No.

In the
Supreme Court of the United States

In Re: SEALED CASE,

IRS WHISTLEBLOWER 7107-16W

Petitioner-Appellant

v.

COMMISSIONER OF INTERNAL REVENUE SERVICE,

Respondents-Appellee

ON PETITION FOR A WRIT OF CERTIORARI

TO THE UNITED STATES FEDERAL COURT OF APPEALS FOR THE

DISTRICT OF COLUMBIA CIRCUIT. **[FILED UNDER SEAL]**

PETITION FOR A WRIT OF CERTIORARI
For and on Behalf of All Overseas US Government "Whistleblowers", "Informants" and "Confidential Sources" Proceeding *Pro Se.*

Filed pursuant to FRCP 5.2. Petitioner, IRS Whistleblower 7107-16W, is proceeding *pro se*, anonymously, on the papers without oral hearings during Covid 19. Resident and domiciled within the European Union, resulting in the US Federal Government's specific obligations, amongst others, pursuant to 28 U.S.C. § 1367 with regards to the laws of the European Union. Including, all the protections of the European Convention on Human Rights, after interaction and intervention by Special Agents of the IRS Criminal Division operating out of the US London Embassy in the United Kingdom. Together with a bespoke "US Treasury Confidentiality Agreement" (March 10, 2008) Appendix. E 1-3, as authorized and directed by IRS Headquarters, Washington DC. In particular, Article 8 an individual's right to protection of; "private and family life, his home and his correspondence".

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August 11, 2021

Question Presented

Background and Context

Pursuant to the plenary powers of Congress, embodied in the 'Spending and Property Clauses' of the United States Constitution, Congress has authorized knowledgeable insiders, who assist the law enforcement efforts of the US Federal Government, to seek an impartial judicial review of their respective submissions. Variously and confusingly referred to in US Federal legislation and regulations as **(1)** "whistleblowers" **(2)** "confidential sources" and **(3)** "informants".

Including, overseas informants and whistleblowers who assist the IRS Criminal Division of the US Treasury Department and exercise their statutory rights to an impartial judicial review of their continuing anonymity and confidentiality, together with, their award determinations made by the Commissioner of Internal Revenue Service pursuant to 26 U.S. Code § 7623(b)(4). Based on evidentiary disclosure of offshore **(1)** money laundering, **(2)** unreported bank accounts, and **(3)** unreported income, activities which undermine the integrity of the US Treasury Department.

Accordingly, the question presented to the US Supreme Court in this matter is:

Whether, contrary to the US Supreme Court's clear affirmation of the 'strict plausibility' pleading standard, the US Federal Courts nevertheless retain a general discretion in refusing to consider, discuss or acknowledge, without an opinion, rationale or dicta, **all** the relevant facts, supporting evidence, statutes, US Treasury regulations having the force of law and salient Constitutional issues; when denying the continuing anonymity and confidentiality of overseas US Government **(1)** "whistleblowers" **(2)** "confidential sources" and **(3)** "informants", during judicial review in the US Federal Courts, pursuant to the 'open courts doctrine'.

RELATED PROCEEDINGS

The following proceedings are directly related to this petition:

***In Re. Sealed Case v. Commissioner of the Internal Revenue Service*, No. 18-1321**, Motion of Anonymity and Sealing the Case, United States Court of Appeals, DC Circuit, judgment denying appeal without an opinion, entered January 19, 2021. Moreover, panel rehearing and en banc hearing, denied without an opinion, May 14, 2021. **[Appendix A-B]**

***In Re. Sealed Case v. Commissioner of the Internal Revenue Service*, No. 18-1321**, Motion for Declaratory Judgment, United States Court of Appeals, DC Circuit denied. Without an opinion, May 14, 2021. Moreover, panel rehearing and en banc hearing denied, without an opinion, June 24, 2021. **[Appendix C]**

IRS Whistleblower* 7107-16W *v. Commissioner of the Internal Revenue Service

Motion for anonymity filed March 22, 2016, US Federal Tax Court denied. Complete with standard, generic 'cut and paste' judgment entered November 6, 2018. Denying Whistleblower 7107-16W's original "sufficient fact-specific" motion 18 months after it was inexplicably held in abeyance by the Tax Court[1] Issued without the Federal Tax Court actually discussing or acknowledging any of the 'specific facts' in Whistleblower 7107-16W's motion for anonymity.[2] As supplemented (August 27, 2018). *Infra* paragraphs 22 thru 56. **[Appendix D]**

[1] Federal Tax Court rule 345(a) whistleblower to set forth a "sufficient, fact-specific basis for anonymity.

[2] Colloquially referred to as the Federal Tax Court's 'Rocket Docket', which entails the periodic clearing out of IRS Whistleblower cases from the US Federal Tax Court docket, particularly those overseas IRS informant \ whistleblower cases proceeding *pro se* (without legal representation) on the papers without oral hearings, irrespective of the legitimacy and authenticity of the case being presented to the Tax Court.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner, IRS Whistleblower 7107-26W, respectfully petitions the US Supreme Court for a writ of certiorari to review the US Court of Appeals (DC Circuit) decision in this matter. Issued without a published opinion, dicta or rationale, in a case of first impression. The DC Circuit has committed a very serious error that will result in long-lasting and devastating repercussions if it is not corrected by way of a grant of Certiorari occasioning an immediate 'summary reversal' to the DC Circuit.

In addition to IRS Whistleblower 7107-26W seeking his rights and thus the protection of the US Supreme Court, IRS Whistleblower 7107-26W also files this petition as a salutary and cautionary warning to all overseas (1) "whistleblowers" (2) "informants" and (3) "confidential sources", outside the jurisdiction of the United States, who may be considering assisting US law enforcement in the future.[8] \ [9] In particular, as to the discriminatory and prejudicial treatment they are likely to receive in the US Federal Courts.

The DC Circuit's decision in the matter of IRS Whistleblower 7107-26W continuing anonymity, without any acknowledgment, discussion or consideration of the relevant facts, supporting evidence, statutes, US Treasury regulations having the force of law and salient Constitutional issues; will result in substantial 'material and irreparable harm' to both the personal safety and professional livelihoods of all current and future US Government **(1)** "whistleblowers" **(2)** "confidential sources" and **(3)** "informants". Including, the inevitable risk

[8] Kristen A. Parillo "A Whistleblower's Cautionary Tale: Anonymity Isn't Guaranteed" (April 22, 2021, online).
[9] Jeremiah Coder. Tax Analysts "Exclusive: A Whistleblower's Cautionary Tale" Tax Analysts (May 9, 2013, online).

of harm to both the personal safety and economic wellbeing of their immediate families. Recurring issues that will disproportionately impact overseas litigants seeking judicial review, proceeding *pro se* without legal representation in the US Federal Courts, 'on the papers' without oral hearings, from outside the US, beyond the protection of US law enforcement and US anti-retaliatory legislation.[10] \ [11]

As stated by Chief Justice Roberts; *"If judicial review is to be more than an empty ritual, it must demand something better than the explanation offered for the action taken in this case."* ***Department of Commerce v. New York (2019 WL 2619473)*** *"In this case"* (IRS Whistleblower 7107-16W), the acts and omissions of both US Federal employees and the US Federal Court of Appeals (DC Circuit) have ensured, that to-date, after 6 years of a purported judicial review in the Federal Courts, Whistleblower 7107-16W case is, for all intents and purposes, an "empty ritual" *id.* Devoid in significant part of the rule of law and absent any meaningful compliance with regulations having the force of law. Bringing the US legal system into disrepute. Particularly, from the perspective of existing and future offshore US Government (1) "whistleblowers" (2) "informants" and (3) "confidential sources", who seek the protection of the US Federal Courts.

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[10] For example British overseas territories top the list of world's leading tax havens for enabling global corporate tax evasion and abuse, flight capital from corrupt politicians and regimes, and the laundering of proceeds of crime such as the Latin American drug cartels; **(1)** British Virgin Islands (British Overseas territory) **(2)** Cayman Islands (British Overseas territory) **(3)** Bermuda (British Overseas territory) **(4)** Jersey (British Crown Dependency (5) Isle of Man (British Crown Dependency) (6) Guernsey (British Crown Dependency) (7) Gibraltar (British Overseas territory). All controlled and directed, at 'arms length', by law firms, banks and accountants operating from the City of London in the United Kingdom, the world's biggest financial center.

[11] See Guardian Newspapers article. Phillip Inman. Published London March 9, 2021. "UK overseas territories top list of world's leading tax havens. British Virgin Islands ranked 'greatest enabler of corporate abuse' by Tax Justice Network".https://www.theguardian.com/business/2021/mar/09/uk-overseas-territories-top-list-of-worlds-leading-tax-havens

Absent an opinion by the DC Circuit in this matter, it is all but impossible to properly address any judicial inconsistency or oversight by the DC Circuit. Particularly, regarding the proper consideration of the DC Circuit's compliance with the law, US Treasury regulations, contravention of the US Constitution or indeed undisputed or indisputable facts. Evidencing the unpalatable truth, not properly understood by most of the US public, that the Federal Courts of Appeals, DC Circuit, when considering evidence of wrongdoing and malfeasance by US Federal employees are, for all intents and purpose, semi-secretive and unaccountable in their decision making. (See DC Circuit Rule. 36 **(c),** Appendix J) Raising the specter of a total lack of transparency and fairness in the US Federal Courts.

