No. 21-978

IN THE
Supreme Court of the United States

CARMELA RIVERO,

Petitioner,

v.

FIDELITY INVESTMENTS, INCORPORATED,

Respondent.

On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Fifth Circuit

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

The Declaratory Judgment Act (DJA) provides federal courts with authority to issue a declaratory judgment "[i]n a case of actual controversy within its jurisdiction, *except with respect to Federal taxes*." 28 U.S.C. 2201(a) (emphasis added). The Anti-Injunction Act (AIA) states 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) (emphasis added). Petitioner sued in federal court, seeking a declaration that she was not required to file an estate tax return and obtain a transfer certificate from the IRS before transferring assets in a brokerage account that she had owned jointly with a nonresident, noncitizen who passed away.

The questions presented are as follows:

1. Whether a federal court may decline to issue a declaratory judgment in a controversy "with respect to federal taxes" without a party having specifically invoked the DJA's tax exception.

2. Whether the DJA's tax exception is identical in scope to the AIA despite the statutes' different wording.

PARTIES TO THE PROCEEDING

The petitioner is Carmela Rivero, who was the appellant before the court of appeals and the plaintiff before the district court.

The respondent is Fidelity Brokerage Services LLC, which was erroneously sued as Fidelity Investments, Inc.—an entity that does not exist. Fidelity Brokerage Services LLC was the appellee before the court of appeals and the defendant before the district court.

RULE 29.6 STATEMENT

Fidelity Brokerage Services LLC is a wholly owned subsidiary of FMR LLC, a privately held company. No publicly traded company has an ownership interest in Fidelity Brokerage Services LLC.

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INTRODUCTION

This case is about the IRS's procedures for assessing estate-tax liability for U.S. assets owned by foreign decedents. The petitioner, Carmela Rivero, jointly owned a Fidelity brokerage account with her friend Jorge Medrano, a citizen and resident of Mexico. Mr. Medrano passed away in 2016. Under IRS regulations, Ms. Rivero is considered a "statutory executor" (executor by operation of law) for estate-tax purposes because she is in possession of U.S. assets that Mr. Medrano held jointly at the time of his death. As a statutory executor, Ms. Rivero is responsible for filing an estate tax return and paying any estate tax owed on the U.S. assets she possesses (or convincing the IRS that no estate tax should be assessed). Until she does, the IRS maintains a tax lien on the assets. But once the IRS has completed its investigation, it will issue her a transfer certificate, she can provide that transfer certificate to Fidelity, and Fidelity can transfer the jointly held assets to Ms. Rivero without incurring tax liability of its own.

This is a relatively simple process, as the U.S. tax system goes, but one that Ms. Rivero believed was unnecessary and burdensome. So instead of following that process, she sued Fidelity in federal court, seeking a declaration that she was not required to obtain a transfer certificate before being transferred sole ownership of the brokerage account. The district court dismissed Ms. Rivero's case under a provision of the Declaratory Judgment Act (DJA) that forbids federal courts from issuing declaratory judgments "with respect to Federal taxes." 28 U.S.C. § 2201(a). The Fifth Circuit affirmed, holding that this provision imposes a jurisdictional limitation on the power of

federal courts and that Ms. Rivero's lawsuit fell squarely within its bounds because adjudicating her declaratory-judgment claim would require a court to determine the taxable value of Mr. Medrano's gross estate and therefore make a determination "with respect to Federal taxes."

The Fifth Circuit's decision does not warrant this Court's review. The petition raises two questions—a jurisdictional question that is not the subject of any circuit conflict, and a statutory-interpretation question that is not even presented in this case, at most involves a shallow and nascent disagreement among courts, and has almost never arisen in the DJA's nearly 100-year history. And even if these questions were cert-worthy, this would not be the right case in which to review them, because their answers will have no practical impact on the resolution of this case.

The petition for a writ of certiorari should be denied.

STATEMENT

A. The United States' estate tax applies not only to U.S. citizens and residents, but also to nonresident noncitizens to the extent they have U.S. assets. For foreigners, the first $60,000 in U.S. assets are exempt from taxation. *See* 26 U.S.C. §§ 2101(a), 6018(a)(2); Pet. App. 19a.[1]

To ensure that estate taxes are paid, the tax code places a lien on the U.S. assets held by these foreign individuals at the time of their death. 26 U.S.C. § 6324(a)(1); Pet. App. 20a. Anyone who transfers the

[1] For a plain-English overview of this regime, see Ann M. Seller, *The Transfer Certificate: The Teeth in the US Estate Tax Bite*, 23 Trusts & Trustees 513-519 (2017), available at https://www.kplaw.com/wp-content/uploads/ttx037.pdf.

decedent's lien-bearing assets before estate taxes are paid becomes personally liable for the estate tax—including the executor appointed to handle the estate or a financial institution holding those assets. 26 U.S.C. § 6324(a)(2); 26 C.F.R. § 20.6325-1(a); Pet. App. 20a.

The IRS has established a process for determining federal estate-tax liability and releasing the lien imposed by the tax code. How the process works depends on whether the estate has a qualified U.S. executor or administrator appointed. If not (as in this case), then "any person in actual or constructive possession of any property of the decedent is required to pay the entire tax to the extent of the value of the property in his possession." 26 C.F.R. § 20.2002-1; *see also* 26 C.F.R. § 20.2203-1 (defining executor to include "any person in actual or constructive possession of any property of the decedent"). These individuals are sometimes called "statutory executors," meaning individuals who are made executors not by appointment but by operation of the tax code. One example of a statutory executor is a person who held property jointly with the decedent. *See Estate of Guida v. Commissioner*, 69 T.C. 811, 813 (1978). This case involves such a statutory executor.

Statutory executors must resolve not just the decedent's estate-tax liability, but also their own, by filing an estate tax return and listing all of the decedent's property in their possession. IRS, Instructions for Form 706-NA, at 1 (Rev. Sept. 2021), https://www.irs.gov/pub/irs-pdf/i706na.pdf ("Form 706-NA Instructions") ("If no executor is appointed, qualified, and acting in the United States, every person in actual or constructive possession of any of the decedent's property must file a return."). Form 706-

NA and Treasury regulations make clear that this requirement encompasses U.S. property that was held jointly with a right of survivorship and passes to the other joint tenant by operation of law when the decedent dies. *Id.* at 3 ("The entire gross estate … includes … the full value of property the decedent owned at the time of death as a joint tenant with right of survivorship."); 26 C.F.R. § 20.2040-1(a) ("A decedent's gross estate includes under section 2040 the value of property held jointly at the time of the decedent's death by the decedent and another person or persons with right of survivorship ….").

