No. 21-1599

In the Supreme Court of the United States

HANNA KARCHO POLSELLI, ET AL.,

Petitioners,

V.

UNITED STATES DEPARTMENT OF THE TREASURY—INTERNAL REVENUE SERVICE,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR CENTER FOR TAXPAYER RIGHTS AS AMICUS CURIAE IN SUPPORT OF PETITIONERS

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INTEREST OF AMICUS CURIAE[1]

The Center for Taxpayer Rights ("CTR") is a non-profit organization dedicated to furthering taxpayers' awareness of, and access to, taxpayer rights. CTR accomplishes its mission in part by educating the public and government officials about the role that taxpayer rights play in promoting compliance and trust in systems of taxation.

CTR's Executive Director is Nina E. Olson, who served as the National Taxpayer Advocate from 2001 to 2019. In that capacity, Ms. Olson was responsible for, among other things, identifying areas "in which taxpayers have problems in dealings with the Internal Revenue Service" ("IRS") and assisting "taxpayers in resolving problems with the" IRS—including problems related to IRS summonses. 26 U.S.C. § 7803(c)(2)(A)(i)-(ii). CTR's Board of Directors includes Leslie M. Book, a Professor of Law at the Villanova Charles Widger School of Law. Professor Book is a leading scholar on IRS practice and procedure, and has published on summons-related issues, including on the question presented. *See, e.g.*, Michael Saltzman & Leslie Book, *IRS Practice and Procedure* ¶ 13.02[2][d] (Westlaw online ed. 2022) ("*IRS Practice and Procedure*").

CTR is dedicated to championing taxpayers' rights, including the congressionally granted rights to

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[1] The parties have consented in writing to the filing of this brief, and received timely notice of the intent to file. No counsel for a party authored this brief in whole or in part; and no such counsel, any party, or any other person or entity—other than amicus curiae and its counsel—made a monetary contribution intended to fund the preparation or submission of this brief.

prevent undue and unwarranted intrusions on privacy by the IRS at the heart of this case.

INTRODUCTION AND SUMMARY OF ARGUMENT

The IRS has broad power to seek records to carry out its myriad investigatory, collections, and other duties. *See* 26 U.S.C. § 7602(a). But over the years, the IRS has overreached in exercising this power. The statute at issue in this case, 26 U.S.C. § 7609, was enacted to guard against abusive use of the IRS's summons power. If allowed to stand, the decision below will vitiate that important check.

In enacting Section 7609, Congress sought to protect the right to privacy from governmental intrusion without unduly bogging down the process of tax administration. Section 7609 sets a baseline expectation that, when the IRS issues a summons seeking, *e.g.*, the records of a bank account, it will provide notice of the summons to the accountholder. Moreover, the statute gives the accountholder a brief window to seek to quash the summons based on recognized privileges and defenses, such as lack of relevance or the attorney-client privilege.

The protections afforded by Section 7609 are not absolute. The statute includes exceptions that deny notice of the summons and the ability to challenge it in certain circumstances. But those exceptions are narrow. And the ones most ripe for abuse come with safeguards, such as court authorization.

The Sixth Circuit's interpretation of one exception leaves a gaping hole in Section 7609's protections and swallows the general rule of notice. The Sixth Circuit held that the IRS may issue a summons seeking the records of people who do not owe the IRS a penny,

without notice, so long as the IRS issued the summons to aid in the collection of *someone else's* tax liability. This interpretation places virtually no limits on the IRS's ability to seek records without notice. And without notice, an innocent person whose records are sought lacks any meaningful opportunity to prevent disclosure of her private information. The Sixth Circuit's interpretation nullifies the right to protect private information from IRS overreach that Congress sought to protect in Section 7609.

By contrast, the Ninth Circuit has adopted a significantly narrower interpretation of the same exception. In the Ninth Circuit, the IRS may not use this exception to obtain the records of innocent third parties without notice. Instead, the IRS may use it only to obtain the records of accounts in which the delinquent taxpayer herself has a recognized legal interest. *See Ip v. United States*, 205 F.3d 1168, 1174-76 (9th Cir. 2000). The Ninth Circuit's interpretation is more consistent with the other narrow exceptions in Section 7609; is far more protective of the privacy interests that Congress wanted to protect; and has a legitimate justification. It directly addresses the concern that giving the delinquent taxpayer notice and an opportunity to challenge the summons may allow her to move assets to avoid collection. The Sixth Circuit's unbounded interpretation has no countervailing virtues—and the IRS has not explained what legitimate purpose it could possibly serve.

