No. 23-436

IN THE

Supreme Court of the United States

VIKKI E. PAULSON, *et al.*,

Petitioners,

v.

UNITED STATES OF AMERICA, *et al.*,

Respondents.

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

REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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INTRODUCTION

Petitioners Vikki Paulson and Crystal Christensen submit this Reply Brief pursuant to Supreme Court Rule 19 to respond to certain inaccuracies in the Brief for the United States in Opposition and in further support of their Petition for a Writ of Certiorari.

In its opinion, the Ninth Circuit announced a novel interpretation of 26 U.S.C. § 6324(a)(2) that conflicts with more than sixty years of IRS practice and decisions issued by tax courts and federal courts considering the statute. The conflicts arise out of the Ninth Circuit's interpretation of two separate portions of the statute, and as a result, (1) the Government now can impose personal liability for unpaid estate taxes on transferees, trustees and beneficiaries who receive property from the decedent's estate *at any time after decedent's death* whereas it was previously held that the relevant trigger was *only at the time of decedent's death*; and (2) notwithstanding the statute's limitation on the measure of such personal liability—"*the value, at the time of the decedent's death*"—the Government can now choose to recover the value of the estate property as of the date when it is received rather than as of the date of decedent's death. By engaging in a "hypertechnical reading" of the statute, (Pet. App. 62a, Ikuta, J., dissenting), selectively choosing which canons of construction to apply and which to reject, and by acting without any Congressional involvement, the Ninth Circuit has dramatically expanded the scope of IRS powers to enforce the Nation's tax laws and increased the potential for abuse and unfairness to taxpayers. The Petition of Paulson and Christensen as well as that of Petitioner Madeleine Pickens have explained at length how the Ninth

Circuit erred in its interpretation of 26 U.S.C. § 6324(a)(2) and how that interpretation conflicts with all prior cases interpreting the scope of personal liability under this statute, and with the decisions of Courts of Appeals as to the appropriate statutory construction of tax statutes. Contrary to the Government's claims (Brief for the United States of America in Opposition ("U.S. Br.") 21-22), this case is an ideal candidate for this Court's review because the Ninth Circuit decision provides the opportunity to resolve these conflicts, including use of judicial estoppel as a new tool to interpret the scope of § 6324(a)(2).

ARGUMENT

I. The Ninth Circuit's Erroneous Interpretation of 26 U.S.C. § 6324(a)(2) Creates Conflicts with the Decisions of This Court Regarding the Appropriate Construction of Tax Statutes and the Decisions of Every Tax and Federal Court To Have Considered the Scope of Personal Liability Under the Statute.

For at least the past sixty years, every tax court and federal court (including the District Court below and dissenting panel Judge Ikuta) have studied the language of 26 U.S.C. § 6324(a)(2) and determined that it imposes personal liability for unpaid estate taxes on the listed persons who receive property from the decedent's estate *only at the time of decedent's death.* Petitioners Paulson and Christensen have previously described at length why the text of § 6324(a)(2), its internal logic, its legislative history, its place in the overall scheme of tax enforcement and proper statutory construction support this interpretation. (Petition for Writ of Certiorari of Vikki E. Paulson and Crystal Christensen ("Paulson Pet.")) 6-9.

Petitioners have also explained why the Ninth Circuit's and the Government's interpretation impermissibly expands the scope of § 6324(a)(2) to include estate assets received *at any time after decedent's death*, and in amounts that could exceed the current value of the property received, is deeply flawed. *Id.* at 12-13. Contrary to the Government's claim (U.S. Br. 12), Petitioners certainly disputed the Ninth Circuit's and the Government's textual analysis of § 6324(a)(2). *See* Paulson Pet. 7-9.