There are circumstances in which a surviving joint owner can avoid estate taxes (in whole or in part) on jointly held property. But to do so, she must demonstrate to the IRS that an exception applies—for example, that the decedent did not furnish consideration (or furnished only a fractional share of consideration) for the acquisition of the property. 26 C.F.R. § 20.2040-1(a) (providing examples of when the entire value of jointly held property is *not* included as a taxable asset of the estate); *id.* § 20.2103-1 (§ 20.2040-1 applies to estates of nonresident noncitizens); *see also* Form 706-NA Instructions 3 ("see the Instructions for Form 706, Schedule E" to satisfy those exceptions); IRS, Instructions for Form 706, at 25-26 (Rev. Sept. 2021), https://www.irs.gov/pub/irs-pdf/i706.pdf (Schedule E instructions).

Once the IRS "is satisfied that the tax imposed upon the estate, if any, has been fully discharged or provided for" following the completion of an "investigation," it issues a "transfer certificate." 26 C.F.R. § 20.6325-1(c); Pet. App. 20a. Surviving joint tenants can provide that transfer certificate to banks,

brokerage firms, or other institutions holding the assets to demonstrate that the lien has been extinguished. Those institutions can then transfer the assets (or remove restrictions placed on their access or transfer) without creating a risk that they will incur estate-tax liability of their own. *Id.*

The IRS also provides a streamlined process for statutory executors who do not believe that the decedent's taxable U.S. assets exceed $60,000 and therefore do not believe an estate tax return must be filed or a transfer certificate must be obtained. Rather than submit Form 706-NA, they can provide specified information to the IRS (including copies of the death certificate and will and an affidavit filed by a personal representative of the estate). IRS, Transfer Certificate Filing Requirements for the Estates of Nonresidents not Citizens of the United States (updated Dec. 3, 2021), https://www.irs.gov/businesses/small-businesses-self-employed/transfer-certificate-filing-requirements-for-the-estates-of-nonresidents-not-citizens-of-the-united-states (Part B). If the IRS agrees, it will provide "correspondence … stating a transfer certificate is not required and will not be issued." *Id.*

B. Ms. Rivero has held a Fidelity brokerage account since 2010, which she initially funded with $121,600 in PepsiCo stock transferred from her Merrill Lynch brokerage account. Pet. App. 2a. Two weeks later, she re-registered the account as a joint account with her longtime friend, Mr. Medrano; the two held the account as joint tenants with a right of survivorship. *Id.* They also had a joint checking account at a Texas bank. D. Ct. Doc. 21-3, at 15-16. Over the next six years, more than $200,000 in

additional deposits were made to the brokerage account. D. Ct. Doc. 21-6, at 5, 12.

In 2016, Mr. Medrano died; at the time, the joint account had a value of about $145,000. D. Ct. Doc. 21-6, at 15. More than a year later, Ms. Rivero informed Fidelity that Mr. Medrano had died and asked that the account be re-registered solely in her name. Pet. App. 3a. In light of Mr. Medrano's status as a nonresident noncitizen, the account presumptively was subject to the lien described above. Accordingly, Fidelity placed a restriction on the joint account and notified Ms. Rivero that she would need to provide Fidelity with a transfer certificate before the re-registration could be completed. *Id.* Fidelity also told Ms. Rivero how she could acquire the certificate from the IRS. D. Ct. Doc. 21-4, at 20.

Ms. Rivero retained an attorney, who asked Fidelity to reregister the joint account in Ms. Rivero's name alone. D. Ct. Doc. 21-3, at 2-5. Fidelity informed counsel it would first need to "receive a transfer certificate to ensure all estate taxes have been paid," and again provided information on how Ms. Rivero could seek a transfer certificate from the IRS. D. Ct. Doc. 21-8, at 2.

Instead, Ms. Rivero sued Fidelity in federal court, filing a one-count complaint for a declaratory judgment. Her complaint alleged that Fidelity was making "an unnecessary and burdensome request" for a transfer certificate before releasing the restrictions on Ms. Rivero's account, and she contended that obtaining a transfer certificate from the IRS was not required under the statutory and regulatory provisions described above. D. Ct. Doc. 1, at 1, 3-5. She alleged that she "solely opened the Fidelity Account and solely

funded the account with 1,900 shares of PepsiCo. Inc. stock from a Merrill Lynch account held solely in her name," and that "Mr. Medrano never contributed any money or property to the Fidelity account." *Id.* at 6. Thus, she asked the court to issue a declaration that the account was not included in Mr. Medrano's gross estate and that she therefore did not need to seek a transfer certificate from the IRS. *Id.*

C. The parties cross-moved for summary judgment, and the district court *sua sponte* concluded that it lacked jurisdiction pursuant to the DJA's tax exception. Pet. App. 15a. That provision provides that "[i]n a case of actual controversy within its jurisdiction, *except with respect to Federal taxes* ..., any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration." 28 U.S.C. § 2201(a) (emphasis added). The tax exception prevents judicial interference with the IRS's assessment and collection process and channels tax disputes to post-collection refund actions. Pet. App. 18a. Because "[d]etermining whether a transfer certificate is necessary … requires a determination of the value of the decedent's gross estate," the court concluded that the declaratory relief Ms. Rivero sought "involves a determination 'with respect to Federal taxes' that is precluded by the plain language of the Declaratory Judgment Act." Pet. App. 21a.[2]

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[2] Although Fidelity had not raised the DJA's tax exception as a distinct ground for dismissal, its summary-judgment motion included a substantively similar argument—that the IRS was the "proper party to determine whether a transfer certificate is required" and that Ms. Rivero was attempting to "circumvent" the IRS's tax-assessment "process." D. Ct. Doc. 21, at 14-15.

D. The Fifth Circuit affirmed. Pet. App. 1a-13a. The court concluded that the district court had properly raised the question whether the DJA's tax exception applies, because the DJA's tax exception limits the jurisdiction of federal courts. And the court agreed that the tax exception bars this action.

First, the court examined the DJA's "text and structure" and concluded that both supported a conclusion that the tax exception is jurisdictional—"an express limitation on the grant of power to 'any court of the United States' to 'declare the rights and other legal relations of any interested party seeking such declaration.'" Pet. App. 9a (quoting 28 U.S.C. § 2201(a)).