This case strikes at the heart of privacy rights that Congress specifically sought to protect. The breadth of the exception at issue dictates whether individuals or entities have a meaningful opportunity to keep their private information out of the IRS's hands. And

the scope of that exception affects an untold number of people. Summons-related issues are among the most frequently litigated in tax law. But the known cases are likely a drop in the bucket, since IRS use of the exception at issue will typically go undetected. As a result, innocent third parties may never find out that the IRS has sought or obtained their private information. Nor will they have the chance to block the disclosure of that information, even when they would have valid grounds on which to do so. For reasons such as these, cases like this one—in which innocent third parties actually know about an IRS summons and are able to challenge it—are few and far between, yet affect countless people who may not see the courthouse doors. The Court should not pass up this opportunity to resolve the circuit split over the important question presented.

ARGUMENT

A. Congress Provided Important Procedural Protections Against Undue IRS Intrusion Into Private Records

Taxpayers and others have an interest in keeping their records private from intrusion by the government. In enacting Section 7609, Congress recognized—and expanded the protection for—those privacy interests vis-à-vis the IRS.

1. As this Court has recognized, private persons have an "interest in maintaining the privacy of [their] 'papers and effects,'" which the Constitution protects against governmental intrusion in many circumstances. *Church of Scientology of Cal. v. United States*, 506 U.S. 9, 13 (1992) (quoting U.S. Const. amend. IV). Bank statements and similar financial data like those commonly sought by the IRS

are precisely the type of information entitled to privacy protections. *See Riley v. California*, 573 U.S. 373, 394-96 (2014).

The privacy interest is particularly strong here, where a government agency is seeking records pertaining to innocent third parties. When the IRS seeks records of a known target of an investigation, the target's privacy rights may give way to "the IRS's interest in enforcing the tax laws." *Tiffany Fine Arts, Inc. v. United States*, 469 U.S. 310, 321 (1985). But when the IRS seeks records of innocent third parties—*i.e.*, people *not* under investigation or from whom the IRS is legally permitted to collect—the IRS's interest is more attenuated. Moreover, the threat to privacy is heightened in this context. The Court has already recognized that a motivating factor for the passage of Section 7609 was Congress's concern that the IRS would use its summons power "to engage in 'fishing expeditions' that might unnecessarily trample upon taxpayer privacy." *Id.* at 320. When the IRS uses its summons power to obtain information about innocent third parties, it greatly expands the pool of information it can gather and implicates that exact risk.

2. As petitioners explain, Congress enacted Section 7609 to provide more protections to taxpayers in response to certain decisions of this Court. *See* Pet. 7-8; *see also Tiffany Fine Arts*, 469 U.S. at 314-16; (explaining the statutory history). But that is not all that was troubling Congress at the time.

In the years leading up to 1978, when Section 7609 was enacted, Congress understood that there was a need to bolster privacy rights against overreach by the IRS and other government agencies. Congress enacted legislation to improve the ability of private

persons to maintain privacy in their personal and financial records, including against government intrusion. *See, e.g.*, Right to Financial Privacy Act of 1978, Pub. L. No. 95-630, §§ 1102-1103, 92 Stat. 3697, 3697-98 (limiting government access to nonpublic financial records); Fair Credit Reporting Act, Pub. L. No. 91-508, § 601, 84 Stat. 1127, 1127-36 (1970); 26 U.S.C. § 6103 (protecting the confidentiality of tax returns). And in the Privacy Act of 1974, Congress explicitly recognized a "right to privacy" and "provide[d] certain safeguards . . . against an invasion of personal privacy" by federal agencies. Pub. L. No. 93-579, § 2(a)(4), (b), 88 Stat. 1896, 1896.

Congress also created a Privacy Protection Study Commission and required the Commission to recommend measures to "protect the privacy of individuals while meeting the legitimate needs of government." *Id.* § 5(b)(2), 88 Stat. at 1906. The Commission's 1977 report expressed significant concerns about the use of financial data by the IRS and other government agencies. Privacy Protection Study Comm'n, *Personal Privacy in an Information Society* 349 (1977) ("*Privacy Protection Commission Report*").[2] The Commission specifically criticized expansive IRS summonses, which "may reach to any conceivable record about an individual" and may be issued by IRS agents who "have exercised their power to issue summons in questionable and improper ways." *Id.* at 367, 369-70. The Commission advocated providing notice and changing procedures so that taxpayers could meaningfully challenge IRS summonses. *Id*. at 350.

