No. 20-1079

IN THE

Supreme Court of the United States

Richard E. Boggs,
Petitioner,

v.

UNITED STATES OF AMERICA, INTERNAL REVENUE SERVICE, PETER RAE (coworkers, et al... as individuals)
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1) Does 26 U.S.C. §7608 (Authority of internal revenue enforcement officers) establish the relevant requisite authority of IRS agents and did Special Agent Peter Rae violate the scope of that authority as alleged?

2) Did the lower court(s), the Internal Revenue Service (IRS), and the Department of Justice (DOJ) ignore the operation of 26 U.S.C. § 7608 in order to deprive the petitioner his Fourth and Fifth Amendment Rights as provided by the Constitution of the United States of America?

3) Did the United States District Court of the District of South Carolina (USDC) improperly remove the petitioner's case from South Carolina Magistrate Court?

4) Did the USDC and the United States Court of Appeals for the Fourth District (CA4) fail to provide the petitioner review as required by 5 U.S.C. § 706?

5) Did the CA4 improperly impose sanctions on the Petitioner?

6) Did the USDC improperly dismiss the petitioner's Motion to Reconsider citing Fed. R. Civ P. 59(e) as the sole basis?

RELATED CASES

- *Boggs v. Peter Rae, Civil Action No.* 2019OR4010500001, Magistrate's Court of Richland County, South Carolina. Removed to the United States District Court of S.C. on February 22, 2019. See Appendix A1.
- *Boggs v. UNITED STATES, Peter Rae,* No. 3:19-cv-0551, U.S. District Court for the District of South Carolina. Judgement entered January 16, 2020. See Appendix A8 – 18, and A68 - 73.
- *Boggs v. UNITED STATES, Peter Rae,* No. 20-1672, U.S. Court of Appeals for the Fourth District. Judgement entered November 17, 2020. Motion for rehearing denied and sanctions imposed November 17, 2020. See Appendix A23 - 57.

RULE 29.6 DISCLOSURE STATEMENT

Petitioner is not a corporation.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Richard E. Boggs ("Boggs", "Petitioner", "Appellant") petitions for a writ of certiorari to review a judgment of the United States Court of Appeals for the Fourth Circuit ("CA4").

OPINIONS BELOW

The opinion of the court of appeals is unpublished and appears in the Appendix at page A39.

JURISDICTION

The judgment of the court of appeals was entered on November 17, 2020. (Appendix at page A39). A timely petition for rehearing en blanc was filed and is pending. (Appendix at page A43). The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

CONSTITUTIONAL AMENDMENTS, STATUTES AND REGULATIONS INVOLVED

Provisions of the United States Constitution involved include Amendments IV and V.

Provisions of the U.S. Code, Title 26 involved include 5 U.S.C. § 706, 26 U.S.C.

§§ 7608 and 7803.

Provisions of the Code of Federal Regulations, Title 26 involved include 27 C.F.R. § 70.33[1], and 26 C.F.R. § 1.274-5(k)(6)(ii).

INTRODUCTION

Petitioner Boggs filed a Complaint and Motion for Restraining Order in South Carolina Richland County Magistrate's Court on January 18, 2019 against Special Agent Peter Rae ("Rae") for harassment (SC Code 16-3-1700(A)) and stalking (SC Code 16-3-1700(B) or (C)) against the Petitioner and his spouse related to IRC Subtitle A enforcement. Said offenses included in the Complaint were, and still are, outside the scope of any lawful enforcement authority possessed by Rae, or any other IRS "Special Agent" per 26 U.S.C. § 7608(b) for "enforcement of laws relating to internal revenue other than Subtitle E" under the guise of an unlawful "criminal investigation" relating to "Subtitle A" taxes. The IRS agrees (see IRM 9.1.2.2(09-06-2013)(1).

This case was ultimately removed from S.C. Magistrate Court and moved to the United States District Court ("USDC") on February 22, 2019. There it was routinely and summarily dismissed without any review of

[1] The pertinent text is set forth verbatim in the Appendix, beginning at A58.

Petitioner's relevant questions of law, constitutional and/or statutory provisions brought before the court as required by 5 U.S.C. § 706.

Given the history of animus and hostility the courts have shown toward this Petitioner in this, and previous cases, he finds no reasonable need for delay in filing this petition for certiorari since the CA4 has failed to consider his Motion for Rehearing En Blanc – the unfavorable outcome of which was not only predictable but expected. Therefore, Petitioner files this petition with this court while he is well aware of the likely futility of the effort given the courts history of ignoring his argument(s) and repeatedly failing in their duty to provide review, due process, and fairness.

