

No. 20-1714

RKB

IN THE
SUPREME COURT OF THE UNITED STATES

William Joseph Mooney
And
Joni Therese Mooney
Plaintiff-Appellants

Supreme Court, U.S.
FILED
OCT 26 2021
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v.

THE UNITED STATES
Defendant-Appellee

On Petition For A Writ of Certiorari To The
United States Court Of Appeals
For the Federal Circuit

PETITION FOR REHEARING

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Table of Contents

Table of Contents	i
Table of Authorities	i
PETITION FOR REHEARING	1
GROUND FOR REHEARING	1
I. GROUND FOR REHEARING	1
II. ADMINISTRATIVE PROCEDURE ACT OF 1946	2
III. 5 U.S.C. § 301—Departmental Rules	4
IV. CFRs Essential To The Plaintiffs Instant Case With Their Federal Register Publications	4
V. Conclusion	6
Certificate of Compliance	8
Proof of Service	8

Table of Authorities

Cases

595 F.2d 207, 214 (5th Cir. 1979).....	3
<i>American Bus</i> , 627 F.2d at 529.....	3
<i>American Iron & Steel Institute v. EPA</i> , 568 F.2d 284, 292 (3d Cir. 1977)	4
<i>Board of Ed. Lands and Funds v. Gillett</i> , 64 N.W.2d 105, 110 (Sup.Ct.Neb. 1954) ...	2
<i>Chrysler v. Brown</i> , 441 U.S. § 281 (1979).....	2
<i>Chrysler v. Brown</i> , 441 U.S. 281 (1979).....	4
<i>Chrysler</i> , 282-283, 288, 301, 308-312	2
<i>Chrysler</i> , 302-303, 315, 313-314	2
<i>Humana of South Carolina v. Califano</i> , 590 F.2d 1070, 1082 (D.C.Cir.1978)	3
<i>Lujan</i> , 504 U.S., at 560, 112 S.Ct. 2130.	6
<i>Mid Continent nail Corp. v. United States</i> , 846 F.3d 1364, 1380 (Fed.Cir. 2017).....	4
<i>Mobil Oil</i> , 728 F.2d at 1490 (quoting <i>New Jersey v. EPA</i> , 626 F.2d 1038, 1045 (D.C. Cir. 1980)).....	4
<i>National Nutritional Foods Association v. Kennedy</i> , 572 F.2d 377, 384 (2nd Cir. 1978)	3
<i>National Wildlife Federation v. Snow</i> , 561 F.2d 227, 232 (D.C.Cir.1976).....	3
<i>Piechota v. Rapp</i> , 27 N.W.2d 682. 688 (Sup.Ct.Neb. 1947)	2
<i>Sharon Steel</i> , 597 F.2d at 379.....	3
<i>Spokeo, Inc. v. Robins</i>, 136 S.Ct.1540, 1543, 1547 (2016)	6
<i>State of N.J. Dept. of Environmental Protection v. U.S.</i> , 626 F.2d 1038, 1046-1047 (D.C.Cir. 1980).....	3
<i>State of Nebraska v. Thayer</i> , 453 N.W.2d 474, 476 (Sup.Ct.Neb. 1990)	2

Statutes

26 U.S.C. § 780..... 5
44 U.S.C. § 301-314, § 304 (§ 310, § 313, § 314 Repealed) (1946 Code) 1
44 U.S.C. § 301-314, § 307 (§310, §313, §314 Repealed) (1946 Code) 1
44 U.S.C. § 301-314, § 307 (§310, §313, §314 Repealed) 1946 Code 1
44 U.S.C. § 307 (§310, §313, §314 Repealed) (1946 Code)..... 1
49 Stat. 500-503, 501 Sec. 4 (1935)..... 1
49 Stat. 500-503, 501 Sec. 5(a) & Sec. 11 (1935)..... 1
49 Stat. 500-503, 502 Sec. 7 1
5 U.S.C. § 301—Departmental R..... 4
5 U.S.C. § 301—Departmental Rules..... 2, 6
5 U.S.C. § 553(b)(1)(2)(3) 2, 4
5 U.S.C. § 553(b)(A)(B) 2, 4
5 U.S.C. § 706(2)(A)..... 5
5 U.S.C. § 706(2)(D) “(2)”..... 4
5 U.S.C. 553(b) 2
60 Stat. 237, Sec. 2(a) 1
82 Stat. 1274 § 1505 & § 1510 (1968) 1
82 Stat. 1276 (1968) § 1507 1
82 Stat. 1276 § 1507 (1968) 1
Administrative Procedure Act of 1946, 60 Stat. 237-244 2
APA of 1946 are irrelevant and the IRS therein sanctioned by t 6
Federal Register Act of 1935 6

