No. 23-___

IN THE
Supreme Court of the United States

MADELEINE PICKENS,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

When an individual passes away, the executor of his estate must pay estate taxes. If the executor fails to pay, the Internal Revenue Service may enforce a tax lien that attaches to all estate property, and may impose personal liability on executors. This case involves an additional, extraordinary authority available to the IRS under 26 U.S.C. § 6324(a)(2). That statute provides that if estate taxes are not paid when due, an individual who falls within six statutory categories

> who receives, or has on the date of the decedent's death, property included in the gross estate under sections 2034 to 2042, inclusive, to the extent of the value, at the time of the decedent's death, of such property, shall be personally liable for such tax.

Id. For nearly 100 years, all three Branches of Government agreed that this provision empowers the IRS to impose personal liability on third parties who have or receive estate property immediately "on the date of the decedent's death," and who can thus "delay or defeat collection" of estate taxes. *Higley* v. *Comm'r*, 69 F.2d 160, 163 (8th Cir. 1934). All three Branches also agreed that Section 6324(a)(2) does not apply to beneficiaries of a trust who receive estate assets after a decedent's death, and who are not responsible for the distribution of the estate's assets. In the decision below, the Ninth Circuit broke with this longstanding consensus and held that Section 6324(a)(2) applies to persons who receive estate property at the date of death or anytime thereafter.

The question presented is whether the limiting phrase in Section 6324(a)(2), "on the date of the decedent's death," applies to both the verbs "receives" and "has."

PARTIES TO THE PROCEEDING

Madeleine Pickens, petitioner on review, was a Defendant-Appellee below.

The United States of America, respondent on review, was the Plaintiff-Appellant below.

Vikki E. Paulson, Crystal Christensen, John Michael Paulson, and James D. Paulson were Defendants in the proceedings below. Vikki E. Paulson, Crystal Christensen, and James D. Paulson were parties to the appeal, and Vikki E. Paulson and Crystal Christensen are petitioners in *Paulson* v. *United States*, No. 23-436 (U.S.).

RELATED PROCEEDINGS

Supreme Court of the United States:

- *Pickens* v. *United States*, No. 23A311 (Oct. 10, 2023) (granting extension of time to file petition of certiorari)
- *Paulson* v. *United States*, No. 23-436 (Oct. 23, 2023) (petition for certiorari filed)

U.S. Court of Appeals for the Ninth Circuit:

- *United States* v. *Paulson*, No. 21-55197 (May 17, 2023) (opinion)
- *United States* v. *Paulson*, No. 21-55197 (July 25, 2023) (rehearing)

U.S. District Court for the Southern District of California:

- *United States* v. *Paulson*, No. 15-cv-2057 (Mar. 23, 2020) (findings of fact and conclusions of law)
- *United States* v. *Paulson*, No. 15-cv-2057 (Sept. 6, 2016) (order and opinion)

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Madeleine Pickens respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit.

INTRODUCTION

This petition presents an exceptionally important question about the interpretation of a major tax statute in a case of IRS abuse.

Section 6324(a)(2) of the Internal Revenue Code provides the IRS with a unique and extremely powerful authority. The IRS may hold certain third parties personally liable for others' unpaid estate taxes. In particular, Section 6324(a)(2) imposes personal liability on a qualifying individual who "receives, or has on the date of the decedent's death, property included in

the gross estate." 26 U.S.C. § 6324(a)(2). Section 6324(a)(2)'s scope is circumscribed. For decades, everyone understood the limiting phrase—"on the date of the decedent's death"—to modify both the verbs "receives" and "has." That means Section 6324(a)(2) applies to individuals who possess or receive property *immediately on the date of death*. Those individuals, such as the trustee of a decedent's living trust, are similarly situated to an executor of an estate because they control the initial distribution of estate assets. To disincentivize these individuals from "delay[ing] or defeat[ing] collection" of estate taxes, Congress subjected them to personal liability if estate taxes go unpaid. *Higley* v. *Comm'r*, 69 F.2d 160, 163 (8th Cir. 1934).

Section 6324(a)(2), by contrast, has always been understood not to apply to persons like beneficiaries of a living trust who do not immediately receive estate property, but instead come into possession months or years after a decedent's death. *Id.* Requiring a mere "beneficiary to be personally liable for the estate tax (in whole or part)" would impose a "real hardship on beneficiaries who would often be hopelessly unable to bear it." *Id.* These harsh results "easily explain why Congress would not impose it." *Id.*

For nearly 100 years, all three Branches of Government agreed with this interpretation. Every court to consider the question recognized that the language of Section 6324(a)(2) and its predecessor statute excludes persons like trust beneficiaries who receive property only after the decedent's death. In 1959, the Tax Court issued what became the authoritative decision interpreting the language now in Section 6324(a)(2) to apply only to persons who receive or have

property "immediately" on the date of the decedent's death. *See Englert* v. *Comm'r*, 32 T.C. 1008, 1016 (1959). The Executive Branch agreed with this interpretation, and, in 1960, the IRS formally acquiesced to the Tax Court's interpretation. Congress, in turn, ratified that interpretation when it recodified Section 6324(a)(2) without disturbing the settled understanding of the law—an indication that "Congress intended to keep the then-current judicial interpretation." Pet. App. 65a (Ikuta, J., dissenting). That narrow understanding of Section 6324(a)(2) has governed ever since.

