



The IRS Is Stopped by the D.C. Circuit Court of Appeals from Sharing Taxpayer Information with ICE

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by Robert S. Horwitz

The Court of Appeals for the District of Columbia Circuit affirmed the district court's order enjoining the IRS from sharing taxpayer return information with Immigration and Customs Enforcement ("ICE") in *Center for Taxpayer Rights v. I.R.S.*, 2026 U.S. App. LEXIS 27506 (Sept. 8, 2026).

As you probably recall, shortly after his inauguration in January 2025, Pres. Trump began a crackdown on immigrants who were here illegally, having either overstayed their visas or having entered the United States illegally. This crackdown took the highly publicized and controversial form of armed bands of ICE agents combing the streets of American cities, arresting people who they believed were here illegally, attacking protestors and otherwise acting in a way which could be described as antithetical to the concept of ordered liberty.

Somewhat less publicized in the mainstream media was the agreement between the IRS and ICE to allow ICE to access tax return information on thousands of taxpayers in violation of taxpayer privacy rights under Internal Revenue Code §6103. Recognizing the value of the right to privacy, the Center for Taxpayer Rights and several other organizations sued to ensure that the rights and protections enacted by Congress under §6103 as to all U.S. taxpayers, including noncitizen taxpayers, were respected.

Background

As the District of Columbia Circuit noted, the IRS has more information on more people than any other governmental agency. It is thus a tempting target for any politician or bureaucrat who wants information on U.S. taxpayers.

Section 6103 was enacted in the wake of revelations during the Watergate Hearings that President Nixon had used the IRS to obtain information on his perceived "enemies," i.e., people who opposed his policies. Section 6103(a) states:

Returns and return information shall be confidential, and except as authorized by this title—

(1) no officer or employee of the United States,

(2) no officer or employee of any State, any local law enforcement agency receiving information under subsection (i)(1)(C) or (7)(A), any



tribal or local child support enforcement agency, or any local agency administering a program listed in subsection (l)(7)(D) who has or had access to returns or return information under this section or section 6104(c), and

(3) no other person (or officer or employee thereof) who has or had access to returns or return information under subsection (c), subsection (e)(1)(D)(iii), paragraph (10), (13), (14), or (15) of subsection (k), paragraph (6), (8), (10), (12), (13) (other than subparagraphs (D)(v) and (D) (vi) thereof), (16), (19), (20), or (21) of subsection (l), paragraph (2) or (4)(B) of subsection (m), or subsection (n),

shall disclose any return or return information obtained by him in any manner in connection with his service as such an officer or an employee or otherwise or under the provisions of this section.

Federal employees who willfully disclose return information in violation of §6103 are subject to criminal and civil penalties.

As obvious from the text of §6103(a), there are many exceptions to the prohibition on disclosure if certain procedural prerequisites are met. One exception, contained in subsection (i)(2), is the disclosure to law enforcement agents for use in a non-tax criminal investigation. Subsection (i)(2) states:

(A) In general. Except as provided in paragraph (6), upon receipt by the Secretary of a request which meets the requirements of subparagraph (B) from the head of any Federal agency . . . the Secretary shall disclose return information (other than taxpayer return information) to officers and employees of such agency who are personally and directly engaged in—

(i) preparation for any judicial or administrative proceeding described in paragraph (1)(A)(i),

(ii) any investigation which may result in such a proceeding, or

(iii) any grand jury proceeding described in paragraph (1)(A)(iii),

solely for the use of such officers and employees in such preparation, investigation, or grand jury proceeding.

(B) Requirements. A request meets the requirements of this subparagraph if the request is in writing and sets forth—



- (i) the name and address of the taxpayer with respect to whom the requested return information relates;
- (ii) the taxable period or periods to which such return information relates;
- (iii) the statutory authority under which the proceeding or investigation described in subparagraph (A) is being conducted; and
- (iv) the specific reason or reasons why such disclosure is, or may be, relevant to such proceeding or investigation.

(C) Taxpayer identity. For purposes of this paragraph, a taxpayer's identity shall not be treated as taxpayer return information.

To further the Trump administration's program for the forcible removal of immigrants, in the summer of 2025 ICE requested the IRS provide information on millions of purportedly illegal immigrants. In response to this request, the IRS "developed a specialized procedure for disclosing return information [that] . . . failed to ensure that ICE's request complied with the statutory requirements." 2026 U.S. App. LEXIS 27506 at *2. The Center for Taxpayer Rights and other groups sued in federal district court, which stayed the IRS from using the new procedures and entered a preliminary injunction. 815 F. Supp. 3d 1 (DC 2025).

Prior to 2025, the IRS had interpreted §6103(i)(2) as prohibiting the disclosure of a taxpayer's address when no other information was requested. In the spring of 2025, it came to light that the Department of Homeland Security had entered into an MOU with the IRS to establish a "Data Exchange Procedure" for ICE to submit putatively valid requests for addresses of people subject to investigation under 8 U.S.C. §1253(a)(1) (illegally remaining in the U.S. after a final removal order). The ICE director requested the last known addresses of over 1.28 million undocumented individuals. To respond to this request, the IRS developed a data-exchange procedure. Under this procedure ICE was not required to provide the taxpayer's address (in violation of §6103(i)(2)(B)(i)); instead, all that was needed was 5 or 9 digits in the address field on the request form. The procedure did not require ICE to identify the individual handling any specific investigation.

