-TJK

HAROLD R. STANLEY, et al,
Plaintiffs,

versus

LORETTA LYNCH, et al,
Defendants,

and

Civil Action 16-CV-02313-TJK

MICHAEL B. ELLIS & ROBERT A. McNEIL, et al,
Plaintiffs,

versus

AMY BERMAN JACKSON, et al,
Defendants,

Declaration of Ellen L. Stanley
In Support of FRAP Rule 21
Petition for Mandamus

(February 22, 2019)

I am Ellen L. Stanley, age 68, with personal knowledge of material, relevant facts, admissible in evidence, and competent to testify thereof.

I have been married to Harold R. Stanley since July 7, 2001.

Harold R. Stanley, one of many victims of the IRS record falsification program, is currently incarcerated at FCI El Reno (Inmate 13716-062).

As a direct result of the stress associated with his incarceration on November 16, 2016, I have suffered the following medical conditions:

- On April 11, 2018, I had a heart attack. The attack led to a heart catheter procedure, in which I ended up with two stents in the right side of my heart.

- On May 13, 2018, I again was transported by ambulance to Shawnee Mission Hospital with severe pain in my chest.

- On October 24, 2018, I was again rushed by ambulance to St. Johns Hospital with pain in my chest. This led to surgery and seven days in the hospital due to an inflamed pancreas and colon and I was jaundiced.

- I have not been back to see any doctors due to the fact that I have more than $15,000 in doctor bills, have no means to pay them, since Harold was my sole means of support, and collection agencies are calling and sending threatening letters to me.

- The conditions under which I am suffering have only occurred due to the stress caused by Harold's unjust prosecution, conviction and incarceration, based on falsified IRS records.

I, Ellen L. Stanley, declare under penalty of perjury, pursuant to 28 U.S.C. §1746, that "The facts stated in the foregoing **"DECLARATION IN SUPPORT OF FRAP RULE 21 PETITION FOR MANDAMUS TO THE HONORABLE TIMOTHY J. KELLY"**, are absolutely true and correct to the very best of my knowledge and belief, So HELP ME GOD.

/s/ *Ellen L. Stanley*
Ellen L. Stanley

APPENDIX B

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA

Civil Action 17-CV-00022-TJK

HAROLD R. STANLEY, et al,
Plaintiffs,

versus

LORETTA LYNCH, et al,
Defendants,

and

Civil Action 16-CV-02313-TJK

MICHAEL B. ELLIS & ROBERT A. McNEIL, et al,
Plaintiffs,

versus

AMY BERMAN JACKSON, et al,
Defendants,

PLAINTIFFS' Rule 59(e) MOTION TO ALTER/AMEND ORDER ADOPTING MAGISTRATE REPORT & RECOMMENDATIONS, W/ Exhibits A & B as Amended

(July 16, 2018)

Introduction

Wrongly-incarcerated Plaintiff Harold Stanley and his fellow rights-raped, robbed Co-Plaintiffs, once again respectfully offer federal bar attorneys opportunity to end the vicious record falsification program used to enforce the income tax on "non-filers", and thus terminate the ongoing, tacit war between the lawyers and the American People.

Herein, Plaintiffs assign fourteen (14) errors to The Hon. Judge Kelly, who adopted on June 18, 2018 his Magistrate's Report and Recommendation **[20]** issued on November 1, 2017. This Motion proceeds as follows. In **Section I.**, Plaintiffs summarize their discovery of the record falsification program being championed and openly prolonged by all involved executive and judicial branch attorneys. In **Section IIA.**, Plaintiffs present principles of the Rule of Law binding on all Americans; in Section **IIB.**, they present the rights of attorney fraud victims to access U.S. District Courts and secure "meaningful" judicial relief from that fraud.

In **Section III**, Plaintiffs identify the fourteen (14) key errors contained in Mr. Kelly's recent Memorandum Opinion **[26]** and Order **[25]** dismissing these cases, which errors infect his three core findings that 1.) Congress supposedly rendered courts impotent in the face of unarguably felonious acts committed by IRS, as approved by the Service's highest ranking attorneys, that 2.)"non-filers" supposedly have no standing to secure redress from the fraud whereby the income tax is being enforced on them, and that 3.) Plaintiffs' cases are supposedly "frivolous".

This presentation by no means addresses *all* the errors contained in Mr. Kelly's Memorandum, only the fourteen (14) most significant at this stage of the proceedings.

Section I. Restatement of the Two Cases

Americans have discovered that IRS has repeatedly, publically conceded it has no authority under 26 U.S.C. §6020(b) to prepare substitute income tax returns for those IRS labels "non-filers".[1]

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[1] See for two examples, The Privacy Impact Assessment IRS published concerning 6020(b), [Link here: http://www.irs.gov/pub/irs-pia/auto_6020b-pia.pdf], which does not mention income taxes. And see the Internal Revenue Manual, §5.1.11.6.7, which precisely confirms the PIA, showing that 26 U.S.C. §6020(b) is limited to matters involving "**employment, excise and partnership taxes**", and does not include the income tax.

Victims have also discovered that public servants in IRS, now with the knowledge of every involved federal bar attorney in both the judicial and executive branches, enforces the income tax upon "non-filers" after first falsifying, in sequential invariable manner, layered digital and paper records, making it appear IRS prepared substitute income tax returns and summary records of assessments on dates when no such thing occurred. More specifically, victims discovered that IRS' all-controlling software, known as the Individual Master File program (IMF), was carefully engineered to prevent entry therein of claimed "deficiency" amounts supposedly owed by "non-filers" unless IRS first makes fraudulent entries creating the appearance IRS supposedly received a return from a "non-filer"(!), and that IRS supposedly prepared substitute income tax returns concerning the victim on claimed dates, even though no such thing exists or ever occurred.[2]

After IRS falsifies its all-controlling ***digital*** records concerning "non-filers", IRS then fabricates falsified ***paper*** records reflecting the falsehoods entered into the underlying digital records.

[Link here: http://www.irs.gov/irm/part5/irm_05-001-011r-cont01.html, scroll down to 5.1.11.6.7 "IRC 6020(b) Authority".]

[2] Plaintiffs have no need to explain WHY the software has such restriction written into it; they simply discovered its existence, and present it for a candid world's consideration.

IRS and DoJ attorneys invariably use falsified IRS records as justification to initiate property thefts and criminal prosecutions of those IRS labels "non-filers". For example, since November 16, 2016 "non-filer" Plaintiff Harold R. Stanley has been incarcerated in El Reno Federal Penitentiary based on records reflecting IRS' pretended preparation of substitute income tax returns concerning him and 2006, which returns IRS records show were prepared on July 1, 2008 and July 28, 2008, even though they don't exist nor were ever prepared.[3]

Accordingly, rights-raped victims of the attorney scheme to enforce the income tax on so-called "non-filers" filed suit to enjoin the IRS fabrication of falsified digital and paper records concerning them, used by IRS and DoJ to conceal and circumvent IRS' CLAIMED lack of authority to enforce the income tax. Knowing that no administrative remedy exists to end the systematic, institutionalized IRS record falsification program violating their rights and damaging them in concrete ways, Plaintiffs in these two cases sought judicial relief to enjoin the program pursuant to §702 of Title 5, and the equitable power

[3] All other Class Plaintiffs, named or seeking to join these cases, have suffered from IRS/DoJ theft of their properties, which agencies used either judicial or non-judicial processes.

of U.S. courts.[4] But, the merits of their cases were not adjudicated, based on specious, hackneyed 'arguments' trotted out by Mr. Timothy J. Kelly.[5]

Section IIA. The Rule of Law

We start, as should all attorneys, from the premise that the agencies of our government are bound by the same rules of behavior that individual Americans are obliged to obey:

> "Decency, security and liberty alike demand that government officials shall be subjected to the same rules of conduct that are commands to the citizen. In a government of laws, existence of the government will be imperiled if it fails to observe the law scrupulously. Our Government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example. Crime is contagious. If the Government becomes a lawbreaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy. To declare that in the administration of the criminal law the end

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[4] See 1st Amd. Cmplt. 17-00022 ¶7, and see 1st Amd. Cmplt. 16-2313, ¶2.

[5] Importantly, after four years of litigating the IRS record falsification program, government-employed attorneys have still not offered a single argument of any merit to counter Plaintiffs' suits; nor can they controvert the overwhelming evidence Plaintiffs have collected proving the scheme's existence.

> justifies the means — to declare that the Government may commit crimes in order to secure the conviction of a private criminal — would bring terrible retribution. Against that pernicious doctrine this Court should resolutely set its face." *Olmstead v. U.S.*, 277 U.S. 438 (1928).

Further, the Supreme Court teaches

> "Our system of jurisprudence rests on the assumption that all individuals, whatever their position in government, are subject to federal law: `No man in this country is so high that he is above the law. No officer of the law may set that law at defiance with impunity. All officers of the government, from the highest to the lowest, are creatures of the law, and are bound to obey it.'" *Butz v. Economou*, 438 U. S., at 478, (1978) citing *United States* v. *Lee,* 106 U. S. [196,] 220 [(1882)]."

Unarguably, crimes cannot be committed to enforce any law of our Nation. No exception is granted federal officers/employees involved in income tax matters; the commission of digital and documentary fraud is not within their remit. Thus, since Congress, at 18 U.S.C. §1001, proscribes the falsification of federal records, no attorney, officer or employee of the government may falsify IRS' Individual Master File records to reflect the pretended receipt by the Service of returns from "non-filers" which were never received, and IRS' pretended preparation of

substitute income tax returns, which were never prepared. Nevertheless, all federal bar attorneys involved in Class cases are, with brazen impunity, concealing the commission of crimes used to enforce the income tax. As shown below, Mr. Kelly's recycled arguments are non-persuasive and embarrassingly revealing of either his ethics or workmanship.

Section IIB. The Rights of Victims of Attorney Fraud

All Americans have an indisputable right of access to courts to sue any federal "employee" or "officer"[6] for violation of their protected rights. The United States Supreme Court is explicit:

> "The right to sue and defend in the courts is the alternative of force. In an organized society, it is the right conservative of all other rights, and lies at the foundation of orderly government. It is one of the highest, most essential privileges of citizenship." *Chambers v. Baltimore & Ohio R.R.Co.,* 207 U.S. 142.