In a split decision below, over Judge Ikuta's emphatic dissent, the Ninth Circuit departed from that longstanding interpretation. Instead, the Ninth Circuit concluded that Section 6324(a)(2) applies whenever someone receives estate property, either on the date of death *or at any time thereafter*. The upshot is that trust beneficiaries who receive assets long after the decedent's death may be held liable for estate taxes—even though such beneficiaries will often be utterly incapable of paying the taxes and even though subjecting them to personal liability punishes them for the misconduct of others. For the reasons explained by Judge Ikuta, the Ninth Circuit's decision flouts rudimentary principles of statutory interpretation and calls out for this Court's review.

First, the Ninth Circuit ignored the consensus understanding of the text of Section 6324(a)(2) and further ignored that Congress ratified that understanding when it recodified the provision without material change. Instead, it adopted an interpretation of the statute that the panel acknowledged yielded harsh and implausible results. The sole reason the panel

majority offered up for this interpretation was the absence of a comma after the statutory term "has," which the panel understood to trigger the rule of the last antecedent. But, as this Court has explained, the last-antecedent canon can be "overcome by other indicia of meaning." *Lockhart* v. *United States*, 577 U.S. 347, 352 (2016) (citation omitted). Here, every other marker of congressional intent refutes the Ninth Circuit's interpretation. The Ninth Circuit's departure from every other court to consider the scope of Section 6324(a)(2), a powerful tax statute that is ripe for abuse, warrants this Court's review.

Second, the Ninth Circuit dismissed the illogical results of its own interpretation on the ground that the government litigators below promised that the IRS will not abuse the new authority the panel's decision gives it. According to the Ninth Circuit, the Government's "avowals in its briefing and at oral argument" and the doctrine of judicial estoppel permanently "bar the government from" abusing Section 6324(a)(2). Pet. App. 38a-39a. That application of judicial estoppel to freeze the legal position of the United States creates yet more problems with the decision below. The circuits are split five-to-four on whether judicial estoppel can ever apply to inconsistent legal positions rather than factual assertions. That the Ninth Circuit estopped *the United States* on a purely legal issue further compounds its error. The Ninth Circuit held that the IRS's statements in this case perpetually bind all future administrations on a matter of law. But, as Judge Ikuta explained, "public policy considerations allow the government to change its positions in ways

private parties cannot." Pet. App. 76a (Ikuta, J., dissenting). By overriding a critical indicator of Congress's meaning based on promises from Executive Branch lawyers, the majority effectively "deliver[ed] lawmaking power to the executive." *United States* v. *Marine Shale Processors*, 81 F.3d 1329, 1348 (5th Cir. 1996).

Third, the Ninth Circuit independently erred by declining to read Section 6324(a)(2) in the taxpayer's favor. "In case of doubt," revenue-raising statutes "are construed most strongly against the government, and in favor of the citizen." *Gould* v. *Gould*, 245 U.S. 151, 153 (1917). The Ninth Circuit, however, disputed the validity of this interpretive canon and refused to apply it. That was yet another error. Other federal circuits routinely apply this canon, and two Members of this Court noted its ongoing viability just last Term. *See Bittner* v. *United States*, 598 U.S. 85, 101 (2023) (Gorsuch, J., joined by Jackson, J.). Because the Government's new interpretation of Section 6324(a)(2) is, at minimum, uncertain, the Ninth Circuit should have construed the uncertainty in the taxpayer's favor.

* * * * *

This case illustrates the dangers of the Ninth Circuit's interpretation and exemplifies why many Americans lack faith in the IRS. As Judge Ikuta explained, the trustee charged with distributing the trust in this case committed extraordinary misconduct, but "the government failed to use the options available to protect" its interests, and "failed to hold" the trustee "personally liable for the estate taxes due." Pet. App. 65a (Ikuta, J., dissenting). Instead, to "compensate for its

failures," the IRS sought to collect millions from Petitioner Madeleine Pickens, the decedent's widow, who was entirely innocent of any wrongdoing. The Government reneged on its acquiescence to the longstanding interpretation of Section 6324(a)(2) and sought to impose liability "for the first time" on a trust beneficiary who received assets years after the decedent's death. Pet. App. 66a (Ikuta, J., dissenting). At the time of her inheritance, Ms. Pickens had no conceivable basis to predict that the IRS would fail to collect taxes from the wrongdoer, nor could she foresee that the Government would reverse its longstanding interpretation and seek millions from her a decade later. The Ninth Circuit's decision below blesses this abuse and invites more of it. This Court should grant review and reverse.

OPINIONS BELOW

The Ninth Circuit's decision (Pet. App. 1a-78a) is reported at 68 F.4th 528. The District Court's opinion (Pet. App. 94a-126a) is reported at 204 F.Supp.3d 1102.

JURISDICTION

The Ninth Circuit entered judgment on May 17, 2023. Pet. App. 3a. The Ninth Circuit denied Petitioner's rehearing petition on July 25, 2023. Pet. App. 129a. On October 10, 2023, this Court extended Petitioner's deadline to petition for a writ of certiorari up to and including November 22, 2023. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISION INVOLVED

26 U.S.C. § 6324(a)(2) provides, in relevant part:

> If the estate tax imposed by chapter 11 is not paid when due, then the spouse, transferee, trustee * * *, surviving tenant, person in possession of the property by reason of the exercise, nonexercise, or release of a power of appointment, or beneficiary, who receives, or has on the date of the decedent's death, property included in the gross estate under sections 2034 to 2042, inclusive, to the extent of the value, at the time of the decedent's death, of such property, shall be personally liable for such tax. * * *

STATEMENT OF THE CASE

A. Legal Background

1. When a person dies, her executor is responsible for administering probate proceedings and for paying estate taxes. *See generally* 26 U.S.C. § 2002. If an executor does not pay the estate taxes, the IRS's primary method of collection is through a tax lien, which automatically attaches to a decedent's property for ten years. *Id*. § 6324(a)(1). In certain circumstances, an executor can elect to pay estate taxes in installments over a longer period. *Id*. § 6166(a)(1). In that case, the Government may impose an additional special lien, or require a surety bond to further protect its interests. *Id*. § 6166(k). If the executor pays "any part of a debt" of an estate "before paying a claim of the Government," the executor becomes personally "liable." 31 U.S.C. § 3713(b); *see* 26 C.F.R. § 20.2002-1.

