

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Richard E. Boggs,)	C/A No.: 1:18-3506-MGL-SVH
)	
Petitioner,)	
)	
vs.)	
)	REPORT AND
United States; Peter Rae and)	RECOMMENDATION
Coworkers, et al. as)	
individuals; and Internal)	
Revenue Service,)	
)	
Respondents.)	

Richard Boggs (“Petitioner”) proceeding pro se, filed a petition seeking to quash summonses by the Internal Revenue Service (“IRS”). Petitioner also sues the United States of America (“USA”) and “Peter Rae and coworkers” (collectively with IRS, “Respondents”). [ECF No. 1].

This matter comes before the court on Respondents’ motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(1) and (6). [ECF No. 28]. Pursuant to *Roseboro v. Garrison*, 528 F.2d 309 (4th Cir. 1975), Petitioner was advised of the dismissal procedures and possible consequences if he failed to respond adequately to the motion by April 5, 2019. [ECF No. 29]. The motion having been briefed [ECF No. 33, 34], it is ripe for disposition.

All pretrial proceedings in this case were referred to the undersigned pursuant to the provisions of 28 U.S.C. § 636(b) and Local Civ. Rule 73.02(B)(2)(e) (D.S.C.). Because the motion to dismiss is dispositive, this Report and Recommendation is entered for the district judge's consideration. For the reasons that follow, the undersigned recommends the court grant Respondents' motion to dismiss.

I. Factual Background

On December 10, 2018, Special Agent Peter Rae of the IRS's Criminal Investigation division issued seven administrative summonses ("the summonses") in connection with an investigation. [ECF No. 1-2]. The summonses are addressed to six of Petitioner's current and/or former employers and to a company that provides video doorbell subscription services, Ring.com. *Id.* All seven summonses are addressed to entities outside of the State of South Carolina. *Id.*

Petitioner initiated this action by filing a Petition on December 19, 2018, seeking: (1) to quash the summonses; (2) a "Bill of Particulars" from the IRS documenting probable cause for its criminal investigation; (3) civil damages of an unspecified amount; (4) a writ of mandamus compelling "the supervisors of this/these errant federal actors and outlaws to discipline them and compel them to cease their unlawful activities . . ." ; and (5) a statement of findings by the court "backed up

by rulings from the Supreme Court" if the court disagrees with Petitioner's claims as to jurisdiction. [ECF No. 1].

Subsequent to filing his petition, Petitioner filed an "Affidavit of Material Facts in Support of Petition to Quash Summons," [ECF No. 6], a motion for temporary restraining order and preliminary injunction [ECF No. 21],¹ and a motion to quash the summonses [ECF No. 22].

II. Discussion

A. Standard on Motion to Dismiss²

Dismissal is appropriate under Fed. R. Civ. P. 12(b)(1) where the court lacks subject-matter jurisdiction. A motion to dismiss under Rule 12(b)(1) examines whether a complaint fails to state facts upon which jurisdiction can be founded. It is the plaintiff's burden to prove jurisdiction, and the court is to "regard the pleadings' allegations as mere evidence on the issue, and may consider evidence outside the pleadings without converting the proceeding to one for summary judgment." *Richmond, Fredericksburg & Potomac R.R. Co. v. United States*, 945 F.2d 765, 768 (4th Cir. 1991). The court is "not required to

¹ Plaintiff's request for a temporary restraining order was denied on March 7, 2019, but the request for a preliminary injunction remains pending. [ECF No. 31].

² Although Respondents presented matters outside of the pleadings, the undersigned has not considered these documents and has not converted Respondents' motion to one for summary judgment.

accept as true the legal conclusions set forth in a plaintiff's complaint." *Edwards v. City of Goldsboro*, 178 F.3d 231, 244 (4th Cir. 1999). Indeed, the presence of a few conclusory legal terms does not insulate a complaint from dismissal when the facts alleged in the complaint cannot support the legal conclusion. *Young v. City of Mount Ranier*, 238 F.3d 567, 577 (4th Cir. 2001). To survive a motion to dismiss under Fed. R. Civ. P. 12(b)(6), "a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). The court is "not required to accept as true the legal conclusions set forth in a plaintiff's complaint." *Edwards v. City of Goldsboro*, 178 F.3d 231, 244 (4th Cir. 1999). Indeed, "[t]he presence of a few conclusory legal terms does not insulate a complaint from dismissal under Rule 12(b)(6) when the facts alleged in the complaint cannot support the legal conclusion." *Young v. City of Mount Ranier*, 238 F.3d 567, 577 (4th Cir. 2001).

Pro se complaints are held to a less stringent standard than those drafted by attorneys. *Gordon v. Leekte*, 574 F.2d 1147, 1151 (4th Cir. 1978). A federal court is charged with liberally construing a complaint filed by a pro se litigant to allow the development of a potentially meritorious case. *Erickson v. Pardus*, 551 U.S. 89, 94 (2007). When a federal court is evaluating a pro se complaint, the plaintiff's allegations

are assumed to be true. *Fine v. City of N.Y.*, 529 F.2d 70, 74 (2d Cir. 1975). The mandated liberal construction afforded to pro se pleadings means that if the court can reasonably read the pleadings to state a valid claim on which the plaintiff could prevail, it should do so. Nevertheless, the requirement of liberal construction does not mean that the court can ignore a clear failure in the pleading to allege facts that set forth a claim currently cognizable in a federal district court. *Weller v. Dep't of Soc. Servs.*, 901 F.2d 387, 390-91 (4th Cir. 1990).

