

November 12, 2015

Ms. Caroline D. Ciraolo-Klepper
Acting Assistant Attorney General
Tax Division
U.S. Department of Justice
950 Pennsylvania Ave, N.W.
Room 4603
Washington, D.C. 20530

Subject: Safe Harbor letter re: McNeil v. Commissioner, 15-1288

Dear Ms. Ciraolo-Klepper:

In your position as Acting Assistant Attorney General, Tax Division, you are likely aware of the criminal case *United States v. William R. Bailey*, 13-CR-3046-CAB, in the Southern District of California. I know this to be true because I informed you of that case in my August 5, 2015 letter, addressed to you. The team of attorneys defending Mr. Bailey targets the same IRS record falsification scheme that damaged me. If its allegations are proven, it will justify dismissal of the indictment in that case.

Also, you have likely received, or will soon receive, the Original Complaint in *DePolo v. Ciraolo-Klepper*, a new case arising in the District of Columbia. Mr. DePolo also alleges IRS never performs substitute 1040 income tax returns involving so-called “non-filers”, yet falsifies its internal and external documentation to make it appear 1040 income tax SFR’s were supposedly executed on certain claimed dates, then used its falsified records to damage him. He also alleges you are leading the effort to obfuscate, protect and prolong the IRS/DoJ record fraud.

As another matter, I understand you only recently joined the Department, so you are perhaps relying upon senior Tax Division attorney Bruce Ellisen to defend the IRS’ program, the subject of my suit. As you know, in *Ellis v. Commissioner & Attorney General*, No.15-5035, Mr. Ellison filed the Government’s Brief in your name. And, by now, you must certainly be aware it is replete with false, misleading, and sanctionable presumptions and misinformation, in a transparent drive to a.) obstruct judicial determination of the core record falsification issue raised in the suit, to b.) invite the Circuit to create a holding precluding future claims concerning the uncovered IRS record fraud, to c.) partner with the Circuit in IRS and DoJ’s official lawlessness¹ by creating “findings of fact” justifying a criminal prosecution against Ellis without having to rely upon falsified IRS records for proof, and to d.) destroy the Supreme Court’s jurisdiction over the actual issues raised on appeal.

In my case, this same obstruction is evident in “**United States’ Motion to Dismiss**” and associated **Memorandum in Support of Defendant United States’ Motion to Dismiss**, submitted under your authorization to Judge Colleen Kollar-Kotelly on October 19, 2015, by Mr. Ryan O. McMonagle. For all practical purposes, his Motion is “yours”, as well, so, I direct this Safe Harbor Letter, and any resulting motion for sanctions, to you both.

¹ “[T]he exclusionary rule ‘enables the judiciary to avoid the taint of partnership in official lawlessness’ and it ‘assures the people – all potential victims of unlawful government conduct – that the government would not profit from its lawless behavior, thus minimizing the risk of seriously undermining popular trust in government.’” *Herring v. United States*, 129 S. Ct. 695, at 707 (2009) (Ginsburg, J, dissenting).

I pray that, when you are through evaluating the contents of this letter, you will see the need to withdraw your Motion, or at least speak with me about it.

The substantive portion of your Motion is found on Page 2 of your “**Memorandum in Support of Defendant United States’ Motion to Dismiss**”, in a section deceptively labeled: “**Factual Allegations and Summary of Argument**”. Those items were addressed, and soundly defeated, in “Plaintiff’s Opposition to Defendants’ Motion to Dismiss”.

But, for the purpose of this Safe Harbor Letter, we need not look beyond your “**Introduction**” on Page 1 to see the litany of presumptions, innuendo, mischaracterizations, and false claims presented in a transparent attempt to mislead the Court. These, alone, justify sanctions/withdrawal.

False Claim #1

“This action seeks to enjoin the Internal Revenue Service from preparing tax returns from information available to it for individuals who do not file their required federal individual income tax returns.”

Here is what I actually wrote in my Complaint: “[I]t **MUST** be clearly noted, as mentioned above, Plaintiff does **NOT** seek to block **ANY** collection activity by any IRS/Treasury employee, whether one currently under way or one which may be executed at any time in the future. **No judicial relief is requested from any collection or assessment activity authorized by Congress.** He seeks **ONLY** to block the Treasury’s record falsification scheme and any use of such records by the government, which was never, and can never be authorized by Congress.” [Compl. ¶ 16]

Further, and, as you well know from the evidence, IRS **never** prepares a ‘Substitute For Return’ (SFR) at any time, on any date. Quoting from my Complaint: “**nor was any substitute for 1040 income tax return performed on any date claimed in the IMF record.**” [Compl. ¶ 5]

False Claim #2

“This action seeks to enjoin the Department of Justice from using certified copies of non-filers’ tax transcripts in subsequent collections and enforcement proceedings.”

Simple logic dictates that, since no SFR is **ever** prepared at any time, on any date, then it is impossible for IRS to “certify” copies of a document that does not exist. The fact it claims to do so is a key feature of the layered fraud so meticulously described in my Complaint.

But, mere logic is insufficient to counter this false claim, so, once again, I provide the actual quote from my Complaint:

*“However, it **MUST** be clearly noted, as mentioned above, Plaintiff does **NOT** seek to block **ANY** collection activity by any IRS/Treasury employee, whether one currently under way or one which may be executed at any time in the future. **No judicial relief is requested from any collection or assessment activity authorized by Congress.** He seeks **ONLY** to block the Treasury’s record falsification scheme and any use of such records by the government, which was never, and can never be authorized by Congress.” [Compl. ¶ 16]*

When exposed to the light of truth, this false claim falls on its face.

