[DO NOT PUBLISH]

In the

# United States Court of Appeals

## For the Eleventh Circuit

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No. 23-12445

Non-Argument Calendar

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JUAN RAMON GOMIS RABASSA,

Plaintiff-Appellant,

*versus*

UNITED STATES OF AMERICA,
INTERNAL REVENUE SERVICE,

Defendants-Appellees.

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Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 1:22-cv-20456-JEM

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Before ROSENBAUM, GRANT, and BRASHER, Circuit Judges.

PER CURIAM:

Juan Gomis Rabassa appeals the district court's order denying both his petition to quash a summons that the Internal Revenue Services issued to his bank and his request for an evidentiary hearing. After reviewing the record and briefing, we affirm.

**I.**

In 1990, the United States and Spain entered a treaty in which both nations agreed that their respective tax authorities would exchange information with one another to enable the nations to enforce their tax provisions. *See generally* Convention Between the United States of America and the Kingdom of Spain for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, Together with a Related Protocol, U.S.-Spain, Feb. 22, 1990, S. Treaty Doc. No. 101-16. Article 1 of the treaty explains that the Convention applies "to persons who are residents of one or both of the Contracting States, except as otherwise provided in the Convention." *Id.* Later in Article 27, the treaty states that Spain and the United States "shall exchange such information as is necessary for carrying out the provisions of this Convention or of the domestic laws of the Contracting States concerning taxes covered by the Convention." *Id.* Given the nations' broad goal of preventing income tax evasion, the treaty goes on to explain that this "exchange of information is not restricted by paragraph 1 Article 1," which is the treaty's residency provision.

Protocol Amending the Tax Convention with Spain, Spain-U.S., art. XXVII, Jan. 14, 2013, S. Treaty Doc. No. 113-4. Rather, if one of the countries requests information in accordance with the treaty, the other country "shall use its information gathering measures to obtain the requested information, even though that other State may not need such information for its own tax purposes." *Id.*

In June 2021, the Spanish tax authority submitted an exchange of information request to the IRS regarding Spain's examination of Juan Gomis Rabassa's 2015 through 2018 tax liabilities. The request explained that Gomis Rabassa was the majority owner of the Spanish company Technical Minds Investments S.L., and that it was seeking information about accounts relating to Gomis Rabassa at the Miami branch of Banco de Sabadell, S.A. After determining the request was proper under the treaty, the IRS issued a summons on January 26, 2022, to the Miami bank, seeking bank account records related to Gomis Rabassa during those tax years. The summons stated that it was issued to investigate Gomis Rabassa's Spanish income and capital tax liabilities, and the IRS provided Gomis Rabassa with a copy.

Soon after, Gomis Rabassa petitioned the district court to quash the summons. In his amended petition, Gomis Rabassa argued that the IRS did not issue the summons in good faith because he is not a resident of either the U.S. or Spain, rendering the treaty inapplicable. He also argued that the summons was a veiled attempt to help Spain launch a criminal investigation against him.

The IRS moved to dismiss the petition, arguing that because the treaty applied to non-residents, Gomis Rabassa's residency was a non-issue. Attached to its motion were two declarations from government officials. The first was by Tina Masuda on behalf of the U.S. competent authority. She explained that, based on her review of the request, it was proper, within the guidelines of the treaty, and should be honored. The second declaration was by Floyd Penn, the IRS agent responsible for authorizing the issuance of summonses based on treaty partner requests. He explained that, despite Gomis Rabassa's petition and claims of non-residency, the Spanish authority continued to require the requested bank information to aid its tax examination of Gomis Rabassa. Therefore, it continued to be appropriate for the United States to honor Spain's request. The IRS argued that, based on these declarations, it had issued the summons for the legitimate purpose of complying with the nation's treaty obligations to Spain.

The district court referred the IRS's motion to dismiss the petition to a magistrate judge who, following a hearing, recommended granting the motion. The magistrate judge determined that the treaty permits the exchange of information relating to non-residents, the IRS had established a prima facie case that its summons was valid, and Gomis Rabassa had not met his burden of rebutting that prima facie showing or otherwise presenting adequate evidence that the IRS lacked good faith. The district court adopted the findings and recommendations, granted the motion to dismiss, and dismissed the amended petition to quash. Gomis Rabassa timely appealed.