Other Authorities

APA Legislative History, *S.Doc. No. 248, 79th Cong., 2d Session (1946)*..... 3
Congressional Record, 79th Congress, Second Session, Vol. 92, Pt.2, Senate March 12, Pg. 2155 2
House Rpt. No. 1980, 79th Congress, 2nd Session, May 3rd, 1946, Pgs. 24, 26 3
S.Doc. No. 248, 79th Cong., 2d Sess. 19, 199, 258 (1946) 3
S.Doc. No. 248, 79th Cong., 2d Sess. 200 (1946) 3
Senate Rpt. No. 753, 79th Congress, 1st Session, Nov. 19, 1945, Pg. 14, 15..... 3
USDC for the District of Columbia (2019), Case No. 1-19-cv-1974, Doc 1—Complaint, Pg. 2..... 6

Regulations

26 CFR § 301.6012-1..... 5
26 CFR § 301.6012-1—Persons required to make returns of income 5
26 CFR § 301.6203-1—Method of Assessment 5
26 CFR § 301.6212-1—Notice of Deficiency 5
26 CFR § 301.6331-1..... 5
26 CFR § 301.6331-1—Levy and distraint..... 5
26 CFR § 301.6331-2..... 6
26 CFR § 301.6331-2—Procedures and restrictions on levies [collections].... 6
26 CFR § 301.7805-1 6

26 CFR § 301.7805-1—Rules and regulations with these published regulations that are in th	6
26 CFR §301.6203-1.....	5
26 CFR §301.6212-1.....	5
Constitutional Provisions	
Article III Sections 1 and 2.....	6
Federal Register	
11 FR 9833-9840, 9835—§ 2.1 Meaning of terms (i) (1946).....	1
11 FR 9833-9840, 9835—§ 2.1 Meaning of terms (i)(1946).....	1
2 FR 15241, Nov. 3, 1967.....	6
2 FR 15241, Nov. 3, 1967, as amended by 36 FR 15041, Aug. 12, 1971	5
2 FR 2254-2256, 2455, Sec. 7 (1935).....	1, 4
2 FR 2454-2456, 2455 Sec. 4 (1937).....	1
3 FR 965-967, 966 Sec. 4 (1938).....	1
3 FR 965-967, 966 Sec. 4 (1938).....	1
3 FR 965-967, 967. Sec. 7 (1938).....	1, 4
32 FR 15241, Nov. 3, 1967.....	5
32 FR 15241, Nov. 3, 1967, as amended by 37 FR 28739, Dec. 29, 1972.....	5
37 FR 7316, Apr. 13, 1972.....	5
38 FR 5171, Feb. 26, 1973.....	5
4 FR 9239, March 14, 2019	5
43 FR 59360, Dec. 20, 1978.....	5
44 FR 27987, May 14, 1979.....	5
44 FR 27988, May 14, 1979.....	6
47 FR 44249, Oct. 7, 1982	5
48 FR 10061, March 10, 1983	5
48 FR 40376, Sept. 7, 1983.....	5
5 FR 72074, Nov. 12, 2020.....	5
51 FR 16305, May 2, 1986.....	5
59 FR 38903, Aug. 1, 1994.....	5, 6
60 FR 62212, Dec. 5, 1995	5
78 FR 49369, Aug. 14, 2013.....	5, 6
78 FR 5994, Jan. 28, 2013	5, 6
79 FR 41891, July 18, 2014.....	5, 6
79 FR 47264, Aug. 12, 2014.....	5, 6
81 FR 25334, April 28.....	5
81 FR 25334, April 28, 2016.....	5, 6
81 FR 27322, May 6, 2016.....	5, 6
81 FR 51797, Aug. 5, 2016.....	5, 6
84 FR 24382, May 28, 2019.....	5, 6
84 FR 6530, Feb. 27, 2019	5, 6
84 FR 9239, March 14, 2019	5, 6
85 FR 72074, Nov. 12, 2020.....	5, 6
85 FR 83447, Dec. 22, 2020, unless otherwise noted.....	5

