

ORIGINAL

No. 21-1035

In The Supreme Court  
of the United States

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FILED  
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SUPREME COURT, U.S.

Joshua Harris,

Petitioner,

v.

Commissioner of Internal Revenue Service.

Respondent.

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ON PETITION FOR A WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

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PETITION FOR A WRIT OF CERTIORARI

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## QUESTIONS PRESENTED

Commissioner and their Attorney did not provide discovery when requested prior to trial, see rule 91(a) (b) United Tax Court and Denied Petitioner Due process, see Federal Rules of Civil Procedure Rule 26, and US Constitution. Duty to disclosure general provisions governing (a) (i),(ii), (iii) who must also make available for inspection.

An Order was entered on June 19, 2019 to dismiss all prior decisions and judgment of the previous decision. Upon information and beliefs, the Second Circuit made a mandate to recalculate the correct taxes, except for the exclusion of commissioner pretrial commissioner's from its calculation of Petitioner's 2013 and 2014 tax deficiencies and penalties and the Second Circuit remand with instructions for the Tax Court to determine whether the exclusion of these concessions was an error and, if so to recalculate the deficiencies and penalties. *Harris v. Commissioner of Internal Revenue*, 748 F App'x 387, 390 (2 D Cir) summary Order.

The Questions Presented are:

1. Whether the U.S Tax Court and the Second Circuit conflicts with the United States Constitution, Amendment 6 and the Fourteenth Amendment to a fair and impartial trial, and see Federal Civil Procedures Law Rule 103 (2) A (2), which specifically states that the Court cannot Suppress evidence before or at trial.
2. Whether Due process was denied by the U.S. Tax Court and the commissioner, The Commissioner obligation under the Brady Doctrine is to disclosed all

evidence to the Court and the petitioner, this was not done see, *Brady v. Maryland*, 373 U.S. 83 (1963). The U.S. Tax Court Judge refuse to allow the petitioner evidence to place on the record at trial. The trial Judge abrogated his duty as to a fair and impartial trial, see *Branerton Corp v. Commissioner*, 6 T.C 691 (1974). In Limine Ruling.

The Court, nor the Commissioner, cannot withhold evidence before or at trial, see *United States Aviation Underwriters v. Olympia Wings, Inc.*, 896 F2 d 949,956.

3. Whether the U.S Tax Court has any right to suppress all petitioner evidence and deny the discovery process and Due process under the United States Constitution.

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**JURISDICTION**

THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT HAS ENTERED AN ORDER ON JUNE 8, 2021 FOR REHEARING EN BANC DOCKET No: 19-4278.

HARRIS V. COMMISSIONER OF INTERNAL REVENUE, 748 F App'x 387,390 (2D Cir).

JURISDICTION OF THIS COURT IS INVOKED UNDER 28 U.S.C 1254 .

## STATEMENT OF CASE

Petitioner was denied a fair and impartial trial as guaranteed by the United States Constitution, and other case precedents.

The judge fundamentally erred in not allowing any of petitioner's evidence to be on the record, by doing so denied petitioner rights to have this case try on its merits, and fundamental due process, all as guaranteed by the US Constitution.

Nor did he consider the petitioner's defense and arguments". This mandates reversal of his findings and judgement.

The Commissioner's pretrial concession of its deficiencies and penalty are excessive, unreliable and inflated numbers, see 26 U.S Code 7491(a) Burden of Proof. This Court cannot uphold a disingenuous, speculative tabulation.

It also constitutes unlawful seizure of property, and cruel and inhuman punishment, contrary to our Constitution and laws.

Discovery was denied by the respondent and pages were missing, and the respondent was never given discovery when he requested the discovery evidence. This is another fundamental, constitutional breach.

The petitioner's pretrial preliminary memorandum was never admitted on the record, this was a trial by ambush, deprivation and bias and not a natural cause of justice, as this prejudiced and gutted his case, and his constitutional guarantees.



In any Court of law, the petitioner rights to a fair trial and is entitled to discovery. In this case, there were structural breaches, and deprivations.

The respondent denied the petitioner's rights to discovery due process, the trial the judge erred by ignoring these pertinent facts, was duped by the government, numerous complaints and objections were sent to the judge regarding the unethical behavior of the commissioner's attorney, but nothing was done by the judge.

This bias and lack of judicial attention deprived the petitioner of a fair and impartial hearing.

Moreover, Federal Civil Procedure law ruling on Evidence U.S. 103. A (2) specifically states the Court cannot suppress evidence, see *Luce v. United States*, 496, U.S (1984), see in Limine ruling; see *United States Aviation Underwriters, Inc. v. Olympia Wings Inc.*, 896 F2 d 949, 956.

The Judge, in his decision suggested that the petitioner did not specifically identify nor quantify respondent's pretrial concession not shown, contrary to mandate of Federal Rule of Civil Procedure Law 8, which rejects the judge argument in his decision. That the Rule of Civil Procedure Law 8, which rejects the judge argument in his decision. That the petitioner neither specifically identify nor quantify the extent of any concession at the hearing, is fundamentally wrong. Petitioner adequately complained and gave notice set forth in his claim and give respondent Fair Notice of its basis see. *Conley v. Gibson*, 1957 335 U.S 41 78 S. CT 99 102 LEO 280.

