

21-8220

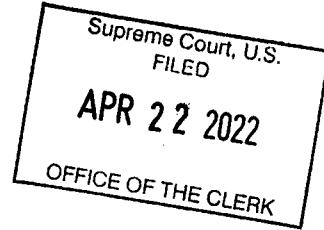
In The Supreme Court of the United States

**Mary Alice Nelson-Rogers,
Petitioner,**

v.

**COMMISSIONER OF THE INTERNAL
REVENUE,**

**CHARLES P. RETTIG,
Respondent.**



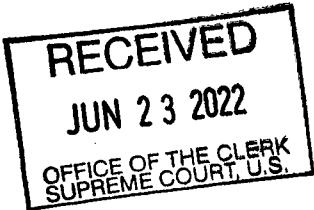
On Petition For Writ of Certiorari

To The United States Court of Appeals

For The Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

**Mary Alice Nelson-Rogers
2072 50th Avenue
Sacramento, CA 95822
Petitioner, Pro Se**



QUESTION(S) PRESENTED

1. Involves both constitutional limitations on federal court jurisdiction and prudential limitations on its exercise concerning moot controversies. The question of standing in the Eastern District Court of California on the 5th Amended Complaint and whether the litigant is entitled to have the court decide the merits of the dispute or of the particular issues.
2. Whether Petitioner may recover damages against the United States under Section 7433 of the Internal Revenue Code when they show that they sustained "actual, direct economic damages * * * as a proximate result of" (26 U.S.C. 7433(b)(1) the unlawful acts of a revenue officer.

PARTIES TO THE PROCEEDING

Petitioner Mary Alice Nelson Rogers was appellant in the court below and plaintiffs in the District Court.

Respondents CHARLES P. RETTIG, individually and in his official capacity as COMMISSIONER OF THE INTERNAL REVENUE SERVICE was the appellee in the court below and defendant in the District Court.

RELATED CASES

Towner Leeper and Lafonne Leeper v. Commissioner Of Internal Revenue, Case No. 02-1537 Supreme Court (2003)

TABLE OF CONTENTS

	Page
OPINIONS AND ORDERS BELOW	1
STATEMENT OF JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS	2-4
STATEMENT OF THE CASE.....	4-6
REASONS FOR GRANTING THE WRIT	6
CONCLUSION.....	7

APPENDIX INDEX

APPENDIX A – NINTH CIRCUIT COURT OF APPEALS ORDER.....	1a, 2a
APPENDIX B – DISTRICT COURT ORDER.....	3a, 4a

TABLE OF AUTHORITIES

CASES

<i>Aetna Life Insurance Co. v. Haworth</i> , 300 U.S. 227, 240-241, 57 S.Ct. 461, 463-64, 81 L.Ed. 617 (1987)....	2, 3
<i>Barrows v. Jackson</i> , 346 U.S. 249, 255-256 (1953)	2
<i>Bob Jones University v. Simon</i> , 416 U.S. 725, 746, 94 S.Ct. 2038, 2050-51, 40 L.Ed.2d 496 (1974)	3
<i>Data Processing Service v. Camp</i> , 397 U.S. 150, 151-154 (1970)	3
<i>Dobson v. Commissioner</i> , 320 U.S. 489	2
<i>Equitable Life Insurance v. Commissioner</i> , 321 U.S. 560	2

TABLE OF AUTHORITIES (cont'd)

