No. 21-_____

IN THE

Supreme Court of the United States

CARMELA RIVERO,

Petitioner,

v.

FIDELITY INVESTMENTS, INCORPORATED,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI FROM THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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Date: January 5, 2022

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QUESTION PRESENTED

The Anti-Injunction Act ("AIA") provides that "no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person . . ." 26 U.S.C. § 7421(a). The Declaratory Judgment Act ("DJA") provides that "[i]n a case of actual controversy within its jurisdiction, **except with respect to Federal taxes** . . . any court of the United States . . . may declare the rights and other legal relations of any interested party seeking such declaration." 28 U.S.C. § 2201 (emphasis added).

Federal courts have interpreted the AIA's prohibition to be "coterminous" with the prohibition under the DJA's tax exception. Accordingly, if a suit is not barred under the AIA, it is likewise not barred by the DJA. *Cohen v. U.S.*, 650 F.3d 717, 730-31 (D.C. Cir. 2011) (en banc) (Kavanaugh, J.). To read the statutes otherwise—and to apply the DJA's tax exception to bar a case that the AIA does not—would raise a "functional concern" that "defies common sense": "[A] court would have jurisdiction to enjoin the parties appearing before it, but not to declare their rights." *Id.* at 730.

This case raises the following important issue: Is the DJA's tax exception "jurisdictional"—and, if so, does it bar a case that is not barred by the AIA? That is, in a case between two private parties that does not involve the assessment or collection of any tax—and

where the Petitioner's primary purpose is to recover her own property—does the DJA's federal-tax exception deny subject-matter jurisdiction to declare the owner of a brokerage account, even though the AIA is not a bar? And if so, does the fact that Congress has not provided Petitioner with an alternative legal forum to resolve the ownership of the account give rise to an exception under this Court's decision in *South Carolina v. Regan*, 465 U.S. 367 (1984)?

PARTIES TO THE PROCEEDINGS AND RELATED PROCEEDINGS

The parties to the proceeding below are as follows:

Petitioner is Carmela Rivero. She was the plaintiff in the district court and appellant in the court of appeals.

Respondent is Fidelity Investments, Incorporated. Respondent was the defendant in the district court and appellee in the court of appeals.

The related proceedings below are:

1) Rivero v. Fidelity Investments, Inc., No. 4:18-CV-909 (E.D. Tex.) – Judgment entered May 19, 2020; and

2) Rivero v. Fidelity Investments, Inc., No. 20-40371 (5th Cir.) – Judgment entered June 10, 2021.

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PETITION FOR WRIT OF CERTIORARI

Carmela Rivero, Petitioner, respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit.

OPINIONS BELOW

The opinion of the U.S. Court of Appeals for the Fifth Circuit is published at 1 F.4th 340 and reproduced in Petitioner's Appendix ("App.") at 1a-13a. The order denying the petition for rehearing *en banc* and the petition for panel rehearing are reproduced at App. 23a-24a. The opinion of the U.S. District Court for the Eastern District of Texas, which *sua sponte* dismissed this case for lack of subject-matter jurisdiction, is published at 2020 WL 2541963 and is included in App. 14a-22a.

JURISDICTION

On May 19, 2020, the district court *sua sponte* held that it lacked subject-matter jurisdiction of Plaintiff Carmela Rivero's claims under the DJA's federal-tax exception and dismissed her lawsuit against Defendant Fidelity Investments, Inc. On May 29, 2020, Plaintiff filed a timely appeal to the Fifth Circuit Court of Appeals, which affirmed the district court's dismissal on June 10, 2021. Plaintiff timely

filed a petition for panel rehearing and a petition for rehearing *en banc*. On July 6, 2021, the Fifth Circuit of Appeals denied both petitions. This Court has jurisdiction under 28 U.S.C. § 1254(1).[1]

STATUTES AND REGULATORY PROVISIONS INVOLVED

The pertinent statutory and regulatory provisions involved in this case are: 28 U.S.C. § 2201(a), 26 U.S.C. § 7421, 26 U.S.C. § 6325, 26 C.F.R. § 20.2040-1(c)(3), and 26 C.F.R. § 20.6325-1(a), (b). These provisions are reproduced at App. 25a-41a.

INTRODUCTION

This case presents important issues with respect to the Anti-Injunction Act ("AIA") and the Declaratory Judgment Act's ("DJA") tax exception. The Fifth Circuit's opinion reopens—more deeply and intractably than ever—a circuit split that this Court unanimously closed in *CIC Services, LLC v. Internal Revenue Service*, 141 S. Ct. 1582 (May 17, 2021). In

[1] The deadline to file this Petition is 150 days from the date of the Fifth Circuit Court of Appeals' order denying Petitioner's petition for a rehearing. This Court's Miscellaneous Order issued on July 19, 2021, continued the extension of the deadline to file a petition for writ of certiorari to 150 days from the date of the lower court's judgment, order denying discretionary review, or order denying a timely petition for rehearing originally extended by miscellaneous orders issued on March 19, 2020, and April 15, 2020.

