

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF FLORIDA  
Miami Division**

Case No. 11-MC-23107-GOLD/Goodman [Lead Case]

**MICCOSUKEE TRIBE OF INDIANS  
OF FLORIDA**, a federally recognized  
Indian Tribe,

Petitioner,  
vs.

**UNITED STATES OF AMERICA,**

Respondent.

**MICCOSUKEE TRIBE’S MEMORANDUM OF LAW IN SUPPORT OF ITS  
MOTION TO REQUEST DISCOVERY AND EVIDENTIARY HEARING**

COMES NOW, Petitioner, the Miccosukee Tribe of Indians of Florida (hereinafter, “the Miccosukee Tribe”), by and through undersigned counsel, and files this Memorandum of Law in support of its Motion to Request Discovery and Evidentiary Hearing as required by Magistrate Judge Goodman’s Order Setting Discovery Conference and Modifying Briefing Schedule and Protocol. [D.E. No. 23].

**MEMORANDUM OF LAW**

**THE COURT SHOULD EXERCISE ITS DISCRETION TO GRANT THE  
MICCOSUKEE TRIBE’S MOTION TO REQUEST DISCOVERY**

It is within this Court's discretion to grant discovery such as depositions to the Miccosukee Tribe. This Court should exercise its discretion in this case to allow the Miccosukee Tribe to conduct pre evidentiary discovery, such as a deposition of the IRS agent, in order to provide the Miccosukee Tribe with an opportunity to obtain information that would aid in challenging the IRS' (hereinafter, "IRS") purpose in issuing the overbroad summonses.

The Fifth Circuit "emphasize[d] that the method and scope of discovery in summons enforcement proceedings largely are committed to the discretion of the district courts." *United States v. Harris*, 628 F.2d 875, 884 (5th Cir. 1980).<sup>1</sup> The 11th Circuit Court of Appeals has stated that it reviews a District court's denial of discovery for abuse of discretion. *Nero Trading, LLC v. United States*, 570 F.3d 1244, 1248 (11th Cir. 2009). A district court has the discretion to limit discovery rules in a summons enforcement proceeding. *Harris*, 628 F.2d at 883. However, this discretion is not abused by allowing the prehearing deposition of the IRS agent. *Id.* In *United States v. Roundtree* the Fifth Circuit rejected the IRS' argument that because summons enforcement actions were summary in nature, the district court was required to deny a request for deposition of the IRS agent. 420 F.2d 845, 852 (5th Cir. 1970). Instead, it found that the district court had abused its

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<sup>1</sup> In *Bonner v. City of Prichard*, 661 F.2d 1206, 1209 (11th Cir. 1981) (en banc), this court adopted as binding precedent all decisions of the former Fifth Circuit handed down prior to October 1, 1981.

discretion in denying deposition of the IRS agent. *Id.* Finally, it found that the district court has authority to limit the deposition if it is conducted unreasonably.

*Id.*

A deposition in this case would aid the Miccosukee Tribe in obtaining information necessary to meet its burden of showing that the IRS issued the summonses for an improper purpose and that the summonses are overbroad. Consequently, the Court should exercise its discretion and grant the Miccosukee Tribe's Motion to Request Discovery and Evidentiary Hearing.

Respectfully submitted this 29th day of December 2011.

s/Bernardo Roman III  
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on December 29, 2011, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that on December 29, 2011 the foregoing document is being served on all counsel of record or pro se parties identified on the attached Service List via NEF by CM/ECF.

s/Bernardo Roman III  
BERNARDO ROMAN III

**SERVICE LIST**

*Miccosukee Tribe of Indians v. United States*  
Case No. 10-MC-23107-GOLD/Goodman (Lead Case)  
United States District Court for the Southern District of Florida

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