

No. 18-611

Supreme Court, U.S.  
FILED

OCT 11 2018

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In The  
**Supreme Court of the United States**

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John Joseph Tatar, Petitioner

v.

United States of America, Respondent  
Internal Revenue Service

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*PETITION FOR A WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT*

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**PETITION FOR WRIT OF CERTIORARI**

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**QUESTION(S) PRESENTED**

1. Did Petitioner-Tatar when he filed his Form(s) 843, Claim(s) for Refund concerning the tax years 1996 through and inclusive to 2010, with the Respondent - Internal Revenue Service located in Fresno, California with such document being dated and sent February 14, 2016, carry his "burden of proof" as to his contention for such Claim(s) for Refund that he incurred "no tax due and owing" concerning each tax year in question, such claim being supported in the filed document his Memorandum in support thereof? Was the "burden of proof" thereby "shifted" to the Respondent concerning Petitioner's administrative Claim(s) for Refund, but was never rebutted in any way shape or form by the Respondent-Internal Revenue Service? If such "burden of proof" was indeed "shifted" to the Respondent, was the Respondent thereby technically and by the "rule of law" in default and thus required to respond to such Memorandum, point by point, in the ensuing Complaint filed by the Petitioner in the U.S. District Court?

2. In the criminal tax case of *United States v Tommy Cryer*, Case No. 06-50164-01(2007), when Defendant-Cryer submitted his Memorandum (Proof) in support of his Motion to Dismiss, 3-felony count indictments for "tax evasion", which were subsequently dismissed by the U.S. District Court in Louisiana; now that this Petitioner-Tatar having submitted a similar Memorandum as Proof of his

Claim(s) for Refund filed with Internal Revenue Service and subsequently filed in the U.S. District Court to enforce his Claim(s) for Refund based upon his contention that as concerning his tax years in question 1996 through 2010, that “there was no tax due and owing”, See Appx A, pp 1-178, when the U.S. District Court dismissed this Petitioner’s Claim(s) for Refund without a review, or rebuttal, or any counter-analysis of his Memorandum, has Petitioner’s substantive rights to equal protection of the law been violated?

3. When the U.S. District Court, as well as the Sixth Circuit Court of Appeal in dealing with Petitioner-Tatar’s Complaint to enforce his Claim(s) for Refund, did both courts ignore and shirk their responsibility to be independent and apply the “rule of law”, but instead used the Federal Rule of Civil Procedure 12(B)(6) and thereby dismissed and ruled against this Petitioner by stating that his Memorandum, filed in support of his Claim(s) for Refund, to be labeled as “frivolous and without merit” and thereby denied this Petitioner his reasonable due process rights?

**PARTIES TO THE PROCEEDING**

John Joseph Tatar, Petitioner

United States of America- -Internal Revenue Service,  
Respondent

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### **APPENDIX A- -The Complaint (Doc# 1)**

*John Joseph Tatar v United States of  
America, 4:16-cv-13117-LVP-DRG*

### **APPENDIX B- -Appellate Court Order Denying Motion for Rehearing En Banc** *John Joseph Tatar v United States of America, Case No. 17-2088 (Unpublished Order) July 19, 2018*

### **APPENDIX C- -Appellate Court Order** *John Joseph Tatar v United States of America, Case No. 17-2088, (Unpublished Order) April 24, 2018*

**APPENDIX D- -District Court Opinion and  
Order (Doc# 16)**

*John Joseph Tatar v United States  
of America,*  
Case No. 4:16-cv-13117-LVP-DRG,  
(Unpublished Opinion and Order)  
August 18, 2017

**APPENDIX E- -Report and Recommendations  
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Dismiss (Doc# 13)**

*John Joseph Tatar v United States  
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## **OPINIONS BELOW**

The Order Denying Petitioner's Motion for Rehearing En Banc of the United States Court of Appeals for the Sixth Circuit appears at Appendix B and was issued on July 19, 2018, and is unpublished. The Order of the United States Court of Appeals for the Sixth Circuit appears at Appendix C and was issued on April 24, 2018 and is unpublished. The Opinion and Order of the United States District Court for the Eastern District Southern Division of Michigan appears at Appendix D and was issued on August 18, 2017 and is unpublished, as the Report and Recommendation dated July 7, 2017, appears at Appendix E, was adopted without change.