Unpublished judicial decisions, with no opinion are an abdication of judicial responsibility. Judicial responsibility that requires the preparation of publication-worthy opinions in important cases of significant public interest, that impact both on the plenary powers of Congress and, the personal safety and professional wellbeing of litigants.[12] The US public has a right to know how the US Federal Courts justify the extensive efforts of both the IRS and Justice Department to sabotage and undermine the effectiveness of the IRS Whistleblower Program. A program that Congress initiated to reduce the annual US tax gap which the IRS themselves estimated as being $ 504 billion per annum, between tax years 2008 and 2010.

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[12] The Joint Committee on Taxation (JCT) released a report (June 07, 2021) entitled "Overview of the Tax Gap". Overview Of Federal Tax Provisions And Analysis Of Selected Issues JCX-30-21 " The tax gap is the difference between taxes paid and taxes owed, and this gap can exist for a few reasons. The IRS estimates that, between tax years 2008 and 2010, the U.S. had an annual gross tax gap of $504 billion, and an annual net tax gap of $447 billion, in 2016 dollars.

Disclosing Whistleblower 7107-16W's identity into the public domain is in effect a 'taking' pursuant to the 'Takings Clause of the Fifth Amendment'; *"Nor shall private property be taken for public use, without just compensation."* Contrary to the principle that the US government should not single out isolated individuals to bear excessive burdens, even in support of an allegedly important public good such as the Federal judiciary's justification of disclosing the personal identities of government whistleblowers, informants and confidential sources into the public domain pursuant to the 'Open Courts Doctrine'. Moreover, acts and omissions by elements within the **(1)** US Federal Judiciary, **(2)** US Department of Justice and **(3)** IRS Counsel, that are calculated to undermine, disable and limit the broad plenary powers of Congress, embodied in the 'Spending and Property Clauses' of the US Constitution. Fundamentally disrupting the balance of power within system of government in the United States.

Congress' Proposed Legal Reform (June 15, 2021) In Response to the DC Circuit's Egregious and Cursory Decision, "Per Curiam" (May 14, 2021) Denying IRS Whistleblower 7107-16W's Continuing Anonymity and Confidentiality Without a Supporting Opinion, Dicta or Rationale.

Congress proposed immediate reform of the IRS Whistleblower Program in response to the DC Circuit's extremely prejudicial, capricious and egregious final decision, without an opinion, May 14, 2021, denying Whistleblower 7107-16W continuing anonymity and confidentiality as a US Government **(1)** "informant" **(2)** "whistleblower" **(3)** "confidential source".[13] Proposing, amongst other things, mandatory **de *novo judicial* review** of IRS award determinations, currently based on the highly deferential, wholly inadequate and inappropriate standard of "abuse of discretion" and also, the mandatory ***'presumption of anonymity'*** for IRS Whistleblowers during judicial review.

On June 15, 2021 Senators Chuck Grassley (R-Iowa) ranking member Senate Committee on Judiciary and Ron Wyden (D-Ore.) Chairman Senate Finance Committee, introduced a bi-partisan bill, ***IRS Whistleblower Program Improvement Act 2021***, to overcome the Federal Court of Appeals (DC Circuits) opposition, obduracy and prejudice with regards the continuing anonymity and confidentiality of IRS Whistleblowers during judicial review. [Appendix L.] In particular, a prejudice against overseas IRS Whistleblowers motivated by a misdirected sense of loyalty and deference to the US Department of Justice whose attorneys have sought to conceal the wrongdoing and malfeasance of Federal employees in the handling of IRS

[13] See Grassley-Wyden joint press release, "Grassley, Wyden Introduce Bill To Strengthen Successful IRS Whistleblower Programs" June 15, 2021. https://www.grassley.senate.gov/news/news-releases/grassley-introduces-bill-to-strengthen-successful-irs-whistleblower-programs

Whistleblower 7107-16W's case during the last 13 years, to the very real detriment of the US Constitution and plenary powers of the US Government. (infra paras. 22 thru 56) [14]

Section 3 of the Wyden -Grassley summary of the proposed bill states;

" 3. **Presumption of Anonymity in Tax Court**. The Tax Court has generally used its own discretion to allow IRS whistleblowers to proceed anonymously before the court. However, the IRS has increasingly contested motions by a whistleblower to proceed anonymously. Such efforts to disclose the whistleblower's identity puts the individual in jeopardy and deters the willingness of other whistleblowers from coming forward and sharing actionable information. Further, identification of the whistleblower may lead to the identification of the taxpayer (who is not a party to the case). This provision establishes a rebuttable presumption in favor anonymity to provide security to whistleblowers, and mitigate needless, costly, and time-delaying litigation in the Tax Court."

The proposed bill does not make it clear what happens to the IRS Whistleblowers who are currently seeking judicial review in the Federal Courts and who are having their motions for anonymity constantly challenged and opposed by both IRS Counsel and the US Justice Department in the Federal Courts. Moreover, the proposed bill clearly does not go far enough in ensuring that Federal Courts comply with the *'strict plausibility'* pleading standard, previously affirmed by the US Supreme Court, during judicial review of IRS Whistleblower cases, particularly on the matter of anonymity and confidentiality of overseas whistleblowers, in offshore jurisdictions (*infra* paras.22-31)

Many IRS Whistleblowers are currently left in legal limbo.[15] ***The IRS Whistleblower Program Reform Bill 2021*** proposed by, Senators Grassley and Wyden, if and when it is passed, could take anywhere from 6-18 months to become law. Many potential IRS Whistleblowers have been advised by counsel during the last month to hold their submissions in abeyance and wait to see if the new law is passed, in order to ensure their future anonymity. Further limiting the

[14] See also Whistleblower 7107-16W's Motion for Declaratory Judgment, United States Court of Appeals, DC Circuit outling in specific detail together corroborative documentary evidence, malfeasance and wrongdoing by US Federal employees; *In Re. Sealed Case v. Commissioner of Internal Revenue Service*, No. 18-1321, denied by the DC Circuit without an opinion or dicta, May 14, 2021. Moreover, panel rehearing and en banc hearing denied by the DC Circuit without an opinion or dicta, June 24, 2021.

[15] Kristen A. Parillo Tax Analysts "Proposed Whistleblower Reforms Seek to Expand Protections." (June 30, 2021, online)

US Treasury Department's efforts to combat **(1)** money laundering, **(2)** unreported offshore bank accounts, and **(3)** unreported income.

Both IRS Counsel and the US Justice Department (who represent the IRS on appeal), have not confirmed whether they will continue to oppose IRS Whistleblower anonymity in the US Courts. If and when the reform bill is passed into law. Opposing IRS Whistleblower anonymity in the Federal Courts has been both the IRS' and the Justice Department' main tactic \ tool for deterring and intimidating IRS Whistleblowers form seeking judicial review of their submission and award determinations. Contrary to, US Treasury standing regulations which clearly state; "The IRS treats whistleblower claimants as confidential informants. Internal Revenue Manual (I.R.M) 25.2.2.7 (12-20-2008); See also I.R.M. 25.2.1.5.4 (01-11-2018), Ex.25.2.1-1 (Debriefing Checklist). The IRS will use its "best efforts" to protect the identity of a whistleblower claimant. Treasury. Reg 301.7623-1(e) (26 CFR)"

During the last 13 years, many IRS Whistleblowers have been suckered into the IRS Whistleblower Program thinking their anonymity is safe, handing over documentary evidence of **(1)** money laundering, **(2)** unreported offshore bank accounts, and **(3)** unreported income to special agents of the IRS Criminal Division. Only to discover later that the US Treasury regulations (*supra*), purportedly protecting Whistleblower anonymity and confidentiality, together with bespoke US Treasury Confidentiality Agreements (*infra* paras.34-42) are worthless. meaningless and illusory promises largely ignored by the US Federal Courts.

OPINIONS AND ORDERS BELOW

The decisions of the Federal Court of Appeals, DC Circuit (App. A-C) are unpublished and unreported. Similarly, the order of the Court of Appeals, DC Circuit denying panel rehearing and hearing en banc (App.-C) is unpublished and unreported.

The US Federal Tax Court decision dismissing the petitioner's motion for anonymity is unpublished and unreported.

STATEMENT OF SUBJECT MATTER AND APPELLATE JURISDICTION

Petitioner-Appellant, IRS Whistleblower 7107-16W, filed a petition in the U.S. Tax Court seeking judicial review of the IRS' determination of his so called IRS Whistleblower award together with a motion for his continuing anonymity and confidentiality pursuant to both a **(1)** bespoke US Treasury Confidentiality Agreement (March 10, 2008) in which the US Treasury Department cited and invoked Whistleblower 7107-16W confidentiality pursuant to Exemption 7D of the Freedom of Information Act, and also **(2)** standing US Treasury regulations for maintaining the confidentiality of IRS Whistleblowers.

