

**UNITED STATES COURT OF APPEALS
DISTRICT OF COLUMBIA CIRCUIT**

We The People, et al.,)	
)	No. 05-5359
<u>Appellants</u>)	
)	EMERGENCY MOTION
v.)	
)	
United States, et al.,)	
)	
<u>Appellees</u>)	

**APPELLANT’S MOTION TO EXPEDITE
MOTION FOR INJUNCTIVE RELIEF**

In support of this motion to expedite, based on the declaration attached and all the prior pleadings, Mark Lane, counsel for all Plaintiffs-Appellants, with the exception of Robert L. Schulz, and Robert Schulz, who is *pro se*, state as follows:

On October 4, 2006, Appellants in this case and controversy involving the Petition Clause of the First Amendment, filed an Emergency Motion for injunctive relief that included a detailed Declaration by Appellant Robert Schulz and sixteen other Declarations and Affidavits documenting the extensive irreparable harm they are suffering as a result of the Government’s WTP 6700 program, a coordinated, broad based, law enforcement program of malicious intent that is impeding the administration of justice and abridging Appellants’ Rights of association, petition, speech, press, privacy, property and due process.

As documented, the WTP 6700 program is being carried out against Appellants, without any response from the Government to the subject Petitions for Redress of constitutional torts, by a group of IRS agents: IRS Agent Gordon's abusive letters to Plaintiffs and donors; IRS retributive and intimidating attack using liens and levies to seize the wages, pension and investment accounts, Social Security payments, and real property of Plaintiffs in violation of the IRS's own Law¹, and without court orders; IRS Agent Sciame's predatory audit of the Foundation with its openly proclaimed focus on identifying people providing services to the Foundation; IRS Agents Engel and Cox's unjustifiable legal harassment against the Board members of Appellant We The People Foundation for Constitutional Education; IRS Agents Roundtree and Agent Cox's bad-faith summonses to PayPal seeking the identities of donors (labeled by IRS as "potential" tax scheme investors) who are supporting the First Amendment Petition process; and IRS Agent Addington's request for Schulz's personal bank records - with the declared purpose of identifying and targeting for investigation those persons that are financially assisting Schulz.

¹ As documented, the IRS is serving said Notices of Levy, Liens and Summons without first preparing and serving a "substitute for return" (required by 26 U.S.C. § 6020), without first preparing and serving an "assessment" (required under § 6201), without first preparing and serving a "declaration under the penalties of perjury that the assessment was valid" (required by § 6065), without first preparing and serving a "Notice of deficiency" (required by § 6212), without first preparing and serving a "notice and demand for tax" (required under § 6303), without first preparing and serving a "Notice and opportunity for hearing before levy" (required by § 6330), without including the statement regarding the "Authority of the Secretary" (required by § 6331(a)), without obtaining the approval of the Secretary for a "continuous levy" (required by § 6331(h)), without complying with the provision of § 6331(h) that prohibits the IRS from attaching more than 15% of the payments due us each month from all sources, and without issuing us a "Notice Before Levy" (required by § 6331(d)), much less a "Notice before levy 30 days before the levy" (required by § 6331(d)).

As Schulz declared in paragraphs 71-75 of his Declaration in support of the Motion for injunctive relief, Addington explicitly stated she was after the identities of family and friends of Schulz who were providing Schulz with charitable gifts of monetary assistance to help Schulz pay his household expenses (not for services rendered), so the IRS could examine *their* tax returns. Addington threatened to formally summon the records from Schulz's bank if Schulz did not provide the records before September 21, 2006.

On or about October 13, 2006, the Government served an opposition to the motion for temporary and preliminary relief, an opposition that did not refute or contravene any of the facts presented by the Appellants, but instead, included a statement alleging sovereign immunity and general statutory authority (without citations) for those IRS agents to continue its abusive enforcement program against Appellants.

On October 11 or 12, 2006, eight days after Appellants had filed an Emergency Motion for Injunctive relief, IRS Agent Addington mailed a summons to Schulz's Bank demanding Schulz's bank records. The Summons is dated October 11, 2006, which may be the date she placed it in the mail. It is postmarked October 12, 2006. Schulz received a copy of the summons on October 16 or 17, 2006.

On October 18, 2006, Appellants filed a Reply to the Government's opposition to the motion for injunctive relief, together with a Declaration by Schulz that included a copy of the Bank Summons.

October 31, 2006 Is a "Drop Dead" Date

Unless this Court grants the motion for injunctive relief by next Tuesday (October 31, 2006), or Schulz initiates a new lawsuit in the Northern District of New York by next Tuesday to quash the summons, and is successful in timely obtaining a stay of the Summons enforcement date, the Bank will comply with the Summons, sending Schulz's bank records to the IRS on November 7, 2006.

The following is language from 26 U.S.C. 7609 (b)(2):

(2) Proceeding to quash.

