No. _____

In The Supreme Court of the United States

SABENA PURI,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

This case concerns an Internal Revenue Service summons served upon the bank of a United States citizen pursuant to a treaty request made by the Republic of India.

It is fundamental that citizens have a right to be free from abuse of the judicial process, and that the Courts have inherent authority to police this abuse. In *United States v. Powell*, 379 U.S. 48 (1964), this Court articulated a framework for policing abuse in the Internal Revenue Service summons enforcement context. There, this Court recognized that "[i]t is the court's process which is invoked to enforce [an IRS] summons and a court may not permit its process to be abused." *Id.* at 58. A court must therefore quash a summons if a taxpayer shows that the summons has been issued for "an improper purpose, such as to harass the taxpayer or to put pressure on him to settle a collateral dispute, or for any other purpose reflecting on the good faith of the particular investigation." *Id.*

Here, Petitioner offered evidence of India's abusive purpose for seeking the summons, but the district court declined to consider it. Instead, the district court held that in the context of a summons issued pursuant to a treaty request, a foreign government's abusive purpose is irrelevant bar none. Rather, so long as the IRS itself acts in response to a treaty request, the IRS's good faith is established and that is all that matters. For its part, the government acknowledges that the IRS makes no inquiry into whether the foreign government acts in good faith or for an abusive purpose. The Ninth

Circuit affirmed, joining the Fifth Circuit in this conclusion. In taking this tack, these courts rely on an inappropriately broad reading of dicta from this Court's decision in *United States v. Stuart*, 489 U.S. 353 (1989).

The upshot is that, contrary to *Powell*, lower courts are holding that they can and must allow their process to be abused, so long as that abuse is by foreign governments making a summons request pursuant to a tax treaty. This case presents an ideal vehicle for this Court to correct this error, and to confirm that lower courts retain the power, and the obligation, to ensure their process is not abused.

Accordingly, this case presents the following question to the Court: Is a foreign government's abusive or bad faith purpose ever relevant to the enforcement of an IRS summons issued pursuant to a treaty request?

RELATED PROCEEDINGS

Sabena Puri v. United States, Case No. 21-55132 (9th Cir) (decision subject to instant petition).

Sabena Puri v. United States, Case No. CV 20-7270-RGK (AGRx) (C.D. Cal.) (decision appealed in Ninth Circuit Case No. 21-55132).

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PETITION FOR WRIT OF CERTIORARI

Petitioner asks this Court for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit in this case.

OPINIONS BELOW

The court of appeals' decision subject to the instant petition is an unpublished memorandum disposition. It is enclosed in this Petition's appendix, is available on PACER at Docket Entry 35-1 of Ninth Circuit Case No. 21-55132, and is available on West Law at 2022 WL 3585664.

The district court's decision subject to that appeal is enclosed in this Petition's appendix, is available on PACER at Docket Entry 31 of Central District of California Case No. 2:20-cv-07270-RGK-AGP, and is available on West Law at 2021 WL 111861.

The district court's decision adopted a Magistrate Judge Report and Recommendation. That Report and Recommendation is enclosed in this Petition's appendix, is available on PACER at Docket Entry 28 of Central District of California Case No. 2:20-cv-07270-RGK-AGP, and is available on West Law at 2020 WL 8084275.

JURISDICTION

The court of appeals entered the judgment sought to be reviewed on August 22, 2022. The court of appeals denied Petitioner's Petition for Rehearing En Banc on January 4, 2023. By letter dated March 17, 2023, this Court extended the time to file a petition for a writ of certiorari to and including Saturday June 3, 2023. By operation of Supreme Court Rule 30, this Petition is due to be filed on Monday, June 5. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY AND REGULATORY PROVISIONS INVOLVED

The relevant statutory provisions are set out in the appendix to this petition. They include:

1. The Fifth Amendment to the United States Constitution.

2. 26 U.S.C. § 7602.

3. 26 U.S.C. § 7609.

4. Article 28 of the United States Tax Convention with the Republic of India.

INTRODUCTION

This case presents an important and recurring issue regarding district court authority to police abuse of process in the context of the enforcement of IRS summonses issued pursuant to treaty requests from foreign governments.