The Internal Revenue Code empowers the IRS to pursue certain other third parties who receive property from delinquent taxpayers. To do so, the IRS

principally uses state fraudulent transfer statutes. *See* 26 U.S.C. § 6901(a)(1)(A)(ii); *Comm'r* v. *Stern*, 357 U.S. 39, 45-46 (1958). Under state laws, the IRS may recover property transferred to third parties through actual or constructive fraud. *See generally* Uniform Fraudulent Transfer Act §§ 4, 5 (1984). Absent fraud, however, the IRS generally cannot use state laws to pursue third parties who receive estate property.

2. This case involves an additional, extraordinary authority the IRS possess to collect unpaid estate taxes from third parties. 26 U.S.C. § 6324(a)(2). As relevant here, Section 6324(a)(2) provides that a person who falls within six categories—including a "trustee," "transferee," or "beneficiary"—"who *receives, or has on the date of the decedent's death*, [non-probate] property included in the gross estate," shall be personally liable "to the extent of the value, at the time of the decedent's death, of such property." *Id.* (emphasis added). The question presented is whether the limiting phrase "on the date of the decedent's death" modifies the verb "receives" in addition to the verb "has."

Before this case, every court to consider the question held that the limiting phrase "on the date of the decedent's death" modifies both the verbs "receives" and "has." Under that interpretation, an individual may be held personally liable for estate taxes under Section 6324 only if she holds or receives non-probate property on the date of the decedent's death—that is, only if she *immediately* controls non-probate property at the time of death and therefore controls the initial distribution of estate assets, much like an executor. By contrast, if a person receives non-probate property

after the date of death, the person cannot be liable for unpaid estate taxes.

The Tax Court adopted this interpretation of Section 6324(a)(2) in 1959. *Englert*, 32 T.C. at 1016. One year later, the IRS formally acquiesced to that opinion. *See IRS Announcement Relating to: Englert*, 1960 WL 62561 (IRS ACQ Dec. 31, 1960). In 1966, Congress recodified Section 6324(a)(2) without modifying the statutory language at issue. *See* Federal Tax Lien Act of 1966, Pub. L. No. 89-719, § 102, 80 Stat. 1125, 1132-1133.

B. Factual Background

Petitioner Madeleine Pickens' husband, Allen Paulson, died in 2000. Pet. App. 6a-7a. During his life, Allen transferred nearly all his assets to a living trust. *Id.* A living trust is a popular mechanism to avoid probate. The terms of Allen's living trust required the trustee to pay estate taxes. *Id.* at 9a. Allen's son from a previous marriage—John Michael Paulson—was appointed trustee. *Id.* According to the terms of the trust and Allen's will, Ms. Pickens was to receive specific bequests.

When Allen died, John Michael Paulson was also the executor of Allen's estate. In total, Allen's estate was valued at $193 million. *Id.* The estate owed around $11 million in estate taxes. In 2001, John Michael Paulson elected to pay the estate taxes through a payment plan. *Id.* at 9a-10a. But the Government neither required John Michael Paulson to post a surety bond, nor imposed a special lien, either one of which would have protected the Government's interests in estate taxes.

John Michael Paulson committed a raft of misconduct in connection with Allen's estate. For one thing, he sought to deprive Ms. Pickens of the assets to which she was entitled from the trust. In 2003, nearly three years after her husband's death, Ms. Pickens entered into a settlement agreement with John Michael Paulson to resolve the dispute. Ms. Pickens subsequently received property she was owed. *Id.* at 10a-11a, 135a-136a. She then had nothing to do with the trust or her husband's estate.

In the settlement agreement, John Michael Paulson confirmed that the trust would pay the outstanding estate taxes. *Id.* at 130a-131a. But John Michael Paulson did not keep his promise. Instead, he squandered a fortune on expensive race horses, personal travel, and speculative investments. He also paid himself handsomely for his role as trustee. *See id.* at 137a-140a. In the meantime, the trust dwindled, and the estate taxes went unpaid. It is undisputed that Ms. Pickens had nothing to do with John Michael Paulson's misconduct.

In 2009, the trust defaulted under the payment plan. *Id.* at 10a. The Government assessed the outstanding tax liability at $9.6 million and valued the estate's assets at $13.7 million, still enough to pay the taxes. *Id.* at 11a. In 2010, after several missed payments, the IRS terminated the trust's payment plan. *Id.* Meanwhile, a state probate court dismissed John Michael Paulson from his position as trustee for his misconduct. *Id.* When the dust settled, two other heirs had become co-trustees. *Id.* at 11a-12a. In 2013, the new trustees claimed the trust had been "completely depleted." *Id.* at 12a.

C. Procedural History

1. To make up for its failure to protect its interests, the Government sought to collect unpaid taxes from Ms. Pickens. In 2015—fifteen years after Allen's death and twelve years after Ms. Pickens received property as a trust beneficiary—the Government filed this action seeking to hold Ms. Pickens personally liable under Section 6324(a)(2) for millions in estate taxes.