PETITION FOR REHEARING

Pursuant to Rule 44 of the Supreme Court of the United States the Petitioners enters this timely Petition for Rehearing and is within the 25 days pursuant to Rule 44.2.

GROUND FOR REHEARING

Rehearing may be granted when “intervening circumstances of a substantial or controlling effect” or “other substantial grounds not previously presented arise.” All Courts of the United States shall take “judicial Notice” of the Publications in the Federal Register of the Laws of the United States enacted by Congress.

This Petition for Rehearing is “presented in good faith and not for delay” and “limited to intervening circumstances of a substantial or controlling effect or to other substantial grounds previously presented.”

I. GROUND FOR REHEARING

Congress in exercising its Legislative Power is very clear in the Federal Register Act of 1935 concerning that all “**Documents**”¹ of all “**Federal Agencies**”² of “**General Applicability and Legal Effect**”³ shall be published in the Federal Register and then if “No Document required in sections 5(a) [**general applicability and legal effect**] to be published in the Federal Register shall be valid as against any person who has not had actual knowledge thereof.”⁴

Then if “Document” of the “Federal Agency” is published in the Federal Register *flows a fortiori* “The contents of the Federal Register shall be judicially noticed,”⁵ and without prejudice to any other mode of citation, may be cited by volume and page number.”

No Court of the United States has followed the mandates of Congress that the publications in the Federal Register shall be “judicially Noticed” to date.

¹ 49 Stat. 500-503, 501 Sec. 4 (1935); 2 FR 2454-2456, 2455 Sec. 4 (1937); 3 FR 965-967, 966 Sec. 4 (1938); 11 FR 9833-9840, 9835—§ 2.1 Meaning of terms (i) (1946); 44 U.S.C. § 301-314, § 304 (§ 310, § 313, § 314 Repealed) (1946 Code).

² 49 Stat. 500-503, 501 Sec. 4 (1935); 2 FR 2454-2456, 2455 Sec. 4 (1937); 3 FR 965-967, 966 Sec. 4 (1938); 11 FR 9833-9840, 9835—§ 2.1 Meaning of terms (i)(1946); 60 Stat. 237, Sec. 2(a); 44 U.S.C. § 301-314, § 304 (§ 310, § 313, § 314 Repealed) (1946 Code).

³ 49 Stat. 500-503, 501 Sec. 5(a) & Sec. 11 (1935); 2 FR 2254-2256, 2455, Sec. 7 (1935); 3 FR 965-967, 967. Sec. 7 (1938); 44 U.S.C. § 301-314, § 307 (§310, §313, §314 Repealed) 1946 Code; 82 Stat. 1274 § 1505 & § 1510 (1968).

⁴ 49 Stat. 500-503, 501 Sec. 5(a) & Sec. 11 (1935); 2 FR 2254-2256, 2455, Sec. 7 (1935); 3 FR 965-967, 967. Sec. 7 (1938); 44 U.S.C. § 301-314, § 307 (§310, §313, §314 Repealed) (1946 Code); 82 Stat. 1276 § 1507 (1968).

⁵ 49 Stat. 500-503, 502 Sec. 7; 2 FR 2254-2256, 2455, Sec. 7 (1935); 3 FR 965-967, 967. Sec. 7 (1938); 44 U.S.C. § 307 (§310, §313, §314 Repealed) (1946 Code); 82 Stat. 1276 (1968) § 1507.