B. Analysis

1. Subject Matter Jurisdiction

Respondents argue the court lacks subject matter jurisdiction to hear Petitioner's claim for relief because he has not provided any evidence that sovereign immunity has been waived. The USA, as a sovereign entity, is immune from suit unless it consents to be sued. *Webb v. United States*, 66 F.3d 691, 693 (4th Cir. 1995) (citing *Library of Congress v. Shaw*, 478 U.S. 310, 315 (1986)). The terms of any such consent, as expressed by statute, "define that court's jurisdiction to entertain the suit." *Id.* (quoting *United States v. Sherwood*, 312 U.S. 584, 586 (1941)). Any waiver of the USA's sovereign immunity must be unambiguous and strictly construed in favor of the USA. *United States v. Nordic Village, Inc.*, 503 U.S. 30, 34 (1992). Plaintiff bears the burden

of showing an unequivocal waiver and that none of a statute's waiver exceptions apply to the particular claim. *Welch v. United States*, 409 F.3d 646, 650–51 (4th Cir. 2005). Because Plaintiff has not, and cannot, cite a waiver of sovereign immunity, his claim for relief must be dismissed. *See, e.g., United States v. Mitchell*, 445 U.S. 535, 538 (1980); *Medina v. United States*, 259 F.3d 220, 223 (4th Cir. 2001).

2. Quashing Summons

The court is also without jurisdiction to hear Petitioner's requests to quash the summonses because they are directed at parties outside of the District of South Carolina. The statute provides "The United States District Court for the district within which the person to be summoned resides or is found shall have jurisdiction to hear and determine any proceeding brought under subsection (b)(2) . . ." 26 U.S.C. § 7609(h). Subsection (b)(2) provides the circumstances for proceedings to quash summonses. Therefore, this court does not have jurisdiction to quash the summonses.³

3 Petitioner argues throughout his filings that Respondent does not have jurisdiction to issue summonses. However, 26 U.S.C. § 7608(b)(2)(A) appears to provide for Rae's authority to issue the summonses. Regardless, any challenge to the legitimacy of the summonses should be brought in the district in which the summonsed party may be found.

1. Mandamus

“The authority of federal courts to issue extraordinary writs derives from the ‘all writs statute,’ 28 U.S.C. § 1651.” *See Gurley v. Superior Court of Mecklenburg County*, 411 F.2d 586, 587 (4th Cir. 1969). Section 1651 provides, in pertinent part, that federal courts “may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.” 28 U.S.C. § 1651(a). Federal district courts are granted “original jurisdiction of any action in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff.” 28 U.S.C. § 1331.

“Mandamus is a drastic remedy, to be invoked only in extraordinary situations.” *United States v. Moussaoui*, 333 F.3d 509, 516 (4th Cir. 2003) (internal quotation marks omitted). The Fourth Circuit Court of Appeals has held:

“[t]he party seeking a writ of mandamus must satisfy the conditions of a rigorous test, demonstrating each and every one of the following requirements: (1) he has a clear and indisputable right to the relief sought; (2) the responding party has a clear duty to do the specific act requested; (3) the act requested is an official act or duty; (4) there are no other adequate means to attain the relief he desires; and (5)

the issuance of the writ will effect right and justice in the circumstances."

In re Braxton, 258 F.3d 250, 261 (4th Cir. 2001) (citing *United States ex rel. Rahman v. Oncology Assocs., P.C.*, 198 F.3d 502 (4th Cir. 1999)). The writ "is intended to provide a remedy for a plaintiff . . . only if the defendant owes him a clear nondiscretionary duty." *Heckler v. Ringer*, 466 U.S. 602, 616 (1984) (emphasis added). Here, Petitioner has failed to identify a non- discretionary duty Rae or Rae's supervisors owe him. Therefore, he has failed to present a cognizable claim for mandamus relief.

2. Civil Damages

In his request for damages against Rae and his coworkers, Plaintiff requests restitution from Rae's "personal pay and assets, and not from the government. . ." Plaintiff cites to criminal statutes Rae has allegedly violated, but such statutes do not give rise to civil liability. To the extent Petitioner seeks to bring a civil rights action against Rae pursuant to *Bivens v. Six Unknown Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971), a petition is not a proper method of obtaining such relief. However, even construing his petition liberally, Petitioner has failed to show that the *Bivens* doctrine should be expanded to include a claim for damages related to an IRS investigation in light of the complex statutory scheme Congress has provided for the collection of taxes. *See*

Ziglar v. Abbasi, 137 S. Ct. 1843, 1857 (2017) (noting that the United States Supreme Court has extended *Bivens* only in limited circumstances, and cautioning that a *Bivens* remedy will not be available if there are “special factors counselling hesitation in the absence of affirmative action by Congress”).

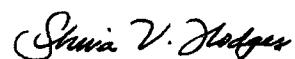
3. Miscellaneous Relief

Petitioner has provided no basis for requesting a “Bill of Particulars” from the IRS documenting probable cause for its investigation. Nor has he provided any authority for requesting the court provide a “statement of findings backed up by rulings from the Supreme Court if it disagrees with any of [Petitioner’s] claims about jurisdiction.”

III. Conclusion and Recommendation

For the foregoing reasons, the undersigned recommends Respondents’ motion to dismiss be granted. If the district judge accepts this recommendation, Petitioner’s motions for a preliminary injunction [ECF No. 21] and to quash the summonses [ECF No. 22] will be rendered moot.

IT IS SO RECOMMENDED.



July 26, 2019

Shiva V. Hodges

Columbia, South Carolina.

United States Magistrate Judge



**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION**

RICHARD E. BOGGS, Petitioner,	§ § § §
vs.	§ CIVIL ACTION NO. 3:18-3506-MGL § § §
UNITED STATES; PETER RAE and Coworkers, et al., as individuals; and INTERNAL REVENUE SERVICE Respondents.	§ § § §

**ORDER ADOPTING THE REPORT AND RECOMMENDATION,
GRANTING RESPONDENTS' MOTION TO DISMISS,
AND RENDERING AS MOOT PETITIONER'S MOTIONS
FOR A PRELIMINARY INJUNCTION AND TO QUASH THE SUMMONSES**

Petitioner Richard E. Boggs (Boggs), a self-represented litigant, filed this action against the United States, Peter Rae and Coworkers, et al., as individuals, and the Internal Revenue Service (collectively, Respondents). The matter is before the Court for review of the Report and Recommendation (Report) of the United States Magistrate Judge suggesting Respondents' motion to dismiss be granted. The Report was made in accordance with 28 U.S.C. § 636 and Local Civil Rule 73.02 for the District of South Carolina.