Inherent in due process of the law is an understanding that an individual will never be subject to judicial process for an abusive and illegitimate purpose. In the IRS summons enforcement context, this principle finds its expression in this Court's seminal decision of *United States v. Powell*, 379 U.S. 48 (1964). In *Powell*, this Court established a framework by which lower courts are to evaluate an IRS summons. First, *Powell* requires the IRS to demonstrate three things to the district court: (1) that its summons is related to a legitimate investigation; (2) that the information sought is not already in the IRS's possession; and (3) that the IRS has complied with Internal Revenue Code procedures. If the IRS meets this burden, at *Powell's* second step, the taxpayer "may challenge the summons on any appropriate ground," including whether "the summons has been issued for an improper purpose, such as to harass the taxpayer or to put pressure on him to settle a collateral dispute." *Id.* at 58. At all times, the courts are to employ the following touchstone: "It is the court's process which is invoked to enforce the administrative summons, and a court may not permit its process to be abused." *Id.*

However, erroneously magnifying a single line of dicta in the Supreme Court's decision in *United States v. Stuart*, 489 U.S. 353, 370 (1989), and in derogation of *Powell*, the Ninth Circuit has swept aside this framework in cases involving summonses issued pursuant to a foreign government's treaty request. Concerning such requests, the Ninth Circuit has held not only that a reviewing court *may* ignore a foreign government's malign purpose in seeking the summons, it *must* do so. The Ninth Circuit's decision below explicitly forbids consideration of the foreign government's bad faith, holding that it "would run counter to what the Supreme Court said in *Stuart*, that '[s]o long as *the IRS itself* acts in good faith . . . and complies with applicable statutes, it is entitled to enforcement of its summons.'" *Puri v. United States*, Mem. Op. 21-55132, Appendix at A3 (Mar. 9, 2022) (quoting *Stuart*, 489 U.S. at 370 (emphasis added)). For the reasons set forth below, this determination was in error.

The Ninth Circuit so held even though the Government acknowledged that the IRS itself conducts no inquiry into whether a foreign government's investigation is brought for a legitimate purpose. Rather, the Government acknowledged in oral argument below that the IRS's function in issuing a summons in response to a foreign government's request is purely ministerial:

> QUESTION BY JUDGE BUMATAY: Counsel, can I ask, does the IRS undertake any sort of analysis of India's motivation before they issue the subpoena [sic]—do they do a good faith analysis itself?

> ANSWER BY GOVERNMENT COUNSEL:
> No, Your Honor. It is not the IRS's job to second-guess a facially proper treaty request.

Accordingly, in the context of IRS summonses issued pursuant to a foreign government's request, the Ninth Circuit has reduced its *Powell* analysis to nothing more than ministerial approval of an already *pro forma* IRS review. As explained below, this conclusion runs counter to the Supreme Court's direction in *Powell*, and runs counter to the text of the applicable treaty itself.

This is a situation in need of correction. It is not what Congress intended. It is not what the Constitution allows. And the stakes are high. The United States has tax treaties not only with India and close historical U.S. allies. The United States also has tax treaties with far less friendly authoritarian regimes such as the Russian Federation, the People's Republic of China, and the Bolivarian Republic of Venezuela. Under the Ninth Circuit's decision below, district courts may simply not consider whether these or any other countries seek an IRS summons for a legitimate tax purpose, or to harass or facilitate the abuse of a U.S. citizen or resident.

This Court has long held that court process may not be abused for illegitimate ends, and that courts have the inherent authority to police such abuse. This Court should accordingly grant this Petition for Certiorari, reverse the Ninth Circuit, and ensure that this bedrock principle endures in the summons enforcement context.

STATEMENT OF THE CASE

A. Legal Background

1. The United States Tax Convention with the Republic of India.

The summons underlying this case was issued pursuant to a request made by the Republic of India under the United States Tax Convention with the Republic of India ("the Tax Convention" or "the Treaty").

The Treaty authorizes summons requests at Article 28 (attached at Appendix at A38). Paragraph 1 of Article 28 provides for information exchange generally:

> The competent authorities of the Contracting States shall exchange such information (including documents) as is necessary for carrying out the provision of this convention or the domestic laws of the Contracting States concerning taxes covered by the Convention insofar as the taxation thereunder is not contrary to the Convention, in particular, for the prevention of fraud or the evasion of such taxes.

The Treaty continues, stating that the competent authorities shall confer as to the appropriate methods of information exchange:

> The competent authorities shall, through consultation, develop appropriate conditions, methods and techniques concerning the matters in

> respect of which such exchange of information shall be made, including, where appropriate, exchange of information regarding tax avoidance.

Paragraph 4 of Article 28 of the Treaty states that this information exchange shall take place in the form and manner ordinarily used by the producing state. This obligates the parties to use the IRS summons procedure for requests of U.S. information:

> If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall obtain the information to which the request relates in the same manner and in the same form as if the tax of the first-mentioned State were the tax of that other State and were being imposed by that other State.

