

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI

TERRY LEE HINDS,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 25-cv-00047-AGF
	)	
JOSEPH R. BIDEN, JR, et al.,	)	
	)	
Defendants.	)	
_____	)	

**MEMORANDUM IN SUPPORT OF THE MOTION TO DISMISS PLAINTIFF’S  
“PETITION”**

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Defendant United States (incorrectly named here through the listing of the officials in their “official capacity” in the caption<sup>1</sup>) respectfully moves to dismiss Plaintiff’s “Petition”<sup>2</sup> (ECF No. 1) pursuant to Federal Rule of Civil Procedure (“FRCP”) Rule 41(b) and/or Rule 12(b)(1) for lack of subject jurisdiction. For the reasons set forth below, the Court should dismiss Hinds’s suit.

## INTRODUCTION

Plaintiff Terry Lee Hinds (“Hinds”) filed a prolix and largely incomprehensible “Petition” comprising 249 pages and 1,226 paragraphs. Hinds previously filed a substantially similar suit, which was dismissed by this Court in 2017. Hinds’s “Petition” should be dismissed

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<sup>1</sup> A suit against an official of the federal government in the officer’s official capacity is treated as a suit against the United States, and thus the proper defendant is the United States. *See Coleman v. Espy*, 986 F.2d 1184, 1189 (8th Cir. 1993); *Hawaii v. Gordon*, 373 U.S. 57, 58 (1963)). Thus, because Plaintiff named as defendants Joseph R. Biden, Daniel Werfel, Janet Yellen, and Merrick B. Garland expressly “in [their] official capacity,” this suit should be treated as one against the United States. While naming individuals as defendants may be appropriate in a suit properly brought under the Administrative Procedure Act (“APA”) or Religious Freedoms Restoration Act (“RFRA”), neither the APA or RFRA should apply in this case as discussed below in Part II.A.1. Even if either did, the naming of officials of the government as party defendants in their official capacities does not properly circumvent the doctrine of sovereign immunity as discussed in Part II.A.1. Similarly, if a suit is brought under 26 U.S.C. § 7422 against an officer of the United States, § 7422(f)(2) requires that the “pleadings be amended to substitute the United States as a party for such officer or employee.” Nevertheless, if the Court does consider this case as one properly brought against government officers such as (now former) President Biden and the other individually named defendants in their official capacities, they all are automatically substituted out since they are no longer with the government and have successors such as President Trump, Attorney General Bondi, etc. *See Fed. R. Civ. P. 25(d)*; *see, e.g., Aiken v. Dep’t of Justice*, 2017 WL 11884820, at \*1 n.1 (S.D. Fla. 2017). Additionally, Hinds has asserted that there are actually *eight* defendants involved in the case, however the “Petition’s” caption, as well as the attached list for the civil cover sheet, identify only the four individuals listed above. (ECF No. 9 at 2, 12); (ECF No. 1 at 1); (ECF No. 1-27 at 2).

<sup>2</sup> Hinds takes issue with our description of ECF No. 1 as a “Complaint” rather than “Petition.” (ECF No. 9). However, FRCP Rule 3, states that a civil action is commenced by the filing of a “Complaint” and FCRP 7(a)(1) specifies that only a complaint is allowed.

pursuant to FRCP Rule 41(b) for failure to comply with the pleading requirements of FRCP Rule 8. The extraordinary prolixity of the “Petition” is incompatible with Rule 8(a)’s direction that statements in pleadings should be “short and plain.” This, combined with the taxpayer’s history of non-compliance with Rule 8, justifies dismissal.

While it is difficult to decipher Hinds’s allegations, he appears to generally contend that the Internal Revenue Code (“IRC”) establishes a religion and infringes on his free-exercise rights. Multiple courts have rejected similar claims that taxation violates the First Amendment.<sup>3</sup> In any event, Hinds’s suit should be dismissed under Rule 12(b)(1) for lack of subject matter jurisdiction as we explain below.