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with the Court. *Mathews v. Weber*, 423 U.S. 261, 270 (1976). The Court is charged with making a de novo determination of those portions of the Report to which specific objection is made, and the Court may

3:18-cv-03506-MGL Date Filed 08/08/19 Entry Number 39 Page 2 of 2
accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge or recommit the matter with instructions. 28 U.S.C. § 636(b)(1).

The Magistrate Judge filed the Report on July 26, 2019, and the Clerk of Court entered Boggs's objections on August 5, 2019. The Court has reviewed the objections, but holds them to be without merit. It will therefore enter judgment accordingly.

Boggs offers no specific objections to the Report. Instead, his arguments generally fall into two categories. The first group is composed of contentions the Magistrate Judge has already addressed. And, because the Court agrees with her treatment of them, it need not repeat her analysis here. Boggs's remaining arguments are so lacking in merit as to require no discussion.

After a thorough review of the Report and the record in this case pursuant to the standard set forth above, the Court overrules Boggs's objections, adopts the Report, and incorporates it herein. Therefore, it is the judgment of the Court Respondents' motion to dismiss is **GRANTED**. Consequently, Boggs's motions for a preliminary injunction and to quash the summonses are **RENDERED MOOT**.

IT IS SO ORDERED.

Signed this 8th day of August, 2019, in Columbia, South Carolina.

s/ Mary Geiger Lewis MARY GEIGER LEWIS
UNITED STATES DISTRICT JUDGE

NOTICE OF RIGHT TO APPEAL

The parties are hereby notified of the right to appeal this Order within sixty days from the date hereof, pursuant to the Federal Rules of Appellate Procedure.

UNPUBLISHED
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
No. 19-2090

RICHARD E. BOGGS,

Petitioner - Appellant,

v.

UNITED STATES; PETER RAE, and coworkers, et al. as individuals;
INTERNAL REVENUE SERVICE,

Respondents - Appellees.

Appeal from the United States District Court for the District of South Carolina,
at Columbia. Mary G. Lewis, District Judge. (3:18-cv-03506-MGL)

Submitted: February 7, 2020 Decided: March 4, 2020

Before NIEMEYER and KEENAN, Circuit Judges, and TRAXLER, Senior
Circuit Judge.

Affirmed by unpublished per curiam opinion.

Richard E. Boggs, Appellant Pro Se. Bruce R. Ellisen, Curtis Clarence Pett,
Tax Division, UNITED STATES DEPARTMENT OF JUSTICE, Washington,
D.C., for Appellee.

Unpublished opinions are not binding precedent in this circuit.

USCA4 Appeal: 19-2090 Doc: 15 Filed: 03/04/2020 Pg: 1 of 2

PER CURIAM:

Richard E. Boggs appeals the district court's orders adopting the report
and recommendation of the magistrate judge, granting Defendants' motion to

dismiss and denying Boggs' motion for reconsideration. We have reviewed the record and find no reversible error. Accordingly, we affirm for the reasons stated by the district court. *Boggs v. United States*, No. 3:18-cv-03506-MGL (D.S.C. Aug. 8 & Sept. 4, 2019). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED

USCA4 Appeal: 19-2090 Doc: 20 Filed: 06/09/2020 Pg: 1 of 1

FILED: June 9, 2020

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

No. 19-2090 (3:18-cv-03506-MGL)

RICHARD E. BOGGS

Petitioner - Appellant

v.

UNITED STATES; PETER RAE, and coworkers, et al. as individuals; INTERNAL
REVENUE SERVICE

Respondents - Appellees

O R D E R

The court denies the petition for rehearing.

Entered at the direction of the panel: Judge Niemeyer, Judge Keenan, and Senior
Judge Traxler.

For the Court

/s/ Patricia S. Connor, Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Richard E. Boggs,)	C/A No. 3:19-551-MGL-SVH
)	
Plaintiff,)	
vs.)	REPORT AND
)	RECOMMENDATION
Peter Rae,)	
)	
Defendant.)	

Richard E. Boggs (“Plaintiff”), proceeding pro se, initiated this action by filing complaint and motion for restraining order against Peter Rae (“Rae”), an Internal Revenue Service (“IRS”) special agent, seeking the court to enjoin Rae from contacting Plaintiff and his family. This matter is before the court on motion filed by the United States of America (“USA”) seeking to substitute the USA for Rae as defendant and seeking dismissal of Plaintiff’s complaint for lack of subject-matter jurisdiction. [ECF No. 11]. Plaintiff filed an opposition to the USA’s motion. [ECF No. 14].¹ The motion is ripe for disposition.

¹ Plaintiff also submitted two sets of “supporting documentation,” totaling over 450 pages, consisting primarily of complaints, letters, and documentation Plaintiff submitted to various governmental entities concerning his ongoing dispute with the IRS [ECF No. 10, ECF No. 19], all of which the undersigned has disregarded as non-standard items not permitted to be filed or otherwise responsive to the issues raised in the Pursuant to the provisions of 28 U.S.C. § 636(b), and Local Civ. pending motion to dismiss.

Rule 73.02(B)(2)(e) (D.S.C.), this matter has been referred to the undersigned for all pretrial proceedings. Because the motion to dismiss is dispositive, this Report and Recommendation is entered for the district judge's consideration. For the reasons that follow, the undersigned recommends the district judge grant the USA's motion, substituting the USA as defendant in the present action and dismissing the case for lack of jurisdiction.