The Ninth Circuit and the Government claim that the tax court and federal decisions on which Petitioners rely were simply erroneously decided and no longer provide appropriate guidance to the taxpayer and the IRS. *See, e.g.*, Pet. App. 47a-48a; U.S. Br. 8-9, 13-14. Petitioners dispute these conclusions. Paulson Pet. 6-8. Every previous tax or federal court that sought to interpret § 6324(a)(2) reviewed its text, investigated Congressional intent, and applied the rule of taxpayer lenity to prevent fundamental unfairness. *Ibid.* Moreover, the analysis by these courts was relied upon for many years by taxpayers, the IRS, and the federal and tax courts.

The Ninth Circuit and the Government, however, rejected this analysis. Relying on their strict grammarian's eye, the Ninth Circuit and the Government assert they can fix the meaning of the text of § 6324(a)(2) caused by misplaced commas; and by invoking the canon of the last antecedent, they offer a total revision of the scope of personal liability for unpaid estate taxes. *See, e.g.*, Pet. App. 16a-28a; U.S. Br. 6-8, 10-11. Having completed this exercise in grammar and punctuation, the Government and the Ninth Circuit proceeded to reject the application of any other canons of statutory construction (such as the

rule of lenity and the absurdity canon) because now, as a result of their analysis, § 6324(a)(2) is no longer ambiguous. Indeed, the Government confidently announced that "[b]ecause *the provision is unambiguous on its face*, no resort to interpretive canons is necessary to discern its meaning," and later claims that the canon of taxpayer lenity has no role to play because "the text of Section 6324(a)(2) *unambiguously* forecloses" its application. U.S. Br. 11, 18 (emphasis added).

This is not a proper method of statutory construction. Section 6324(a)(2) is certainly ambiguous on its face. The fact that the Ninth Circuit and the Government now differ in their interpretations of § 6324(a)(2) with all the judges who authored the previous decisions over sixty years should confirm the reality of the statute's ambiguity as to the scope of personal liability, and should trigger applicable canons of construction. The canons of construction are to be used to confirm the "most logical meaning" of the statute under consideration. *See, e.g.*, *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 133 (2000); *Davis v. Mich. Dep't of Treasury*, 489 U.S. 803, 809 (1989); *United States v. One Sentinel Arms Striker-12 Shotgun Serial No. 001725*, 416 F.3d 977, 979 (9th Cir. 2005).

One of the appropriate canons of construction to be applied here is the canon of taxpayer lenity. *See, e,g.*, *United Dominion Indus. v. United States*, 532 U.S. 822, 839 (2001) (Thomas, J. concurring) (collecting cases discussing whether and when to apply "the traditional canon that construes revenue-raising laws against their drafter"). That canon is especially appropriate since the Government seeks tax penalties on the unpaid

taxes. Pet. App. 96a; *see, e.g.*, *Bittner v. United States*, 143 S. Ct. 713, 724-45 (2023) (applying rule of lenity to penalties). The canon is especially appropriate here to restore some fundamental fairness to the taxpayer. It is clear, as explained by dissenting Judge Ikuta (Pet. App. 66a), that the Government resorted to its novel interpretation of § 6324(a)(2) to offset its abject failure to protect its interests in securing the payment of estate taxes through the available special lien or surety bond. The Government fails to explain why it has neglected entirely to hold John Michael Paulson, the Executor and original Trustee, responsible for his financial misconduct in wasting estate assets and failing to pay taxes, which is the root of the problem. Paulson Pet. 3-4.

The Ninth Circuit, however, refused to apply the revenue-raising canon here. Pet. App. 44a-46a. In this regard, Petitioner Pickens has set forth at length the conflicts among circuit courts created by the Ninth Circuit's refusal to apply the revenue-raising canon. (Petition for Writ of Certiorari of Madeleine Pickens ("Pickens Pet.")) 28, 32-34. The Government does not respond to this argument. U.S. Br. 18.