The District Court rejected the Government's argument. Citing the "well-settled" understanding that Section 6324(a)(2) applies only to a person who "receive[s] property from an estate at the time of a decedent's death," the District Court concluded that Ms. Pickens was not personally liable because she had received estate property three years after her husband died. Pet. App. 111a-113a, 117a-118a.[1]

As part of the same litigation, the Government sued John Michael Paulson, who was directly responsible for the failure to pay the estate taxes. But the District Court held that the IRS had made yet another error that prevented it from pursuing John Michael Paulson. He had submitted a "discharge request" to the IRS, and though the "IRS acknowledged receipt"

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[1] The District Court also explained that the term "beneficiary" in Section 6324(a)(2) has long been understood to have narrow meaning, and that Ms. Pickens was not liable as a beneficiary because she did not receive insurance proceeds. The Ninth Circuit reversed that holding, too. *See* Pet. App. 50a-58a; *see generally infra* pp. 23-24 (explaining that "beneficiary" has a narrow meaning).

of that request, it "never responded to it." *Id.* at 83a. The District Court held that the IRS's failure to respond discharged John Michael Paulson from his personal liability for unpaid taxes as both executor and trustee. *Id.* at 93a.

The IRS elected not appeal the ruling about John Michael Paulson. Instead, the IRS appealed the decision interpreting Section 6324(a)(2) to foreclose the Government's claims against Ms. Pickens. *Id.* at 111a-113a.

2. Over Judge Ikuta's dissent, a divided panel of the Ninth Circuit reversed the district court's interpretation of Section 6324(a)(2).

The majority—the first court to ever do so—held that "§ 6324(a)(2) imposes personal liability for unpaid estate taxes" on persons who receive estate property "either on the date of the decedent's death *or at anytime thereafter*." Pet. App. 16a (emphasis added). To reach this result, the majority relied on the last-antecedent canon, an interpretive principle that a limiting clause ordinarily modifies "only the noun or phrase that it immediately follows." *Id.* at 18a (citation omitted). According to the majority, because Congress did not include a comma after the word "has," "the limiting phrase 'on the date of the decedent's death' modifies only the immediately preceding antecedent 'has,' and not the more remote antecedent 'receives.' " *Id.* at 19a.

The majority recognized that its interpretation produces an illogical result: The IRS may impose liability that "exceed[s] the value of the property re-

ceived." Pet. App. 33a n.20. Section 6324(a)(2) imposes liability based on the value "at the time of the decedent's death," but property can, and frequently does, decline in value over time. By the time a beneficiary receives property years after the decedent's death, the property may be worth less than the taxes owed.

The majority acknowledged that this result may seem "not wise," "harsh and misguided." Pet. App. 34a (citation omitted). But the majority dismissed this concern because the Government "avow[ed] in its briefing and at oral argument" that the IRS would not wield its newfound power to "expose a person to liability that exceeds the value of the property that he or she personally had or received." *Id.* at 38a-39a. Even though the statutory text provided no support for its conclusion, the majority held that the Government's litigation representations "bar the government from later arguing, in this case or a future case, that it can recover more than the value of the property that the taxpayer received." *Id.* at 39a.

The majority refused to construe Section 6324 in favor of the taxpayer, *id.* at 44a-46a, notwithstanding the "traditional canon that construes revenue-raising laws against their drafter," *United Dominion Indus., Inc.* v. *United States*, 532 U.S. 822, 839 (2001) (Thomas, J., concurring). Instead, the panel questioned the canon's "modern validity" and concluded that Section 6324 was insufficiently ambiguous to warrant a construction in favor of Ms. Pickens. Pet. App. 44a.

3. Judge Ikuta dissented. As she explained, "[t]o compensate for its failures to use the available statutory options to collect estate taxes, the government here adopted a novel reading of § 6324(a)(2)" that contravenes the statutory text, upends a decades-long consensus, and yields results that Congress cannot conceivably have intended. *Id.* at 66a. In blessing that reinvention of Section 6324(a)(2), the majority adopted a "hypertechnical reading" of the statute that was divorced from its "most logical meaning." *Id.* at 62a (citation omitted).

Judge Ikuta explained that the "phrase 'receives * * * on the date of decedent's death,' refers to property received by persons solely because of decedent's death." *Id.* at 65a (quotation marks omitted). This includes someone "who becomes trustee of a trust on the date of decedent's death" and controls trust assets. *Id.* It does *not* include a beneficiary of a trust who receives trust assets years after the decedent's death. This was the "accepted reading" of Section 6324(a)(2), endorsed by every court to consider the issue and unquestioned for decades until the Government adopted a new interpretation "for the first time" in this litigation. *Id.* at 66a. Judge Ikuta explained that Congress itself endorsed this long-held interpretation of Section 6324(a)(2). In 1966, "Congress amended § 6324," but "did not change the syntax of § 6324(a)(2)." *Id.* at 65a. "Congress is presumed to be aware of an administrative or judicial interpretation of a statute and to adopt that interpretation when it re-enacts a statute without change." *Id.* (quoting *Lorillard* v. *Pons*, 434 U.S. 575, 580 (1978)). By recodifying Section 6324(a)(2) without

changing the operative language, Congress "intended to keep the then-current judicial interpretation." *Id.*

Judge Ikuta rejected the majority's reliance on the last-antecedent canon. The last-antecedent canon "can assuredly be overcome by other indicia of meaning," and it is "inapplicable when it creates illogical results and the statute's plain language gives rise to a more logical reading." *Id.* at 67a (quoting *Barnhart* v. *Thomas*, 540 U.S. 20, 26 (2003)). The majority's interpretation of Section 6324(a)(2) produces just such a result: It permits the IRS to impose "personal liability for unpaid estate taxes on trust asset recipients in excess of the value of the assets received." *Id.* at 68a-69a. "Congress could not have intended" such an "illogical" result, which would make an individual's tax liability "completely disproportionate to the value of the property when the individual eventually receives it." *Id.* at 66a, 69a.