## **JURISDICTION**

The decision of the United States Court of Appeals for the Sixth Circuit, dismissing Petitioner's Motion for Rehearing En Banc was handed down July 19, 2018. This Court has jurisdiction pursuant to 28 U.S.C. Section 1254(1).

## **RELEVANT PROVISIONS INVOLVED**

U.S. Constitution, Article I, Sec 2 Cl. 3

U.S. Constitution, Article 1 Sec 8

U.S. Constitution, Article I, Sec 8 Cl. 1

U.S. Constitution, Article I, Sec 9 Cl. 4

U.S. Constitution, Amendment 10:

The powers not delegated to the United States by the Constitution, not prohibited by it to the States, are reserved to the States respectively or to the people

U.S. Constitution, Amendment 14:

Section 1: All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

U.S. Constitution, Amendment 16:

The Congress shall have the power to lay and collect

taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.

#### 26 USC Section 7422-Civil actions for refund

(a) No suit prior to filing claim for refund .No suit or proceeding shall be maintained in any court for the recovery of any internal revenue tax alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Secretary, according to the provisions of law in that regard, and the regulations of the Secretary established in pursuance thereof

#### 26 USC Section 6532-Periods of limitation of suit

##### (a) Suits by taxpayers for refund

(1) General rule. No suit or proceeding under section 7422(a) for the recovery of any internal revenue tax, penalty, or other sum, shall be begun before the expiration of 6 months from the date of filing the claim required under such section unless the Secretary renders a decision thereon within that time, nor after the expiration of 2 years from the date of mailing by certified mail or registered mail by the Secretary to the taxpayer of a notice of the disallowance of the part of the claim to which the suit or proceeding relates.

See Appendix A.....i-xvii

## STATEMENT OF THE CASE

Petitioner-Tatar has arrived at this point in time seeking this Writ of Certiorari filed with the Supreme Court of the United States after many decades of dealing with the Respondent—Internal Revenue Service. Petitioner in the past has dealt with the Respondent through audit(s) and contacts by written letter and/or face to face interviews with any “public functionary” who was willing to listen to his concerns. Such past dealings with the Respondent concerning this Petitioner’s past filings of federal income tax forms has brought marginal if not spotty success. Petitioner being engaged with issues and concerns of the interpretation and enforcement of the federal income tax law against him have led to this point in time. Petitioner has not made and filed his Claim(s) for Refund and then subsequently filing his Claims in U.S. District Court without first doing his own “due diligence”. This Supreme Court of the United States should be mindful of Petitioner’s intent and desire to enforce the “rule of law”. Petitioner has never claimed that the United States 16<sup>th</sup> Amendment is “unconstitutional” as to form and/or substance; also Petitioner has never claimed that Title 26 (the Internal Revenue Code) is “unconstitutional”, but has contended by filing his Form 843--Claim(s) for Refund that concerning the tax years in question that “there is no tax due and owing”. No administrative body and/or court has yet to deal with this Petitioner

according to the “rule of law”, that is why on February 14, 2016, Petitioner filed his Claim(s) for Refund to recapture monies paid voluntarily and/or taken from him due to his own misunderstanding of the “rule of law”. The content of his Claim(s) for Refund and subsequent filing of his Complaint in the United States District Court to enforce his Claim(s) for Refund containing his Memorandum to support his position that Petitioner has “no tax due and owing” were instituted.