The Supreme Court and Federal Court of Appeals have jurisdiction over this matter pursuant to the 'collateral order doctrine'. See ***United States v. Microsoft, 56F.3D 1448, 1457 (D.C. Cir.1995).*** The US Federal Tax Court's order denying anonymity satisfies the requirements of the 'collateral order document' (supra) because it; **(1)** "conclusively determines the disputed question", that is whether Whistleblower 7107-16W may proceed anonymously and confidentially; **(2)** "resolves an important issue completely separate from the merits of the action"; and **(3)** if the [Whistleblower 7107-16W] identity is disclosed as required by the Federal Tax Court, the issues would be effectively un-reviewable on appeal from a final judgment".

The Federal Court of Appeals (DC Circuit) entered judgment on January 19, 2021. On May 14, 2021, the Court of Appeals denied Whistleblower 7107-16W timely filed motion for panel rehearing and hearing en banc. Whistleblower 7107-16W invokes the US Supreme Court's jurisdiction pursuant to 28 U.S.C. § 1254(1), having timely filed this petition for a writ of certiorari within ninety days of the Federal Court of Appeal's denial without opinion of panel rehearing and hearing en banc May.

STATUTORY PROVISIONS INVOLVED

The relevant statutory provisions are set out in the petition appendix. At Appendix G-H.

26 U.S. Code § 7623(b)(4).....

5 U.S.C. § 552(b)(7)(D)(2006 & Supp. IV 2010)..... .....

INTRODUCTION

1. The United States Congress has a long history of utilizing, authorizing and by implication protecting knowledgeable insiders who, at great personal and professional risk, assist the law enforcement efforts of the US Federal Government that underpin the 'Spending and Property Clauses' of the United States Constitution. In 1777, in response to a petition by sailors and marines of the USS Warren (Providence Rhode Island), Congress funded the legal defense of two of their number in the amount of $ 1418. The two US navy Whistleblowers were sued and imprisoned for criminal slander for disclosing corruption, war profiteering and abuse of British prisoners by the then US Commodore of the US navy during the American War of Independence. In addition, the United States Continental Congress 1774–1781 passed the United States first whistleblower law;

> *"Resolved, It is the duty of all persons in the service of the United States, as well as all other inhabitants therof, to give the earliest information to Congress or any other proper authority of any misconduct, frauds or misdemeanours committed by any persons in the service of these states, which may come to their knowledge."* [16\17]

2. Similarly, the IRS Informant \ Whistleblower program, codified at I.R.C § 7623, has existed in various forms since 1867.[18] In 2006 Congress substantially revised the IRS Whistleblower Program. See Tax Relief and Health Care Act of 2006 ("TRHCA"), Pub. L. 109-432, div. A, sec. 406, 120 Stat. 2958. Congress amended section 7623, "to address

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[16] See Journals of the Continental Congress, 1774-1789 Volume 1, May 2 1778-September 1, 1778, at page 732.

[17] Often referred to as the United States first whistleblower protection law passed unanimously by the Continental Congress July 30, 1778. Previously cited in the Supreme Court in National Whistleblower Center amicus curiae brief in Vermont Agency Of Natural Resources *v.* United States Ex Rel. Stevens Certiorari to the United States Court Of Appeals, Second Circuit No 98-1828, May 22, 2000, on the issue of the constitutionality of False Claims Act.

[18] All section references are to the Internal Revenue Code unless otherwise indicated

perceived problems" with the way in which the Internal Revenue Service implemented the existing IRS whistleblower law.[19] [Appendix H]

3. In 2006, Congress acted in the "belie[f] that an enhanced reward program would be more attractive to future informants" S. Rep. No. 109-336 at 31 (2006). Particularly, those "confidential sources", "whistleblowers" and "informants" operating as knowledgeable insiders i.e. bankers, accountants and lawyers outside the US, in offshore jurisdictions. Overcoming the ineffectiveness, mismanagement, inconsistency and lack of transparency in which the IRS had previously operated a discretionary system of informant awards, prior to the 2006 amendments. For example, prior to the reform, "most rejected claims did not provide the rationale for the reviewer's decision." *Id.* The IRS made arbitrary award decisions stemming from a "lack of standardized procedures and limited managerial oversight." *Id.*

4. The 2006 Act designated the existing statute as subsection 7623(a), and introduced a second type of award in subsection (b). The new provisions in section § 7623(b) provide mandatory awards where specified dollar thresholds and other requirements are met. In particular, the statute requires the Secretary of the Treasury to make an award "of the collected proceeds" from "any ... action described in subsection (a)" that is based on the whistleblower's information 26 U.S.C. § 7623(b)(1).

5. Similarly, prior to the 2006 Act there was no express statutory provision for judicial review of tax whistleblower claims. The 2006 amendment to the Act

[19] See Cooper v. Comm'r, 135 T.C. 70, 73 (2010) ("Cooper I").for a full narrative of the history and reform of IRS Whistleblower Program.

provided for judicial review of IRS award determinations pursuant to § 7623(b)(4). Congress intended there to be judicial review of all types of IRS award determinations, including denials. ***Cooper I, 135 T.C. at 75*** (citing Staff of Joint Comm. on Taxation, Technical Explanation of H.R. 6408, at 89 (J. Comm. Print 2006) ("The provision permits an individual to appeal the amount or a denial of an award determination to the United States Tax Court * * * within 30 days of such determination.")); ***Whistleblower 11332-13W v. Comm'r, 142 T.C. 396, 402 (2014)*** (the Court's determination that whistleblower met pleading requirements was "consistent with TRHCA's intent to provide whistleblowers with judicial review of award determinations").

6. Senator Charles Grassley, the then Chairman of the Senate Finance committee, was the principal author of the 2006 IRS Whistleblower amendments which provided for mandatory award provisions pursuant to § 7623(b)(1).[20] Nevertheless, during the last 13 years Senator Grassley has continued to highlight the extensive efforts of both IRS Counsel and the US Justice Department to thwart, limit and undermine the effectiveness of the IRS Whistleblower Program. Both IRS counsel and the Justice Department have continued to actively pursue strategies and policies to discourage, intimidate, defame, dissuade, discredit and prejudice IRS whistleblowers from pursuing judicial review in the US Federal Courts. In

[20] See press release, "Grassley Highlights Potential for Whistleblowers on Big-dollar Tax Cheating" (Sept. 9, 2011) Available at https://www.grassley.senate.gov/news/news-releases/grassleyhighlights-potential-whistleblowers-big-dollar-tax-cheating.

particular, targeting overseas IRS Whistleblowers proceeding pro se, on the papers. In 2015 Senator Grassley submitted a series of questions to the then IRS Commissioner John Koskinen in connection with a Senate hearing on the IRS' budget.[21] \[22] In that letter the Senator stated:

> *"I again find myself frustrated with an IRS Chief Counsel office that seems to wake up every day seeking ways to undermine the whistleblower program both in the courts and the awards. I am especially concerned that chief counsel is throwing every argument it can think of against whistleblowers in tax court. It appears at times that the Chief Counsel's office thinks its job is to come up with hyper technical arguments and seek to deny awards to whistleblowers . . . I ask that your office and the director of the whistleblower office review the chief counsel's wasteful and harmful litigation positions that undermine the whistleblower program."*

7. During the last 13 years IRS Counsel have repeatedly taken legal positions that interpret section 7623(b) in narrow ways in order to limit, dissuade or deny whistleblowers from seeking judicial review in the Federal Tax Court, and \ or limit and reduce their awards. E.g., ***Cooper I, 135 T.C. at 76*** (rejecting IRS argument that denial letter was not a "determination" that confers jurisdiction on Tax Court); ***Smith v. Comm'r, 148 T.C. 21, 24 (2017)*** (rejecting IRS argument that "amounts in dispute" are limited to the part of collected proceeds attributable to whistleblower's information). The IRS routinely concludes that no action has been taken, or no proceeds collected, merely because of a debatable legal interpretation. See ***Whistleblower 21276-13W v. Comm'r, 147 T.C. 4, 32 (2016)*** (rejecting IRS argument that

[21] Available at https://www.grassley.senate.gov/news/news-releases/grassley-irswhistleblower-office-key-court-case-commissioner-responses-grassley

[22] See also Press Release, Grassley on the IRS Whistleblower Office; Key Court Case, Commissioner Responses to Grassley Questions (June 3, 2015) Available at https://www.grassley.senate.gov/news/news-releases/grassley-irswhistleblower-office-key-court-case-commissioner-responses-grassley

"collected proceeds" only include payments mandated by U.S. Code title 26). Such an interpretation precluded judicial review of a potentially meritorious claim.[23] In response, during 2018, Senator Grassley made further amendments to the 2006 IRS whistleblower legislation.[24]

8. On the issue of opposing IRS Whistleblower's anonymity and confidentiality during judicial review in the Federal Courts, the IRS office of Chief Counsel and US Justice Department have continued to exploit a further opportunity to undermine the IRS Whistleblower program. Arbitrarily denying informant and whistleblower anonymity and confidentiality in Court proceedings, in order to intimidate IRS whistleblowers from appealing their respective award determinations and prejudice IRS whistleblower cases going forward.