STATEMENT OF THE CASE

1. Factual Background and Proceedings in District Court.

On August 17, 2018 thru January 17, 2019 Rae, and an accomplice Pamela Prado, did commit the unlawful and unauthorized actions complained of in the Complaint filed with the Richland County Magistrate's Court. The complaint was filed with the Magistrate Court on January 18, 2019 and served on Rae at his place of business on January 29, 2019 (see Appendix A1).

The case was removed from Magistrate Court to USDC on February 22, 2019. On March 3, 2019 the defendant files a Motion to Dismiss.

On March 5, 2019 Petitioner filed an Opposition to Motion to Move and Dismiss and a Supplement on April 5, 2019.

Magistrate's Report and Recommendation ("R&R") filed on November 19,2019 and Petitioner's Objection to R&R was filed on November 25, 2019 recommending grant the USA's Motion to Dismiss. The defendant filed a Response to Plaintiff's Objection on December 9, 2019 contending the United States as the proper party in order to plead "sovereign immunity" in order to shield the unlawful actions of its agent (Rae) and escape accountability for the unauthorized, unlawful actions perpetrated by Rae upon the Petitioner, his family, and business associates.

Order adopting the R&R filed January 16, 2020.

Petitioner filed a timely Motion to Reconsider with the USDC on January 17, 2020 (See Appendix A68). Motion was subsequently routinely DENIED on April 24, 2020 absent any review as required by 5 U.S.C. § 706 citing "Rule 59(e)" as sole support for the decision (See Appendix A68 & A73.). Rule 59(e), as the court said in US v. Fiorelli, 337 F. 3d 282 (3rd Cir. 2003) is a "device to **relitigate** the original issue decided by the district court and used to allege error." The USDC maintains that Rule 59(e) may NOT be "used to relitigate..." citing a conflicting 4th Cir. decision (Robinson v. Wix Filtration Corp., 599 F. 3d 403, 407 (4th Cir. 2010)) and dismissed the Motion on that basis alone – apparently there exist a discrepancy among the circuit courts as to the purpose and function of Rule 59(e). Nevertheless, based on the courts own reasoning, and facts presented, the Petitioner showed beyond any reasonable doubt in his Motion to Reconsider that there had been a "clear error of law or a manifest injustice" in the courts decision in that it failed to provide the review required by law

(5 U.S.C. § 706) of relevant provisions (26 U.S.C. § 7608 – not to mention the violations of S.C. state law presented) which was / is the foundation of the complaint. The question is - did the court err in dismissing the Motion to Reconsider based on its conflicting Rule 59(e) interpretation as the sole basis to dismiss the Motion and deny the Petitioner due process?

On June 12, 2020 Petitioner filed a timely Notice of Appeal with the USDC.

2. Proceedings in Appeals Court.

On July 8, 2020 Petitioner filed a timely appeal to CA4 seeking review of the lower court's 1) improper removal of Petitioner's case from S.C. Magistrate Court to the USDC, 2) failure to review the issue(s) presented regarding Rae's authority per 26 U.S.C. § 7608 to engage in any way in the enforcement of laws relating "other that Subtitle E".

On August 5, 2020 the Appellee's entered their reply brief. The brief is a twenty-seven page poorly veiled attempt to cover the admitted "routinely"[2] (Doc 10 at 19) unlawful, unauthorized actions of Rae (et al) perpetrated against the Petitioner, his family, and business associates under the guise of "tasks associated with conducting a criminal investigation". Appellee also filed a simultaneous "Motion for Sanctions" for "maintaining a frivolous appeal", which fails to provide any coherent, meaningful explanation as to the frivolousness of any the Appellant's claims. It is merely a disjointed, feeble attempt to explain away the clear,

[2] See page 14 Doc 10 of Appellee's Reply Brief.

unambiguous language of the statutory provisions relied upon by this Appellant. The appellee refers to the very relevant provisions and language of IRC §§ 7608, 7803 and 26 CFR § 1.274-5(k)(6)(ii) as "inapposite". Apparently, the government interprets any statute, regulation, or rule that restrains their authority as "irrelevant", inapposite", and "frivolous". This should deeply concern every citizen and this court!

The appellee goes on in its reply brief to name the Appellant as a "target" (Doc 10 at 10) and then a "subject" (Doc. 10 at 11) of "an ongoing investigation"– two very opposite characterizations. However, does confirm that Rae is conducting an unlawful, unauthorized "investigation" of Subtitle A which the Appellant has held to be in violation of IRC § 7608.