It also looked to a similar provision contained in the Anti-Injunction Act, 26 U.S.C. § 7421(a), which 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." Pet. App. 10a (quoting 26 U.S.C. § 7421(a)). Although the court made clear that it was not concluding that the AIA *itself* barred jurisdiction in this declaratory-judgment case, it said that its precedents categorizing the AIA as jurisdictional "buttress[ed] [the] conclusion that the DJA's federal-tax exception is likewise a jurisdictional condition." Pet. App. 11a.

Second, the court held that Ms. Rivero's complaint fell squarely within the tax exception. It agreed with the district court that Ms. Rivero's declaratory-judgment claim would require it to determine the value of Mr. Medrano's gross estate and therefore "make a determination 'with respect to Federal taxes,' beyond

the power granted to federal courts by the DJA." Pet. App. 12a.[3]

REASONS FOR DENYING THE WRIT

The Fifth Circuit's decision does not warrant further review. The petition identifies no circuit split regarding the jurisdictional status of the DJA's tax exception, and for good reason: the DJA's plain text limits the authority of federal courts to grant declaratory relief, rather than establish procedural requirements that must be satisfied by litigants. This Court has repeatedly stated that similarly worded provisions in the AIA and Tax Injunction Act impose jurisdictional limitations, and no circuit has held that any of these three provisions creates a claim-processing rule instead.

The second question presented—whether the DJA's tax exception is coextensive with a complementary provision in the AIA—is not even squarely presented in this case. But even if it were, Ms. Rivero asks this Court to resolve what is, at most, a shallow and nascent disagreement about an issue that has been analyzed in depth by only one circuit since the DJA's enactment nearly a century ago. Moreover, Ms. Rivero's interpretation of the tax exception's scope is founded in functional concerns rather than the statute's text. Should those concerns come to fruition—and there is

[3] In the Fifth Circuit, Fidelity stated that it would defer to the court's evaluation of its own jurisdiction. Fidelity C.A. Br. 7. But as in the district court, its brief again argued that the IRS was the "proper party to determine whether a transfer certificate is required" and that Ms. Rivero was attempting to "circumvent" the IRS's tax-assessment "process." *Id.* at 17-20 (capitalization modified).

no indication they will—the Court can intervene once the issue has percolated.

Finally, this case is not a good vehicle to resolve the questions presented, which are largely academic here. Even if the DJA's tax exception is *not* jurisdictional, Ms. Rivero has pointed to no authority that makes it improper for the district court to have raised the issue *sua sponte*. Likewise, even if the scope of the AIA and the DJA's tax exception *are* coterminous, Ms. Rivero's claim would still be barred. At bottom, the claim represents Ms. Rivero's efforts to avoid the IRS's process for assessing and collecting estate taxes, which requires statutory executors (like Ms. Rivero) to file a tax return and pay any estate tax owed before being transferred U.S. assets of a nonresident, noncitizen decedent. That claim falls within the heartland of even the AIA's text.

I. The first question presented does not warrant review.

The petition offers no reason for this Court to grant certiorari to consider whether the DJA's tax exception is jurisdictional. No circuit has adopted Ms. Rivero's argument that this statute creates a claim-processing rule, and the decision below does not conflict with any of this Court's precedents. Petitioner seeks review of the "jurisdictional" label on the apparent belief that, if the tax exception is nonjurisdictional, she can compel the courts below to entertain her action for declaratory relief. That is incorrect: declaratory relief is discretionary, and—whether jurisdictional or not—the tax exception gives any federal court ample reason not to entertain a suit for declaratory relief barred by Congress.

A. The petition identifies no conflict about the jurisdictional status of the DJA's tax exception.

The petition makes no attempt to argue that the circuits—or any courts, really—are in disagreement about whether the DJA's tax exception imposes a jurisdictional limitation or a claim-processing rule. To the contrary, the circuits have been uniform in their view that the tax exception is a limitation on the adjudicatory authority of federal courts—a paradigmatic example of a jurisdictional rule, *see Reed Elsevier, Inc. v. Muchnick*, 559 U.S. 154, 157 (2010). *See, e.g.*, *Gilbert v. United States*, 998 F.3d 410, 412 (9th Cir. 2021); *Green Sol. Retail, Inc. v. United States*, 855 F.3d 1111, 1114-1115 & nn. 2-3 (10th Cir. 2017); *Cohen v. United States*, 650 F.3d 717, 729 (D.C. Cir. 2011) (*en banc*); *Christian Coal. of Fla., Inc. v. United States*, 662 F.3d 1182, 1192 (11th Cir. 2011); *Ecclesiastical Ord. of the ISM of AM, Inc. v. IRS*, 725 F.2d 398, 402 (6th Cir. 1984).

Rather than identify a circuit split, the petition suggests that the Fifth Circuit's jurisdictional holding conflicts with this Court's decision in *Reed Elsevier*. According to the petition, *Reed Elsevier* interpreted as a claim-processing rule a provision of the Copyright Act that begins as follows: "[N]o civil action … shall be maintained …." Pet. 24 (supposedly quoting *Reed Elsevier*, 559 U.S. at 157, and 17 U.S.C. § 411). Ms. Rivero contends that the wording of the AIA (not the DJA) is "almost identical" and should therefore also be interpreted as a claim-processing rule. *Id.* Although the petition does not spell this out, it apparently wants the reader to assume that, if the AIA is

not jurisdictional, the DJA's tax exception is not either.

Petitioner's treatment of *Reed Elsevier* is doubly flawed. First, the premise is wrong. The supposed conflict with *Reed Elsevier* is founded entirely on a misquotation of the Copyright Act, which is in fact *not* similarly worded to the DJA (or the AIA), much less "almost identical" to either. Pet. 24. The Copyright Act provision analyzed by *Reed Elsevier* actually read as follows: "[N]o civil action for infringement of the copyright in any United States work shall be *instituted*"—not, as petitioner says, "maintained"—"until preregistration or registration of the copyright claim has been made in accordance with this title." 17 U.S.C. § 411(a) (emphasis added). As this Court concluded, that provision is a classic claim-processing rule that governs the obligations of litigants, rather than the authority of courts: "It establishes a condition—copyright registration—*that plaintiffs ordinarily must satisfy before filing* an infringement claim." 559 U.S. at 158 (emphasis added); *see also id.* at 160-161 (distinguishing jurisdictional rules from claim-processing rules); *id.* at 164-166.

Second, even if petitioner were right that the *AIA* is worded similarly to the Copyright Act, she does not claim that the DJA's tax exception contains similar language. Nor could she: the exception does not speak to the conduct of litigations at all. Instead, it strips federal courts of their authority to "declare the rights and other legal relations of any interested party" "with respect to federal taxes." 28 U.S.C. § 2201(a).

