Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

UNITED STATES *v.* CLARKE ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

No. 13–301. Argued April 23, 2014—Decided June 19, 2014

The Internal Revenue Service (IRS) issued summonses to respondents for information and records relevant to the tax obligations of Dynamo Holdings L. P. See 26 U. S. C. §7602(a). When respondents failed to comply, the IRS brought an enforcement action in District Court. Respondents challenged the IRS's motives in issuing the summonses, seeking to question the responsible agents. The District Court denied the request and ordered the summonses enforced, characterizing respondents' arguments as conjecture and incorrect as a matter of law. The Eleventh Circuit reversed, holding that the District Court's refusal to allow respondents to examine the agents constituted an abuse of discretion, and that Circuit precedent entitled them to conduct such questioning regardless of whether they had presented any factual support for their claims.

Held: A taxpayer has a right to conduct an examination of IRS officials regarding their reasons for issuing a summons when he points to specific facts or circumstances plausibly raising an inference of bad faith. Pp. 5–9.

(a) A person receiving a summons is entitled to contest it in an adversarial enforcement proceeding. *Donaldson* v. *United States*, 400 U. S. 517, 524. But these proceedings are "summary in nature," *United States* v. *Stuart*, 489 U. S. 353, 369, and the only relevant question is whether the summons was issued in good faith, *United States* v. *Powell*, 379 U. S. 48, 56. The balance struck in this Court's prior cases supports a requirement that a summons objector offer not just naked allegations, but some credible evidence to support his claim of improper motive. Circumstantial evidence can suffice to meet that burden, and a fleshed out case is not demanded: The taxpayer need only present a plausible basis for his charge. Pp. 5–7.

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(b) Here, however, the Eleventh Circuit applied a categorical rule demanding the examination of IRS agents without assessing the plausibility of the respondents' submissions. On remand, the Court of Appeals must consider those submissions in light of the standard set forth here, giving appropriate deference to the District Court's ruling on whether respondents have shown enough to entitle them to examine the agents. However, that ruling is entitled to deference only if it was based on the correct legal standard. See *Fox* v. *Vice*, 563 U. S. ___, ___. And the District Court's latitude does not extend to legal issues about what counts as an illicit motive. Cf. *Koon* v. *United States*, 518 U. S. 81, 100. Pp. 7–9.

517 Fed. Appx. 689, vacated and remanded.

KAGAN, J., delivered the opinion for a unanimous Court.

SUPREME COURT OF THE UNITED STATES

No. 13–301

UNITED STATES, PETITIONER *v.* MICHAEL CLARKE ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

[June 19, 2014]

JUSTICE KAGAN delivered the opinion of the Court.

The Internal Revenue Service (IRS or Service) has broad statutory authority to summon a taxpayer to produce documents or give testimony relevant to determining tax liability. If the taxpayer fails to comply, the IRS may petition a federal district court to enforce the summons. In an enforcement proceeding, the IRS must show that it issued the summons in good faith.

This case requires us to consider when a taxpayer, as part of such a proceeding, has a right to question IRS officials about their reasons for issuing a summons. We hold, contrary to the Court of Appeals below, that a bare allegation of improper purpose does not entitle a taxpayer to examine IRS officials. Rather, the taxpayer has a right to conduct that examination when he points to specific facts or circumstances plausibly raising an inference of bad faith.

I

Congress has "authorized and required" the IRS "to make the inquiries, determinations, and assessments of all taxes" the Internal Revenue Code imposes. 26 U. S. C.

§6201(a). And in support of that authority, Congress has granted the Service broad latitude to issue summonses "[f]or the purpose of ascertaining the correctness of any return, making a return where none has been made, determining the liability of any person for any internal revenue tax . . . , or collecting any such liability." §7602(a). Such a summons directs a taxpayer (or associated person[1]) to appear before an IRS official and to provide sworn testimony or produce "books, papers, records, or other data . . . relevant or material to [a tax] inquiry." §7602(a)(1).

If a taxpayer does not comply with a summons, the IRS may bring an enforcement action in district court. See §§7402(b), 7604(a). In that proceeding, we have held, the IRS "need only demonstrate good faith in issuing the summons." *United States* v. *Stuart*, 489 U. S. 353, 359 (1989). More specifically, that means establishing what have become known as the *Powell* factors: "that the investigation will be conducted pursuant to a legitimate purpose, that the inquiry may be relevant to the purpose, that the information sought is not already within the [IRS's] possession, and that the administrative steps required by the [Internal Revenue] Code have been followed." *United States* v. *Powell*, 379 U. S. 48, 57–58 (1964). To make that showing, the IRS usually files an affidavit from the responsible investigating agent. See *Stuart*, 489 U. S., at 360. The taxpayer, however, has an opportunity to challenge that affidavit, and to urge the court to quash the summons "on any appropriate ground"—including, as relevant here, improper purpose. See *Reisman* v. *Caplin*, 375 U. S. 440, 449 (1964).

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[1]The IRS has authority to summon not only "the person liable for tax," but also "any officer or employee of such person," any person having custody of relevant "books of account," and "any other person the [IRS] may deem proper." 26 U. S. C. §7602(a)(2). For convenience, this opinion refers only to the "taxpayer."

The summons dispute in this case arose from an IRS examination of the tax returns of Dynamo Holdings Limited Partnership (Dynamo) for the 2005–2007 tax years. The IRS harbored suspicions about large interest expenses that those returns had reported. As its investigation proceeded, the Service persuaded Dynamo to agree to two year-long extensions of the usual 3-year limitations period for assessing tax liability; in 2010, with that period again drawing to a close, Dynamo refused to grant the IRS a third extension. Shortly thereafter, in September and October 2010, the IRS issued summonses to the respondents here, four individuals associated with Dynamo whom the Service believed had information and records relevant to Dynamo's tax obligations. None of the respondents complied with those summonses. In December 2010 (still within the augmented limitations period), the IRS issued a Final Partnership Administrative Adjustment proposing changes to Dynamo's returns that would result in greater tax liability. Dynamo responded in February 2011 by filing suit in the United States Tax Court to challenge the adjustments. That litigation remains pending. A few months later, in April 2011, the IRS instituted proceedings in District Court to compel the respondents to comply with the summonses they had gotten.

Those enforcement proceedings developed into a dispute about the IRS's reasons for issuing the summonses. The IRS submitted an investigating agent's affidavit attesting to the *Powell* factors; among other things, that declaration maintained that the testimony and records sought were necessary to "properly investigate the correctness of [Dynamo's] federal tax reporting" and that the summonses were "not issued to harass or for any other improper purpose." App. 26, 34. In reply, the respondents pointed to circumstantial evidence that, in their view, suggested "ulterior motive[s]" of two different kinds. App. to Pet. for Cert. 72a. First, the respondents asserted that the IRS

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