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Petitioner has the right to due process as guaranteed by the United States Amendment 6, and the fourteenth amendment of the United States Constitution to a fair and impartial trial. The Tax Court ruling conflicts with the U.S constitution, see U.S. 103 (2) A (2), which specifically states that the Courts cannot suppress evidence, *see Luce v. United States*, 496 U.S. (1984).

Congress created an inferior tribunal in 1942, the Revenue Act, subsequently the United States Tax Court was established under Article 1 of the constitution in 1969, C 83 V 7301, to adjudicate disputes over taxpayers in a fair manner.

The withholding of documents before trial and discovery is a transgression the petitioner suffered as the mandate of the Tax Court is clear, the Tax payer has a right to a fair trial, the tax Court nor the commissioner's attorney has no right to suppress or deprived or withhold evidence. In this case, Federal Civil Procedure Law Rule on evidence, see U.S 103 (2) A (2), which specifically states the Court cannot suppress evidence, *see Luce v. United States*, 496, U.S 38 (1984), see before trial or occur at trial so called In Limine ruling, *see United States Aviation Underwriter's Inc v. Olympia Wings Inc.* 896 F2 949, 956. The judge was aware of specifically what was included and involved here, but recklessly transgressed the petitioner's rights.

In respondent's pretrial concession, Federal Rule of Civil Procedure Law 8 rejects the judge decision. As the petitioner neither specifically Identify or

quantified the extent of concession at the hearing, petitioner adequately complained and give notice set forth in his claim and give respondent fair notice of its Basis *see Conley v. Gibson*, 1957 335 U.S 41 78 S CT 99 102L Ed 2d 80. The Second Circuit Court and the Tax Court is conflicting with the U.S Constitution Amendment 14, 1789 (rev. 1992) regarding Due process and deny petitioner rights to submit evidence in the Court as to the merits of this case. The Tax Court has no right to suppress evidence before or at trial the 14 Amendment guaranteed a fair trial.

It is a national importance that a tribunal or State do not deprive it citizen equal protection of Rights and Due process under the Law, the judge in this case abrogated his duties and deprived Petitioner rights to submit evidence on the records at trial.

The Court's review is warranted, and mandates the reversal of the Court's erroneous decision.

## ARGUMENT

Petitioner had only one trial and appeared before U.S Tax Court, all default decisions were vacated. The government's duty to provide evidence when a general request is made or not, *see, United States v. Bagley*, 473 U.S 667 (1995) exculpatory evidence, *see United States v. Agurs*, 427 U.S 97 (1976). Bagley held that regardless of request favorable evidence is material and constitutional error results from suppression by the government, if there is reasonable probability that the discovery evidence has been disclosed to the petitioner, the result of the proceeding would have been different. A reasonable probability of a different result is accordingly shown when the government evidentiary suppression undermines confidence in the outcome of a trial, as happened here.

In *Smith v. Cain*, 565 U.S 73, 132 S CT 627 LED 2d 571 (2012), the Court reversed and remanded the case as the evidence material within the meaning of Bagley, *see, United States v. Bagley*, 473 U.S. 667 682(1995). Also *see, Weavry v. Cain*, 136 S. CT 1002 (2016), the Court addressed the meaning of material evidence, when there is a likelihood, it could affect the judgement, *see, Napue v. Illinois*, 360 U.S 264 (1959). The Commissioner's Attorney gave false and misleading statements, withheld and suppress evidence to the Courts in this case regarding the evidence from the petitioner. The Trial Judge in Tax Court denied the petitioner to place evidence on the record during the trial. *See Kyles v. Whitley*, 514 U.S 419, 433 (1995), petitioner's Writ should be granted because the opinion is contrary to the foregoing authorities from the Tax Court, and the Due process clause.

Petitioner demonstrates a threshold level of prejudice by Commissioner Attorney and the U.S. Tax court Judge. The undisclosed evidence is material in this case, *see, United States v. Lopez*, supra 1064 (1995) withholding evidence is unconstitutional of the U.S Tax Court, citing *Strickler v. Greene*, 527. U.S 263,269 (1999), there is a reasonable probability, if Petitioner's evidence was on the record and was given evidence in the discovery process when requested that the outcome of this matter will have a different outcome. The commissioner's pretrial concession was only presented at trial petitioner did not get a chance to challenge it also the accuracies of any deficiencies, contrary to his Brady and due process rights, *see Gale v. County of Hennepin Min C5-99-1349* (2000), *Smith v. Cain*, No: 10-8145 Supreme Court (01/10/2012) - holding the State of Louisiana's failure to produce evidence, violated the disclosure rule of *Brady v. Maryland*, 373 U.S. 83 (1963).

### REASONS FOR GRANTING THE PETITION

The Supreme Court has issued several recent decisions articulating on the subject matter regarding suppressing evidence and discovery, building on case decided over the last century.