## II.

We will not reverse an order enforcing an IRS summons unless it is clearly erroneous. *United States v. Clarke*, 816 F.3d 1310, 1315 (11th Cir. 2016). We review a district court's denial of an evidentiary hearing for an abuse of discretion. *United States v. Clarke*, 573 U.S. 248, 255–56 (2014).

## III.

Gomis Rabassa argues on appeal that the IRS lacked good faith when issuing the summons because it knew that he was not a resident of either nation and that he had fulfilled any tax obligations between 2015 and 2018. The summons was also improper, he argues, because the IRS sought to initiate a Spanish criminal investigation by using civil means. And because he could "point to specific facts or circumstances plausibly raising an inference of bad faith," he was entitled to an evidentiary hearing. *Clarke*, 573 U.S. at 254. We disagree. The district court did not err in enforcing the summons because the treaty applies to non-residents and because the legitimacy of Spain's investigation is irrelevant to whether the IRS acted in good faith.

The IRS has broad statutory authority to issue summonses to taxpayers to determine tax liabilities. *Id.* at 249. That authority includes issuing a summons pursuant to a treaty partner's request. *See United States v. Stuart*, 489 U.S. 353, 360–63 (1989). Taxpayers can petition a district court to quash a summons the IRS issued to a third party for records relating to the taxpayer. *See* 26 U.S.C. §

7906(a), (b)(2). To defeat the petition, the IRS must make a prima facie showing that it issued the summons in good faith, demonstrating that (1) it issued the summons for a legitimate purpose, (2) the information sought may be relevant to that legitimate purpose, (3) it does not already possess the information, and (4) it followed the required administrative steps to issue a summons. *United States v. Powell*, 379 U.S. 48, 57–58 (1964). "The IRS can satisfy this burden merely by presenting the sworn affidavit of the agent who issued the summons attesting to these facts." *La Mura v. United* States, 765 F.2d 974, 979 (11th Cir. 1985).

If the IRS makes this prima facie showing, the burden then shifts to the taxpayer to disprove one of the four elements or convince the court that enforcing the summons would constitute an abuse of the court's process. *Id.* at 979–80; *Powell*, 379 U.S. at 58. Such abuse takes place "if the summons had been issued for an improper purpose, such as to harass the taxpayer or to put pressure on him to settle a collateral dispute, or for any other purpose reflecting on the good faith of the particular investigation." *Powell*, 379 U.S. at 58. Unlike the IRS's light burden to establish a prima facie enforcement case, the burden on the petitioner contesting the summons is heavy. *United States v. Leventhal*, 961 F.2d 936, 940 (11th Cir. 1992). And although courts have the power to enforce a summons, we may inquire only whether the IRS issued the summons in good faith and "must eschew any broader role of overseeing the IRS's determinations to investigate." *Clarke*, 573 U.S. at 254. Our focus is on the IRS's good faith in issuing the summons, not the treaty partner's good faith in requesting the information. *See*

*Mazurek v. United States*, 271 F.3d 226, 231 (5th Cir. 2001) (citing *Stuart*, 489 U.S. at 370).

On appeal, Gomis Rabassa challenges only the first of the *Powell* factors, contending that the IRS did not issue the summons for a legitimate purpose. But the declarations attached to the IRS's motion satisfied this factor by explaining that it issued the summons to assist Spain's investigation, pursuant to the IRS's information-sharing obligations under the treaty. *See Mazurek*, 271 F.3d at 230 ("Assisting the investigation of a foreign tax authority has been held to be a legitimate purpose by itself."); *see also La Mura*, 765 F.2d at 979 (explaining that the IRS can satisfy its prima facie showing "merely by presenting the sworn affidavit of the agent who issued the summons attesting to these facts").