Moreover, "a person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof." 5 U.S.C. §702. Further, if no "legal" relief exists to remedy victims of criminal schemes run by our

[6] 28 CFR 50.15 recognizes "officers" as "employees".

government attorneys, the equitable power of U.S. District courts IS available.

Accordingly, since no *administrative* remedy exists to terminate the institutionalized falsification of IRS federal records concerning Plaintiffs, which program is violating both their substantive rights to due process of law and the criminal law of the United States, (falsification of federal records proscribed at 18 U.S.C. §1001), and which scheme is resulting in their unjust incarceration and the ongoing theft of their property, they sued pursuant to both 5 U.S.C. §702 and the equitable power of U.S. courts to stop the attorneys' attack on their lives. But, incredibly, all federally-employed attorneys involved in Class cases to date, claim that no judicial relief can be secured from the fraud attorneys use to imprison victims and steal their property. This open, festering wound on the body of our Republic must be redressed.

Section III. Summary of Kelly Errors re: Jurisdiction, Standing, Frivolousness

The very first documents Judge Kelly entered in this case, his Order **[25]** and Memorandum **[26]** dated June 19, 2018, are laden with condescending nonsense,[7] bald presumptions, and morally bankrupt

[7] For three examples, he begins his Memo: "Plaintiffs... have embarked on a seemingly unending quest to stop the federal government from collecting unpaid income taxes". By attempting to stop the IRS record falsification

arguments. He swallowed whole, as though he were his Magistrate's law clerk, Mr. Harvey's fetid opinions that three main issues justify dismissal of Plaintiffs' cases: 1.) The Anti-Injunction Act (AIA) supposedly renders courts impotent in the face of the institutionalized IRS record falsification program; 2.) victims of the IRS record falsification program supposedly lack standing to access judicial relief to terminate the systematic falsification of federal records concerning each of them, and that 3.) the two cases filed by victims are supposedly "frivolous". Along with all men of good will, Plaintiffs respectfully, emphatically disagree.

Section IIIA.

Error 1. Unsupported Presumption

In the Section he labels "Background", (and elsewhere, as shown below), Mr. Kelly makes bald, paternalistic presumptions he cannot support, and which, moreover, are directly contradicted by evidence before his bench. For example, Mr. Kelly opines:

> "These cases... are the latest volley in Plaintiffs' war to enjoin the federal

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program, he claims Plaintiffs are supposedly "tilting at windmills", and "judges themselves have become targets for Plaintiffs' ill-advised jousting". [Doc. 26, Mem., Snts.1-3.] No man or woman with a conscience, viewing the fraud Mr. Kelly is defending, is amused.

> government's enforcement of the income tax against individuals *who do not* ***file*** **their** ***returns***." [Doc. 26, Mem., Pg. 1, last full sentence, emphasis added.]

The phrase "do not file ***their*** returns" is clearly important to Mr. Kelly, since it appears on the very first page of his opus. But, he failed to state the statutory source of his presumption, which thus must be based on "materials outside the pleadings". [8] Regardless of its concealed source, it is utterly untenable.

His presumption is destroyed by Plaintiffs' discovery of the existence of IRS' institutionalized, invariable record falsification program, as fully exposed by Plaintiffs in their Amended Complaints **[3]**, supported by Exhibits A[9] and B[10] **[3-1]** attached thereto, and of which Mr. Kelly should by now become fully aware. Accordingly, Plaintiffs request he either reveal the specific statutes explicitly imposing the Kelly-presumed duty upon "non-filers" to "file ***their*** returns", or alternatively, withdraw his presumption, since known only to attorneys, and

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[8] See Doc. 26, Mem. Pg. 5, 3rd Sent.: "A court may consider materials outside the pleadings to determine its jurisdiction."

[9] In Exhibit A, Plaintiffs detail the entire IRS falsification program, step-by-step.

[10] In Exhibit B, Plaintiff McNeil, a forensic accountant, compares the almost identically-falsified Individual Master File records of ten (10) IRS victims.

since directly controverted by sworn evidence before his bench.

Error 2. Kelly Incorrectly Stated the Statutory basis for Plaintiffs' suit

Plaintiffs filed suit in both cases pursuant to the equitable power of United States courts, and pursuant to 5 U.S.C. §702, which mandates that:

> "a person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof". [17-00022, 1st Amd. Cmplt. **[3]**, ¶ 7 and 16-2313, 1st Amd. Cmplt. **[3]**, ¶2.]

Instead of truthfully citing Plaintiffs' jurisdictional claim based on 5 USC §702, Mr. Kelly failed to mention that statute in his introductory remarks, incorrectly stating that: "Plaintiffs assert claims under the Administrative Procedure Act, 5 U.S.C. §551, et seq...." [Mem., Doc. 26, Pg. 3, First Sent.] Accordingly, Plaintiffs request Mr. Kelly amend his Memorandum, then adjudicate the cases under both correct basis on which they filed suit: 5 U.S.C. §702 and the equitable power of United States Courts.

Error 3. Kelly Inability to Distinguish <u>Inferences</u> Requested from <u>Declaratory Judgments</u>

Contrary to Mr. Kelly's errant claim, in neither lawsuit did Plaintiffs request declaratory judgment. Instead, for example, after Plaintiffs set forth detailed facts derived SOLELY from documentation provided by IRS, Plaintiffs requested in *Ellis* that Mr. Kelly make this inference:

> "Accordingly, the Court is requested to make this wholly reasonable inference arising from those uncontroverted IRS concessions: A person who does **not** attest to his tax liability by voluntarily swearing out a return, does **not** connect any attorney-presumed tax liability to pay income tax to the Service's statutory ability to summarily assess under 26 USC §6020(b). Hence, so-called "non-filers" can never be lawfully prosecuted for willful failure to pay income tax, and can't damage themselves by failing to pay an exaction not imposed by Congress." [See 16-2313, 1st Amd. Cmplt **[3]**, ¶ 102],

And in *Stanley*, Plaintiffs requested Kelly make a similar inference:

> **"Grant** Plaintiffs the reasonable inferences derived from their explicit allegations and uncontroverted/incontrovertible evidence appended hereto, that Congress did NOT impose on them or on any so-called "non-filer" either a duty to file an income tax return, or a duty to pay "income taxes", since it requires the commission of criminal acts to enforce the

> exaction on those who don't voluntarily surrender their property to IRS, or who don't connect (by the voluntary swearing out of a return) their presumed "*tax liability* with the Service's statutory ability to *summarily assess* the tax"; [See 17-00022, 1st Amd. Cmplt. **[3]**, ¶ 96.]

Nevertheless, despite the fact the word "declaratory" does NOT appear in either Complaint before him, Mr. Kelly errantly held:

> "They seek various forms of relief, including (1) a declaratory judgment that Congress has not imposed a duty on Americans to file income tax returns, and therefore non-filers cannot be prosecuted for failing to file, *Ellis* Am. Compl. ¶¶100-102; *Stanley*, Am. Compl. ¶ 96." [Doc. 26, Mem., Pg. 3, 1st ¶, Sec. Sent.]

Since Plaintiffs sought no declaratory relief whatsoever in either case, they request Mr. Kelly amend his holding to remove reference to the relief he fabricated and attributed to them.

Section IIIB. Kelly Multiple Errors Regarding His Claimed Lack of Jurisdiction

Here we arrive at the core of Mr. Kelly's errors. Apparently, he is of the opinion that Congress, by enacting the Anti-Injunction Act, emasculated federal courts, converting them to impotent victims

of IRS deception and fraud. Such conclusion, if held, is dead wrong. "The public welfare demands that the agencies of public justice be not so impotent that they must always be mute and helpless victims of deception and fraud." *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238 (1944).

Error 4: No Tax Amount is in Controversy, hence the AIA is Inapposite

Beginning his "Analysis" concerning the AIA, Judge Kelly makes an amazing omission. [Doc. 26, Pg. 5, 2nd full ¶] First, he correctly quotes, in part, *Enochs v. Williams Packing and Navigation Co.*, 370 U.S. 1, (1962):

> "The manifest purpose of §7421(a) is to permit the United States to assess and collect taxes alleged to be due without judicial intervention, and to require that the legal right to the disputed sums be determined in a suit for refund."

But then Mr. Kelly forgot to notice that in neither lawsuit do Plaintiffs or the Government allege that any "disputed sums" exist or are in controversy between the parties. He further failed to notice that Plaintiffs do not seek to restrain any ongoing assessment or collection activity. Instead, they seek to enjoin ONLY IRS' institutionalized, surreptitious program to secretly falsify federal digital records, upon which IRS builds falsified paper records, which

are in turn used to commence assessment and collection activities.

Accordingly, Plaintiffs request Mr. Kelly amend his Memorandum to show how the AIA applies to cases when no disputed tax sums are in controversy, and no ongoing IRS/DoJ assessment or collection activity is underway against the plaintiffs.

Errors 5 & 6 Re: "Declaratory Judgments" and Failure to Identify Acts of Which Complaint Has Been Made

Next, in regard to the alleged AIA bar to Plaintiffs' suits, Mr. Kelly held that

> "Plaintiffs' requested relief includes, for instance, a declaration that the government cannot prosecute individuals who do not file taxes and an injunction prohibiting IRS and DoJ employees from taking certain actions that would enable them to conduct collection and enforcement proceedings against non-filers. *Ellis* Am. Compl. ¶¶ 100-102, 110-112; *Stanley* Am. Compl. ¶¶ 96-98." [Doc. 26, Mem., Pg. 6, 3rd Sent.]

That sentence contains two critical errors. With respect to the first part of his sentence, and as noted above, Plaintiffs sought no "declaratory judgment" in either case. Instead, Plaintiffs merely requested the

Court to make the following inferences based on the documentary evidence provided wholly by IRS:

> "100. **First**, IRS' layered record falsification scheme, which is invariably used to attack every person IRS labels a "non-filer", provides the strongest possible inference Congress did not impose any duty upon Americans to file income tax returns, since Congress cannot authorize commission of crimes to enforce the law.[11] Hence, the Court is also requested to make the corollary inference that that so-called "non-filers" cannot "damage themselves" by "failing to file" returns.
>
> "101. **Second**, in regard to any presumed duty *to pay* income tax, it is of primary importance to note, and the Court is explicitly requested to notice, that an IRS internal memo by IRS Assistant Chief Counsel corroborates the Commissioner's lack of authority to compel "non-filers":
>
> > "Accordingly, the penalties of perjury statement has important significance in our tax system. The statement connects the taxpayer's *attestation of tax liability* (by the signing of the statement) with

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[11] "The acts of federal agents ... are limited and controlled by the Constitution of the United States", which "has not empowered Congress to authorize anyone to violate criminal laws". *Olmstead v. United States*, 277 U.S. 438, 482.