CASES	Page
<i>Ex parte Baez</i> , 177 U.S. 378, 390, 20 S.Ct. 673, 677, 44 L.Ed. 813 (1900)	3
<i>Linda R.S. v. Richard D.</i> , 410 U.S. 614, 617 (1973)	3
<i>Phillips v. Commissioner</i> , 283 U.S. 589, 597-98, 51 S.Ct. 608, 611-612, 75 L.Ed. 1289 (1931)	3, 4
<i>United States v. Causby</i> , 328 U.S. 256 (1946)...	5, 6
STATUTES AND RULES	
Rule 60.(a), (b), (d)(3).....	1
5 U.S.C.A. § 552a.....	2, 5
26 U.S.C.A. § 7421.....	3
26 U.S.C.A. § 7433(a)(1).....	4
26 U.S.C.A. § 7433(b)(1).....	i, 2, 4
26 U.S.C.A. § 7433.....	i, 4, 5
26 U.S.C.A. § 6304.....	4
OTHER	
Nontaxpayer Challenges to Internal Revenue Service Rulemaking: Constitutional and Statutory Barriers to Judicial Review, 63 Georgetown L.J. 1263, at 1286, 1288-89 (1975)	4
Hart, Foreword: The Time Chart of the Justices 73 Harv.L.Rev. 84, 88 (1959).....	6

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

The opinion of the United States Court of Appeals appears at Appendix A to the petition and is unpublished by order of the United States Court of Appeals for the Ninth Circuit.¹

The opinion of the United States District court appears at Appendix B to the petition and is reported at the United States District Court of California Eastern District.²

¹ Ninth Circuit in their order have misstated and misnomer the caption, or heading of this case, in their orders. Respondents also have misstated the caption of this case. This suit was brought against the Commissioner of Internal Revenue Service ["IRS"], not against any other agent or employee of the IRS. App A 1a.

² Eastern District in their order have misstated and misnomer the caption, or heading of this case in their orders. Respondents also have misstated the caption of this case. This suit was brought against the Commissioner of Internal Revenue Service ["IRS"], not against any other agent or employee of the IRS. App B 3a. The Ninth Circuit, in their order, is not uniform to the Eastern District's order nor petitioner's brief. The Eastern District's order does not reflect the Fifth Amended Complaint by petitioner. **Rule 60** States that:

- (a) "The court may correct a clerical mistake or a mistake arising from oversight or omission whenever one is found in a judgment, order, or other part of the record...."
- (b) "On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under **Rule 59(b)**; (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party; (4) the judgment is void; or (6) any other reason that (d)(3) set aside a judgment for fraud upon the court.

JURISDICTION

The judgment of the court of appeals was entered on October 15, 2021. The petition for rehearing was denied on January 25, 2022. The petition for a writ of certiorari was filed on April 22, 2022. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

The Supreme Court's position in the 1943 decision of *Dobson v. Commissioner*, 320 U.S. 489, states that it would not review tax court rulings, unless it could identify a clear-cut mistake of law.

Equitable Life Insurance v. Commissioner, 321 U.S. 560. The Court's rule today, by necessity, is to service issues rather than to do justice for all litigants. Justice Frankfurter, before he served on the Court, wrote that the essential functions of the Supreme Court are "[to] resolve conflicts among coordinate appellate tribunals and to determine matters of national concern."

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This inquiry involves both constitutional limitations on federal court jurisdiction and prudential limitations on its exercise. E.g., *Barrows v. Jackson*, 346 U.S. 249, 255-256 (1953).

This writ raises a highly technical issue arising from a potential conflict between the Internal Revenue Code 26 U.S.C.A. § 7433(b)(1) and the Federal Right to Financial Privacy Act of 1978, 5 U.S.C.A. § 552a; 12 U.S.C. §§ 3401, et. Seq.

A justiciable controversy is thus distinguished from a difference or dispute of a hypothetical or abstract character; from one that is academic or moot. The controversy must be definite and concrete, touching the legal relations of parties having adverse legal interests. It must be a real and substantial controversy admitting of specific relief through a decree of a conclusive character, as distinguished from an opinion advising what the law would be upon a hypothetical state of facts. *Aetna Life*

Insurance Co. v. Haworth, 300 U.S. 227, 240-241, 57 S.Ct. 461, 463-64, 81 L.Ed. 617 (1987).

If the case is moot "there is no subject matter on which the judgment of the court's order can operate." *Ex parte Baez*, 177 U.S. 378, 390, 20 S.Ct. 673, 677, 44 L.Ed. 813 (1900). "Federal courts lack jurisdiction to decide moot cases because their constitutional authority extends only to actual cases or controversies."