It is apparent that in his current suit Hinds seeks to circumvent the doctrine of sovereign immunity by suing government officials in their official capacities instead of naming the United States. Hinds instead makes conclusory arguments that the Administrative Procedure Act, 5 U.S.C. §§ 551-559 (“APA”) and Religious Freedom Restoration Act, 42 U.S.C. §§ 2000bb-2000bb-4 (“RFRA”) as grounds for jurisdiction. But Hinds fail to allege why or how the APA and the RFRA would apply here. In any event, those two statutes cannot overcome the Anti-Injunction Act, 26 U.S.C. § 7421 (“AIA”) and the tax exception to the Declaratory Judgment

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<sup>3</sup> See *Hernandez v. Comm’r*, 490 U.S. 680, 699 (1989) (rejecting free exercise claim because “the guiding principle is that a tax ‘must be uniformly applicable to all, except as Congress provides explicitly otherwise’” (quoting *US v. Lee*, 455 U.S. 252, 261 (1982)); *Lee*, 455 U.S. at 260 (“Because the broad public interest in maintaining a sound tax system is of such a high order, religious beliefs in conflict with the payment of taxes affords no basis for resisting the tax.”); *Garner v. US*, 424 U.S. 648, 660 (1976) (“‘[I]ncome tax return[s] (are) neutral on their face and directed at the public at large.’” (quoting *Albertson v. SACB*, 382 U.S. 70, 79 (1965))); *US v. Rosnow*, 977 F.2d 399, 412 (8th Cir. 1992) (“First Amendment protection is ‘not so absolute as to protect speech or conduct which otherwise violates or incites a violation of the tax law.’” (quoting *US v. Citrowske*, 951 F.2d 899, 901 (8th Cir.1991))). Because the Court lacks subject matter jurisdiction, this motion does not seek to dismiss under Rule 12(b)(6).

Act, 28 U.S.C. §2201 (“DJA”) which bar his suit. As best as we can decipher, Hinds is challenging at least one tax liability and its collection because buried in his “Petition,” Hinds complains that he received an IRS notice (“statutory notice of deficiency”) showing that he owes \$12,080 for tax year 2021. He also alleges he is not a taxpayer. (ECF No 1. ¶¶ 280, 567-571; ECF No. 1-2). The AIA and tax exception to the DJA preclude injunctive and declaratory relief with regard to a challenge of Hinds’s tax liabilities.

To the extent Hinds may be seeking an abatement of his taxes, that is also precluded. Nowhere does Hinds allege that he paid the tax and filed an administrative claim for refund. Because the United States’s sovereign immunity has not been waived, the Court lacks subject matter jurisdiction over his suit, and it should be dismissed under Rule 12(b)(1).

## I. NATURE OF THE CASE

### A. *Previous Suit*

As stated, in 2017, Hinds filed a similarly verbose “complaint” before this Court consisting of 549 pages. See *Hinds I* (Civil Docket No. 17-00750, ECF No. 1). The Court first struck Hinds’s complaint for failure to comply with FRCP Rule 8. Hinds then filed an assortment of documents he labeled as “Revelation[s]” which the Court construed together as an amended “complaint.” *Id.* ECF Nos. 44, 55. The Court granted the United States’s motion to dismiss the case for lack of subject matter jurisdiction, holding that the “Complaint” failed to show a waiver of sovereign immunity, the DJA did not grant jurisdiction, and the AIA barred injunctive relief. *Id.* ECF No. 93-94 (reported at 2017 WL 6316813). Following dismissal, Hinds unsuccessfully appealed. See *Hinds v. U.S.*, 2018 U.S. App. LEXIS 8327 (8th Cir. 2018), *cert.denied.*, 586 U.S. 821 (2018). The Court is requested to take judicial notice of the foregoing under Federal Rule of Evidence 201.

B. *Present Suit*

In the present suit, Hinds reiterates many of the same core conclusory contentions he raised in the previous case. *Id.*; (ECF No. 1). He reiterates his belief that the Internal Revenue Code (“IRC”) creates and institutionalizes a religion he calls “taxism” and the “Systematic Theology of THEIRS.” (ECF No. 1 ¶¶ 33-34). He argues that core IRS functions (such as auditing, issuing refunds, and approving credits) create a religious relationship between the taxpayer and government and therefore the IRC unconstitutionally violates the Establishment and Free Exercise Clauses of the First Amendment. *Id.* ¶¶ 42-44, 972.