> the Service's statutory ability to *summarily assess* the tax. (Emphasis added) Assistant Chief Counsel, *Memorandum* 3 (July 29, 1998) http://www.irs.gov/pub/irs-wd/1998-053.pdf.
>
> "102. Accordingly, the Court is requested to make this wholly reasonable inference arising from those uncontroverted IRS concessions: A person who does **not** attest to his tax liability by voluntarily swearing out a return, does **not** connect any attorney-presumed tax liability to pay income tax to the Service's statutory ability to summarily assess under 26 USC §6020(b). Hence, so-called "non-filers" can never be lawfully prosecuted for willful failure to pay income tax, and can't damage themselves by failing to pay an exaction not imposed by Congress." See *Ellis*, Amd Cmplt, ¶¶ 100-102.

Those requested inferences are **not** requests for declaratory judgments, so Plaintiffs again request that Mr. Kelly amend his Memorandum to eliminate his (and his law clerk's) error in that regard.

More importantly, in the second part of his sentence quoted above, he found that Plaintiffs supposedly seek "an injunction prohibiting IRS and DoJ employees from taking certain actions that would enable them to conduct collection and enforcement

proceedings against non-filers". Mr. Kelly has confused himself. He failed to explicitly state the precise IRS actions of which Plaintiffs complain, (falsifying digital and paper documents upon which IRS builds justification for criminal prosecutions and civil forfeitures), and further failed to determine whether the specific acts identified by Plaintiffs are "assessment" or "collection" activities authorized by Congress, thus shielded by the AIA from judicial review.

When reviewing his Memorandum, Plaintiffs respectfully suggest Mr. Kelly bear in mind that

> "There is no presumption against judicial review and in favor of administrative absolutism (see *Abbott Laboratories* v. *Gardner,* 387 U. S. 136, 140), unless that purpose is fairly discernible in the statutory scheme. Cf. *Switchmen's Union* v. *National Mediation Board,* 320 U. S. 297.

Accordingly, if Mr. Kelly wishes to stand by his position on the issue, Plaintiffs request he amend his Memorandum to plainly state that IRS' institutionalized falsification of federal digital and paper records are "assessment or collection activities" that Congress expressly, or by implication, shielded from judicial review when enacting the AIA. (Of

course, Congress' intent when enacting the AIA is inscrutable.[12])

Error 7: Kelly Claim IRS Falsification of Federal Records is Precisely Similar to Authorized Collection or Assessment Activities, ("a distinction without a difference"), Both Shielded by the AIA from Judicial Review

The core of Mr. Kelly's defense of the IRS record falsification program hinges on his adoption of Mr. Harvey's malodorous Recommendation **[20]** that no distinction can be made between attempts to enjoin legitimate assessment/collection activities authorized by Congress, and Plaintiffs' effort to enjoin the layered, felonious falsification of IRS digital and paper records concerning them. Specifically, Mr. Kelly cites Magistrate Harvey's opinion that

> "even if it is true that IRS employees merely make SFRs appear to exist (**in digital and paper records, when they never were prepared**), Plaintiffs still seek to enjoin the process by which that (**fraudulent**) appearance is created and through which tax

[12] Determining Congress' intent when enacting the AIA is impossible, since the Supreme Court has discovered that the statute "apparently has no recorded legislative history". *Bob Jones Univ. v. Simon*, 416 U.S. 725. *See also* Note, *Enjoining the Assessment and Collection of Federal Taxes Despite Statutory Prohibition*, 49 Harv. L. Rev. 109, n.9, (1935) ("[T]he amendment's progress was devoid of reported comment.") Amazing, isn't it?

> deficiencies are then assessed and collected. Report & Rec., Pg. 7. Thus, Plaintiffs claims still fall within the ambit of the AIA." [Doc. 26, Mem., Pg. 6, last sentence, **highlighted**, parenthetical interpolations, Plaintiffs.]

Incredibly, Mr. Kelly swallowed whole Mr. Harvey's indefensible claim that cases seeking to enjoin IRS from committing acts Congress has proscribed, are precisely analogous to cases seeking to enjoin IRS from engaging in lawfully authorized collection and assessment activities. [See Doc. 26, Mem. Pg. 6, last line: "a distinction without a difference", as Mr. Kelly parrots Harvey, who apes Ms. Amy Berman Jackson. See D.C.D.C. cause 14-471, *Ellis v. Commissioner*, 2014, Jackson Memorandum **[Doc 28]**, Pg. 10, 2nd ¶, 4th Sent.] No one faithful to the Rule of Law upon which this Nation was founded agrees with the attorneys.

Plaintiffs respectfully suggest that Mr. Kelly reconsider his adoption of the Jackson/Harvey nonsense, while bearing in mind that "Executive actions are presumptively subject to judicial review", and that "[W]e have stated time and again that judicial review of executive action will not be cut off unless there is persuasive reason to believe that such was the purpose of Congress." See *Gutierrez de Martinez v. Lamagno*, 515 U.S. 417, 434 (1995).

In light of the inarguable fact that Congress cannot authorize the commission of acts Congress has expressly made criminal, (see Section IIA., "Rule of Law", Pg. 4, *supra*) and since Congress did not, in fact, state or infer when enacting the AIA, any intent to remove power from courts to review acts by government employees Congress has expressly criminalized, Prisoner Harold Stanley and his Co-Plaintiffs request Mr. Kelly withdraw his holding that criminal acts of IRS employees are precisely equivalent to, and similarly shielded from judicial review as are lawfully authorized IRS acts, ("A distinction without a difference").

In alternative, Plaintiffs request Mr. Kelly amend his Memorandum to explain:

- The source of Congress' power to enact a law shielding from judicial review acts by government agents Congress has expressly made criminal;
- Identify any similar Congressional enactments shielding violations of the criminal law by government agents, damaging Americans, from judicial review; and
- State whether, and precisely where, Congress shielded from judicial review the sequential falsification by IRS of records used to enforce the income tax on "non-filers".

Error 8: Kelly Claim the Equitable Exception to the AIA Does Not Apply

In regard to the purported AIA bar (which Mr. Kelly claims renders all judicial branch attorneys impotent observers of felonious acts IRS is committing, despite Congress' explicit proscription), Plaintiffs have also contended that the equitable exception to the AIA applies to authorize courts to review the acts of falsifying IRS digital and paper records to justify and initiate attacks on "non-filers". Plaintiffs noted in their Rule 72 Motion **[9]** that Magistrate Harvey failed to adjudicate the issue: whether the equitable exception to the AIA applies to their cases.

In response, Mr. Kelly conceded Harvey's failure to rule on the issue, but then found the equitable exception to the AIA supposedly inapposite. First, he quotes a snippet from *Enochs* noting that the AIA does not apply when "it is clear that under no circumstances could the Government ultimately prevail in the case at bar, and equity jurisdiction otherwise exists." [Doc. 26, Mem., Pg. 7, First full ¶, 2nd Sent.] But, then, Mr. Kelly leaped to this conclusion:

> "Plaintiffs do not show, and the Court does not find, any evidence suggesting that the government will not prevail. Also, Plaintiffs have adequate remedies at law, such as their APA claims, that would not require the Court to resort to equity jurisdiction. Accordingly,

the equitable exception does not apply here." [Doc. 26, Mem. Pg. 7, First ¶, 5th Sent.]

A full quote of the *Enochs* language reveals the bankruptcy of Mr. Kelly's claim the equitable exception to the AIA supposedly does not apply to these cases:

> "The manifest purpose of § 7421(a) is to permit the United States to assess and collect **taxes alleged to be due** without judicial intervention, and to require that the legal right **to the disputed sums** be determined in a suit for refund. In this manner, the United States is assured of prompt collection of its lawful revenue. Nevertheless, if it is clear that under no circumstances could the Government ultimately prevail, the central purpose of the Act is inapplicable and, under the *Nut Margarine* case, **the attempted collection may be enjoined if equity jurisdiction otherwise exists**. In such a situation, the exaction is merely in "the guise of a tax." *Id.* at *Enochs*, 370 U.S. 1, 7. [Emph. added.]

As noted above, Mr. Kelly failed to show that any alleged amount is claimed due by the parties, that any disputed sums exist which must be determined in a suit for refund, or that there is any ongoing collection attempt occurring. Hence, "the central purpose of the Act is inapplicable" to these cases;

there is simply no amount of tax revenue in controversy and no tax amount which is in contest between the parties, over which the Government might prevail.

Just as clearly, equity exists for such a time as this, when rights-raped, robbed, wrongly incarcerated victims of a lawless government agency seek to enjoin the institutionalized falsification of federal records concerning them, which program has damaged them and will continue damaging them until enjoined. [13] Plaintiff Stanley and his Co-Plaintiffs request that Mr. Kelly amend his Memorandum by withdrawing his claim the equitable exception to the AIA is inapposite, since no amount is in controversy between the parties, thus the central purpose of the Act is inapplicable.

Error 9: Kelly Failed to Adjudicate Pursuant to §702 Either

Incredibly, even though Plaintiffs have also sued under the provisions of Title 5 §702, and Mr. Kelly directly recognized that fact, he failed to adjudicate the case under that statutory authority. That is, he first noted "Plaintiffs assert claims under the

[13] Of course, if Mr. Kelly remedies his "Error 9", as addressed next, and properly adjudicates the merits of both suits pursuant to the legal remedy Congress provided at 5 U.S.C. §702, we will waive our suggestion that he base jurisdiction on the equitable exception to the AIA.

Administrative Procedure Act, 5 U.S.C. §551, et seq...." [Doc. 26, Mem. Pg. 3, First Sent.] Then, later he states:

> "Plaintiffs have adequate remedies at law such as their APA claim, that would not require the Court to resort to equity jurisdiction. Accordingly, the equitable exception does not apply here." [Doc. 26, Mem. Pg. 7, First Full ¶, Last two Sents.]

That is, to obviate the exercise of his Court's equitable power, Judge Kelly claims Plaintiffs can access legal relief under the APA. Yet, Mr. Kelly refused to adjudicate Plaintiffs' cases under Title 5, even though HE stated that they were also brought under the APA.[14]

Wrongly-incarcerated Plaintiff Stanley and his Co-Plaintiffs request that Mr. Kelly withdraw his Memorandum and adjudicate their cases pursuant to the conceded power of his Court to review wrongful actions of Government agencies, as provided by Congress at 5 U.S.C. §702. (He is free to call that statute the "APA" or any other name.)