“Judicially Noticed” is found in many Decisions of many “Courts of the United States.” See *State of Nebraska v. Thayer*, 453 N.W.2d 474, 476 (Sup.Ct.Neb. 1990); *Piechota v. Rapp*, 27 N.W.2d 682, 688 (Sup.Ct.Neb. 1947); *Board of Ed. Lands and Funds v. Gillett*, 64 N.W.2d 105, 110 (Sup.Ct.Neb. 1954); [many other cases available.]

II. ADMINISTRATIVE PROCEDURE ACT OF 1946

The Administrative Procedure Act of 1946, 60 Stat. 237-244, was enacted as a “law of the United States” for sole purpose of establishing a means of identifying “substantive regulations.” See *Congressional Record, 79th Congress, Second Session, Vol. 92, Pt.2, Senate March 12, Pg. 2155* “The pending bill, therefore applies procedures only to the making of so called **substantive rules**, that is, through administrative legislation under **authority of Congress.**”

This Supreme Court of the United States **held** in *Chrysler v. Brown*, 441 U.S. § 281 (1979) “In order for a regulation to have the “force and effect of law” or “legislative rule” affecting individual rights and obligations it must be the product of a congressional grant of legislative authority, promulgated in conformity with any procedural requirements imposed by Congress.” See *Id. Chrysler*, 302-303, 315, 313-314. See *Id, Chrysler*, 282-283, 288, 301, 308-312 held “5 U.S.C. § 301— Departmental Rules” including “housekeeping regulations,” and other various types of regulations such as “interpretative” “cannot be the “authorization by law”” and creates nothing affecting individual rights or obligations of the People.

There are only two options under 5 U.S.C. 553(b) for any rulemaking that is a “substantive rule” having the “force and effect of law.”

Option One—the Predicate for the Formal Rule Making where Congress mandates the procedure in the IRS’s Federal Register Publications in both the Proposed Rule and the Final Rule that it must be in compliance with the mandated “procedure” of 5 U.S.C. § 553(b)(1)(2)(3). The IRS does not even attempt in any of the Federal Register Publications” to use the Predicate of Formal Rulemaking.

Option Two—the Predicate for the Informal Rulemaking where Congress mandates the procedure in the IRS’s Federal Register Publications that the IRS can use when required in an “emergency” or “necessity” (“good cause”) procedure in 5 U.S.C. § 553(b)(A)(B), to wit:

Except when notice or hearing is required by statute, this subsection does not apply--

interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice; or

(B) when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable unnecessary, or contrary to the public interest.

The use and definitions of a “emergency” or “necessity” is not an “**escape clause**” for the “**Federal Agencies,**” which is concisely stated in *Senate Rpt. No.*

753, 79th Congress, 1st Session, Nov. 19, 1945, Pg. 14, 15; and, House Rpt. No. 1980, 79th Congress, 2nd Session, May 3rd, 1946, Pgs. 24, 26 that was reprinted in the APA Legislative History, S.Doc. No. 248, 79th Cong., 2d Session (1946).

The issue of the “escape clause” and “emergency” is concisely identified best in *State of N.J. Dept. of Environmental Protection v. U.S.*, 626 F.2d 1038, 1046-1047 (D.C.Cir. 1980), to wit:

From this, it should be clear beyond contradiction or cavil that Congress expected, and the courts have held, that the various exceptions to the notice-and-comment provisions of section 553 will be narrowly construed and only reluctantly countenanced. S.Doc. No. 248, 79th Cong., 2d Sess. 19, 199, 258 (1946); *American Bus*, 627 F.2d at 529; *Humana of South Carolina v. Califano*, 590 F.2d 1070, 1082 (D.C.Cir.1978); *National Nutritional Foods Association v. Kennedy*, 572 F.2d 377, 384 (2nd Cir. 1978); *National Wildlife Federation v. Snow*, 561 F.2d 227, 232 (D.C.Cir.1976). Nowhere did Congress make its intention in this respect plainer than in its deliberations over the very exception respondent cites. The Senate Committee responsible for the APA warned:

The exemption of situations of emergency or necessity is not an “escape clause” in the sense that any agency has discretion to disregard its terms or the facts. **A true and supported or supportable finding of necessity or emergency must be made and published. “Impracticable”** means a situation in which the due and required execution of the agency functions would be **unavoidably prevented** by its **undertaking public rule-making proceedings**.