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[2] Available at https://www.ojp.gov/pdffiles1/Digitization/49602NCJRS.pdf.

Around the same time, Congress heard testimony regarding concerns that the IRS was using its civil third-party summons power to request records to assist in criminal tax investigations. *See Jeopardy and Termination Assessments and Administrative Summonses: Hearing Before the Subcomm. on the Admin. of the Internal Revenue Code of the S. Comm. on Finance*, 94th Cong. 81 (1975) ("*Jeopardy and Termination Assessments*") (statement of Theodore S. Lynn, Esq., Webster, Sheffield, Fleischmann, Hitchcock & Brookfield).[3] Some witnesses emphasized that "fundamental concepts of liberty are at stake." *See id.* at 88 (statement of Robert S. Fink, Esq.). A House Oversight Subcommittee had also taken note of "public doubt" developing due to a "growing number of controversies" involving the IRS. *See Operation Leprechaun: Hearing Before the Subcomm. on Oversight of the H. Comm. on Ways and Means*, 94th Cong. 1 (1975) (statement of Rep. Vanik, Chairman), *reprinted in* 4 Bernard D. Reams, Jr. & Emelyn B. House, *Tax Reform-1976: A Legislative History of the Tax Reform Act of 1976* (1992). The balance to be struck was clear: While "the subcommittee realize[d] that there is a legitimate r[o]le for properly supervised IRS efforts to enforce the tax laws," *id.* at 2, it would "not condone governmental violations of law and civil rights in the pursuit of tax evaders and criminals," *id.* at 1; *see id.* at 2 (arguing that "a proper balance between the rights of individuals and tax-related law enforcement" must be maintained).

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[3] Available at https://www.google.com/books/edition/Jeopardy_and_Termination_Assessments_and/t0GaRMilqpkC.

3. Section 7609 codified, in significant part, recommendations offered by the Privacy Protection Study Commission and others. The newly added protections were intended to address the concern that the IRS was "unreasonably infring[ing] on the civil rights of taxpayers, including the right to privacy." S. Rep. No. 94-938, at 368 (1976); *see* H.R. Rep. No. 94-658, at 307 (1975).

As mentioned above, Congress was keenly aware of the balance to be struck between the right to privacy and the IRS's need to collect information, via a summons, to carry out its duties. *See* S. Rep. No. 94-938, at 368, 371. In enacting Section 7609, Congress effectuated such a balance. It did not grant new substantive rights, privileges, or defenses. *See id.* at 370. Instead, it provided new procedural protections. Congress obligated the IRS, when issuing a summons, to notify the person whose records were sought about the summons. *See id.* at 368 (noting that there was no notice requirement previously). "For example, if the [IRS] summons a bank to furnish records with respect to all deposits and withdrawals of the X corporation for the year 1976, the X corporation is to receive notice of the summons." *Id.* at 369. In addition, Congress granted the person whose records are sought the right to challenge the summons based on any existing ground recognized by law, such as relevance or the attorney-client privilege. *See id.* at 370-71. To ensure that "these procedures" do not "produce a problem for sound tax administration greater than the one they seek to solve," Congress imposed strict timing and other limitations. *Id.* at 371; *see, e.g.*, 26 U.S.C. § 7609(a)(1).

Congress also provided certain exceptions. *See* 26 U.S.C. § 7609(c)(2), (f)-(g). But in doing so, it made clear that such exceptions should be rare. *See, e.g.*, S. Rep. No. 94-938, at 372 (characterizing one exception as an "unusual procedure"). Most are narrowly drawn. And broader exceptions with a heightened potential for abuse come with additional safeguards. If, for example, the IRS is concerned that giving notice of a summons would "lead to attempts to conceal, destroy, or alter records relevant to the examination, to prevent the communication of information from other persons through intimidation, bribery, or collusion, or to flee to avoid prosecution, testifying, or production of records," then the IRS may withhold notice—but only if it petitions a district court and demonstrates "reasonable cause to believe" that one of the listed grounds exists. 26 U.S.C. § 7609(g); *see* S. Rep. No. 94-938, at 372. Similarly, to prevent the use of "John Doe" summonses from turning into fishing expeditions, Congress required the IRS to make a specific showing in court before issuing such a summons. 26 U.S.C. § 7609(f); *see* S. Rep. No. 94-938, at 372-73.

In short, when Congress enacted Section 7609, it was legislating in response to concerns about the risk of IRS overreach into the private lives of citizens. And it sought to ensure that taxpayers and others would be able to protect themselves against unwarranted or illegal intrusions on their right to privacy by the IRS.