In its constitutional dimension, standing imports justiciability: whether the plaintiff has made out a "case or controversy" between plaintiff and the defendant within the meaning of Art. III. this is the threshold question in every federal case, determining the power of the court to entertain suit. As an aspect of justiciability, the standing question is whether the plaintiff has "alleged such a personal stake in the outcome of the controversy" as to *his/her* invocation of federal court jurisdiction and to justify exercise of the courts remedial powers on *his/her* behalf. . . . The Art. III judicial power exists only to redress or otherwise to protect against injury to the complaining party, even though the court's judgment may benefit others collaterally. The federal court's jurisdiction therefore can be invoked only when the plaintiff himself has suffered "some threatened or actual injury resulting from the putatively illegal action. . . ." *Linda R.S. v. Richard D.*, 410 U.S. 614, 617 (1973). *See Data Processing Service v. Camp*, 397 U.S. 150, 151-154 (1970).

The Anti-injunction 26 U.S.C. § 7421 provisions of the Internal Revenue Code represent another limitation on federal jurisdiction. The courts have upheld the Act's restriction on suits to restrain the assessment or collection of taxes, but only after finding that Congress has provided the injured taxpayer with other adequate remedies. *Bob Jones University v. Simon*, 416 U.S. 725, 746, 94 S.Ct. 2038, 2050-51, 40 L.Ed.2d 496 (1974) (where judicial review available, injunction denied University suing to prevent revocation of its tax exempt status); *Phillips v. Commissioner*, 283 U.S. 589, 597-98, 51 S.Ct. 608, 611-612, 75 L.Ed. 1289 (1931) (summary procedure for collection of unpaid income and property taxes from transfer of property of taxpayer valid since transferee has two alternate methods of judicial review).

As Justice Brandeis pointed out in *Phillips v. Commissioner*, 283 U.S. 589, 51 S.Ct. 608, 75 L.Ed. 1289 (1931), "where only property rights are involved, mere postponement of the judicial enquiry is not a denial of due process, if the opportunity given for the ultimate judicial determination of the liability is adequate." 283 U.S. at 596-97, 51 S.Ct. at 611.

Justice Brandeis' reasoning implies that a jurisdictional limitation in tax cases that deprived a person of property without due process of law would be improper. Consistent with this reading of the statute, federal courts have recognized that there may be an exception to the Anti-Injunction Act where a plaintiff has no other remedy. *See Note. Nontaxpayer Challenges to Internal Revenue Service Rulemaking: Constitutional and Statutory Barriers to Judicial Review*, 63 Georgetown L.J. 1263, at 1286, 1288-89 (1975).

STATEMENT OF THE CASE

This suit was brought against the Commissioner of Internal Revenue. The statute on which petitioner relies authorizes "a civil action for damages against the United States" 26 U.S.C. 7433(a)(1).

Petitioner is entitled to damages because she has proven by a preponderance of the evidence that" this violation of Section 7433(b)(1) "was a proximate cause of any and all damages."³

This writ of certiorari arises from a memorandum order submitted by the 9th District Court of Appeals upholding the Eastern District Court of California's order against Plaintiffs' claims against the Commissioner of Internal Revenue Service, Charles P. Rettig regarding actions and or omissions collectively employed under color of law by Internal Revenue Service agents and/or employees under the Commissioner's authority. One damaged by

³ The Ninth Circuit and the Eastern District have ignored the facts presented that the petitioner's privacy and "taxpayer bill of rights" were violated. Agents operating under the commissioner harassed, and abused their authority in violation of the Fair Tax Collection Act, [26 U.S.C. 6304] (c) which states that, "a civil claim for violations of this section, see section 7433."

governmental action claimed to be unconstitutional may be able to raise the issue in a suit for damages. *United States v. Causby*, 328 U.S. 256 (1946).

