No. 21-1599

In the Supreme Court of the United States

HANNA KARCHO POLSELLI, ABRAHAM & ROSE, P.L.C., AND JERRY R. ABRAHAM, P.C., PETITIONERS

v.

INTERNAL REVENUE SERVICE

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

REPLY BRIEF FOR PETITIONERS

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INTRODUCTION

When the IRS issues a summons to third-party recordkeepers, like banks, it must give the person named in the summons notice and an opportunity to ask a court to quash the summons. I.R.C. § 7609(a)(1), (b)(2)(A). There are a few exceptions, because people sometimes use notice to move money beyond the IRS's grasp. Under § 7609(c)(2)(D)(i), if the IRS makes an assessment or secures a judgment against a delinquent taxpayer, then it doesn't have to give notice when summonsing records of accounts in which the taxpayer has a legal interest, because notice would just give him a chance to move the money. Nor does the IRS need to give notice under clause § 7609(c)(2)(D)(ii) to a transferee or fiduciary liable for some portion of the assessed tax debt.

Not so fast, the government says. The IRS claims it doesn't have to give anybody notice if it has made an assessment of a taxpayer's liability. An "assessment" is just an internal "bookkeeping notation," *Laing v. United States*, 423 U.S. 161, 170 n.13 (1976), recording what the taxpayer owes. Then it's open season on anyone's accounts, not just the taxpayer's. The IRS thus claims it can secretly summons years' worth of bank account records of a law firm just because that firm did some work for a delinquent taxpayer. And the only legal authority for that power, says the IRS, is that the statute dispenses with the notice requirement for a summons "issued in aid of the collection of an assessment," I.R.C. § 7609(c)(2)(D)(i)—never mind that the rest of the statute refutes that understanding. In the IRS's view, Congress wrote § 7609 to give its agents covert operations powers, not to cabin their secret summons authority to limited circumstances.

That reading is deeply concerning. It also misreads the statute. Congress wrote § 7609 as a broadly worded privacy statute to curtail this Court's decisions leaving the IRS's summons authority unchecked and taxpayers' privacy rights unprotected. Section 7609(c)(2)(D) gives the IRS limited exceptions from the notice provisions. The provision exempts from the notice requirement "any summons … 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)." I.R.C. § 7609(c)(2)(D). Clause (i)'s "in aid of the collection" language requires a direct connection, meaning that the delinquent taxpayer must have a legal interest in the summonsed account. Reading the statute not to impose that requirement would make all of clause (ii)—and all of clause (i) after "assessment made or judgment rendered"—superfluous. Put simply, the IRS would read clause (i) to say "in aid of the collection of an assessment made or judgment rendered," period.

The IRS's arguments don't add up. The agency whistles past the precedent from this Court that Petitioners cited to explain the meaning of "in aid of," *Clinton v. Goldsmith*, 526 U.S. 529, 534-35 (1999), citing a poorly reasoned circuit court case instead. Then it cites a decision supposedly interpreting "in aid of" language in Federal Rule of Civil Procedure 69(a)(2), even though that decision instead emphasized that the case was "*not* … about the breadth of Rule 69(a)(2)." *Republic of Argentina v. NML Capital, Ltd.*, 573 U.S. 134, 140 (2014) (emphasis added).

Next, the IRS claims that its reading doesn't make clause (ii) superfluous, because it sometimes collects a tax debt from a transferee or fiduciary even when it can't get the money from the taxpayer himself. But that's *Petitioners'* point—the IRS is *still* collecting the same assessment or judgment against the taxpayer even when it finds the money in someone else's hands. Clause (ii) has no role to play. No wonder this is the first time the IRS has floated this argument in this case—a good indication that it hasn't known what to do with clause (ii) for years. Finally, the IRS pivots again, saying that clause (ii) actually lets it issue noticeless summonses *before* assessment to collect from fiduciaries and transferees. Really, delinquent taxpayers have greater privacy rights than third parties? And to support that point, the IRS selectively quotes legislative history proving just the opposite.

Just how many secret summonses the IRS has issued under clause (i) it won't say. Maybe it doesn't know—after all, apparently all it takes to launch a covert operation is one IRS agent's speculation and a nod from his boss. Forget administrative state—this is an unadministered agency. The agency seems to think § 7609 put NSA agents in IRS cubicles.

The IRS's view of § 7609 doesn't reflect the statute Congress wrote, the reasons it acted, or the fundamental expectations we have of our government. The Court should reverse.

ARGUMENT

A. Statutory text and context show that § 7609(c)(2)(D)(i) applies only when the delinquent taxpayer has a legal interest in the summonsed records or accounts.