False Claim #3

“Plaintiff is a tax protestor who does not file federal income tax returns, claiming that he has a Fifth Amendment right to refuse doing so.”

I deny your unfounded claim I am a “tax protestor”, whatever that means. As a free-born American, I pay taxes in many forms, supporting the functions of government, and contributing to a well-ordered society, every day. But, I will **NEVER** voluntarily waive my right, under the Fifth Amendment, not to be compelled to be a witness against myself. A sworn 1040 income tax return provides such evidence. Yes, I know the words say ‘in any criminal case’, but, it is self-evident in *Bailey*, and many other cases, that IRS’ deliberately falsified and fraudulently “certified” documents form the seed from which criminal indictments grow. And, I refuse to surrender ANY of my God-given rights embodied in the Constitution.

Per *Hale v. Henkel*, 201 U.S. 43 (1906), “*The individual may stand upon his constitutional rights as a citizen. He is entitled to carry on his private business in his own way. His power to contract is unlimited. He owes no duty to the State or to his neighbors to divulge his business, or to open his doors to an investigation, so far as it may tend to criminate him. He owes no such duty to the State, since he receives nothing therefrom beyond the protection of his life and property. His rights are such as existed by the law of the land long antecedent to the organization of the State, and can only be taken from him by due process of law, and in accordance with the Constitution. Among his rights are the refusal to incriminate himself... He owes nothing to the public so long as he does not trespass upon their rights.*”

Finally, I most certainly will **NEVER** allow myself to be “deprived of life, liberty, or property, without due process of law”. And, “due process of law” can **NEVER** comport with IRS’ record falsification scheme, and DoJ’s support thereof.

False Claim #4

“He alleges that when he annually exercises his “right” to not file a federal income tax return, the Service “fraudulently” prepares a return on his behalf that “illegally” presumes that he paid zero tax.”

Repeating, AGAIN, the IRS **never** prepares a discoverable Substitute For Return (SFR) at any time, on any date. This fact was verified in the “**Affidavit of Robert A. McNeil In Support of Original Complaint**”, **Exhibit B** (the Villegas Letter). This September 17, 2013 letter from Klaudia Villegas, Disclosure Manager, Disclosure Office 13 was written in response to my August 2, 2013 FOIA, in which I requested, in Item “i”, “*a copy of the return represented by the Document Locator Number (DLN), listed in the table below, or admit that/those document(s) does/do not exist.*” Item “i” requested copies of documents for the years 2002-2009. In this case, however, for the year 2006, the relevant DLN recorded in my Individual Master File (IMF) was 49210-888-00000-8, with a “supposed” SFR Date of August 11, 2008, and a “supposed” Return Received Date of July 23, 2008. The fact my IMF indicated an SFR was prepared a full 20 days **after** the alleged “return” was received was the first “red flag” indicating manipulation and falsification of data by the IRS.

But, the falsification and concealment was further confirmed by Ms. Villegas in **Exhibit B, Page 2** where she replied to my request with the following:

“For item i, you asked for a copy of the documents identified by several Document Locator Numbers (DLN), for the tax year 2002-2009. A document is not created for every DLN shown on a transcript. In situations where taxpayers fail to file required income tax returns a document locator number was assigned to create a module on the Master File. The DLN you

*requested was generated by our Automated Substitute for Return Program. This DLN is computer generated and there is no paper document associated with it. **Therefore, there are no documents responsive to your request.*** [Emphasis added]

There are many, many more such claims in your recent Motion justifying sanctions/withdrawal. Why pretend this type of treatment by the best minds in the Department of Justice is “due process of law”? Why not quietly ask IRS to simply “shoot the messenger” and make it look like an accident? How would that be substantively different from the legal fraud you are perpetrating on the District Court today to obstruct my right to due process?

At this point, I feel compelled to serve **Notice of 18 USC §1519 Destruction, alteration, or falsification of records in Federal investigations and bankruptcy**, which states:

“Whoever knowingly alters, destroys, mutilates, conceals, covers up, falsifies, or makes a false entry in any record, document, or tangible object with the intent to impede, obstruct, or influence the investigation or proper administration of any matter within the jurisdiction of any department or agency of the United States or any case filed under title 11, or in relation to or contemplation of any such matter or case, shall be fined under this title, imprisoned not more than 20 years, or both.”

Ms. Ciruolo, it is now clear from the pleadings in *Ellis*, and in my case, that you are fully aware of the multiple falsehoods which have been presented to the Court in your name to defend the vicious, underlying, layered IRS record fraud. It is also clear that you and Mr. McMonagle intend to continue to present presumptions and falsehoods to the Court to obstruct the due course of justice. Please reconsider your direction.

You should know I intend to exhaust all legal remedies available to me to ensure a fair and impartial hearing, based on the facts and evidence presented to the Court in my Original Complaint.

I respectfully request that you consider withdrawing your Motion to make substantive changes, and would greatly appreciate your written response to this Safe Harbor letter on, or before the end of business, December 4, 2015.

In liberty,

/s/ Robert A. McNeil
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CC: Mr. Bruce Ellisen
Mr. Ryan O. McMonagle