APPENDIX

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Appendix A - Memorandum of the United States Court of Appeals for the District of Columbia Circuit, Filed March 26, 2025

United States Court of Appeals
For the District of Columbia Circuit

No. 23-5265 September Term, 2024
Filed On: March 6, 2025

Norman Douglas Diamond, Appellant,

v.

United States of America and Unknown Employees of the United States, Appellees.

No. 23-5265

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA, No. 1:23-cv-00326-TNM.

BEFORE: Henderson, Millett, and Walker, Circuit Judges

JUDGMENT

This appeal was considered on the record from the United States District Court for the District of Columbia and on the briefs filed by the parties. See Fed. R. App. P. 34(a)(2); D.C. Cir. Rule 34(j). Upon consideration of the foregoing and the motion for appointment of counsel, it is

ORDERED that the motion for appointment of counsel be denied. In civil cases, appellants are not entitled to appointment of counsel when they have not demonstrated sufficient likelihood of success on the merits. It is

FURTHER ORDERED AND ADJUDGED that the

district court's September 15, 2023 dismissal order and November 1, 2023 reconsideration order be affirmed.

First, appellant has not demonstrated any error in the district court's conclusion that the court was an improper venue for appellant's claims under 26 U.S.C. § 7422. See 28 U.S.C. §§ 1346(a)(1), 1402(a)(1). Nor has appellant shown that the district court abused its discretion in dismissing those claims instead of transferring them.

Second, appellant has not demonstrated any error in the district court's dismissal of his claims under 26 U.S.C. § 7433 for lack of subject matter jurisdiction because the claims as alleged were beyond the statute's limited waiver of sovereign immunity. See *Ivy v. Comm'r of IRS*, 877 F.3d 1048, 1048, 1050 (D.C. Cir. 2017); *Kim v. United States*, 632 F.3d 713, 716-17 (D.C. Cir. 2011).

Third, appellant has shown no error in the district court's conclusion that his tort claims fell within the tax exception to the Federal Tort Claims Act's limited waiver of sovereign immunity and were beyond the court's jurisdiction. See 28 U.S.C. § 2680(c); *Brownback v. King*, 592 U.S. 209, 217 (2021). Appellant has failed to raise in his opening brief, and thus has forfeited, any challenge to the district court's conclusion that the Administrative Procedure Act, 5 U.S.C. § 702, and the Mandamus Act, 28 U.S.C. § 1361, do not provide jurisdiction for his tort claims. *See Twin Rivers Paper Co. v. SEC*, 934 F.3d 607, 615 (D.C. Cir. 2019).

Fourth, appellant likewise has failed to raise in his opening brief, and thus has forfeited, any challenge to the district court's dismissal of his requests for injunctive relief as barred by the Tax Anti-Injunction Act, 26 U.S.C. § 7421. See *Twin Rivers*, 934 F.3d at 615.

Finally, appellant also has not shown that the district court abused its discretion in denying his motion for leave to file a second sur-reply or in denying as moot his motion to correct the sur-reply. It is

FURTHER ORDERED AND ADJUDGED that the district court's November 2, 2023, prefiling injunction order be affirmed. Appellant has forfeited any challenge to the prefiling injunction order by failing to raise it in his opening brief. See *Twin Rivers*, 934 F.3d at 615. Even if the opening brief's reference to appellant's prior litigation could be construed as an argument against the prefiling injunction, the issue is forfeited due to appellant's failure to develop any such challenge. See *Gov't of Manitoba v. Bernhardt*, 923 F.3d 173, 179 (D.C. Cir. 2019). Due to appellant's forfeiture, this decision does not address the propriety of the prefiling injunction. It is

FURTHER ORDERED AND ADJUDGED that the district court's November 3, 2023 minute order be affirmed. Appellant has failed to raise, and thus has forfeited, any arguments challenging the district court's denial of his motion for return of a declaration. See *United States ex rel. Totten v. Bombardier Corp.*, 380 F.3d 488, 497 (D.C. Cir. 2004).

Pursuant to D.C. Circuit Rule 36, this disposition will

not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after resolution of any timely petition for rehearing or petition for rehearing en banc. *See* Fed. R. App. P. 41(b); D.C. Cir. Rule 41.

Per Curiam

Appendix B – Memorandum Opinion of the United States District Court for the District of Columbia, Filed September 15, 2023

United States District Court for the District of Columbia

NORMAN DOUGLAS DIAMOND, Plaintiff,

v.

UNITED STATES OF AMERICA, et al., Defendants.

Case No. 1:23-cv-00326 (TNM).

United States District Court, District of Columbia.

September 15, 2023.