The IRS doesn't need to provide notice when it issues third-party summonses "in aid of the collection" of tax liabilities. I.R.C. § 7609(c)(2)(D). Statutory text and context confirm that § 7609(c)(2)(D)(i) applies only when the summons will lead directly to payment satisfying the assessment or judgment against the delinquent taxpayer. That standard is met, as Judge Kethledge explained, when the taxpayer has a legal interest in the summonsed accounts. The IRS hasn't shown otherwise. Instead, it asserts that Congress put *no limits* on its ability to issue secret third-party summonses once it has made an assessment. But it fails to engage with Petitioners' textual arguments and cannot show that its expansive interpretation leaves any role for § 7609(c)(2)(D)(ii).

1. Section 7609(c)(2)(D) requires a direct connection between the summons and payment, not just the possibility of obtaining information.

a. Section 7609(c)(2)(D)'s text shows that the exception targets collection, not general information gathering somehow related to collection. Pet. Br. 20-25. "Collection"—the provision's focus—means "obtaining payment of taxes due." *Direct Marketing Ass'n v. Brohl*, 575 U.S. 1, 10 (2015). "In aid of" means assisting or helping with an objective, and is ordinarily limited to activities that directly advance that objective, as caselaw shows and statutory context here confirms. Put simply, the phrase "in aid of" "does not enlarge" its subject. *Goldsmith*, 526 U.S. at 534-35.

In contrast, "related to" and "in connection with" "generally [have] a broadening effect." *Lamar, Archer & Cofrin, LLP v. Appling*, 138 S. Ct. 1752, 1760 (2018). While Congress used those expansive phrases in § 7609(c)(2)(E)(i) and (f)(1), it chose "in aid of" for § 7609(c)(2)(D). That disparate choice "strongly suggests" that Congress "intentionally" restricted

§ 7609(c)(2)(D) to third-party summonses (the aid) directly connected to the transfer of money into the federal treasury (the objective). *Azar v. Allina Health Servs.*, 139 S. Ct. 1804, 1813 (2019) (citation omitted). What's more, Congress consistently distinguished collection from information gathering, confirming that "in aid of" does not transform § 7609(c)(2)(D)—a limited exception focused on collection—into a broad exception for covertly collecting information about innocent parties.

"In aid of the collection" covers summonses that lead directly to the IRS obtaining payment for a tax liability. A summons under § 7609(c)(2)(D)(i) meets that standard when the delinquent taxpayer "has a recognizable legal interest in the records summoned." Pet. App. 30a (Kethledge, J., dissenting) (citation omitted). That's because summonsed information likely will reveal property the IRS can collect to satisfy the tax debt only when the taxpayer owns or has some right in the property. When the taxpayer *lacks* such a legal interest, in contrast, the information can reveal only clues. Clues may in some general sense "relate to" collection. But that's not what § 7609(c)(2)(D) says or what "in aid of" means.

b. The IRS responds that "in aid of the collection" is limitless, reaching any summons seeking information that might somehow relate to collection, no matter how attenuated the connection to collection might be. That's incorrect.

i. The IRS claims that "a summons issued in aid of collection is one that helps the government obtain payment." Br. 16-17. That argument is based entirely on the IRS's unexplained assertion that "in aid of the collection" broadly means "relating to the collection."

Br. 19. It doesn't. Like the decision below, the IRS reads "in aid of" in a vacuum, ignoring Congress' decision to use phrases like "relates to" and "in connection with" elsewhere in § 7609. Pet. Br. 21-22, 40; *supra* pp. 4-5. It also ignores this court's precedent interpreting "in aid of," *Goldsmith*, 526 U.S. at 534-35, plus common usage and common sense.

Take common usage. To provide "aid" is to "support, help, [or] assist." *Black's Law Dictionary* 63 (5th ed. 1979). These words share a limiting principle: the conduct leads directly to the objective. A point guard earns an "assist" when her pass "leads directly to a basket," *Glossary of WNBA Terms*, https://tinyurl.com/WNBA-Assist (last visited Mar. 17, 2023); a shortstop turning a double play "assists" the putout at first base, *Official Baseball Rules* § 9.10(a) (2022), https://tinyurl.com/MLB-Rules. A teammate who inbounded the ball at the far end of the court, however, does not earn an "assist." Neither does the athletic trainer who taped the point guard's ankle or the mascot who rallied the crowd to cheer for the shortstop. Those efforts may generally "relate to" the athletes' performance, but they are too far removed from the objective to be understood as aid or assistance.