As Judge Ikuta explained, the majority's effort to escape that implausible result—judicially estopping the United States in future cases—created still more problems. " 'It is well settled that the government may not be estopped on the same terms as any other litigant' because public policy considerations allow the government to change its positions in ways private parties cannot." *Id.* at 76a (quoting *Heckler* v. *Community Health Servs. of Crawford Cnty., Inc.*, 467 U.S. 51, 60-61 (1984)) (brackets omitted). Instead, "the government may readily change its interpretation of a statute," including "in response to changed factual circumstances, or a change in administrations." *Id.* (quotation marks omitted). Thus, "judicial estoppel would

not avoid the illogical results caused by the government's (and majority's) interpretation of the statute." *Id.*

Ms. Pickens sought *en banc* review, which the Ninth Circuit denied. *Id.* at 129a. Two of Allen Paulson's heirs were co-defendants in the district court, and lost for the same reasons in the Ninth Circuit. Those heirs have separately sought certiorari in this Court. *See Paulson* v. *United States*, No. 23-436 (U.S. Oct. 23, 2023).

This petition follows.

REASONS FOR GRANTING THE PETITION

The petition presents an exceptionally important question about the interpretation of an Internal Revenue Code provision that is ripe for IRS abuse. The decision below also deepens circuit conflicts that warrant this Court's review.

I. THE DECISION BELOW IS WRONG.

Until this case, all three Branches agreed that the phrase "on the date of the decedent's death" modifies both "has" and "receives." 26 U.S.C. § 6324(a)(2). The Government in this case "for the first time" minted an extreme new interpretation, under which the statute would apply whenever someone receives non-probate estate assets *at any point in time*. Pet. App. 66a (Ikuta, J., dissenting). A divided Ninth Circuit panel acquiesced to this IRS overreach, adopting a novel and implausible interpretation of Section 6324(a)(2) that misapplies basic principles of statutory construction, improperly purports to estop the United States, and refuses to apply the rule that ambiguities in revenue-

raising statutes are resolved against the United States.

A. Section 6324(a)(2) Applies Only To Property Received On The Date Of Death.

Section 6324(a)(2) imposes personal liability on an individual who "receives, or has on the date of the decedent's death" non-probate estate property. The phrase "on the date of the decedent's death" has always been understood to modify both "receives" and "has."

Section 6324(a)(2) is a targeted provision designed to permit the United States to pursue individuals, in addition to the executor, who control certain non-probate estate property "on the date of the decedent's death." The executor is chiefly responsible for paying estate taxes. Estate tax liens and personal liability on the executor normally provide the IRS sufficient recourse if an executor does not pay. But certain "non-probate" property is included in a decedent's estate for estate tax purposes, yet does not fall under the executor's control, such as property in a living trust. *See* 26 U.S.C. § 2038; Pet. App. 70a (Ikuta, J., dissenting). Section 6324(a)(2) provides the United States enforcement authority for those who control non-probate property on the date of death, and who can dissipate the estate's assets. But Section 6324(a)(2) does not permit the IRS to collect taxes from trust beneficiaries who receive estate property years after the decedent's death. Until now, all three Branches of Government agreed with this interpretation.

In 1934, the Eighth Circuit interpreted the statutory predecessor to Section 6324(a)(2) to exclude trust

beneficiaries who receive property after the decedent's death. The Eighth Circuit explained that Congress enacted the statute to give the IRS recourse against persons who are "in position to dispose of the property and possibly delay or defeat collection." *Higley*, 69 F.2d at 163. This makes sense: Those who have "legal title, control, and possession" at the time of death must have a meaningful incentive to see "the payment of the tax." *Id*. Otherwise, those individuals who control the estate could disperse its assets and impede the Government's tax collection.

The Eighth Circuit concluded that the statute did not apply to persons, such as "children or other dependents," who receive property from a trust after the decedent's death. *Id.* As the court explained, there is no need to impose liability on such beneficiaries: "all opportunity" for the evasion of estate taxes "is anticipated and guarded against by placing upon the trustee a personal liability and by attaching the lien to the trust property." *Id.* Meanwhile, the harsh "results flowing from such a personal liability easily explain why Congress would not impose it," because requiring a trust beneficiary "to be personally liable for the estate tax (in whole or part) would result in dire hardship in many instances." *Id.* Instead, it is "very natural to presume that Congress deemed payment of the tax sufficiently secured by a lien on the property and by imposing a personal liability on the trustee without going further and placing this real hardship on beneficiaries who would often be hopelessly unable to bear it." *Id.* The contrary interpretation was "at least doubtful," and "[i]n such a situation the beneficiary is

entitled to a favorable construction because liability for taxation must clearly appear." *Id.* at 162-163.

In 1959, interpreting the same language now codified in Section 6324(a)(2), the Tax Court held that the phrase "receives, or has on the date of the decedent's death" applies to those who "immediately received * * * property solely because of the decedent's death." *Englert*, 32 T.C. at 1016. The court in *Englert* added that the statute "can only mean the person who 'on the date of the decedent's death' receives or holds the property of a transfer made in contemplation of, or taking effect at, death." *Id.* "If there is any doubt as to the meaning of the statute in that respect, that doubt must be resolved in [the taxpayer's] favor." *Id.*

Again in 1994, the Tax Court endorsed this narrow interpretation of Section 6324(a)(2), explaining that "when an inter vivos trust is includable in the gross estate, personal liability is not imposed on the beneficiaries but on the trustee." *Garrett* v. *Comm'r*, 67 T.C.M. (CCH) 2214, *14 (T.C. 1994). Reiterating the "real hardship" that would result from a contrary interpretation, the court found no liability for a person who did not possess any estate property "[a]t the date of the decedent's death." *Id.* at *13-14.