MEMORANDUM OPINION

TREVOR N. McFADDEN, District Judge.

No stranger to federal court, pro se Plaintiff Norman Diamond sues the United States and unknown civil servants (together, "the Government"), alleging various violations of federal law related to his income taxes. The Government moves to dismiss on several grounds, including that venue is improper and that this Court lacks subject matter jurisdiction.

The Court will grant the motion and dismiss this case. Venue for Diamond's tax refund and wrongful collections claims lies exclusively in the Court of Federal Claims. And Diamond has pointed to no waiver of sovereign immunity that allows the Court to hear his other claims against the United States.

I.

Plaintiff Norman Diamond, a U.S. citizen and current resident of Canada, has repeatedly sued the United States for claims related to his income taxes. This saga began in 2012 when he and his wife, Zaida Golena Del Rosaria, sued for a refund of their 2005 income taxes. [1] *See Diamond v. United States*

[1] This background does not include Diamond's litigation history against the IRS before the U.S. Tax Court. Between 2010 and

(Diamond I), 107 Fed. Cl. 702, 703 (2012), *aff'd*, 530 F. App'x 943 (Fed. Cir. 2013). The couple resided in Japan in 2005, and "paid income taxes through the withholding on income generated by investments in the United States." *Id.* Diamond and Del Rosario asserted that the IRS improperly credited their 2005 withholdings and that they were owed a refund of $10,645. *See id.*

The couple then filed a joint federal tax return containing several errors and omissions. See id. For example, they did not include their social security numbers (SSNs) or taxpayer identification numbers on the return; they crossed out the attestation above the signature line regarding the truth and accuracy of the statements in the return; and they claimed zero dollars in wages and gross income from sources in a foreign country. See id. They then claimed a refund of $10,645—the total amount of tax withheld during that year. *See id.*

After the IRS rejected the return as frivolous, Diamond and Del Rosario filed an amended 2005 return. See id. This return was also faulty. It did not contain Del Rosario's SSN or tax identification number; it again claimed zero dollars in foreign income; and it failed to provide the required supporting documentation. See id. After Diamond and Del Rosario failed to respond to the IRS's request for more information, the IRS informed them in 2011 that their refund request was denied because they had failed to submit a return within three years of its due date. *See id.*

Diamond and Del Rosario then sued in the Court

2020, Diamond appears to have brought at least ten suits there. *See* Notice of Related Cases, ECF No. 2.

of Federal Claims. Diamond I, 107 Fed. Cl. at 702. The court found that they failed to submit a valid refund claim and that it thus lacked subject matter jurisdiction over the case. See *id.* at 707. The Federal Circuit affirmed. See 530 F. App'x at 944.

In 2013, Diamond and Del Rosario filed another refund suit, this time for their 2006-2011 tax withholdings and for an abatement of penalties assessed against them for filing frivolous tax returns. *See Diamond v. United States* (Diamond II), 115 Fed. Cl. 516, 522 (2014), aff'd, 603 F. App'x 947 (Fed. Cir. 2015). The Government moved to dismiss. First, it argued that the court lacked subject matter jurisdiction because Diamond and Del Rosario had not paid the 2008 tax liability for which they sought a refund. See id. at 525-26. Second, it argued that they failed to state a claim for the remaining tax years because they had received a refund in the form of tax credits that were legally applied to their other outstanding tax liabilities. *See id.* at 527-28. The court agreed and granted the Government's motion. The Federal Circuit again affirmed. *See* 603 F. App'x at 952.

Diamond sued again in 2013, this time bringing a smorgasbord of claims against the IRS and unnamed government employees. *See Diamond v. IRS* (Diamond III), No. 13-cv-8042, 2014 WL 7883613, at *3 (C.D. Cal. Nov. 14, 2014), R. & R. adopted, 2015 WL 64805 (C.D. Cal. June 4, 2015), *aff'd* sub nom. *Diamond v. United States*, 688 F. App'x 429 (9th Cir. 2017). Diamond alleged (1) fraudulent filing of information returns; (2) unauthorized disclosure of his SSN; (3) conspiracy to interfere with civil rights under 42 U.S.C. § 1985; (4) imposition of frivolous filing penalties in violation of the Constitution; and

(5) perjury by IRS employees in the Tax Court. See id. at *4. Specifically, Diamond accused IRS personnel of altering tax records. *See id.* The IRS moved to dismiss to the complaint, which the district court granted. See 2015 WL 354046, at *1. The Ninth Circuit affirmed. See 688 F. App'x at 430.

