

OCT 06 2010

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>UNITED STATES OF AMERICA,</p> <p>Petitioner - Appellee,</p> <p>v.</p> <p>JOHN J. SCHLABACH,</p> <p>Respondent - Appellant.</p>
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No. 09-35135

D.C. No. 2:08-cv-00095-CI

MEMORANDUM\*

Appeal from the United States District Court  
for the Eastern District of Washington  
Fred Van Sickle, District Judge, Presiding

Submitted September 22, 2010\*\*

Before: WALLACE, HAWKINS, and THOMAS, Circuit Judges.

The district court did not clearly err by granting the petition because John Schlabach (“Schlabach”) failed to rebut the government’s showing that the summons was issued in good faith. *See Stewart v. United States*, 511 F.3d 1251, 1254-55 (9th Cir. 2008) (taxpayer’s heavy burden to show abuse of process or lack

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\* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

\*\* The panel unanimously concludes this case is suitable for decision without oral argument. *See Fed. R. App. P. 34(a)(2)*.

of good faith once government makes prima facie showing summons was issued in good faith).

Schlabach's remaining contentions are unpersuasive.

**AFFIRMED.**