What Hinds wants the Court to do is not clear. Hinds generally requests declaratory relief, but he does not specify any particular declaration he is seeking. One way or another, Hinds seeks to eliminate his tax obligation. He alleges — as “a controversy ripe for judicial determination” — that he received a Notice CP200 for the 2021 tax year, more commonly referred to as a “Notice of Deficiency” dated July 3, 2023.<sup>4</sup> (ECF No. 1 ¶¶ 567; ECF No. 1-2). The Notice of Deficiency proposed changes to the amount of tax due for 2021 identifying that Hinds owed \$9,320 in taxes, a \$1,864 penalty for substantial tax understatement, and \$896 in

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<sup>4</sup> The issuance of a notice of deficiency is the taxpayer’s ticket to Tax Court. *See Guthrie v. Sawyer*, 970 F.2d 733, 735 (10th Cir. 1992). It is generally a statutory pre-condition before the Service may make an income tax assessment based on an audit determination that the taxpayer owes additional tax. *See Hempel v. U.S.*, 14 F.3d 572, 573 n.3 (11th Cir. 1994); *see also U.S. v. Zolla*, 724 F.2d 808, 810 (9th Cir.1984). If the taxpayer does not petition the Tax Court within 90 days after the mailing of the notice of deficiency, the Service may thereafter record the tax liability through a book-keeping notation known as an “assessment.” 26 U.S.C. §§ 6213(c); 6201(a)(1); 6203; *PolSELLI v. IRS*, 598 U.S. 432, 438 (2023); *Hibbs v. Winn*, 542 U.S. 88, 100 (2004); *Guthrie v. Sawyer*, 970 F.2d 733, 735 (10th Cir. 1992). Then following an assessment, coupled with notice thereof and a demand for payment, the IRS may administratively collect the assessed tax and any related assessments for interest and penalties. *U.S. v. Chila*, 871 F.2d 1015, 1018 (11th Cir. 1989).

interest. (ECF No. 1-2). In total, it proposed Hinds owed \$12,080 for tax year 2021. *Id.* Hinds disputes that he is liable for the taxes, alleging he “never filed a 2021 tax return[,]” because “‘I am’ not an IRS’ Taxp[r]ayer [*sic*].” (ECF No. 1 ¶ 280). This echoes language Hinds used in correspondence to the IRS where he asserts, “Terry & Sheila Hinds are NOT Taxpayers as within 26 U.S. Code §7701... We have not filed a 1040 Tax Forms for over 25 years.” (ECF No. 1-3, at 3).<sup>5</sup>

To the extent that it is cognizable from the 249-page “Petition,” we infer that Hinds seeks to have this Court to either declare his is not liable for the tax liability referred to above and/or permanently enjoin the IRS from either assessing his liabilities or collecting these liabilities for his 2021 tax year. (ECF No. 1 at 84-249) (asking for decree in each unnumbered “WHEREFORE” clause); (ECF No. 1 ¶ 15).

## II. ARGUMENT

### A. *Hinds’s “Petition” should be dismissed pursuant to Rule 41(b) for violating Rule 8*

The Court should dismiss the Petition because it violates the pleading requirements in Rule 8. Rule 8(a) requires, in part, that a pleading contains a “short and plain statement” of the grounds for the court’s jurisdiction and “short and plain statement” of the claim. A complaint that fails to comply with Rules 8(a) may be dismissed pursuant to Rule 41(b).<sup>6</sup> *Nevijel v. N. Coast Life Ins. Co.*, 651 F.2d 671, 675 (9th Cir. 1981).

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<sup>5</sup> Hinds’s allegations are similar to the ones set forth in *Lonsdale v. US*, 919 F.2d 1440, 1448 (10th Cir. 1990) (explaining many circuits have found that the argument that certain people are not “persons” subject to taxation is “completely lacking in legal merit and patently frivolous”).