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[14] Whether he calls §702 "APA" or not, he must adjudicate the case pursuant to that statute. Plaintiffs question whether Mr. Kelly even read "his" opinion, since it is so obviously nonsensical. It will be embarrassing to Mr. Kelly when the Supreme Court reviews the Memorandum. But, we leave that decision to him.

Section IIIC. Kelly Multiple Errors Regarding Standing

Judge Kelly adopted Mr. Harvey's recommendation that Plaintiffs supposedly lack standing for three reasons: 1.) their allegations were supposedly only "generalized grievances" which 2.) were supposedly "self-inflicted"; and 3.) the forward-looking relief they seek would supposedly not address the past injuries they have identified. No one with fidelity to the Rule of Law could agree with any of those defenses.

Error 10: Plaintiffs Supposedly Only Claim Generalized Grievances

Each Plaintiff has a right to access "meaningful" judicial relief when IRS surreptitiously falsifies federal records concerning them, resulting not only in concealed violation of their procedural due process rights, but also in their unlawful incarceration and the theft of their properties. Again,

> "A person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof." 5 U.S.C. §702.

Clearly, Plaintiffs' description of the attorney-approved, attorney prolonged falsification of IRS records directly related to each Plaintiff, is not a "generalized grievance". Nor do Plaintiffs seek generalized relief. They seek to end the IRS falsification of records concerning each Plaintiff.

Accordingly, Mr. Stanley and his Co-Plaintiffs request that Mr. Kelly withdraw his untenable, errant conclusion that Plaintiffs' drive to terminate IRS falsification of records concerning each of them, which IRS is using to steal their property and justify their incarceration, only states a "generalized grievance" that "no more benefits them than it does the public at large".

Error 11: Kelly Claim Plaintiffs Injuries are "Self-Inflicted"

Mr. Kelly opines that "Plaintiffs' injuries are self-inflicted because they have chosen not to comply with federal income tax laws". [Doc. 26, Mem., Pg. 9, first full ¶, 4th Sent.] But, once again, Mr. Kelly failed to provide a shred of authority to support his presumption that Plaintiffs have been, in some magical manner known only to attorneys, required to comply with federal income tax laws.

And, as noted above, sworn evidence before his bench presented by Plaintiffs [See **Exhibits A & B**, appended.] is **fatal** to his bald presumption. Specifically, if he in fact read Plaintiffs' Complaints with supporting sworn evidence, (an open question), he should have learned that IRS systematically falsifies digital and paper records to justify prosecuting "non-filers", which FACTS defeat Mr. Kelly's bald presumption Congress imposed a duty on "non-filers" to comply with income tax laws. That is, Mr. Kelly is wrong because Congress could never impose a duty on Americans which requires IRS to

enforce by falsifying federal records. Thus, the revelation of the existence of IRS' institutionalized falsification of records concerning each Plaintiff is PROOF Congress imposed no duty upon them "to comply with federal income tax laws."

Accordingly, Mr. Stanley and his Co-Plaintiffs request that Mr. Kelly either state the precise law he claims Plaintiffs "have chosen to not comply with", or withdraw his bald, case-dispositive, controverted and, (truly), fraudulent presumption.

Errors 12 & 13: Kelly Holding the Forward-Looking Relief Plaintiffs Seek Would Not Remedy Past Harms.

Mr. Kelly opines:

> "'So long as plaintiff continues to refuse to file his tax returns, defendants may institute deficiency proceedings against him, even without generating an SFR or using a self-authenticating certification.' Thus, the relief Plaintiffs seek would not redress their injuries." [Doc. 26, Mem., Pg. 10, 6th Sent.]

In response, we first note that Mr. Kelly has failed, once again, to present the explicit statute upon which this bald presumption rests: that a "non-filer" supposedly has a duty to "file his tax returns". And, as noted above, that presumption has been DESTROYED by Plaintiffs' discovery and presentation of irrefutable IRS-provided

documentation, [See **Exhibits A & B**], proving IRS MUST systematically falsify digital and paper records before initiating attacks on "non-filers". Restated: Plaintiffs' incontrovertible presentation of IRS documentation proving existence of IRS' record falsification program destroys the bald attorney presumption that Congress placed a duty on "non-filers" to file tax returns.[15]

We next note, in response to the Kelly holding quoted above, that Plaintiffs have produced incontrovertible evidence supplied by IRS proving IRS CANNOT institute, and NEVER in fact institutes, deficiency proceedings against "non-filers" unless and until IRS employees first commit crimes, i.e., falsify digital records concerning targeted "non-filers" to reflect IRS' pretended receipt of returns from those victims and IRS' pretended preparation of substitute income tax returns. That means, when a court finally enjoins the falsification program, IRS will never again be able to attack and defraud those IRS labels as "non-filers". IRS' complete lack of power under 6020(b) will finally be exposed, proving the income tax is, as IRS officials have incessantly reminded us, "voluntary".[16]

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[15] Plaintiffs contend that the casual repeated failure by Mr. Kelly to present the basis for his presumptions indicates that he knows he is defrauding Plaintiffs, despite their presumption-destroying explicit allegations and incontrovertible proof.

[16] "Each year American taxpayers voluntarily file their tax returns and make a special effort to pay the taxes

The forward-looking relief Plaintiffs seek, terminating IRS' falsification of records concerning each of them, would DEFINITELY provide them relief for past IRS attacks, by, for example, immediately justifying PLAINTIFF HAROLD STANLEY'S RELEASE from El Reno Federal Correctional Institution. For other Plaintiffs, who have "merely" lost property at the hands of the attorney-led, attorney-prolonged record falsification

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they owe." Johnnie M. Walker, IRS Commissioner, 1971, Internal Revenue 1040 Booklet. And

--"Our tax system is based on individual self-assessment and voluntary compliance." Mortimer Caplin, IRS Commissioner, 1975 Internal Revenue Audit Manual. And

--"The IRS's primary task is to collect taxes under a voluntary compliance system." Jerome Kurtz, IRS Commissioner, 1980 Internal Revenue Annual Report. And

--"... Encourage and achieve the highest possible degree of voluntary compliance... " Harold M. Browning, IRS District Director, Hawaii, 1984. And

--"Let's not forget the delicate nature of the voluntary compliance tax system... " Lawrence Gibbs, IRS Commissioner, *Las Vegas Review Journal*, May 18, 1988. And

--"We don't want to lose voluntary compliance... We don't want to lose this gem of voluntary compliance." Fred Goldberg, IRS Commissioner, *Money* magazine, April, 1990. And

-- During the Eighty-Third Congress in 1953, Dwight E. Avis, head of the Alcohol and Tobacco Tax Division, Bureau of Internal Revenue, testified before the Ways and Means Committee, "Let me point this out now: Your income tax is 100 percent voluntary tax, and your liquor tax is 100 percent enforced tax. Now, the situation is as different as night and day."

program, the re-establishment of the Rule of Law in this Nation, and their ability to hand their children a future free from fears public servants will brazenly steal everything they own without explanation, [but on the basis of concealed, surreptitiously falsified federal records), would hugely remedy their past sufferings.

Unlike lawyers, Plaintiffs' standing does not rest on their social status or on 'things' they own, but on their honor, their fidelity to known duties, including the duty to fight for each other's rights, no matter the lawless opposition interposed by "men of zeal, no doubt, but without understanding." *Olmstead v. U.S.*, 277 U.S. 438 (1928), Brandeis, J, dissenting. In other words, Plaintiffs don't need money damages to redress the wrongs committed against them in the past.

Accordingly, Plaintiffs respectfully suggest that Mr. Kelly amend his Memorandum by withdrawing his controverted, untenable presumptions that a.) Congress supposedly imposed on "non-filers", (in a magical manner known only to attorneys), a duty to "file tax returns", and that b.) IRS supposedly can institute deficiency proceedings against "non-filers", even were Plaintiffs successful in enjoining IRS' systematic, invariably falsification of records concerning them.

Further, Plaintiffs request that Mr. Kelly amend his Memorandum to reflect that the injunction they seek, to enjoin IRS from falsifying records concerning them,

would provide Plaintiff Stanley redress by justifying his immediate release from wrongful imprisonment. For other rights-raped, robbed Plaintiffs, Mr. Kelly should amend his Memo to reflect that the injunction sought would provide redress for past IRS fraud perpetrated against them by giving each the incontrovertible PROOF they were correct when they lawfully opposed IRS thefts of their property. It would also prove that a handful of "nobodies" can restore the precious Rule of Law to our Nation, that Plaintiffs' past efforts and treasure expended to uphold the Rule were not spent in vain, and that they are passing to their children a constitutional republic that actually works. Men have died for that cause. When Plaintiffs win their battle to restore the Rule of Law, that will be all the redress they need to establish their standing.

Section IIID. Error 14: Supposedly "Frivolous Nature" of IRS Victims' Cases

On Pg. 11 of his Memorandum, Mr. Kelly partially states the standard for dismissal of cases deemed supposedly "frivolous": "This standard requires that the 'claims be flimsier than "doubtful or questionable", they must be essentially fictitious"", *Best v. Kelly*, 39 F.2d 328 (D.C.Cir. 1994), citing *Neitzke v. Williams*, 490 U.S. 319, 327, wherein the Supreme Court held: "An action is frivolous if it lacks an arguable basis in either law or fact", and "embraces not only (an) inarguable legal conclusion, but also fanciful factual allegation(s)".

In these two cases, Plaintiffs present irrefutable IRS documentation proving IRS never prepares substitute income tax returns on any date shown in IRS-falsified digital and paper records concerning "non-taxpayers", and that IRS falsifies records concerning "non-filers" in the manner presented, to conceal ***IRS' concession*** that 26 U.S.C. §6020(b) does not apply to income taxes.[17]

That is, Plaintiffs have presented to public servant Timothy J. Kelly irrefutable, IRS-supplied documentation supporting their Complaints, including "**Exhibit A**" a step-by-step analysis of IRS' falsification program, and "**Exhibit B**", a comparison by Mr. Robert McNeil, (a professional forensic accountant), of the almost identically-falsified Individual Master File records of ten (10) victims IRS labels "non-filers".