S.Doc. No. 248, 79th Cong., 2d Sess. 200 (1946) (emphases added). The Committee concluded its report by **reminding courts of their particular obligation to enforce the APA through a meticulous and demanding interpretation of its terms:**

It will thus be the **duty of reviewing courts to prevent avoidance of the requirements of the bill by any manner or form of indirection**, and to determine the meaning of the words and phrases used. For example, in several provisions the expression “**good cause**” is used. The cause so specified must be interpreted by the context of the provision in which it is found and **the purpose of the entire section and bill. Cause found must be real and demonstrable.**

Id. at 217. As the Fifth Circuit commented in *U. S. Steel*, **This exception should be read narrowly.** It is an important safety valve to be used where delay would do real harm. It should not be used, however, **to circumvent the notice and comment requirements** whenever an agency finds it inconvenient to follow them.

595 F.2d 207, 214 (5th Cir. 1979) (citation and footnote omitted). Accord, *Sharon Steel*, 597 F.2d at 379; *American Iron & Steel Institute v. EPA*, 568

F.2d 284, 292 (3d Cir. 1977).

In *Mid Continent nail Corp. v. United States*, 846 F.3d 1364, 1380 (**Fed.Cir.** 2017) “As a general matter, exceptions to notice-and-comment rulemaking under the APA are “**narrowly construed and only reluctantly countenanced.**” *Mobil Oil*, 728 F.2d at 1490 (quoting *New Jersey v. EPA*, 626 F.2d 1038, 1045 (D.C. Cir. 1980)) FN12 [ten circuits in this FN].”

III. 5 U.S.C. § 301—Departmental Rules.

The IRS has identified 706 Regulations published in the Federal Register and this “Federal Agency,” being the IRS, has them all identified as Part 301 Regulations, *i.e.*, *Chrysler v. Brown*, 441 U.S. 281 (1979), which of course is too extensive a list to include in this Petition.

IV. CFRs Essential To The Plaintiffs Instant Case With Their Federal Register Publications.

Some of the Essential CFRs Used by the IRS against the Plaintiffs that NO “Court of the United States” will rule on or even address to DATE concerning the Federal Register and the Administrative Procedure Act, *i.e.*, “553(b).)

They are listed below with all of the Federal Register Publications that are first identified as part 301 Regulations by the IRS or CIR having no application to the People. The Plaintiff is invoking the Federal Register Act of 1935 for the “Supreme Court of the United States” to take “judicial Notice” remembering that the complete “Federal Act of 1935” was published in total twice in the Federal Register, **2 FR 2254-2256, 2455, Sec. 7 (1935)**; and, **3 FR 965-967, 967. Sec. 7 (1938)**.

And further, the Plaintiffs are invoking this Court to Comply with the Mandate of Congress all of the public records that the IRS has published in the Federal Register shall be “judicially Noticed,” see cites *supra.*, meaning merely that it is taken as true without offering of evidence by a party who ordinarily should have done so.

Every one of the public Federal Register Publications DO NOT comply with the Procedures mandated by Congress for the Predicate for Formal Rulemaking—5 U.S.C. § 553(b)(1)(2)(3).: and, they DO NOT Comply with the “Predicate for the Informal Rulemaking”—5 U.S.C. § 553(b)(A)(B). The Plaintiffs have verified each of the Federal Registration Publications and the IRS is all over the Place with No Notice and Comments, Notice and Comments with no “Emergency” ever identified, and using “impracticable, unnecessary and not in the public interest” (or one or two or all three) with NO “emergency” identified for the “good cause” as mandated by Congress therein using this as an “escape clause” clearly mandated by Congress to not be available to “Federal Agencies.”

One of the remedies that the “Supreme Court of the United States” is mandated to invoke is the **5 U.S.C. § 706(2)(D)** “(2) hold unlawful and set aside

agency action, findings, and conclusions found to be—**(D) without observance of procedure required by law.**”

Also, **5 U.S.C. § 706(2)(A)** “hold unlawful and set aside agency action, findings, and conclusions found to be—(A) arbitrary, capricious, and abuse of discretion, or otherwise not in accordance with the law.”