B. The Sixth Circuit Gives The IRS Virtually Unlimited Power To Trample Privacy Rights

As interpreted by the Sixth Circuit, an exception to Section 7609 deprives countless taxpayers of the

notice and other protections guaranteed by the statute and allows the IRS to run roughshod over the privacy rights that Congress sought to protect.

1. Section 7609(c)(2) provides exceptions for "any summons"

> (D) issued in aid of the collection of—
>
> (i) an assessment made or judgment rendered against the person with respect to whose liability the summons is issued; or
>
> (ii) the liability at law or in equity of any transferee or fiduciary of any person referred to in clause (i) . . .

26 U.S.C. § 7609(c)(2)(D).

The decision below interpreted this exception to apply so long as the IRS "demonstrates" that "(1) an assessment was made or a judgment was entered against a delinquent taxpayer and (2) the summons was issued 'in aid of the collection' of that delinquency." Pet. App. 11a. Such an interpretation imposes no limit on the IRS's power to infringe on privacy rights. Once the IRS makes an assessment against one taxpayer, it can seek, *e.g.*, the bank records of anybody it wants, without providing notice to the accountholder. All it has to do is claim that the records are needed "in aid of the collection" of the delinquent taxpayer's liability. This interpretation "is arguably broad enough to swallow the general rule" of notice. *IRS Practice and Procedure* ¶ 13.02[2][d].

The Sixth Circuit's interpretation of the exception at issue is particularly problematic in the context of

innocent third parties—who owe the IRS nothing—for (at least) three reasons.

First, whether an innocent third party receives notice depends almost entirely on the IRS's say-so. If an IRS agent simply checks a box on the summons stating that "[n]o notice is required," then no notice is provided. *E.g.*, Pet. App. 77a. Without notice, innocent third parties will never find out when the IRS issues summonses for records of their accounts and will have no opportunity to object. Unless the IRS is haled into court, it will never have to "demonstrate[]" that the conditions for invoking the exception are met. *Id.* at 11a.

The IRS has argued that "[i]nterested parties . . . remain free to challenge [its] assertion that a summons was issued for collection rather than another purpose. For example, parties can argue that a summons purportedly issued in aid of collection was actually issued to investigate the possibility of assessing additional taxes." IRS CA6 Br. 31 n.3. But the IRS ignores the practicalities of the situation. An innocent third party would have the opportunity to make such an argument only if it finds out about the summons and files a proceeding to quash in the short period before the records requested are turned over. Without notice, many innocent third parties will never have their day in court.[4] This is not a new problem. Congress has known since before Section 7609 was enacted that, without notice, any right to

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[4] There is no guarantee that banks and other recordkeepers will notify interested parties about summonses. Section 7609 provides broad immunity to "[a]ny summoned party . . . making a disclosure of records . . . pursuant to this section" regardless of whether notice is given. 26 U.S.C. § 7609(i)(3).

challenge a summons—and thus any meaningful limit on the IRS's summons power—is "illusory." *Jeopardy and Termination Assessments* 228 (statement of Hope Eastman, Associate Director, American Civil Liberties Union).

Second, an innocent third party will have no meaningful opportunity to assert an available privilege or defense that could block the release of the records sought by a summons. *See* S. Rep. No. 94-938, at 368, 370-71. If the IRS issues a summons in aid of the collection of a tax liability, it does not provide notice to an innocent third party; consequently, that party will have no right to institute a proceeding to quash the summons. *See* 26 U.S.C. § 7609(b)(2)(A) (only those "entitled to notice of a summons . . . shall have the right to begin a proceeding to quash such summons"); Pet. App. 8a-9a. So even if an innocent third party happens to find out about a summons, the most it can do is challenge the IRS's assertion that the summons was issued in aid of collection. *See supra* at 11. If that challenge fails, the proceeding is dismissed for lack of jurisdiction and the records must be turned over—even if they have little or no connection to the asserted collection-related purpose, are overbroad, or are privileged.

This case is a prime example. Two of the petitioners are law firms. Pet. App. 4a. The IRS is seeking bank records of the firms, which may show transactions with clients unrelated to the taxpayer whose tax liability the IRS is supposedly seeking to collect. *See id.* Under the Sixth Circuit's test, the firms' banks must turn over those records even if they contain irrelevant, privileged, or confidential

information.[5] These are exactly the sorts of privacy interests that Congress sought to protect and that are undermined by the decision below.

