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10 UNITED STATES DISTRICT COURT FOR THE  
 NORTH DISTRICT OF CALIFORNIA  
 SAN FRANCISCO DIVISION

11 IN THE MATTER OF THE TAX )  
 12 LIABILITIES OF: )  
 )  
 13 JOHN DOES, United States citizen( ), who )  
 directly or indirectly held authority over any )  
 14 combination of account held with Payward )  
 Venture Inc., d/b/ Kraken or Kraken.com, or )  
 15 its redeemer, subsidiary, division, or )  
 affiliate (collectively, "Kraken"), with total )  
 16 net worth of \$20,000 in value of )  
 17 transaction (regardless of type) in )  
 cryptocurrency in any one year, for the period )  
 18 January 1, 2016 through December 31, 2020. )

Civil Number: 3:21-cv-02201-JCS

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20 **UNITED STATES' RESPONSE TO**  
**ORDER TO SHOW CAUSE WHY**  
**PETITION SHOULD NOT BE DENIED**

21 The Court has ordered the United States to show cause why its ex parte petition for leave to serve  
 22 "John Doe" summons on Payward Venture, Inc. and Subsidiary (Kraken) should not be denied for  
 23 failure to meet the "nonfrivolously" requirement of 26 U.S.C. § 760(f). (Docket No. 6). The United  
 24 States submit this response.

25 **I. INTRODUCTION**

26 The requirement that John Doe summons be "nonfrivolously" filed to inform that pertains to  
 27 the failure (or potential failure) of the [John Doe client] to comply with one or more provisions of the  
 internal revenue law" was added to 26 U.S.C. 760 (f) to ensure that "the information sought in the  
 summons [is] at least potentially relevant to the tax liability of the concerned group." H. R. Rep. No.

1 116-3 , 116<sup>th</sup> Cong. 1<sup>st</sup> Se , t 41 (A ril , 201 ). The John Doe ummon the I S eek to erve on  
 2 Kr ken i rt of n ongoing, exten ive inve tig tion involving ub t nti l I S re ource th t i  
 3 roducing re l re ult –million of doll r in re viou ly unre orted nd un id t xe recovered for the  
 4 Tre ury to d te. And the ummon eek inform ation th t i needed to identify t x yer who m ay not  
 5 be com plying with the l w.

6 In it Order, the Court referred to nother Magi tr te Judge deci ion in e r te ummon  
 7 enforcement roceeding, *United States v. Coinbase*, No. 17-cv-01431-JSC, 2017 WL 58 0052, (N.D.  
 8 C l. Nov. 28, 2017). In *Coinbase*, the Court enforced in rt n rrowed John Doe ummon , but found  
 9 th t bro d c tegorie of inform ation, like ome of tho e reque ted here, were not relev nt under *United*  
 10 *States v. Powell*, 37 U.S. 48 (1 64). The Court re oned th t “the I S hould fir t review b ic u er  
 11 inform ation nd tr n ction hi torie before determining whether further ub oen —either to the  
 12 cry tocurrency exch nge or to individu l u er —were nece ry.” (OSC, Docket No. 6 (citing *United*  
 13 *States v. Coinbase*, t \*6-7). In effect, the Court in *Coinbase* cre ted novel ummon roce by which  
 14 the I S h d to ur ue it inve tig tion in h e . The United St te doe not believe th t thi h ed,  
 15 limited-inform ation-review ro ch i wh t *Powell* require or Congre intended in modifying  
 16 § 760 (f). Indeed, if Congre h d believed th t the I S hould be initi lly limited to getting only the  
 17 mo t b ic identifying inform ation, it would h ve legi l ted cordingly. In te d, Congre w nted to  
 18 cl rify th t the inform ation ought in John Doe ummon h d to be “ t le t otenti lly relev nt to the  
 19 t x li bility of the [John Doe cl ].” H. . e . No. 116-3 , t 40-42. Congre reiter ted th t the new  
 20 requirement w not intended to ch nge the well-e t bli hed enforcement t nd rd in *Powell* or ch nge  
 21 the I S burden of roof. *Id.*

22 The n rrowly t ilored requirement w intended to require the I S to c refully ev lu te wh t  
 23 inform ation it need to identify the member of John Doe cl nd to determine whether tho e cl  
 24 member com plied with the intern l revenue l w . A det iled below, the United St te believe th t it  
 25 reque t re n rrowly-t ilored to eek “inform ation th t ert in to the f ilure (or otenti l f ilure) of the  
 26 er on or grou or cl of er on referred to in [§ 760 (f)(2)] to com ply with one or more rovi ion  
 27 of the intern l revenue l w,” nd reflect le on le rned from the limited inform ation the I S received

United St te e on e to  
 Order to Show C u e

1 from the retroactively enforced Coinbase John Doe summons. But to allude to potential concern, the IRS  
 2 has reviewed some of the requests in the retroactively issued John Doe summons to Kraken. The reviewed retroactively issued  
 3 summons included Exhibit B to the Second Declaration of Kraken Cincott (“Second Declaration”),  
 4 filed concurrently with this opinion, and the content of the reviewed retroactively issued summons are explained  
 5 below.