1. **26 CFR § 301.6012-1—Persons required to make returns of income** with these published regulations that are in the Federal Register for 26 CFR § 301.6012-1, to wit:

[32 FR 15241, Nov. 3, 1967], 32 FR 15241, Nov. 3, 1967; 78 FR 5994, Jan. 28, 2013; 78 FR 49369, Aug. 14, 2013; 79 FR 41891, July 18, 2014; 79 FR 47264, Aug. 12, 2014; 81 FR 25334, April 28, 2016; 81 FR 27322, May 6, 2016; 81 FR 51797, Aug. 5, 2016; 84 FR 6530, Feb. 27, 2019; 84 FR 9239, March 14, 2019; 84 FR 24382, May 28, 2019; 85 FR 72074, Nov. 12, 2020; 85 FR 83447, Dec. 22, 2020, unless otherwise noted. Authority: 26 U.S.C. § 7805.

2. **26 CFR § 301.6212-1—Notice of Deficiency** with these published regulations that are in the Federal Register for 26 CFR §301.6212-1, to wit:

[32 FR 15241, Nov. 3, 1967, as amended by 37 FR 28739, Dec. 29, 1972; 43 FR 59360, Dec. 20, 1978; 47 FR 44249, Oct. 7, 1982; 48 FR 40376, Sept. 7, 1983; 51 FR 16305, May 2, 1986; 60 FR 62212, Dec. 5, 1995]; 32 FR 15241, Nov. 3, 1967; 78 FR 5994, Jan. 28, 2013; 78 FR 49369, Aug. 14, 2013; 79 FR 41891, July 18, 2014; 79 FR 47264, Aug. 12, 2014; 81 FR 25334, April 28, 2016; 81 FR 27322, May 6, 2016; 81 FR 51797, Aug. 5, 2016; 84 FR 6530, Feb. 27, 2019; 84 FR 9239, March 14, 2019; 84 FR 24382, May 28, 2019; 85 FR 72074, Nov. 12, 2020; 85 FR 83447, Dec. 22, 2020, unless otherwise noted. Authority: 26 U.S.C. § 7805

3. **26 CFR § 301.6203-1—Method of Assessment** with these published regulations that are in the Federal Register for 26 CFR §301.6203-1, to wit:

[32 FR 15241, Nov. 3, 1967]; 32 FR 15241, Nov. 3, 1967; 78 FR 5994, Jan. 28, 2013; 78 FR 49369, Aug. 14, 2013; 79 FR 41891, July 18, 2014; 79 FR 47264, Aug. 12, 2014; 81 FR 25334, April 28, 2016; 81 FR 27322, May 6, 2016; 81 FR 51797, Aug. 5, 2016; 84 FR 6530, Feb. 27, 2019; 84 FR 9239, March 14, 2019; 84 FR 24382, May 28, 2019; 85 FR 72074, Nov. 12, 2020; 85 FR 83447, Dec. 22, 2020, unless otherwise noted.

4. **26 CFR § 301.6331-1—Levy and distraint** with these published regulations that are in the Federal Register for 26 CFR § 301.6331-1, to wit:

[32 FR 15241, Nov. 3, 1967, as amended by 36 FR 15041, Aug. 12, 1971; 37 FR 7316, Apr. 13, 1972; 38 FR 5171, Feb. 26, 1973; 44 FR 27987, May 14, 1979; 48 FR 10061, March 10, 1983; 59 FR 38903, Aug. 1, 1994]; 32 FR 15241, Nov. 3, 1967; 78 FR 5994, Jan. 28, 2013; 78 FR 49369, Aug. 14, 2013; 79 FR 41891, July 18, 2014; 79 FR 47264, Aug. 12, 2014; 81 FR 25334, April 28, 2016; 81 FR 27322, May 6, 2016; 81 FR 51797, Aug. 5, 2016; 84 FR 6530, Feb. 27, 2019; 84 FR 9239, March 14, 2019; 84 FR 24382, May 28, 2019; 85 FR

72074, Nov. 12, 2020; 85 FR 83447, Dec. 22, 2020, unless otherwise noted. Authority: 26 U.S.C. § 7805.