In short, the supposed conflict with *Reed Elsevier* is wholly illusory—premised on a mistaken comparison

of statutory language that in fact is entirely dissimilar. *Reed Elsevier* provides no reason for this Court to take up the construction of the DJA.

B. The Fifth Circuit's jurisdictional ruling is correct.

With no plausible conflict to offer, the petition pejoratively labels the Fifth Circuit's decision a "drive-by jurisdictional ruling." Pet. 5, 13. Not so. A "drive-by jurisdictional ruling" is one made without analysis—when a court sloppily uses a "jurisdictional" label to describe a dismissal that has nothing to do with jurisdiction. *E.g.*, *Arbaugh v. Y&H Corp.*, 546 U.S. 500, 511 (2006). That bears no similarity to the Fifth Circuit's *explicit* jurisdictional holding, made after a careful examination of the DJA's text and structure, this Court's jurisdictional precedents, and Fifth Circuit precedents holding that a related statute, the AIA, is jurisdictional. Pet. App. 6a-11a.

That holding is correct. The plain text of the DJA's tax exception makes it a poor fit for a nonjurisdictional claim-processing rule. As this Court has made clear, claim-processing rules "seek to promote the orderly progress of litigation" by imposing procedural requirements *on litigants*. *Henderson ex rel. Henderson v. Shinseki*, 562 U.S. 428, 435 (2011). They are typically requirements that "protect defendants," *John R. Sand & Gravel Co. v. United States*, 552 U.S. 130, 133 (2008)—run-of-the-mill timeliness requirements and filing prerequisites like the Copyright Act's registration requirement. *See, e.g.*, *United States v. Wong*, 575 U.S. 402, 411 (2015) (Federal Tort Claims Act time limitation that simply "spell[ed] out a litigant's filing obligations without restricting a court's authority" is a claim-processing rule).

Jurisdictional rules, in contrast, are those that delineate or limit "a court's adjudicatory authority." *Kontrick v. Ryan*, 540 U.S. 443, 454-455 (2004); *accord Reed Elsevier*, 559 U.S. at 157. They are "grounded in public structural values such as federalism, separation of powers, and limited federal government," rather than "fairness and efficiency" concerns that underlie claim-processing rules. Howard M. Wasserman, *The Demise of 'Drive-by Jurisdictional Rulings*,' 105 Nw. U. L. Rev. 947, 958-960 (2011).

The DJA's tax exception falls squarely within the jurisdictional box. By its plain text, the statute says nothing about what parties should, can, or must do before filing an action in federal court. Instead, the exception removes federal courts' power to provide a Congressionally created remedy: the DJA provides that federal courts "*may* declare the rights and other legal relations of any interested party seeking such declaration" "[i]n a case of actual controversy within its jurisdiction." 28 U.S.C. § 2201(a). And the tax exception added by Congress in 1935 strips away that authority "with respect to Federal taxes." *Id.*

Finally, the DJA's tax exception is worded similarly (from a jurisdictional perspective) to two statutes that this Court has consistently (and recently) categorized as jurisdictional: the AIA[4] and its state-tax analogue, the Tax Injunction Act.[5] *See Direct Mktg. Ass'n v.*

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[4] 26 U.S.C. § 7421(a) ("[N]o suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person ….").

[5] 28 U.S.C. § 1341 ("The district courts shall not enjoin, suspend or restrain the assessment, levy or collection of any tax under State law where a plain, speedy and efficient remedy may be had in the courts of such State.").

Brohl, 575 U.S. 1, 14 (2015) (interpreting the Tax Injunction Act narrowly because it is "a jurisdictional statute" and "jurisdictional rules should be clear" (brackets omitted)); *Enochs v. Williams Packing & Navigation Co.*, 370 U.S. 1, 5 (1962) (AIA "withdraw[s] jurisdiction from the state and federal courts to entertain suits seeking injunctions prohibiting the collection of federal taxes").

It would be nonsensical to read the AIA and Tax Injunction Act as jurisdictional limits but treat the DJA's tax exception as a nonjurisdictional claim-processing rule that litigants can waive. Each of these tax-related statutes speaks to the authority and power of the court, rather than to the conduct of the parties, and each is grounded in public structural values—enacted to ensure the government's ability to collect revenue and protect government resources. *See Direct Mktg.*, 575 U.S. at 4 (Tax Injunction Act); *CIC Servs., LLC v. IRS*, 141 S. Ct. 1582, 1586 (2021) (AIA).[6] And the tax exception was adopted to ensure that litigants could not circumvent "the long-continued policy of Congress," "as expressed in [the AIA] and other provisions," through the simple expedient of asking for a declaration rather than an injunction. S. Rep. No. 74-1240, at 11 (1935). The Fifth Circuit

[6] Ms. Rivero contends that these statutes cannot establish jurisdictional rules, because the Court has recognized exceptions to the AIA's reach (though, once again, she offers nothing to tie this point to the *DJA*'s reach). Pet. 25-26. But a jurisdictional limit may have exceptions. *See, e.g.*, *John R. Sand*, 552 U.S. at 134. To the extent this Court has read the AIA to contain exceptions, it has done so as a matter of statutory interpretation (informed by constitutional avoidance). *See South Carolina v. Regan*, 465 U.S. 367, 374 (1984) (stating that the AIA "was not intended to apply in the absence of [an alternative] remedy").

made no error in interpreting these limitations as equally jurisdictional in nature, and its splitless holding does not warrant this Court's attention.

C. This case is a poor vehicle to consider this question.

Even if there were a circuit conflict with respect to this jurisdictional question, this case would be a poor vehicle to address it, because the question has no practical significance to this case's resolution. Declaratory-judgment cases are unique in that federal courts have broad discretion not to entertain them. And that discretion is not subject to waiver by the parties. Thus, whether or not the DJA's tax exception is deemed jurisdictional, the district court was entirely within its authority to decline to adjudicate a case that would plainly fall within the tax exception.