9. The IRS requires whistleblowers to disclose their identity and contact information as part of a § 7623(b) whistleblower debriefing and award submission. IRS Whistleblowers initially provide that information, in good faith, on the understanding that the IRS will carefully protect a whistleblower's identity. See IRS Whistleblower office statement titled "Confidentiality and Disclosure for Whistleblowers."[25] Confidentiality and anonymity of US Treasury "informants", "whistleblowers" and "confidential sources" is also addressed by the Department of US

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[23] See *Comparini v. Comm'r, 143 T.C. 274, 282 (2014)* ("we hold that we have jurisdiction . . . If it were otherwise, the Commissioner could largely frustrate judicial review by issuing ambiguous denials that did not seem to be, but were, determinations"); id. at 286 ("We believe that adoption of the Commissioner's contentions in this case would create an unnecessary trap for individuals seeking to invoke our jurisdiction under section 7623(b)"

[24] Between 2007 and 2018 IRS Counsel routinely and repeatedly argued against paying IRS whistleblower awards by limiting the definition of "collected proceeds" upon which a whistleblower award was to be based. Congress passed the Bipartisan Budget Act of 2018 § 41108, 26 U.S.C. § 7623(c) in which Congress redefined "collected proceeds" to include criminal penalties, civil forfeitures, interest, additions to tax, and additional amounts provided under the internal revenue laws, as well as any proceeds arising from laws for which the IRS is authorized to administer, enforce, or investigate forfeitures, and violations of reporting requirements."

[25] See IRS Whistleblower Office webpage titled " Confidentiality and Disclosure for Whistleblowers " available at https://www.irs.gov/compliance/confidentiality-and-disclosure-for-whistleblowers

Treasury Regulations 26 C.F.R. § 301.7623-1(e), which states: "No unauthorized person will be advised of the identity of an informant. The IRS will use its best efforts to: (i) prevent the disclosure of a whistleblower's identity; and (ii) notify a whistleblower prior to any disclosure."

10. Similarly, US target taxpayers' information is protected by I.R.C. § 6103. As a corollary those protections also cover an IRS Whistleblower's anonymity and confidentiality, as both the IRS whistleblower's identity and the information that the IRS whistleblower provides forms part of a US target taxpayers information protected by I.R.C. § 6103. Protecting IRS whistleblowers because the IRS is prohibited from disclosing a whistleblower's personal information apart from explicit exceptions within that section, confirming that tax returns and return information including whistleblower submissions - are confidential. Irrespective of whether or not a whistleblower submission results in "collected proceeds" or an award to the whistleblower. The broad definitions of tax return and return information provided by Internal Revenue Code § 6103 make nearly any information received, prepared, or collected by the IRS or furnished to the IRS regarding a taxpayer's tax liability protected from disclosure into the public domain.

11. Nevertheless, contrary to all of the above, the Federal Tax Court requires that IRS Whistleblower's set forth a "sufficient fact specific basis" for anonymity during judicial review. (See Tax Court Rule 345.) [APPENDIX K] Despite the obvious Kafkaesque contradiction in the Tax Court's thinking, IRS whistleblowers are enrolled in a US Federal Government sponsored "Informant" "Whistleblower Program" as a "confidential source". Pursuant to all the protections of both Exemption 7D Freedom of Information Act and US

Treasury regulations covering anonymity and confidentiality of "informants", "whistleblowers" and "confidential sources". [Appendix I] Nevertheless, the Federal Tax Court inhabits a somewhat dystopian world which only permits an IRS Whistleblower to proceed anonymously, "if the whistleblower presents a sufficient showing of potential harm that outweighs counterbalancing societal interest in knowing the whistleblower's identity." See ***Whistleblower 12568-16W v. Commissioner, 148 T.C. No. 7 (March 22, 2017).***

Statement of the Case

12. This case concerns the rights of US Government (1) "whistleblowers" (2) "informants" (3) "confidential sources", to pursue a judicial review of their award determinations pursuant to 26 U.S. Code § 7623(b)(4) without any threat to either their personal safety or economic wellbeing by Federal employees disclosing their identities into the public domain.

13. The DC Circuit's decision also threatens not only Whistleblower 7107-16W's personal and professional security and that of his immediate family, but also the personal and professional security of all "confidential sources", "informants", "whistleblowers" who may be working with the US government, Indeed, who may be considering working with US law enforcement in the future. In particular, those offshore "whistleblowers" and "informants" who have legitimate recourse to the US Federal Courts e.g. seeking 'judicial review' in the future.

14. The DC Circuits decision threatens to deny the future 5th Amendment rights of US Government "informants" to due process. Potentially confronting all US government informants *"with a dilemma of either forfeiting confidentiality to seek judicial review or forfeiting judicial review. The likely upshot would [will] be a chilling effect on some claimants who have a compelling need to proceed anonymously. This result would [will] be at odds with*

the ostensible legislative purpose of encouraging tax whistleblower claims and promoting public confidence, through judicial oversight, in the administration of the tax whistleblower award program." ***Judge Michael B. Thornton.[26] Whistleblower 14106-10W, v. Commissioner Of Internal Revenue 137 T.C. 183 (2011) at 206.***

15. Whistleblower 7107-16W set forth a detailed "sufficient, fact-specific" basis for continuing anonymity and confidentiality during judicial review. [Appendix K] In response, the US Federal Tax Federal Tax Court provided a standard generic 'cut and paste' judgment entered November 6, 2018 denying Whistleblower 7107-16W's original "sufficient fact-specific"[27] [Appendix D] motion for anonymity filed March 22, 2016. Inexplicably, the Federal Tax Court refused to discuss or acknowledge any of the 'specific facts' in Whistleblower 7107-16W's motion for anonymity.[28] As supplemented (August 27, 2018). (*Infra* paras. 22-56.)

16. Similarly, the Federal Court of Appeals (DC Circuit) denied Whistleblower 7107-16W motions of anonymity without providing any written opinions, rationale or lawful explanation as to the semi-secretive, arbitrary and capricious judicial decision making. Acts and omissions that are, by default, contrary to the US Constitution. In particular, the discriminatory animus in disclosing Whistleblower 7107-16W's identity into the public domain is in effect a 'taking' pursuant to the 'Takings Clause of the Fifth Amendment'; *"Nor shall private property be taken for public use, without just compensation."* Contrary to the principle that the US government should not single out isolated individuals to bear excessive burdens,

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[26] Judge Michael B.Thornton, formerly Chief Judge US Federal Tax Court.

[27] Federal Tax Court rule 345(a) whistleblower to set forth a "sufficient, fact-specific basis for anonymity.

[28] Colloquially referred to as the Federal Tax Court's 'Rocket Docket', which entails the periodic clearing out of IRS Whistleblower cases from the US Federal Tax Court docket, particularly those overseas IRS informant \ whistleblower cases proceeding *pro se* (without legal representation) on the papers without oral hearings, irrespective of the legitimacy and authenticity of the case being presented to the court.

even in support of an allegedly important public good such as the Federal judiciary's justification of disclosing the personal identities of government whistleblowers, informants and confidential sources into the public domain pursuant to the 'open courts doctrine'. *"Accepting contrived reasons would defeat the purpose of the enterprise."* ***Department of Commerce v. New York 139 S Ct. 2551 (2019)***

17. No opinions or lawful explanation as to judicial decision making, rejects any notion of a fair and open judicial review. Decisions without an opinion, dicta or rationale, particularly where a petitioner is an informant for the IRS Criminal Division proceeding *pro se,* on the papers, without any hearings, seriously impacts the civil liberties of litigants bringing the United States justice system into disrepute. Particularly, where the respondent is the US Government. At very least, the DC Circuit were required by their own circuit rules to publish an opinion that satisfied a "general public interest" in the matter. In this respect the Federal Court of Appeals, District of Columbia District, has knowingly and purposefully ignored and failed to follow the Court's own rules in refusing to provide an opinion in this matter. See DC Circuit Rule. 36 **(c). [Appendix J]**

18. Petitioner, IRS Whistleblower 7107-16W, has spent over 2 years in the Federal Court of Appeals DC Circuit appealing the issue of maintaining his anonymity as a US Government informant. Despite the law, facts and documentary evidence being overwhelmingly in his favor. Nevertheless, every single decision by the DC Circuit has been issued without an opinion or discussion of the facts. Without a Court's opinion in this matter, there can be no presumption this case received the thorough consideration that the rule of law requires.