Finally, Paragraph 3 of Article 28 states that the information-sharing provisions of the Treaty do not override domestic protections of taxpayer rights:

> In no case shall the provisions of paragraph 1 be construed so as to impose on a Contracting State the obligation:
>
> (a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;
>
> (b) to supply information which is not obtainable under the laws or in the

> normal course of the administration of that or of the other Contracting State;
>
> (c) to supply information which would disclose any trade, business, industrial, commercial, or professional secret or trade process, or information the disclosure of which would be contrary to public policy (ordre public).

Accordingly, the U.S.–India Tax Convention authorizes the IRS to issue a summons in response to a request from the Indian Government. However, the Treaty itself confirms that the process must comply with domestic limitations and taxpayer rights, rather than override them.

The Court should further be aware that this language is present in virtually all of the tax treaties between the United States and other states. It is not unique to its tax convention with India.

2. The *Powell* summons evaluation framework.

This Court has set forth the relevant domestic limitations and taxpayer rights in its seminal decision of *United States v. Powell*, 379 U.S. 48 (1964). *Powell* and its progeny seek to strike an appropriate balance between safeguarding taxpayer rights on the one hand and effective tax administration on the other. *Powell* straddles this line by requiring district courts to engage in a two-step analysis.

At *Powell*'s step one, the IRS must make the following showing:

> [The IRS] must show that the investigation [to which the summons relates] will be conducted pursuant to a legitimate purpose, that the inquiry may be relevant to the purpose, that the information sought is not already within the [IRS's] possession, and that the administrative steps required by the [Internal Revenue] Code have been followed—in particular, that the 'Secretary [of the Treasury] or his delegate,' after investigation, has determined the further examination to be necessary and has notified the taxpayer in writing to that effect.

379 U.S. at 58. That said, the required showing is not onerous, and normally may be met "by submitting a simple affidavit from the investigating [IRS] agent." *See United States v. Clarke*, 573 U.S. 248, 254 (2014).

Once the IRS makes this required showing, the burden shifts to the taxpayer. At this stage, the taxpayer "may challenge the summons on any appropriate ground." *Powell*, 379 U.S. at 58. Such an "appropriate ground" includes "[i]f the summons had been issued for an improper purpose, such as to harass the taxpayer or to put pressure on him to settle a collateral dispute, or for any other purpose reflecting on the good faith of the particular investigation." *Id.* at 58. Under *Powell*, it would therefore appear that a foreign government's illegitimate purpose in conducting an investigation would be a relevant inquiry for the Court.

3. *United States v. Stuart*, 489 U.S. 358 (1989), *United States v. Manufacturers and Traders Trust Co.*, 703 F.2d 47 (2d Cir. 1983), and summonses issued pursuant to treaty requests.

The next major legal development relevant to this Petition is this Court's decision *United States v. Stuart*, 489 U.S. 353 (1989). This case addressed what constitutes valid grounds to quash an IRS summons issued pursuant to a treaty request made by a foreign government. Importantly, however, *Stuart* concerned a particular subset of these summonses: those sought by a foreign government to advance a foreign criminal investigation. To understand the significance of this nuance, some background discussion is in order.

Following *Powell*, this Court addressed several cases concerning IRS summonses issued to advance domestic criminal investigations. First, in *Reisman v. Caplin*, 375 U.S. 440 (1964), issued mere months after *Powell*, this Court observed in dicta that a challenge to a summons "on any appropriate ground" would "include, as the circuits have held, the defenses that the material is sought for the improper purpose of obtaining evidence for use in a criminal prosecution." *Id.* at 449.

The Supreme Court walked back this dictum, however, in the subsequent cases of *Donaldson v. United States*, 400 U.S. 517 (1971) and *United States v. LaSalle Nat'l Bank*, 437 U.S. 298 (1978). In *Donaldson*, this Court addressed a summonsed taxpayer's contention that a summons was unenforceable because it was issued in aid of an

investigation that could result in a criminal charge against the taxpayer. The Court held against the taxpayer, holding that the *Reisman* dicta was applicable only to "the situation of a pending criminal charge or, at most, of an investigation solely for criminal purposes." *Id.* at 533.