<sup>6</sup> “Although pro se pleadings are to be construed liberally, pro se litigants are not excused from compliance with relevant rules of the procedural and substantive law.” *Schooley v. Kennedy*, 712 F.2d 372, 373 (8th Cir. 1983).

Hinds’s “Petition” is preposterously long, consisting of 1226 paragraphs and 249 pages, exclusive of attached exhibits (he also filed a separate “Brief in Support of Petition.”) (ECF Nos. 1-2). Hinds’s “Petition” fails to coherently plead facts justifying its length (or its request for relief at all). Plus, Hinds has a history of violating Rule 8. This action follows his 2017 suit where Hinds filed a 4451 paragraph, 547-page “complaint” and dozens of other lengthy filings that consistently failed to comply with Rule 8. *Hinds I* at ECF No. 1. The Court itself emphasized that Hinds filed “more than seventeen other motions or documents in this matter” each of which failed to constitute an amended complaint compliant with Rule 8. *Id.* at ECF No. 42 at 2.

Hinds has a track record of “non-compliance with the Federal Rules of Civil Procedure.” *Nevijel*, 651 F.2d at 675. Indeed, Hinds was previously warned by the Court of the necessity to abide by Rule 8 and the potential consequences of failing to do so. *Hinds I* at ECF Nos. 8, 18, 29, 42; *see also Mangan v. Weinberger*, 848 F.2d 909, 911 (8th Cir. 1988). Accordingly, dismissal for violation of Rule 8 is appropriate here due to extreme length and the repeated failure to abide by Rule 8.

B. *Hinds’s “Petition” should be dismissed under Rule 12(b)(1) for lack of subject matter jurisdiction*

A waiver of sovereign immunity is a prerequisite to subject matter jurisdiction in suits against the United States.<sup>7</sup> *Pres. Gardens Assocs. v. U.S. ex rel. Sec. of HUD*, 175 F.3d 132, 139 (2d Cir. 1999). Therefore, to sustain a suit against the government, the plaintiff must first show a waiver of sovereign immunity, even if a statute otherwise grants the Court subject matter

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<sup>7</sup> Hinds may not properly circumvent the doctrine of sovereign immunity by naming government officials as party defendants as noted earlier.

jurisdiction. *U.S. v. Park Place Assocs., Ltd.*, 563 F.3d 907, 924 (9th Cir. 2009) (“[A] statute may create subject matter jurisdiction yet not waive sovereign immunity.”); *see also Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994) (explaining that to sustain a suit a plaintiff must establish subject matter jurisdiction). This is a threshold matter, and without jurisdiction a court must order dismissal without proceeding any further. *Steel Co. v. Citizens for a Better Env’t*, 523 U.S. 83, 94-95, (1998); Fed. R. Civ. P. 12(h)(3).

Whether Hinds establishes subject matter jurisdiction hinges on whether he can show that the United States waived its sovereign immunity to consent to be sued. *U.S. v. Sherwood*, 312 U.S. 584, 586 (1941); *U.S. v. Dalm*, 494 U.S. 596, 608 (1990); *FDIC v. Meyer*, 510 U.S. 471, 475 (1994). “Absent a waiver, sovereign immunity shields the Federal Government and its agencies [and employees sued in their official capacities] from suit.” *Meyer*, 510 U.S. 475 (citations omitted). In order for a statute to waive sovereign immunity to allow a suit against the US, it must do so explicitly. *Lane v. Pena*, 518 U.S. 187, 192 (1996). Sovereign immunity similarly shields individually named defendants acting in their official capacity. *Atkinson v. O’Neill*, 867 F.2d 589, 590 (10th Cir. 1989); *Morgan v. FBPs*, 129 F.4th 1043, 1051 (7th Cir. 2025). Listing individuals as defendants, therefore, is not a run-around the constraints of sovereign immunity.<sup>8</sup>

1. Potential waivers of sovereign immunity under the APA or RFRA cannot overcome AIA and tax exception to the DJA which divest the Court of jurisdiction