## 6 II. DISCUSSION

7 In enforcing the John Doe summons in part, the Court in *Coinbase* explained that it viewed the  
 8 IRS’ first investigative task being to review the transaction information of each account holder to  
 identify whether there was any taxable gain. *Coinbase, supra*, at \*7. But the IRS’ process for  
 10 identifying whether there was any taxable gain based on the information it receives from John Doe  
 11 summons, such as the one in *Coinbase*, is not straightforward. As in *Coinbase*, the transaction  
 12 information sought from Kraken relates to cryptocurrency. Cryptocurrency is treated as property for  
 13 federal tax purposes. *See* Notice 2014-21, 2014-16 I.R.B. 38, 2014 WL 1224474 (Mar. 26, 2014).  
 14 When reporting gain and loss from the sale of cryptocurrency, taxpayers may use different methods  
 15 for calculating that gain or loss. For example, taxpayers may use the specific identification method to  
 16 identify the sale of specific units of cryptocurrency in a specific acquisition. *See* IRS Virtual Currency  
 17 FAQ, FAQ#3 & 40, available at: [Frequently Asked Question on Virtual Currency Transaction |](#)  
 18 [Internal Revenue Service \(irs.gov\)](#). Alternatively, where taxpayers have not used the specific  
 19 identification method or block record to fully support the use of that method, the taxpayer must rely on  
 20 the so-called “first-in-first-out” accounting method that implies the sale of units of cryptocurrency  
 21 gain in the oldest-acquired unit chronologically. *Id.* at FAQ#41. The examples show taxpayers  
 22 flexibility in how they calculate gain or loss on the sale of cryptocurrency units held in a  
 23 wallet, the IRS cannot make “taxable gain” determination by looking at transaction holder  
 24 transaction information in isolation. The IRS must (1) identify the account holder, (2) determine  
 25 whether that individual filed a tax return for the relevant taxpayer, (3) determine whether that individual  
 26 reported cryptocurrency transaction on that return, and (4), if so, whether what was reported, or the  
 27 block chain in reporting the information, indicate compliance with the internal revenue law.

1 This difficulty can become even more complicated because many taxpayers reporting in the  
 2 cryptocurrency space have accounts at more than one cryptocurrency exchange and I am aware of  
 3 several individuals. For example, the IRS has conducted examinations where the taxpayer involved  
 4 had cryptocurrency transactions at three or more distinct exchanges and, at times, upwards of ten  
 5 exchanges. Second Declaration ¶ 6. Current tax reporting requirements do not require taxpayers to  
 6 identify on their tax return on which cryptocurrency exchange taxable transactions occurred. *Id.* This  
 7 makes rooting out tax non-compliance much more complex than simply reviewing the account  
 8 transaction information for one account holder on one exchange in isolation. As explained below,  
 9 having additional specific information about the nature of an account holder's non-transaction activity  
 10 is necessary when the IRS is making its initial determination about who the correct taxpayer is, and in  
 11 what other activity that individual may be engaging in. This information is required for the IRS to reach  
 12 a reasonably accurate conclusion about tax compliance. The IRS investigation is not solely focused on  
 13 identifying tax non-compliance for account holders at single exchanges like Kraken, but rather to  
 14 identify tax non-compliance for individuals transacting in cryptocurrency with accounts at those exchanges  
 15 who may have additional accounts at other exchanges.

16 Essentially, beyond dispute, the account holder's identity within the IRS's own computer  
 17 system is vital to determining whether there has been tax non-compliance. This requires linking  
 18 a particular account holder to a particular name and taxpayer identification number within the IRS  
 19 internal database. As the Court in *Coinbase* correctly recognized, basic information such as name,  
 20 address, date of birth, and taxpayer ID number can go a long way in establishing the identity of  
 21 a taxpayer. But in the IRS's experience, including its most recent experience processing the Coinbase  
 22 summons information, those four data points alone are insufficient. This is because taxpayers  
 23 will use aliases, false addresses, or out-of-office boxes, fictitious entity names, or other means to disguise  
 24 their true identity and taxpayers who create false identities are more likely to evade their taxes. And the  
 25 IRS is not guaranteed to lawfully receive those four data points for each account holder because certain  
 26 pieces are either missing (such as date of birth where an entity name is used), incomplete, or have been  
 27 falsified.

1 5 **A. The IRS Required More Information to Positively Identify the Coinbase John Does**

2 5 In receiving the information provided in response to the *Coinbase* subpoena, the IRS  
 3 encountered several problems. First, Coinbase did not provide taxpayer ID number for more than 10%  
 4 of the user (over 1,300 taxpayer). Second Declaration ¶ 10. There were also over 10 instances in  
 5 which the account did not include name and approximately 170 instances in which pseudonym  
 6 was provided rather than actual name. *Id.* There were over 100 instances in which no date of birth  
 7 information was provided and roughly 1,000 instances in which no physical address information was  
 8 provided. *Id.* After consultation with the IRS, Coinbase, provided more user information that reduced  
 9 the unknown name to only a few, instances of missing address were reduced to approximately 60,  
 10 and missing date of birth were reduced to slightly below 100. *Id.* ¶ 11. Notably, Coinbase could not  
 11 provide any of the missing taxpayer ID number. *Id.* Coinbase admitted that some of the account  
 12 information was lacking because it had not been collected for some of the oldest account. *Id.* ¶ 12.  
 13 In the *ex parte* hearing, the four dissenting opinions permitted by the Court in *Coinbase* were insufficient for the IRS  
 14 to positively identify actual taxpayer. *Id.*

1 Since that time, the IRS has used its own information and information gathered from other  
 16 source to positively identify approximately 30 additional taxpayer from the Coinbase information,  
 17 but more than 700 taxpayer remain unknown to the IRS. *Id.* ¶ 14. The *ex parte*-unidentified taxpayer  
 18 had cryptocurrency proceeds that exceeded \$100,000,000 that the IRS cannot examine because the  
 19 limited identity information it received preclude positive identification. *Id.* ¶ 15.