(A) In general. Notwithstanding any other law or rule of law, any person who is entitled to notice of a summons under subsection (a) shall have the right to begin a proceeding to quash such summons **not later than the 20th day after the day such notice is given** in the manner provided in subsection (a)(2). In any such proceeding, the Secretary may seek to compel compliance with the summons. (emphasis added).

The IRS Bank Summons Is An Act Of Insolence & Defiance of *Two* U.S. Court of Appeals Orders Protecting Schulz

The Court's attention is invited to paragraphs 49-56 of the Declaration by Schulz, dated October 3, 2006, dealing with IRS attempt (in 2003) to summons Schulz's records, and the results of Schulz's motion to quash the summons; Exhibit J is the decision by the United States Court of Appeal for the Second Circuit in *Schulz v IRS*, 413 F. 3d 297, 302 (2d Circuit, 2005).

In *Schulz*, the Second Circuit held that if the IRS felt it was entitled to Schulz's records it would have to initiate a lawsuit in federal district where, in the interest of due process, Schulz would be able to assert his constitutional defenses, and there would be a full adversarial proceeding and hearing, and a court order would be required before Schulz would have to turn over his private and personal information to the IRS.

Instead of honoring the spirit and intent of the Second Circuit rulings that spoke clearly and unrestrained regarding Schulz's Right to Due Process protections against IRS administrative actions, *and instead of waiting for this Court to decide the 10/4/06 Emergency Motion for Injunctive Relief, if not the underlying issues in this case*, on 10/12/06 the IRS formally summoned Schulz's Bank for the information. It is important to note that the Bank in question is also located in the 2nd Circuit, indicating the degree of defiance IRS has exposed in its pursuit of quashing the Appellant's exercise of their First Amendment Right to Petition.

The IRS claims that the decision reflected in the *Schulz I* and *Schulz II* opinions has nothing to do with the new Bank summons because the controversy in *Schulz* was about the jurisdiction of the federal court in a case involving a "two-party" summons, whereas the new Bank summons is a "three-party" summons.

However, as the Second Circuit indicated on page 10 in *Schulz*, that whether in defense against a "two-party" or a "three-party" summons, in the interest of Due

Process Schulz is entitled to a *full adversarial proceeding and judicial hearing* before being put in jeopardy of penalty by having his private and personal property turned over to the Government without his consent, as would be the case if the Bank complied with the Summons.

To repeat, Schulz responded to the IRS Summons in 2003 by petitioning the federal District Court to quash the summons on the ground that he had a Right to Petition the Government for Redress of Grievances and that the summons was a deliberate infringement of that Right – i.e., impermissible retaliation. In response, the United States Court of Appeals for the 2nd Circuit ruled that before Schulz could be put in jeopardy of penalty by having his private and personal property turned over to the Government without his consent, he was entitled, by Due Process, to *assert his defenses* in an adversarial judicial proceeding and hearing.²

Quoting *Schulz*:

“United States v. Euge, 444 U.S. 707, 719, 63 L. Ed. 2d 141, 100 S. Ct. 874 (1980) (‘The summoned party is entitled to challenge the issuance of the summons in an adversary proceeding in federal court prior to enforcement, and may assert appropriate defenses.’ (emphasis added))” Schulz II (Schulz v IRS, 413 F. 3d 297, 302 (2d Circuit, 2005).

“Donaldson v. United States, 400 U.S. 517, 525, 27 L. Ed. 2d 580, 91 S. Ct. 534 (1971) (‘Thus the [IRS] summons is administratively issued but its enforcement is only by federal court authority in an adversary proceeding affording the opportunity for challenge and complete protection to the witness.’ (internal quotations marks omitted, emphasis added))” Schulz II (Schulz v IRS, 413 F. 3d 297, 302 (2d Circuit, 2005).

² The 2d Circuit Court of Appeals also affirmed the lower court’s dismissal for lack of jurisdiction, recognizing that unlike three-party summonses, the Internal Revenue Code does not specifically provide for petitions to quash two-party summonses.

“*Reisman* advances this view. [375 U.S. at 450](#) (“We remit the parties to the comprehensive procedure of the Code, which provides full opportunity for judicial review before any coercive sanctions may be imposed.”); *see also* [Bisceglia, 420 U.S. at 151](#) (“Congress has provided protection from arbitrary or capricious action by placing the federal courts between the Government and the person summoned [by the IRS].”). *Schulz I* provided our first opportunity to conform the law of this Circuit to that view.” *Schulz II* (*Schulz v IRS*, 413 F. 3d 297, 302 (2d Circuit, 2005)).