In his petition, Hinds cursorily invokes the APA and RFRA which provide for limited

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<sup>8</sup> *Kennedy v. Comm’r*, 790 Fed. Appx. 447, 449 n.1 (3d Cir. 2019) (“A plaintiff cannot circumvent the doctrine of sovereign immunity by naming the Commissioner and an IRS employee as defendants where, as here, there is no indication that the defendants are being sued in anything other than their official capacity.”).

waivers of sovereign immunity for nonmonetary relief.<sup>9</sup> 5 U.S.C. §§ 701-702, 706; *Lonsdale v. U.S.*, 919 F.2d 1440, 1444 (10th Cir. 1990); *see also* 42 USC §§ 2000bb-2000bb-4; *Dep't of Educ. v. California*, \_\_\_, U.S. \_\_\_, 2025 WL 1008354, at \*1 (2025); *Davila v. Gladden*, 777 F.3d 1198, 1210 (11th Cir. 2015). However, both waivers are conditioned on no other statute precluding relief. Built into the very text of the APA is the exception that “[t]he APA’s waiver of sovereign immunity does not apply ‘if any other statute that grants consent to suit expressly or impliedly forbids the relief which is sought.’” *Dep't of Educ.*, 2025 WL 1008354 at \*1 (quoting 5 U.S.C. § 702). And while RFRA does generally waive sovereign immunity for suits involving nonmonetary relief, “[t]he tax system could not function if denominations were allowed to challenge the tax system because tax payments were spent in a manner that violates their religious belief.” *US v. Lee*, 455 U.S. 252, 260 (1982); *accord U.S. v. Bowman*, 2022 WL 1616985, at \*1 (9th Cir. 2022). And any waiver of sovereign immunity under RFRA may nevertheless be precluded by other statutes. RFRA, 42 USC §§ 2000bb-2000bb-4; *Hobby Lobby Stores, Inc. v. Sebelius*, 723 F.3d 1114, 1127 (10th Cir. 2013), *aff'd sub nom. Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682 (2014) (concluding that in this case the AIA did not apply so the court could then consider a RFRA claim); *Morgan*, 129 F.4th at 1049-1050 (explaining in a RFRA case seeking damages that “federal sovereign immunity bars suits against the United States, including suits against federal agencies or federal officials in their official capacities, unless Congress has waived this immunity[.]” and that the phrase “appropriate relief” in RFRA was too ambiguous to waive the government’s sovereign immunity) (citing *U.S. v. Testan*, 424

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<sup>9</sup> Even if Hinds is correct in naming individual officers the legal analysis is the same because the immunities claimed in an official-capacity action are the forms of sovereign immunity which the entity would claim. *Kentucky v. Graham*, 473 U.S. 159, 167 (1985).

U.S. 392, 399 (1976) and collecting cases).

An APA challenge is inapplicable here because Hinds alleges no agency action (final or otherwise). Moreover, the only specific agency action that Hinds seems to refer to the IRS issuance of a statutory notice of deficiency that shows he has an income tax liability for tax year 2021, and that he disputes it by claiming not to be a taxpayer. (ECF No. 1 ¶¶ 567; ECF No. 1-2). But the APA cannot apply here since other statutes bar Hinds' challenge as we explain below. *See also Dillon v. U. S.*, 620 F.Supp.3d 856, 860 (D. Minn. 2022).

Where Congress has provided for a specific waiver of sovereign immunity, the “limitations and conditions upon which the Government consents to be sued must be strictly observed.” *Soriano v. U.S.*, 352 U.S. 270, 276 (1957). Two of those limitations and conditions on any waiver of sovereign immunity are found in the AIA and tax exception to the DJA. *See* AIA, 26 U.S.C. § 7421(a); *Pagonis v. U.S.*, 575 F.3d 809, 813 (8th Cir. 2009); *see also* DJA, 28 U.S.C. § 2201(a); *Porter v. Fox*, 99 F.3d 271, 274 (8th Cir. 1996). If either of these statutes apply, the Court does not have subject matter jurisdiction, even under the APA. *Rivera v. IRS*, 708 Fed. Appx. 508, 511-12 (10th Cir. 2017).<sup>10</sup>