CIC Services, this Court held that the AIA did not bar an advisor's lawsuit seeking a declaration that an IRS tax notice was invalid. Under the Fifth Circuit's analysis below, however, *CIC Services* would result in a different outcome: Jurisdiction would *not* exist because the DJA prohibits such a declaration, even though the AIA is not a bar. The Fifth Circuit's rationale provides a blueprint to easily sidestep *CIC Services's* holding, rendering it a dead letter before its first anniversary.

The D.C. Circuit has held that the AIA and DJA are coterminous—if the AIA does not bar subject-matter jurisdiction, the DJA's tax exception does not either. *Z St., Inc. v. Koskinen*, 44 F. Supp. 3d 48, 56 (D.D.C. 2014), aff'd, 791 F.3d 24 (D.C. Cir. 2015) ("The well-documented history behind the tax exception to the DJA and its relationship to the AIA has led numerous courts of appeal, including the D.C. Circuit, to conclude that the scope of the DJA's tax exception is 'coterminous' or 'coextensive' with the AIA's prohibition."); *Cohen v. U.S.*, 650 F.3d 717, 727 (D.C. Cir. 2011) (en banc) ("In other words, 'with respect to Federal taxes' means 'with respect to the assessment or collection of taxes.'"). *See also CIC Services, LLC v. IRS*, 925 F.3d 247, 250 n.3 (6th Cir. 2019) ("The Anti-Injunction Act and the tax exception to the Declaratory Judgment Act are 'to be interpreted coterminously.'"), rev'd on other grounds by this Court at 141 S.Ct. 1582.

In a series of cogent, well-reasoned opinions, the D.C. circuit has confirmed that the legislative history supports this conclusion, as do the text, precedent, and relevant functional considerations. Indeed, the D.C. Circuit has poignantly demonstrated that the Fifth Circuit's reading gives rise to "insurmountable" functional problems:

> The court would have jurisdiction to enjoin the parties appearing before it, but not to declare their rights. This defies common sense, however, "since an injunction of a tax and a judicial declaration that a tax is illegal have the same prohibitory effect on the federal government's ability to assess and collect taxes." *Wyoming Trucking Ass'n, Inc. v. Bentsen,* 82 F.3d 930, 933 (10th Cir.1996). A non-coterminous reading of the two statutes thus poses an insurmountable obstacle. The court would not have jurisdiction to provide declaratory relief but could effectively do so anyway.

Cohen v. United States, 650 F.3d at 730.

Yet in the case below, the Fifth Circuit became the first federal court in history to affirmatively hold that the DJA's prohibition against jurisdiction is broader than that of the AIA. The Fifth Circuit,

expressly conceding that the AIA "does not frustrate jurisdiction" in this case because the case "does not involve 'the assessment or collection of any tax,'" nonetheless held that the DJA "divests" subject-matter jurisdiction because it "*takes away* a court's power to provide declaratory relief in cases involving federal taxes." *See* App. 6a, 11a. In doing so, the Fifth Circuit created an important circuit split with the D.C. Circuit.

The Fifth Circuit's holding was a paradigmatic "drive-by-jurisdictional" ruling—precisely the type that this Court has eschewed in a decades-long line of cases. The jurisdictional issue was invoked *sua sponte*. It was neither raised nor briefed by Respondent. In fact, Respondent expressly "took no position" on the application of the AIA or DJA. Because this Court's jurisprudence supports Petitioner's contention that the two statutes—which are coterminous—are not jurisdictional, Respondent waived its right to assert dismissal of Petitioner's claims. *See Reed Elsevier, Inc. v. Muchnick*, 559 U.S. 154 (2010) (Thomas, J., majority opinion); *Hobby Lobby Stores, Inc. v. Sebelius*, 723 F.3d 1114, 1157-58 (10th Cir. 2013) (Gorsuch, J., concurring). Petitioner's lawsuit should continue to the merits.

Moreover, the Fifth Circuit's decision leaves Petitioner without any remedy at law. The dispute, at heart, turned entirely upon state law: whether the financial account at issue, held as a joint tenancy with

right of survivorship, automatically passed by operation of law to Petitioner. Respondent raised an obscure tax-reporting objection to granting access to the account. But as even the Fifth Circuit itself acknowledged, this case does not involve "the assessment or collection of tax." *See* App. 11a; 26 U.S.C. § 7421.