The IRS also ignores common sense. Pet. Br. 30-31. Even if "in aid of" *could* mean "relating to," only the narrower reading prevents § 7609(c)(2)(D) "from assuming near-infinite breadth." *FERC v. Electric Power Supply Ass'n*, 577 U.S. 260, 278 (2016) (interpreting "affecting" to mean "directly affecting"). The IRS's only response is to claim that it's reading the statute's "literal language." IRS Br. 21 (citation omitted). But fair meaning, not sterile literalism, is the textualist's touchstone. Pet. Br. 39-40. That's why Judge O'Scannlain agreed that § 7609(c)(2)(D)(i) applies only when "the assessed taxpayer 'has a recognizable legal interest in the records summoned.'" *Ip v. United States*, 205 F.3d 1168, 1176 (9th Cir. 2000) (alteration adopted; citation omitted); *id.* at 1177 (O'Scannlain, J., specially concurring). As Judge Kethledge explained, the legal-interest test is a concrete application to bank accounts of the direct-connection standard, which comes from "in aid of the collection." Pet. App. 30a; *supra* pp. 4-5. It thus makes no difference whether the words "legal interest" or "direct connection" appear in § 7609(c)(2)(D) or the legislative history, *contra* IRS Br. 21-22, 39-40, just as it didn't matter whether the word "directly" appeared in the Federal Power Act, *Electric Power Supply Ass'n*, 577 U.S. at 277-78.

ii. The IRS claims that I.R.C. § 7610, *Haber v. United States*, 823 F.3d 746 (2d Cir. 2016), and Federal Rule of Civil Procedure 69 support its limitless construction of "in aid of the collection." Not so.

Section 7610 sheds no light on how to interpret § 7609(c)(2)(D)(i). Pet. Br. 40-42. Section 7610 states that the government may not reimburse production costs if "the person with respect to whose liability the summons is issued has a *proprietary interest in the books, papers, records or other data required to be produced*." I.R.C. § 7610(b)(1) (emphasis added). The IRS does not dispute that §§ 7609 and 7610 address different issues, or that the legal-interest test in § 7609 and the proprietary-interest test in § 7610 are distinct. It instead argues (Br. 22-23) that Congress could not have put "*any*" interest-based limitation in § 7609(c)(2)(D) because § 7610 expressly includes one, albeit a different one. Because it is undisputed that §§ 7609 and 7610 address different issues and involve different interest-based tests, this apples-to-oranges comparison is unhelpful. The better comparison is Congress' disparate use of "in aid of" in § 7609(c)(2)(D) and "relates to" and "in connection with" elsewhere *in the same section*—crucial context the IRS ignores.

Rather than address the "in aid of" case Petitioners cited from this Court, *Goldsmith*, 526 U.S. 529, the IRS invokes (Br. 19) a single court of appeals case, *Haber*. But *Haber* is unpersuasive. While *Haber* said that "in aid of" in § 7609(c)(2)(D) is "broad general language," 823 F.3d at 751, that assertion is *ipse dixit*. Indeed, *Haber* ignored (a) the ordinary meaning of "aid," (b) precedent showing that "in aid of" does not enlarge its subject, (c) Congress' choice *not* to use "related to" or "in connection with" in § 7609(c)(2)(D), despite using those phrases elsewhere in § 7609, and (d) common sense, which says that phrases like "related to" must have a limit.

Finally, Federal Rule of Civil Procedure 69(a)(2) does not help the IRS because its "in aid of" language doesn't set the scope of the rule. Rule 69(a)(2) states that "[i]n aid of the judgment or execution, the judgment creditor or a successor in interest whose interest appears of record may obtain discovery from any person—including the judgment debtor—as provided in these rules or by the procedure of the state where the court is located." That text makes clear that the rule's breadth results from Federal Rule of Civil Procedure 26's discovery provisions and state law, not the prefatory "in aid of" language.