I. Factual and Procedural Background

As has been previously addressed by the court in Boggs v. United States, 3:18-CV-3506 ("Boggs V"), Plaintiff is subject to an ongoing investigation, conducted by Rae, of possible offenses committed by Plaintiff in connection with the administration or enforcement of the internal revenue laws. [Boggs V, ECF 28-2 ¶¶ 1, 3].²

On January 18, 2019, Plaintiff filed a complaint and motion for restraining order in the Magistrate's Court of Richland County, South Carolina, alleging Rae made contact in person and through phone calls with Plaintiff, Plaintiff's spouse, or his spouse's

² A district court may take judicial notice of materials in the court's own files from prior proceedings. See Colonial Penn Ins. Co. v. Coil, 887 F.2d 1236, 1239 (4th Cir. 1989) (noting the most frequent use of judicial notice is in noticing the content of court records); Fletcher v. Bryan, 175 F.2d 716, 717 (4th Cir. 1949).

employer on a number of occasions, “for no legitimate purpose other than to harass, intimidate, and cause mental or emotional distress.” [ECF No. 1-1¶¶ 3, 4]. Plaintiff states Rae held himself out as a special agent of the IRS Criminal Investigation Division, but provided no official credentials, and unlawfully surveilled Plaintiff’s home. Plaintiff seeks an order enjoining Rae from abusing him or his family, from entering or attempting to enter Plaintiff’s residence or place of employment, and from communicating with Plaintiff and his family in a way that violates South Carolina law. *Id.* ¶ 5.

On February 22, 2019, the USA removed this action pursuant to 28 U.S.C. § 1442(a).³ In its motion to dismiss filed on March 1, 2019, the USA argues it should be substituted in this action as a defendant and as the real party in interest, and the matter should be dismissed as barred by the doctrine of sovereign immunity as well as the Anti-Injunction Act and the Declaratory Judgment Act, where, as here, Plaintiff “seeks to

³ This is the sixth case filed by Plaintiff and addressed by this court wherein Plaintiff challenges the IRS’s efforts to assess and collect taxes from him. See *Boggs v. United States*, 3:16-CV-1178 (dismissing action *sua sponte* for failure to allege any non-frivolous, cognizable claims), *Boggs v. United States*, 3:16-CV-2865 (same), *Boggs v. Logic Technology, Inc.*, 3:17-CV-2166 (granting USA’s motion to dismiss), *Boggs v. United States*, 3:18-CV-1915 (same), *Boggs V* (same).

enjoin Special Agent Rae from conducting his lawful duties as a criminal investigator for the IRS.” [ECF No. 11-1 at 1].

A. Standard of Review

Dismissal is appropriate under Fed. R. Civ. P. 12(b)(1) where the court lacks subject-matter jurisdiction. A motion to dismiss under Rule 12(b)(1) examines whether a complaint fails to state facts upon which jurisdiction can be founded. It is the plaintiff's burden to prove jurisdiction, and the court is to “regard the pleadings' allegations as mere evidence on the issue, and may consider evidence outside the pleadings without converting the proceeding to one for summary judgment.” *Richmond, Fredericksburg & Potomac R.R. Co. v. United States*, 945 F.2d 765, 768 (4th Cir. 1991) (citing *Adams v. Bain*, 697 F.2d 1213, 1219 (4th Cir.1982)). The court is “not required to accept as true the legal conclusions set forth in a plaintiff's complaint.” *Edwards v. City of Goldsboro*, 178 F.3d 231, 244 (4th Cir. 1999). Indeed, the presence of a few conclusory legal terms does not insulate a complaint from dismissal when the facts alleged in the complaint cannot support the legal conclusion. *Young v. City of Mount Ranier*, 238 F.3d 567, 577 (4th Cir. 2001).

Pro se complaints are held to a less stringent standard than those drafted by attorneys. *Gordon v. Leeke*, 574 F.2d 1147, 1151 (4th

Cir. 1978). A federal court is charged with liberally construing a complaint filed by a pro se litigant to allow the development of a potentially meritorious case. *Erickson v. Pardus*, 551 U.S. 89, 94 (2007). When a federal court is evaluating a pro se complaint, the plaintiff's allegations are assumed to be true. *Fine v. City of N.Y.*, 529 F.2d 70, 74 (2d Cir. 1975). The mandated liberal construction afforded to pro se pleadings means that if the court can reasonably read the pleadings to state a valid claim on which the plaintiff could prevail, it should do so. Nevertheless, the requirement of liberal construction does not mean that the court can ignore a clear failure in the pleading to allege facts that set forth a claim currently cognizable in a federal district court. *Weller v. Dep't of Soc. Servs.*, 901 F.2d 387, 390–91 (4th Cir. 1990).

B. Analysis

Plaintiff opposes substitution of the USA as the defendant in this case, arguing Rae “acted outside any legal authority as a purported ‘law officer of the US,’” and thus Plaintiff’s action against Rae is “as an individual” in that Rae “willfully, intentionally, and with malice acted outside his official capacity, authority, and jurisdiction.” [ECF No. 14-1 at 4–5]. However, it is undisputed all alleged actions taken by Rae were taken in the course of Rae’s investigation of Plaintiff.

As has been held by multiple courts in this district, plaintiff’s

claims for relief “are properly viewed as claims against the United States because the United States is the proper defendant in actions against IRS employees in which the taxpayer alleges misconduct by the IRS employees with respect to taxes.” Riley v. Bartlett, No. 6:14-350-TMC-KFM, 2014 WL 4746289, at *2 (D.S.C. Aug. 13, 2014), report and recommendation adopted, No. CIV.A. 6:14-350-TMC, 2014 WL 4417708 (D.S.C. Sept. 8, 2014), aff’d, 615 F. App’x 794 (4th Cir. 2015); Aderinto v. Tax Payer Advocate (IRS), No. C.A. 308-1551- JFA-BM, 2008 WL 2077910, at *3 (D.S.C. May 14, 2008) (“Hence, the United States, not the IRS or individual Internal Revenue Service (IRS) employees, is the proper defendant in a taxpayer’s action alleging misconduct by the Internal Revenue Service with respect to taxes.”); see also Johnson v. Barr, C.A. No. 7:11-cv-104-BO, 2012 WL 7983770, at *1 (E.D.N.C. Oct. 2, 2012) (“Courts in the Fourth Circuit have recognized that the United States, and not its individual employees, is the proper party in a suit based on actions taken by IRS employees in their official capacity.”); Portsmouth Redev. & Hous. Auth. v. Pierce, 706 F.2d 471, 473 (4th Cir.1983) (“This is a suit against a federal official for acts performed within his official capacity, and, consequently, it amounts to an action against the sovereign.”).