19. Ironic and inherently contradictory, because the DC Circuit is allegedly justifying disclosing Whistleblower 7107-16W's identity, as a US government informant, into the public domain on the basis that the US public have a right to know whose using its courts under the 'open courts doctrine'. Nevertheless, the judiciary of the DC Circuit appears to function under a semi-secretive and arbitrary policy of not publishing an opinion, without lawful explanation, which compromises the effective implementation of an important US government program.

20. As a consequence of the acts and omissions of the judiciary of the Federal Court of Appeals DC Circuit, Whistleblower 7107-16W asserts a substantial number of injuries—resulting in the disclosure of the personal details and information of US target taxpayers—affirmative and permanent disclosure of the identities and personal details of US Government **(1)** "whistleblowers" **(2)** "confidential sources" and **(3)** "informants", into the public domain. Resulting in substantial 'material and irreparable harm' to both the personal safety and professional livelihoods of all US Government **(1)** "whistleblowers" **(2)** "confidential sources" and **(3)** "informants". Including, the inevitable risk to both the personal safety and economic wellbeing of their immediate families.

21. Recurring issues that will disproportionately impact overseas litigants proceeding *pro se* without legal representation in the US Federal Courts, 'on the papers' without oral hearings, from outside the US, beyond the protection of US law enforcement and US anti-retaliatory legislation. Notwithstanding, existing injuries already disclosed in this matter (See Motion for Anonymity together with affidavit and evidence as supplemented August 27, 2018), there are also primarily future injuries, which "may suffice if the threatened injury is certainly

impending, or there is a substantial risk that the harm will occur." ***Susan B. Anthony List* v. *Driehaus*, 573 U. S. 149, 158 (2014)** (internal quotation marks omitted).

Reasons for Granting the Writ of Certiorari

This case presents the question as to whether, contrary to the US Supreme Court's clear affirmation of the strict plausibility pleading standard, the US Federal Courts nevertheless retain a general discretion in refusing to consider, discuss or acknowledge, without an opinion, rationale or dicta, **all** the relevant facts, supporting evidence, statutes, US Treasury regulations having the force of law and salient Constitutional issues; when denying the continuing anonymity and confidentiality of overseas US Government **(1)** "whistleblowers" **(2)** "confidential sources" and **(3)** "informants", during judicial review.

An horrendous judicial error which, unless corrected immediately, will result in the affirmative and permanent disclosure of the identities and personal details of US Government **(1)** "whistleblowers" **(2)** "confidential sources" and **(3)** "informants", into the public domain. Together with the personal details and information of US target taxpayers.

Judicial error which has resulted in the total disregard of US Treasury regulations and all the relevant legislation creating an intolerable conflict among the various circuits of the US Federal Court of Appeals and the lower courts. Ultimately, undermining, disabling and limiting the broad plenary powers of Congress, embodied in the 'Spending and Property Clauses' of the US Constitution. Fundamentally disrupting the balance of power within system of government in the United States. The DC Circuits decision in this matter without an opinion cannot be reconciled with numerous cases in both the US Supreme Court and other circuits in the Federal Court of Appeals.

Accordingly, the US Supreme Court's review of this matter is warranted as;

I. The DC Circuit has Completely Ignored the Requirements of the Strict Plausibility Pleading Standard As Approved by the Supreme Court and Adopted by All The Other Circuits In The Federal Courts of Appeal.

22. The US Federal Courts have adopted a strict plausibility pleading standard, as affirmed by the Supreme Court in ***Bell Atlantic Corp. V Twombly,*** *550 US 544 (2007)* and **Ashcroft v Iqbal,** ***556 U.S. (2009.)*** Stating; "When there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief." ***Ashcroft v. Iqbal, at 662 Id.***[29] *A* strict plausibility pleading standard previously approved of and argued by IRS Counsel in the US Tax Court, citing ***Twombly*** and ***Iqbal.*** See IRS motion to dismiss claim, in ***Garth Spencer v Commissioner Internal Revenue Service*** *8760-17W,* at paragraph 11, page 4, June 2, 2017.

23. Nevertheless, the DC Circuit knowingly and purposefully ignored, exempted and opted out of the strict plausibility pleading standard, without lawful explanation when considering Whistleblower 7107-16W's motion for anonymity and confidentiality. Motivated by an instinctive deference and bias in favour of the IRS and Department of Justice, to the detriment of both the US Constitution and Congress' plenary powers. In particular, the DC Circuit and US Tax Court's refusal to enforce the rule of law with regards the Internal Revenue Service; **(1)** Reneging on a US Treasury Confidentiality Agreement (March 10, 2008) which cited and invoked Whistleblower 7107-16W's Exemption 7D, Freedom of Information Act rights to confidentiality, **[Appendix E1-3] (2)** Committed Perjury on an industrial scale in the US Government's pleadings, contrary FED. R. CIV. P. 11(b)

[29] A so called 'Bivens action' against the US Government for violation of an individuals constitutional rights

[Appendix G] (3) Spoliation (destruction of evidence), **(4)** Disclosed US taxpayer information to third parties contrary to 26 U.S. Code § 6103[30], and **(5)** As approved by IRS Headquarters Washington DC, IRS Special Agents instructing third parties to obtain, without a subpoena or warrant, contrary to 4th amendment of the US Constitution, documentary evidence of US citizens committing tax evasion and money laundering.

24. As Chief Justice Roberts has previously stated; "If judicial review is to be more than an empty ritual, it must demand something better than the explanation offered for the action taken in this case." ***Department of Commerce v. New York (2019 WL 2619473)*** "In this case" (IRS Whistleblower 7107-16W), the acts and omissions of both the US government and the US Federal Court of Appeals in Whistleblower 7107-16W's case have ensured that, to-date, after 6 years of a purported judicial review in the Federal Courts, Whistleblower 7107-16W case is, for all intents and purposes, an "empty ritual". Devoid in significant part of the rule of law and absent any meaningful compliance with regulations having the force of law.

25. The DC Circuit's unpublished panel decision (January 19, 2021), regarding a case of first impression, involving an overseas US Government informant assisting US law enforcement during a 3 and half year criminal investigation; was issued without an opinion or dicta. Whistleblower 7107-16W's case presented new legal issues and required, amongst other things, the interpretation of both existing US legislation and the application of existing case law from the Supreme Court and other Federal Courts of Appeal. Both by

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[30] **26 U.S. Code § 6103 - Confidentiality and disclosure of US taxpayer returns and return information.**

inference and analogous to, the presumption of anonymity and confidentiality for US Government "informants", "whistleblowers" and "confidential sources" working with US law enforcement. Together with the pertinent protections in the legislation of the European Union where Whistleblower 7107-16W resides.

II. DC Circuit Took the Path of Least Resistance and Completely Ignored the Fact That US Government Attorneys Committed Perjury in their Pleadings on an Industrial Scale, Contrary FED. R. CIV. P. 11(b)

26. US Government attorneys lied on an industrial scale in their formal pleadings when they filed an answer in Federal Tax Court on January 6, 2017. [Appendix G] **(Doc. 034)**[31] in response to Whistleblower 7107-16W's petition, March 22, 2016. **(Doc 001)**. Conduct, amongst other statutes and common law applications, that were contrary to Federal Tax Court Rule 33[32] and constituted perjury contrary to **FED. R. CIV. P. 11(b) (4).**

27. US government attorneys, after considering the contents of Whistleblower 7107-16W's petition for some 9 months, served and filed a signed answer (January 6, 2017) which failed to plead any defenses, affirmative defenses or allegations, other than general denials of every single factual assertion stated in the petition.**[Appendix G]** In particular, the US government's signed answer (January 6, 2017) resorted to 'denying' the existence of every single US Treasury \ IRS document cited in Whistleblower 7107-16W petition (filed March 22, 2016). **(Doc. 034)** Including, but not limited to; letters, emails, Federal documents, meetings, telephone calls between the IRS Criminal Division and Whistleblower 7107-16W between January 2008 and fall of 2010.

[31] Docket number refers to the US Tax Court entries
[32] Signature requirements.

28. Moreover, the US government answer (January 6, 2017) **(Doc. 034)** significantly 'denied' the existence of, knowledge of, or possession of; **a)** printed US Treasury "Confidentiality Agreement", [Appendix D] complete with US Treasury seal (March 10, 2008) with Whistleblower 7107-16W, **b)** all three of Whistleblower 7107-16W, 7623(b) Form 211's, variously submitted by Whistleblower 7107-16W on[33], **(i)** January 29, 2008, **(ii)** February 10, 2008 **(iii)** June 26, 2015. In addition, the US government 'denied' knowledge of **c)** Whistleblower 7107-16W's IRS Form 3949-A mailed late January 2008. (See Exhibit A attached to Whistleblower 7107-16W's motion in opposition to respondent's motion for summary judgment (filed May 25, 2018)).

