IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MARK CRUMPACKER, Plaintiff, v. CAROLINE CIRAOLO-KLEPPER; MICHAEL MARTINEAU; MARK J. LANGER; COMM'R., INTERNAL REVENUE; UNITED STATES ATTORNEY GENERAL; and 2 UNKNOWN-NAMED IRS/DOJ ATTORNEYS, Defendants.	)	Case No. 1:16-cv-01053
UNITED STATES OF AMERICA Counterclaim Plaintiff, v. MARK CRUMPACKER, MICHAEL B. ELLIS, and ROBERT A. MCNEIL Counterclaim Defendants.	)	

UNITED STATES' REPLY IN SUPPORT OF
MOTION FOR ORDER TO SHOW CAUSE WHY
COUNTERCLAIM DEFENDANTS SHOULD NOT BE HELD IN CONTEMPT

The United States established in its motion for order to show cause that the counterclaim defendants, Robert McNeil and Michael Ellis, violated this court's injunction by filing *McNeil, et al. v. Harvey, et al.*, No. 1:17-cv-01720 in this district without first obtaining leave to do so.

McNeil and Ellis's opposition offers no reason why they should not be held in contempt for filing this new lawsuit. Instead, it simply rehashes McNeil and Ellis's oft-repeated and always rejected claim that their actions – and the actions they helped others file – were improperly dismissed under the Tax Anti-Injunction Act (26 U.S.C. § 7421) because:

> attorneys [including DOJ attorneys, and judicial officers from this district and elsewhere] "falsified the record [in their dismissed cases] to reflect that victims were supposedly attempting to 'enjoin IRS preparation of substitute income tax returns," despite victims' explicit ACTUAL core complaint allegation that the IRS never prepares substitute income tax returns on any date shown in IRS' digital records falsified as the initial step in the ASFR program.

Opposition [Dkt. No. 54] at 2.

McNeil and Ellis's outlandish allegation that judicial officers and attorneys from the Department of Justice are actively conspiring to deny them access to the Courts is (as this Court is aware) not new. They have litigated it via Rule 59 motions, as well as in their unsuccessful appeals to the D.C. Circuit in this case[1] and others. They are also currently litigating this claim in *Ellis v. Berman-Jackson*, No. 1-16-cv-02313 (D.D.C.). Complaint [Dkt. No. 1] at ¶ 37 ("United States judges have committed multiple apparent acts of misprision to obstruct the due administration of justice in a conspiracy to defraud Plaintiffs and the United States"), ¶ 84 (accusing this Court and other judicial officers of violating First Amendment Right of Access to

[1] *See* Plaintiffs' Rule 59(e) Motion to Vacate [Dkt. No. 26 at p. 1, 6 (accusing this Court of violating First Amendment right of access to courts by "refus[ing] to address the gravamen allegations of victims' suits, and . . .substitut[ing] their own fabricated allegations for those of the plaintiffs"); Plaintiffs' Second Rule 59(e) Motion to Vacate [Dkt. No. 44 at p. 6-8 (same)]; Appellants' Opposition to United States' Motion for Summary Affirmance and Motion for Summary Reversal, U.S.C.A. No. 17-5054 [Doc. # 1677549] at p. 10 (accusing this Court of never "adjudicat[ing] the ACTUAL merits of Plaintiff/Appellant's underlying case]; Appellants' Brief, U.S.C.A. No. 17-5191 [Doc. # 1694835] at p. 15 (accusing this Court of "fabricating and attributing to litigants complaint allegations they never made, and relief they never sought").

Courts by "falsely attributing to Plaintiffs allegations and relief sought . . . in order to bring Plaintiff/victims cases within the restrictive parameters of the [Anti-Injunction Act]").