In determining the proper defendant in this suit, it does not matter that Plaintiff believes the IRS has no legal authority to

investigate him and that Rae has conducted his investigation improperly. Plaintiff's allegations concern actions taken by Rae only in the course of his work as an IRS agent, and Plaintiff does not argue otherwise in opposition to the USA's motion to dismiss. [ECF No. 1-1, ECF No. 14-1 at 4]. Accordingly, the court deems this case to be against the USA.

As such, this court lacks subject-matter jurisdiction over this case for multiple reasons. First, the USA, as a sovereign entity, is immune from suit unless it consents to be sued. *Webb v. United States*, 66 F.3d 691, 693 (4th Cir. 1995) (citing *Library of Congress v. Shaw*, 478 U.S. 310, 315 (1986)). The terms of any such consent, as expressed by statute, "define that court's jurisdiction to entertain the suit." *United States v. Sherwood*, 312 U.S. 584, 586 (1941). Any waiver of the USA's sovereign immunity must be unambiguous and strictly construed in favor of the USA. *United States v. Nordic Village, Inc.*, 503 U.S. 30, 34 (1992). Plaintiff bears the burden of showing an unequivocal waiver and that none of a statute's waiver exceptions apply to the particular claim. *Welch v. United States*, 409 F.3d 646, 650–51 (4th Cir. 2005). Because Plaintiff has not, and cannot, cite a waiver of sovereign immunity, his claim for relief must be dismissed. See, e.g., *United States v. Mitchell*, 445 U.S. 535, 538 (1980); *Medina v. United States*, 259 F.3d 220, 223 (4th Cir. 2001).

Additionally, the Anti-Injunction Act prohibits attempts to restrain the IRS from collecting taxes. 26 U.S.C. § 7421(a) (stating, except as provided in certain other sections not applicable here, “no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person . . .”). As stated by the Fourth Circuit, the Anti-Injunction Act’s effect “is simple and obvious: courts lack jurisdiction to issue injunctive relief in suits seeking to restrain the assessment or collection of taxes.” *Judicial Watch v. Rossotti*, 317 F.3d 401, 405 (4th Cir. 2003); see also *id.* (“it is clear that the Anti-Injunction Act extends beyond the mere assessment and collection of taxes to embrace other activities, such as an audit to determine tax liability, that may culminate in the assessment or collection of taxes”). In *Judicial Watch*, the Fourth Circuit delineated “safeguards and remedies” Congress has provided “[w]ith respect to alleged misconduct by individual IRS employees,” and rejected the argument the court could issue an injunction, even where plaintiffs in that case “attribute[ed] a non-tax related purpose to the IRS’s actions.” *Id.* at 407, 410.

Similarly, the Declaratory Judgment Act authorizes courts to issue declaratory judgments “[i]n a case of actual controversy within its jurisdiction, except with respect to Federal taxes other than actions brought under section 7428 of the Internal Revenue Code

of 1986" 28 U.S.C. § 2201(a) (emphasis added). This Act "removes subject matter jurisdiction with respect to suits to 'declare the rights and other legal relations of any interested party' with respect to federal taxes . . ." Felkel v. United States, 861 F. Supp. 507, 509 (D.S.C. 1994) (noting the Declaratory Judgment Act and Anti-Injunction Act, together, "have been held to reflect congressional intent to require taxpayers to litigate tax controversies either in Tax Court, see 26 U.S.C. § 6213(a), or to 'pay first, litigate later' through a suit for a tax refund, see 28 U.S.C. § 1346(a)(1); 26 U.S.C. § 7422, whenever disputes arise regarding the payment of taxes").

In sum, the court is without subject-matter jurisdiction over Plaintiffs complaint seeking to enjoin the investigative activities of an IRS agent taken within the scope of that agent's employment.

III. Conclusion and Recommendation

For the foregoing reasons, it is recommended the district judge grant the USA's motion to dismiss. [ECF No.11].

IT IS SO RECOMMENDED.

November 19, 2019

Shiva V. Hodges

Columbia, South Carolina

United States Magistrate Judge

The parties are directed to note the important information in the attached
“Notice of Right to File Objections to Report and Recommendation.”

UNITED STATES DISTRICT COURT

for the

District of South Carolina

<u>Richard E. Boggs,</u>)	
<i>Plaintiff</i>)	
v.)	Civil Action No. 3:19-cv-00551-MGL
<u>United States of America,</u>)	
<i>Defendant</i>)	

JUDGMENT IN A CIVIL ACTION

The court has ordered that (check one):

the plaintiff (name) _____ recover from the defendant (name) _____ the amount of _____ dollars (\$_____), which includes prejudgment interest at the rate of ____ %, plus postjudgment interest at the rate of ____ %, along with costs.

the plaintiff recover nothing, the action be dismissed on the merits, and the defendant (name) _____ recover costs from the plaintiff (name) _____.

the plaintiff, Richard E. Boggs, take nothing of the defendant, United States of America, and this action is dismissed without prejudice.

This action was (check one):

tried by a jury, the Honorable _____ presiding, and the jury has rendered a verdict.

tried by the Honorable _____ presiding, without a jury and the above decision was reached.

decided by the Court, the Honorable Mary Geiger Lewis, US District Judge, presiding. The Court having adopted the Report and Recommendation of US Magistrate Judge Shiva V. Hodges, granting defendant's motion to dismiss.

Date: January 16, 2020

ROBIN L. BLUME, CLERK OF COURT

s/Charles L. Bruorton

Signature of Clerk or Deputy Clerk

NO 20-1672

**In the United States Court of Appeals
For the Fourth Circuit**

**Richard E. Boggs Pro Se
Petitioner/Appellant**

V.