29. The US Supreme Court will kindly note that the IRS attorneys who committed **(a)** perjury **(b)** forgery **(c)** spoliation **(d)** fabrication and **(e)** suppression of evidence on an "industrial scale" in Whistleblower 7107-16W's case were summarily removed from both Whistleblower 7107-16W's case and the IRS litigation department. Listed as IRS 'attorneys of record' **(a)** Jonathan M. Pope (Tax Court Bar Number PJ 0946) and, **(b)** Patricia Davis (Tax Court Bar Number PP0148), both of whom drafted and signed the respondent's answer (January 6, 2017) and Motion for Summary Judgment (April 5, 2018). Both, Jonathan M. Pope (Tax Court Bar Number PJ 0946) and, **(b)** Patricia Davis (Tax Court Bar Number PP0148), have allegedly and simultaneously ***"changed their positions of employment with respondent"*** [Emphasis added].[34] See US government Status Report filed in Federal Tax Court, dated October 22, 2018. **(Doc. 097.)**

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[33] Claim for an award pursuant to IRS code 7623(b), the so called IRS Whistleblower Program

[34] As Whistleblower 7107-16W understands it, in response to IRS employees committing blatant perjury, during the summer of 2018 both **(a)** Jonathan M. Pope (Tax Court Bar Number PJ 0946) and, **(b)** Patricia Davis (Tax Court Bar

III. In a Case of First Impression, the DC Circuit's Decision Recited a General 'Cut and Paste' Rule, then Without Lawful Explanation Ignored and Refused to Acknowledge All the Factors Supporting a Case for Anonymity.

30. The D.C. Circuit decision in Whistleblower 7107-16W's case, incorrectly cited a general formulaic 'balancing test' for establishing anonymity and confidentiality usually applied in NON-law enforcement cases which don't involve criminal investigations. Referencing the Advanced Textile case[35], the DC Circuit relied primarily on ***United States v. Microsoft, 56 F.3d 1448 (D.C. Cir. 1995),*** stating that the appropriate way to determine whether a litigant may proceed anonymously is "to balance the litigant's legitimate interest in anonymity against countervailing interests in full disclosure." A presumption, that permits an overly wide discretion that cynically favors disclosing the identity of US Government informants into the public domain once the government informant usefulness in assisting a criminal investigation is at an end.

31. In an apparent contradiction, the DC Circuit's decision in Whistleblower 7107-16W's case stated; "The Tax Court was not required to formulaically apply multi-factor tests used by other circuits in deciding appellant's motion for anonymity. Id. at 97." Although, at page 9 of ***In re Sealed No 17-1212, 931 F.3d 92, 96*** the DC Circuit approved a very "formulaic" "multi-factor test" including a 5 factor test to apply to Federal Tax Court cases borrowed from the Fourth Circuit ***James vs Jacobson, 6F.3D 233, 236-38(1993).*** Approved by the DC Circuit in ***US vs Microsoft, 56 F 3 d 1448, 1447 (DC Cir 1995).***

Number PP0148), were removed from the IRS litigation group and reassigned as researches in the IRS International Tax Treaty section. Had a US citizen committed the same act of perjury they would have faced the full force of the law.

[35] The DC Circuit applied the five factor test found in the case of Does I through XIII v. Advanced Textile Corp., 214 F.3d 1058, 1067 (9th Cir. 2000).

32. Similarly, DC Circuit's assertion in Whistleblower 7107-16W's case also contradicted the DC Circuits statement ***In re Sealed No 17-1212, 931 F.3d 92, 96*** (page 9), confirming that the Tax Court had indeed borrowed a very "formulaic" "multi factor test" citing 10 factors, from the Second Circuit. "The Tax Court has previously cited a "non-exhaustive" list of ten factors borrowed from the Second Circuit to guide its analysis of a request made under Rule 345(a), see ***Whistleblower 14106-10W, 137 T.C. at 193-94*** (citing ***Sealed Plaintiff, 537 F3d at 189-90);*** we have no quarrel with it's use of the second Circuits list...."

33. Absent a published opinion in this case, there can be no presumption that the DC Circuit properly considered any of the relevant factors in favor of anonymity. There was no proper consideration of "whether the decision maker failed to consider a relevant factor [or] relied on an improper factor, and whether the reasons given reasonably support the conclusion." ***Kickapoo Tribe of Indians of the Kickapoo Reservation*** in ***Kansas v. Babbitt, 43 F.3D 1491, 1497 (D.C. Cir.1195)*** The DC Circuit simply, didn't bother to consider any of the factors and apply the relevant tests which properly balance the needs of the parties. Salient factors that were disclosed in the Whistleblower 7107-16W's Brief (August 8, 2020) and Reply (November 2, 2020). Summarized as follows, but not limited to;

(1) Co-operation with the IRS Criminal division for 3 and half years,

(2) A non-US national, resident and domiciled outside the US, beyond the protection of US law enforcement and US Whistleblower anti-retaliatory legislation,

(3) The IRS Criminal Division provided a US Treasury "Confidentiality Agreement" (March 10, 2008) invoking and claiming Whistleblower 7107-16W's anonymity pursuant to section 7(D) Freedom of Information Act, [Appendix E 1-3]

(4) Whistleblower 7107-16W proceeding anonymously does not prejudice the US Government's case in anyway,

(5) Whistleblower 7107-16W had a well-founded interest in preserving his anonymity because he had a "reasonable fear of physical or economic harm". **(a)** An immediate family member of one of the target taxpayers has served time in Federal Penitentiary for money laundering and drug trafficking with close links to organized crime in the US. **(b)** Also as disclosed by Whistleblower 7107-16W, he lost his employment in the legal profession 13 years ago due to disclosure of his identity by IRS Special agents as a government informant registered in the IRS Whistleblower Program. Without references from his previous employer, he has not been employed in the legal profession since.

(6) Disclosing Whistleblower 7107-16W's identity and that of his former law firm in London will result in the US target taxpayer(s) potentially suing for damages in both the US and UK Court(s). Including, suing the US government for breach of 4th amendment rights, IRC regulation 6103 and defamation.

(7) The release of redacted documents whilst maintaining the anonymity of the US Government informant can balance the public's need for access to judicial hearings with the plaintiff's privacy concerns.

(8) Senator Grassley, as chair of the Senate Judiciary committee, on behalf of Whistleblower 7107-16W, letter to John Koskinen, the then IRS Commissioner, February 28, 2014, referencing amongst other issues, the preservation of Whistleblower 7107-16W confidentiality and anonymity as an overseas IRS Whistleblower.[36] [Appendix F]

(9) Furthermore, on May 7th 2016, in response to Whistleblower 7107-16W motion of anonymity the US Government conceded by way of responsive motion in Federal Tax Court ***"that Whistleblower 7107-16W has submitted information sufficient to provide a basis for granting anonymity".*** (*supra* para.)

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[36] See Petitioner Appellant's Brief August 2020. Senator Grassley 's letter, in his capacity as ranking member of Senate Committee on the Judiciary, addressed to IRS Commissioner John Koskinen dated February 28, 2014 discussing, amongst other things, the confidentiality and anonymity of whistleblower 7107-16W (Petitioner-Appellant) as a US government informant in Re: Sealed 18-1321.

IV. D.C. Circuits Decision Conflicts with US Supreme Court's decision in *DOJ v. Landano, 508 U.S. 165, at 172 (1993)* and other Circuits, by Refusing to Acknowledge and Enforce a US Treasury Confidentiality Agreement (March 10, 2008) in Which the US Government Invoked, Cited and Claimed Whistleblower 7107-16W Anonymity and Confidentiality Pursuant to Exemption 7D Freedom Of Information.[37]

34. Whistleblower 7107-16W disclosed significant, relevant and substantial factors in support of a motion for anonymity. Including a bespoke "US Treasury Confidentiality Agreement" (March 10, 2008) in which the US Government invoked, cited and claimed, as a term and condition, the protections of confidentiality and anonymity of a US government informant pursuant to Exemption 7D Freedom of Information Act. **[Appendix E1-3]**

35. Congress intended exemption 7(D) to protect "informants", "confidential sources" and "whistleblowers" from harm, who assist US law enforcement in criminal investigations. Exemption 7(D) provides protection for *"records or information compiled for law enforcement purposes [which] could reasonably be expected to disclose the identity of a confidential source, including a state, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source."* 5 U.S.C. § 552(b)(7)(D)(2006 & Supp. IV 2010).

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[37] See, Department of Justice Guide to Exemption 7D. Freedom of Information Act.", which provides protection for "records or information compiled for law enforcement purposes [which] could reasonably be expected to disclose the identity of a confidential source"(2004, online)

36. In cases of US government informants assisting law enforcement, applicability of Exemption 7 D either by analogy, comparison or inference, the DC Circuit had an obligation to invoke and consider all the protections of Exemption 7D, Freedom of Information Act. Particularly, when the Justice Department, on behalf of the US Government, are quite clearly reneging on a contractual obligation to protect the confidentiality of Whistleblower 7107-16W as a US Government "informant", "confidential Source", "whistleblower".