21 5 In *Coinbase*, the Court remedy for litigation in which the four dissenting opinions proved insufficient  
 22 to make positive identification was for the IRS to issue follow-up subpoena to Coinbase for  
 23 specific taxpayer. Issuing follow-up subpoena with regard to specific taxpayer is complicated where  
 24 the IRS cannot establish the identity of the relevant taxpayer. Section 7602 authorize the IRS to issue  
 25 subpoena with respect to the tax liability of any person. 26 U.S.C. § 7602( ). Section 7609( ),  
 26 however, require the IRS to provide notice to the specific person identified in the subpoena. The IRS  
 27 cannot meet this requirement when the threshold issue is the question of the taxpayer identity. When

1 t x yer identity i unknown to the I S, § 7 09(f) provide the I S with n exce tion to the notice  
 2 requirement when the o-c lled “John Doe” rocedure re followed. A r ctic l m ater, em ploying  
 3 the ro ch contem pted in *Coinbase* would require the I S to i ue multi le John Doe ummon e to  
 4 the me third- rty ( uch Kr ken). Nothing in the flu h l ngu ge of § 7 09(f) or it legi l tive  
 5 hi tory im lie th t the n rrowly t ilored requirement w intended to require the I S to i ue eri l  
 6 John Doe ummon e to third rty, obt ining lightly more inform ation with e ch iter tion until it h d  
 7 ju t enough inform ation to dequ tely dmini ter the t x l w .<sup>1</sup> Such roce would be extremely  
 8 burden ome nd time-con uming.

### 9 **B. The IRS Will Need Additional Information to Identify Kraken Account Holders**

10 According to it term sof ervice, Kr ken h three ccount verific tion level — t rter,  
 11 intermedi te, nd ro.<sup>2</sup> Second Decl r tion t ¶ 17. For ll three ccount level , Kr ken g ther the  
 12 u er em al ddre , full n me, d te of birth, tele hone number, nd hy ic l ddre . *Id.* t ¶ 18.  
 13 Not bly, Kr ken doe not require t x yer ID number for the t rter ccount level. *Id.* For the  
 14 intermedi te nd ro ccount level , Kr ken l o require v lid ID, roof of re idence, nd t x yer  
 15 ID number (for U.S. re ident ). *Id.* t ¶ 20. At the ro ccount level, Kr ken require com pletion of  
 1 Know-Your-Cu tomer que tionn ire th t for individu l include : em al ddre ; tell u bout your elf  
 17 que tion ; ublic ccount ID; ur o e of ccount; country of re idence; de o it/withdr w l inform ation;  
 18 em ployment; net worth; ource of we lth; nd ex ected tr ding ctivitie . *Id.* t ¶ 21. For bu ine e ,  
 19  
 20

21 <sup>1</sup> Addition lly, the I S bility to ex mine t x yer who e inform ation i obt ined through  
 22 John Doe ummon i t tutorily time-limited under § 501( ). Although th t limit tion eriod i tolled  
 23 for ortion of time th t roduction of inform ation in re on e to the ummon i ending (§  
 24 7 09(e)(2)), the t tute i not tolled during the time while the I S i reviewing the initi l ummon  
 25 re on e nd conducting n inve tig tion to meet the requirement of § 7 09(f) for ub equent John  
 Doe ummon or while the court i con idering etition for rov l of econd John Doe ummon .  
 T ken whole, eri l John Doe ummon to the me third rty i not r ctic l ro ch to t x  
 dmini tr tion given the limit tion eriod on e ment .

2 <sup>2</sup> Kr ken recently (during 2021) introduced fourth ccount verific tion level—ex re —th t i  
 27 only v il ble in the United St te . It fit between the t rter nd intermedi te level . Bec u e it did not  
 exi t during the eriod covered by the John Doe ummon , the United St te i not going to focu on it  
 requirement .

1 the que tionn ire include : leg l n me; bu ine d dre ; country; web ite; cont ct inform ation;  
 2 indu try; good nd ervice ; government-i ued bu ine regi tr tion or t x-identific tion number;  
 3 tr ding ctivitie ; nd ource of fund . *Id.* It i import nt to note th t none of the ccount level l ce  
 4 ny re triction on tr ding volume or v lue, me ning n individu l with t rter ccount c n tr de  
 5 cry tocurrency in unlimited ount ( nd gener te ignific nt ount of t x ble g in) without needing  
 6 to rovide Kr ken with t x yer ID number. *Id.* t¶ 22.

7 All three ccount level ermit the u er to tr de on m argin, lthough limit re l ced b ed on  
 8 ccount level nd ll three ccount level ermit the u er to e rn more cry tocurrency by rtici ting in  
 9 “ t king.”<sup>3</sup> *Id.* t¶ 23. The rim ary di tinction between the ccount level rel te to the bility to fund  
 10 the ccount with fi t currency (i.e., U.S. doll r ) or only with cry tocurrency. *Id.* t¶ 24. The t rter  
 11 ccount level doe not ermit ny de o it or withdr w l from the ccount to be m ale in fi t currency.  
 12 The intermedi te nd ro level ccount ermit de o it nd withdr w l to be m ale in fi t currency.  
 13 *Id.*; see [Verific tion level ex l ined – Kr ken \( rchive.org\)](#). The intermedi te nd ro level llow  
 14 u er cce to more tr ding o tion uch future tr ding nd over-the-counter tr ding. *Id.*

15 All of the ccount ty e ermit de o it nd withdr w l to be m ale in cry tocurrency. *Id.* t¶  
 16 25. There re no limit l ced on cry tocurrency de o it for ny of the ccount level , but the t rter  
 17 ccount level h withdr w l limit of only \$5,000 (in USD v lue) er 24-hour eriod. *Id.* The bility  
 18 to de o it or withdr w cry tocurrency unit i one of the fe ture of cry tocurrency th t et it rt  
 19 from tr dition l ccount holding fin nci l inve tment . *Id.* t¶ 26. How e ily cry tocurrency u er  
 20 c n move (de o it or withdr w) cry tocurrency unit from one exch nge l tform to nother one, or to  
 21 er on l u er w llet, i rt of wh t m ke it h rder for the I S to m ke n initi l determin tion whether  
 22 u er i in com pli nce with the intern l revenue l w . *Id.* Unlike tr dition l inve tment ccount where  
 23 n ccount holder i buying nd elling ecuritie within th t ccount, cry tocurrency exch nge  
 24

25 <sup>3</sup>“St king,” more ecific lly “on-ch in t king” i roce through which u er holding  
 26 cert in ty e of cry tocurrency c n rtici te indirectly in the v lid tion nd confirm ation of  
 27 cry tocurrency tr n ction to the blockch in by “ t king” their unit . While t ked, the u er c nnot ell  
 28 or withdr w the unit but c n e rn rew rd ( yout ) in return for t king. See [Overview of On-ch in t king on Kr ken – Kr ken](#).