Every time the issue has come up in litigation since the Eighth Circuit first addressed it, courts have followed this interpretation. *See United States* v. *Johnson*, No. 2:11-cv-87, 2013 WL 3924087, at *5 (D. Utah July 29, 2013) (to be personally liable under Section 6324(a)(2) a "person must have or receive property from the gross estate immediately upon the date

of decedent's death rather than at some point thereafter"); *United States* v. *Detroit Bank & Tr. Co*., No. 20937, 1962 LEXIS 5184, at *5 (E.D. Mich. Feb. 28, 1962) (holding that a beneficiary of a trust was not liable under Section 6324(a)(2)). This Court itself has favorably cited the Eighth Circuit's holding "that the personal liability of transferees did not extend to the beneficiaries under a trust." *Allen* v. *Trust Co. of Ga*., 326 U.S. 630, 636 n.5 (1946).

The Executive Branch similarly agreed that Section 6324(a)(2) does not impose personal liability on trust beneficiaries who receive property after a decedent's death. One year after the Tax Court authoritatively interpreted the language of Section 6324(a)(2) in *Englert*, the IRS in 1960 formally acquiesced to the Tax Court's interpretation. *See IRS Announcement Relating to: Englert*, 1960 WL 62561. Formal acquiescence meant "the IRS accept[ed] the court's holding and w[ould] follow it in disposing of cases with the same controlling facts." Boris Bittker & Lawrence Lokken, *Federal Taxation of Income, Estates & Gifts* § 110.6.7 (Nov. 2023); *Taxation With Representation Fund* v. *IRS*, 646 F.2d 666, 672 n.10 (D.C. Cir. 1981) (IRS acquiescence means "that the rule of that decision will be followed and applied by the IRS in future cases.").

Congress in turn ratified this interpretation in 1966, when Congress recodified Section 6324(a)(2) without changing the operative statutory language. *See* Federal Tax Lien Act of 1966, Pub. L. No. 89-719, § 102, 80 Stat. 1125, 1132-1133. "Congress is pre-

sumed to be aware of an administrative or judicial interpretation of a statute and to adopt that interpretation when it re-enacts a statute without change." Pet. App. 65a (Ikuta, J., dissenting) (quoting *Lorillard*, 434 U.S. at 580); *see* Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 322-326 (2012) (endorsing this canon). As this Court has explained, where Congress acts in the face of "settled" precedent regarding the meaning of a statutory phrase, the Court must "presume that when Congress reenacted the same language," "it adopted the earlier judicial construction of that phrase." *Helsinn Healthcare S.A.* v. *Teva Pharms. USA, Inc.*, 139 S. Ct. 628, 633-634 (2019); *accord Sebelius* v. *Auburn Reg'l Med. Ctr.*, 568 U.S. 145, 159 (2013); *Bragdon* v. *Abbott*, 524 U.S. 624, 631 (1998). Thus, when Congress "amended § 6324 in 1966" but "did not change the syntax of § 6324(a)(2)," Congress "intended to keep the then-current" interpretation of Section 6324(a)(2). Pet. App. 65a (Ikuta, J., dissenting).

Four additional tools of interpretation confirm that the phrase "on the date of the decedent's death" modifies both "has" and "receives."

First, as Judge Ikuta outlined, the Ninth Circuit's broad interpretation of Section 6324(a)(2) produces an "illogical result": It empowers the IRS to "impose personal liability for unpaid estate taxes" on third parties "in excess of the value of the assets received." Pet. App. 68a-69a (Ikuta, J., dissenting). That is because Section 6324(a)(2) imposes personal liability "to the extent of the value, *at the time of the decedent's death*." 26 U.S.C. § 6324(a)(2) (emphasis added). But property

values can decline over time. If property "had a high value at the time of the decedent's death but decreased precipitously by the time it was received by a beneficiary," "the beneficiary would nevertheless be personally liable" for the much higher value. Pet. App. 69a (Ikuta, J., dissenting). This is true "even if the property were worth mere cents on the dollar when received by the beneficiary." *Id.* (Ikuta, J., dissenting). This implausible result confirms the longstanding interpretation of Section 6324(a)(2)'s language. "Congress could not have intended to make a person who receives property many years after a settlor's death personally liable for estate taxes that exceed the value of the property received." *Id.* (Ikuta, J., dissenting).

That is not the only bizarre result that flows from the Ninth Circuit's reading of Section 6324(a)(2). Because Section 6324(a)(2) applies to *non-probate* property but not *probate* property, the Ninth Circuit's holding produces inconsistent tax treatment based on immaterial differences in estate planning. If a decedent bequeaths property via a will, heirs will not face liability for an executor's misconduct. By contrast, if the decedent places assets into a trust, heirs may face personal liability based on another's failure to pay estate taxes. There is no reason to think Congress intended to impose a such a "dire hardship" on the beneficiaries of a trust but not the beneficiaries of a will—particularly given that trust beneficiaries are often vulnerable or unsophisticated, which is why a trust is used in the first place. *Higley*, 69 F.2d at 163.