**United States of America, Peter Rae
Respondent/ Appellee**

**ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
AT COLUMBIA**

Appellant's Opening Informal Brief

Counsel for

20-1672 Informal Opening Brief

TABLE OF AUTHORITIES**Cases**

<i>Barnhart, Comm'r of Social Security v. Sigmon Coal Co., Inc.</i> , 534 US 438, 450 (2002)	4
<i>Robinson v. Shell Oil Co.</i> , 519 US 337, 340 (1997) (citing <i>United States v. Ron Pair Enterprises, Inc.</i> , 489 US 235, 240 (1989))).....	5

Statutes

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Issue 1: The District Court Improperly Removed This Case from State Court and Improperly Substituted the United States of America (USA) As the Defendant.

Facts in support of Issue 1:

- 1) The lower court failed to properly consider and interpret 26 USC § 7608 in regard to IRS agent authority relating to Subtitle A (Income). This fact is undisputed, and the Plaintiff argues this point repeatedly throughout, despite the magistrate's statement to the contrary in her R & R.¹ This fact is confirmed on pg. 3 of the judge's Order [EN 27].
 - a. IRC 7608 could not be clearer and more unambiguous in its language as to authority of any IRS enforcement officer/agent. Accordingly, it sets the foundation for authority for other agent actions such as those specified in IRC § 7602. The court and the DOJ choosing to ignore IRC § 7608 does not make it any less relevant.
 - b. Even the IRS' s own manual² instructs that IRC § 7608 "provides the initial authority", not IRC § 7602 as the DOJ claims.
 - c. The USDC failed to even mention this controlling statute here, but did muster a vague, doubtful rendering in 3:18-cv-03506 magistrate's R&R [EN 36] pg. 7, footnote 3 by stating:

Petitioner argues throughout his filings that Respondent does not have

¹ See EN 20 pg 6.

² See IRM 9.1.2.2 (09-06-20 I 3)(1)

jurisdiction to issue summonses. However, 26 U.S. C. § 7608(b)(2)(A) appears to provide for Rae's authority to issue the summonses.

Although the magistrate erred in stating "Petitioner argues throughout his filings that Respondent does not have jurisdiction ..." since Petitioner only argues lack of authority - "appears" is insufficient to base a ruling and leaves doubt as to the court's reliance to base a decision. This alone is sufficient grounds to reverse the lower court ruling³

2) Peter Rae (hereafter "Rae") declared in his 28 February 2019 sworn declaration [see 3:18-cv-0551 ECF No 28-2] that he is a "duly commissioned Special Agent employed by the Internal Revenue Service's Criminal Investigation Division". "Agents" are granted enforcement authority from IRC 7608(a) relating to enforcement of Subtitle E ONLY!

³ A tax must be imposed by clear and unequivocal language. Where the construction of a tax law is doubtful, the doubt is to be resolved in favor of whom upon which the tax is sought to be laid. (See *Spreckles Sugar Refining v. McClain*, 192 U.S. 397, 416 (1904); *Gould v. Gould*, 245 U.S. 151, 153 (1917); *Smietanka v. First Trust & Savings Bank*, 257 U.S. 602, 606 (1922); *Lucas v. Alexander*, 279 U.S. 573, 577 (1929); *Crooks v. Harrelson*, 282 U.S. 55 (1930); *Burnet v. Niagra Falls Brewing Co.*, 282 U.S. 648, 654 (1931); *Miller v. Standard Nut Margarine Co.*, 284 U.S. 498, 508 (1932); *Gregory v. Helvering*, 293 U.S. 465, 469 (1935); *Hassett v. Welch*, 303 U.S. 303, 314 (1938); *US. v. Batchelder*, 442 U.S. 114, 123 (1978)).

3) The District Court erred in its Notice of Removal [EN 1] in referring to Rae as "a sworn law enforcement officer of the United States of America". Rae, or ANY IRS "agent", is NOT a "law enforcement officer" according to 26 CFR § 1.274-
enforcement officer" may include an arson investigator if the investigator otherwise meets the requirements of this paragraph (k)(6)(ii), but does not include Internal Revenue Service special agents.

4) Special Agent Rae acted outside the scope of his statutory authority as dictated by IRC § 7608 when issuing summons and harassing the Plaintiff and Plaintiff's spouse regarding Subtitle A tax. IRM 5.17.5.13 (3) clearly states "Official immunity applies only when the officer or employee of the Government is acting within the scope of his or her authority". IRM 5.17.5.13 (4) goes on to state "Officials and employees of the United States are liable in their own right, in criminal and civil actions instituted in federal or state courts, for their actions done outside of the scope of the duties of their office or employment. Thereby making the "sovereign immunity" defense moot and Rae personally liable for his actions. This alone is sufficient grounds for reversal of the USDC ruling.

Issue 2: The District Court Failed to Provide the Plaintiff Review as Required By 5 USC § 706.

Facts in support of Issue 2:

- 1) The District Court is compelled by 5 USC § 706 to hold unlawful and set aside agency action(s) found to be in excess of statutory authority.
- 2) The District Court, apparently blinded by its biased determination to find

in favor of the government, ignored the foundational statute (26 USC § 7608) which clearly defines the extend and limitation of authority bestowed upon IRS agents by Congress. Thereby proceeding as though agent Rae had authority to undertake the actions taken and ignoring the clear unambiguous language of IRC § 7608 in order to dispose of this case using the "sovereign immunity" defense which the Appellant has shown to be not applicable in this case.

- 3) The Supreme Court says that a court's duty is to interpret the provisions relied upon. (See *Barnhart, Comm'r of Social Security v. Sigmon Coal Co., Inc.*, 534 US 438, 450 (2002) ("As in all statutory construction cases, we begin with the language of the statute. The first step "is to determine whether the language at issue has a plain and unambiguous meaning with regard to the particular dispute in the case." *Robinson v. Shell Oil Co.*, 519 US 337, 340 (1997) (citing *United States v. Ron Pair Enterprises, Inc.*, 489 US 235, 240 (1989)). The inquiry ceases "if the statutory language is unambiguous and 'the statutory scheme is coherent and consistent.'" 519 US, at 340.")).
- 4) Congress clearly makes the obvious distinction regarding authority and enforcement of Subtitle E (Alcohol, Tobacco, and Firearms) and "other than Subtitle E" in IRC 7608. If Congress had intended to extend enforcement authority to "any investigator, *agent*, or other internal revenue officer by whatever term designated" regarding Subtitle A as it did to Subtitle E it

would have done so.