1 gener ally permit u er to de o it nd withdr w the cry tocurrency unit them selve , which llow u er  
 2 to hift ro erty mong multi le &ccount for rofit-m aximiz tion or other re on . *Id.* t ¶ 27.  
 3 Identifying the exi tence of other ccount owned by u er nd tr cing the movement of cry tocurrency  
 4 to tho e ccount make c lcul ting t x yer g in for t x com pli nce ur o e ch llenging. *Id.* t ¶  
 5 2 .

6 8 The olde t inform tion the I S h rel ting to Kr ken ccount verific tion requirement i  
 7 from Augu t 2019. *Id.* t ¶ 30. B ed on the I S ex erience with Coinb e, cry tocurrency  
 8 ex hnge h ve ch nged over time wh t inform tion they collect for ccount verific tion. For Coinb e, 8  
 9 there w eriod in which t x yer ID inform tion w not collected. *Id.* Kr ken e r to h ve  
 10 required t x yer ID number for verific tion t the intermedi te nd ro ccount level ince tle t  
 11 Augu t 2019 but doe not require t x yer ID number for t rter level ccount . *Id.* t ¶ 31. A  
 12 ex l ined bove, the I S w l rgely un ble to o itively identify Coinb e u er when t x yer ID  
 13 number w l cking from the inform tion Coinb e initi lly rovided. Here, the I S would ex ect to  
 14 receive ccount inform tion for n entire c tegory of Kr ken ccount where the t x yer ID number i  
 15 l cking. A uch, the I S will need to rely on ddition l er on l identity or Know-Your-Cu tomer 8  
 16 inform tion to connect Kr ken ccount holder with ctu l t x yer .

### 17 **C. The IRS's Requests Are Narrowly Tailored to Meet its Investigative Needs**

18 Gener ally, the I S dr ft it reque t for inform tion in m nner th t en ure it will c ture the 8  
 19 inform tion it need even when it i not cle r how the ummoned rty c tegorize or define th t  
 20 inform tion. When re d with the context of wh t inform tion it i believed Kr ken collect from it  
 21 u er , nd with the benefit of the I S ex erience with Coinb e, the I S reque t re ro ri tely  
 22 t ilored to en ure the recei t of relev nt inform tion. Even o, the I S h revi ed ome it reque t to  
 23 even more n rrowly identify wh t inform tion it i eeking, while till trying to lign tho e reque t with  
 24 how it believe Kr ken m nge it d t .

#### 25 **1. Request 1**

26 The I S i eeking ccount regi tr tion record for e ch ccount owned or controlled by  
 27 Kr ken John Doe nd h further identified ecific c tegorie of inform tion th t it believe m ay be



collected by Kraken: complete user profile, account creation, and user reference; history of change to the user profile; complete user history; record permitting third-party access; and complete user payment method, including any other information relating to funding source. The IS is not seeking private information such as name, address, key, security setting, or account recovery information. This request is primarily intended to illicit the following necessary information from Kraken: (1) the account user name; (2) date of birth; (3) taxpayer ID number; (4) physical address; (5) email address; and (6) telephone number.

**a. Complete User Profile, Account Application, and Complete User Preferences**

The IS has requested the user profile, user reference, and account creation because it believes that the categories include the information that is most like the four data points the Court identified in *Coinbase* basic information—that is, name, date of birth, taxpayer ID number, and physical address.<sup>4</sup>

Based on Kraken account verification requirements, the IS believes that this information will also include telephone number and email address. The IS needs both additional items because the IS internally tempts to check taxpayer telephone number and email address when reported by taxpayer. Second Declaration ¶ 46. When the IS does not receive taxpayer ID number or the account holder name and taxpayer ID number do not initially match with the IS internal information, it has found that other data points such as date of birth, physical address, telephone number, and email address can allow the IS to link the account information to specific taxpayer. *Id.* ¶ 47. Generally, the IS tries to match three specific alternative data points to positively link an account to taxpayer. *Id.* ¶ 48. For that reason, reconciling multiple different pieces of identifying information going into the IS internal record is necessary when verifying an account user identity.

<sup>4</sup> In the IS experience, cryptocurrency exchange do not maintain in internal “account creation” document because information is generally entered by the client through web-based portal with several data fields rather than traditional “creation” that would be completed on paper. Similarly, some basic information may be bifurcated and maintained in internal “profile” information and internal “reference.” Ultimately, the IS requests for information within the categories designed to ensure it receives the identifying information that it needs to fulfill its investigative need no matter what it is called or how it is stored.

1 The I S h le rned th t tele hone nd em al inform ation i ue d more frequently in the  
 2 cry tocurrency ce th n n me or hy ic l ddre e . *Id.* t ¶ 4 . For ex m ple, when the I S i ue  
 3 ummon to Coinb e for n individu l- er on inform ation, Coinb e reque t th t the I S rovide it  
 4 with ecific identifier , including both tele hone number nd em al ddre e . *Id.* t ¶ 50. Even  
 5 though Coinb e did not rovide thi inform ation in re on e to the John Doe ummon to it, thi i the  
 6 ex ct inform ation it ue to configure u er e rche in it own y tem. Coinb e i l o un ble to e rch  
 7 it own y tem for n ccount holder u ing t x yer ID number. *Id.* The I S bility to i ue follow-  
 8 u ummon e i me ngle if it c nnot rovide the cry tocurrency exch nge with ufficient  
 inform ation to conduct e rche of their own inform ation.