The case involved two private parties before the court on diversity jurisdiction. There was no tax assessment at issue; no taxes alleged to be due. As such, Petitioner would lack standing to bring a refund or other suit on behalf of Mr. Medrano, another taxpayer, against the IRS because she is not the executor or authorized representative of the estate and the tax matter relates to another taxpayer. *See,* e.g., *Sandrow v. U.S.*, 832 F. Supp. 918, 920 (E.D. Pa. 1993) (noting cases in which taxpayers who pay taxes of another are effectively volunteers or donors who lack standing to bring refund suits). And the IRS has not assessed any tax against Mr. Medrano's estate, nor is there any reason to believe it would ever do so. *See* 26 U.S.C. § 7422 (requiring an assessment or collection of tax prior to bringing suit). Petitioner is thus left without any judicial forum to turn to.

The Fifth Circuit's approach thus invites creative litigants to assert obscure defenses sounding in tax laws that simply do not govern matters of property law, leaving helpless litigants with virtually no forum. And because Petitioner lacks any remedy

at law, the Fifth Circuit's decision barring Petitioner's lawsuit from moving forward is squarely at odds with this Court's decision in *South Carolina v. Regan*, 465 U.S. 367, 373 (1984) ("Congress intended the [AIA] to bar a suit only in situations in which Congress had provided the aggrieved party with an alternative legal avenue by which to contest the legality of a particular tax.").

STATEMENT OF THE CASE

This case is not a dispute over taxes. Win or lose, Petitioner will not owe or pay any taxes. Rather, this case is about access to court to determine the ownership of property. It raises the following question: Whether the DJA's federal-tax exception denies subject-matter jurisdiction over Petitioner's request to be declared the owner of a brokerage account.

A. Background

Petitioner sought a declaratory judgment that she was the owner of a brokerage account (the "Fidelity Account") managed by Fidelity Investments, Inc. ("Fidelity") and that as such she was entitled to access the account. Petitioner, a citizen of Mexico and a resident of the State of Texas at the time, opened the account in her sole name and funded the account with stock that was her sole property. Petitioner was not married. She later granted a right of survivorship

in the Fidelity Account to a Mexican citizen who subsequently passed away ("Mr. Medrano").

Mr. Medrano never contributed any money or property to the Fidelity Account, nor to any account owned by Petitioner. Nor did he ever own, or even claim to own, the Fidelity Account. Mr. Medrano's sole relation to any property in the United States was the right of survivorship in the Fidelity Account.

After Mr. Medrano's death, Petitioner sought to access her Fidelity Account. Fidelity Investments denied the request, asserting that it required an IRS "transfer certificate" to change ownership over the account and to grant her access. Petitioner had no ability to obtain an IRS transfer certificate.

With no other options to access her account, Petitioner filed a Complaint against Fidelity Investments in the Eastern District of Texas. In her Complaint, Petitioner requested a declaratory judgment that she owned the Fidelity Account by operation of state law. Separately, she requested a second declaratory judgment that because she was the sole owner, nothing further was required to transfer ownership to her.

At no point in the proceedings did Fidelity Investments raise the issue or contend that the AIA or the federal-tax exception to the DJA barred the relief that Petitioner requested in her Original

Complaint. Nevertheless, the district court issued its Memorandum Opinion and Order on May 19, 2020, *sua sponte* dismissing Petitioner's lawsuit and holding that the DJA's tax exception deprived it of subject-matter jurisdiction to declare Petitioner the owner of the account.

B. Petitioner is the Owner of the Account by Operation of State Law

Because she contributed 100 percent of the property in the account, Petitioner owned 100 percent of the account, even during Mr. Medrano's life. And in any event, upon his death, the account transferred to her sole ownership automatically by operation of law.

Only Massachusetts or Texas law applies to determine Petitioner's ownership interest in the Fidelity Account. Under Massachusetts law, property that is held by joint tenancy "passes to the survivor by operation of law and does not constitute a part of the decedent's estate." *In re Smith*, 361 Mass. 733, 737 (1972). Texas law applies a similar rule by statute—providing that an account transfers by operation of law to the surviving party if there is a right of survivorship in place:

> Sums remaining on deposit on the death of a party to a joint account belong to the surviving party or parties against the

> estate of the deceased party if the interest of the deceased party is made to survive to the surviving party or parties by a written agreement signed by the party who dies.

Tex. Est. Code § 113.151(a); *see also Punts v. Wilson*, 137 S.W.3d 889, 892 (Tex. App.—Texarkana 2004) ("The party to the account owns the account. On the death of the party, ownership of the account passes to the P.O.D. beneficiaries of the account. The account is not a part of the party's estate."). Under both Massachusetts law and Texas law, the Fidelity Account transferred by operation of law to Petitioner on the death of Mr. Medrano. Mr. Medrano's estate has no property interest in the Fidelity Account and has never claimed to have any right to the account. Nonetheless, Fidelity refused to allow Petitioner to access her account. Following the Fifth Circuit's ruling, Petitioner has no forum to obtain access to her property.