The next year Diamond was back at it, reprising his claims that the IRS and various government agents altered his tax records and publicly revealed his SSN. See *Diamond v. IRS* (Diamond IV), No. 14-cv-9196, 2015 WL 3532901, at *2 (C.D. Cal. Apr. 16, 2015), R. & R. adopted, 2015 WL 3545046 (C.D. Cal. June 4, 2015), aff'd sub nom., *Diamond v. United States*, 688 F. App'x 445 (9th Cir. 2017). The district court again dismissed the complaint, see 2015 WL 3545046, at *1, and the Ninth Circuit again affirmed, *see* 688 F. App'x at 446.

Diamond returned to federal court in 2017. He sued the United States for (1) refunds for various years that he overpaid his taxes, (2) return of amounts the IRS wrongfully collected or withheld, and (3) the wrongful disclosure of his SSN. *See Diamond v. United States* (Diamond V), No. 17-cv-6327, 2018 WL 922128, at *1 (C.D. Cal. Feb. 15, 2018), aff'd, 765 F. App'x 377 (9th Cir. 2019). The court dismissed Diamond's claims for improper venue and claim preclusion. *Id.* at *2. For the third time, the Ninth Circuit affirmed. See 765 F. App'x at 378.

That brings us to this case. Diamond again brings a bevy of claims against the United States related to his income taxes. He claims:

- $3 million in damages for the IRS's alleged fraudulent conversion of his 2005 tax withholdings. *See* Compl. ¶¶ 41-42.
- $1 million in damages for the IRS's alleged failure

to follow I.R.C. § 6201(d) in connection with determining his 2005 tax withholdings. *See id.* ¶¶ 49, 51.

• $3 million in damages for the IRS's alleged violation of I.R.C. § 31 and I.R.C. § 6401 by not properly crediting his 2005 tax withholdings. *See id.* ¶¶ 54, 61.

• $3 million in damages for the IRS's alleged failure to notify him that his 2005 refund claim was denied. *See id.* ¶¶ 63, 68.

• $4 million in damages for the IRS's alleged submission of fraudulent transcripts and making inconsistent factual statements in Tax Court proceedings related to his 2007 tax return. *See id.* ¶¶ 71-74, 77, 81.

• $1 million in damages for the IRS's alleged submission of a fraudulent or modified declaration to the Tax Court. *See id.* ¶ 84.

• $8 million in damages for the IRS's alleged submission of fraudulent supporting records to the Tax Court. *See id.* ¶¶ 96, 99.

• $2 million in damages for the IRS's alleged "fraudulent assertions of joint and several liability." *See id.* ¶¶ 110, 120.

• A refund of penalties that were "fraudulently" collected for 2002, 2005-2008, and an unknown year in the total amount of $3,659. *See id.* ¶ 154.

• A refund of the 2005 tax overpayment of $10,645. See id. ¶ 198.

Diamond also asks for injunctive relief requiring the IRS to issue a notice of mathematical error, file his 2005 tax return, revise its list of frivolous positions, and provide tax assessments, addresses, and his amended return for 2007. *See* Compl. ¶¶ 155-200.

The United States has moved to dismiss for

improper venue and lack of subject matter jurisdiction. See Mot. to Dismiss (MTD), ECF No. 10. The motion is now ripe.

II.

To survive a Rule 12(b)(1) motion, a plaintiff must establish this Court's jurisdiction over his claims. *See Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561 (1992). The Court "assume[s] the truth of all material factual allegations in the complaint and construe[s] the complaint liberally, granting plaintiff the benefit of all inferences that can be derived from the facts alleged." *Am. Nat'l Ins. Co. v. FDIC*, 942 F.3d 1137, 1139 (D.C. Cir. 2011) (cleaned up). If the Court determines that it lacks jurisdiction as to any claim, it must dismiss that claim. *See* Fed. R. Civ. P. 12(b)(1), 12(h)(3).

Rule 12(b)(3) allows dismissal for improper venue. And under 28 U.S.C. § 1406(a), the Court must "dismiss, or if it be in the interest of justice, transfer," a case filed "in the wrong division or district." When evaluating a Rule 12(b)(3) motion, the Court "accepts the plaintiff's well-pled factual allegations regarding venue as true, draws all reasonable inferences from those allegations in the plaintiff's favor, and resolves any factual conflicts in the plaintiff's favor." *Sanchez-Mercedes v. BOP*, 453 F. Supp. 3d 404, 414 (D.D.C. 2020) (cleaned up), *aff'd*, 2021 WL 2525679 (D.C. Cir. June 2, 2021). The plaintiff bears the burden of showing that venue is proper. *See id.*

The Court is mindful that Diamond proceeds without counsel. Complaints filed by pro se litigants "must be held to less stringent standards than formal pleadings drafted by lawyers." *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (cleaned up). More, the Court must consider a pro se complaint "in light of all filings,

including filings responsive to a motion to dismiss." *Brown v. Whole Foods Mkt. Grp., Inc.*, 789 F.3d 146, 152 (D.C. Cir. 2015). But even pro se litigants must meet the minimum pleading standards required by the Federal Rules and the Constitution. *See Yellen v. U.S. Bank, Nat'l Assoc.*, 301 F. Supp. 3d 43, 47 (D.D.C. 2018).