In *LaSalle Nat'l Bank*, the Court drew a bright line rule based upon the progress of the Government's investigation. It held that prior to the time the IRS refers a case to the Justice Department for criminal prosecution, a summons may in good faith seek information relevant to both a civil and criminal investigation (or either). But once the IRS "recommends to the Department of Justice that a criminal prosecution, which reasonably would relate to the subject matter of the summons," such an IRS summons would constitute bad faith. *LaSalle Nat'l Bank*, 437 U.S. at 318. Congress, for its part, subsequently codified this aspect of *LaSalle National Bank's* holding at 26 U.S.C. § 7602(c). That code provision states in relevant part that "[n]o summons may be issued under this title, and the Secretary may not begin any action under section 7604 to enforce any summons, with respect to any person if a Justice Department referral is in effect with respect to such person."

Following these decisions, and the codification of § 7602(c), taxpayers sought to expand this rule to circumstances where a foreign government made a treaty request for an IRS summons to advance that foreign government's own criminal investigation. The first of these cases came before the Second Circuit in *United States v. Manufacturers & Traders Trust Co.*, 703 F.2d 47 (2d Cir. 1983). There, a

taxpayer argued that the U.S. Courts should deny enforcement of a summons issued pursuant to a request by Canada made under the United States-Canada Tax Convention of 1942, on the grounds that Canada sought the summons to further a criminal investigation run not by the Canadian Department of National Revenue, but by Canada's general national law enforcement arm, the Royal Canadian Mounted Police. *Id.* at 49. In effect, that Canadian investigation had reached a stage analogous to that of a Justice Department referral in the United States. The *Manufacturers & Traders Trust Co.* taxpayers therefore argued that, under *Powell* and *LaSalle National Bank*, the summons should be quashed.

The Western District of New York agreed, but the Second Circuit reversed. In doing so, the Second Circuit noted that the principle that the IRS's use of a summons following a Justice Department referral constitutes bad faith "stems from special provisions in United States law." *Manufacturers & Traders Trust Co.*, 703 F.2d at 52. Specifically, following a Justice Department referral, tools of criminal discovery are limited and information gathering must principally be routed through a grand jury, which serves as a check on prosecutorial power. *Id.* To instead allow the IRS to summons information would subvert the grand jury process and infringe upon the grand jury's systemic role. *Id.*

But, importantly, other countries—including Canada—do not employ grand juries. It therefore could not be said that Canada's request—even after a case matured to a point analogous to a Justice Department referral under Canadian law—would

constitute a bad-faith end-run around the grand jury process in the same way it would for a purely domestic summons. *Id.* at 53. Accordingly, the Second Circuit held that the summons must be enforced.

But the Second Circuit specifically left open the door to consideration of a foreign government's bad faith where appropriate. The Second Circuit observed that "[t]here are other components of 'bad faith' which might apply even to this type of international case—*e.g.*, harassment of the taxpayer, putting pressure on him to settle a collateral dispute or possibly invasion of a recognized privilege." *Id.* However, no such allegations were made in *Manufacturers & Traders Trust*. The Second Circuit therefore held that the summons would be enforced.

A few years later, the Ninth Circuit considered the same issue and reached a different result. In *United States v. Stuart*, 813 F.2d 243 (9th Cir. 1987), the United States District Court for the Western District of Washington entered an order directing compliance with an IRS summons issued pursuant to Canada's treaty request, even though the summons sought to further a criminal investigation that had reached a point analogous to a Justice Department referral.

The Ninth Circuit, however, reversed, and held that the summons must be quashed. The Ninth Circuit held that to enforce the summons, the Canadian government must have sought it in good faith, and that this good faith requirement included addressing "whether the Canadian investigation has progressed to a stage analogous to a Justice

Department referral." *Id.* at 249. Specifically, the Ninth Circuit held that the Government's prima facia showing under *Powell* must include "an affirmative statement that the investigation has not reached a stage analogous to a Justice Department referral." *Id.* at 250.

Because the Government included no such statement in its prima facia case before the district court, the Ninth Circuit remanded to the district court "to allow the IRS to amend its affidavits to include the required statement." *Id.* In reaching this conclusion, the Ninth Circuit declined to follow the Second Circuit's decision in *Manufacturers & Traders Trust*, erroneously stating that it was decided prior to Congress's enactment of 26 U.S.C. § 7602(b), and therefore under a different standard. *See Stuart*, 813 F.2d at 249.[1]

The Government appealed the Ninth Circuit's *Stuart* decision and, recognizing conflict between it and *Manufacturers & Traders Trust*, this Court granted certiorari. This Court reversed the Ninth Circuit, summing up its decision as follows:

> The question presented is whether the United States Internal Revenue Service may issue an administrative summons pursuant to a request by Canadian authorities only if it first

[1] Congress codified § 7602(c)'s Justice Department referral reference when it passed the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. No. 97-248, 96 Stat. 324, on September 3, 1982. The Second Circuit decided Manufacturers & Traders Trust on March 18, 1983.

