APPENDIX

APPENDIX A

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action 19-MC-00011 (CRC)

IN RE MCNEIL AND ELLIS
PRE-FILING INJUNCTION

UNITED STATES OF AMERICA
Movant,

v.

MICHAEL B. ELLIS, ROBERT A. McNEIL
Respondents,

OPINION AND ORDER
(May 26, 2021)

Respondents Robert McNeil and Michael Ellis have filed, or helped others file, a raft of lawsuits accusing the Internal Revenue Service and sundry public officials of perpetuating an illegal scheme to falsify the tax liability of individuals who, like themselves, feel no obligation to pay federal income taxes. Each one of these suits has been dismissed and the dismissals have been affirmed on appeal. In response to the barrage of filings, the Court in 2017

granted the government's request for a pre-filing injunction. Under the injunction, which was amended in 2018, Respondents must obtain leave of Court to file further suits of a similar nature. Respondents now seek permission to file a new suit, this one against the Chief Judge of the D.C. Circuit Court of Appeals and the Chief Justice of the United States. Finding the proposed suit covered by the injunction, the Court will deny leave to file. It will also deny Respondents' associated motions for the Court's recusal and appointment of counsel.

I. Background

On April 3, 2018, the Court issued an Amended Pre-Filing Injunction barring Respondents from "[f]iling, or assisting in the filing of," three general categories of lawsuits without prior leave of court: *first*, "any civil action . . . assert[ing] a claim under the United States Constitution or the Administrative Procedure Act challenging actions taken by the Internal Revenue Service in preparing to assess and assessing income tax liabilities

pursuant to 26 U.S.C. § 6020;" *second*, "any civil action . . . assert[ing] a claim under the United States Constitution or the Administrative Procedure Act challenging actions taken by the Department of Justice to defend against . . . suits to collect income tax liabilities;" and *third*, "any civil action . . . assert[ing] claims against judicial officers . . . challenging the merit, the substance, and/or the process of those judicial officers' decisions with respect to the Internal Revenue Service's program for preparing to assess and assessing income tax liabilities pursuant to 26 U.S.C. § 6020(b)[.]" See Am. Inj. at 3-4, ECF No. 35. To receive leave of court to file any such action, Respondents are required, among other things, to "certif[y] that the claims presented are new claims never before raised and disposed of on the merits . . . or jurisdictional grounds by any court[.]" Id. at 4.

In the fall of 2020, Respondents filed two duplicative filings, each styled as a "Respectful Demand to Recuse," Mot. for Recusal, ECF Nos. 38, 40, as well as

two additional duplicative filings, each styled as a "Status Report and Notice," Status Report & Notice, ECF Nos. 37, 39. In broad strokes, these four filings sought vacatur of the Amended Injunction and this Court's recusal from consideration of that motion. On September 17, 2020, the Court denied the requests as squarely foreclosed by D.C. Circuit rulings relating to this case. See Crumpacker v. Ciraolo-Klepper, 715 F. App'x 18 (D.C. Cir. 2018) (affirming the Court's entry of the pre-filing injunction and the Court's denial of Respondents' recusal motion); Crumpacker v. Ciraolo-Klepper, No. 17-5054, 2017 WL 4231164 (D.C. Cir. Sept. 13, 2017) (affirming the dismissals underlying Respondents' recusal motion); see also Sept. 17, 2020, Min. Order.

Just two weeks later, Respondents filed four more motions: one "respectful demand/motion," again seeking this Court's recusal, see Mot. for Recusal, ECF No. 42; one "respectful demand/motion" seeking appointment of counsel

to certify Respondents' recusal motion, see Mot. to Appoint Counsel, ECF No. 43; and two substantively identical motions seeking leave to file a new lawsuit pursuant to the injunction, see Mot. for Order, ECF No. 41 ("First Motion for Order"); Mot. for Order, ECF No. 44 ("Second Motion for Order"). By Minute Order, the Court instructed the government to respond. See Oct. 1, 2020, Min. Order. Shortly thereafter, Respondents filed a notice of an interlocutory appeal from that Minute Order, arguing that the Court had wrongfully "appoint[ed] [itself] free representation" by seeking the government's response. See Notice of Interlocutory Appeal at 1, ECF No. 45. The Court held the underlying motions in abeyance pending resolution of that appeal. See Oct. 26, 2020, Min. Order. Approximately four months later, the D.C. Circuit dismissed the appeal following Respondents' motion to withdraw. See In re: United States v. Ellis, No. 20-5316 (D.C. Cir. dismissed Feb. 8, 2021).

Respondents' motions are thus once more before this Court.