III.

A.

Consider first Diamond's tax refund and wrongful collection claims. See 26 U.S.C. § 7422 (actions for refund); id. § 7433 (actions for unauthorized collection activity). The Government argues that venue is improper in this district and that the claims should be dismissed. The Court agrees.

Federal district courts and the U.S. Court of Federal Claims have concurrent jurisdiction over claims against the United States for the recovery of taxes "alleged to have been erroneously or illegally assessed or collected." 28 U.S.C. § 1346. For such claims brought in district court, venue is proper in the judicial district where the plaintiff resides. *See* 28 U.S.C. § 1402(a)(1). Taken together, this means that a plaintiff living outside the United States may only bring a tax collection claim in the Court of Federal Claims. See *Topsnik v. United States*, 554 F. App'x 630, 631 (9th Cir. 2014).

Diamond resides in Canada, and thus the proper venue for his wrongful collection and tax refund claims is the Court of Federal Claims. *See id.*; Compl. ¶ 4. Diamond disagrees. He says that he is treated as a resident of this district under 26 U.S.C. § 7701(a)(39), which provides that citizens residing abroad "shall be treated as residing in the District of Columbia" for certain purposes. The problem for

Diamond is that this special definition modifies only some "provision[s] of this title"—i.e., Title 26. And the venue provision applicable to these claims, 28 U.S.C. § 1404(a), is found in Title 28. So Diamond is not a resident of this district, nor any other, for purposes of the venue statute.

Thus, venue for Diamond's tax refund and wrongful collection claims lies exclusively in the Court of Federal Claims. *See Topsnik*, 554 F. App'x at 631. The Court typically would need to decide whether is it "in the interest of justice" to transfer these claims to the proper venue, or whether dismissal is justified instead. *See* 28 U.S.C. § 1406(a). But the Court of Federal Claims is not a "district or division" to which a district court may transfer a case under 28 U.S.C. § 1404(a). *See Fisherman's Harvest, Inc. v. PBS & J*, 490 F.3d 1371, 1378 (Fed. Cir. 2007). So the Court has no statutory authority to transfer these claims. Dismissal is thus required. *See Laukus v. United States*, 691 F. Supp. 2d 119, 127 (D.D.C. 2010) (explaining that the court "must dismiss because there is no appropriate transferee court").

Diamond has one final arrow in his quiver. He says that another transfer provision, 28 U.S.C. § 1631, requires this Court to transfer his tort actions to the Court of Federal Claims. That frog will not hop. Section 1631 permits district courts to transfer civil actions "[w]henever a civil action is filed in a court . . . and that court finds that there is a *want of jurisdiction*." (emphasis added). And this Court has not determined that it lacks jurisdiction over Diamond's tax refund and wrongful collection claims.[2]

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[2] Though the Government asserts defects in both subject matter jurisdiction and venue, this Court "has leeway to choose among threshold grounds for denying audience to a case on the merits."

Instead, the Court has found that venue for these claims is improper here. That does not trigger § 1631. *Sorcia v. Holder*, 643 F.3d 117, 122 (4th Cir. 2011) ("We hold that § 1631, which speaks exclusively of jurisdiction, does not mandate transfer where venue is lacking.").

In any event, even if this Court did have authority to transfer these claims, it would decline to do so. It is not in the interest of justice to send this suit elsewhere. The claims have "obvious substantive problems." *Ananiev v. Wells Fargo Bank, Nat'l Assoc.*, 968 F. Supp. 2d 123, 132 (D.D.C. 2013) (cleaned up). And Diamond has a long history of vexatious litigation against the United States. *See* Diamond V, 2018 WL 922128 at *1 ("Plaintiff has filed numerous cases with similar if not identical allegations against the United States."). "So troublesome is this plaintiff that transfer of this action would not be in the interest of justice." *Chandler v. BOP* No. 17-cv-11, 2017 WL 2787598, at *3 (D.D.C. June 27, 2017).

B.