> determines that the Canadian tax investigation has not reached a stage analogous to a domestic tax investigation's referral to the Justice Department for criminal prosecution. We hold that neither the 1942 Convention nor domestic legislation imposes this precondition to issuance of an administrative summons. So long as the summons meets statutory requirements and was issued in good faith, as we defined that term in *United States v. Powell*, 379 U.S. 48, 57–58, 85 S.Ct. 248, 254–255, 13 L.Ed.2d 112 (1964), compliance is required, whether or not the Canadian tax investigation is directed toward criminal prosecution under Canadian law.

Stuart, 489 U.S. at 356.

In reaching this decision, this Court explicitly noted that it did not present a case of the more conventional kind of bad faith unaddressed in either the Ninth Circuit's *Stuart* decision or *Manufacturers & Traders Trust*. This Court noted, "In their petitions to quash, respondents nowhere alleged that the IRS was trying to use the District Court's process for some improper purpose, such as harassment or the acquisition of bargaining power in connection with some collateral dispute" and "nor does it appear that they later sought to prove abuse of process." *Id.* at 360–61.

Rather, the Court analyzed only the requirements of 26 U.S.C. § 7602(c), and whether its

restriction on the IRS's use of a summons following a Justice Department referral ought to apply to requests made by foreign governments. *See Stuart*, 489 U.S. at 362. This Court concluded that § 7602(c) did not so apply. In doing so, this Court pointed to the statute's text, its legislative history, as well as the observation that virtually none of the United States's tax treaty partners employ grand juries and therefore "[t]he concerns that prompted Congress to pass § 7602(c) are therefore not present when the IRS issues summonses at the request of most foreign governments conducting investigations into possible violations of their own tax laws." *Id.* at 363–64.

After this and some additional analysis of the applicable United States–Canada Convention, this Court concluded with the language that Petitioner in this matter contends is in vital need of clarification:

> We conclude that the IRS need not attest that a Canadian Tax investigation has not yet reached a stage analogous to a Justice Department referral by the IRS in order to obtain enforcement of a summons issued pursuant to a request by Canadian authorities under the 1942 Convention. *So long as the IRS itself acts in good faith, as that term was explicated in* United States v. Powell*, 379 U.S. at 57–58, 85 S.Ct., at 254–255, and complies with applicable statutes, it is entitled to enforcement of its summons.*

Stuart, 489 U.S. at 370 (emphasis added).

Since *Stuart*, lower courts have read this language to sweep away any inquiry into whether a foreign country makes a treaty request for a good faith purpose. *See*, *United States v. Mazurek*, 271 F.3d 226 (5th Cir. 2001); *Zhang v. United States*, Mem. Op. Case No. 21-17093, 2022 WL 14010799 (9th Cir. Oct. 24, 2022). This includes inquiry into the more conventional notions of bad faith purposes, such as harassment or bargaining pressure, consideration of which was preserved by the Second Circuit in *Manufacturers and Traders Trust*, 703 F.2d at 53, and not at issue in *Stuart*, 489 U.S. at 360–61. Rather, so long as "the IRS itself" acts with a good-faith purpose—and responding to a treaty request is, in and of itself, a good faith purpose—the summons will be enforced.

B. Factual and Procedural History

This case began on July 23, 2020, with the IRS's issuance of a third-party summons upon Citibank, N.A., seeking the records of all accounts related to Petitioner Sabena Puri. The summons was issued pursuant to a treaty request made by the Republic of India, and seeks records covering the sixteen-year period from April 1, 2003 through March 31, 2019.[2] The request seeks not only the account opening documentation and know-your-customer records related to these accounts, but also Petitioner Puri's

[2] At the time the district court passed on the Puri's Petition to Quash the summons, India had no statute of limitations for tax assessments. This situation has since changed, and India has now enacted a statute of limitations covering a narrower time period than the one for which records have been requested.

monthly account statements, detailing all of her purchases during that sixteen-year stretch. It is a substantial invasion of Puri's private affairs.

On August 12, 2020, Petitioner Puri filed a petition to quash the summons under 26 U.S.C. § 7609(b). As relevant to the instant Petition for Writ of Certiorari, Puri argued that "the purpose of India's information request appears to be to abuse [Puri] and her family, rather than to engage in any legitimate investigation of income tax liability." (Petition to Quash at 8.) In support, Puri pleaded that she has no plausible legitimate Indian tax liability, and observed the well-reported circumstances of India's present ruling party using India's taxation authority to harass its political opposition, *i.e.*, members of the rival Indian National Congress party. This harassment included the leaking of nominally protected confidential tax information, and the sharing of tax information among other Indian government agencies.