37. Accordingly, the DC Circuits decision in Whistleblower 7107-16W's case completely overturned the US Supreme Court's decision in ***DOJ v. Landano, 508 U.S. 165, at 172 (1993).*** In which the Supreme Court clearly stated, "the question is not whether the requested [or disclosure of a] document is of the type that the agency usually treats as confidential, but whether the particular source spoke with an understanding that the communication would remain confidential."

38. Similarly, the DC Circuit's denial of Whistleblower 7107-16W's Motion for Anonymity contradicted and conflicted with other relevant DC Circuit decisions. Routinely cited and relied upon in other circuits in the Federal Court of Appeals, involving the anonymity of US Government informants assisting US law enforcement in criminal investigations. ***See Parker v. DOJ, 934 F.2d 375, 378 (D.C. Cir. 1991)*** ("a source can be confidential based upon an express assurance of confidentiality or because of circumstances from which assurance of confidentiality may be reasonably inferred"); ***Keys v. DOJ, 830 F.2d 337, 345 (D.C. Cir. 1987)*** ("circuits agree without dissent that courts should find an assurance of

confidentiality where it is reasonable to infer from the circumstances that its absence would impair the [agency's] ability to elicit the information");

39. Moreover, ***Parker v. DOJ, 934 F.2d 375, 380 (1991)*** confirmed that when US law enforcement agencies invoke, cite and claim the protections of Exemption 7(D), Freedom of Information Act, either; in **(1)** an implied in fact or **(2)** express confidentiality agreement, it is for the US Federal Courts "to assist federal law enforcement agencies" in their efforts "to obtain, and to maintain, confidential sources, as well as to guard the flow of information to these agencies."[38]

40. Moreover, the DC Circuit's decision is contrary to the Court's previous rulings which have recognized that the implicit safeguards of anonymity and confidentiality for US government informant's assisting US law enforcement in criminal investigations. Protecting all the obvious identifying information, such as the name and address of "confidential sources", "informants" and "Whistleblowers". See ***Piper v. DOJ, 374 F. Supp. 2d 73, 81 (D.D.C. 2005)*** (protecting name and address); Moreover, all information that would "tend to reveal" the source's identity.[39] See also ***Palacio v. DOJ, No. 00-1564, 2002 U.S. Dist. LEXIS 2198, at *25 n.15 (D.D.C. Feb. 8, 2002)*** (withholding co-operating

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[38] The FOIA Exemption 7(D) ensures that "confidential sources are not lost through retaliation against the sources for past disclosure or because of the sources' fear of future disclosure." See, e.g., Ortiz v. HHS, 70 F.3d 729, 732 (2d Cir. 1995) (stating that "Exemption 7(D) is meant to . . . protect confidential sources from retaliation that may result from the disclosure of their participation in law enforcement activities"); McDonnell v. United States, 4 F.3d 1227, 1258 (3d Cir. 1993) (finding that "goal of Exemption 7(D) [is] to protect the ability of law enforcement agencies to obtain the cooperation of persons having relevant information and who expect a degree of confidentiality in return for their cooperation");

[39] See, e.g., Pollard v. FBI, 705 F.2d 1151, 1155 (9th Cir. 1983) (holding that entire document properly was withheld where disclosure "would tend to reveal [source's] identity");

witness' "aliases, date of birth, address, identification numbers, . . physical description, and [information which sets] forth his or her involvement in other investigations").

41. The DC Circuit's decision substantially undermines and threatens the US Government's ability to effectively implement fiscal policy, by implication the effectiveness of US law enforcement to identify **(1)** unreported income **(2)** offshore money laundering, and **(3)** unreported bank accounts.[40] See ***Sellers v. DOJ, 684 F. Supp. 2d 149, 161 (D.D.C. 2010)*** noting anonymity of confidential sources "not only protects confidential sources, but also protects the ability of law enforcement agencies to obtain relevant information from such sources"); ***Miller v. DOJ, 562 F. Supp. 2d 82, 122 (D.D.C. 2008)*** (recognizing that "[e]xperience has shown the FBI that its sources must be free to provide information 'without fear of reprisal' and 'without the understandable tendency to hedge or withhold information out of fear that their names or their cooperation with the FBI will later be made public'" (quoting agency declaration)).[41]

42. The DC Circuits decision to effectively disclose US government informant identities into the public domain, irrespective of whether they have either, an **(1)** implied in fact, or **(2)** express confidentiality agreement with the US Government; conflicts with the

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[40] Providence Journal Co. v. U.S. Dep't of the Army, 981 F.2d 552, 563 (1st Cir. 1992) (explaining that Exemption 7(D) is intended to avert "drying-up" of sources) (citing Irons, 880 F.2d at 1450-51); Nadler v. DOJ, 955 F.2d 1479, 1486 (11th Cir. 1992) (observing that "fear of exposure would chill the public's willingness to cooperate with the FBI . . . [and] would deter future cooperation" (citing Cleary v. FBI, 811 F.2d 421, 423 (8th Cir. 1987); Shaw v. FBI, 749 F.2d 58, 61 (D.C. Cir. 1984) (holding that purpose of Exemption 7(D) is "to prevent the FOIA from causing the 'drying up' of sources of information in criminal investigations"); Schoenman v. FBI, 763 F. Supp. 2d 173, 200 (D.D.C. 2011) (concluding that FBI properly invoked Exemption 7(D) because as it stated in its declaration "public disclosure of [confidential] source information would have a chilling effect on the cooperation of other sources and thereby hinder its ability to gather confidential information");

[41] Garcia v. DOJ, 181 F. Supp. 2d 356, 375 (S.D.N.Y. 2002) ensuring "that confidential sources are protected from retaliation in order to prevent the loss of valuable sources of information "*Wilson v. DEA, 414 F. Supp. 2d 5, 15 (D.D.C. 2006)* (concluding that release of names of DEA sources could jeopardize DEA criminal investigative operations and deter cooperation of future potential DEA sources);

authoritative decisions of other US Courts of Appeals circuits. In particular, the U.S. Court of Appeals for the Fifth Circuit has held that revealing the identity of a confidential whistleblower constitutes an adverse personnel action, giving rise to damages. The Court reasoned as follows: "it is inevitable that such a disclosure [of the whistleblower's identity] would result in ostracism, and, unsurprisingly, that is exactly what happened to [the whistleblower] following the disclosure." The Court went on to explain: "no one volunteers for the role of social pariah." ***See, Halliburton v. Administrative Review Board*, 771 F.3d 254 (5th Cir. 2014).**

V. The DC Circuit Ignored the Statutory Requirement that the Judiciary is Not Permitted to Undertake a 'Balancing Test' of Conflicting Interests Where a US Government Informant has been Provided with Either an (1) Implied in Fact or (2) Express Promise of Anonymity and Confidentiality.

43. The applicability of exemption 7(D) focuses on the circumstances upon which the information is provided. Therefore, no 'balancing test' is applied pursuant to the case law of Exemption 7(D). See ***Roth v. DOJ, 642 F.3d 1161, 1184 (D.C. Cir. 2011)*** declaring that "[u]nlike Exemptions 6 and 7(C), Exemption 7(D) requires no balancing of public and private interests") (citing Parker, 934 F.2d at 375). Affirming ***Jones v. FBI, 41 F.3d 238, 247 (6th Cir. 1994)*** Exemption 7(D) "does not involve a balancing of public and private interests; if the source was confidential, the exemption may be claimed regardless of the public interest in disclosure".

44. Moreover, that the "judiciary is not permitted to undertake a balancing of conflicting interests, but is required to uphold a claimed 7(D) exemption so long as the statutory criteria are met" ***Irons v. FBI, 811 F.2d 681, 685 (1st Cir. 1987.*** Also; **Bretti v. DOJ, 639 F.**

Supp. 2d 257, 265 (N.D.N.Y. 2009) where the plaintiff had not articulated any public benefit, the court stated that "information furnished by a confidential source requires no balancing test and no consideration of the public interest in disclosure" in order to qualify for protection.[42]

VI. The DC Circuit Decision Refused to Consider or Acknowledge that the Federal Courts, US Department of Treasury and the IRS, have Previously Recognized in US Treasury Regulations, the Very Legitimate Rights of IRS Whistleblowers to Anonymity as Confidential Informants.

45. In Whistleblower 7107-16W's case the DC Circuit refused to consider that US government "confidential sources", "informants" and "whistleblowers" are deemed 'confidential' when they have provided information either pursuant to **(1)** an implied in fact promise of confidentiality, or **(2)** an express promise of confidentiality. See S. Conf. Rep. No. 93-1200, at 13 (1974), reprinted in 1974 U.S.C.C.A.N. 6285, 6291 (specifying that term 'confidential source' was substituted for 'informer' "to make clear that the identity of a person other than a paid informer may be protected if the person provided information under an express assurance of confidentiality or in circumstances from which such an assurance could reasonably be inferred"); ***Rosenfeld v. DOJ, 57 F.3d 803, 814 (9th Cir. 1995)*** (stating that an "express promise of confidentiality is 'virtually unassailable' [and is] easy to prove: 'The FBI need only establish the informant was told his name would be held in confidence'" (quoting ***Wiener v. FBI, 943 F.2d 972, 986 (9th Cir. 1991)***; or "under circumstances from which such an assurance could be reasonably inferred."[43] \ [44]

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[42] See also ***Brant Constr. Co. v. EPA, 778 F.2d 1258, 1262-63 (7th Cir. 1985)*** confirming that "[n]o judicial 'balancing' of the competing interests is permitted" under Exemption 7(D).