REASONS FOR GRANTING THE WRIT

The Fifth Circuit "decided an important federal question in a way that conflicts with [a] relevant decision[] of this Court." S. Ct. Rule 10(c). In *CIC Services*, this Court held that the AIA did not bar an advisor's lawsuit seeking a declaration that an IRS tax notice was invalid. Under the Fifth Circuit's analysis, however, *CIC Services* would in fact result

in a different outcome: Jurisdiction would not exist because the DJA prohibits such a declaration. The Fifth Circuit's decision directly conflicts with this Court's recent and unanimous decision and provides a blueprint to circumvent *CIC Services's* holding.

The Fifth Circuit's decision is also in conflict with this Court's decision in *South Carolina v. Regan*, 465 U.S. 367 (1984). In *Regan*, this Court held that "Congress did not intend the [AIA] to apply to actions brought by aggrieved parties for whom it has not provided an alternative remedy." *Id. a*t 378. The Court's reasoning there extends to the DJA as well, particularly in light of their "coterminous" relationship. Because the Fifth Circuit's interpretation effectively leaves Petitioner without a remedy, it is in conflict with this Court's precedent.

The Fifth Circuit also "entered a decision in conflict with the decision of another United States court of appeals on the same important matter[.]" S. Ct. Rule 10(a). Specifically, the DC Circuit has repeatedly held that the "DJA and AIA a[re] coterminous." *Cohen v. United States*, 650 F.3d 717, 727–28 (D.C. Cir. 2011 (en banc) (Kavanaugh, J.) ("precedent interprets the DJA and AIA as coterminous.") (citing *E. Kentucky Welfare Rts. Org. v. Simon,* 506 F.2d 1278, 1284 (D.C. Cir. 1974); "*Am. United" Inc. v. Walters*, 477 F.2d 1169, 1176 (D.C. Cir. 1973)). As then-Judge Kavanaugh, writing the

seminal opinion on the issue for an *en banc* DC Circuit, has explained:

> In other words, "with respect to Federal taxes" [DJA] means "with respect to the assessment or collection of taxes" [AIA]. This interpretation is consistent with law in several other circuits.

Cohen, at 728 (citing *In re Leckie Smokeless Coal Co.,* 99 F.3d 573, 583–84 (4th Cir. 1996); *Ecclesiastical Ord. of ISM of AM, Inc. v. I.R.S.,* 725 F.2d 398, 404–05 (6th Cir. 1984); *Perlowin v. Sassi,* 711 F.2d 910, 911 (9th Cir. 1983); *McCabe v. Alexander,* 526 F.2d 963 (5th Cir. 1976); *Tomlinson v. Smith*, 128 F.2d 808, 811 (7th Cir. 1942)). The conflict indeed extends to multiple circuits.

While conceding that the AIA "does not frustrate jurisdiction" in this case because it "does not involve 'the assessment or collection of any tax,'" the Fifth Circuit nonetheless held that the DJA "divests" subject-matter jurisdiction because it "*takes away* a court's power to provide declaratory relief in cases involving federal taxes."[2] *See* App. 6a, 11a. Its

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[2] In her opening appellate brief, Petitioner contended that the AIA and the DJA should be interpreted coterminously. *See* Doc No. 00515573320, at 5-6. Respondent never put this contention at issue. Indeed, Respondent did not brief the issue, opting instead to "defer to th[e appellate] Court's decision regarding the propriety of the district court's *sua sponte* determination that the

decision marks the first time that a federal court has affirmatively held that the prohibition under the DJA's federal-tax exception, *see* 28 U.S.C. § 2201, is broader than that contained in the AIA, *see* 26 U.S.C. § 7421. Because the split is with the D.C. Circuit—the circuit in which most Administrative Procedure Act challenges arise—the circuit split invites forum shopping. Indeed, because APA challenges frequently come part and parcel with AIA and DJA disputes, the judicial interest in uniformity with the D.C. Circuit is particularly compelling.

Finally, the Fifth Circuit "has decided an important question of federal law that has not been, but should be, settled by this Court." S. Ct. Rule 10(c). The AIA and the DJA are frequently invoked in federal court cases, often serving as the source of threshold disputes that, where held applicable, hinder the resolution of disputes and the development of other substantive law. The Fifth Circuit's decision is a "drive-by-jurisdictional ruling"—precisely the type that this Court has eschewed. And it drives right past an important question of federal law without so much as waving: Is the AIA or the DJA *jurisdictional*? That question is deserving of scrutiny and reasoned analysis.