Puri's petition further observed that her uncle is a leader of the Indian National Congress party and a major political rival of the present ruling party. In briefing on the Petition, Puri explained that her family is active in Indian politics in opposition to the present ruling party, and that this summons appeared to be an effort to root through Puri's personal expenditures for politically damaging information, and to harass her family. In this connection, it should be noted that the present ruling party in India is a nationalist and populist party, and Petitioner Puri has become a United States citizen, graduated from Harvard Business School and Columbia University, and has been an

entrepreneur and technology executive in the Bay Area.

Puri accordingly asked the United States District Court for the Central District of California to quash the summons, or else to grant limited discovery or an evidentiary hearing to allow Puri to obtain India's justification for the summons. *See, e.g.*, *United States v. Clarke*, 573 U.S. 248 (2014) (holding that a taxpayer is entitled to an evidentiary hearing on summons enforcement "when [s]he can point to specific facts or circumstances plausibly raising an inference of bad faith"). Puri anticipated that even if Indian officials refused to participate in discovery or a hearing, such refusal to offer a legitimate purpose for the summons would suggest a court inference that no legitimate purpose existed, entitling her to have the summons quashed. The United States moved to dismiss Puri's Petition to Quash, and the district judge referred the matter to a magistrate judge for report and recommendation.

On December 9, 2020, the Magistrate Judge issued her Report and Recommendation, finding against Puri and recommending that her Petition to Quash be dismissed. In doing so, the Magistrate Judge turned aside Petitioner's allegations of the Indian taxation authority's bad faith, determining that they were irrelevant. In doing so, the Magistrate Judge relied upon the language in this Court's *Stuart* opinion stating that "[s]o long as the IRS itself acts in good faith . . . it is entitled to enforcement of its summons." 489 U.S. at 370. Petitioner objected to the Report and Recommendation, but these objections were summarily overruled as "without merit."

Petitioner made this failure to even consider her showing of India's bad faith purpose in seeking the summons the centerpiece of her appeal. The Ninth Circuit rejected this argument, doubling down on the holding that a requesting foreign government's good faith is irrelevant to a district court's inquiry. The Ninth Circuit stated as follows:

> Puri cites no authority to support her argument that the court may look beyond a facially proper request to determine the true motivations of the requesting foreign government. Such an inquiry would run counter to what the Supreme Court said in *Stuart*, that "[s]o long as *the IRS itself* acts in good faith . . . and complies with applicable statutes, it is entitled to enforcement of its summons."

(Appendix at A3.) (emphasis in original).

The Ninth Circuit so held despite the Government's candid admission at oral argument that the IRS itself does no meaningful review of a foreign government's treaty request before it issues a summons, other than to determine that it is "facially valid:"

> QUESTION BY JUDGE BUMATAY: Counsel, can I ask, does the IRS undertake any sort of analysis of India's motivation before they issue the subpoena [sic]—do they do a good faith analysis itself?

> ANSWER BY GOVERNMENT COUNSEL: No, Your Honor. It is not the IRS's job to second-guess a facially proper treaty request.

In response to the Ninth Circuit's decision, Puri petitioned for rehearing *en banc*, but that petition was denied. After seeking a brief extension, Puri now files the instant Petition for Writ of Certiorari.

REASONS FOR GRANTING THE PETITION

This petition meets this Court's traditional criteria for review. It presents a narrow issue for consideration, of whether the lower courts are misreading a single line of dicta in *Stuart* to obviate the considered taxpayer protections that this Court articulated in *Powell*, in cases involving summonses issued pursuant to a foreign government's treaty request.

If the Ninth Circuit's decision is allowed to stand, this issue will have far reaching consequences, granting foreign governments *carte blanche* to root through American nationals' financial lives for any reason. The IRS would be deputized into that process and—contrary to *Powell*—the courts would be foreclosed from having any meaningful oversight role.

A. This case presents an important issue

The IRS's summons power is among the broadest information gathering tools available under U.S. law. It allows the IRS to gather "books, papers, records, or other data" from any source, and to

compel the testimony of a taxpayer and third parties. *See* 26 U.S.C. §§ 7602 & 7609; IRS Internal Revenue Manual § 25.5.6. There is no warrant or probable cause requirement. *Cf.* U.S. Const. amend. IV. And there is no proportionality requirement, as under the Federal Rules of Civil Procedure. *Cf.* Fed. R. Civ. P. 26(b).