"Since its inception, the Declaratory Judgment Act has been understood to confer on federal courts unique and substantial discretion in deciding whether to declare the rights of litigants." *Wilton v. Seven Falls Co.*, 515 U.S. 277, 286 (1995). A litigant has no "absolute right" to obtain a declaration. *Id.* at 287 (citation omitted). And in deciding whether to exercise its discretion, federal courts properly consider "teachings … concerning the functions and extent of federal judicial power." *Id.* (citation omitted).[7] Particularly where, as here, Congress enacted a bright-line rule to

[7] Even outside the declaratory-judgment context, federal courts have discretion to raise *sua sponte* prudential doctrines grounded in concerns of federal judicial competence and efficiency—like abstention or law of the case. *See, e.g.*, *Bellotti v. Baird*, 428 U.S. 132, 143 (1975) (abstention); *United States v. Anderson*, 772 F.3d 662, 669 (11th Cir. 2014) (law of the case); *DiLaura v. Power Authority*, 982 F.2d 73, 76 (2d Cir. 1992) (law of the case).

prevent judicial interference with the IRS's activities, Pet. App. 18a, courts commit no error by following Congress's directive when a plaintiff's declaratory-judgment claim falls within the exception.

Indeed, before this Court definitively held that the Tax Injunction Act prohibits declaratory judgments (not just injunctions) regarding state tax laws, it instructed lower courts to use their discretion and decline to issue declaratory judgments when a party attempted to use federal courts to interfere with the assessment and collection of state taxes. *Great Lakes Dredge & Dock Co. v. Huffman*, 319 U.S. 293, 299-301 (1943). The district court's judgment here is amply supported on the same basis.

Because the district court properly raised the DJA's tax exception on its own motion, the question whether the exception is jurisdictional is ultimately irrelevant. This Court's intervention is not warranted to resolve an academic dispute over which the circuits are not in conflict.

II. The second question presented does not warrant review.

Ms. Rivero asks this Court to decide whether the AIA and the DJA's tax exception are "coterminous" even though the DJA's text (declaration "with respect to Federal taxes") is literally broader than the AIA's ("suit for the purpose of restraining the assessment or collection of any tax"). This question has almost never arisen in the DJA's history, and it is not presented here. This case seeks to interfere with the assessment and collection of taxes in ways that lie at the core of what Congress prohibited in *both* the DJA and the AIA.

A. The petition misreads the Fifth Circuit's decision.

The petition contends that the Fifth Circuit "created an important circuit split" by becoming "the first federal court in history to affirmatively hold that the DJA's prohibition against jurisdiction is broader than that of the AIA." Pet. 4-5. But it is far from clear that the Fifth Circuit actually reached that conclusion. Ms. Rivero's argument rests on a snippet of a sentence—the court's passing remark that "this action does not involve 'the assessment or collection of any tax,' such that the AIA does not frustrate jurisdiction," Pet. App. 11a—in a section of the opinion that was not examining the substantive scope of the DJA, much less comparing it to the AIA. And as discussed further below (Section II.C, *infra*), this suit would in fact be barred by the AIA if framed as an injunctive action. There is no reason to read the Fifth Circuit as gratuitously deciding otherwise.

The language Ms. Rivero points to came in the section of the opinion examining whether the DJA's tax exception is a jurisdictional limitation or a claim-processing rule. In holding that the exception is jurisdictional, the court analogized it to the AIA, which it called "a similar statute" that it had previously categorized as jurisdictional. Pet. App. 10a. In doing so, the court was careful to say that it was not holding that the AIA *itself* barred Ms. Rivero's claim, but rather that the AIA's jurisdictional status supported interpreting the DJA's federal-tax exception as jurisdictional too. The court said:

> So while it is true, as Rivero contends, that this action does not involve "the assessment or collection of any tax," such that the AIA does not frustrate jurisdiction, the AIA is simply inapplicable. The AIA's jurisdictional condition only buttresses our conclusion that the DJA's federal-tax exception is likewise a jurisdictional condition that divests subject-matter jurisdiction if it applies. We now turn to that question.

Pet. App. 11a. It is entirely unsurprising that the court disclaimed the AIA's application—the AIA *was* "inapplicable," because Ms. Rivero was seeking only declaratory relief, not an injunction to cease the IRS's assessment or collection efforts. But the court's recognition that the AIA was "simply inapplicable" does not mean the court was reaching any "affirmative[] hold[ing]" about its substantive scope (Pet. 4), or determining that Ms. Rivero's substantive claim would have been within the district court's authority if she had sought injunctive relief. If anything, the court took pains *not* to create new law on this point, noting in the *immediately preceding sentence* that there was "no dispute … that the federal tax exception to the [DJA] is at least as broad as the Anti-Injunction Act." Pet. App. 10a (quoting *Bob Jones Univ. v. Simon*, 416 U.S. 725, 732 n.7 (1974)).

Indeed, the court's *actual* analysis of the scope of the DJA's tax exception came in the next section of the court's opinion, when the court *agreed* with the district court that resolving Ms. Rivero's declaratory-judgment claim would require the court "to value Medrano's gross estate," construe the tax code, and "make a determination" about whether federal estate taxes are owed. Pet. App. 12a-13a; Pet. App. 21a-22a

& n.3. The petition virtually ignores that section of the opinion and points to no conflict between it and decisions from any other court.

In short, it is far from clear that the decision below even reached the second question presented. This out-of-context snippet from an inapposite section of the Fifth Circuit's opinion does not create a circuit split. But even if the Fifth Circuit's opinion could reasonably be read as Ms. Rivero reads it, this Court's review would still not be warranted, for the reasons discussed below.

B. The decision below does not conflict with *CIC Services*.

The petition argues that the decision below is inconsistent with this Court's recent decision in *CIC Services*, 141 S. Ct. 1582. It cannot argue that the two decisions are directly in conflict—*CIC Services* does not even mention the DJA.[8] So instead, it contends that because this Court did not *explicitly reject* the proposition that the DJA and AIA are coterminous, it must have "impliedly accepted" it. Pet. 15.

That argument is a nonstarter. This Court has consistently rejected this type of endorsement-by-silence argument, even as to jurisdictional issues. *See, e.g.*, *United States v. L.A. Tucker Truck Lines, Inc.*, 344

[8] The scope of the DJA was not a question presented in *CIC Services*—only the scope of the AIA was. Pet. i, *CIC Servs.*, No. 19-930 (filed Jan. 17, 2020); 140 S. Ct. 2737 (2020) (order granting certiorari). And contrary to the petition's suggestion, it is unlikely that the government could have won under the DJA given the Court's conclusion that the petitioner was challenging the way IRS reporting requirements were promulgated in alleged violation of the APA, not its own potential tax liability. 141 S. Ct. at 1590-1592.