The case the IRS cites (Br. 19) *confirms* this point, not the IRS's argument: "subject to the district court's discretion, '[p]arties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense.'" *NML Capital*, 573 U.S. at

139 (quoting Fed. R. Civ. P. 26(b)(1)). In fact, *NML Capital* explicitly states that it "is not a case about the breadth of Rule 69(a)(2)." *Id.* at 140. Rather, it was about whether the Foreign Sovereign Immunities Act limits discovery against a foreign state. *Id.* at 139-40. No wonder the IRS cites *NML Capital* but ignores *Goldsmith*, which *does* interpret "in aid of" language, which there set the scope of federal courts' writ jurisdiction. 526 U.S. at 534.

c. Contrary to the IRS's arguments (Br. 23-24), the direct-connection standard's legal-interest test isn't hard to apply. As Judge Ikuta explained, a court considers the totality of the circumstances, like "whether there was an employment, agency, or ownership relationship between the taxpayer and third party." *Viewtech, Inc. v. United States*, 653 F.3d 1102, 1106 (9th Cir. 2011). Those factors make sense, because they help inform whether the summons will lead directly to the payment of the assessment or judgment. For instance, when a taxpayer wholly owns a business entity, he is entitled to the entity's income, meaning the IRS can seize the entity's assets to satisfy his tax debt. *See id.* But when the taxpayer does not have an ownership interest in the entity—like how Remo Polselli does not have an ownership interest in the Petitioner law firms—the IRS cannot seize the entity's assets to satisfy the tax debt.

This approach also provides meaningful guidance to the IRS. An IRS agent can no longer ignore § 7609(a) to secretly snoop through innocent parties' private lives for possible clues to help "locate the taxpayer's assets for collection." IRS Br. 22. Instead, he must prove to his supervisor, *see* IRS Br. 45, that notice is not required under § 7609(c)(2)(D) because the summonsed information likely will lead directly to payment satisfying the assessment or judgment. In most scenarios, that determination will be straightforward based on the information obtained during the "pre-liability fact-gathering phase." IRS Br. 38. For example, the IRS knew that Remo Polselli had incorporated "several businesses," and it had reason to believe that Dolce Management, LLC, had made "payments on his behalf." IRS Br. 5. Under *Viewtech*, that would be enough to trigger § 7609(c)(2)(D) for a summons for *Dolce's* accounts. *See* 653 F.3d at 1106. But if all the IRS agent can show is that summonsing a law firm's accounts might produce information that may (or may not) eventually lead to the taxpayer's assets, as is the case here, then notice is required.

The IRS complains about administrability concerns, but courts and agencies deal with totality tests all the time. The bigger administrability concern is the consequence of the IRS's reading—the ability of administrative agents to act with little accountability. "[C]ommon sense" makes "it very unlikely that Congress" gave IRS agents such sweeping secret summons power. *West Virginia v. EPA*, 142 S. Ct. 2587, 2609 (2022) (citation omitted).

Finally, the IRS claims (Br. 24) that the legal-interest test doesn't account for summonses to nonbanks, like accounting firms or employers. That argument lacks merit. *First*, employers aren't third-party recordkeepers. *See* I.R.C. § 7603(b)(2). *Second*, the definition of third-party recordkeepers lists entities that maintain accounts or records in which persons have legal interests: savings institutions, credit unions, persons extending credit, brokers, attorneys, accountants, and investment companies. *Id.*

2. The direct-connection standard's legal-interest test gives full effect to clauses (i) and (ii).

a. Reading "in aid of the collection" to mean "relating to the collection," as the IRS does (Br. 19), creates significant surplusage problems. Pet. Br. 25-27. Section 7609(c)(2)(D) applies in two scenarios. *First*, when "an assessment [has been] made or judgment [has been] rendered against the [delinquent taxpayer]." I.R.C. § 7609(c)(2)(D)(i). *Second*, when there is a "liability at law or in equity of any transferee or fiduciary of [the delinquent taxpayer] referred to in clause (i)." I.R.C. § 7609(c)(2)(D)(ii). The "only way" to give effect to both clauses is to read § 7609(c)(2)(D) to require a "direct connection between the summons and the 'collection' of the liability of the persons described in §§ 7609(c)(2)(D)(i) and (D)(ii)." Pet. App. 30a (Kethledge, J., dissenting). Otherwise, all of clause (ii) and the bulk of clause (i) would be superfluous.

b. Below, the IRS could not identify "a single concrete example of a summons that falls within § 7609(c)(2)(D)(ii) but not (D)(i)." Pet. App. 28a (Kethledge, J., dissenting); *see* Pet. Br. 42-44. It still can't.

i. The IRS says clause (ii), but not clause (i), applies "where the government cannot collect directly from the taxpayer." IRS Br. 26 (emphasis omitted). This new theory rests on the false premise that the inability to collect *from* the taxpayer prevents the IRS from collecting the assessment of or judgment determining *the taxpayer's debt*. Indeed, in scenarios where the IRS cannot collect from the taxpayer but instead seeks payment from a transferee or fiduciary, the IRS is still satisfying the debt that gave rise to the assessment or judgment. Thus, under the IRS's expansive reading, § 7609(c)(2)(D)(i) reaches *any* summons issued "in aid of the collection of an … assessment made or judgment rendered against the [taxpayer]," even if the IRS seeks to collect from a third party, and there is no work left for clause (ii).