DJA precludes it from having the requisite subject-matter jurisdiction over [Petitioner's] declaratory judgment action[.]"

A. The Fifth Circuit's Decision Conflicts with this Court's Decision in *CIC Services.*

The Fifth Circuit's recent opinion contradicts this Court's opinion in *CIC Services, LLC v. Internal Revenue Service*, 141 S. Ct. 1582 (May 17, 2021). In *CIC Services*, a material advisor sought a declaration under the DJA that an IRS notice (the "Notice") was invalid and an injunction prohibiting the IRS from enforcing the disclosure requirements as set forth in the Notice. *CIC Services, LLC v. IRS*, 2017 WL 5015510, at *1 (E.D. Tenn. Nov. 2, 2017). This Court held that the suit was not barred.

After CIC filed suit, the government filed a motion to dismiss the complaint on the basis that the district court lacked subject-matter jurisdiction under the DJA's federal-tax exception and the AIA. *Id.* at *2. The district court granted the motion to dismiss. *Id.* at *4.

On appeal, the Sixth Circuit Court of Appeals concluded, based on its prior precedent, that the AIA and the DJA's federal-tax exception are coterminous. *CIC Services, LLC v. IRS*, 925 F.3d 247, 250 n. 3 (6th Cir. 2019).[3] The Sixth Circuit then agreed with the district court that it lacked subject-matter jurisdiction under those provisions. *Id.* at 258-59.

[3] This Court's decision in *CIC Services* did not take issue with, much less disrupt, this point of law.

This Court granted certiorari and unanimously reversed the Sixth Circuit's decision, *CIC Services*, 141 S. Ct. 1582, holding that CIC's challenge to the Notice was not barred under the AIA—even though the IRS could impose a civil tax penalty against CIC for its failure to comply with the Notice's reporting requirements. *Id.* at 1588.

If the DJA's federal-tax exception were broader than the scope of the AIA, as the Fifth Circuit has now held, this Court in *CIC* would have been required to address whether the DJA divested subject-matter jurisdiction in light of the government's argument in that case that CIC Services' claims were barred under both the AIA and the DJA. Instead, this Court impliedly accepted the Sixth Circuit's characterization. *See CIC Services, LLC v. IRS*, 925 F.3d 247, 250 n.3 (6th Cir. 2019) ("The Anti-Injunction Act and the tax exception to the Declaratory Judgment Act are 'to be interpreted coterminously.'"). This Court, in other words, implicitly rejected the very rationale upon which the Fifth Circuit's decision rests.

Drawing no distinction between the AIA and DJA's impact on CIC's request for declaratory relief, this Court reasoned that the relief sought by CIC was not barred because the "objective aim" of its complaint was to challenge the Notice requirements rather than the civil penalty or any federal tax. *Id.* at 1589-90.

Much the same, Petitioner's objective aim here, as evidenced in her Complaint, was not to challenge a federal income tax or penalty. Rather, Petitioner sought a judicial determination that she is the sole owner of an account and that it must be transferred to her. Indeed, even the Fifth Circuit correctly noted that Appellant's request for relief has nothing to do with "the assessment or collection of any tax." *See* App. 11.

In finding in favor of CIC Services, this Court also noted that the AIA did not apply because "the Notice's reporting rule and the statutory tax penalty [we]re several steps removed from each other." *Id*. at 1591. According to the Court, the steps to assess or collect any tax were far too attenuated for the AIA to apply:

> To start, CIC has to withhold required information about a micro-captive transaction that the Notice covers . . . Next, the IRS must determine (often no small matter) that a violation of the Notice has in fact occurred. And finally, the IRS must make the – entirely discretionary – decision to impose a tax penalty . . . If and only if all those things occur does tax liability attach. That threefold contingency matters in assessing whether the Anti-Injunction Act applies. Even the Government

> concedes that when there is too attenuated a chain of connection between an upstream duty and a downstream tax, a court should not view a suit challenging the duty as aiming to restrain the assessment or collection of a tax.

Id.

Here, too, the purported "tax" connection is far too attenuated. Fidelity required an IRS-transfer-certificate report in order to allow access to Petitioner's account. Not only is Petitioner unable to obtain a transfer-certificate report, but the filing or non-filing of an IRS transfer certificate has no bearing *at all* on whether there is a federal tax liability. *Compare* 26 C.F.R. § 20.6325-1(a) *with* 26 U.S.C. § 2101. There is, in fact, no connection between an upstream duty (indeed, no duty in the first place) and a downstream tax.

For all of the foregoing reasons, the Fifth Circuit's opinion conflicts with this Court's decision in *CIC Services*.

