

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

Adam Steele, Brittany Montrois, and )  
Joseph Henchman, on behalf of )  
themselves and all others similarly )  
situated, )  
    *Plaintiffs,* )  
    v. )  
United States of America, )  
    *Defendant.* )  
\_\_\_\_\_ )

Civil Action No.: 1:14-cv-01523-RCL

**MOTION FOR CLARIFICATION OF SUMMARY-JUDGMENT OPINION**

Plaintiffs seek clarification of two points of ambiguity in the Court’s January 24, 2023 Memorandum Opinion. The first is whether the cost of work relating to unidentified return preparers (“ghosts”) may be included in the PTIN fee. The second is whether the costs of registration of foreign preparers, who lack social security numbers, may be included in the PTIN fee.

“Although no Federal Rule of Civil Procedure specifically governs ‘motions for clarification,’ these motions are generally recognized and allowed by federal courts. The general purpose of a classic motion for clarification is to explain or clarify something ambiguous or vague.” *Fairholme Funds, Inc. v. Fed. Hous. Fin. Agency*, No. 1:13-cv-1053-RCL, 2022 WL 11110548, at \*5 (D.D.C. Oct. 19, 2022) (Lamberth, S.J.) (cleaned up). Plaintiffs identified the ambiguities in the parties’ Joint Status Report of February 23, 2023, and now file this formal motion seeking clarification.

First, in discussing the costs of Compliance Department activities that may be covered by the PTIN fee, the Court refers in one place to misuse *and* nonuse, and in another, just to misuse.

ECF 226 at 22. Policing misuse of PTINs within RPO was a separate activity from the policing of nonuse. *See* ECF 204 at 14 n.9 (arguing that ghost-preparer problems have existed for decades (i.e., pre-PTINs) and a PTIN would not be of use to a ghost preparer).

On page twenty-two of its memorandum opinion, the Court states that “[t]o the extent that [the three specific categories of Compliance Department activities] relate to misuse of PTINs, all three are reasonably related to the provision of the private benefit that the Circuit identified in *Montrois*—protection of preparers’ identity—because the misuse of PTINs compromised their ability to serve as a secure means of identification.” ECF 221 at 22. Yet, in the next paragraph, the opinion suggest that activities related to “the misuse or *nonuse* of PTINs” are recoverable costs. *Id.* (emphasis added). Plaintiffs thus respectfully request clarification as to whether costs associated with detecting and policing both misuse and nonuse of PTINs are permissibly included, or whether only costs associated with misuse of PTINs are permissibly included.

Second, Plaintiffs seek clarification about whether registration costs for foreign preparers may be recovered through PTIN fees. In their opening summary judgment brief, Plaintiffs argued that they should not be. ECF 177-29 at 20-21. The government waived any argument that they should be included by not responding to the argument. Because the Court did not expressly rule on the issue, Plaintiffs seek clarification as to whether the Court’s silence on the matter indicates that the costs are permissible or impermissible.

The 2010 Cost Model includes the following item: “Foreign Preparer Registration Processing: Includes costs associated with validating location and identity of preparers without an SSN.” *See, e.g.*, ECF 177-31 at 5. *Montrois* held that the “specific benefit” provided by the PTIN is “help[ing] protect tax-return preparers’ identities by allowing them to list a number on returns other than their social security number.” *Montrois v. United States*, 916 F.3d 1056, 1063 (D.C.

Cir. 2019). This Court then held that “the government must be able to explain with respect to each activity that formed the basis of the PTIN fees how that activity was reasonably related to providing the private benefit that the Circuit identified in *Montrois*: a means of identifying return preparers that protects them from identity theft.” ECF 221 at 18. Because foreign preparers who did not have social security numbers received no benefit from the PTIN, the costs of their PTIN registration activities should not be recoverable through PTIN fees. ECF 177-29 at 20-21. The government did not argue otherwise. In light of the Court’s silence on the issue and Defendant’s waiver, Plaintiffs seek clarification whether the Court intended those costs to be included in the lawful PTIN fee.

Dated: March 17, 2023

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on March 17, 2023, I electronically filed Plaintiffs' Motion for Clarification of Summary-Judgment Opinion. I understand that notice of this filing will be sent to all parties by operation of the Court's electronic filing system.

Dated: March 17, 2023

/s/ William H. Narwold

William H. Narwold