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9 **IN THE UNITED STATES DISTRICT COURT**  
10 **EASTERN DISTRICT OF CALIFORNIA**  
11

12 UNITED STATES OF AMERICA,

13 Petitioner,

14 v.

15 RICHARD RODRIGUEZ,

16 Respondent.

**1:14-cv-00326-LJO-GSA**

**FINDINGS AND RECOMMENDATIONS  
RE: I.R.S. SUMMONS ENFORCEMENT**

Taxpayer:  
**RICHARD RODRIGUEZ**

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19 This matter came before Magistrate Judge Gary S. Austin on May 9, 2014, under the  
20 Order to Show Cause filed March 10, 2014. The Order to Show Cause, with the Verified  
21 Petition to Enforce I.R.S. Summons filed March 6, 2014 and its supporting memorandum, was  
22 personally served upon the respondent, Richard Rodriguez, on March 18, 2014. Respondent did  
23 not file a written opposition or a notice of non-opposition to the verified petition as provided for  
24 in the Order to Show Cause. Yoshinori H. T. Himel, Assistant United States Attorney, appeared  
25 on behalf of Petitioner, and investigating Revenue Officer Lorena Ramos was also present.  
26 Respondent did not appear at the scheduled hearing.  
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1 The Verified Petition to Enforce IRS Summons initiating this proceeding seeks to enforce  
2 an administrative summons (Exhibit A to the petition) issued May 28, 2013. The summons is  
3 part of an investigation of the respondent to secure information needed to collect Form 1040  
4 assessed federal income taxes for the tax year ending December 31, 2007, and civil penalties for  
5 the quarterly tax periods ending June 30, 2008, September 30, 2008, December 31, 2008, March  
6 31, 2009, June 30, 2009, September 30, 2009, December 31, 2009, March 31, 2010, June 30,  
7 2010, September 30, 2010, December 31, 2010, March 31, 2011, June 30, 2011, and September  
8 30, 2011.

9 Subject matter jurisdiction is invoked under 28 U.S.C. §§ 1340 and 1345, and is found to  
10 be proper. I.R.C. §§ 7402(b) and 7604(a) (26 U.S.C.) authorize the government to bring the  
11 action. The Order to Show Cause shifted to respondent the burden of rebutting any of the four  
12 requirements of United States v. Powell, 379 U.S. 48, 57-58 (1964).

13 The Court has reviewed the petition and supporting documents. Based on the  
14 uncontroverted verified petition by Revenue Officer Lorena Ramos and the entire record, the  
15 Court makes the following findings:

16 (1) The summons issued by Revenue Officer Lorena Ramos on May 28, 2013, and served  
17 upon respondent, Richard Rodriguez, on May 28, 2013, seeking testimony and production of  
18 documents and records in respondent's possession, was issued in good faith and for a legitimate  
19 purpose under I.R.C. § 7602, that is, to secure information needed to collect Form 1040 assessed  
20 federal income taxes for the tax year ending December 31, 2007, and civil penalties for the  
21 quarterly tax periods ending June 30, 2008, September 30, 2008, December 31, 2008, March 31,  
22 2009, June 30, 2009, September 30, 2009, December 31, 2009, March 31, 2010, June 30, 2010,  
23 September 30, 2010, December 31, 2010, March 31, 2011, June 30, 2011, and September 30,  
24 2011.

25 (2) The information sought is relevant to that purpose.

26 (3) The information sought is not already in the possession of the Internal Revenue  
27 Service.

28 (4) The administrative steps required by the Internal Revenue Code have been followed.

1 (5) There is no evidence of referral of this case by the Internal Revenue Service to the  
2 Department of Justice for criminal prosecution.

3 (6) The verified petition and its exhibits made a prima facie showing in satisfaction of the  
4 requirements of United States v. Powell, 379 U.S. 48, 57-58 (1964).

5 (7) The burden shifted to respondent, Richard Rodriguez, to rebut that prima facie  
6 showing.

7 (8) Respondent presented no argument or evidence to rebut the prima facie showing.

8 The Court therefore recommends that the IRS summons served upon Respondent,  
9 Richard Rodriguez, be enforced, and that Respondent be ordered to appear at the I.R.S. offices  
10 at 2525 Capitol Street, Suite 206, Fresno, California, before Revenue Officer Lorena Ramos or  
11 her designated representative, on the twenty-first (21st) day after the filing date of the District  
12 Judge's summons enforcement order, or at a later date to be set in writing by Revenue Officer  
13 Ramos, then and there to be sworn, to give testimony, and to produce for examining and  
14 copying the books, checks, records, papers and other data demanded by the summons, the  
15 examination to continue from day to day until completed. It is further recommended that if it  
16 enforces the summons, the District Court should retain jurisdiction to enforce its order by means  
17 of its contempt power.

18 These findings and recommendations are submitted to the United States District Judge  
19 assigned to this case pursuant to 28 U.S.C. § 636(b)(1)(B) and (C) and Rule 304 of the Local  
20 Rules of this Court. Within fourteen (14) days after being served with these findings and  
21 recommendations, any party may file written objections with the court and serve a copy on all  
22 parties. Such a document should be titled "Objections to Magistrate Judge's Findings and  
23 Recommendations." Any reply to the objections shall be served and filed within ten (10) days  
24 after service of the objections. The District Judge will then review these findings and  
25 recommendations pursuant to 28 U.S.C. § 636(b)(1). The parties are advised that failure to file  
26 objections within the specified time may waive the right to appeal the District Court's order.  
27 Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

1 THE CLERK SHALL SERVE this and further orders by mail to Richard Rodriguez,  
2 7233 W. Browning, Fresno, California 93723.

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4 IT IS SO ORDERED.

5 Dated: June 3, 2014

/s/ Gary S. Austin  
6 UNITED STATES MAGISTRATE JUDGE