The AIA expressly prohibits injunctive relief that would restrain the “assessment or collection of any tax.” 26 U.S.C. § 7421(a).<sup>11</sup> And not only does it cover assessment of the

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<sup>10</sup> When taxpayers challenge acts taken by the IRS that relate to the assessment or collection of taxes, the APA does not negate the AIA and the tax exception to the DJA. *See Franklin v. U.S. States*, 49 F.4th 429, 434-35 (5th Cir. 2022); *Cypress v. U.S.*, 646 Fed. Appx. 748, 755 (11th Cir. 2016); *Hybertson v. U.S.*, 2016 WL 1171520 at \*5 (D. S.D. 2016) (citing, among other cases, *Porter*, 99 F.3d at 274; *accord Dillon* F.Supp.3d at 860).

<sup>11</sup> The AIA contains several statutory exceptions, including the failure to issue a notice of deficiency under 26 U.S.C. § 6212(a), but none are applicable here. And Hinds admitted he received such a notice as explained above.

liabilities, but also the activities leading up to the assessment of a tax liability (such as the issuance of a notice of deficiency), and its collection. *Dillon*, 620 F. Supp.3d at 860-61. Stated another way, the AIA “kicks in when the target of a requested injunction is a tax obligation.”<sup>12</sup> *Optimal Wireless LLC v. IRS*, 77 F.4th 1069, 1073 (D.C. Cir. 2023) (quoting *CIC Servs., LLC v. IRS*, 141 S. Ct. 1582, 1589-0 (2021)).

Declaratory relief is similarly prohibited “with respect to federal taxes” by the tax exception to the DJA. 28 U.S.C. § 2201(a). See *E.J. Friedman Co. v. US*, 6 F.3d 1355, 1359 (9th Cir. 1993) (“Because the case at bar involves federal taxes, declaratory relief is unavailable, and § 2201 cannot serve as a waiver of sovereign immunity.”). This is a broad bar to relief and includes constitutional challenges to taxation. See, e.g., *Wyo. Trucking Ass’n v. Bentsen*, 82 F.3d 930, 933-34 (10th Cir. 1996); *Willis v. Alexander*, 575 F.2d 495, 496 (5th Cir. 1978); *Bell v. Rossotti*, 227 F. Supp. 2d 315, (M.D. Pa. 2002) (dismissing claim for declaration regarding application of First Amendment to tax issues); *Klingler v. Exec. Branch of Union Known as U.S.*, 572 F. Supp. 589, 590-91 (M.D. Ala. 1983) (dismissing suit where “it is clear that his requested relief, if granted, would prohibit the processes of federal tax collection”). The tax exception to the DJA “is at least as broad as the Anti-Injunction Act.” *Bob Jones Univ. v. Simon*, 416 U.S. at 732 n.7, and a number of courts have held that the tax exception to the DJA and the AIA are coterminous statutes. *Green Solution Retail, Inc. v. U.S.*, 855 F.3d 1111, 1115 (10th Cir. 2017) (citing *Cohen v. U.S.*, 650 F.3d 717, 730–31 (D.C. Cir. 2011) (en banc)).

Hinds’s claim directly relates to the assessment or collection of taxes even though he

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<sup>12</sup> Historically, this has also included constitutional claims related to taxes. *Bob Jones Univ. v. Simon*, 416 U.S. 725, 748-49 (1974).

does not expressly state exactly what the declaration and/or injunction he seeks. (ECF No. 1 at 84-249 (asking for decree in each unnumbered “WHEREFORE” clause)). At a minimum, Hinds contests a notice of deficiency covering his taxes. (ECF No. 1 ¶¶ 280, 567, 571; ECF No. 1-2.) More generally, his Petition shows that he wants to prevent the IRS from assessing and/or collecting any taxes against him (and perhaps any and all other taxpayers as well). (ECF No. 1 ¶ 15). Either of these arguments independently trigger the AIA and DJA, which bar jurisdiction.