Start with corporate dissolution, the IRS's primary example. Corporations sometimes make "liquidating distributions" to their shareholders before dissolution. M. Saltzman & L. Book, *IRS Practice and Procedure* § 17.05, 1999 WL 1051057, at *3 (2022). Because the dissolved corporation lacks assets, the IRS can collect from the shareholders as transferees. *Id.* But collecting from "a stockholder transferee" means "enforc[ing] the tax liability *of the corporation*." *Phillips-Jones Corp. v. Parmley*, 302 U.S. 233, 237 (1937) (emphasis added); *see IRS Practice and Procedure* § 17.05, 1999 WL 1051057, at *3 ("Once the Service has collected the *transferor's tax liability*," *i.e.*, the dissolved corporation, "the liability of all transferees for the *transferor's debt* is extinguished." (emphases added)).

The same logic applies to the IRS's other examples. A bankruptcy "extinguishes *only* 'the personal liability of the debtor,'" *Johnson v. Home State Bank*, 501 U.S. 78, 83 (1991) (citation omitted), thus leaving intact the assessment made or judgment rendered against the taxpayer, which the IRS can collect from a transferee or fiduciary. And no matter whether the taxpayer's estate is insolvent or the limitations period bars collection from the taxpayer, *compare* I.R.C. § 6501(a), *with* I.R.C. § 6901(c), the IRS is still "collecting taxes due from a transferor." *United States v. Floersch*, 276 F.2d 714, 717 (10th Cir. 1960).

This logic makes sense given the nature of assessments and judgments. An assessment is simply "a bookkeeping notation." *Laing*, 423 U.S. at 170 n.13. It "refers to little more than the calculation or recording of a tax liability." *United States v. Galletti*, 541 U.S. 114, 122 (2004). That ledger entry is not "obsolete," IRS Br. 27, just because the taxpayer lacks collectable assets: "it is *the tax* that is assessed, not the taxpayer." *Galletti*, 541 U.S. at 123. The transferee is thus "liable for payment of the taxpayer's debt," *id.*, and satisfaction of that debt constitutes satisfaction of the assessed tax. Judgments are no different: "Once a tax liability is reduced to judgment, … the judgment … exist[s] until the amount is paid." 14A *Mertens Law of Federal Income Taxation* § 53:48 (Mar. 2023 Supp.).

ii. The IRS also claims (Br. 27-31) that Congress drew a hard line at assessment for clause (i), with only clause (ii) applying pre-assessment. Under that theory, Congress must have wanted to give delinquent taxpayers *some* privacy protections during the collection phase (*i.e.*, pre-assessment notice) and simultaneously deny transferees and fiduciaries *any* privacy protections. That argument is incorrect, and it's also inconsistent with another IRS argument.

Start with the statute. Clause (ii) refers to the taxpayer in clause (i) because when the IRS seeks to collect from a transferee, it seeks to satisfy the assessment or judgment against the taxpayer. Put another way, clause (ii)'s reference to "any person referred to in clause (i)" means a person against whom an assessment has been "made or judgment rendered." I.R.C. § 7609(c)(2)(D)(i), (ii); *see* Pet. Br. 42. Thus, "*[e]very* summons 'issued in aid of the collection of' the liability of a 'transferee or fiduciary' of an assessed taxpayer …

is 'issued in the aid of the collection of' that assessment." Pet. App. 28a (Kethledge, J., dissenting).

While the IRS says that it could, in theory, issue a secret summons pertaining to a transferee's liability before it has assessed the taxpayer's debt, it "offers not a single concrete example" proving the point. *Id.* Talk about "claim[ing] to discover in a long-extant statute an unheralded power." *West Virginia*, 142 S. Ct. at 2610 (citation omitted). Indeed, the IRS admits (Br. 31 n.3) that it issues "summonses under Clause (ii) only after … assessment." For good reason. The IRS needs to know the amount to collect from a transferee *before* it issues a collection-focused summons concerning the transferee's liability. And because the transferee's liability is "derivative" of the taxpayer's, IRS Br. 2, the IRS must first calculate and record the taxpayer's liability—*i.e.*, assess it. *Galletti*, 541 U.S. at 122. That's why Congress intended clause (ii) to be limited to scenarios where the tax "has been assessed." H.R. Rep. No. 94-658, at 310 (1975) (House Report).