10 Intern lly, the I S i l o in o e ion of cry tocurrency l tform d t received from other  
 11 ource rel ting to foreign-b ed cry tocurrency exch nge . *Id.* t ¶ 51. Thi d t l ck t x yer ID  
 12 number nd in te d i e rched mo t ucce fully u ing tele hone number , em al ddre e , nd  
 13 internet rotocol ddre e (di cu ed below). *Id.* Thi foreign-b ed cry tocurrency exch nge d t i  
 14 lre dy in the o e ion of the I S which me n the I S c n u e it rt of it initi l n ly i of  
 15 whether rticul r individu l i in com pli nce with the intern l revenue l w , but only if the I S 9  
 16 receive the d t nece ry to e rch thi inform ation. *Id.*

### 17 **b. History of Changes to the User Profile**

18 Kr ken ermit it u er to u d te their b ic ccount inform ation t ny time. *See* [U d ting](#)  
 1 [ccount inform ation – Kr ken](#). So, the ccount inform ation th t i m ant ined in Kr ken record when  
 20 Kr ken re ond to the ummon m ay not reflect the n me, d te of birth, hy ic l ddre , tele hone  
 21 number, or em al ddre inform ation th t the I S h in it d t b e . *Id.* t ¶ 55. The I S need  
 22 com plete li t of how thi inform ation m ay h ve ch nged over time o th t it c n h ve higher  
 23 rob bility of ucce fully linking n ccount holder to n individu l t x yer.

24 In ddition, ome t x yer h ve intention lly ch nged their er on l inform ation over time to  
 25 di gui e their identity. One well-known ex m ple of thi involve o Ulbricht, the individu l behind  
 26 the inf mou Silk o d m rket l ce on the d rk web. De ite multi- gency inve tig tion into the Silk  
 27 o d m rket l ce, the inve tig tive te m h d been un ble to identify the dmini tr tor of the

1 market place. Gary Alford, Special Agent with the I S Criminal Investigation Division, found  
 2 Ulbricht's e-mail address in response to a bitcoin forum relating to a post Ulbricht had  
 3 made about the Silk Road that suggested the poster had inside knowledge about the Silk Road. Despite  
 4 Ulbricht's subsequent attempt to scrub his e-mail information from the internet and change his e-mail  
 5 address, this particular rule of his e-mail remained embedded in part of the chat record and  
 6 Alford found it. Ultimately, this proved to be a key element in uncovering the true identity of the  
 7 administrator of the Silk Road and helped lead to Ulbricht's arrest and ultimate prosecution. *See* [The  
 8 Tex Sleuth Who Took Down Drug Lord - The New York Times \(nytimes.com\)](#).

Limiting the I S request for user profile information to a subset of only current information  
 10 significantly hinders the I S's ability to connect account holder data with a particular user. The time  
 11 period covered by the John Doe subpoena begins in 2016—five years ago. Having information about  
 12 how an account holder's name, date of birth, physical address, telephone number, and e-mail address  
 13 information has changed over the life of the account is necessary to accurately identify a user who  
 14 may have changed that information.

### 15 c. Complete User History

16 The I S request for complete user history is directed at three main items—confirmed device ,  
 17 internet protocol (IP) address , and account activity. The first item—account activity—is covered in  
 18 requests 5 and 6 (now requests 4 and 5 in the revised subpoena). Thus, the I S is removing  
 19 the reference to that information in part of this request because it expects to receive the requested  
 20 information in response to requests 5 and 6. The I S is also revising its request to remove the first  
 21 item—confirmed device —because it believes that, in examination where device-specific information  
 22 is necessary to attribute ownership or control to a particular user, the I S should already have  
 23 sufficient other identifying information in its possession to issue Kraken follow-up subpoena for that  
 24 particular user.

25 As for the second item—IP address —this information is helpful when first confirming a  
 26 account holder's identity. IP address information shows the geographic location where a device  
 27 accesses the internet (generally through an internet service provider). *Id.* at ¶ 60. For example,

1 t x y e r c e e i n g h i K r k e n c c o u n t f r o m S n F r n c i c o , C a l i f o r n i w i l l h a v e n o I P a d d r e s s s h o w i n g  
 2 t h a t t h e c c e s s w a s m a d e f r o m S n F r n c i c o , C a l i f o r n i . *I d.* t ¶ 61. T h e g e o g r a p h i c l o c a t i o n o f t h e I P  
 3 a d d r e s s i s p u b l i c l y a v a i l a b l e . *I d.* t ¶ 60. T h e I S i s t h e n a b l e t o c o n f i r m u s e r i d e n t i t y , w h e n t h e  
 4 u s e r i d e n t i t y i s u n c e r t a i n , b y c o n f i r m i n g t h a t t h e c c o u n t w a s c e e d e d f r o m I P a d d r e s s l o c a t i o n t h a t  
 5 c o i n c i d e w i t h t h e t x y e r k n o w n h y i c l o c a t i o n . *I d.* t ¶ 64. B u t w h e r e t h e I P a d d r e s s  
 6 i n f o r m a t i o n d o e s n o t m a t c h , t h e I S c a n d o a d d i t i o n a l d u e d i l i g e n c e t o d e t e r m i n e t h e r o b e r t c c o u n t  
 7 o w n e r o r w h e t h e r t h e r e w a s a n i n c i d e n c e o f i d e n t i t y t h e f t . *I d.* t ¶ 65. S e r i e s e l y , e x a m p l e d a b o v e ,  
 8 t h e I S i s i n o p e r a t i o n o f d e t e r m i n i n g t o f o r e i g n c r y p t o c u r r e n c y e x c h a n g e . A l t h o u g h t h a t d e t a i l e d  
 9 t x y e r I D n u m b e r , i t d o e s i n c l u d e i n f o r m a t i o n s u c h a s t e l e p h o n e n u m b e r , e m a i l a d d r e s s , a n d I P  
 10 a d d r e s s . *I d.* t ¶ 66. M a t c h i n g t h e I P a d d r e s s f o r K r k e n u s e r t o I P a d d r e s s e s a n d o t h e r d e t a i l e d i n f o r m a t i o n  
 11 t h e I S i n f o r m a t i o n w i l l a l l o w t h e I S t o l i n k s u b s t a n t i v e c c o u n t i n f o r m a t i o n f r o m m u l t i p l e s o u r c e s  
 12 f o r i n d i v i d u a l t x y e r s a n d m a k e m o r e e f f e c t i v e t h e i n i t i a l d e t e r m i n a t i o n o f w h e t h e r t h a t  
 13 i n d i v i d u a l i s i n c o m p l i a n c e w i t h t h e i n t e r n a l r e v e n u e l a w .