Gomis Rabassa's argument that the summons could not have a legitimate purpose because he is a non-resident fails because the treaty's exchange-of-information agreement applies to taxpayers who are not residents of either the United States or Spain. Gomis Rabassa misreads how Articles 1 and 27 of the treaty interact. Although Article 1 states that the treaty applies to residents of both nations, Article 27 explains that the nations' exchange-of-information duties are "not restricted" by Article 1's residency clause. Protocol Amending the Tax Convention with Spain, Spain-U.S., art. XXVII, Jan. 14, 2013, S. Treaty Doc. No. 113-4. Rather, the two nations agreed that they "shall exchange such information as is foreseeably relevant for . . . the administration or enforcement of the domestic laws concerning taxes of every kind." *Id.* And

although Gomis Rabassa is not a resident of either country, he concedes that he pays non-resident income taxes in Spain. Gomis Rabassa has a connection to both countries—as a non-resident taxpayer and businessowner in Spain and a bank account holder or beneficiary in the United States. Not only does the summons therefore possess a legitimate purpose under the letter of the statute, but the treaty's purpose of enabling the nations to enforce their "domestic laws concerning taxes of every kind" clearly includes non-resident taxpayers like Gomis Rabassa as well. *Id.*

Our reading of the treaty is consistent with the Department of the Treasury's technical explanation, which explains that "if a third-country resident has a permanent establishment in the other Contracting State, and that permanent establishment engages in transactions with a U.S. enterprise, the United States could request information with respect to that permanent establishment, even though the third-country resident is not a resident of either Contracting State." Dep't of the Treasury, Technical Explanation of the Protocol Amending the Convention Between the United States of America and the Kingdom of Spain for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Its Protocol 48.

Just as Gomis Rabassa's residency is not relevant to the legitimacy of the summons, neither are the arguments he makes attacking the legitimacy of Spain's investigation. "As long as the IRS acts in good faith, it need not also attest to—much lest prove—the good faith of the requesting nation." *Mazurek*, 271 F.3d at 231

(citing *Stuart*, 489 U.S. at 370). Gomis Rabassa's unsupported arguments that Spain is engaging in an improper criminal investigation and that he fulfilled whatever tax liabilities he had to Spain are irrelevant. The legitimacy of Spain's investigation does not rebut the IRS's prima facie showing under *Powell* because the enforcement inquiry ends with a determination that the IRS acted in good faith. *See Stuart*, 489 U.S. at 356; *Mazurek*, 271 F.3d at 233.

Because non-resident taxpayers are covered by the treaty and because Spain's good faith is irrelevant, the district court did not clearly err in finding that the IRS had a legitimate purpose in issuing the summons. The declarations explain how Spain's request was proper under the treaty, and the United States is required under the treaty to help Spain collect tax liability information. *See Stuart*, 489 U.S. at 355 (explaining, in the context of a similar international agreement, that tax treaties "oblige the United States . . . to obtain and convey information" to the treaty partner). Therefore, the IRS has made a prima facie showing under *Powell*'s first factor that the summons was issued for a legitimate purpose, and Gomis Rabassa has failed to meet his heavy burden to refute that factor on appeal. And because Gomis Rabassa challenged only the first element of the IRS's prima facie showing, we will not consider any challenge to the remaining *Powell* factors. *See APA Excelsior III L.P. v. Premiere Techs., Inc.*, 476 F.3d 1261, 1269 (11th Cir. 2007) ("[W]e do not consider claims not raised in a party's initial brief.").

Lastly, the district court did not abuse its discretion by denying an evidentiary hearing. Gomis Rabassa had to "point to specific

facts or circumstances plausibly raising an inference of bad faith" to warrant an evidentiary hearing. *Clarke*, 573 U.S. at 254. But his request centered around his arguments about his residency and the legitimacy of Spain's investigation, both of which are irrelevant to the determination of the IRS's good faith. Accordingly, the district court was well within its discretion to deny the request because the hearing would have centered on irrelevant evidence. *See Mazurek*, 271 F.3d at 235.

## IV.

The district court is **AFFIRMED**. We deny all pending motions as moot.