Now for the inconsistency. The notion that Congress wanted to give delinquent taxpayers but not transferees or fiduciaries pre-assessment notice makes little sense. Where does the IRS think the transferees or fiduciaries are getting the money? And the notion conflicts with the IRS's own assertion elsewhere that "'the right to privacy' carries substantial weight" when the agency is still trying to figure out whether a taxpayer owes money in the first place. IRS Br. 38. Add the two assertions together, and apparently delinquent taxpayers have greater privacy rights than third parties. That's hard to imagine. Indeed, the IRS's main authority for that proposition is a sentence from legislative history that shows, when a key word the IRS elides (Br. 30-31) is restored, that Congress had no such intent: Congress was concerned about the "possibility that the *taxpayer*, transferee, or fiduciary would" use notice "to withdraw the money in his account, thus frustrating the collection activity of the Service." House Report 310 (emphasis added). In fact, the same report, on the same page, shows that Congress viewed clause (ii) as limited to attempts "to enforce fiduciary or transferee liability for a tax *which has been assessed*." *Id.* (emphasis added); *see* Pet. Br. 43. Clause (ii) doesn't apply pre-assessment.

iii. Finally, the IRS says it doesn't matter if clause (ii) is superfluous because Congress sometimes uses a belt and suspenders. Br. 31-34. That argument fails. As with all interpretive principles, courts discern whether Congress employed a belt-and-suspenders approach by construing the supposed redundancy "in light of its text and place within a comprehensive statutory scheme." *Territory of Guam v. United States*, 141 S. Ct. 1608, 1615 (2021). For example, Congress may use repetition to "make sure" a statute is clear. *Atlantic Richfield Co. v. Christian*, 140 S. Ct. 1335, 1350 n.5 (2020).

The IRS fails to establish that Congress had good reason to create redundancy. For starters, clause (ii) is superfluous, not redundant. It would "have no operation at all," *Marbury v. Madison*, 1 Cranch 137, 174 (1803), because clause (i) does all the work. *Supra* pp. 11-15. The problem isn't "overlap," IRS Br. 25, but nullification. Regardless, it's implausible that Congress created redundancy in the Tax Reform Act of 1976 based on concerns about a 1928 law enacted in response to a 1927 district court decision. *Contra* IRS Br. 33-34. Congress had other things in mind, like the IRS's widespread abuse of power. Center for Taxpayer

Rights Br. 5-9. Congress enacted § 7609 to make sure the IRS does "not unreasonably infringe on the civil rights of taxpayers, including the right to privacy," House Report 307, say by using its summons power to conduct fishing expeditions, *Tiffany Fine Arts, Inc. v. United States*, 469 U.S. 310, 314-16 (1985). The question here isn't whether Congress gave the IRS a belt and suspenders, but whether Congress gave IRS agents invisibility cloaks.

b. Interpreting "in aid of the collection" to mean "relating to the collection" vitiates most of § 7609(c)(2)(D)(i), Pet. Br. 26-27, and the IRS hasn't shown otherwise. On the IRS's reading, § 7609(c)(2)(D) might as well read, "in aid of the collection of an assessment made or judgment rendered," full stop. But Congress specifically identified the taxpayer in clause (i) and the transferee and fiduciary in clause (ii), *and* it referred back to the taxpayer in clause (ii). The direct-connection standard gives effect to these drafting decisions. The IRS's expansive construction does not. Indeed, the IRS interprets "in aid of the collection" so broadly that it has "blurred" the textual "distinction" between summonses issued under clause (i) and (ii). IRS Br. 20.

3. Subsections (a) and (b), the heart of § 7609, show that § 7609(c)(2)(D)(i) is a limited exception.

Reading § 7609(c)(2)(D)(i) to contain a limiting principle—the direct-connection standard—is the only way to preserve the privacy protections in subsections (a) and (b), thus honoring "§ 7609 as a whole." Pet. App. 30a (Kethledge, J., dissenting); *see* Pet. Br. 27-31. Subsections (a) and (b)—the notice, right-to-intervene, and petition-to-quash provisions—are the very reason Congress enacted § 7609: to safeguard privacy and give innocent parties an opportunity to challenge third-party summonses. *Tiffany Fine Arts*, 469 U.S. at 314-16; *Ip*, 205 F.3d at 1174. What's more, by putting expansive language like "any summons" and "any person" in subsections (a) and (b), I.R.C. § 7609(a)(1), (b)(2)(A), Congress made clear that the protections in subsections (a) and (b) apply broadly. The subsection (c) exceptions, in contrast, target specific scenarios. Given the primacy of privacy in § 7609, and given that § 7609(c)(2)(D) targets collection rather than information gathering somewhat related to collection, it makes sense that § 7609(c)(2)(D)(i) is a limited exception to the broad privacy protections. What doesn't make sense, Judge Kethledge explained, is reading § 7609(c)(2)(D)(i) so broadly that subsections (a) and (b) become "entirely superfluous as to summonses issued in aid of collecting a previously assessed tax liability." Pet. App. 29a.