#### 14 **d. Records Permitting Third-Party Access**

15 L i k e m a n y c r y p t o c u r r e n c y e x c h a n g e s , K r k e n e r m i t u s e r s t o g e n e r a t e a n A p p l i c a t i o n  
 16 P r o g r a m m i n g I n t e r f a c e ( A P I ) k e y . T h e e k e y c a n b e u s e d b y c c o u n t h o l d e r t o p r o v i d e d i r e c t “ l o g  
 17 i n ” a c c e s s t o u s e r c c o u n t f o r t h i r d p a r t y . K r k e n d e s c r i b e s t h e e k e y b e i n g u s e d f o r t r a d i n g  
 18 b o t , t h i r d - p a r t y p o r t f o l i o m a n a g e r o r m o b i l e . S e e [U s i n g t h e K r k e n A P I w i t h t h i r d p a r t y  
 19 s e r v i c e – K r k e n](#) . F o r t x y e r s o e , h o w e v e r , t h e I S k n o w s t h a t A P I k e y s r e l o u e d  
 20 m e c h a n i s m t o s y n c h r o n i z e t r a n s a c t i o n l o g s w i t h t h i r d - p a r t y t x o f t w a r e c o m p a n y t h a t e c i t i z e i n  
 21 h e l p i n g c l o u d t e x t b l e g i n b a s e d o n c r y p t o c u r r e n c y t r a n s a c t i o n . S e c o n d D e c l a r a t i o n t ¶ 6 .  
 22 I n f o r m a t i o n o n u s e r e m p l o y m e n t o f a n A P I k e y t o p r o v i d e t r a n s a c t i o n l o g s t o t x o f t w a r e  
 23 c o m p a n y i s n o t o n l y s p e c i f i c i n f o r m a t i o n u s i n g c o n c l u s i o n t h a t t h e u s e r h a d r e c o g n i z e d t x b l e  
 24 g i n , b u t a l s o u g g e s t s t h a t t h e u s e r s h o u l d h a v e k n o w n w h a t t h e g i n w a s e v e n i f i t w a s n o t r e p o r t e d o n  
 25 t h e t x r e t u r n . T h e I S c a n u s e t h i s i n f o r m a t i o n t o h e l p m a k e a n i n i t i a l d e t e r m i n a t i o n o f w h e t h e r u s e r  
 26 w a s i n c o m p l i a n c e w i t h t h e i n t e r n a l r e v e n u e l a w .

1 **e. Complete User Payment Methods**

2 Kraken permit users to fund their account with either fiat currency or with cryptocurrency.  
 3 Understanding how an account was funded and where it was funded from can provide valuable insight  
 4 for the IRS when determining whether an individual is in compliance with the internal revenue law.  
 5 The IRS has seen situations in which the gross income reported on the taxpayer's tax return does not  
 6 support the taxpayer's financial ability to conduct the transaction that occurred on the cryptocurrency  
 7 exchange. This is more common in cryptocurrency transactions because the demographic of  
 8 cryptocurrency users skew toward younger taxpayers who often have non-traditional income sources.  
 Second Declaration ¶ 76.

10 For example, in her declaration in support of the petition to serve the John Doe summons on  
 11 Kraken, revenue Agent Karen Cincott identified multiple specific examples of taxpayers who held  
 12 accounts at Kraken and did not appear to be in compliance with the internal revenue law. (Docket No.  
 13 1-2, ¶¶ 70-74). Since 2017, Taxpayer 1 had been involved in more than \$3 million in financial  
 14 transactions, but Taxpayer 1's last-filed income tax return in 2015 reported no income other than  
 15 minimal wage income. *Id.* ¶ 70. The minimal wage income could not support the U.S.-dollar value of  
 16 transactions that Taxpayer 1 had engaged in. Identifying the specific funding source in the situation  
 17 is important. Given that Taxpayer 1 was withholding his transactions through multiple entities—that he  
 18 did not file tax return—knowing the funding source would enable the IRS to trace the source of  
 1 fund even when the taxpayer is using accounts that are not in his own name.

20 In addition, Taxpayer 4 discussed in revenue Agent Cincott's declaration did not file tax return  
 21 reporting only minimal wage income yet engaged in transactions exceeding \$5.6 million dollars. *Id.* ¶  
 22 73. This reflects the disconnect between reported income and financial status. By evaluating the  
 23 account holder's funding source, such as a linked account, the IRS can determine whether an individual  
 24 account user appears to be adequately reporting all their income.

25 **2. Request 2**

26 The IRS is seeking "any other record of Know-Your-Customer due diligence" performed by  
 27 Kraken on users. Based on Kraken's representation about what identity verification information it

1 collect, this category of information is limited to user verified ID, proof of residence, and information  
 2 collected through Know-Your-Customer (KYC) questionnaire. Second Declaration ¶ 73. For  
 3 individual, the questionnaire generally include email address; tell us about yourself questionnaire; public  
 4 account ID; source of account; country of residence; deposit/withdrawal information; employment; net  
 5 worth; source of wealth; expected trading activities. *Id.* ¶ 74. For business, the questionnaire  
 6 generally include legal name; business address; country; website; contact information; industry; good  
 7 and service; government-issued business registration or tax-identification number; trading activities;  
 8 and source of funds. *Id.* ¶ 75.