Second, Section 6324(a)(2)'s structure confirms its longstanding interpretation. The statute does not impose personal liability on *everyone* "who receives, or has on the date of the decedent's death" non-probate property. 26 U.S.C. § 6324(a)(2). Rather, Section 6324(a)(2) imposes liability on six categories of individuals who receive or have such property: A "spouse," "transferee," "trustee," "surviving tenant," "person in possession of the property by reason of the exercise, nonexercise, or release of a power of appointment," or "beneficiary." *Id.* Congress chose that list deliberately: Each of the six categories refers to persons who control non-probate property *immediately* upon a decedent's death.

The statutory history makes this conclusion clear. A substantially similar predecessor statute listed these same six categories, then cross-referenced six provisions of the Internal Revenue Code "in exactly the same order" to define each of the six categories. *Englert*, 32 T.C. at 1013, 1016. These cross-referenced provisions included only persons who possess or receive property immediately upon the decedent's death, and thus undisputedly did not include trust beneficiaries. Courts uniformly interpreted these categories to exclude trust beneficiaries who merely receive property after the decedent's death, and who do not control the distribution of estate assets. *See id.* at 1015 ("We do not think petitioner [a trust beneficiary] comes within any of the six designations listed in section 827(b), as amended, as being personally liable for the unpaid tax" and "it is obvious the use of the word 'beneficiary' " in the cross-referenced provision "applies

only to insurance policy beneficiaries."); *accord Garrett*, 67 T.C.M. 2214, at *12-13; *see also Higley*, 69 F.2d at 162; Pet. App. 70a-71a (Ikuta, J., dissenting).

Again, this interpretation was settled when Congress reenacted the statutory language without material change. In the current version of Section 6324(a)(2), Congress retained the six categories of persons that have always been understood to exclude trust beneficiaries. Due to unrelated changes in the Internal Revenue Code, Congress increased the number of cross-referenced statutes from six to nine, but this did not alter the provision's substantive meaning. Congress's decision to retain the six categories is powerful evidence that Congress intended Section 6324(a)(2) to apply to individuals who receive property immediately on the decedent's death, not years later.

Third, the Government's broad new interpretation of Section 6324(a)(2) is unnecessary. Congress provided the IRS ample other authorities to collect estate taxes. As Judge Ikuta explained, the IRS in this case could have required a "surety bond" or "special lien" to protect its interests. Pet. App. 63a (Ikuta, J., dissenting). The IRS alternatively could have held John Michael Paulson "personally liable for the estate taxes due" as the trustee of the living trust. *Id.* at 65a (Ikuta, J., dissenting).

The Government here simply "failed to use the options available to protect" itself. *Id.* (Ikuta, J., dissenting). The Government bungled this matter from the outset, then advanced a sweeping reinterpretation of Section 6324(a)(2) to save it from its own mistakes.

Fourth, were there any doubt about Section 6324(a)(2)'s narrow scope, this Court applies "the traditional canon that construes revenue-raising laws against their drafter." *United Dominion Indus.*, 532 U.S. at 839 (Thomas, J., concurring) (collecting cases); *see Bittner*, 598 U.S. at 101 (applying rule); 3A Shambie Singer, *Sutherland Statutes and Statutory Construction* § 66:1 (Nov. 2023 update) ("[T]he rule is firmly established that tax laws are construed strictly against the state and in favor of the taxpayer."). That rule requires a narrow construction, as both the Eighth Circuit and the Tax Court held. *See Higley*, 69 F.2d at 162-163 ("[T]he beneficiary is entitled to a favorable construction because liability for taxation must clearly appear."); *Englert*, 32 T.C. at 1016 ("[D]oubt must be resolved in petitioner's favor.").

B. The Ninth Circuit Erred In Holding Otherwise.

The Ninth Circuit committed a host of errors in jettisoning the most natural meaning of Section 6324(a)(2).

The majority principally relied on the last-antecedent canon. But the Government's "hypertechnical reading" ignores all other indicia of legislative intent—including Congress's ratification of the settled contrary interpretation and the statutory structure confirming that interpretation. Pet. App. 62a (Ikuta, J., dissenting). As this Court has explained, the last-antecedent canon "can assuredly be overcome by other indicia of meaning." *Barnhart*, 540 U.S. at 26 (citation omitted). The canon applies "unless the sense of the passage requires a different construction." *Simm's*

Lessee v. *Irvine*, 3 U.S. (3 Dall.) 425, 444 n.* (1799). The majority simply "overemphasized a single canon of statutory construction" "to ignore that fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme." Pet. App. 77a (Ikuta, J., dissenting) (quotation marks omitted).

The court below recognized its reading of Section 6324(a)(2) creates illogical results. Its novel interpretation of Section 6324(a)(2) allows the IRS to impose personal liability in excess of the value of estate assets received. But the Ninth Circuit sought to avoid the illogical implication of its interpretation by subjecting the United States to judicial estoppel: "[W]e rely on the government's avowals in its briefing and at oral argument that estate tax liability cannot exceed the value of the property received." Pet. App. 38a.

The panel's invocation of judicial estoppel is problematic on multiple levels. For starters, the Ninth Circuit applied judicial estoppel to a purely *legal* position regarding the scope of the IRS's authority under Section 6324(a)(2). But "judicial estoppel may only be applied when the position sought to be estopped is one of fact rather than law." *Minnieland Priv. Day Sch., Inc.* v. *Applied Underwriters Captive Risk Assurance Co., Inc.*, 867 F.3d 449, 455 (4th Cir. 2017). This Court has differentiated between judicial estoppel for a "purely factual[] kind of conflict," and judicial estoppel for a "legal conclusion." *Cleveland* v. *Policy Mgmt. Sys. Corp.*, 526 U.S. 795, 802 (1999). The leading treatises

confirm that "the doctrine of judicial estoppel is generally applied to factual assertions," not "inconsistent legal assertions." 18 *Moore's Federal Practice – Civil* § 134.30 (3d ed. 2023); 18B Charles A. Wright & Arthur R. Miller, *Federal Practice and Procedure: Jurisdiction and Related Matters* § 4477.3 (3d ed. Apr. 2023 update) ("It is difficult to imagine circumstances that would justify an invocation of judicial estoppel to preclude inconsistent positions as to a matter of pure law, divorced from any application to a common matrix of fact.").