Clearly, Plaintiffs claims are not "essentially fictitious", (as Mr. Kelly's law clerk and Mr. Harvey have led him to believe). Plaintiffs have not suggested any bizarre conspiracy theories, nor fantastic government manipulations of their will or mind, nor any supernatural intervention. And, contrary to Mr. Kelly's inference, no Plaintiff in any Class case has ever frivolously argued that "the IRS committed 'fraud' by filling out returns on his behalf

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[17] See Footnote 1, for two of the Commissioner's published claims that §6020(b) provides him no power to prepare income tax returns for "non-filers".

as authorized by IRC §6020(b)". [See Doc. 26, Mem., Pg. 12, ¶1, 4th Sent.]

On the contrary, their claim is laser-like and simple. IRS **never** prepares substitute income tax returns on any date shown in IRS-falsified digital and paper records concerning targeted "non-filers", then IRS uses the falsified records to justify initiating criminal prosecutions and theft of victims' property.

In short, federal bar attorneys, now with Mr. Kelly's full knowledge and approval, are using an extensive record falsification program, once concealed – but now being run "in the clear" - to enforce the income tax on "non-filers", the existence of which program is incontrovertibly proven from IRS-provided records known to Mr. Kelly and all involved federal attorneys.

Accordingly, Prisoner Stanley and his rights-raped Co-Plaintiffs request that the Court either compel IRS to prove the Service prepares substitute income tax returns on the dates shown in its records concerning "non-filers" such as Prisoner Stanley, or remove Mr. Kelly's cynical denigration of their cases which he finds "so attenuated and unsubstantial as to be absolutely devoid of merit." [Doc. 26, Mem., Pg. 12, 3rd Sentence.]

Summary

U.S. Courts have jurisdiction to hear victim complaints that a government agency is systematically falsifying federal records to justify civil property forfeitures and criminal prosecutions of

Americans. The Anti-Injunction Act cannot be interposed in cases such as those at bar where no amount in controversy exists, and where victims present evidence IRS is surreptitiously, in institutionalized fashion, falsifying IRS records to justify attacking "non-filers". Congress has never indicated intent to strip, nor did strip, nor could strip U.S. courts of power to review acts by federal employees/officers that Congress has expressly made criminal.

Unrepresented victims of the program have standing to secure meaningful judicial review of such programs, or, they are *untermensch*, sub-humans without rights. Finally, the explicit relation by Plaintiffs of the inner working of the IRS/DoJ record falsification program defies any pretense by federal bar attorneys that Plaintiffs' cases are "frivolous" and "absolutely devoid of merit".

Afterwards

After nearly five years of litigation on this subject, federal bar lawyers have proven unable to offer any viable rationale supporting their claim courts are impotent in the face of IRS fraud. It is long-past time for judicial branch attorneys to stop their insulting, paternalistic attacks on those they are victimizing, just another re-iterative violation of their rights seconding that committed previously by IRS, and usually with the DoJ's participation.

Plaintiffs request that all men of good will unite to terminate the conscience-shocking, scandalous scheme, now being operated "in the clear" with full approbation of all involved federal bar attorneys, whereby IRS and the DoJ enforce the income tax on those IRS labels "non-filers".

"Let our people go...."

Relief Requested

Plaintiffs incorporate here, by reference, each respectful request they made above to Judge Kelly to amend his Memorandum with regard to the fourteen (14) errors identified. This document is respectfully presented, and it is so moved.

In RE: Cause 1:16-CV-02313 TJK/GMH

Michael B. Ellis

Robert A. McNeil

Verification/Declaration

Comes now Michael B. Ellis and Robert A. McNeil, declaring under penalty of perjury, pursuant to 28 USC §1746, that: "The facts stated in the foregoing '**Rule 59(e) Motion to Alter/Amend...**' are absolutely true and correct to the very best of my knowledge and belief, So HELP ME GOD."

Michael B. Ellis

Robert A. McNeil

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Cause 1:17-CV-00022 TJK/GMH

Harold R. Stanley

Michael B. Ellis

Robert A. McNeil

Barry E. Brooks

William B. McGarvin

Gregory A. Darst

Jan Marie Schieberl

Anthony Tinsman

Lynne M. Kuchenbuch

Lee C. Prymmer

Gary S. Dwaileebe

Ebenezer K. Howe IV

Todd B. Casey

James Back
~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~

APPENDIX C

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA

Case 19-5047

In Re: Harold R. Stanley, et al,
Petitioners,

Underlying Cases

1:16-cv-02313-EGS-GMH

1:17-cv-00022-EGS-GMH

Before

GRIFFITH and KATSAS, Circuit Judges

and

SENTELLE, Senior Circuit Judge

ORDER

(April 5, 2019)

Upon consideration of the petition for a writ of mandamus, which contains a request for oral argument, it is

ORDERED that the request for oral argument be denied. It is

FURTHER ORDERED that the petition for a writ of mandamus be denied without prejudice to refiling. Petitioners have not shown that the district court's delay in ruling on their motion to alter or amend the judgment is so egregious or unreasonable as to warrant the extraordinary remedy of mandamus. See *Gulfstream Aerospace Corp. v. Mayacamas Corp.*, 485 U.S. 271, 289 (1988); cf. *Telecommc'ns Research & Action Ctr. v. FCC*, 750 F.2d 70, 79-81 (D.C. Cir. 1984). We are confident that the district court will act as promptly as its docket permits.

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to transmit a copy of this order to the district court.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/
Daniel J. Reidy
Deputy Clerk

APPENDIX D

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA

Civil Action 17-CV-02313 (TJK/GMH)

MICHAEL B. ELLIS, et al,
Plaintiffs,

versus

AMY BERMAN JACKSON, et al,
Defendants,

Consolidated with

Civil Action 17-CV-00022 (TJK/GMH)

MEMORANDUM OPINION

(June 19, 2018)

Plaintiffs Michael Ellis, Robert McNeil, and Harold Stanley have embarked on a seemingly unending quest to stop the federal government from collecting unpaid income taxes. Courts in this Circuit

have repeatedly dismissed Plaintiffs' cases for lack of subject-matter jurisdiction. These rulings have not dissuaded Plaintiffs from tilting at windmills, however, and judges themselves have become targets for Plaintiffs' ill-advised jousting. Plaintiffs fare no better in these consolidated cases, the latest chapter in their saga.

Magistrate Judge G. Michael Harvey has issued a Report and Recommendation recommending, among other things, that the Court grant Defendants' First Amended Motion to Dismiss these cases for lack of subject-matter jurisdiction. Upon review of the Report and Recommendation and Plaintiffs' objections to it, the Court adopts the Report and Recommendation in its entirety and dismisses the cases on these grounds.

Background

These consolidated cases—*Ellis v. Jackson*, No. 16-cv-2313 ("*Ellis*"), and *Stanley v. Lynch*, No. 17-cv-22 ("*Stanley*")—are the latest volley in Plaintiffs' war to enjoin the federal government's enforcement of the income tax against individuals who do not file their returns. At their core, the complaints allege that various U.S. government employees—including everyone from a former President to three federal judges—have concocted a "scheme" to "enforce the income tax" on those who do not pay it. *See* No. 16-cv-2313, ECF No. 3 ("*Ellis* Am. Compl.") ¶ 12; No. 17-cv-22; ECF No. 3 ("*Stanley* Am. Compl.") ¶¶ 1, 3. Specifically, Plaintiffs allege that certain Internal Revenue Service ("IRS") employees operate a "records falsification" program that they use to collect taxes from individuals who do not file a tax return, so-called "non-filers." *See Ellis* Am. Compl. ¶¶ 19-35; *Stanley* Am. Compl. ¶¶ 42-45. To do so,

IRS employees purportedly enter "a certain sequence of numeric entries" into an IRS database which creates the "appearance" of two abbreviations in IRS's "Individual Master File." *See Ellis* Am. Compl. ¶¶ 22-23; *see also Stanley* Am. Compl. ¶¶ 39, 42. These abbreviations purportedly denote falsified dates showing when the IRS "received" a tax return from the non-filer and when a "substitute for return" ("SFR") was executed, even though no tax return was filed and no SFR created. *Ellis* Am. Compl. ¶ 22; *see also Stanley* Am. Compl. ¶ 42. As Plaintiffs tell it, the Department of Justice ("DOJ") relies on the information in this "Individual Master File" to pursue collection and enforcement proceedings against non-filers. *See Ellis* Am. Compl. ¶¶ 11, 24, 28, 32-35; *Stanley* Am. Compl. ¶¶ 43-47. This scheme is allegedly blessed by high-level government officials, including a former President

and Attorney General. *Stanley* Am. Compl. ¶ 1. And in *Ellis*, Plaintiffs also name three federal judges as defendants. *Ellis* Am. Compl. They allege that these judges, each of whom has agreed that federal courts lack subject-matter jurisdiction over similar lawsuits, have participated in the scheme against Plaintiffs by conspiring among themselves and with DOJ attorneys to dismiss those previous cases, including by misstating Plaintiffs' factual allegations. *Id.* ¶¶ 36-84.

Plaintiffs assert claims under the Administrative Procedure Act, 5 U.S.C. § 551 *et seq.*, and the First, Fourth, and Fifth Amendments to the Constitution. *Ellis* Am. Compl. ¶¶ 85-98; *Stanley* Am. Compl. ¶¶ 78-88. They seek various forms of relief, including (1) a declaratory judgment that Congress has not imposed a duty on Americans to file income tax returns, and therefore non-filers cannot be

prosecuted for failing to file, *Ellis* Am. Compl. ¶¶ 100-102; *Stanley* Am. Compl. ¶ 96; and (2) an injunction prohibiting IRS and DOJ employees from taking various actions involving the falsification or manipulation of computer records related to tax returns, *Ellis* Am. Compl. ¶¶ 110-112; *Stanley* Am. Compl. ¶ 98.

On April 26, 2017, Defendants moved to dismiss these cases. *See* No. 16-cv-2313, ECF No. 8. On November 1, 2017, Magistrate Judge Harvey issued his Report and Recommendation relating to the motion to dismiss, as well as several other pending motions. *See* No. 16-cv-2313, ECF No. 20 ("R&R"). In it, he recommends that the Court grant the motion to dismiss Plaintiffs' complaints for three reasons: (1) the Anti-Injunction Act ("AIA"), 26 U.S.C. § 7421(a), deprives this Court of jurisdiction to hear the case; (2) Plaintiffs lack standing; and (3) their

claims, which have been repeatedly rejected in this Circuit, are frivolous. *Id.* at 7, 11-12.