Consider next Diamond's tort claims. The United States may not be sued for damages unless it has waived its sovereign immunity. *See United States v. Orleans*, 425 U.S. 807, 814 (1976). And the Federal Tort Claims Act (FTCA) waives the Government's sovereign immunity for common law tort claims brought in federal court. *See Millbrook v. United States*, 569 U.S. 50, 52 (2013). But this waiver is limited by enumerated exceptions. Key here, the

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Sinochem Int'l Co. v. Malaysia Int'l Shipping Corp., 549 U.S. 422, 431 (2007). And because the Court agrees that these claims must be dismissed for improper venue, it need not reach the Government's arguments about subject matter jurisdiction.

FTCA expressly divests district courts of jurisdiction over tort claims "arising in respect of the assessment or collection of any tax." 28 U.S.C. § 2680(c).

The question, then, is whether Diamond's tort claims against the Government relate to the IRS's assessment of taxes and penalties. If so, the Court lacks subject matter jurisdiction and must dismiss these claims under § 2680(c).

Courts have "consistently" interpreted this exception "to exclude most tort actions involving IRS agents from the FTCA's waiver of sovereign immunity." *Reiff v. United States*, 107 F. Supp. 3d 83, 87 (D.D.C. 2015). The language of § 2680(c) "is broad enough to encompass any activities of an IRS agent even remotely related to his or her official duties." *Childresss v. Northrop Corp.*, 618 F. Supp. 44, 49 (D.D.C. 1985) (cleaned up). And, as here, this exception "applies with particular force" in cases in which "the IRS is attempting to collect a specific debt from a specific taxpayer." *Reiff*, 107 F. Supp. 3d at 87.

With these principles in mind, the Court finds that Diamond's tort claims fall within the tax exception to the FTCA. The gist of Diamond's Complaint is that various IRS agents modified records and violated their statutory duties, resulting in the improper calculation and assessment of taxes and penalties. See Compl. ¶ 11 ("Damages are claimed for fraudulent actions . . . pertaining to illegal conversions of legal collected taxes, collections of penalties, and fraudulent submissions to US courts."). This falls within the heartland of the FTCA's tax exception.

Diamond's allegations of fraud do not undermine the fact that each of the alleged fraudulent actions occurred during, or resulted from, the IRS's

assessment of taxes and penalties. These allegations thus do not allow him to skirt the United States' sovereign immunity from tax-related suits. Section 2680(c) "reflect[s] the government's strong interest in protecting the administration of its tax system from the burden of constant litigation." *Capozzoli v. Tracey*, 663 F.2d 654, 657 (5th Cir. 1981). This interest would be entirely frustrated if courts permitted plaintiffs to bring tax-related claims against the United States whenever those claims are characterized as sounding in fraud.

Diamond points to two other statutes that he claims grant this Court jurisdiction over his claims. See Opp'n at 3. For both, his reliance is misplaced.

First, he notes that the Administrative Procedure Act (APA), 5 U.S.C. § 702, waives sovereign immunity for certain agency actions. True enough. But this door is closed to a plaintiff when another statute provides an "adequate" alternative remedy for his claim. *See Perry Cap. LLC v. Mnuchin*, 864 F.3d 591, 620-21 (D.C. Cir. 2017). If relief of the "same genre" is available, review under the APA is precluded. *Women's Equity Action League v. Cavazos*, 906 F.2d 742, 751 (D.C. Cir. 1990).

The Court has little difficultly concluding that a tax refund suit is an adequate alternative remedy for Diamond's claims here. As Diamond is well aware, the refund statute, 26 U.S.C. § 7422(a), "provides a cause of action for the recovery of taxes alleged to have been illegally or improperly collected and, in doing so, displaces a cause of action under the APA." *Harrison v. IRS*, No. 20-cv-828, 2021 WL 930266, at *4 (D.D.C. March 11, 2021). Indeed, Diamond has brought claims against the Government under § 7422(a) in at least five separate lawsuits, including

this one. He has provided no explanation why a tax refund suit would not be an adequate remedy for his damages claims. So the APA does not rescue his tort claims.

Second, Diamond says that this Court has jurisdiction under the Mandamus Act. See Opp'n at 3. The Act confers original jurisdiction in district courts over "any action in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff." 28 U.S.C. § 1361. Mandamus is an extraordinary remedy and thus an "option of last resort." *Process & Indus. Devs. Ltd. v. Fed. Republic of Nigeria*, 962 F.3d 576, 582 (D.C. Cir. 2020).

Mandamus relief is unavailable to Diamond for the same reason that he cannot rely on the APA. The Court may not assert mandamus jurisdiction when the plaintiff has an adequate alternative remedy. *See Illinois v. Ferriero*, 60 F.4th 704, 714 (D.C. Cir. 2023). And § 7422(a) allows Diamond to seek damages in a tax refund suit. *See Harrison*, 2021 WL 930266, at *4. More, a writ of mandamus is "reserved only for the most transparent violations of a clear duty to act," *In re Bluewater Network*, 234 F.3d 1305, 1315 (D.C. Cir. 2000), and Diamond has not specified the duty that he is owed.