Moreover, this Court held that McNeil's and Ellis's repeated, insistent prosecution of the same worn conspiracy theories in multiple suits amounted to "harassment" warranting the entry of an injunction under *In re Powell*, 861 F.2d 427, 431 (D.C. Cir. 1988). Order of Permanent Injunction, Findings of Fact, ¶ 10 ("McNeil and Ellis have, in their own suits and the suits they have prepared on behalf of others, sued . . . judicial officers[.]"); ¶ 11 ("McNeil has no good faith or legal basis for continuing to promote this duplicative litigation on www.ram-v-irs.com."); ¶ 12 ("McNeil and Ellis brought their respective lawsuits against individual federal officials, employees, and judicial officers for the purpose of harassment, and not for any legitimate purpose."). Accordingly, despite McNeil and Ellis's protestations to the contrary, this new suit is in no way new.

But, even assuming *arguendo* that this claim were new, McNeil and Ellis were still required to file an "Application Pursuant to Court Order Seeking Leave to File' that certifies that the claims presented are new claims never before raised an disposed of on the merits or on jurisdictional grounds by any court, attaches this Court's injunction, and "contains a certification *under penalty of contempt that the allegations of the complaint are true*." Order of Injunction at p. 6 ¶ 2 (emphasis added). They did not do so and have therefore violated this Court's injunction.

McNeil and Ellis respond that this new action is not within the ambit of the injunction because the new lawsuit does not challenge actions "taken by either the [IRS] or [DOJ], and seek no judgment against either. Instead . . . they seek a narrow declaratory judgment as to whether the merits of their [prior dismissed] cases to terminate the ASFR record falsification program

were ever adjudicated." Opp'n at 4-5. This argument does not justify their failure to follow the pre-filing procedures set out in this Court's injunction for two reasons. First, a declaration that the prior courts did not adjudicate their claims, or did not properly consider the record by "fabricating" facts, is functionally the same as a direct appeal from those dismissals.[2] It is nonsensical to argue that a direct appeal of those dismissals does not challenge the underlying conduct alleged in the complaint, when the very reason for the direct appeal is that the Court did not address the underlying conduct alleged in the complaint. Put another way, they cannot avoid the injunction against suing the DOJ for moving to dismiss their frivolous legal challenges by instead suing the courts for dismissing them. To the extent there is any distinction between the two, it is a false one.

Second, as noted above, McNeil and Ellis are litigating this same declaratory relief claim in *Ellis v. Jackson, et al.*, which was filed before the injunction was entered and which the Court noted as an example of a suit brought solely for the purpose of harassment. There is no principled reason why a post-injunction lawsuit seeking the same relief as *Ellis v. Jackson* does not violate the Court's injunction.

[2] For this reason, McNeil and Ellis's new lawsuit is subject to dismissal because a District Court is not a "reviewing court" that may review the decisions of its fellow Article III judges *Sibley v. United States Supreme Court*, 786 F. Supp. 2d 338, 345 (D.D.C. 2011) ("[t]his court is not a reviewing court and cannot compel . . . other Article III judges in this or other districts or circuits to act review by any other court.").

Conclusion

For the reasons set forth in the United States' opening memorandum and reply, the United States requests that the court order McNeil and Ellis to show cause why they should not be held in contempt or, since they have already responded to the United States' motion before an order to show cause has been issued, to hold them in contempt.

Dated: October 11, 2017

JESSIE K. LIU
United States Attorney

DAVID A. HUBBERT
Acting Assistant Attorney General

/s/ Ryan O. McMonagle
RYAN O. MCMONAGLE
Trial Attorney, Tax Division
U.S. Department of Justice
P.O. Box 227
Washington, D.C. 20044
Telephone: (202) 307-1355
Fax: (202) 514-6866
Email: Ryan.McMonagle@usdoj.gov

CERTIFICATE OF SERVICE

I certify that on October 11, 2017 I filed the foregoing Reply with the Clerk of Court using the CM/ECF system, and have caused a copy thereof to be served by U.S. mail, postage prepaid, to the following:

Michael B. Ellis
5052 NE County Road 220
Rice, Texas 75155
Counterclaim Defendant

Robert A. McNeil
729 Grapevine Highway #148
Hurst, Texas 76054
Counterclaim Defendant

/s/ Ryan O. McMonagle
RYAN O. MCMONAGLE