Third, when the IRS obtains records of an innocent third party without notice because of an ostensible collection-related purpose, it can use those records for *any* purpose. For example, in this case, if the IRS obtains the law firms' bank records to aid in the collection of one client's tax liability, it can use those records in an audit of other clients or of the law firms themselves. That is true even though the IRS *would* have to provide notice if it sought the exact same records for examination purposes rather than collection purposes. *See* 26 U.S.C. § 7609(a)(1). Indeed, that is true even if the IRS issues a dual-purpose summons, or one that admittedly serves *both* collection-related and non-collection-related purposes. *See Barmes v. United States*, 199 F.3d 386, 389 (7th Cir. 1999).

* * *

The Sixth Circuit's decision upsets the balance that Congress struck between the IRS's interest in collecting taxes and an innocent third party's interest in the privacy of her personal and financial records. When a summons is issued without notice, the affected party is by definition uninformed—or, if

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[5] Although the IRS offered to allow the banks to turn over the records to the law firms first to ensure that the records included information only about the assessed taxpayer, that is inadequate. Pet. App. 5a. Under the Sixth Circuit's decision, the firms have no *legal right* to review or redact the records. And if the banks had not notified the firms about the summonses, the banks presumably would have turned the records over to the IRS without any review.

informed, unable to challenge the summons in a meaningful way. The Congress that enacted Section 7609 did not create new procedures to protect the right to privacy with one hand only to take them away with the other.

2. As the petition explains, the Sixth Circuit's decision directly conflicts with the approach in the Ninth Circuit. Pet. 15-20. That conflict warrants this Court's review in its own right. But it also makes clear that there are other ways to interpret the notice exception for summonses "in aid of the collection" of an assessment or judgment that do not unduly infringe on privacy rights.

The Ninth Circuit applies the exception "only where the assessed taxpayer 'has a recognizable [legal] interest in the records summoned.'" *Ip v. United States*, 205 F.3d 1168, 1174-76 (9th Cir. 2000) (alteration in original) (citation omitted); *accord* Pet. App. 30a (Kethledge, J., dissenting). In other words, under the Ninth Circuit's interpretation, the IRS can use the exception to avoid giving notice of a summons only when it seeks records of an account in which the delinquent taxpayer herself has a recognized legal interest. And as a result, only the delinquent taxpayer is barred from meaningfully challenging a collections-related summons issued without notice.

That situation presents far fewer privacy concerns. Before an assessment or judgment is entered, a taxpayer generally has the opportunity for administrative review, including in the IRS Independent Office of Appeals. *See* 26 U.S.C. § 7803(e)(4). The taxpayer generally also has the opportunity to pursue judicial review in the Tax Court before having to pay any deficiency asserted by the IRS. *See id.* § 6213(a). So the taxpayer's right to

privacy in its records may reasonably give way to the IRS's need to collect the outstanding debt. *Cf. Tiffany Fine Arts*, 469 U.S. at 321 (the "IRS's interest in enforcing the tax laws" can outweigh incidental effects on "privacy rights" when the IRS is pursuing a "legitimate investigation of a particular taxpayer").

The concerns highlighted above are also less significant—if not absent altogether. A summons issued for a delinquent taxpayer's own records is more likely to reveal assets from which the IRS can collect. It is thus more likely to serve a bona fide collection-related purpose than a summons issued to an innocent third party, from whom the IRS cannot collect the delinquent tax liability. The delinquent taxpayer is less likely to be able to assert a legitimate privilege or defense against disclosure of her own records. And since the universe of delinquent taxpayers is much smaller than the universe of innocent third parties, so too is the pool of information and the potential for use of that information for non-collection-related purposes.

3. The virtually unchecked—and uncheckable—power conferred by the decision below will impact an incalculable number of people. Only the IRS knows the full impact of that power, since (as far as CTR knows) the IRS does not publicly report how often it uses its summons power to collect records from third-party recordkeepers like banks without notice to those affected. Indeed (as far as CTR knows), the IRS publicly reports almost no information about the frequency with which it uses *any* of its summons powers. But Section 7609 clearly has a substantial effect. Data collected in the years leading up to the passage of Section 7609 suggested that the IRS issued approximately 45,000 summonses annually to

third-party recordkeepers like banks, brokers, credit unions, insurers, attorneys, and accountants. 122 Cong. Rec. 24250 (July 28, 1976). The vast majority of them were intended to be covered by the procedural requirements of Section 7609. *Id.*