U.S. 33, 38 (1952) (jurisdictional issues not "raised in briefs or argument nor discussed in the opinion of the Court" cannot be taken as "a binding precedent on th[e] point"). And given that this Court previously said the DJA's tax exception is "at least as broad as the Anti-Injunction Act" but expressly declined "to resolve whether the former is even more preclusive," *Bob Jones*, 416 U.S. at 732 n.7, it would be particularly strange to read a later opinion that does not even mention the DJA as having resolved that question.

C. The question whether the DJA's tax exemption has a broader scope than the AIA is not presented by this case.

Even if the second question presented were certworthy, this is not the right case to address it. Much like the jurisdictional question discussed above, the second question presented is purely academic in this case, because the Fifth Circuit's judgment is correct even if the two statutes *are* coterminous. Ms. Rivero's lawsuit effectively asks a federal court to litigate her tax status—she is, in substance, seeking a judicial declaration that despite being a statutory executor who is potentially liable for Mr. Medrano's estate-tax liability, she can avoid filing an estate tax return and paying any estate taxes owed before Fidelity transfers assets that could fall within the IRS's reach. And this Court has already held that lawsuits, like this one, seeking to litigate a party's tax status are barred by the AIA. *See Bob Jones*, 416 U.S. at 727; *see Z St. v. Koskinen*, 791 F.3d 24, 30 (D.C. Cir. 2015) ("the Anti-Injunction Act bars suits to litigate an organization's tax status" (citing *Bob Jones*)).

1. Ms. Rivero contends that this case has nothing to do with taxes. Pet. 7. But the IRS's estate tax

regime is at the heart of this dispute. The lien placed on jointly held assets, and the liability imposed on statutory executors and others who hold those assets, are the IRS's way of collecting estate taxes from nonresident noncitizens that otherwise might go unpaid. The IRS's transfer-certificate procedure is the final step in that assessment and collection process: once the tax (if any) is assessed and paid, the transfer certificate releases the lien. *See* 26 U.S.C. § 6324(a)(1). Individuals, like Ms. Rivero, in possession of a nonresident noncitizen's U.S. assets can obtain a transfer certificate that will allow institutions like Fidelity to transfer those assets only by filing an estate tax return and satisfying any estate taxes owed (or demonstrating that no taxes are owed). *See* 26 C.F.R. §§ 20.2002-1, 20.2203-1, 20.6325-1(c); Form 706-NA Instructions.

Ms. Rivero's declaratory-judgment action seeks to circumvent that taxation process. She asks the courts to declare that she *need not* file an estate tax return, pay any estate tax owed, and obtain a transfer certificate before being transferred the funds in the brokerage account she held jointly with Mr. Medrano. In other words, she asks the court to declare that there is no tax lien on those assets, and therefore Fidelity may transfer them to her without risking its own tax liability. As the district court observed, resolving Ms. Rivero's claim would require "a determination of the value of" Mr. Medrano's taxable estate and whether, based on that value, a transfer certificate is necessary. Pet. App. 21a. That falls squarely within the AIA's "assessment and collection" scope.

In fact, a provision of the AIA is specifically written to foreclose lawsuits by litigants claiming they owe no

estate tax *themselves*, but who possess assets that may be subject to a lien. Subsection (b)(1) of the AIA extends the prohibition to injunctive actions concerning "the liability … of a transferee of property of a taxpayer in respect of any internal revenue tax." 26 U.S.C. § 7421(b)(1). That subsection cross-references "the provisions of chapter 71," which make clear that a "transferee" for estate tax purposes "includes any person who, under section 6324(a)(2), is personally liable for any part of such tax." *Id.* § 6901(h). And as explained above, section 6324(a)(2) is the provision specifying that if a person transfers the decedent's lien-bearing assets before estate taxes are paid, that person becomes personally liable for the estate tax. *See* pp. 2-3, *supra*. That is precisely the type of liability implicated by this action.

2. The Ninth Circuit reached a similar conclusion in *Gilbert v. United States*, 998 F.3d 410 (9th Cir. 2021), a case between private parties similarly involved in a dispute about privately owned property that was subject to a tax lien. The party purchasing the property maintained that it was required to withhold a portion of the purchase price in light of the seller's status as a foreign entity, and the seller insisted that the property was not subject to statutory withholding. *Id.* at 412. The buyers sued, seeking a declaratory judgment to resolve the dispute, and the Ninth Circuit held that the claim was barred by the DJA's tax exception. *Id.* at 414.

The court rejected the view that because statutory withholdings occur *before* the IRS assesses tax liability, the lawsuit would not restrain the assessment or collection of taxes, holding that the DJA's tax exception "applies even where the IRS has yet to make a

final determination of the plaintiff's tax liability," including where the dispute involves obligations imposed on private parties to facilitate enforcement and collection. *Id.* The court joined a long line of decisions under the AIA holding that where the remedy sought has serious implications for the IRS's assessment and collection efforts, it is barred by the AIA even if the attempt to restrain the IRS's collection effort is only "indirect[]." *Ecclesiastical Ord.*, 725 F.2d at 400-401; *see, e.g.*, *Z St.*, 791 F.3d at 30 (AIA "requires a careful inquiry into the remedy sought, the statutory basis for that remedy, and any implication the remedy may have on assessment and collection" (citation omitted)); *Lowrie v. United States*, 824 F.2d 827, 830 (10th Cir. 1987) (AIA applies "not only to the actual assessment or collection of a tax, but [also] to activities leading up to, and culminating in, such assessment and collection").

Ms. Rivero plainly could not ask a court to enjoin the IRS from demanding that she file a tax return, or to require the IRS to provide a letter stating that her funds can be transferred. To the contrary, courts have frequently held that efforts to limit information the IRS considers in the tax-assessment process are barred by the AIA. *See Dickens v. United States*, 671 F.2d 969, 971 (6th Cir. 1982); *United States v. Meyer*, No. 18-cv-60704, 2021 WL 2410341, at *3 (S.D. Fla. June 14, 2021); *see also Linn v. Chivatero*, 714 F.2d 1278, 1283 (5th Cir. 1983) (attempts to "keep information from the IRS through procedures other than those provided by the Internal Revenue Code" would be barred). But that is precisely what Ms. Rivero's lawsuit would do by effectively excepting her from the requirement that she file an estate tax return and obtain a transfer certificate. If she would not be able to

obtain that relief directly against the IRS, she should not be able to achieve the substantive equivalent through this declaratory-judgment action.