On August 29, 2016, Petitioner filed his lawsuit to enforce his 15 Claim(s) for Refund challenging the United States government’s ability to levy federal income taxes upon him. The matter went before the Court on Defendant’s Motion to Dismiss. The Court referred Petitioner’s Complaint for all pretrial matters to Magistrate Judge David R. Grand. On July 7, 2017, Magistrate Judge Grand issued a Report and Recommendation (R&R) in which he recommended that the Trial Court grant Defendant’s motion. Judge Grand first concluded that the court lacked subject matter jurisdiction to issue the injunctive or declaratory relief Petitioner sought pursuant to the Anti-Injunction Act and Declaratory Judgment Act. Next, Magistrate Judge Grand concluded that the Trial Court lacked subject matter jurisdiction to adjudicate Petitioner’s claims for a refund for any tax year except 1996, due to Petitioner’s failure to comply with the jurisdictional requirements of a Claim for

Refund suit. Finally, with respect to the 1996 tax year Claim for Refund, Magistrate Judge Grand concluded that Petitioner's claim lacked merit—without any counter analysis of substance in rebuttal to defeat Petitioner's filed Memorandum. At the conclusion of the R&R, Magistrate Judge Grand informed the parties that they must file any objections to the R&R within fourteen days. Petitioner filed objections on July 21, 2017. Defendant filed a response to the objections on August 3, 2017. Judge Grand upheld Defendant's Motion to Dismiss as contained in Appx D issued August 18, 2017.

Petitioner filed his timely appeal to the Sixth Circuit Court of Appeal on September 8, 2017. Subsequently, the parties filed briefs and a decision was rendered by the Sixth Circuit of Appeal, without oral argument, and concluded that the Decision of the U.S. District Court was upheld and Petitioner's Appeal being dismissed, as contained in Appx C.

Thereafter, Petitioner timely filed his Motion for Rehearing En Banc on to the Sixth Circuit Court of Appeal 6/6/2018. The Order of the Court Denying Petitioners Rehearing was issued July 19, 2018 as contained in Appx B.

Petitioner now files this timely Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit with this Supreme Court of the United States.

## REASONS FOR GRANTING THE PETITION

A conflict exists between the ruling contained in the case of *United States v Tommy K. Cryer*, Case No.06-50164-01 (2007), where Tommy Cryer had 3 criminal tax evasion indictments dismissed in the United States District Court of Louisiana, and this Petitioner's Case of *John Joseph Tatar v United States of America* 4:16-cv-13117-LVP-DRG, who used similar narrative and arguments as those contained in *U.S. v Cryer*, but were ignored by the Department of Justice when it said the filing of this Petitioner's "Memorandum" that "...plaintiff has based his claim for refund on frivolous legal theories..." 4:16-cv-13177-lvp-DRG DKT # 5 Pg Id 183.

This Case was never properly adjudicated! The "Memorandum" that this Petitioner attached as proof and support of the law of his Claim(s) regarding the "federal income tax" as administered by the Internal Revenue Service was never rebutted administratively by the Internal Revenue Service, and when this Petitioner then filed his case in the United States District Court for the Eastern District Southern Division of Michigan, his "Memorandum" was dismissed as "frivolous without merit" without any substantive refutation given by any of the opposing party's representatives or by the U.S. District Court itself.

See: *Webster v Reproductive Health Services*, 492 U.S. 490 (1989) "The opinion contains not one word of rationale...This 'it is so because we say so' jurisprudence constitutes nothing other than an attempted exercise of brute force; reason much less persuasion, has no place."

Petitioner's Case was then appealed to the United States Court of Appeals for the Sixth Circuit, which was denied, and again without any refutation of this Petitioner's "Memorandum", See: *Webster*, supra.

This Petitioner concludes with this thought as to why this Petition for a Writ of Certiorari should be granted, and that is if "public functionaries", be they administrative officials, administrative agencies, and/or Article III Judges appointed as per the Constitution of the United States can act in such a manner as exhibited in this Petition for Writ, by ignoring their Oath of Office and "usurp" authority never delegated to such "public functionaries", then there is absolutely no need for the law to contain the process that a citizen can use to support his or her redress of a grievance, because such grievance will never be heard or much less granted-- ***such grievance will be doomed to failure before it is even filed!***

## CONCLUSION

For the above and forgoing reasons, Petitioner respectfully requests the issuance of a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit.

Respectfully submitted,

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