9 The IRS does not need proof of residence information because the John Doe client already  
 10 limited to United States taxpayer. Although information contained in user verified ID such  
 11 driver license or passport number are helpful to positively identify user through other source, the  
 12 IRS believe it can wait to obtain this information. Although, it need not obtain copy of user verified  
 13 ID provided to Kraken. The IRS believe that if this information become necessary to prove account  
 14 owner his or her identity, it can issue follow-up summons to Kraken at that time.

15 As for the individual KYC questionnaire, the IRS in reviewing it request to only seek the  
 16 reference to the employment, net worth, and source of wealth questionnaire. Given that the KYC  
 17 questionnaire is only required for pro-level account, the IRS expect that the reference will only be  
 18 provided for limited number of account holder. But that limited subset of account holder have the  
 19 type of account that permit the large movement of funds well access to Kraken “dark pool”—a  
 20 discrete market where the order book is secret, making it easier to buy or sell larger unit volume  
 21 without influencing the market. Second Declaration ¶ 85. Given the more-likely larger movement of  
 22 funds and higher dollar value it is almost certain that the individual will have experienced taxable  
 23 gains. Having additional information such as employment, net worth, and source of wealth will help the  
 24 IRS determine whether an individual is in compliance with the internal revenue law. Employment  
 25 information can be matched against Form W-2 issued by the identified employer to both confirm the  
 26 user identity and identify the user income level. Net worth and source of wealth information can

1 hel the I S under t nd whether the identified t x yer h level of wealth commensurate with hi  
2 earning or o ibly unreported income.

3 5 A for the bu ine KYC que tionnaire, the I S believe ll the information obtained by the  
4 que tionnaire i the me b ic information requested for individual u er . The I S believe e ch of the  
iece of information identified in the que tionnaire, if not already provided rt of the u er identity  
6 information de scribed in eque t 1, i nece ry to ro erly identify the bu ine t x yer th t control  
7 the ccount well the ctual individual (cont ct ) th th ve cce to the ccount.

### 8 **3. Request 3**

9 The I S h hi toric lly relied he vily u on corre spondence information obtained through John 5  
10 Doe ummon e when conducting inve tigation directed t t x non-compliance in the off hore re .  
11 Bec u e off hore t x ev ion often involve n off hore entity (e.g., cor or tion, tru t, or found tion)  
12 or multi le entitie , the e entitie ty ic lly re controlled through nominee director nd/or tru tee nd 5  
13 re u ed to conce l the t x yer benefici l owner hi of off hore—and ometime dome tic—  
14 ccount nd et . Foreign cor or tion /off hore found tion with nominee officer nd director re  
1 often u ed to conce l benefici l owner hi . Second Decl r tion t ¶ 90. To ro erly ex mine t x yer 5  
16 o er ting off hore, the I S needed to obt in corre spondence to identify the true benefici l owner—the  
17 individual who w m king deci ion nd benefiting from the off hore fund . *Id.*

18 Ju t with off hore t x void nce, individual h ve begun u ing cry tocurrency digit l  
19 venue to move money nd void t xe bec u e of it eudonymou ect . However, bec u e of the 5  
20 verific tion requirement th t Kr ken h im plemented, the I S believe it c n w it to obt in  
21 corre spondence th t m ay be relev nt to it inve tigation until l ter time. If the I S receive the other  
22 ummoned information di cu ed o f r, it hould be ble to i ue follow-u ummon to Kr ken for  
23 the subject individual for corre spondence. So, the I S h removed thi reque t from the revi ed  
24 ro o ed ummon .

2

26

27 5



1 6 **4. Request 4<sup>5</sup>**

2 6 Bec u e cry tocurrency exch nge re tre ted money ervice bu ine under Title 31 of the  
 3 United St te Code, they re required to im plement n nti-money l undering (“AML”) y tem. The  
 4 I S i eeking ll exce tion re ort gener ted by th t y tem nd inve tig tion of tho e re ort . In the  
 5 I S ex erience, the e re ort , nd the rel ted inve tig tion , c n rovide v lu ble in ight into whether  
 rticul ru er or grou of u er were in com pli nce with the intern l revenue l w . Second  
 7 Decl r tion ¶ 93. The I S review of thi inform ation h led it to identify ctivitie uch u iciou  
 8 tr n ction between eemingly unrel ted t x yer , nd to identify ddition l cry tocurrency exch nge  
 9 ccount or er on l u er w llet (which c n be inde endently e rched u ing ublic blockch in  
 10 ex lorer to check for t x non-com pli nce), h red ccount cce , or u iciou movement of fund .  
 11 *Id.*

12 6 The exce tion re ort identify que tion ble tr n ction eng ged in by u er th t w rr nted  
 13 more re e ch nd inve tig tion by the exch nge. *Id.* t ¶ 93. eviewing the e re ort llow the I S to  
 14 lever ge the indu try ex erti e of the bu ine involved (here, cry tocurrency exch nge) bout wh t  
 15 ty e of ctivity i bnorm d or u iciou nd llow the I S to combine th t ex erti e with other  
 1 inform ation v il ble to the I S in order to determine whether the subject t x yer i in com pli nce  
 17 with the intern l revenue l w . *Id.* A ex l ined in evenue Agent Cincott decl r tion, crimin l  
 18 ctivity, even when it i not trictly t x rel ted, i gener lly indic tive of t x non-com pli nce. (Docket  
 19 No. 1-2, ¶¶ 78). Inve tig tive inform ation com piled by the cry tocurrency exch nge often cont in  
 20 inform ation rovided by the u er ex l ining the n ture of the que tion ble ctivity th t c n hel the I S  
 21 determine whether t x yer i in com pli nce with the intern l revenue l w . For ex m le, in re on e  
 22 to n inve tig tion into l rge doll r, voluminou , or frequent tr n ction , u er m y h ve rovided n  
 23 ex l n tion on the ource of fund or ecific ur o e for the ctivity th t i re on ble nd com port to  
 24 wh t w re ort ed by the u er on hi t x return. Second Decl r tion t ¶ 95. In thi itu tion, the I S  
 25

2  
 27 <sup>5</sup> With the remov l of the ub t nce of eque t 3 from the revi ed ro o ed ummon , eque t  
 4- from the initi lly ro o ed ummon re now renumbered eque t 3-5 re ectively in the revi ed  
 ro o ed ummon .