Under this procedure, IRS disclosed 47,289 records to ICE. The IRS never confirmed whether ICE provided the name and address of any taxpayer. The district court concluded that the plaintiffs were likely to succeed in demonstrating the new policy and procedure were unlawful and that it threatened to harm plaintiffs. It therefore issued a preliminary injunction.



Analysis of the Court of Appeals

The Court of Appeals set out what a plaintiff needed to establish to get a preliminary injunction:

- (a) Likelihood of success on the merits;
- (b) That it would suffer irreparable harm if relief is not granted;
- (c) The balance of equities tips in its favor; and
- (d) Injunctive relief is in the public interest

A district court's order granting or denying a preliminary injunction is reviewed for abuse of discretion.

Since none of the plaintiffs was a person whose tax return information was sought by ICE, the first issue addressed by the Court was whether the plaintiffs had standing. To show standing, at least one of the plaintiffs had to show (a) injury in fact and (b) causation and redressability. The Court held that at least one of the plaintiffs, the Center for Taxpayer Rights, was likely to establish standing. The Center had shown that the policy harmed its interests because immigrants were less likely to come to the Center's events, seek its guidance, or engage with its education and outreach programs. Its pro bono tax clinic had seen a decline in cases involving taxpayers with no social security number and the Center had to divert resources to counteract the effect of the new policy.

The IRS argued that the policy was not subject to review under the Administrative Procedures Act (APA) because it was not formal agency action. That there was no "formal" agency action was irrelevant because an agency action is final and thus reviewable if it "marks the consummation of the agency's decision making process" and "rights and obligations have been determined." The Data Exchange Procedure did just that and were thus final agency action.

The Court rejected several other IRS arguments: First, that the MOU only requires it to comply with §6103(i)(2); second, that there was no agency statement pertaining to the Data Exchange Procedure; and third, the plaintiffs were unable to show direct and appreciable legal consequences from the policy.

Concerning the first argument, the Court noted that the procedure is contained in a final written document that prescribes the steps the IRS will follow to implement the MOU. The procedure was used to make disclosures. That it was not formally noticed or published is not a prerequisite for final agency action. The Court stated that based on a declaration filed by a government official, the IRS procedure violates §6103(i)(2)(B)(1) and the procedure is



not merely a statement of the agency’s interpretation of law-it is an “actual, on-the-ground policy” that was used to produce 47,289 individual records. The procedure “qualifies as final agency action because it makes concrete the agency’s policy decision to allow disclosure of confidential taxpayer information on specified terms.”

Counsel for the IRS “candidly conceded that the Data Exchange Procedure does not comply with the requirements of §6103(i)(2) or the MOU.” 2026 U.S. App. Lexus 27506, *23. While the MOU tracked the language of §6103(i)(2), the Data-Exchange Procedure “veers off that course.” *Id.* at *23. It also represents a dramatic change in agency policy from individualized review of records to “a mass automated review of millions of records at the press of a button.” *Id.* at *23. Under the new procedure there is no individual review or “any other means of ensuring compliance with the legal prerequisites to releasing each individual taxpayer’s information. Such a substantial and material change in policy is yet another indication that the Procedure is final agency action.” *Id.* at *25.

Finally, the procedure was designed for continued use and remains operational with “at best” possible adjustments. The Court concluded that the procedure “as written and implemented constitutes the consummation of the agency’s decision on how it will share – and has shared – confidential taxpayer information with ICE.” *Id.* at *26-*27.

The Court next found that the Date Exchange Procedure is also an agency action “by which rights and obligations have been determined” since it sets out the conditions under which IRS employees are required to transfer confidential taxpayer data to ICE and removes IRS employee discretion to reject a request that did not meet statutory requirements. The procedure deprives noncitizens of the protections that §6103 guarantees to all taxpayers. Thus, the procedure is final agency action that is reviewable under the APA.

Under the APA, if another statute creates a “special and adequate review procedure” for a particular agency action, it deprives the district court of its normal jurisdiction under the APA. The Court rejected the IRS contention that the Code provision for civil damages for violations of §6103 is an adequate review procedure. The damage action provides only a claim for actual damages for a knowing or negligent inspection or disclosure of return information and punitive damages for a willful disclosure. Similarly, criminal charges against federal employees who willfully violate §6103 do not provide the relief requested. Neither is an adequate remedy for the harm that plaintiffs allege or the relief they seek, since they do not hold the IRS accountable for unlawful actions. A civil or criminal damage remedy after the information is released does not protect taxpayers’ privacy rights. Since the plaintiffs “can access no statutory remedy of the same genre” as APA review, they “may bring suit under the APA.”