B. The Fifth Circuit's Decision Conflicts with Decisions from the D.C. Circuit and Other Circuits.

Although this Court has never decided with precision the proper scope of the DJA's federal-tax exception, it came close in *Bob Jones Univ. v. Simon*, 416 U.S. 725 (1974). In that case, Bob Jones University filed suit against the IRS "for preliminary and permanent injunctive relief [to] prevent[ ] the [IRS] from revoking or threatening to revoke [its] tax-exempt status." *Id.* at 735. This Court held that the AIA barred the federal courts from considering the relief requested. *Id.* at 737. And although not central to the issue in that case, this Court stated in *dicta* in a footnote that "[t]here is no dispute . . . that the federal tax exception to the Declaratory Judgment Act is at least as broad as the Anti-Injunction Act." *Id.* at 732 n. 7. But this Court left to another day a decision on whether the DJA's federal-tax exception was as broad or broader in scope than the AIA. *See id.* at 732 n. 7 (reasoning that the Court had "no occasion to resolve whether the [DJA's federal-tax exception] is even more preclusive [than the AIA]."); *see also Alexander v. Americans United Inc.*, 416 U.S. 752, 767 n. 5 (1974) (Blackmun, J., dissenting) ("I would agree with the Court's observation in the . . . [*Bob Jones* companion case] that questions exist as to the scope of . . . [the federal-tax exception of the DJA] and as to whether it is coterminous with . . . [the AIA].").

The Fifth Circuit decision in *Rivero* takes the footnote in *Bob Jones* a step further, and improperly so. Relying solely on one sentence in the footnote, the

Fifth Circuit affirmatively held that the DJA's federal-tax exception *is broader* than the AIA. *See* App. 11a. However, the Fifth Circuit's reliance on this language to support its conclusion rests on faulty grounds for at least three reasons.

First, the statement in the *Bob Jones* footnote does not actually state that the federal-tax exception to the DJA is broader in scope than the AIA. It notes the question, leaving it for another day and implies that its answer is deserving of a great deal of analysis. Indeed, the fact that one is "at least as broad" as the other is equally consistent with another conclusion: they are coterminous. It is, in other words, another way of saying that there is no reason to believe that the former was intended to have a more circumscribed scope.

Second, the statement completely ignores the subsequent sentence in the same footnote, which states that this Court had "no occasion to resolve whether the [DJA's federal-tax exception] is even more preclusive [than the AIA]." *Id.* at 732 n. 7. Because the scope of the federal-tax exception was not squarely before the Court, the Court did not need to address—and expressly did not address—the relationship between the DJA and the AIA.

Third, other federal courts that have deeply analyzed the scope of the DJA's federal-tax exception and the AIA have determined that both statutes must

be interpreted as coterminous in scope. Moreover, each of these federal courts has done so notwithstanding—and fully aware of—the *Bob Jones* footnote.

In direct contrast to the Fifth Circuit's holding, the D.C. Circuit has held that the scope of the DJA's federal-tax exception is *not* broader than the scope of the AIA. And for good reason: neither the DJA's statutory language, its legislative history, its function, nor the historical purpose of the DJA support such a view.

Federal courts may issue declaratory judgments under the DJA. *See* 28 U.S.C. § 2201. The DJA, however, does not permit declaratory judgments "with respect to Federal taxes." *Id.* Similarly, the AIA prohibits federal courts from entertaining suits and issuing injunctions if the purpose of the suit is to "restrain[ ] the assessment or collection of any tax[.]" 26 U.S.C. § 7421.

Here, Petitioner sought a declaratory judgment that she owned the brokerage account and that Defendant-Appellee was required to transfer the account to her. The panel, however, concluded that the DJA's federal-tax exception deprived the district court of subject-matter jurisdiction. *See* App. 11-12. In support, the panel reasoned that:

> deciding the merits of [Appellant's] request for declaratory relief would inevitably involve sifting through the applicable Treasury regulations discussed above in order, ultimately, to make a determination 'with respect to Federal taxes,' beyond the power granted to federal courts by the DJA.

App. 12. The Fifth Circuit further (and correctly) concluded that "the AIA is simply inapplicable" to the facts of this case because Appellant's cause of action does not involve "the assessment or collection of any tax," such that the AIA does not frustrate jurisdiction. *Id.* at 7.