The IRS admits that its interpretation makes subsections (a) and (b) meaningless the moment it determines that *anyone* owes a tax. *See* IRS Br. 35-36 (contrasting the liability-investigation phase with the collection phase). That expansive interpretation ignores "context" and "the overall statutory scheme," violating one of the most "fundamental canon[s] of statutory construction." *Roberts v. Sea-Land Servs., Inc.*, 566 U.S. 93, 101 (2012) (citation omitted). Again, even if "in aid of the collection" could mean "related to the collection," common sense prevents that phrase "from assuming near-infinite breadth." *Electric Power Supply Ass'n*, 577 U.S. at 278.

B. Statutory history and purpose show that § 7609(c)(2)(D)(i) is a limited exception.

1. Congress enacted § 7609 to broadly safeguard privacy in the context of third-party summonses.

Section 7609 is about protecting privacy. Pet. Br. 31-33. Congress "clearly" knew the IRS could "'conduct fishing expeditions' into the private affairs of [ordinary people]," and "unreasonably infringe" their "right to privacy." *Tiffany Fine Arts*, 469 U.S. at 315-16 (citations omitted). So Congress enacted the broadly worded privacy protections in § 7609(a) and (b). *See id.* Congress could not have gutted that guarantee just a few provisions later in § 7609(c)(2)(D)(i).

In opposing cert, the IRS argued that Congress wanted "notice [to] be provided in the mine-run of pre-assessment cases," including when the summons is "issued in aid of the collection of a liability that has not yet been assessed." Opp. 18. But now the IRS says that Congress wanted the IRS to *never* give notice when it's "seeking to collect liability." Br. 38. To support this new, more expansive reading, the IRS argues (Br. 36-37, 39) that § 7609 should be confined to the fact pattern in *Donaldson v. United States*, 400 U.S. 517 (1971), which addressed privacy concerns only during the liability-investigation phase. Reading § 7609 that way would gut it. Section 7609 is exhaustive: it contains broadly worded privacy protections, I.R.C. § 7609(a)-(b), a handful of tailored exceptions, I.R.C. § 7609(c), restrictions on the examination of records, I.R.C. § 7609(d), additional requirements for certain exceptions, I.R.C. § 7609(f)-(g), and specific duties of summonsed parties, I.R.C. § 7609(i).

2. Reading § 7609(c)(2)(D)(i) to swallow the broad notice rule is anathema to congressional intent and legal tradition, and it creates the same opportunity for government abuse that Congress sought to eradicate.

Congress enacted broad privacy protections in § 7609 to ensure that innocent parties can defend their privacy against invasive investigations akin to "inquisitorial process." Pet. App. 26a (Kethledge, J., dissenting); *see* Pet. Br. 33-34. Reading § 7609(c)(2)(D(i) broadly would undermine that goal and revive the abusive practices that led to § 7609. Pet. Br. 34-36. The consequences of such a ruling are easy to imagine. If the IRS issued 45,000 third-party summonses in the 12 months before Congress enacted § 7609, *see* Chamber of Commerce Br. 17, imagine how many summonses it issues today. And given the IRS's collection role, a significant number of those summonses are likely issued under § 7609(c)(2)(D)—in secret. The IRS doesn't claim otherwise. Third-party recordkeepers should not be forced to clean up the mess. Pet. Br. 35-36. It is no response that record-keepers have "long been" doing the IRS's job, IRS Br. 44-45, especially because the burden will only grow, Chamber of Commerce Br. 17-19.