Diamond's tort claims arise from the IRS's assessment of taxes and penalties and are thus excepted from the FTCA's waiver of sovereign immunity. And because the refund statute provides Diamond with an adequate remedy for his damages claims, neither the APA nor Mandamus Act allow this Court to hear these claims. So this Court must dismiss Diamond's tort claims for want of subject

matter jurisdiction.[3]

C.

Last up are Diamond's requests for injunctive relief. He asks for an order requiring the IRS to issue a notice of mathematical error, file his 2005 tax return, revise its list of frivolous positions, and provide tax assessments, addresses, and his amended tax return for 2007. *See* Compl. ¶¶ 155-200. Diamond faces the same problem as before: He has not pointed to any waiver of sovereign immunity that would allow him to pursue injunctive relief against the United States. This is so because the Anti-Injunction Act, which is part of the Tax Code, specifically bars a plaintiff from suing "for the purpose of restraining the assessment or collection of any tax." 26 U.S.C. § 7421(a).

This provision reflects "the Government's need to assess and collect taxes as expeditiously as possible with a minimum of pre-enforcement judicial interference," and it works by "requir[ing] that the legal right to the disputed sums be determined in a

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[3] The Government also argues that these claims should be dismissed because Diamond did not plead that he submitted an administrative claim for damages before suing. *See* MTD at 12. Not so. Diamond attached documents to his opposition that show he submitted an incident notification and claim for damages to the IRS, which the agency denied a few months before he filed this suit. *See* Admin. Claim at 1-23, ECF No. 14-1; IRS Denial at 24, ECF No. 14-1. This is sufficient. The Court also rejects the Government's suggestion that consideration of these exhibits requires the Court to convert its motion to one for summary judgment. *See* Reply at 9 n.1, ECF No. 16. Because Diamond is pro se, facts and exhibits in his responses to the Government's motion to dismiss are treated as pleaded facts. *See Brown*, 789 F.3d at 152.

suit for refund." *Bob Jones Univ. v. Simon*, 416 U.S. 725, 736 (1974) (cleaned up). Thus, a suit for injunctive relief brought under the APA is dead on arrival if it "concerns the assessment or collection of federal taxes." *McGuirl v. United States*, 360 F. Supp. 2d 129, 132 (D.D.C. 2004), *aff'd*, 167 F. App'x 808 (D.C. Cir. 2005). And because "relief in the nature of mandamus is no different than a request for a mandatory injunction," a suit brought under the Mandamus Act is similarly precluded if its purpose is to prevent the IRS from assessing or collecting taxes. *Ross v. United States*, 460 F. Supp. 2d 139, 150 (D.D.C. 2006) (cleaned up). So Diamond has not offered a statutory basis for this Court to exercise subject matter jurisdiction over his claims for injunctive relief.

IV.

For these reasons, the Court will grant the Government's motion to dismiss. A separate Order will issue today.[4]

Dated: September 15, 2023

TREVOR N. McFADDEN, U.S.D.J.

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[4] The Court will deny Diamond's motion for leave to file a second sur-reply. *See* Pl.'s Mot. for Leave to File Surreply, ECF No. 20. The "decision to grant or deny leave to file a sur-reply is committed to the sound discretion of the Court." *Lu v. Lezell*, 45 F. Supp. 3d 86, 91 (D.D.C. 2014). The Government has raised no arguments for the first time in its reply. More, the Court has already permitted Diamond to file one sur-reply already. *See* Min. Order (June 28, 2023); Pl.'s Surreply, ECF No. 18. And even if the Court were to grant leave, none of Diamond's supplemental submissions would change the Court's analysis. The Court will thus deny as moot Diamond's motion to correct his proposed sur-reply. *See* Mot. to Correct, ECF No. 24.

Appendix C – Memorandum Order of the United States District Court for the District of Columbia, Filed November 1, 2023

United States District Court for the District of Columbia

NORMAN DOUGLAS DIAMOND, Plaintiff,

v.

UNITED STATES OF AMERICA, et al., Defendants.

Case No. 1:23-cv-00326 (TNM).

United States District Court, District of Columbia.

November 1, 2023.

MEMORANDUM ORDER

TREVOR N. McFADDEN, District Judge.