Yet the Fifth Circuit nonetheless held that the DJA's tax exception is broader than the AIA and is a bar to Petitioner's claims. That holding is in direct conflict with the D.C. Circuit's holding that the scope of the two statutes is coterminous. *Z St., Inc. v. Koskinen*, 44 F. Supp. 3d 48, 56 (D.D.C. 2014), aff'd, 791 F.3d 24 (D.C. Cir. 2015) ("The well-documented history behind the tax exception to the DJA and its relationship to the AIA has led numerous courts of appeal, including the D.C. Circuit, to conclude that the scope of the DJA's tax exception is 'coterminous' or 'coextensive' with the AIA's prohibition."); *Cohen v. U.S.*, 650 F.3d 717, 727 (D.C. Cir. 2011) (en banc) ("In other words, 'with respect to Federal taxes' means 'with respect to the assessment or collection of

taxes.'"). *See also CIC Services, LLC v. IRS*, 925 F.3d 247 n.3 (6th Cir. 2019) ("The Anti-Injunction Act and the tax exception to the Declaratory Judgment Act are 'to be interpreted coterminously.'").

The Fifth Circuit's opinion invites "functional concern[s]" that, as the D.C. Circuit warned, "def[y] common sense—indeed, under the Fifth Circuit's decision a "court would not have jurisdiction to provide declaratory relief," but would nonetheless be able to "effectively do so anyway" because the court would still have jurisdiction to issue an injunction (because the AIA is not applicable). *Cohen*, 650 F.3d at 730. The Fifth Circuit's decision, for instance, invites Petitioner to simply refile her suit and reframe the requested relief in the form of an injunction, rather than a declaration. Because "the AIA is simply inapplicable[,]" App. 11, the district court can issue an injunction, but not a declaration.

C. The Fifth Circuit's Decision is at Odds with this Court's Well-Established Jurisprudence under *Arbaugh* and its Progeny.

This Court has never decided the issue of whether the AIA and the DJA's federal-tax exception go to the subject-matter jurisdiction of federal courts.[4]

[4] In this context, courts generally refer to the AIA and DJA as simply the "AIA." Likewise, Petitioner does so throughout this section unless otherwise distinguishing between them.

However, this Court has, in a long line of cases, cautioned federal courts to avoid "drive-by-jurisdictional rulings . . . which too easily can miss the crucial difference[s] between true jurisdictional conditions and nonjurisdictional limitations on causes of action." *Reed Elsevier, Inc. v. Muchnick*, 559 U.S. 154, 161 (2010). This is because the characterization of a statute as either a claims-processing rule or a jurisdictional rule has significant ramifications to the litigants. First, "[u]nlike most arguments, challenges to subject-matter jurisdiction may be raised by the defendant at any point in the litigation, and courts must consider them *sua sponte*." *See Fort Bend Cty., Texas v. Davis*, 139 S.Ct. 1843, 1849 (2019) (quotations omitted). Second, if a statute is jurisdictional, the issue of subject-matter jurisdiction may never be forfeited or waived because subject-matter jurisdiction relates to the court's authority or power to hear a case. *Arbaugh*, 546 U.S. 500, 514 (2006). Thus, "harsh consequences" attend the jurisdictional brand. *Ford Bend County*, 139 S.Ct. at 1849.

Indeed, Petitioner suffered from such "harsh consequences" in this case. At no point during the district court's litigation did Respondent contend that the court lacked subject-matter jurisdiction over her claims under the AIA or the DJA's federal-tax exception. Accordingly, Petitioner and Respondent engaged in costly litigation and the preparation of motions for summary judgment only to have the

district court *sua sponte* conclude at the later stage of the proceedings that the DJA's federal-tax exception barred the relief Petitioner requested. *Cf. Henderson ex rel. Henderson v. Shinseki*, 562 U.S. 428, 435 (2011) (claims-processing rules "seek to promote the orderly progress of litigation by requiring that the parties take certain procedural steps at certain specified times."). By holding that the DJA's federal-tax exception was a bar on subject-matter jurisdiction, the Fifth Circuit's decision improperly applied this Court's guidance in *Arbaugh* and its progeny.

Indeed, this Court has held that an almost identical statute to the AIA did *not* have jurisdictional effect but was instead a claims-processing rule. Specifically, in *Reed Elsevier*, this Court faced the question of whether a copyright statute, 17 U.S.C. § 411, was jurisdictional or a claims-processing rule. *See Reed Elsevier*, 559 U.S. 154 (2010). That copyright statute provided: "[N]o civil action . . . shall be maintained . . ." *Id*. at 157. Based on the *Arbaugh* test, the Supreme Court concluded that the statute "[said] nothing about whether a federal court has subject-matter jurisdiction." *Id*. at 164. Much like the statute at issue in *Reed Elsevier*, the AIA provides: "[N]o suit . . . shall be maintained . . ." *See* 26 U.S.C. § 7421. Accordingly, *Reed Elsevier* and the statutory text of the AIA support a conclusion that the AIA is a claims-processing rule and not jurisdictional. *See also Hobby Lobby Stores, Inc. v. Sebelius*, 723 F.3d 1114, 1158 (10th Cir. 2013) (Gorsuch, J., concurring).

