

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

OCT 24 2022

FOR THE NINTH CIRCUIT

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

JEN ZHANG, (Hwa Yu); CHARLES  
ZHANG, (Zhi Yu),

Plaintiffs-Appellants,

v.

UNITED STATES OF AMERICA; UNITED  
STATES INTERNAL REVENUE  
SERVICE; UNITED STATES ATTORNEY  
GENERAL,

Defendants-Appellees.

No. 21-17093

D.C. No. 3:21-cv-04655-CRB

MEMORANDUM\*

Appeal from the United States District Court  
for the Northern District of California  
Charles R. Breyer, District Judge, Presiding

Submitted October 18, 2022\*\*  
Portland, Oregon

Before: PAEZ and BADE, Circuit Judges, and R. COLLINS,\*\*\* District Judge.

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\* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

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

\*\*\* The Honorable Raner C. Collins, United States District Judge for the District of Arizona, sitting by designation.

Plaintiffs-Appellants Jen (Hwa Yu) and Charles (Zhi Yu) Zhang (collectively “Appellants”) appeal the district court’s order granting the United States’ motion to dismiss or summarily deny petition to quash IRS summons and to enforce IRS summons. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

1. The IRS summons in this case was issued at the request of Canadian tax authorities pursuant to a bilateral treaty between the United States and Canada. The IRS may issue a third-party summons to obtain relevant documents when, as here, those documents are properly requested by a treaty partner. *See United States v. Stuart*, 489 U.S. 353, 355–56, 370 (1989). To obtain enforcement of the summons, the IRS must make a prima facie showing of its “good faith” by meeting the elements enumerated in *United States v. Powell*, 379 U.S. 48, 57–58 (1964). *See Crystal v. United States*, 172 F.3d 1141, 1143–44 (9th Cir. 1999). The IRS need only establish its own good faith, not that of the requesting foreign sovereign. *See Stuart*, 489 U.S. at 370; *see also Lidas, Inc. v. United States*, 238 F.3d 1076, 1081–82 (9th Cir. 2001). Upon a prima facie showing of good faith, the taxpayer may then challenge the enforcement of the summons “on any appropriate grounds,” including that the IRS failed to meet the *Powell* elements or that issuing the summons would be an abuse of process. *Crystal*, 172 F.3d at 1144 (quoting *United States v. Jose*, 131 F.3d 1325, 1328 (9th Cir. 1997) (en banc)).

Appellants do not dispute that the IRS satisfied its burden under *Powell* by establishing a prima facie case of good faith. Instead, Appellants argue that the district court should have considered evidence of Canada’s bad faith at what they term “*Powell*’s second step” because Canada’s bad faith is relevant to whether issuing the summons would constitute an abuse of the court’s process. We have recently considered and rejected nearly identical arguments. *See Puri v. United States*, No. 21-55132, 2022 WL 3585664 (9th Cir. Aug. 22, 2022).

We do so again today, reiterating that as “long as *the IRS itself* acts in good faith, as that term was explicated in [*Powell*], and complies with applicable statutes, it is entitled to enforcement of its summons.” *Stuart*, 489 U.S. at 370 (emphasis added). Indeed, we have explicitly held that “the IRS need not establish the good faith of the requesting nation” when a summons is issued “at the request of a tax treaty partner.” *Lidas*, 238 F.3d at 1082. We reject Appellants’ reading of *Powell*, *Stuart*, and related cases as untenable.

**AFFIRMED.**