The appellee also entered a simultaneous Motion for Sanctions in the amount of $8000 for "maintaining a frivolous appeal" citing IRC §§ 7608, 7803 and 26 CFR § 1.274-5(k)(6)(ii) as "inapposite".

On November 17, 2020 the CA4 rendered its unpublished per curiam opinion (Appendix A___) finding "no reversible error" and yet <u>again</u> failing to provide the review required by 5 USC § 706 of the statutory provisions presented by the Appellant. The court, obviously emboldened by this court's refusal to provide certiorari of a previous related case filed with this court (Docket 20-529) and failure to provide supervisory oversight of the lower court, imposed outlandish sanctions on the Appellant in the amount of $5000 in what can only be interpreted as an effort

to suppress the will, and financial ability, of the Appellant to fight these injustices in "courts of law".

On December 14, 2020 Appellant filed a timely Motion for En Blanc Rehearing with the CA4 to review the panel's decision. This Motion is pending.

REASONS FOR GRANTING THE WRIT

1. Supervisory action is needed to reign in lower court's refusal to provide review of relevant statutes presented which restrain the actions of federal agents/agencies and provide protection to persons and property in tax cases.

At the heart of this case is IRC § 7608 entitled "Authority of internal revenue enforcement officers ". The lower courts blatant refusal to enforce, or even provide a definitive interpretation of this statute, among others, which restrain the actions of federal agents/agencies is astounding. As the record shows in this case, the lower courts neglected their duty under 5 U.S.C. § 706 to review the relevant questions of law raised by the Petitioner or make any effort to render a definitive interpretation. The best the lower courts could muster was a single vague, inconclusive mention in a footnote[3] - "...26 U.S.C. § 7608(b)(2)(A) **appears** to provide for Rae's authority...".

[3] See USDC Magistrate's R&R (3:18-cv-03506 (EN 36)) page 6, footnote 3 and Appendix A67.

This alone is grounds for reversal by the CA4.

It is clear and unambiguous that 26 U.S.C. § 7608 restrains any IRS agent or investigator's authority to Subtitle E enforcement only unless they are "any criminal investigator of the **Intelligence Division of the Internal Revenue Service**..." and charged with such duty by the Secretary. According to Rae's own declaration[4], he does not meet the statutory requirements to enforce any Subtitle other than Subtitle E. IRC § 7608(b) is explicit and provides no leeway to interpret the requirement to enforce any Subtitle other than Subtitle E as does § 7608(a) and its corresponding regulation[5] 27 CFR § 70.33 – a regulation which is lacking for § 7608(b). The IRS agrees – see IRM 5.17.5.13 (3) & (4).

According to this court, the laws simply mean what the words used in them say, and nothing more can be read into the law or assumed about it into existence. The following U.S. Supreme Court cases below clearly reveal these irrefutable facts:

> In *Demarest v. Manspeaker, 498 US 184, 112 L Ed 2d 608, 111 S Ct. 599, (1991)*, the court held: "In deciding a question of statutory construction, we begin of course with the language of the statute."
>
> In *Connecticut National Bank v. Germain, 503 US 249, p. 253-254, 117 L.Ed 2nd 91(1992)*, the court identifies that: " ... courts must

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[4] See Appendix A64

[5] See Appendix A62

presume that a legislature says in a statute what it means and means in a statute what it says there. When the words of a statute are unambiguous, then, this first canon is also the last: "judicial inquiry is complete.""

In *McNary v Haitian Refugee Center, 498 US 479, 112 L Ed 2d 1005, 111 S Ct. 888, (1991)*, the court invokes these basic standards of statutory construction again: "It is presumable that Congress legislates with knowledge of our basis rules of statutory construction...".

In *Reiter v Sonotone Corp., 442 US 330, 337, 60 L Ed 2d 931, 99 S Ct. 2326 (1979)*, the court again recognizes its duty to begin with the specific words of the statute: "As is true in every case involving the construction of a statute, our starting point must be the language employed by Congress."

"(A) statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process of law." – *Connally v. General Construction Co., 269 US 385, 391 (1926).*

The IRS, DOJ, and lower courts have intentionally either ignored the plain, unambiguous language of this restraining provision (among others), or perverted, or attempt to guess at, it's clear meaning in order to support an unconscionable, biased predetermined position of authority.

2. Supervisory action is needed to preserve due process in tax

cases.