The United States Constitution Amendment fourteenth passed by congress on June 13, 1866 and ratified July 9 1868 guaranteed it citizen it rights, U.S constitution Amendment Six to a fair and impartial trial equal and protection under the law.

The government cannot engage in trial by ambush, as it did here, withholding discovery and exculpatory evidence and material evidence before trial and at trial. The government duty is to provide evidence timely, whether a general request is made or not, *see United States v. Bagley*, 473 U.S 667 (1995). Bagley held that regardless of the request, favorable evidence is material and a constitutional error results from suppression by the government. This applies in this case, also.

The commissioner nor his Attorney never provided any discovery when petitioner requested.

The Commissioner made up numbers, which is whimsical, capricious and arbitrary, numbers that were pulled out of thin air and founded on no reasonable or rational basis. Moreover, the commissioner cannot substantiate how he arrived at these numbers, when questioned. The commissioner's pretrial concession is deficient and erroneous, and penalties numbers are excessive and inflated numbers, see U.S Code 7491 9(a) regarding Burden of Proof, and hence, void in law.

The U.S Tax Court Judge violated the petitioner's rights as to U.S Constitution Amendment Eight's cruel and unusual punishment, inflicted excessive penalties and excessive amount monies in commissioner pretrial concession without any justification. The U.S. Bill of rights Amendment VIII regarding Due process by imposing excessive penalties and fines and inflated commissioner pretrial concession, without the petitioner's right to dispute the commissioner pretrial concession.

The Commissioner's pretrial deficiencies when there is no credible evidence that if any deficiencies exist, his refusal to allow the valid concessions regarding petitioner paid business expenses, for rent, real estate, paid taxes, car expenses and expenses of operating his business, and other allowable expenses. The commissioner attorney's refused to do an audit even though petitioner when out of his way to accommodate commissioner attorney on several occasions. This capricious attitude was very oppressive and denied due process and/or fairness to the petitioner, a US citizen.

The commissioner's attorneys gave zero concession towards petitioner's 2013 and 2014 tax years regarding petitioner's operating business expenses- a legal and practical impossibility, fraught with unreasonableness. This arbitrary, capricious and unreasonable deprivation is illegal and unreasonable, and underlines the unfairness of the Government's unsubstantiated and unfair calculations.

The Commissioner's attorney refused to do an audit, the petition never had any opportunity in U.S Tax Court at trial to present evidence or rebuttal to the zero concession toward 2013 and 2014 tax year

deficiencies at trial. The fact that the judge acted as a prosecutor for the commissioner and refused to take any evidence from the petitioner at trial, show a bias that the U.S. Tax Court Judge operated like the apartheid system discriminating and suppressing and marginalizing the petitioner's rights and the Judge did not try nor evaluate this case on its merits.

Suffice it to say the United States constitution and its Amendments and the Bill of Rights Congress passed and ratified gave its citizen its rights to a fair and impartial trial and such that judicial system or State in this case, the U.S Tax Court cannot infringe upon its citizen rights and it protect its citizen with the Due Process Clause. It blatantly ignored the principles that must guide its actions.

Further, the U.S Constitution makes it clear as to fair and impartial trials. Petitioner rights to present proof in the U.S Tax Court was denied by the trial judge in this case, the evidentiary evidence was illegally considered, the accounting that the commissioner attorney presented and submitted to the court was false and misleading, pages were missing, the calculation was incorrect and the trial judge allowed this into evidence by the commissioner attorney over the objections by the petitioner.

*See United States v. General Motors Corp, 1942,* where the District Court disagreed that the federal rules are applicable to the United States, except to the extent that the United States is expressly excepted from them.

Petitioner requested information from the Commissioner through the Freedom of Information



Act of 1967, but the Commissioner suppressed, and capriciously withheld the information.

This type of consistently draconian action is unacceptable, and must be condemned by this High Court of review.

**CONCLUSION**

This Court is mandated to rule, in accordance with the law, precedents, procedure and evidence, that the U.S Tax Court has violated the Constitutional rights of the petitioner by denying discovery, denying petitioner his rights to submit evidence, denied a fair and impartial hearing to the petitioner, abrogated his due process rights, showed bias towards the Government at the expense of the petitioner, disregarded and diminished the strong evidence supporting the Petitioner's contentions and arguments throughout the trial and record, all on the record at trial, on the merits of this case, and in these arguments.

These breaches, individually and cumulatively, are based upon the prior precedent cases as of national importance regarding Due process clause and The Bill of rights and the Amendment six and fourteenth of the United States Constitution, which were breached in this case by the hearing Judge.

The rules of natural justice, due process, fairness and stare decisis mandate that this case be reversed, and justice served to the petitioner, fairly and fearlessly.

When a lower Court has erred on both substantive and procedural matters, as here, it behooves this appellate court to reverse its perverse and erroneous decisions.

Respectfully Submitted,

/s/ Joshua Harris  
Joshua Harris, Pro Se  
Petitioner-Appellant



JASWINDER SINGH  
Notary Public State of New York  
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Qualified in Queens county  
My Commission Expires Jun 7, 2025