To help determine the "most logical meaning" of § 6324(a)(2), dissenting Judge Ikuta also took into account the long period of time during which there was a judicial consensus among the tax courts and the federal courts that § 6324(a)(2) imposed personal liability for unpaid estate taxes on the listed persons who receive property from the decedent's estate *only at the time of decedent's death.* Pet. App. 64a-65a. During this period, in 1966, Congress amended and re-enacted § 6324(a)(2). Congress specifically revised the tax lien portions, but did not change the syntax

of the remainder of § 6324(a)(2), including the provisions relevant to this case. Relying on *Lorillard v. Pons,* 434 U.S. 575 (1978), Judge Ikuta explained that this legislative activity was an indicator of Congressional intent, and that Congress should be presumed to have been aware of the long-standing judicial interpretation of § 6324(a)(2), and to have adopted it. Pet. App. 65a.

The Government goes to great lengths to argue that "this inference of Congressional ratification . . . is weak," (U.S. Br. 14), and that more evidence of legislative action is required to establish a broad "judicial consensus" to satisfy what it claims are the standards for Congressional ratification, as set forth in *BP p.l.c. v. Mayor of Baltimore,* 141 S. Ct. 1532, 1541 (2021) (quoting *Jama v. Immigr. And Customs Enf't*, 543 U.S. 335, 349 (2005)). U.S. Br. 14-15. The Government also dismisses Petitioners' evidence of an existing judicial consensus by attempting to characterize it as "a smattering of lower court opinions." *BP p.l.c.*, 141 S. Ct. at 1541; U.S. Br. 14-15. Indeed, the Government seeks to minimize the significance of the 1966 amendments to § 6324(a)(2) altogether by claiming that a "comprehensive" revision (without any effort to define that term) is necessary to support Congressional ratification. U.S. Br. 15; *see AMG Cap. Mgmt., LLC v. Fed. Trade Comm'n,* 141 S. Ct. 1341, 1351 (2021).

The Government's arguments regarding the requirements for Congressional ratification miss the point. Congress's 1966 amendment and re-enactment of § 6324(a)(2) are only an indicator of Congressional intent—not definitive evidence. They are only part of the process of statutory construction. Congress revises statutes for many reasons—some important, some to correct dates or

other minor details and some just for cosmetic reasons. Here, what we know for sure is that every previous tax or federal court that sought to interpret § 6324(a)(2) shared a unanimous view for at least sixty years. It was not just a "smattering of lower court opinions." *BP p.l.c.*, 141 S. Ct. at 1541.

In this regard, Petitioners claim only that in defining the scope of personal liability under § 6324(a)(2), some weight should be given to the Congressional revisions to § 6324(a)(2) in 1966, because, despite the opportunity, Congress made no changes to the syntax relevant here. No one can say that these revisions were not "comprehensive" just because Congress altered the tax lien provisions but did not change anything else regarding the scope of personal liability. In short, Congress continued to accept the language of § 6324(a)(2) (with the existing judicial consensus as to its interpretation).

II. The Ninth Circuit's Novel Interpretation of 26 U.S.C. § 6324(a)(2) Impermissibly Amends the Time for Measuring Personal Liability.

In her vigorous dissent, Judge Ikuta concluded that the majority's interpretation of § 6324(a)(2) should be rejected, explaining that it is "not logical because it would allow a person who receives estate property years after the estate is settled to be held personally liable for estate taxes that potentially *exceed* the current value of the property received." Pet. App. 61a (emphasis added). In her view, "the taxpayer's reading of the statute, which also accords with the plain language of the text, is more logical: it would allow the government to impose personal liability for estate taxes only on a person who receives

(or holds) estate property on the date of the decedent's death." *Id.* at 61a-62a. Judge Ikuta further determined that Congress could not have intended such an illogical and disproportionate result. *Id.* at 69a. This encapsulates the Petitioners' position. Paulson Pet. 5-6, 12-13.