Argument:

The Appellant is entitled to arrange his affairs in such a lawful way as to minimize the amount of any "tax" owed, if any. The Appellant has done that based on a good faith understanding of the law and the application of the subject provisions referenced herein. The Appellant's understanding and interpretation of the laws relied upon has yet to be rebutted by the Appellee(s), therefore is undisputed.

Section 18 USC § 241 makes it a crime for "Two or more persons (to) conspire to injure, oppress, threaten, or intimidate, any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States." Under the "laws of the United States," Rae, and the other special agent(s) who participated in any way in the unauthorized, unlawful actions against the Appellant and his spouse were clearly barred by the provisions of Section 7608 from doing so.

Therefore, if this Court, in conjunction with the U.S. attorneys defending this action on behalf of the Appellee(s), were to again deny this Appellant the protection afforded him by section 7608 et al, but were instead to "injure" and "oppress" him further by not granting him the relief requested and as mandated by this statute, then this Court, together with said U.S attorneys, would be collectively in clear violation of the provisions of 18 USC§ 241.

The Appellee(s) willfully and intentionally failed to hew to the law, their own internal guidelines, and the recognized standards of legal construction in order to misuse the scope of their authority causing the Appellant much financial, emotional, and professional hardship for simply having an understanding of the law and applying that understanding to his affairs.

The Appellee(s) willfully and intentionally denied the Appellant the Rights guaranteed under 26 USC§ 7803(a)(3) [Taxpayer Bill of Rights]⁴

Appellant's arguments are firmly rooted in the statutory language of the controlling subject provisions relied upon.

Conclusion:

Therefore, it has to be concluded that the actions by the Appellee(s), U.S. Attorney's and the Department of Justice (Tax Division) to subvert the laws, as evidenced herein, and trample on the rights of the Appellant can only be deemed willful and intentional. This equates to extortion (18

⁴ (A) the right to be informed, (B) the right to quality service, (C) the right to pay no more than the correct amount of tax, (D) the right to challenge the position of the Internal Revenue Service and be heard, (E) the right to appeal a decision of the Internal Revenue Service in an independent forum, (F) the right to finality, (G) the right to privacy, (H) the right to confidentiality, (I) the right to retain representation, and (J) the right to a fair and just tax system.

USC §872), racketeering (18 USC §1962), conspiracy against rights (18 USC §241), and deprivation of rights under color of law (18 USC §242) committed by all those involved by their actions against this Appellant. And, since the Appellee(s) used the U.S. Mail services in their unlawful activity, add mail fraud (18 USC §1341) to their crimes. Rae committed perjury in his declaration⁵ by claiming authority for actions he clearly knew, or should have known, no authority existed. Ignorance of the law is never an excuse! The actions against this Appellant, his spouse, and employers were in fact intended to harass, intimidate, and harm - another lie by Rae in his declaration.

The District Court simply choose to look the other way while Rae violated the law and the rights of the Appellant and his family.

This Appellant will hold steadfast is his conclusion(s)until such time he is provided lawful evidence to the contrary. This Appellant has made this court aware of said crimes as required of him by law (18 USC §4).

Relief Requested:

Based on the above, and the facts and evidence in Appellant's filings contained in the court record and previously submitted to

⁵ See 3:18-cv-03506-MGL EN 28-2 "DECLARATION OF SPECIAL AGENT RAE".

1. the IRS, Appellant respectfully requests the following relief:
 - a. Reimbursement of \$2,500.00 by Rae personally for:
 1. attorney fees paid for legal representation of spouse at sham, unlawful interrogation.
 2. All court costs associated with this action.
2. Find Rae committed perjury in his declaration by claiming authority for action he clearly knew, or should have known, no authority existed.
3. For such other additional relief as this Court may seem just and proper.

Verification:

I, Richard E. Boggs, do hereby swear under penalties of perjury (28 USC §1746) that the foregoing statements and claims are true and correct to the best of my knowledge, as I am a first-hand witness thereto.

Executed this 5 day of 1d.. 2020.

Richard E. Boggs,

Appellant Pro Se

All Rights Reserved

CONSTITUTIONAL AMENDMENT, STATUTES, AND REGULATIONS INVOLVED
(PERTINENT TEXT)

The **Fourth Amendment** of the United States Constitution provides:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

The **Fifth Amendment** of the United States Constitution provides:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, **nor be deprived of life, liberty, or property, without due process of law**; nor shall private property be taken for public use, without just compensation.

5 U.S.C. § 706 Scope of review provides:

To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional

and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing court shall—

(1) compel agency action unlawfully withheld or unreasonably delayed; and

(2) hold unlawful and set aside agency action, findings, and conclusions found to be—

(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

(B) contrary to constitutional right, power, privilege, or immunity;

(C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;

(D) without observance of procedure required by law;

(E) unsupported by substantial evidence in a case subject to sections 556 and 557 of this title or otherwise reviewed on the record of an agency hearing provided by statute; or

(F) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court.

In making the foregoing determinations, the court shall review the whole record or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 393.)