Moreover, the Fifth Circuit's decision fails to recognize this Court's prior decisions that have held that federal courts have "no authority to create equitable exceptions to jurisdictional requirements." *Bowles v. Russell*, 551 U.S. 205, 214 (2007). A jurisdictional statute is absolute, and federal courts have no authority to craft equitable exceptions. This fundamental precept has been established through centuries of case law, including in this Court.

This Court has recognized that the AIA is subject to equitable exceptions. It does not apply if "equity jurisdiction exists." *See Enochs v. Williams Packing*, 370 U.S. 1, 7 (1962); *see also Bob Jones Univ. v. Simon*, 416 U.S. 725, 748-49 (1974) ("Since we hold that *Williams Packing*, supra, governs this case, the remaining issue is whether petitioner has met the standards of that case."); see also *Allen v. Regents of Univ. Sys. of Georgia*, 304 U.S. 439, 449 (1938) ("What we have said indicates that [the AIA] does not oust the jurisdiction. The statute is inapplicable in exceptional cases where there is no plain, adequate, and complete remedy at law."); *Hill v. Wallace*, 259 U.S. 44, 62 (1922) ("extraordinary and exceptional circumstances" may render the Anti-Injunction Act inapplicable); *Bailey v. George*, 259 U.S. 16, 20 (1922) (same). Because equity jurisdiction exists under the AIA, the AIA and the DJA's federal tax-exception, which is interpreted coterminously with the AIA, cannot be interpreted to be subject-matter

jurisdiction requirements. Rather, both should be interpreted as waivable claims-processing rules, particularly here, where the parties are both private parties with no government litigant.

D. The Fifth's Circuit Decision Provides Petitioner with No Adequate Remedy at Law.

The AIA bars federal courts from entertaining a suit brought "for the purpose of restraining the assessment or collection of any [federal] tax." 26 U.S.C. § 7421. The AIA serves twin purposes: it responds to "the Government's need to assess and collect taxes as expeditiously as possible with a minimum of preenforcement judicial interference" and it "require[s] that the legal right to the disputed sums be determined in a suit for refund." *Hibbs v. Winn*, 542 U.S. 88, 102-03 (2004). To satisfy the "full payment rule," a plaintiff must pay the full amount of tax which the plaintiff seeks to recover, prior to initiating a tax refund suit. *Flora v. U.S.*, 362 U.S. 145, 177 (1960). This Court has held that "the Act's purpose and the circumstances of its enactment indicate that Congress did not intend the Act to apply to actions brought by aggrieved parties for whom it has not provided an alternative remedy." *See South Carolina v. Regan*, 465 U.S. 367, 378 (1984).

28 U.S.C. § 2201 generally creates a remedy for declaratory judgments "except with respect to Federal

taxes." As discussed *supra*, the federal-tax exception of the AIA should be interpreted coterminously with the AIA. The legislative history of the DJA's federal-tax exception suggests that its proscription on federal tax matters does not apply to parties who have no other alternative remedy at law. *See* S. Rep. No. 1240, 74th Cong., 1st Sess. At 11 (1935) ("the long continued policy of Congress with respect to the determination, assessment, and collection of federal taxes . . . should not be interfered with by a procedure designed to facilitate the settlement of private controversies, **and that existing procedures . . . afford ample remedies for the correction of tax errors.**") (emphasis added).

Here, the Fifth Circuit correctly concluded that Petitioner's request for relief did not involve the "assessment or collection of taxes" which would bar her claims under the AIA. *See* App. 11a. However, the Fifth Circuit went further to hold that her request for relief should be barred under the DJA's federal-tax exception. *See* App. 13a. With the Fifth Circuit's decision, Petitioner is left with no other adequate remedy at law to seek a return of her funds from Respondent. Indeed, Respondent can continue to maintain effective ownership and control over Petitioner's funds under the guise that no federal court will have subject-matter jurisdiction over her claims against Respondent.

Under the Fifth Circuit's decision, Petitioner is left with no other adequate legal remedy at law because 26 C.F.R. § 20.6325-1(a) requires, subject to exceptions not applicable here because of the district court and Fifth Circuit's rulings, an IRS transfer certificate to transfer stock registered in the name of a non-resident decedent. And under IRS guidance, an IRS transfer certificate may only be executed "through the appointment of an executor or administrator, qualified and acting within the United States." Rev. Rul. 55-160, 1955-1 C.B. 464 (1955). Because Petitioner cannot have an executor or administrator appointed—as she is not a family member of Mr. Medrano—Petitioner cannot ever satisfy the requirements to obtain an IRS transfer certificate. Accordingly, Petitioner will forever be unable to access her funds held with Respondent.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that this Court issue a writ of certiorari to review the judgment of the Fifth Circuit Court of Appeals.

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