3. Contrary to Ms. Rivero's argument (at 14-17), this case is anything but analogous to *CIC Services*. There, the petitioners were mounting an APA challenge to a reporting requirement backed by tax penalties and criminal penalties. 141 S. Ct. at 1588. This Court held that the lawsuit was not barred by the AIA because the petitioners were trying to avoid "the (non-tax) burdens of a (non-tax) reporting obligation." *Id.* at 1591. Taxation was only tangentially involved—the non-tax reporting obligation being challenged was simply enforced using a tax penalty. *Id.* Moreover, obtaining judicial review of the non-tax reporting obligation would have required the petitioner *to violate the law*, committing a crime in the process—not *follow the law* by paying any taxes owed and then obtaining judicial review through a refund action, which is the alternative remedy to seeking preemptive judicial review with respect to federal taxes. *Id.* at 1592.

None of those characteristics is present here. Ms. Rivero's lawsuit seeks to avoid a tax requirement—filing an estate tax return to obtain a transfer certificate—that is directly tied to the assessment and collection of taxes. She is not trying to avoid a non-tax burden of a non-tax regulatory requirement.

Nor is it the case that Ms. Rivero will have to commit a crime to obtain judicial review. Although she contends that she will have no form of judicial review without declaratory relief (Pet. 26-28), that is simply incorrect. The process is simple and set forth clearly

on the IRS's website[9]: Ms. Rivero can file an estate tax return, satisfy the IRS that no estate taxes are owed, and then obtain a transfer certificate from the IRS upon completion of its investigation. Or, if Ms. Rivero believes that no transfer certificate is required, she can seek a letter to that effect from the IRS after providing the information required through the "Part B" procedure described on the same webpage. If the IRS disagrees with her that no taxes are owed, she can pay any taxes assessed, obtain a transfer certificate, and then bring a refund suit in district court or in the Court of Federal Claims—precisely where tax-related challenges are supposed to be channeled pursuant to the AIA and DJA. *See CIC*, 141 S. Ct. at 1586; *Enochs*, 370 U.S. at 7-8.

Ms. Rivero also suggests that she cannot file an estate tax return and seek a transfer certification and would have no standing to seek a refund action because she is not the appointed executor of Mr. Medrano's estate. But that is wrong too—because Ms. Rivero is in possession of potentially taxable assets, she is a statutory executor and it is *her* tax liability that is at issue. The relevant regulations and Form 706-NA instructions are absolutely clear on this point. *See* 26 C.F.R. § 20.2002-1 ("any person in actual or constructive possession of any property of the decedent is required to pay the entire tax to the extent of the value of the property in his possession"); Form 706-NA Instructions 1 ("every person in actual or constructive possession of any of the decedent's property must file a return"); Rev. Rul. 55-160, 1955-1 C.B. 464

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[9] https://www.irs.gov/businesses/small-businesses-self-employed/transfer-certificate-filing-requirements-for-the-estates-of-nonresidents-not-citizens-of-the-united-states.

(requirement to seek a transfer certificate applies to a "surviving co-owner" in possession of property held in joint tenancy with the right of survivorship).[10]

Fidelity repeatedly informed both Ms. Rivero and her counsel that she simply needed to go through this process before the restriction on her account could be released. And yet, inexplicably, she has never done so. Instead, she's tried to circumvent the IRS's assessment and collection process by seeking the right to transfer those assets from Fidelity directly. This is precisely the type of lawsuit that the DJA's tax exception and the AIA were enacted to prevent.

Finally, review of the second question is also unwarranted because declaratory relief is discretionary. As already explained, even if the district court had jurisdiction, the court could just as easily have declined to exercise it given the relief available to Ms. Rivero through the IRS's estate-tax-assessment process. *See* Section I.C, *supra.*

D. Any shallow, underdeveloped, and recent disagreement among the circuits does not warrant this Court's intervention.

The petition suggests that the Fifth Circuit's decision is an anomaly, running against a consensus reached by the other circuits. Pet. 12. But in reality,

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[10] The IRS's rules in this area are so clear that the tax question raised by Ms. Rivero's complaint does not appear to have arisen in any prior case in history. That provides all the more reason for this Court to deny certiorari—unlike the APA challenges in *CIC Services* and *Direct Marketing*, a dispute about whether a joint tenant is required to file an estate tax return and seek a transfer certificate is unlikely to arise in the future.

only one court has squarely considered the question and provided any significant analysis.

Petitioner cites a Fourth Circuit case, *In re Leckie Smokeless Coal Co.*, 99 F.3d 573, 583 (4th Cir. 1996), as supposedly holding that the DJA and AIA are coextensive. But that statement, which was made without undertaking any textual analysis of the two statutes, was dicta. The court ultimately held that the claims (which expressly challenged Coal Tax premiums) were barred by *both* the AIA and the DJA but permitted the claims to be adjudicated in federal court anyway given the lack of an alternative method of challenging those taxes. *Id.* at 584.

The Sixth Circuit cases Ms. Rivero cites can only be described as puzzling. In *Ecclesiastical Order*, the court said that the DJA's tax exception "is at least as broad as the Anti-Injunction Act," quoting this Court's decision in *Bob Jones*. 725 F.2d at 402. It then went on to hold that the plaintiff's claims were barred by *both* the AIA *and* the DJA's tax exception without resolving whether the DJA's scope is broader. Twenty-five years later, the court quoted *Ecclesiastical Order* as supposedly holding that the two statutes "are 'to be interpreted coterminously.'" *CIC Servs., LLC v. IRS*, 925 F.3d 247, 250 n.3 (6th Cir. 2019), *rev'd and remanded,* 141 S. Ct. 1582 (2021). The court appears not to have realized it was quoting *the dissent* in *Ecclesiastical Order*, not the majority opinion. Thus, the Sixth Circuit has never analyzed this question and issued a reasoned decision on the issue.

The situation in the Ninth Circuit is similar. The court initially recited the same "at least as broad" language from *Bob Jones* cited by the Sixth Circuit in *Ecclesiastical Order*. *See California v. Regan*, 641 F.2d

721, 722-723 (9th Cir. 1981). A subsequent case then erroneously cited that decision as having held that the two acts are "coextensive" "despite the broader language of the" DJA. *Perlowin v. Sassi*, 711 F.2d 910, 911 (9th Cir. 1983).

The Tenth Circuit has stated that "[t]he reach of these two statutes is coextensive," oddly citing *Bob Jones*, which in fact expressly reserved that question, 416 U.S. at 732 n.7, and "common sense." *Wyo. Trucking Ass'n v. Bentsen*, 82 F.3d 930, 933 (10th Cir. 1996). And even that statement was dicta—the court ultimately held that the plaintiffs' claims were barred by *both* statutes. *Id.* at 935. The court has subsequently recited that same language, again without any analysis of the issue. *Green Sol. Retail, Inc.*, 855 F.3d at 1115.

