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7 Attorneys for Petitioner United States of America

8 **IN THE UNITED STATES DISTRICT COURT**  
9 **EASTERN DISTRICT OF CALIFORNIA**

10  
11 UNITED STATES OF AMERICA,  
12  
13 Petitioner,

14 v.

14 MANUEL CARRAZCO REA,  
15  
16 Respondent.

**1:16-CV-01692-AWI-MJS**

**MAGISTRATE JUDGE'S FINDINGS AND  
RECOMMENDATIONS AND ORDER RE:  
I.R.S. SUMMONS ENFORCEMENT**

**Taxpayer:  
MANUEL CARRAZCO REA**

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19 This matter came on before Magistrate Judge Michael J. Seng on February 24, 2017,  
20 under the Order to Show Cause filed November 15, 2016. ECF 4. The order, with the verified  
21 petition filed November 4, 2016, ECF 1, and its supporting memorandum, ECF 3-1, was  
22 personally served on Respondent, on December 22, 2016, in Madera, California. ECF 5.  
23 Respondent did not file opposition or non-opposition to the verified petition as provided for in  
24 the Order to Show Cause. At the hearing, Bobbie J. Montoya, Assistant United States Attorney,  
25 personally appeared on behalf of Petitioner, and investigating Revenue Officer Lorena Ramos  
26 also was present in the courtroom. Respondent did not appear at the hearing.

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1           The Verified Petition to Enforce I.R.S. Summons initiating this proceeding seeks to  
2 enforce an administrative summons issued December 1, 2015. *See* Exhibit A to the Petition,  
3 ECF 1-2. The summons is part of an investigation of the respondent to determine the existence  
4 and amount of U.S. tax liability and collection of the tax liability for Form 940 for the calendar  
5 periods ending December 31, 2006, December 31, 2007, and December 31, 2008; Form 943 for  
6 the calendar periods ending December 31, 2006, and December 31, 2007, and Form CIVPEN  
7 for the calendar period ending December 31, 2006.

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

12           I have reviewed the petition and documents in support. Based on the uncontroverted  
13 petition verified by Revenue Officer Lorena Ramos and the entire record, I make the following  
14 findings:

15           (1)     The summons (Exhibit A to the Petition, ECF 1-2) issued by Revenue Officer  
16 Lorena Ramos on December 1, 2015, and served upon Respondent on December 4, 2015,  
17 seeking testimony and production of documents and records in Respondent's possession, was  
18 issued in good faith and for a legitimate purpose under I.R.C. § 7602, that is, to determine the  
19 existence and amount of U.S. tax liability and collection of the tax liability for Form 940 for the  
20 calendar periods ending December 31, 2006, December 31, 2007, and December 31, 2008; Form  
21 943 for the calendar periods ending December 31, 2006, and December 31, 2007, and Form  
22 CIVPEN for the calendar period ending December 31, 2006.

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

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

26           (4)     The administrative steps required by the Internal Revenue Code have been  
27 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 of satisfaction of  
4 the requirements of *United States v. Powell*, 379 U.S. 48, 57-58 (1964).

5 (7) The burden shifted to respondent, Manuel Carrasco Rea, to rebut that *prima facie*  
6 showing.

7 (8) Respondent presented no argument or evidence to rebut the *prima facie* showing.  
8 I therefore recommend that the I.R.S. summons served upon Respondent, Manuel Carrasco Rea,  
9 be enforced and that Respondent be ordered to appear at the I.R.S. offices at 2525 Capitol Street,  
10 Suite 206, Fresno, CA 93721, before Revenue Officer Lorena Ramos or her designated  
11 representative, on the twenty-first (21st) day after the filing date of the District Judge's  
12 summons enforcement order, or at a later date to be set in writing by Revenue Officer Ramos,  
13 then and there to be sworn, to give testimony, and to produce for examining and copying the  
14 books, checks, records, papers and other data demanded by the summons, the examination to  
15 continue from day to day until completed. I further recommend that if it enforces the summons,  
16 the Court retain jurisdiction to enforce its order by its contempt power.

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

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1 THE CLERK SHALL SERVE this and further orders by mail to Manuel Carrazco Rea,  
2 1509 Wrenwood Way, Madera, CA 93638.

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4 IT IS SO ORDERED.

5 Dated: March 6, 2017

6 /s/ Michael J. Seng  
7 UNITED STATES MAGISTRATE JUDGE  
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