1. Has the Petitioner a right to the guarantees and protection of the Constitution Petitioner demands? 2. If Petitioner has a right, and that right has been violated, do the laws of Petitioner's country afford Petitioner a remedy? "It is a general and indisputable rule that where there is a legal right, there is also a legal remedy by suit, or action at law, whenever that right is invaded." The government of the United States has been emphatically termed a government of laws, and not of men. It will certainly cease to deserve this high appellation, if the laws furnish no remedy for the violation of a vested legal right. The issues presented are questions of statutory law, H.R. 95-1383 and misapplication of that law by the District Court and the 9th Circuit Court of Appeals. The issues to be reviewed are (1) whether the district court issued its final Order based on moot questions and issues, *i.e.*, *the Original Complaint for Violation of Civil Rights and Amended Complaints 1 through 4*, a clear error and/or misapplication of law; AND (2) whether the 9th Circuit Court of Appeals misstated the heading in order to uphold the District Courts order based on moot questions; AND (3) whether the Internal Revenue Service is subject to the Right to Financial Privacy Act 5 U.S.C.A. § 552a when it fails to follow its own procedures under the Internal Revenue Code 26 U.S.C.A. § 7433 and whether Plaintiff fall's within the Right to Privacy waiver of sovereign immunity. The facts are not disputed. This appeal turns on purely legal questions. In the case at hand, the Internal Revenue Service did not follow the proper procedure when it failed to obtain court approval for administrative subpoenas related to federal tax liens recorded in county records produce levies on plaintiff's, land, real estate, personal property and Retirement Pension, and bank accounts. It follows, then, that the question whether the legality of an act of the head of a department be examinable in a court of justice or not, must always depend on the nature of that act. If some acts be examinable, and others not, there must be some rule of law to guide the court in the exercise of its jurisdiction. In some instances, there may be difficulty in applying the rule to particular cases; but there cannot, it is believed, be much difficulty in laying down the rule. The Ninth Circuit

Court does not have the authority to discharge or reproach any United States statutory law passed by Congress on behalf of the people of the United States.

Plaintiff contends that Memorandum and Final Order issued by the 9th Circuit Court of Appeals and the Eastern District Court of California was a clear clerical error against Plaintiff. Courts may not decide moot questions and once informed about the clerical mistake, or on its own order must reverse their judgment once the clerical error that affected the outcome of the case has been discovered. Whereby only actual cases or controversies, which represent Plaintiff-Petitioner's 5th Amended Complaint has standing and the memorandum from the 9th Circuit of Appeals involved parties that are considered moot either by clerical error or other manners that Petitioner is not aware.

REASONS FOR GRANTING THE WRIT

A review on writ of certiorari is not a matter of right, but of judicial discretion, and will be granted only when there are special and important reasons therefor. The Court grants certiorari for the interest of the public, not merely for the interests of the parties. When a party seeks review by appeal, the litigant, under the relevant statute, is invoking as of right. E.g., Hart, Foreword: The Time Chart of the Justices 73 Harv.L.Rev. 84, 88 (1959).

Appellees have misstated the caption of this case. Article III Courts may not decide moot questions, only actual cases or controversies. The district court and court of appeals have made a clear-cut mistake of law and are in direct conflict with the Constitution.

It is essential criterion of appellate jurisdiction that it revises and corrects the proceedings in a cause already instituted, and does not create that cause. The Order issued by the Ninth Circuit creates a controversy asked of in question #1.

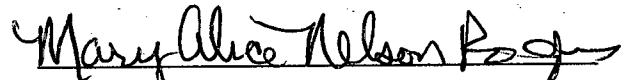
One damaged by governmental action claimed to be unconstitutional may be able to raise the issue in a suit for damages. *United States v. Causby*, 328 U.S. 256 (1946).

CONCLUSION

For the foregoing reasons the decision of the district court and court of appeals is incorrect and conflicts with decision(s) of this Court the writ of certiorari. Further review is therefore warranted.

The petition for a writ of certiorari should be granted.

Respectfully submitted



Mary Alice Nelson Rogers
Mary Alice Nelson Rogers, Petitioner

June 8, 2022