Plaintiff Norman Diamond has sued the United States repeatedly in various federal courts for claims related to his income taxes. On this stop of his tour, Diamond sued in this district seeking millions of dollars in damages and injunctive relief against the United States. The Court dismissed Diamond's suit on improper venue and sovereign immunity grounds. Despite the dismissal of all claims, the Government filed this Motion for Reconsideration to correct its position (which the Court adopted) that venue for some of Diamond's claims was only proper in the Court of Federal Claims. The Government now urges the Court to dismiss Diamond's wrongful collection claims on the alternative ground, argued below, that the Court lacks subject matter jurisdiction. The Court concludes that reconsideration is warranted on this narrow issue.

I.

In its Motion to Dismiss, the Government argued that this Court was the wrong venue for Diamond's wrongful collection claims because Diamond did not reside in this district. Defs.' Mot. to Dismiss (MTD) at

7, ECF No. 10. But the Government explained that venue for non-resident defendants like Diamond would be proper in the Court of Federal Claims, which has concurrent jurisdiction over civil actions against the United States for the recovery of "erroneously or illegally assessed or collected" taxes. *See* 28 U.S.C. § 1346(a)(1); *Topsnik v. United States*, 554 F. App'x 630, 631 (9th Cir. 2014). The Court agreed. It therefore dismissed Diamond's tax refund and wrongful collection claims for improper venue, while further noting that venue would be proper in the Court of Federal Claims. Mem. Op. at 6–7.

This conclusion was clearly erroneous and warrants reconsideration. *See Wright v. FBI*, 598 F. Supp. 2d 76, 77 (D.D.C. 2009) (noting that courts will grant reconsideration "to correct clear error"). As the Government now explains, Diamond could not bring his § 7433 wrongful collection claims in the Court of Federal Claims because such claims must be brought "in a district court of the United States," 26 U.S.C. § 7433(a), and the Court of Federal Claims is not a "district court," *Wall v. United States*, 141 Fed. Cl. 585, 596 (2019). Thus, contrary to the Court's conclusion in its Memorandum Opinion, Diamond may not bring his § 7433 wrongful collection claims in the Court of Federal Claims.

In its Motion for Reconsideration, the Government suggests that venue might be proper in this district under the general venue statute, 28 U.S.C. § 1391. Defs.' Mot. for Recon. (MFR) at 14 n.4, ECF No. 28. But § 1402(a)(1) indicates that civil actions for wrongful collection, when brought by natural persons in district courts, "may be prosecuted *only* . . . in the judicial district where the plaintiff resides." Id. § 1402(a)(1) (emphasis added). Indeed, courts in this

district and others have strongly suggested that venue under § 1402(a)(1) is restrictive and thus precludes venue under § 1391. *See Wallace v. United States*, 557 F. Supp. 2d 100, 103 (D.D.C. 2008) ("Courts in this district have consistently held that D.C. is an improper venue for non-resident plaintiffs bringing suit on tax related matters against the government."); *see also Vanskiver v. Rossotti*, No. 00-cv-2455, 2001 WL 361470, at *2 (D.D.C. Jan. 31, 2001) ("In a tax refund suit against the United States, plaintiffs must file suit in the district in which they reside."); Krapf v. United States, 604 F. Supp. 1164, 1165 (D. Del. 1985) (concluding that, for plaintiffs living in the Bahamas, "the venue provisions of 28 U.S.C. § 1402(a)(1) preclude litigation of Plaintiffs' claim in any district court."). Since Diamond does not reside in this district—or in any federal judicial district—venue is not proper under § 1402(a)(1). *See* Compl., ECF No. 1, at ¶¶ 3–4 (indicating the Diamond resided in either Japan or Canada during relevant periods).

That said, the Court need not determine whether venue could be proper in this district under 28 U.S.C. § 1391 because Diamond's wrongful collection claims cannot survive for another reason.

II.

Even if venue were proper in this district, Diamond's wrongful collection claims must be dismissed for lack of subject matter jurisdiction because they fall outside Congress's limited waiver of sovereign immunity.

Section 7433 of the Internal Revenue Code waives sovereign immunity "if the IRS or its agents have intentionally, recklessly, or negligently disregarded any provision of the Code 'in connection with any

collection of Federal tax.'" *Buaiz v. United States*, 471 F. Supp. 2d 129, 135 (D.D.C. 2007). Courts have construed this provision narrowly, however, holding "that § 7433 does not provide a cause of action for wrongful tax assessment or other actions that are not specifically related to the *collection* of income tax." *Id.*; *see also Jaeger v. United States*, 524 F. Supp. 2d 60, 64 (D.D.C. 2007) ("[S]ection 7433 does not provide a cause of action for wrongful tax assessment, the absence of a tax assessment, or other actions not related to the collection of income tax."); *Miller v. United States*, 66 F.3d 220, 222 (9th Cir. 1995) ("[I]mproper determination [of tax] is not actionable as a matter of law under § 7433."); *Shaw v. United States*, 20 F.3d 182, 184 (5th Cir. 1994) ("[A] taxpayer cannot seek damages under § 7433 for an improper assessment of taxes.").