The Government, however, dismisses as "speculative" Petitioners Paulson's and Christensen's concerns that the appellate court's new interpretation of the scope of § 6324(a)(2) would cause "illogical results" and significant unfairness. U.S. Br. 16-18. Petitioners argued that these "illogical results" were not speculative, but would occur because the unpaid estate taxes due would exceed the value of the estate assets they received since their value "decreased precipitously" during the time between the date of decedent's death and the date of their receipt. Paulson Pet. 5. Given the nature of a sizable portion of estate assets (uniquely depreciative horses) and the inordinate delay in the Government's tax enforcement efforts (15 years) (Paulson Pet. 2-4), Petitioners' concerns about diminution in the value of estate assets when they were received are certainly legitimate. They arise out of the explicit statutory language of § 6324(a)(2) which provides that personal liability for unpaid estate taxes will be imposed "to the extent of the *value at the time of the decedent's death*" of such property. (emphasis added)

Moreover, contrary to the Government's current claims regarding the "speculative" nature of Petitioners' concerns (U.S. Br. 17), in its prior briefing and oral arguments (but not in its Complaint), the Government represented that in its enforcement efforts (contrary to the language in § 6324(a)(2)), Petitioners' "estate tax liability cannot exceed the value of the property received."

Pet. App. 38a. The only reason for the Government to make this representation during the litigation was to attempt to improve its statutory construction argument by ameliorating the surprise and "illogical" results of its interpretation of the scope of personal liability under § 6324(a)(2).

The Government's litigation gambit was successful. The Ninth Circuit chose to rely on those representations to establish a new cap on personal liability under § 6324(a)(2). Pet. App. 38a. The Ninth Circuit did so even though it contradicts the statutory language in § 6324(a)(2) and constitutes an attempt to amend the statute by judicial fiat. No justification for this conclusion is offered by the Ninth Circuit or the Government other than that such a change could ameliorate the illogical results and unfairness to taxpayers of the new interpretation of the scope of personal liability. The Ninth Circuit also realized that this attempt to manipulate the decision in this one case needed to be broadened to apply to future cases. Thus, the Ninth Circuit invoked the doctrine of judicial estoppel, which the Government had never argued. Pet. App. 38a-42a.

As dissenting Judge Ikuta explained at length, however, judicial estoppel is not applicable here; it will not bind the Government in future cases, and, most importantly, it will not avoid the illogical results caused by the Ninth Circuit's and the Government's interpretation of § 6324(a)(2). Pet. App. 74a-76a. Petitioner Pickens has previously explained how the Ninth Circuit decision applying judicial estoppel to prevent the Government from changing its legal position (rather than its factual position) deepens the existing conflicts among the Courts of

Appeals on this issue. Pickens Pet. 29-32. The Government does not respond to these arguments regarding judicial estoppel other than bizarrely denying that the Ninth Circuit decided the issue of judicial estoppel. U.S. Br. 19 (arguing that the Ninth Circuit "did not apply judicial estoppel at all").

Petitioners' concerns about the illogical results of the Ninth Circuit's and Government's proposed interpretation of § 6324(a)(2) are not just preferred "policy argument[s]," as the Government's brief claims. U.S. Br. 16. Rather, these concerns about "illogical results" are an integral part of an appropriate statutory construction which involves an analysis of Congressional intent. *See Lockhart v. United States*, 577 U.S. 347, 352 (2016) (the "context," internal logic, legislative history and the provision's "place in the overall statutory scheme" should be considered); *see also Facebook, Inc. v. Duguid,* 141 S. Ct. 1163, 1170 n.5 (2021); *United States v. Hayes*, 555 U.S. 415, 425 (2009); *Barnhart v. Thomas*, 540 U.S. 20, 26 (2003); *One Sentinel Arms*, 416 F.3d at 979. As Judge Ikuta observed, when, as here, the language of a statute is ambiguous, the Court must consider "the most logical meaning" of the statute. Pet. App. 61a. The "illogical results" of the Ninth Circuit's interpretation of § 6324(a)(2), as set forth above and in the Petitions, warrant its reversal.

CONCLUSION

The Court should grant the Petition of Vikki Paulson and Crystal Christensen for a Writ of Certiorari.

Respectfully submitted,

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