On November 15, 2017, Plaintiffs filed their objections to the Report and Recommendation. *See* No. 16-cv-2313, ECF No. 21 ("Pls.' Objs."). Specifically, they assert that Judge Harvey: (1) failed to recuse himself or explain his decision not to do so; (2) failed to take judicial notice of and resolve conflicting IRS statements about the applicability of 26 U.S.C. § 6020(b) to income tax; (3) refused to evaluate whether the AIA shields IRS "non-action" from judicial review; (4) failed to determine if the equitable exception to the AIA applies; (5) was incorrect in concluding that Plaintiffs lack standing; (6) falsified the record in multiple instances; (7) improperly refused to compel the IRS to produce a document; and (8) impermissibly dismissed Plaintiffs' claims as frivolous. Id. at 4-5.

II. Legal Standards

A. Evaluating a Report and Recommendation

Under Federal Rule of Civil Procedure 72(b), when a magistrate judge issues a report and recommendation on a dispositive motion, "[t]he district judge must determine de novo any part of the magistrate judge's disposition that has been properly objected to." Fed. R. Civ. P. 72(b)(3). But "when a party makes conclusory or general objections, or simply reiterates his original arguments, the Court reviews the Report and Recommendation only for clear error." *M.O. v. District of Columbia*, 20 F. Supp. 3d 31, 37 (D.D.C. 2013) (quoting *Alaimo v. Bd. of Educ. of the Tri-Valley Cent. Sch. Dist.*, 650 F. Supp. 2d 289, 291 (S.D.N.Y. 2009)).

Rule 72(b) "does not permit a litigant to present new initiatives to the district judge." *Taylor v. District of Columbia*, 205 F. Supp. 3d 75, 89 (D.D.C. 2016) (quoting *Aikens v. Shalala*, 956 F.

Supp. 14, 19 (D.D.C. 1997)). "[O]nly those issues that the parties have raised in their objections to the Magistrate Judge's report will be reviewed by this court." *M.O.*, 20 F. Supp. 3d at 37 (quoting *Aikens*, 956 F. Supp. at 19). Indeed, "[p]arties must take before the Magistrate Judge, 'not only their "best shot" but all of their shots.'" *Aikens*, 956 F. Supp. at 23 (quoting *Singh v. Superintending Sch. Comm.*, 593 F. Supp. 1315, 1318 (D. Me. 1984)).

"The district judge may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions." Fed. R. Civ. P. 72(b)(3).

A. Subject-Matter Jurisdiction

Federal courts are courts of limited jurisdiction. See *Gen. Motors Corp. v. EPA*, 363 F.3d 442, 448 (D.C. Cir. 2004) ("As a court of limited jurisdiction, we begin, and end, with an examination

of our jurisdiction."). The law presumes that "a cause lies outside [the Court's] limited jurisdiction" unless the party asserting jurisdiction establishes otherwise. *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). "Under Rule 12(b)(1), the plaintiff bears the burden of establishing jurisdiction by a preponderance of the evidence." *Ellis v. Comm'r*, 67 F. Supp. 3d 325, 330 (D.D.C. 2014) (citing *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561 (1992)), aff'd, 622 F. App'x 2 (D.C. Cir. 2015). "A court may consider materials outside the pleadings to determine its jurisdiction." *DePolo v. Ciraolo-Klepper*, 197 F. Supp. 3d 186, 18990 (D.D.C. 2016) (citing *Settles v. U.S. Parole Comm'n*, 429 F.3d 1098, 1107 (D.C. Cir. 2005)), aff'd, No. 16-5308, 2017 WL 4231143 (D.C. Cir. June 15, 2017).

III. Analysis

A. Subject-Matter Jurisdiction

Magistrate Judge Harvey recommends that this Court conclude that it lacks subject-matter jurisdiction for three reasons: (1) the lawsuit is barred by the AIA, (2) Plaintiffs lack standing, and (3) their cases should be dismissed as frivolous. Plaintiffs object to all three recommendations. The Court addresses each in turn.

1. The Anti-Injunction Act

The AIA provides that, except under statutory exceptions not relevant here, "no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person, whether or not such person is the person against whom such tax was assessed." 26 U.S.C. § 7421(a). "The manifest purpose of § 7421(a) is to permit the United States to assess and collect taxes alleged to be due without judicial intervention, and to require that the legal right to the disputed

sums be determined in a suit for refund." *Cohen v. United States*, 650 F.3d 717, 724 (D.C. Cir. 2011) (quoting *Enochs v. Williams Packing & Navigation Co.*, 370 U.S. 1, 7 (1962)).

The Court adopts Magistrate Judge Harvey's recommendation to dismiss these cases for lack of subject-matter jurisdiction because they are barred by the AIA. Here, Plaintiffs' lawsuits are undoubtedly "for the purpose of restraining the assessment or collection of any tax." 26 U.S.C. § 7421(a). Plaintiffs' requested relief includes, for instance, a declaration that the government cannot prosecute individuals who do not file taxes and an injunction prohibiting IRS and DOJ employees from taking certain actions that would enable them to conduct collection and enforcement proceedings against non-filers. *Ellis* Am. Compl. ¶¶ 100-102, 110-112; *Stanley* Am. Compl. ¶¶ 96, 98. These requests are clearly intended to restrain

the assessment or collection of income tax. *See McNeil v. Comm'r*, 689 F. App'x 648, 649 (D.C. Cir. 2017) ("The complaint effectively challenged the legality of income tax and the requirement to file tax returns, thereby falling within the clear ambit of the Anti-Injunction Act."), *cert. denied*, 137 S. Ct. 2227 (2017). And neither party has suggested that any of the statutory exceptions applies. Thus, "[a]s was true of the prior suits filed in this district, those currently before the Court are barred by the Anti-Injunction Act." Op. & Order, *Dwaileebe v. Martineau*, No. 16-cv-420, ECF No. 19 at 3 (D.D.C. Dec. 31, 2016); *see also Ellis*, 622 F. App'x at 3; *DePolo*, 197 F. Supp. 3d at 190-91; *Ellis v. Jarvis*, No. 16-cv-31, 2016 WL 3072244, at *3 (D.D.C. May 31, 2016).

Plaintiffs assert two objections to the Report and Recommendation's conclusion that the AIA bars these cases. They claim that Magistrate Judge

Harvey "refused to evaluate" whether the AIA covers "non-action" (i.e., the IRS's purported failure to prepare SFRs on the dates shown) and that he failed to determine whether the equitable exception to the AIA applies. Pls.' Objs. at 8-10. The Court overrules both of these objections. Plaintiffs' first objection is simply incorrect. Magistrate Judge Harvey did evaluate their argument, concluding that it is a "distinction without a difference" because, even if it is true that IRS employees merely make SFRs *appear* to exist, "Plaintiffs still seek to enjoin the process by which that appearance is created and through which tax deficiencies are then assessed and collected." R&R at 7. Thus, Plaintiffs claims still fall within the ambit of the AIA.

As to the second objection, while the Report and Recommendation does not explicitly discuss the equitable exception to the AIA, the Court finds that

it is clearly inapplicable here. In *Enochs v. Williams Packing & Navigation Co.*, 370 U.S. 1 (1962), the Supreme Court held that the AIA does not apply "if it is clear that under no circumstances could the Government ultimately prevail" in the case at bar and "equity jurisdiction otherwise exists." *Id.* at 7.

In a similar case brought by one of these Plaintiffs, the D.C. Circuit held that this exception did not apply. *See McNeil*, 689 F. App'x at 649 ("In no way does the limited exception to the Anti-Injunction Act, articulated in *Enochs* . . . , apply to this case."). The same is true here. Plaintiffs do not show, and the Court does not find, any evidence suggesting that the government will not prevail. Also, Plaintiffs have adequate remedies at law, such as their APA claim, that would not require the Court to resort to equity jurisdiction. Accordingly, the equitable exception does not apply here.

2. Standing

"The 'irreducible constitutional minimum of standing' requires that a plaintiff demonstrate three elements: (1) injury in fact; (2) causation; and (3) redressability." *Scenic Am., Inc. v. U. S. Dep't of Transp.*, 836 F.3d 42, 48 (D.C. Cir. 2016) (quoting *Lujan*, 504 U.S. at 56061), *cert. denied*, 138 S. Ct. 2 (2017). "The party invoking federal jurisdiction bears the burden of establishing these elements." *Lujan*, 504 U.S. at 561. "In reviewing the standing question, [courts] must be 'careful not to decide the questions on the merits for or against the plaintiff, and must therefore assume that on the merits the plaintiffs would be successful in their claims.'" *In re Navy Chaplaincy*, 534 F.3d 756, 760 (D.C. Cir. 2008) (quoting *City of Waukesha v. EPA*, 320 F.3d 228, 235 (D.C. Cir. 2003)).

Magistrate Judge Harvey concluded that Plaintiffs lack standing for multiple reasons. He

concluded that many of their alleged injuries are generalized grievances that are insufficient to demonstrate standing. R&R at 8. He also concluded that Plaintiffs have failed to establish redressability for some of their more specific injuries because the forward-looking relief they seek would not address the past injuries they have identified. *Id.* at 9. Lastly, he concluded that Plaintiffs lack standing to bring claims against the judges that they have filed suit against because this Court cannot compel other federal judges to act—rather, to the extent Plaintiffs disagree with another judge's decision, their recourse lies in an appeal. *Id.* at 10-11.

Plaintiffs object, and argue in response that a favorable ruling in this case would redress Plaintiff Stanley's injury by freeing him from prison (he was incarcerated as of when their objections were filed). Pls.' Objs. at 12. They also argue that the remaining

Plaintiffs have standing because they "have been damaged, are currently being damaged, and will be damaged unendingly into the future" absent relief, which will allow them to "rest confident [in] their lives, property, jobs and honor." *Id.* They also argue that they do not seek any specific relief against the judicial defendants, obviating Judge Harvey's concerns about this Court's lack of jurisdiction to control the decisions of other federal judges. *Id.* at 13.