The Government argues that the Court lacks subject matter jurisdiction because Diamond's claims do not constitute wrongful collection activity under § 7433. MFR at 3–5. The Court agrees. Indeed, while Diamond's Complaint is prolix and difficult to follow, it states, "The IRS legally collected tax overpayments . . . . Diamond does not allege damage from collection of withholdings." Compl. ¶ 128 (emphasis added). His claims to the contrary now do not persuade.

First, Diamond asserts that he is entitled to relief under § 7433 because the IRS filed tax liens against him, claimed that it intended to levy such liens, conducted Collection Due Process Hearings, and issued several Notices of Determination. Pl.'s Resp. to MFR at 1–4, ECF No. 30. While activities such as "the filing of a notice of lien [are] patently . . . tax collection activitie[s]," *Glass v. United States*, 480 F.

Supp. 2d 162, 165 (D.D.C. 2007), Diamond pleads no facts suggesting that IRS's collection actions involved any reckless, intentional, or negligent disregard of the Internal Revenue Code. And to the extent that Diamond alleges any wrongdoing regarding the tax assessments underlying the IRS's collection actions, his claims are not actionable under § 7433. *See Pollinger v. United States*, 539 F. Supp. 2d 242, 251 (D.D.C. 2008) (dismissing quiet title action challenging "the merits and validity of the tax assessment underlying [a] Notice of Federal Tax Lien" for lack of subject matter jurisdiction).

Next, Diamond contends that the IRS engaged in collection activity by applying his tax refund from one year to his underlying tax liability. Pl.'s Resp. to MFR at 3. Again, while offsetting might be a collection activity, Diamond does not allege that the offset involved reckless, intentional, or negligent disregard of any provision of the Internal Revenue Code.

Last, Diamond levies several allegations of fraud, including that the United States submitted fraudulent documents to federal courts. *See* Compl. ¶¶ 88–96. Even favorably construed, these allegations fall outside the scope of § 7433's waiver of sovereign immunity because they do not involve violations of the IRS's collection regulations. *See Buaiz*, 471 F. Supp. 2d at 136.

Diamond's wrongful collection claims all fall outside the scope of § 7433's limited waiver of sovereign immunity. The Court therefore dismisses them for lack of subject matter jurisdiction.

III.

For these reasons, it is hereby

ORDERED that Defendants' Motion for Reconsideration is GRANTED; and it is further

Appendix C

ORDERED that this case is DISMISSED for lack of subject matter jurisdiction.

SO ORDERED.

Dated: November 1, 2023

TREVOR N. McFADDEN, U.S.D.J.

Appendix D - Denial of Panel Rehearing by United States Court of Appeals for the District of Columbia Circuit,
Filed July 1, 2025

United States Court of Appeals
For the District of Columbia Circuit

No. 23-5265 September Term, 2024
Filed On: July 1, 2025

Norman Douglas Diamond, Appellant,

v.

United States of America and Unknown Employees of the United States, Appellees.

No. 23-5265

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA, No. 1:23-cv-00326-TNM.

BEFORE: Henderson, Millett, and Walker, Circuit Judges

ORDER

Upon consideration of the petition for rehearing, it is **ORDERED** that the petition be denied.

Per Curiam

FOR THE COURT:
Clifton B. Cisak, Clerk
BY: /s/
Daniel J. Reidy
Deputy Clerk

Appendix E - Denial of Rehearing En Banc by United States Court of Appeals for the District of Columbia Circuit,
Filed July 1, 2025

United States Court of Appeals
For the District of Columbia Circuit

No. 23-5265 September Term, 2024
Filed On: July 1, 2025

Norman Douglas Diamond, Appellant,

v.

United States of America and Unknown Employees of the United States, Appellees.

No. 23-5265

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA, No. 1:23-cv-00326-TNM.

BEFORE: Srinivasan, Chief Judge, and Henderson, Millett, Pillard, Wilkins, Katsas, Rao, Walker, Childs, Pan, and Garcia, Circuit Judges

ORDER

Upon consideration of the petition for rehearing en banc, and the absence of a request by any member of the court, it is
ORDERED that the petition be denied.

Per Curiam

FOR THE COURT:
Clifton B. Cisak, Clerk
BY: /s/
Daniel J. Reidy
Deputy Clerk