The Seventh Circuit stated in a 1942 opinion that the AIA and the DJA's tax exception are "co-extensive." *Tomlinson v. Smith*, 128 F.2d 808, 811 (7th Cir. 1942). But the court provided no textual or contextual analysis of the two statutes—indeed, the decision does not even mention the language of the DJA—and instead relied entirely on its view that a contrary conclusion would be "unreasonable." *Id.* In the 80 years since, the Seventh Circuit has not encountered the question again.

The only court to have actually analyzed this question of statutory interpretation in any meaningful way is the D.C. Circuit, in *Cohen*, 650 F.3d 717.[11] But the

[11] The petition incorrectly states that then-Judge Kavanaugh authored the *en banc* majority opinion in *Cohen*. Pet. i, 11, 12. In fact, he wrote two dissents in that case. His panel dissent recognized that "courts today likely would not find [the DJA and AIA] coterminous" in light of their textual differences. *Cohen v.*

court's holding that the two statutes have an identical reach was based largely on misguided "functional" and purposivist concerns, rather than textual analysis. *Id.* at 728-730; *see* pp. 31-32, *infra*.

Thus, to the extent a split exists at all, it is shallow, with only one court to have engaged in any meaningful analysis of the DJA's scope. That the issue has arisen only a handful of times in nearly a century underscores that the question is not sufficiently important or frequently recurring to warrant this Court's intervention. If anything, allowing any split to remain will encourage parties to litigate this issue, resulting in reasoned decisions that could aid this Court's review at a later date if ultimately it is warranted.

E. The DJA's tax exception is broader than the AIA.

This Court's intervention is not necessary to correct any error in the decision below. The DJA's tax exception *is* broader in scope than the AIA, and Ms. Rivero's efforts to hypothesize practical problems to support her countertextual reading of the statute only underscores why further percolation of this issue is appropriate.

Begin with the text. The DJA precludes declaratory relief "with respect to Federal taxes," 28 U.S.C. § 2201(a), while the AIA forecloses lawsuits that are

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United States, 578 F.3d 1, 19 n.6 (D.C. Cir. 2009) (Kavanaugh, J., dissenting), *reh'g en banc granted in part, opinion vacated in part*, 599 F.3d 652 (D.C. Cir. 2010). His *en banc* dissent did not address this "difficult issue[] of statutory interpretation" in light of other doctrines that, in his view, independently barred the plaintiffs' claims. *Cohen*, 650 F.3d at 745 n.12 (Kavanaugh, J., dissenting).

filed "for the purpose of restraining the assessment or collection of any tax," 26 U.S.C. § 7421(a). The former provision is, on its face, broader than the AIA, which is why the IRS has taken the position that the two provisions are not coterminous. Litigation Guideline Memorandum, IRS LGM GL-52, 1991 WL 1167968 (June 28, 1991). If Congress wanted the two provisions to be identical in scope, it could have simply used the AIA's existing language and amended the DJA to "except any suit challenging the assessment or collection of any tax" from the declaratory relief that federal courts may provide.

Next: the statutory context. Each of these statutory provisions contains statutory exceptions—*different* exceptions. For example, the DJA permits courts to grant declaratory relief "with respect to federal taxes" in actions relating to the status and classification of 501(c)(3) organizations, and actions relating to certain trade determinations. *See* 28 U.S.C. § 2201(a). Those exceptions do not appear in the AIA—but different exceptions do, including petitions for review of innocent-spouse determinations, requests to enjoin the collection of certain taxes while refund suits are pending, and requests to enjoin the collection of tax-return-preparer penalties in certain instances. *See* 26 U.S.C. § 7421(a). Two statutes that contain entirely different exceptions cannot reasonably be deemed coterminous.

The D.C. Circuit's contrary conclusion in *Cohen* gave short shrift to these textual distinctions. It focused instead on legislative history indicating that the DJA was amended so that declaratory-judgment cases could not be used to circumvent the AIA. 650 F.3d at 729-730. But establishing *why* the amendment occurred says little about *what* the amended text does.

And even putting aside the problems with using legislative history to trump the DJA's plain text, the scant legislative history cited in *Cohen*—a Senate Finance Committee Report—actually supports a broader interpretation of the DJA's tax exception. The AIA had long forbade suits aimed at "restraining *the assessment or collection*" of taxes. 26 U.S.C. § 7421(a) (emphasis added). The report, by contrast, swept more broadly than the AIA: it described the Committee's concerns with litigants seeking declaratory judgments "with respect to the *determination*, assessment, and collection of Federal taxes." S. Rep. No. 74-1240, at 11 (1935) (emphasis added). Given Congress's concerns with federal courts interfering not with only the "assessment" and "collection" of taxes, but also "the determination" of taxes, it makes perfect sense that Congress's amendment to the DJA was framed more broadly than the limitations in the AIA.

The D.C. Circuit also relied heavily on what it viewed as "functional" concerns—the possibility that litigants could circumvent the DJA by simply seeking injunctive relief rather than declaratory relief. *Cohen*, 650 F.3d at 730; *see also* Pet. 22 (similar). That concern is overstated. There already exist myriad barriers to seeking injunctive relief even aside from the AIA's limitations. A plaintiff must have a cause of action under which the lawsuit can proceed and no alternative legal remedies available, among other limitations. *Rondeau v. Mosinee Paper Corp.*, 422 U.S. 49, 57 (1975).[12] Indeed, declaratory-judgment claims are

[12] Here for example, as discussed below, Ms. Rivero likely could not obtain injunctive relief because she has an alternative remedy available—she can simply file an estate tax return with the IRS and obtain a transfer certificate once she pays any estate tax

most commonly asserted when a party has no ability to get into court under traditional adjudication avenues. There is therefore no anomaly from construing the DJA's tax exception as imposing broader restrictions on this unique litigation mechanism to prevent these lawsuits from impinging on the IRS's authority.

In any event, if these "functional" concerns actually become an issue, then this Court could grant review and address them. But the speculative nature of these concerns is precisely why further percolation is required. Allowing the law in this area to develop will allow parties to actually identify and raise any "functional" problems in concrete terms, rather than hypothesize academic ones that may never transpire.

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that may be owed. *See* pp. 25-26, *supra*. Nor has she articulated a cause of action under which she could seek injunctive relief, as required under Texas law. *See Butnaru v. Ford Motor Co.*, 84 S.W.3d 198, 204 (Tex. 2002).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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