26 U.S.C. § 7608 Authority of internal revenue enforcement officers
provides:

(a) Enforcement of subtitle E and other laws pertaining to liquor, tobacco, and firearms Any investigator, agent, or other internal revenue officer by whatever term designated, whom the Secretary charges with the duty of enforcing any of the criminal, seizure, or forfeiture provisions of subtitle E or of any other law of the United States pertaining to the commodities subject to tax under such subtitle for the enforcement of which the Secretary is responsible may—

- (1) carry firearms;**
- (2) execute and serve search warrants and arrest warrants, and serve subpoenas and summonses issued under authority of the United States;**
- (3) in respect to the performance of such duty, make arrests without warrant for any offense against the United States committed in his presence, or for any felony cognizable under the laws of the United States if he has reasonable grounds to believe that the person to be arrested has committed, or is committing, such felony; and**
- (4) in respect to the performance of such duty, make seizures of property subject to forfeiture to the United States.**

(b) Enforcement of laws relating to internal revenue other than subtitle E

(1) Any criminal investigator of the Intelligence Division of the Internal Revenue Service whom the Secretary charges with the duty of enforcing any of the criminal provisions of the internal revenue laws, any other criminal provisions of law relating to internal revenue for the enforcement of which the Secretary is responsible, or any other law for which the Secretary has delegated investigatory authority to the Internal Revenue Service, is, in the performance of his duties, authorized to perform the functions described in paragraph (2).

(2) The functions authorized under this subsection to be performed by an officer referred to in paragraph (1) are—

- (A) to execute and serve search warrants and arrest warrants, and serve subpoenas and summonses issued under authority of the United States;
- (B) to make arrests without warrant for any offense against the United States relating to the internal revenue laws committed in his presence, or for any felony cognizable under such laws if he has reasonable grounds to believe that the person to be arrested has committed or is committing any such felony; and
- (C) to make seizures of property subject to forfeiture under the internal revenue laws.

26 U.S.C. § 7803 Commissioner of Internal Revenue; other officials

provides:

[Commissioner of Internal Revenue; other officials.]

(3) Execution of duties in accord with taxpayer rights. In discharging his duties, the Commissioner shall ensure that employees of the Internal Revenue Service are familiar with and act in accord with taxpayer rights as afforded by other provisions of this title, including -

- (A) the right to be informed,
- (B) the right to quality service,
- (C) the right to pay no more than the correct amount of tax,
- (D) the right to challenge the position of the Internal Revenue Service and be heard,
- (E) the right to appeal a decision of the Internal Revenue Service in an independent forum,
- (F) the right to finality,
- (G) the right to privacy,
- (H) the right to confidentiality,
- (I) the right to retain representation, and
- (J) the right to a fair and just tax system.

26 C.F.R. § 70.33 - Authority of enforcement officers of the Bureau provides:

Appropriate TTB officers may perform the following functions:

- (a) Carry firearms;

(b) Execute and serve search warrants and arrest warrants, and serve subpoenas and summonses issued under authority of the United States;

(c) In respect to the performance of such duty, make arrests without warrant for any offense against the United States committed in his presence, or for any felony cognizable under the laws of the United States if he has reasonable grounds to believe that the person to be arrested has committed, or is committing, such felony; and...

IRM 9.1.2.2(09-06-2013)(1) - General Authority to Enforce Internal Revenue Laws and Related Statutes provides...

1. Title 26 United States Code (USC) §7608(b) provides the initial authority for investigating crimes arising under the Internal Revenue laws.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

RICHARD E. BOGGS,)
Petitioner,) C/A No. 3:18-cv-03506-MGL-SVH
v.)
UNITED STATES OF AMERICA, et al.,)
Defendants.)

DECLARATION OF SPECIAL AGENT PETER RAE

I, Peter Rae, declare pursuant to Title 28, United States Code § 1746 as follows:

1. I am a duly commissioned Special Agent employed by the Internal Revenue Service's Criminal Investigation Division. I make this declaration on the basis of my personal knowledge of the facts described herein.
2. In my capacity as a Special Agent, I am authorized to issue administrative summonses for documents and testimony in furtherance of investigations into any offense connected with the administration or enforcement of the internal revenue laws. 26 U.S.C. § 7602(b); 26 C.F.R. § 301.7602-1; Internal Revenue Service Delegation Order No. 4 (as revised).
3. I am conducting an investigation of possible offenses by Mr. Boggs connected with the administration or enforcement of the internal revenue laws.
4. In furtherance of the above-referenced investigation, and in accordance with 26 U.S.C. § 7602, on December 10, 2018, I issued administrative summonses (Form 2039) to the following entities at the addresses indicated:
 - a. Indotronix Int'l Corp.
687 Lee Road, Suite 250

Rochester, NY 14606

- b. ATOS IT Solutions
4851 Regent Boulevard
Irving, TX 75063
- c. Artech Information Systems
121 West Trade Street, Suite 2190
Charlotte, NC 28202
- d. Logic Technology, Inc.
650 Franklin Street, 4th Floor
Schenectady, NY 12305
- e. Swoon Group LLC
300 S Wacker, Suite 300
Chicago, IL 60606
- f. Infinite Computer Solutions
15201 Diamondback Drive, Suite 125
Rockville, MD 20850
- g. Ring Legal Department, Custodian of Records
subpoenas@ring.com

5. Each of the summonses identified in paragraph 4 directed a representative of the entity to whom the summons was addressed to appear at my office in Charlotte, North Carolina on January 10, 2019, and produce records.

6. On information and belief, Boggs has or had an employment relationship with each of the entities identified in paragraph 4.a – 4.f.

7. On information and belief, Ring.com is a company headquartered in Santa Monica, California that provides video doorbell subscription services.

8. Attached as **Exhibit A** to this declaration are true and correct copies of the summonses identified in paragraph 4.

9. I followed all administrative steps required by the Internal Revenue Code for issuance of the summonses.

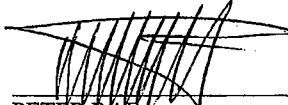
10. At the time the summonses were issued, none of the records or information sought by the summonses were in the IRS' possession. I have not yet reviewed any records received in response to the summonses, and those records will remain segregated from my investigation file pending resolution of Boggs's petition to quash.

11. I did not issue the summonses to harass Boggs or his spouse, nor did I issue the summonses to harm his reputation.

12. At the time the summonses were issued, and continuing through today, no Justice Department referral as defined by 26 U.S.C. § 7602(d)(2) is in effect with respect to Richard Boggs.

I declare under penalty of perjury that the foregoing is true and correct. Executed on the

28th day of February, 2019.


PETER RAE
Special Agent, CI
Internal Revenue Service