“The rule of due process upon which we relied in *Schulz I*, and upon which we rely now, can be stated thus: any legislative scheme that denies subjects an opportunity to seek judicial review of administrative orders except by refusing to comply, and so put themselves in immediate jeopardy of possible penalties ‘so heavy as to prohibit resort to that remedy,’ *Oklahoma Operating Co. v. Love*, 252 U.S. 331, 333, 64 L. Ed. 596, 40 S. Ct. 338 (1920), runs afoul of the due process requirements of the Fifth and Fourteenth Amendments. This is so even if ‘in the proceedings for contempt the validity of the original order may be assailed.’ *Id.* at 335; *see also* [Reisman, 375 U.S. at 446](#); [Ex parte Young, 209 U.S. 123, 147-48, 52 L. Ed. 714, 28 S. Ct. 441 \(1908\)](#).” *Schulz II* (*Schulz v IRS*, 413 F. 3d 297, 303 (2d Circuit, 2005)).

Instead of bringing Schulz into federal court where he could assert his defenses and where he would have a public, adversarial hearing and a receive the full protection of the Court, the IRS served a summons on his Bank requesting that the Bank turn over the personal and private information the IRS was denied access to in the 2nd Circuit, believing the Bank would have little direct interest in asserting Schulz’s defenses, would be hesitant to become embroiled in a dispute between the Government and one of its customers, could not be an advocate for customers and would otherwise not want to engage in battling someone else’s legal controversy.

The effect of the Bank complying with the summons without a court order *would be the same as if the IRS used force against Schulz directly*, without his consent, and without a judicial hearing. Schulz would be penalized. He would have his

private and personal information seized by the Government without his consent and most disturbingly, with the intent (and effect) of infringing his First Amendment Right to Petition and further engaging in acts of malicious intent seeking to obstruct justice. Schulz would be denied the Due Process Rights the 2nd Circuit Court of Appeals ruled must be protected under our Constitution, i.e., the Right to face his accuser and *assert his defenses* in a *full* adversarial judicial proceeding and hearing before suffering injury.

Beyond ignoring the *two* 2nd Circuit orders in *Schulz* which specifically address the issue of Due Process protections with respect to IRS administrative acts and which explicitly require an Article III judicial hearing before Schulz can be injured by such an administrative action, the IRS would have this Court believe the rulings in *Schulz* apply only to “two-party” IRS Summonses and not to the other various forms of IRS administrative actions. This strained interpretation would itself, pose a substantial Due Process controversy if such an asymmetrical application of Due Process protections were to apply to only one form of IRS administrative action, while virtually sanctioning the denial of Due Process and infliction of injury in other, equally abusive forms IRS administrative actions.

Appellants have not been able to find another example in American legal history where the IRS summoned a taxpayer’s personal and private information, was told by a court of competent jurisdiction, much less a United States Court of Appeals

(*twice*), that a citizen was entitled to Due Process and as such, must be allowed to assert his defenses in an adversarial judicial proceeding and hearing, and the IRS, *in defiance of such Appellate Order*, proceeded to administratively seize the very records and private information the Court intended to protect, from a disinterested third party institution that would not have the least interest in battling the IRS or in asserting the citizen's constitutional defenses.

The Government is clearly attempting to inappropriately circumvent the clear mandate of the Second Circuit by seeking to secure documents through the back door after the court has closed the front door. Due process is not a game; the ruling of the Second Circuit should be accorded full respect by all, including the Government.

Under the facts and circumstances of this case, the 2005 decision by the 2nd Circuit in *Schulz*, with its sound reiteration of the revered principle of Due Process, was correct and ought to be the law of this case.

The Appellant's Emergency Motion for Injunctive Relief did not include a so-called "drop dead" date, that is, but for an order granting the requested relief by a date certain the Appellants would suffer irreparable harm. As the evidence has shown, however, the irreparable harm is substantial and affects all Appellants, it has been ongoing, rising to levels constituting obstruction of Justice. With each new dawn, Appellants bear the rapidly accruing weight of their injuries and are increasingly faltering in their ability to sustain their homes, families, and businesses, and sadly,

even their ability to prosecute this case seeking a judicial resolution of a crucial Constitutional controversy.

In short, much hangs in the balance while the Appellants await the Court's determination of this historical controversy. Given the facts and circumstances of this case, it would not be unreasonable to provide the People with some measure of protection against a Government adversary that continues to openly demonstrate its intent to impede Justice and quash the fundamental Rights of the Appellants.

Due to the on-going nature and extent of the irreparable harm to all Appellants caused by the Government's intentional obstruction of justice and unlawful abridgement of certain unalienable Rights, including the recent Summons served on Schulz's Bank, Appellant's respectfully request an expedited decision on the Emergency Motion for Injunctive Relief, granting all Appellants the temporary relief requested in their Motion or, alternatively, granting partial Relief on an expedited basis as follows:

- a) temporarily staying the enforcement of the IRS Summons served on the Glens Falls National Bank and Trust Company against Appellant Robert Schulz, until the underlying questions before the Court are finally determined, and
- b) granting such other and further relief as the Court may seem just and proper.

Respectfully submitted:
Dated: October 26, 2006

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