The Court then turned to whether the Center for Taxpayer Rights was likely to succeed on the merits. It pointed out that the Data Exchange Procedure “indisputably contravenes the requirements of section 6103.” Contrary to §6103(i)(2)(B)(1), the procedure does not require ICE to submit any taxpayer address in its information request. ICE only needs to provide a 5 or 9 digit number in the address field and the IRS produced individual taxpayer records in response to ICE requests listing as the address “unknown,” “Failed to Provide” or “NANA” or a partial address lacking a street name or a number.

Additionally, contrary to §6103’s requirement that information only be disclosed to individuals “personally and directly engaged” in the qualifying criminal proceeding or investigation, under the procedure the IRS can release information as long as the point of contact field is not empty, including if the field lists “unknown” or “TBD.” As a result, the IRS could release taxpayer information even though no federal employee is listed as the point of contact. When ICE requested information in the summer of 2025 on 7.6 million taxpayers who allegedly entered the United States illegally and 1.28 million taxpayers who allegedly stayed more than 90 days after a removal order, it identified the same government individual as the point of contact on every single request. The Court found it implausible that the same ICE assistant director was “personally and directly engaged” in 7.6 million criminal investigations under one statute and 1.28 million under a second statute. Taken together with the government’s acknowledgement that ICE sought the information to support the White House’s mass deportation agenda, the record raises the inference that ICE’s representation that it was conducting criminal investigations was a pretext.

There were other ways in which the procedure was illegal. ICE was not required to provide a specific reason why the requested information may be relevant to a proceeding or investigation as required by §6103(i)(2)(B)(iii). The IRS accepted a cover letter accompanying a batch of 1.28 million requests that gave a vague “reason” why the information requested was relevant. The Court found that the IRS flouted its statutory obligation when it accepted “that facially non-specific ‘reason’ as sufficient” to allow it to provide information to ICE. “The government and its personnel face steep civil and criminal consequences for willful disclosure of information in violation of section 6103. 26 U.S.C. §§ 7213(a)(1), 7431(c)(1). As this court has already cautioned, ‘we expect that, going forward, [the] IRS will adhere to the representations made before this court regarding the address requirement,’ and we stress that the same applies to the other requirements of section 6103. *Centro de Trabajadores Unidos*, 167 F.4th at 1232.” 2026 U.S. App. Lexus 27506 at *37-*38.

Finally, the district court acted within its sound discretion when it issued preliminary relief. Plaintiffs had demonstrated a likelihood of irreparable injury. An organization faces



irreparable harm when there are new obstacles that make it more difficult to accomplish its primary mission in circumstances where there can be no do over or redress. The injury the Center for Taxpayer Rights claimed was irreparable.

As to the balance of equities and the public interest, these factors merge when the Government is involved since it is against the public interest for a government agency to engage in unlawful action and the balance is in favor of the plaintiffs since they seek to prevent the IRS from making unlawful disclosures.

The Court stated that there was no governmental interest in conducting criminal investigations in violation of the statute. The district court's order that the IRS provide, under seal, prior notice of criminal investigatory activity "reasonably balances" the government's interest in making lawful disclosures with the plaintiff's interest in preventing unlawful disclosures. The Court concluded that the district court acted within its sound discretion when it preliminarily enjoined the IRS from using the Data Exchange Procedure. It therefore affirmed the district court.

Where Are We Now

It is unknown whether the government will seek a rehearing or petition the Supreme Court for certiorari. While it is refreshing to see a government attorney concede that a procedure violates the law and agree that the IRS will adhere to the law, it is not clear that this will happen, given the administration's penchant for violating court orders, especially in the area of immigration. See, <https://apnews.com/article/trump-courts-defiance-judges-lawsuits-152e5b39ca222c583962805fda5f47ae>. The courts, however, may be more willing to sanction misconduct by government officials. See, *Trump v. IRS*, 2026 U.S. Dist. Lexus 94772 (S.D. FL 8/3/2026) (imposing nonmonetary Rule 11 sanctions, including referral of President Trump's lawyer and Attorney General Blanche to their state bars, after finding that "Plaintiffs acted in bad faith and for an improper purpose by 'collusively filing a lawsuit with claims subject to multiple dispositive defenses solely to provide cover for a collusive settlement.'"). As the Supreme Court stated in *Niz-Chavez v. Garland*, "If men must turn square corners when they deal with the government, it cannot be too much to expect the government to turn square corners when it deals with them." Nor can it be too much to expect the courts to ensure the government does so.

Robert S. Horwitz is a Principal at Hochman Salkin Toscher Perez P.C., former Chair of the Taxation Section, California Lawyers' Association, a Fellow of the American College of Tax Counsel, a former Assistant United States Attorney and a former Trial Attorney, United States Department of Justice Tax Division. He represents clients throughout the United States and elsewhere involving federal and state administrative civil tax disputes and tax litigation as well as defending clients in criminal tax



investigations and prosecutions. In 2022 the Tax Section of the California Lawyers Association awarded him the Joanne M. Garvey Award for lifetime achievement in and contributions to the field of tax law. Additional information is available at <http://www.taxlitigator.com>.