1 may be able to void unnecessarily examining an individual based on activity that might otherwise  
2 require a subpoena. *Id.*

3 The IRS is not seeking any suspicious activity reports (SARs) that may have been ultimately  
4 generated because of an AML alert or any other information that would reveal a SAR.

### 5 **5. Request 5**

6 The information sought in request 5 is transactional information relating to a user account. The  
7 IRS needs transactional information to determine whether an account holder is in compliance with the  
8 Internal Revenue Law. *Id.* ¶ 9. As the Court correctly recognized in *Coinbase*, the IRS is entitled to  
9 this type of information.

#### 10 **a. Buy/Sell Information**

11 The IRS is seeking the purchase and sale information for the John Doe user account. This  
12 includes transactions where cryptocurrency units were purchased or sold for fiat currency. The sale of  
13 cryptocurrency is a taxable disposition. *Id.* ¶ 98. And although the purchase of cryptocurrency is  
14 not inherently taxable, the purchase price (including any fees paid) is treated as the cost basis in the property  
15 that is used to determine the amount of taxable gain generated upon the sale of that same unit. *Id.* The  
16 same is true even when cryptocurrency is exchanged for other cryptocurrency rather than fiat currency.  
17 *Id.*

#### 18 **b. Lending, Borrowing, and Margin Positions**

19 When a user engages in “margin” activity, that is the borrowing (or lending) of fiat currency or  
20 cryptocurrency to effectuate other trading activity, those transactions may have tax implications. *Id.* ¶  
21 100.

#### 22 **c. Cryptocurrency Deposit/Withdrawal Information**

23 The IRS is seeking information relating to the deposit and withdrawal of cryptocurrency units  
24 out of the user account. This information will show if the user is moving units of cryptocurrency  
25 from other cryptocurrency platforms or from a user wallet, which will, in turn, help the IRS  
26 make a better determination of whether the user is in compliance with the Internal Revenue Law. *Id.* ¶  
27 102. The deposit or withdrawal of units from an account may also be a taxable transaction themselves.

1 *Id.* ¶ 103. The de o it (recei t) of cry tocurrency into n ccount m ay re re ent com pen tion or  
 2 imil r yment to the u er th t re re ent t x ble income. *Id.* And the withdr w l ( ending) of unit  
 3 from the ccount m ay re re ent t x ble di o ition if the unit re going to third rty. *Id.* To  
 4 ev lu te thi nform aion to determine ro er t x ch r cteriz tion of the tr n ction nd whether u er  
 5 i in com pli nce with the intern l revenue l w , the I S i eeking the d te nd time of the tr n ction,  
 6 cry tocurrency involved, mount of cry tocurrency involved, U.S. doll r v lue, tr n ction h h (ID),  
 7 nd blockch in ddre e for cry tocurrency unit tr n ferred into or out of the u er ccount from  
 nother Kr ken u er or from out ide Kr ken. *Id.* ¶ 104.

#### 9 d. Other Units Received

10 Fin lly, the I S i eeking record rel ting to other t x ble event th t m ay h ve occurred within  
 11 the ccount. Thi include the recei t of ddition l unit of cry tocurrency the re ult of  
 12 ch in litting h rd fork, which re re ent t x ble income. *See* ev. ul. 2019-24, 2019-44 I. .B. 1004,  
 13 2019 WL 5090550 (Oct. 10, 2019). Kr ken ermit it u er to rtici te in “ t king” which i nother  
 14 roce through which u er c n e rn unit of cry tocurrency. *Id.* ¶ 105. Fin lly, other itu tion  
 15 exi t where u er m ay receive unit of cry tocurrency gr tuitou ly through romotion l event . *Id.*  
 16 Bec u e ll of the e itu tion re ult in income to the u er, the I S need the tr n ction l nform aion  
 17 rel ting to the e event o it c n ro erly determine whether u er i in com pli nce with the intern l  
 1 revenue l w . *Id.* ¶ 106.

#### 19 6. Request 6

20 A with the tr n ction l item sin eque t 5, the Court in *Coinbase* enforced in full the I S  
 21 reque t for tr n ction l ccount nform aion rel ting to the de o it nd withdr w l of fi t currency from  
 22 the ccount. A ex l ined bove in rel tion to funding ource , the I S u e thi nform tion to  
 23 under t nd how u er i funding hi or her urch e of cry tocurrency nd where money m ay be ent  
 24 fter unit re old. *Id.* ¶ 107. All thi nform aion i ev lu ted to m ke the mo t nformed deci ion  
 25 the I S c n bout whether n individu l i in com pli nce with the intern l revenue l w .

### 26 III. CONCLUSION

27 For the e re on , the United St te reque t the Court not deny it etition nd in te d i ue n

1 order granting the I S le ve to erve it revi ed ro o ed John Doe ummon u on P yw rd Venture ,  
2 Inc. nd Sub idi rie . In the ltern tive, if the Court i till concerned bout the co e of the revi ed  
3 ro o ed ummon , the United St te reque t it be gr nted le ve to further revi e it reque t before  
4 deni l of it etition.

5 9 D ted thi 14th d y of A ril, 2021. 9

6 9 DAVID A. HUBBE T  
Acting A i t nt Attorney Gener l

7  
8 /s/ Amy Matchison  
AMY MATCHISON  
Tri l Attorney, T x Divi ion  
U.S. De rtment of Ju tice

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