The Court nonetheless adopts Magistrate Judge Harvey's recommendation that Plaintiffs lack standing. "[T]he Supreme Court has 'consistently held that a plaintiff raising only a generally available grievance about government—claiming only harm to his and every citizen's interest in proper application of the Constitution and laws, and seeking relief that no more directly and tangibly benefits him than it does the public at large—does not state an Article III

case or controversy.'" *Ellis*, 67 F. Supp. 3d at 335 (D.D.C. 2014) (quoting *Lujan*, 504 U.S. at 573-74). Many of the injuries Plaintiffs allege fall into this category. *See, e.g.*, *Ellis* Am. Compl. ¶ 1 ("Plaintiffs seek to . . . form common cause with . . . the American people to end the vicious exaction" of the "so-called 'income tax'"); *id.* ¶ 34 ("This is exquisite, layered fraud, damaging Americans in manners not one in a million can identify."); *id.* ¶ 86 (asserting that "IRS'[s] institutionalized scheme to fabricate evidence concerning Plaintiffs has adversely affected them"); *Stanley* Am. Compl. ¶ 3 (referencing "crimes committed by our Government"); *id.* ¶ 17 ("[T]his case does not raise mere academic questions, but reveals the ongoing battle of the Defendant attorneys against the Rule of Law, the Constitution, individual Americans, and the defrauded United States."). Such

generalized grievances "do[]not state an Article III case or controversy." *Lujan*, 504 U.S. at 574.

Plaintiffs do allege some injuries that are more concrete. Plaintiff Stanley, for instance, alleges that he was incarcerated as a result of the government's purported scheme. *Stanley* Am. Compl. ¶ 48. And in *Ellis*, Plaintiffs allege that the judicial defendants improperly dismissed previous cases that they had filed. *Ellis* Am. Compl. ¶¶ 37, 67. But these harms are insufficient to confer standing for two reasons. First, Plaintiffs fail to establish causation for these injuries because they are self-inflicted. "[I]t is well-settled in this jurisdiction that self-inflicted injuries—injuries that are substantially caused by the plaintiff's own conduct—sever the causal nexus needed to establish standing." *Ellis*, 67 F. Supp. 3d at 336 (D.D.C. 2014) (citing *Grocery Mfrs. Ass'n v. EPA*, 693 F.3d 169, 177 (D.C. Cir. 2012) and *Petro–Chem*

Processing, Inc. v. EPA, 866 F.2d 433, 438 (D.C. Cir. 1989)). Here, Plaintiffs' injuries are self-inflicted because they have chosen not to comply with federal income tax laws. *See Ellis*, 67 F. Supp. 3d at 336 ("Plaintiff has consistently maintained that he has no intention of filing an income tax return, which means he is taking a voluntary step to create the deficiencies that lead inexorably to his complained of injuries. It is therefore hard to conclude that his future injuries are not self-inflicted, which would eliminate causation."); *DePolo*, 197 F. Supp. 3d at 191. Thus, Plaintiffs have failed to establish causation.

Second, even if Plaintiffs could establish causation, they could not establish redressability. Plaintiffs seek injunctions and other forward-looking relief prohibiting IRS and DOJ employees from taking various actions involving the purported

falsification or manipulation of computer records related to tax returns, *Ellis* Am. Compl. ¶¶ 110-112; *Stanley* Am. Compl. ¶ 98, and declaratory relief regarding the government's actions to collect income tax, *Ellis* Am. Compl. ¶¶ 99-105; *Stanley* Am. Compl. ¶¶ 90-96. "[W]here the plaintiffs seek declaratory and injunctive relief, past injuries alone are insufficient to establish standing." *Dearth v. Holder*, 641 F.3d 499, 501 (D.C. Cir. 2011). That is because "forward looking relief . . . do[es] not remedy past harms." *Ellis*, 67 F. Supp. 3d at 337. Here, even if the Court were to grant this relief, it is not "likely" that it would redress Plaintiffs' cognizable injuries. *Lujan*, 504 U.S. at 561. "So long as plaintiff continues to refuse to file his tax returns, defendants may institute deficiency proceedings against him, even without generating an SFR or using a self-authenticating certification." *Ellis*, 67 F. Supp. 3d at

337 (collecting cases); *see also DePolo*, 197 F. Supp. 3d at 191. Thus, the relief Plaintiffs seek would not redress their injuries.[1]

In response, Plaintiffs argue a favorable ruling in this case would provide them standing to sue the government in future lawsuits for the damages that they have suffered. Pls.' Objs. At 12. This argument makes no sense. There is no reason to believe a favorable ruling here would have such an effect. But more importantly, that the relief Plaintiffs seek could, in their view, create standing to file *other* lawsuits does not establish redressability in *this* lawsuit. "Redressability examines whether the relief sought, assuming that the court chooses to grant it, will likely alleviate the particularized injury alleged by

[1] Plaintiffs do request one form of monetary relief: that the Court order the United States to establish a trust fund and order defense counsel to each deposit $1,000 for each material misrepresentation. *Ellis* Am. Compl. ¶ 117. But this request is not tethered to any damages suffered by Plaintiffs.

the plaintiff." *Fla. Audubon Soc. v. Bentsen*, 94 F.3d 658, 663-64 (D.C. Cir. 1996) (en banc). Here, the forward-looking and declaratory relief that Plaintiffs seek will not redress the cognizable injuries that they allege in this case. Accordingly, the Court overrules Plaintiffs' objection to Magistrate Judge Harvey's recommendation that they lack standing.

3. Frivolousness

"A complaint may be dismissed on jurisdictional grounds when it 'is patently insubstantial, presenting no federal question suitable for decision.'" *Tooley v. Napolitano*, 586 F.3d 1006, 1009 (D.C. Cir. 2009) (quoting *Best v. Kelly*, 39 F.3d 328, 330 (D.C. Cir. 1994)) (internal quotation marks omitted). "This standard requires that the 'claims be flimsier than "doubtful or questionable"—they must be "essentially fictitious."'" *Walsh v. Comey*, 118 F. Supp. 3d 22, 25 (D.D.C. 2015) (quoting *Best*, 39 F.3d at 330).

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Magistrate Judge Harvey recommended that this Court dismiss these cases as frivolous because they "hypothesize a vast conspiracy among IRS employees, attorneys for the federal government, federal judicial officers, and the highest-level executive branch officers." R&R at 11-12. Plaintiffs object, and argue in response that Magistrate Judge Harvey "refuses to adjudicate Plaintiffs' actual core complaint: that IRS fails to prepare substitute income tax returns on any date shown in IRS'[s] falsified records concerning targeted victims." Pls.' Objs. at 15.

The Court adopts Magistrate Judge Harvey's recommendation and concludes that Plaintiffs' complaints must also be dismissed as frivolous. Plaintiffs allege a wide-ranging "scheme," one that includes current and former government employees ranging from IRS employees to a former President to

federal judges, organized for the purpose of defrauding the United States by "enforc[ing] the income tax." *Ellis* Am. Compl. ¶¶ 6, 12, 33-34; *see also Stanley* Am. Compl. ¶ 1. These allegations are "obviously frivolous" and "so attenuated and unsubstantial as to be absolutely devoid of merit." *Decatur Liquors, Inc. v. District of Columbia*, 478 F.3d 360, 363 (D.C. Cir. 2007) (quoting *Hagans v. Lavine*, 415 U.S. 528, 536-37 (1974)); *see also Douglas v. United States*, 324 F. App'x 320, 321 (5th Cir. 2009) ("[Plaintiff's] argument that the IRS committed 'fraud' by filling out returns on his behalf as authorized by I.R.C. § 6020(b) is frivolous.").

Plaintiffs' status as serial litigants further underscores the frivolousness of their claims in these cases. There have been at least ten "virtually identical lawsuits" filed in this Circuit— including two by Ellis (*Ellis*, 67 F. Supp. 3d 325; *Ellis*, 2016

WL 3072244) and one by McNeil (*McNeil v. Comm'r*, 179 F. Supp. 3d 1, 8 (D.D.C. 2016), *aff'd*, 689 F. App'x 648)—that "share the same distinctive format and font and appear to have been crafted by a single unidentified person or organization." Op. & Order, *Dwaileebe v. Martineau*, No. 16-cv-420, ECF No. 19 at 1-2 (D.D.C. Dec. 31, 2016) (citation omitted). All were dismissed. In fact, after this lawsuit was filed, Judge Cooper issued an injunction prohibiting Plaintiffs Ellis and McNeil from "filing further duplicative lawsuits challenging the IRS's assessment of income taxes." Order of Permanent Injunction, *Crumpacker v. Ciraolo-Klepper*, No. 16-cv-1053, ECF No. 44 (D.D.C. Apr. 19, 2017).

IV. Additional Objections

Plaintiffs also assert the following objections: that Magistrate Judge Harvey (1) failed to recuse himself or explain his decision not to do so, (2) failed to take judicial notice of and resolve conflicting IRS

statements about whether 26 U.S.C. § 6020(b) applies to income tax, (3) falsified the record in multiple instances, and (4) refused to compel the IRS to produce a document. Pls.' Objs. at 4-5. The Court addresses each objection in turn.

A. Recusal

On August 11, 2017, Plaintiffs filed a Motion to Recuse Magistrate Judge Harvey and Judge Sullivan, who had previously been assigned to this case, pursuant to 28 U.S.C. § 455(a). No. 16-cv-2313, ECF No. 17. Plaintiffs claim that they have been deprived of their right to "neutral and detached judges," taking issue with several adverse rulings. *Id.* at 1-2.

28 U.S.C. § 455(a) permits a litigant to seek recusal of a federal judge "in any proceeding in which his impartiality might reasonably be questioned." "[T]o be disqualifying, the appearance of bias or prejudice must stem from an extrajudicial

source." *Klayman v. Judicial Watch, Inc.*, 278 F. Supp. 3d 252, 255 (D.D.C. 2017) (quoting *United States v. Barry*, 961 F.2d 260, 263 (D.C. Cir. 1992)). "[T]his circuit applies an 'objective' standard: Recusal is required when 'a reasonable and informed observer would question the judge's impartiality.'" *SEC v. Loving Spirit Found. Inc.*, 392 F.3d 486, 493 (D.C. Cir. 2004) (quoting *United States v. Microsoft Corp.*, 253 F.3d 34, 114 (D.C. Cir. 2001) (en banc) (per curiam)). "[B]ald allegations of bias or prejudice" will not suffice. *Karim-Panahi v. U.S. Cong., Senate & House of Representatives*, 105 F. App'x 270, 275 (D.C. Cir. 2004). And "unfavorable judicial rulings alone almost never constitute a valid basis for reassignment." *United States v. Hite*, 769 F.3d 1154, 1172 (D.C. Cir. 2014).