3. Congress struck a reasonable balance between privacy and enforcement.

a. Reading § 7609(c)(2)(D)(i) as Congress intended will not tie the IRS's hands. Pet. Br. 37-38. The IRS can still look for collection-related clues; it just can't snoop in secret *whenever* the agency has made an assessment against *someone*. Plus, when no-tice is required, the person whose privacy is at stake has only 20 days to challenge the summons. I.R.C. § 7609(b)(2)(A). True, litigation takes time. IRS Br. 41. But Congress *allowed* for this litigation in striking the balance between the IRS's collection efforts and individual privacy, and in doing so, established a deadline to challenge the summons that is much shorter than other "reasonable" deadlines, *see* Fed. R. Civ. P. 4(d)(1)(F). And while the IRS disputes (Br. 41) whether it could have invoked § 7609(g) *here*, § 7609(g) just shows that Congress gave the IRS plenty of tools to collect taxes.

b. Congress recognized that notice could prompt parties to relocate assets. Pet. Br. 10. But contrary to the IRS's view (Br. 38, 40), nothing in § 7609(c)(2)(D) suggests that Congress thought that risk was so great that it wanted the IRS to trample all privacy in the collection context just to try to prevent it. Statutory text and context show that Congress wanted § 7609(c)(2)(D) to cover only summonses that lead directly to the payment, a reasonable balance between privacy and enforcement. *See supra* pp. 3-17.

c. The IRS claims (Br. 43-44) that individuals don't need to worry about privacy because Congress created other "meaningful privacy protections," like I.R.C. §§ 7602(a)(2) and 6103. Wrong.

Under § 7602(a)(2), summonses must be limited to "relevant or material" information. But when the IRS issues noticeless summonses (which will *always* happen during the collection phase if the IRS wins) and when the summonses cannot be challenged (which is always the case with noticeless summonses) this "rule" is a mere recommendation, subject only to IRS self-policing. The presumption of regularity is no defense, *contra* IRS Br. 45, because it's irregular for an agency to unilaterally decide whether it is violating the law. *Cf.* 5 U.S.C. § 702 (persons "adversely affected or aggrieved by agency action" are entitled to judicial review).

Section 6103—which "generally bars the Service from disclosing 'in any manner' any 'return information' that it receives in response to a third-party summons," IRS Br. 44—is also irrelevant. The privacy concern is whether *the government* should have secret access to sensitive information, not whether the government can disclose that information to *the public*.

C. The IRS is not entitled to a thumb on the scale in determining § 7609(c)(2)(D)(i)'s scope.

Congress unequivocally waived the United States' sovereign immunity in proceedings to quash third-party summonses. I.R.C. § 7609(b)(2)(A). The IRS doesn't disagree. Instead, as last resort, it argues (Br. 41-43) that the Court should resolve any doubts about § 7609(c)(2)(D)(i)'s scope in favor of locking the courthouse doors. Put differently, the IRS thinks the Court should liberally construe § 7609(c)(2)(D)(i) as a giant clawback from § 7609(b)(2)(A). That gets things backwards.

When Congress uses "sweeping language" to waive sovereign immunity, as it did in § 7609(b)(2)(A), the Court "narrowly construe[s] exceptions to" the waiver to make sure the exceptions do not swallow Congress' pro-waiver intent. *United States v. Nordic Village, Inc.*, 503 U.S. 30, 34 (1992) (citation omitted). Thus, "[w]here a statute contains a clear and sweeping waiver of immunity from suit on all claims with certain well defined exceptions, resort to that rule [of strict construction] cannot be had in order to enlarge the exceptions." *United States v. Yellow Cab Co.*, 340 U.S. 543, 548-49 n.5 (1951) (citation omitted). The Federal Tort Claims Act, for example, broadly waives sovereign immunity for certain actions, 28 U.S.C. § 1346(b)(1), just as § 7609(b)(2)(A) does for challenges to summonses. Given that broad waiver, the Court has narrowly construed the FTCA's statutory exceptions. *See, e.g.*, *Block v. Neal*, 460 U.S. 289, 298 (1983). As the Court explained, "[t]he exemption of the sovereign from suit involves hardship enough where consent has been withheld. [Courts should] not … add to its rigor by refinement of construction where consent has been announced." *Id.* (citation omitted); *accord United States v. Williams*, 514 U.S. 527, 541 (1995) (Scalia, J., concurring).

The Court shouldn't read of § 7609(c)(2)(D)(i) to preserve what Congress unequivocally waived in § 7609(b)(2)(A). Section 7609(c)(2)(D)(i) must be read *fairly*, consistent with ordinary meaning, context, history, and purpose.

D. Petitioners have a right to challenge the summonses in federal court.

The Court should hold that Petitioners had a right to notice under § 7609(a) and thus may challenge the summonses under § 7609(b), because Remo Polselli does not have a legal interest in their bank accounts. At the very least, the Court should remand for factual findings. *See* IRS Br. 47-48.

CONCLUSION

The Court should reverse and either hold that Petitioners may challenge the third-party summonses in federal court, or remand for factual findings under the direct-connection standard's legal-interest test.

Respectfully submitted.

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