And, as stated, while there are limited exceptions to the AIA, both statutory and judicially-created, none apply here. 26 U.S.C. § 7421(a) carves out exceptions to relief from joint and several liability on joint return, notices of deficiency,<sup>13</sup> restrictions applicable to deficiencies, premature action, extension of the collections statute expiration date, wrongful levy, injury to superior rights in property, review of jeopardy levy or assessment procedures, and proceedings for determination of employment status. In addition, caselaw has created an exception where explaining attempted collection may be enjoined if in no circumstances could the government prevail on collection of the taxes alleged to be due and if equity jurisdiction otherwise exists.<sup>14</sup> *Enochs v. Wms. Packing Navigation Co.*, 370 U.S. 1, 7 (1962). But that exception is inapplicable because Hinds can pay his liability and sue for a refund, and that is his adequate remedy at law. *See Maze v. IRS*, 862 F.3d 1087, 1093 (D.C. Cir. 2017) (a refund suit is

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<sup>13</sup> In addition, while the exception outlined in § 7421 also mentions notices of deficiency, the exception applies when there is a “failure to send a notice of deficiency to taxpayer.” *U.S. v. Landau*, 2000 WL 16926, at \*2 (S.D.N.Y. 2000). Not, as is the case here, where a taxpayer merely disagrees with the information on the notice of deficiency. Regardless, Hinds does not raise this in the “Petition.” (ECF No. 1).

<sup>14</sup> Hinds does fails to argue that there are no circumstances under which the United States could prevail in collecting taxes from him. The notice of deficiency suggests that he has income. (ECF No. 1-2).

an adequate alternative to injunctive relief); *accord Taliaferro v. United States*, 677 Fed. Appx. 536, 538 (11th Cir. 2017).

Hinds invokes 26 U.S.C. § 7426(b)(1), which is one of the statutory exceptions to the AIA. *See* (ECF No. 1 ¶ 22). Hinds pleads no § 7426 wrongful levy claim, and if even he had, he would lack standing to invoke that statute. Section 7426 is for the exclusive use of a third party (someone other than the taxpayer) who claims that their property was wrongfully levied upon. *See* Section § 7426(a)(1); *Gold Forever Music, Inc. v. U.S.*, 920 F.3d 1096, 1098 (6th Cir. 2019).<sup>15</sup> Hinds plead no such third-party levy.

In sum, Hinds fails to show on the face of the “Petition” that the United States has waived its sovereign immunity and that the Court has subject matter jurisdiction to hear this case.

2. There is no independent First Amendment waiver of sovereign immunity

The First Amendment, on its own, does not waive the United States’s sovereign immunity. *Ascot Dinner Theatre, Ltd. v. Small Bus. Admin.*, 887 F.2d 1024, 1031 (10th Cir. 1989). Indeed, nothing in the text of the First Amendment references a lawsuit against the government. And waiver cannot be implied. *Lane*, 518 U.S. at 192. Just like in 2017, Hinds points to no caselaw indicating that the First Amendment is strictly construed as a waiver, nor does he make the argument that the First Amendment “unequivocally expresses” any waiver. *See Hinds I*, 2017 WL 6316813, at \*2 (E.D. Mo. 2017).

3. The United States only waives sovereign immunity in tax refund suits when the taxpayer fully pays the tax and files and administrative claim for refund.

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<sup>15</sup> And in any Section 7426 action, the suit may only be maintained against the United States. *See* Sections 7426(d) and (e), and the validity of the tax liability is presumed to be conclusive. Sec. 7426(c).