Here, Magistrate Judge Harvey denied the Motion to Recuse as to himself. R&R at 13 (quoting *United States v. Miller*, 355 F. Supp. 2d 404, 405

(D.D.C. 2005) ("The judge who is the object of the recusal motion rules on the motion.")); No. 16-cv-2313, Minute Order of November 1, 2017. He also recommended that the Court deny the Motion to Recuse as to Judge Sullivan as moot because the case had been reassigned by that point. R&R at 13. In their objections, Plaintiffs argue that Magistrate Judge Harvey repeatedly falsified the record and failed to explain why he did not recuse himself. Pls.' Objs. at 5-7.

In light of these developments, the Court will deny Plaintiffs' Motion for Recusal as moot. Magistrate Judge Harvey has already denied the motion as to himself, and Judge Sullivan is no longer assigned to this case. Thus, the motion is moot. The Court also notes that it has found no indication whatsoever to question the impartiality of Magistrate Judge Harvey or Judge Sullivan. And

none of Plaintiffs' arguments alter the Court's earlier conclusion that it lacks subject-matter jurisdiction to hear their claims.

B. Judicial Notice

Plaintiffs also object on the ground that Magistrate Judge Harvey failed to "judicially notice and resolve" the fact that the IRS Commissioner has purportedly offered differing views in IRS manuals and public statements regarding whether 26 U.S.C. § 6020(b) applies to income tax. Pls.' Objs. at 7-8.

As an initial matter, Plaintiffs never made this argument in their opposition to Defendant's First Amended Motion to Dismiss. *See* No. 16-cv-2313, ECF No. 16. Thus, it is waived. *Taylor*, 205 F. Supp. 3d at 89; *M.O.*, 20 F. Supp. 3d at 37; *Aikens*, 956 F. Supp. at 23.

And even if the Court were to consider the objection that Magistrate Judge Harvey should have taken judicial notice of this dispute, the objection

would be overruled. Under Federal Rule of Evidence 201(b), "the court may judicially notice a fact that is not subject to reasonable dispute because it: (1) is generally known within the trial court's territorial jurisdiction; or (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." Whether to take judicial notice "is left in the court's discretion, but the matters to be noticed must be relevant." *Slate v. Am. Broad. Cos.*, 12 F. Supp. 3d 30, 44-45 (D.D.C. 2013) (citing *Whiting v. AARP*, 637 F.3d 355, 364 (D.C. Cir. 2011)). Here, Plaintiffs have failed to establish that the statements they cite are from "sources whose accuracy cannot be reasonably be questioned." *Cf. Haywood v. Massage Envy Franchising, LLC*, No. 3:16-cv-1087, 2017 WL 2546568, at *3 (S.D. Ill. June 12, 2017) ("[Company's] . . . training documents are not of the type of facts so universally or generally

known as to merit judicial notice, such as statutes or prior court documents."), *aff'd*, 887 F.3d 329 (7th Cir. 2018). And they have also failed to establish that documents they cite have any relevance to the question of whether this Court has subject-matter jurisdiction to hear their claims.

C. Alleged Falsification of the Record

Next, Plaintiffs object to Magistrate Judge Harvey's alleged falsification of the record in multiple places. Pls.' Objs. at 13-14. The Court overrules this objection. Plaintiffs cite two instances where Magistrate Judge Harvey purportedly miscited Plaintiffs' papers. *Id.* But upon review of the citations, it is clear that Magistrate Judge Harvey accurately quoted language from them. *See id.* (comparing Report and Recommendation and Plaintiffs' papers). Plaintiffs also take issue with the way in which Magistrate Judge Harvey described

their argument that the IRS's "non-action" can be challenged notwithstanding the AIA. *Id.* But, in fact, the Report and Recommendation accurately summarized, and then rejected, that argument. *See* R&R at 7 (rejecting Plaintiffs' argument as a "distinction without a difference"). And even if Magistrate Judge Harvey had actually made these supposed errors, none of them would alter the Court's conclusion that it lacks subject-matter jurisdiction to hear Plaintiffs' claims

D. Refusal to Compel Document Production

Finally, Plaintiffs object on the ground that Magistrate Judge Harvey failed to compel the IRS to produce a document to Plaintiffs. Pls.' Objs. at 14-15. The document is purportedly one "upon which [the] IRS and the DoJ incarcerated" Stanley. *Id.* at 15.

Again, Plaintiffs never made this argument in their opposition to Defendants' First Amended

Motion to Dismiss, No. 16-cv-2313, ECF No. 16, so it is waived, *Taylor*, 205 F. Supp. 3d at 89. And Plaintiffs fail to advance any argument why Magistrate Judge's Harvey ruling was incorrect or why this issue or document would have any bearing on the Court's jurisdiction to hear these cases. Thus, this objection is also overruled.

Ultimately, none of Plaintiffs' objections are persuasive, and the consolidated cases will be dismissed for lack of subject-matter jurisdiction.

V. Additional Motions

In addition to the Motion to Recuse, which will be denied as moot as discussed above, there are a number of other outstanding motions on the docket that Magistrate Judge Harvey addressed in his Report and Recommendation.

A. Motion to Certify

On April 26, 2017, Plaintiffs filed a motion to vacate Judge Sullivan's referral of the case to

Magistrate Judge Harvey on the ground that Magistrate Judge Harvey made a number of supposed misstatements in an opinion consolidating these cases. No. 16-cv-2313, ECF No. 9 at 1. On July 27, 2017, Judge Sullivan denied that motion. No. 16-cv-2313, ECF No. 14. In response, Plaintiffs have filed a motion to certify an interlocutory appeal of Judge Sullivan's decision. No. 16-cv-2313, ECF No. 15. Magistrate Judge Harvey recommended that the Court deny this outstanding motion because Plaintiffs have failed to meet the standard for certification of an interlocutory appeal. R&R at 12-13.

"A district judge may certify a non-final order for appeal if it 'involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation.'" *Philipp v. Fed. Republic of Germany*, 253 F. Supp. 3d 84, 87 (D.D.C.

2017) (citing 28 U.S.C. § 1292(b)). "The decision whether to certify a case for interlocutory appeal is within the discretion of the district court." *Id.* (citing *In re Kellogg Brown & Root, Inc.*, 756 F.3d 754, 761 (D.C. Cir. 2014)). "Because certification runs counter to the general policy against piecemeal appeals, this process is to be used sparingly." *Sai v. DHS*, 99 F. Supp. 3d 50, 59 (D.D.C. 2015).

The Court adopts Magistrate Judge Harvey's recommendation and will deny this motion. Plaintiffs' argument—that Magistrate Judge Harvey's order consolidating these cases contains misrepresentations—fails to show that they have satisfied any of the criteria set forth in 28 U.S.C. § 1292(b). Plaintiffs do not even challenge Magistrate Judge Harvey's decision to consolidate these cases, but merely his characterization of their argument.

Plaintiffs have shown no basis for certifying an interlocutory appeal.

B. Motion for Continuance

On May 10, 2017, Plaintiffs filed a motion titled "Motion to Judge Sullivan for Continuance of Magistrate Order Setting Response Date." No. 17-cv-22, ECF No 20. This motion sought an extension of time for Plaintiffs to respond to Defendants' First Amended Motion to Dismiss, in light of Plaintiffs' request to vacate Judge Sullivan's referral of the case to Magistrate Judge Harvey. *Id.* at 3. Magistrate Judge Harvey recommended denying this motion. R&R at 12. Plaintiffs did not assert any objections. The Court adopts this recommendation.

C. Motions for Permissive Joinder

In *Stanley*, twelve prospective plaintiffs have filed motions for permissive joinder. *See* No. 17-cv-22, ECF Nos. 5-10, 13-14, 17, 19, 21, 25. Magistrate Judge Harvey recommended denying these motions

as moot. *See* R&R at 13-14; No. 17-cv-22, ECF No. 26.[2] Plaintiffs did not assert any objections. Given that these cases will be dismissed for lack of jurisdiction, the Court adopts Magistrate Judge Harvey's recommendation.

VI. Conclusion

For the reasons set forth above, the Court will, in a separate Order, adopt Magistrate Judge Harvey's Report and Recommendation, No. 16-cv-2313, ECF No. 20, in its entirety and grant Defendants' First Amended Motion to Dismiss, No. 16-cv-2313, ECF No. 8. In accordance with the Report and Recommendation, No. 16-cv-2313, ECF No. 20, the Court will also, in a separate Order, (1) deny Plaintiffs' Motion to Recuse, No. 16-cv-2313, ECF No. 17, as moot; (2) deny Plaintiffs' Motion to

[2] On January 3, 2018, Magistrate Judge Harvey addressed the last of these motions in a separate Report and Recommendation. *See* No. 17-cv-22, ECF No. 26. Plaintiffs did not object to this Report and Recommendation, and the Court adopts it as well.

Certify an Interlocutory Appeal, No. 16-cv-2313, ECF No. 15; (3) deny Plaintiffs' Motion for Continuance, No. 17-cv-22, ECF No. 20; and (4) deny Plaintiffs' Motions for Permissive Joinder, No. 17-cv-22, ECF Nos. 5-10, 13-14, 17, 19, 21, as moot. Similarly, the Court adopts Magistrate Judge Harvey's Report and Recommendation, No. 17-cv-22, ECF No. 26, in its entirety and will, in a separate Order, deny the remaining Motion for Permissive Joinder, No. 17-cv-22, ECF No. 25, as moot.

/s/ Timothy J. Kelly
TIMOTHY J. KELLY
United States District Judge

Date: June 19, 2018

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APPENDIX E

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA

Case 19-5041

In Re: Robert A. McNeil, et al,
Petitioners,

Underlying Case

1:17-cv-02602-RC

Before

GRIFFITH and KATSAS, Circuit Judges

and

SENTELLE, Senior Circuit Judge

ORDER

(April 8, 2019)

Upon consideration of the petition for a writ of mandamus; and the motion to voluntarily dismiss the petition, which contains a request to refund the filing fee, it is

ORDERED that the motion for voluntary dismissal be granted and this case be dismissed. It is

FURTHER ORDERED that the request to refund the filing fee be denied. Petitioners have not shown that this case presents any circumstances warranting a refund.

Pursuant to D.C. Circuit Rule 36, this disposition will not be published.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/
Amy Yacisin
Deputy Clerk

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