Rather, the IRS's power to issue a summons is subject to a single threshold limitation: the IRS summons process may be used only to further a legitimate tax investigation. Per the statutory text authorizing the process, a summons may be issued only—

> [f]or the purpose of ascertaining the correctness of any [tax] return, making a return where none has been made, determining the liability of any person for any internal revenue tax or the liability at law or in equity of any transferee or fiduciary of any person in respect of any internal revenue tax, or collecting any such liability.

26 U.S.C. § 7602(a). Recognizing the potential for IRS information-gathering through the summons process to serve as a backdoor for the rest of the Government, Congress has enacted strict prohibitions on the IRS's disclosure of this information even to other Government components. *See* 26 U.S.C. § 6103.

This Court, in *Powell*, crystalized the judiciary's role in safeguarding the sole limitation on the IRS's summons authority that it must be used in connection with a legitimate tax investigation.

Under *Powell*, for a court to enforce an IRS summons, the IRS must attest that the summons is related to a good-faith tax investigation, and the court must afford the taxpayer an opportunity challenge the summons both by attacking that IRS assertion and on other "appropriate grounds." 379 U.S. at 58.

Permitting the Ninth Circuit's decision below to stand would eviscerate this protection with respect to summonses issued by foreign governments pursuant to treaty requests. The IRS itself conducts no inquiry into whether the foreign government issues its request pursuant to a bona fide investigation. That, according to the Government, is not the IRS's job. Rather, the IRS enforces the request if it is merely "facially proper." And the Ninth Circuit's decision below holds that any showing that a taxpayer may make concerning a foreign government's bad faith purpose is irrelevant. Rather, "so long as the IRS itself acts in good faith," the summons must be enforced. (Appendix at A3.) The effect is to grant unfettered access to Americans' "books, papers, records, and other data" to foreign governments upon request, without any oversight and without taxpayer recourse.

The danger of this approach should be evident. The United States has tax treaties not only with India and close historical U.S. allies. The United States also has tax treaties with far less friendly authoritarian regimes such as the Russian Federation and the People's Republic of China, as well as regimes accused of recent democratic "back-sliding," such as the Republic of Turkey.

An illustration of the potential for danger may be helpful. For example, if the Russian Federation seeks the bank records of a prominent U.S.-based opponent of the Ukraine War—nominally for tax purposes, but really to harass—the IRS will not "second-guess a facially proper treaty request." And—if the Ninth Circuit's decision stands—a district court simply must approve it, even if the subject of the request could conclusively prove Russia's abusive purpose. Through this procedure, the Russian Federation could obtain a complete picture of this U.S. person's financial life, as well as track any funds that he transferred to Ukraine, identifying that individual's confederates and other items of potential intelligence value. Again, under the decision below, courts would be powerless to decline to enforce a summons *even if this abusive purpose could be conclusively proven by the summons's subject.*

B. The Ninth Circuit's decision is wrong on the merits, and based on a too-narrow reading of *Stuart's* dicta.

Given this fallout of the Ninth Circuit's decision, it should come as little surprise that the decision's reasoning is flawed. Rather, the conclusion is instead premised on a single line of dicta from this Court's decision in *United States v. Stuart*, shorn of the necessary context of that case.

As observed in the discussion of this matter's legal background, this Court's decision in *United States v. Powell* sets forth the framework that the district courts are to apply to summons enforcement, without reference to whether the summons stems

from a treaty request or domestic processes. In all cases, the district court is to consider and enforce the limiting principles that a summons must relate to a legitimate tax investigation and that it not constitute a bad-faith abuse of court process. Pursuant to *Powell*, before a summons will be enforced, "[t]he [IRS] must show that the investigation [to which the summons relates] will be conducted pursuant to a legitimate purpose, that the inquiry may be relevant to the purpose, that the information sought is not already within the [IRS's] possession, and that the administrative steps required by the [Internal Revenue] Code have been followed." 379 U.S. at 58.

This framework and these limitations are preserved by the text of the applicable Tax Treaty itself. Paragraph 3 of Article 28 of the United States–India Tax Convention states that it does not require the United States "to carry out administrative measures at variance with [its] laws and administrative practice." Further, the Treaty does not require the United States "to supply information which is not obtainable under the laws or in the normal course of [its] administration." And, finally, the Treaty does not require the United States "to supply information . . . the disclosure of which would be contrary to public policy." This incorporates *Powell*. This Court's *Powell* framework constitutes United States "law and administrative practice," and affords due process of law, a key United States' public policy.