II. Analysis

As stated, there are four motions currently pending before the Court: a motion for recusal, a motion for appointment of counsel, and two applications for leave to file a complaint pursuant to the pre-filing injunction. The Court takes each in turn.

A. Motion for Recusal

Respondents, once again, seek recusal of the undersigned from considering further filings on this docket. See Mot. for Recusal at 2-6. As they did in their prior recusal motions, Respondents argue that recusal is warranted because this Court has colluded with other judicial officers to prevent substantive consideration of their claims. The Court's response to this argument in September 2020 remains the same today:

> [T]he D.C. Circuit has already rejected Respondents' request to remove the Court from administering the pre-filing injunction. See Crumpacker v. Ciraolo-Klepper, 715

> Fed.Appx 18 (D.C. Cir. 2018). Respondents offer no evidence since the Circuit's ruling that would reasonably call the Court's impartiality into question or that would demonstrate any personal bias or prejudice on the part of the Court against them. See 28 U.S.C. §455(a), (b)(1).

Sept. 17, 2020, Min. Order. The Court therefore denies the recusal motion for the same reasons.

B. Motion for Appointment of Counsel

Relatedly, Respondents request that the Court appoint them counsel to certify that their recusal motion was made in good faith as required by 28 U.S.C. § 144. See Mot. to Appoint Counsel. Respondents state that they "are aware of the technical requirement" that a licensed attorney certify their motion but cannot afford "to retain any lawyer, let alone one with the courage and mental acuity" required for the task. Id. at 1. As just explained, the Court denies Respondents' recusal request regardless of the lack of the statutorily required certification. Independent consideration of the appointment request is therefore unnecessary.

The Court would reject the motion on its merits in any case. Among other things, courts evaluating a request for appointment of counsel to parties proceeding in forma pauperis consider the "[n]ature and complexity of the action[,]" the "[p]otential merit of the pro se party's claims[,] . . . and the degree to which the interest of justice will be served by the appointment of counsel[.]" LCvR 83.11(b)(3). Each of these factors cuts decidedly against Respondents. For starters, Respondents have neither sought nor obtained *in forma pauperis* status. Additionally, Respondents' recusal motion lacks both merit and complexity—the motion is, after all, premised on the exact argument that was rejected by this Court just two weeks before they filed the present motion. Finally, it would not serve the interests of justice to appoint Respondents counsel on this issue, which has already been litigated on multiple occasions.

C. Motions for Leave to File

Finally, Respondents file two duplicative applications for leave to file a lawsuit pursuant to the Amended Injunction. See First Motion for Order; Second Motion for Order. In the applications, Respondents propose a suit naming Chief Judge Srinivasan and Chief Justice Roberts in their personal capacities to adjudicate what they perceive to be two "narrow questions." First Motion for Order at 1. The first question is whether there is a policy and practice of appellate judges refusing to address the "merit of EVERY issue raised on appeal by victims of complex attorney fraud in violation of litigants' statutory rights[.]" Id. at 1. The second question is whether there is a "policy and practice of appellate judges to refuse providing assistance of counsel to victims of complex government-paid-attorney fraud" in violation of due process. Id. Respondents later explain that the referenced fraud is the alleged "IRS record falsification program." Id. at 2-3.

Respondents certified that these are "new" claims as required by the Amended Injunction. At best, however, they are thinly veiled efforts to advance the same claims that have been lodged repeatedly by Respondents in other lawsuits. See, e.g., Compl. ¶¶ 33-35, McNeil v. Brown, No. 17-cv-2602 (D.D.C. Nov. 29, 2017), ECF No. 1; Compl. ¶¶ 15, 45-56, McNeil v. Harvey, No. 17-cv-1720 (D.D.C. Aug. 21, 2017), ECF No. 1; Compl. ¶¶ 94-98, Ellis v. Jackson, No. 16-cv-2313 (D.D.C. Nov. 18, 2016), ECF No. 1. As a result, they are plainly barred by the Amended Injunction, which prohibits Respondents from bringing any further claims "against judicial officers . . . challenging the merit, the substance, and/or the process of those judicial officers' decisions with respect to the Internal Revenue Service's program for preparing to assess and assessing income tax liabilities pursuant to 26 U.S.C. § 6020(b)[.]" Am. Inj. at 4.

Accordingly, the Court denies both motions for leave to file pursuant to the Amended Injunction.

III. Conclusion

For the foregoing reasons, it is hereby

ORDERED that [41] and [44] Motion for Order is DENIED. It is further

ORDERED that [42] Motion for Recusal is DENIED. And it is further

ORDERED that [43] Motion to Appoint Counsel is DENIED.

/s/ Christopher R. Cooper

CHRISTOPHER R. COOPER
United States District Judge

Date: May 26, 2021