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NCLA, Shanmugam Ask Supreme Court to Grant Cert. Petition, Fix 4th Am. Rights for Crypto Records

James Harper v. Michael Faulkender, in His Official Capacity as Acting IRS Commissioner, et al.

Washington, DC (June 13, 2025) – The New Civil Liberties Alliance and renowned Supreme Court advocate Kannon Shanmugam have filed a reply [brief](#) urging the high court to hear NCLA’s *Harper v. Faulkender* appeal and reform the “third-party doctrine.” The federal government uses this doctrine to deny Fourth Amendment protection against government seizure and search of people’s cryptocurrency records stored with third parties.

The Internal Revenue Service unlawfully seized financial records of NCLA client James Harper and more than 14,000 other people from the Coinbase cryptocurrency exchange through abuse of a “John Doe” summons. IRS took Mr. Harper’s documents without any individualized suspicion to believe he had under-reported his income or failed to pay taxes. NCLA proudly welcomes Kannon Shanmugam and his Paul Weiss colleagues to our team representing Mr. Harper. The Justices should take this the opportunity to fix the third-party doctrine, which the government has used to strip away the Fourth Amendment digital privacy rights of millions of Americans who have little choice but to share their data with third-party service providers.

In August 2022, a three-judge panel of the U.S. Court of Appeals for the First Circuit unanimously ruled that Mr. Harper could take IRS to federal court for collecting his private financial information about his use of virtual currency from third-party exchanges without a lawful subpoena. However, the U.S. District Court for the District of New Hampshire subsequently dismissed Mr. Harper’s lawsuit against IRS in May 2023, incorrectly ruling that he had failed to state a claim. The First Circuit invoked the third-party doctrine to uphold that dismissal last September, denying Mr. Harper’s privacy and property interests. The Supreme Court must revisit the third-party doctrine to restore Fourth Amendment protection for Mr. Harper’s cryptocurrency data and other digital records.

Digital records are the modern-day equivalent of an individual’s “papers” and “effects” that the Fourth Amendment explicitly safeguards against the government’s prying eyes. Justice Sonya Sotomayor has observed that the third-party doctrine is “ill suited to the digital age, in which people reveal a great deal of information about themselves to third parties in the course of carrying out mundane tasks.” The government wrongly claims the Supreme Court does not need to hear this case because appeals courts have shown “uniformity in applying settled Fourth Amendment principles to new technology.” In fact, many federal judges have raised concerns about applying the wooden doctrine as technology develops. The Fifth and Ninth Circuits have both specifically questioned whether Americans assume the risk of their private information being disclosed to the government when they give it to third parties, the core idea upon which the third-party doctrine is founded.

The government obtained financial records of Mr. Harper and more than 14,000 other Americans without individualized suspicion that any of them broke the law. But the key Supreme Court decisions that created the third-party doctrine involved targeted investigations of a single individual and never justified warrantless mass surveillance. The Justices should return the doctrine to that focused, limited foundation or do away with it entirely.

NCLA released the following statements:

“The Government has failed to proffer convincing reasons why *certiorari* ought not be granted in this case. The case not only represents an injustice to Jim Harper’s rights but also presents novel and important questions for Fourth Amendment rights in the digital age.”

— **John Vecchione, Senior Litigation Counsel, NCLA**

“The third-party doctrine is a Fourth Amendment abomination. People have little choice in the digital age but to share private information with third-party service providers. Doing so does not surrender their property or privacy interests in that data, so the Court should require government agencies to obtain search warrants to access it.”

— **Mark Chenoweth, President, NCLA**

For more information visit the case page [here](#).

ABOUT NCLA

[NCLA](#) is a nonpartisan, nonprofit civil rights group founded by prominent legal scholar [Philip Hamburger](#) to protect constitutional freedoms from violations by the Administrative State. NCLA’s public-interest litigation and other pro bono advocacy strive to tame the unlawful power of state and federal agencies and to foster a new civil liberties movement that will help restore Americans’ fundamental rights.

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