In the years since then, summons-related issues have become among the most frequently litigated issues in tax law. *See* Nat'l Taxpayer Advocate, *Annual Report to Congress 2021*, at 189-90 (2021) ("*2021 Annual Report*").[6] In 2018, the National Taxpayer Advocate identified 25 instances in which a taxpayer petitioned to quash a summons issued to a third-party recordkeeper. Many were dismissed on procedural or jurisdictional grounds, including because of the notice exception of Section 7609(c)(2)(D). *See* Nat'l Taxpayer Advocate, *Annual Report to Congress 2018: Volume 1*, at 475 (2019).[7] And hundreds of summonses were litigated in 2020 and 2021. *See* Nat'l Taxpayer Advocate, *Annual Report to Congress 2020*, at 206 (2020);[8] *2021 Annual Report* 189. These known cases do not represent the scope of the issue in this case—which, by its nature, remains hidden from public view. After all, an innocent third party cannot object to an IRS summons of which she is unaware.

Nobody outside of the IRS knows how often the IRS uses the exception to Section 7609 at issue here.

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[6] Available at https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2022/01/ARC21_Full-Report.pdf.

[7] Available at https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/07/ARC18_Volume1.pdf.

[8] Available at https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2021/01/ARC20_FullReport.pdf.

Nevertheless, it is evident that summons-related issues are common; that this specific exception comes up often enough to have given rise to a circuit split over its meaning; and that this split will affect countless innocent third parties. This case presents an ideal opportunity to address the scope of, and limits on, important privacy protections in Section 7609 that might otherwise evade this Court's review.

C. The IRS Has Little To Gain By Not Providing Notice Of Summonses To Innocent Third Parties

Although the IRS has emphasized the importance of the summons power (*see* IRS CA6 Br. 14-16), that is not the issue. Nobody questions that the IRS has the power to seek the records of innocent third parties via a summons. *See* 26 U.S.C. § 7602(a). The question is when the IRS can do so *without notice*. And the IRS has said remarkably little about why it needs a still broader and unchecked power to seek the records of innocent third parties, like petitioners, without giving them notice.

The primary reason for denying notice in this context is to avoid tipping off those who owe taxes that the IRS is undertaking collection activity. Notice of a summons for account records of a delinquent taxpayer could allow her to "withdraw the money in [her] account, thus frustrating the collection activity of the [IRS]." H.R. Rep. No. 94-658, at 310. But the Ninth Circuit's interpretation of the exception at issue here adequately protects against that concern. *See Ip*, 205 F.3d at 1176. When the IRS is seeking records of accounts belonging to people who do not owe taxes, the same rationale simply does not apply. Nor has the IRS offered any other reason to support

the Sixth Circuit's expansive rule denying notice to such innocent third parties.

To the extent the IRS may suggest that giving notice would cause delay, that too does not suffice. The difference between the interpretations of the exception at issue matters only for a summons issued to an innocent third party in aid of the collection of someone else's tax liability. The IRS generally has 10 years to collect a tax assessment, and even longer to collect a judgment. *See* 26 U.S.C. § 6502(a). And complying with Section 7609 requires only *23 days' notice*—a vanishingly small portion of a 10-year collection period. *See id.* § 7609(a)(1). Even when notice of a summons leads to court proceedings to quash the summons, there is still plenty of time to collect the tax liability with respect to which the summons was issued. Moreover, the IRS routinely takes months or years to perform many of its core functions, including processing tax returns, issuing refunds to collect any tax liability, responding to taxpayer correspondence, and performing audits. *See, e.g.*, News Release, IRS, IR-2022-129, *National Taxpayer Advocate Issues Midyear Report to Congress; Expresses Concern About Continued Refund Delays and Poor Taxpayer Service* (June 22, 2022).[9] The IRS should not be heard to complain about the relatively minimal delay necessary to protect privacy rights.

In any event, the benefit to providing notice to innocent third parties clearly outweighs any prejudice to the IRS. Section 7609 was enacted to curtail IRS

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[9] Available at https://www.irs.gov/newsroom/national-taxpayer-advocate-issues-midyear-report-to-congress-expresses-concern-about-continued-refund-delays-and-poor-taxpayer-service.

overreach and to give interested parties an opportunity to assert privileges or defenses that would block disclosure of their records. *See supra* at 7-9. Notice and an opportunity to object to the disclosure of information are integral to the statute. Those remedies should not be denied in cases involving innocent third parties where the risk of IRS overreach and disclosure of irrelevant, privileged, or confidential information is at its apex.

CONCLUSION

The petition for a writ of certiorari should be granted.

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