5. **26 CFR § 301.6331-2—Procedures and restrictions on levies [collections]** with these published regulations that are in the Federal Register for 26 CFR § 301.6331-2, to wit:

44 FR 27988, May 14, 1979; 59 FR 38903, Aug. 1, 1994; 66 FR 2821, Jan. 12, 2001]; 32 FR 15241, Nov. 3, 1967; 78 FR 5994, Jan. 28, 2013; 78 FR 49369, Aug. 14, 2013; 79 FR 41891, July 18, 2014; 79 FR 47264, Aug. 12, 2014; 81 FR 25334, April 28, 2016; 81 FR 27322, May 6, 2016; 81 FR 51797, Aug. 5, 2016; 84 FR 6530, Feb. 27, 2019; 84 FR 9239, March 14, 2019; 84 FR 24382, May 28, 2019; 85 FR 72074, Nov. 12, 2020; 85 FR 83447, Dec. 22, 2020, unless otherwise noted.

6. **26 CFR § 301.7805-1—Rules and regulations** with these published regulations that are in the Federal Register for **26 CFR § 301.7805-1, i.e., alleged Statutory Authority** is limited to **ONLY 5 U.S.C. § 301—Departmental Rules.**

V. Conclusion

In a Complaint from the Committee on Ways and Means, United States House of Representatives, wherein the House should know, filed in the *USDC for the District of Columbia (2019)*, Case No. 1-19-cv-1974, Doc 1—Complaint, Pg. 2 “In refusing to comply with the statute, Defendants have mounted an extraordinary attack on the authority of Congress to obtain information needed to conduct oversight of Treasury, the IRS, and the tax laws on behalf of the American people who participate in the Nation’s voluntary tax system.”

The Plaintiffs conclusively have standing arising under Article III Sections 1 and 2 for this “Court of the United States” exercising the “judicial Power of the United States” in “all Cases, in Law and Equity, arising under this Constitution; the Laws of the United States” as held in *Spokeo, Inc. v. Robins*, 136 S.Ct.1540, 1543, 1547 (2016), to wit:

Our cases have established that the “irreducible constitutional minimum” of standing consists of three elements. *Lujan*, 504 U.S., at 560, 112 S.Ct. 2130. The plaintiff must have (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision. The Plaintiffs have had IRS Revenue Officers sell their home, take money from their bank accounts; and, it is conclusively traced to the IRS Revenue Officers: and, is mandated to be redressed favorably as the IRS publications mandated for all “**Documents**” of a “**Federal Agency**” that have “**General Applicability and Legal Effect**” that are published in the Federal Register. The essential regulations used against the Plaintiff are identified by the IRS as Part 301 Regulations; therein *flows a fortiori* that the Federal Register publications irreducible provide the unassailable evidentiary FACTS being clothed as “judicially noticed” will result in the Petition for Rehearing be Granted otherwise the Federal Register Act of 1935 and APA of 1946 are irrelevant and the IRS

therein sanctioned by this Court with NO Rule of Law and the Plaintiffs can't rely upon the Laws of the United States enacted by Congress.

/s/ William Joseph Mooney

/s/ Joni Therese Mooney

Certificate of Compliance

I certify as pursuant to the Supreme Court Rule 37.1(h) complies with the typeface requirement of the Supreme Court Rule 33.1(b), being prepared in Century Schoolbook 12 point for the text and 10 point for the footnotes, and this brief contains 2,967 words.

I declare that this statement is true under the penalties of perjury.

/s/ William Joseph Mooney

Proof of Service

I, William Joseph Mooney, do here declare that on October 26th, 2021 I did via USPS Priority Mail send 3 copies of the Petition for Rehearing to the following Party, to wit:

Acting Solicitor General
United States department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 205-30-0001

Date: October 26, 2021 – Original Date Submitted

/s/ William Joseph Mooney