While Congress does not allow taxpayers to challenge their assessed tax liabilities through injunctive or declaratory relief, the proper way for a taxpayer to do so is through a refund suit.<sup>16</sup> There is a narrow waiver of sovereign immunity for tax refund suits related to taxation, but Hinds’s suit falls outside that waiver. The United States consents to be sued for “erroneously or illegally assessed or collected taxes,” *only after* taxpayers (1) fully pay the tax or penalty due; *Flora v. U.S.*, 357 U.S. 63, 68 (1958), *aff’d on reh’g*, 362 U.S. 145 (1960); (2) timely file a claim for refund with the IRS, 26 U.S.C. §§ 7422(a) & 6511; *U.S. v. Dalm*, 494 U.S. 596, 601–02, 607–08 (1990); and (3) if the refund claim is denied or not acted upon within six months, timely file suit in the district court or Court of Claims. See 26 U.S.C. § 6532(a). *See also U.S. v. Clintwood Elkhorn Min. Co.*, 553 U.S. 1, 4 (2008) (“The [IRC] specifies that before [bringing a suit], the taxpayer must comply with the tax refund scheme established in the [Internal Revenue] Code. That scheme provides that a claim for a refund must be filed with the [IRS] before suit can be brought and establishes strict timeframes for filing such a claim.” (internal citations omitted)); *see also Barse v. US*, 957 F.3d 883, 885-86 (8th Cir. 2020).

Hinds does not allege that he paid the tax or penalty<sup>17</sup> and filed a timely administrative claim for refund before the IRS. *See generally* (ECF No. 1). Accordingly, this suit does not fall within the narrow waiver of sovereign immunity.

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<sup>16</sup> Even if styled as an APA suit, when a case comes down to taxes it may nevertheless be “a refund suit in everything but name.” *See. Harrison v. IRS*, 2021 WL 930266, at \*4 (D.D.C. 2021) (quoting *Clark Cty. Bancorporation v. US Dep’t of Treasury*, No. 2014 WL 5140004, at \*9 (D.D.C. 2014).

<sup>17</sup> Hinds does not allege that he has paid any of his tax liabilities before seeking this suit. To the contrary, he insists that he has not even filed a tax return “for over 25 years.” (ECF No. 1-3, at 3).

## CONCLUSION

This “Petition” should also be dismissed pursuant to Rule 41(b) for failing to comply with Rule 8. In addition, this case should be dismissed pursuant to Fed. R. Civ. P. 12(b)(1) because Hinds fails to establish a waiver of sovereign immunity and therefore the Court lacks subject matter jurisdiction.

Accordingly, this motion should be *granted* and the “Petition” dismissed.

Dated: April 14, 2025

s/ Mollie Clark Ahsan  
MOLLIE CLARK AHSAN  
0505321(MN)<sup>18</sup>  
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*Counsel for Defendant*

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<sup>18</sup> Counsel, Mollie Clark Ahsan, in the Motion for Extension of Time to File Answer filed on March 13, 2025 listed her bar number as 0505284, but a different number was listed on Minnesota’s online registry. Counsel appreciates Hinds discovering this error and bringing it to her attention. Upon investigating the issue and reaching out to the Lawyer Registration Office, Counsel was able to confirm that, following admission to the Minnesota Bar on October 25, 2024, Counsel was erroneously issued two bar numbers. The error has been corrected and Counsel has confirmed that her correct bar number is 0505321. At all times since October 25, 2024, Mollie Clark Ahsan has been licensed to practice and searchable (as Hinds demonstrates) via name in the Minnesota Supreme Court Lawyer Registration Office, and therefore the discrepancy did not prejudice the Plaintiff.

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI

TERRY LEE HINDS,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 25-cv-00047-AGF
	)	
JOSEPH R. BIDEN, JR, et al.,	)	
	)	
Defendants.	)	
_____	)	

**CERTIFICATE OF SERVICE**

I hereby certify that on April 14, 2025, I filed a true and correct copy of the MEMORANDUM IN SUPPORT OF THE MOTION TO DISMISS PLAINTIFF’S “PETITION” by electronically filing it with the Court using the CM/ECF system, which will notify all registered users. Moreover, I certify that I caused to be mailed, in postage prepaid and sealed envelope, a true and correct copy of the Motion referred to above by U.S. Mail to the following non-participant in Electronic Case Filing and addressed to

Terry Lee Hinds  
438 Leicester Square Dr.  
Ballwin, MO 63021

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Dated: April 14, 2025

s/ Mollie Clark Ahsan  
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