By ignoring clear statutory language, the judiciary has routinely deprived this Petitioner fair and impartial review of relevant provisions of law presented that protect his person and property, as well as properly restrain an ever more aggressive federal bureaucracy in tax cases.

As a "reviewing court", 5 USC § 706 compels courts review and render a decision regarding "questions of law", and "constitutional and statutory provisions". This court declared in *U.S. v. Lopez, 115 S. Ct. 1624, 1633, 514 U.S. 549 (1995)* it is the duty of the judiciary "to say what the law is". To date, the Petitioner has been denied such review, which is a violation of his right to due process as set forth in Amendment V of the Constitution of the United States of America.

The lower courts must be reminded again and again by this court of their duty to review all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action as required by 5 U.S.C. § 706 in tax cases. Both the USDC and the CA4 have deprived the Petitioner of this fundamental right to due process in this case.

REMEDY SOUGHT

The Petitioner prays this court restore the lost semblance of fairness and reliance upon the law as our guide – not encourage legal gymnastics and trickery as has been displayed by the lower courts. Petitioner seeks the following remedy of this court:

- Proper review of IRC § 7608 as required by law (5 USC § 706).
- Rescind sanctions imposed by the CA4 upon the Petitioner for merely asking the court(s) to do its duty as required by law.
- Impose an equal reciprocal amount ($5000) as a sanction against the following individuals personally and individually for their abuse of discretion and authority in attempting to suppress the will and financial ability of the Petitioner to pursue his right to due process in the courts:
    - CA4 judges DIAZ, FLOYD, & SHEDD; USDC judges LEWIS & HODGES; DOJ official's ZUCKERMAN, CATTERALL, & BRANMAN

  These sanctions are appropriate upon these individuals because, as in the CA4's own words, sanction awards "serve as an effective deterrent..." and "recompense..." the Petitioner "for at least the direct costs of the appeal." The actions of these individuals without question warrants such a deterrent for their blatant disregard for the rights of not only this Petitioner, but every litigant that should be unfortunate enough to have to come before them.

- Petitioner seeks an order commanding the USDC & the CA4 explain with specificity which of the Petitioner's arguments are "manifestly frivolous" and why so that the Petitioner can avoid making such arguments in the future. The Petitioner has relied on only the statutory language of the law for his determinations and conclusions and has made plain where such reliance is founded – the courts throw the term

"frivolous" about with reckless abandon, all the while refusing to cite their basis for such claim(s) of "frivolous" with specificity.

CONCLUSION

This case exposes a clearly willful, intentional abuse of authority by the IRS for the sole purposes of exacting Petitioner's property not owed and continuously harassing this Petitioner and his family - all in violation of the Fourth and Fifth Amendment rights of all those affected as provided by the Constitution of the United States.

The USDC and CA4 courts neglected their duty as "reviewing courts" per 5 U.S.C. § 706 to make a decision regarding the relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action.

The lower court's refusal to restrain the unlawful actions of the IRS and show even a minuscule amount of concern for the rights of the Petitioner, has perpetuated itself into a Constitutional crisis that requires the supervisory intervention of this court.

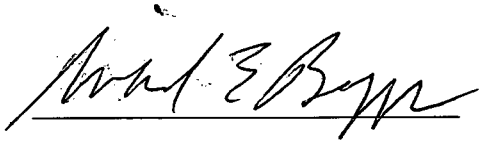
This court's refusal to provide certiorari of the issues presented by this Petitioner in a past case (20-529) has emboldened the CA4 to not only continue to deny the Petitioner review of the statutory provisions presented, but to also impose outlandish sanctions in what can only be interpreted as an effort to suppress his will and financial ability to raise challenges and allege wrongdoing in the courts.

Sanctions imposed by the CA4 are improper for the following reasons:

1) The court provided no support for imposing sanction. Petitioner has filed, and acted, in good faith in all his pleadings and has relied on nothing but statutory language of the laws of the United States of America. To the contrary, it has been the courts that have acted in bad faith.

2) Fed. R. App. P. Rule 38, which the CA4 cites as foundational for the imposition of sanction, has not been violated by the Petitioner. The Petitioner has litigated in good faith and the court's claim to the contrary is wholly without merit or substance. Just calling a filing "frivolous" does not make it so absent any basis for such claim.

3) Sanctions are intended as a means to reimburse a litigant the cost of litigation. Given the fact the United States has deemed itself to be a defendant in this case, and the fact the United States government has a stable of highly paid, full-time, salaried attorneys at its disposal, the United States nor Rae have incurred ANY costs in this litigation whatsoever and therefore sanction is not warranted on that basis alone.



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