Contrary to the Ninth Circuit's decision below, this Court's decision in *United States v. Stuart*, 489 U.S. 353 (1989), did not remove summonses issued

pursuant to treaty requests from this framework. Rather, *Stuart* explicitly observed that the facts of that case presented no indication of any bad faith, harassment, or abuse of process by the Canadian authorities requesting the summons. 489 U.S. at 360–61. The Court's decision in *Stuart* explicitly noted that "[i]n their petitions to quash, respondents nowhere alleged that the IRS was trying to use the District Court's process for some improper purpose, such as harassment or the acquisition of bargaining power in connection with some collateral dispute" and "nor does it appear that they later sought to prove abuse of process." *Id.*

Instead, the *Stuart* taxpayer's only proffered justification for quashing the summons was that it related to a Canadian investigation that was criminal in nature and that had matured to a stage analogous to a Department of Justice investigation. Under U.S. law, that fact would have foreclosed the use of the IRS's administrative summons process. This is because, under the particularities of U.S. criminal procedure, in such a circumstance the summons would constitute an end-run by Department of Justice prosecutors around the protections of the grand jury, and such an end-run would constitute bad faith. But Canada—the foreign nation that made the request at issue in *Stuart*—does not use grand juries. It therefore is not relevant to Canada's good faith that the investigation had matured to a stage analogous to a Justice Department referral. Canada has no grand jury process to circumvent. Accordingly, in that context—and, in that context only—this Court in *Stuart* held that "[s]o long as the IRS itself acts in good faith, as

that term was explicated in *United States v. Powell*, 379 U.S. at 57–58, 85 S.Ct., at 254–255, and complies with applicable statutes, it is entitled to enforcement of its summons." *Stuart*, 489 U.S. at 370.

But this language from *Stuart* did not undo *Powell's* command that courts must police summonses issued for a bad faith purpose in other contexts. Rather, as the Second Circuit observed in *Manufacturers & Traders Trust*, "[t]here are other components of 'bad faith' which might apply even to this type of international case—*e.g.*, harassment of the taxpayer, putting pressure on him to settle a collateral dispute or possibly invasion of a recognized privilege." 703 F.2d at 53. *Stuart* did not immunize summonses issued pursuant to treaty requests from scrutiny concerning such "other components of 'bad faith."

In its opinion below, the Ninth Circuit held that a district court lacked power to enforce a summons even if a requesting foreign government's bad faith was conclusively proven. It held that a foreign government's bad faith is simply irrelevant to a district court's analysis.

This holding forces lower courts to become complicit in demonstrated abuses of their process. The Ninth Circuit's conclusion is therefore inconsistent with fundamental notions of due process that require all government actions to at least be rationally related to a legitimate government interest. It is inconsistent with *Powell's* fundamental instruction that "[i]t is the court's process which is invoked to enforce [an IRS]

summons and a court may not permit its process to be abused." 379 U.S. at 58. And it is inconsistent with the plain language of the applicable Tax Convention.

C. The Question Presented is important, and this case presents it cleanly.

As this Petition has demonstrated, this case presents an important question. The lower courts' interpretation of *Stuart* has essentially eliminated district courts' ability to police summonses that foreign governments seek for abusive purposes—even if that abusive purpose is conclusively established. Per the opinion below, as well as the Fifth Circuit's decision in *United States v. Mazurek*, 271 F.3d 226 (5th Cir. 2001), a foreign government's bad-faith purpose is simply *irrelevant* to a reviewing court's analysis.

This conclusion flouts basic due process protections that require all government action to be reasonably related to a legitimate government interest. It flouts this Court's particular admonition in *Powell* that "[i]t is the court's process which is invoked to enforce the administrative summons, and a court may not permit its process to be abused." 379 U.S. at 58. And it opens the door to significant abuse.

Fortunately, the extreme nature of the conclusion reached in the decision below makes this case an attractive vehicle for review. The decision below directly states that, in light of this Court's dicta in *Stuart*, a court may not "look beyond a facially proper request to determine the true motivations of a requesting foreign government."

(Appendix at A3.) Granting Certiorari in this matter would afford this Court an opportunity to directly address this interpretation of its dicta, and provide needed direction and clarification to the lower courts.

CONCLUSION

For the foregoing reasons, the Petition for Certiorari should be granted. This Court should take this opportunity to clarify that its dicta in *Stuart* did not exempt summonses issued pursuant to treaty requests from the *Powell* framework, and that a foreign government's bad faith is still relevant to the summons enforcement analysis.

Respectfully submitted,

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