[43] Jones v. FBI, 41 F.3d 238, 248 (6th Cir. 1994) (stating that "sources who spoke with express assurances of confidentiality are always 'confidential' for FOIA purposes"); McDonnell v. United States, 4 F.3d 1227, 1258 (3d Cir.

46. See also ***Gordon v. Thornburgh, 790 F. Supp. 374, 377 (D.R.I. 1992)*** (defining "confidential" as "provided in confidence or trust; neither the information nor the source need be 'secret'"); ***Billington, 233 F.3d at 585*** (holding that "confidentiality analysis proceeds from the perspective of an informant, not [that of] the law enforcement agency"); ***Weisberg v. DOJ, 745 F.2d 1476, 1492 (D.C. Cir. 1984)*** (stating that availability of Exemption 7(D) depends not upon factual contents of document sought, but upon whether source was confidential); Ortiz, 70 F.3d at 733 (finding that although agency did not solicit letter from letter writer, it was writer's expectation that letter would be kept secret); Providence Journal, 981 F.2d at 563 (explaining that "confidentiality depends not on [document's] contents but on the terms and circumstances under which" agency acquired information); ***Ferguson v. FBI, 957 F.2d 1059, 1069 (2d Cir. 1992)*** (observing that "Exemption 7(D) is concerned not with the content of the information, but only with the circumstances in which the information was obtained");[45]

47. Similarly, the DC Circuit refused to consider the alluring and illusory promises made on US Government websites, "The IRS treats whistleblower claimants as confidential informants. Internal Revenue Manual (I.R.M) 25.2.2.7 (12-20-2008); See also I.R.M. 25.2.1.5.4 (01-11-2018), Ex.25.2.1-1 (Debriefing Checklist). The IRS will use its "best

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1993) (holding that "identity of and information provided by [persons given express assurances of confidentiality] are exempt from disclosure under the express language of Exemption 7(D)").

[44] S. Conf. Rep. No. 93-1200, at 13 (1974), reprinted in 1974 U.S.C.C.A.N. 6285, 6291; Farrugia v. EOUSA, No. 04-029, 2006 WL 335771, at *8 (D.D.C. Feb. 14, 2006) (reasoning that "[b]ased on the nature of crime for which plaintiff was convicted and circumstances surrounding his arrest . . . it [was] reasonable to infer the existence of an implicit grant of confidentiality").

[45] McDonnell, 4 F.3d at 1258 (holding that "content based test [is] not appropriate in evaluating a document for Exemption 7(D) status[;] rather the proper focus of the inquiry is on the source of the information");

efforts" to protect the identity of a whistleblower claimant. Treasury. Reg 301.7623-1(e) (26 CFR)"

48. US Treas. Reg. § 301.7623–1(e) confirms Whistleblower confidentiality and provides that "[n]o unauthorized person will be advised of the identity of an informant." The IRS will use its best efforts to: (i) prevent the disclosure of a whistleblower's identity; and (ii) notify a whistleblower prior to any disclosure. See IRS Statement on Confidentiality for more information. In 2017, the IRS formalized this non-disclosure policy with Chief Counsel Notice 2017-005 (CC-2017-005).[46] Chief Counsel's Notice is very specific, stating by way of the overall policy in the introductory paragraph that "the Service is committed to keeping the existence and identity of whistleblowers confidential."

49. Moreover, US taxpayers' information is protected (I.R.C. § 6103) accordingly an IRS whistleblowers identity and the information the whistleblower provided forms part of a US taxpayers information protected by I.R.C. § 6103. Section 6103 whistleblowers because it prohibits the Federal employees from disclosing a whistleblower's information apart from explicit exceptions within that section, it instructs that tax returns and return information including whistleblower submissions - are confidential.[47]

VII. D.C. Circuit Ignored and Eviscerated more than 50 years of Judicial Estoppel Jurisprudence in the US Supreme Court (*New Hampshire v. Maine, 532 U.S. 742 (2001)* and the Federal Court of Appeals.

50. The DC Circuit's decision eviscerates and ignores more than 50 years of 'judicial estoppel' jurisprudence in the US Federal Courts. Permitting both IRS Counsel and the

[46] https://www.irs.gov/pub/irs-ccdm/cc-2017-005.pdf

[47] Pursuant to IRC section 7213, willful unauthorized disclosure of returns or return information by a Federal employee or former employee is a felony punishable with a fine of up to $5,000 or up to five years of imprisonment, or both, plus costs of prosecution.

Justice Department to erroneously take position(s) and assert arguments in the Federal Court of Appeals which are directly contrary to the US Governments earlier assertions in the proceeding. Previously, the US Government asserted unequivocal statements in US Federal Tax Court supporting Whistleblower 7107-16W's motion for anonymity (March 22, 2016). (*infra* para.36)

51. Whistleblower 7107-16W proceeded anonymously in this matter for some two and half years in Federal Tax Court due, in significant part, to the US Government stating in responsive motion May 7 2016, (a)***"Respondent [US Government] hereby notifies the Court that he has no objection to petitioner proceeding anonymously pursuant to T.C. Rule 345(a)"*** [emphasis added] Going onto state (b) ***"Respondents [US Government] concedes that petitioner [Whistleblower 7107-16W] has submitted information sufficient to provide a basis for granting anonymity".*** [emphasis added]

52. In this respect, the DC Circuit should have rightly prevented and rejected the US Government's change of position with regards Whistleblower 7107-16W's anonymity and confidentiality as a US Government informant. Accordingly, the US Government is seeking to obtain an advantage to the detriment of Whistleblower 7107-16W's by asserting an irreconcilable position with the US Government's earlier contention(s) in the Federal Tax Court.

53. Supreme Court Justice Ginsburg has stated that the doctrine of 'judicial estoppel' bars a party from taking a contradictory position from their earlier position in legal proceedings. *"Where a party assumes a certain position in a legal proceeding, and succeeds in maintaining that position, he may not thereafter, simply because his interests have changed,*

assume a contrary position, especially if it be to the prejudice of the party who has acquiesced in the position formerly taken by him..." ***New Hampshire v. Maine, 532 U.S. 742 (2001)***

54. The authority to apply the doctrine stems from the Federal Court of Appeal's inherent equitable authority to sanction malfeasance. The main purpose behind the theory of judicial estoppel is to both **(1)** protect the integrity of the Court's process, and **(2)** to prevent the commission of fraud upon Whistleblower 7107-16W. The US government have changed or adapted their position in bad faith with the intent "to play fast and loose with the Court" which has been emphasized as "an evil the Federal Courts that should not tolerate". See ***State of Arizona v. Shamrock Foods Co., 729 F.2d 1208, 1215 (9th Cir. 1984), cert. denied, 469 U.S. 1197, 105 S. Ct. 980, 83 L. Ed. 2d 982 (1985.)***[48]

VIII. DC Circuit's Obligations to Ensure that the US Federal Government Protects the Confidentiality and Anonymity of Overseas US Government Informant Pursuant to Article 8 European Convention on Human Rights.

55. The US Federal Government's obligations under foreign law pursuant to Article 8, European Convention on Human Rights Act which provides an obligation to respect and protect IRS Whistleblower 7107-16W's anonymity and confidentiality. In particular, Article 8 provides a right to respect for one's "private and family life, his home and his correspondence".

56. U.S. Federal Courts have long had the authority to resolve disputes that require the application of substantive foreign law routinely applying the law of other sovereigns. ***See***

[48] Quoting Scarano v. Central R. Co. of New Jersey, 203 F.2d 510, 513 (3d Cir.1953).

***Applied Med. Distrib. Corp. v. Surgical Co. BV,* 587 F.3d 909, 920 (9th Cir. 2009).**[49] Pursuant to 28 U.S.C. § 1367 a US court can properly exercise supplemental jurisdiction which a foreign law claims, so long as said claims derive from a "common nucleus of operative fact" with a claim over which the federal court has original jurisdiction so that said claims form part of the same case or controversy. ***Id.; United Mine Workers of America v. Gibbs*, 383 U.S. 715, 725 (1966).**

Conclusion

The petition for a writ of Certiorari should be granted.

Respectfully submitted,

Signed .....
Whistleblower 7107-16W,
Petitioner-Appellant

Dated....August 11, 2021

[49] See *also generally Sunstar, Inc. v. Alberto-Culver Co.,* 586 F.3d 487, 495 (7th Cir. 2009). *Lehman v.Humphrey Cayman, Ltd.,* 713 F.2d 339, 345 (8th Cir. 1983).