The majority's invocation of judicial estoppel was particularly troubling given that it estopped the United States. As Judge Ikuta explained, "[i]t is well settled that the [g]overnment may not be estopped on the same terms as any other litigant." Pet. App. 76a (Ikuta, J., dissenting) (quoting *Heckler*, 467 U.S. at 60-61). That rule reflects core constitutional principles. The Executive Branch has an ongoing duty to "enforce[] the law." *New Hampshire* v. *Maine*, 532 U.S. 742, 755 (2001). If "a court refuses to enforce the law on the basis of a previous representation from a government official, it renders the current executive unable to enforce the law and thus discharge its responsibilities under the Take Care Clause." *Marine Shale Processors*, 81 F.3d at 1348. Allowing government lawyers to wield judicial estoppel in this manner would allow one administration permanently to bind its successors, and prevent any future "change in public policy." *New Hampshire*, 532 U.S. at 755 (quotation marks omitted). And the "executive branch could use this doctrine strategically to achieve results Congress

intended to prevent"—like expanding the scope of Section 6324(a)(2)—"thus delivering lawmaking power to the executive." *Marine Shale Processors*, 81 F.3d at 1348.

The Ninth Circuit independently erred by declining to apply the canon that revenue-raising statutes are read narrowly against their drafter. For more than a century, this Court has recognized that "[i]n case of doubt, [revenue-raising statutes] are construed most strongly against the government, and in favor of the citizen." *Gould*, 245 U.S. at 153. That rule ensures that taxpayers receive fair notice of the laws that apply to them. *See Bittner*, 598 U.S. at 101.

Contrary to the Ninth Circuit's suggestion, the rule remains "valid," Pet. App. 46a, as Justice Gorsuch confirmed last Term, *see Bittner*, 598 U.S. at 101 (Gorsuch, J., joined by Jackson, J.); *see also United Dominion Indus.*, 532 U.S. at 839 (Thomas, J., concurring). And if there were any case in which that canon should apply, this is it. At best, there are dueling interpretations of Section 6324(a)(2), and "reasonable minds could differ (as they have differed) on the question." *Wooden* v. *United States*, 595 U.S. 360, 388 (2022) (Gorsuch, J., concurring in the judgment); *see also id.* at 376 (Sotomayor, J., concurring). In this circumstance, the "venerable principle" of construing revenue-raising statutes "against the government and in favor of individuals" resolves the question presented in Ms. Pickens's favor. *Bittner*, 598 U.S. at 101.

II. THE DECISION BELOW DEEPENED TWO CIRCUIT SPLITS.

The Ninth Circuit below departed from every other decision interpreting the language of Section 6324(a)(2). In addition, the decision below deepened two circuit splits.

A. The Circuits Are Split 5-4 Regarding The Proper Application of Judicial Estoppel.

The decision below entrenches an acknowledged 5-4 circuit split about whether a party can be judicially estopped from changing purely legal rather than factual positions.

Central to the decision below was the majority's conclusion that the United States will be estopped from changing its legal position about the scope of Section 6324(a)(2). Like the Ninth Circuit, the Third, Fifth, Seventh, and Federal Circuits also hold that judicial estoppel can prevent parties from changing legal positions.

The Fifth Circuit has squarely confronted and rejected the argument that "judicial estoppel may never be applied to issues of law." *Republic of Ecuador* v. *Connor*, 708 F.3d 651, 656 (5th Cir. 2013). According to that court, "a change of legal position can be just as abusive of court processes and an opposing party as deliberate factual flip-flopping." *Id.* at 657.

The Federal Circuit has noted the split with other "circuits" that apply "judicial estoppel to inconsistent factual assertions," but has held that parties can be estopped on purely legal questions. *Transclean Corp.* v. *Jiffy Lube Int'l, Inc.*, 474 F.3d 1298, 1307 (Fed. Cir.

2007). The Federal Circuit has thus judicially estopped parties on legal positions as varied as whether entities "were in privity for claim preclusion purposes," *id.* at 1305, and the "proper construction" of a patent claim, *Key Pharms.* v. *Hercon Lab'ys Corp.*, 161 F.3d 709, 713, 715 n.1 (Fed. Cir. 1998).

The Seventh Circuit has recognized that other courts apply judicial estoppel "only to positions on questions of fact." *Matter of Cassidy*, 892 F.2d 637, 641 (7th Cir. 1990). But the Seventh Circuit "disagree[s]" with that approach because it believes that a "change of position on the legal question is every bit as harmful * * * as a change on an issue of fact." *Id.* at 641-642.

The Third Circuit has explained that it "has recognized the doctrine of judicial estoppel to bind parties to factual and legal positions." *Hardwick* v. *Cuomo*, 891 F.2d 1097, 1105 n.14 (3d Cir. 1989). It has, for example, judicially estopped shifting positions on whether damages "were barred by the Eleventh Amendment." *See Murray* v. *Silberstein*, 882 F.2d 61, 66-67 (3d Cir. 1989).

Finally, the Ninth Circuit has squarely held that the doctrine of judicial estoppel "applies to a party's legal as well as factual assertions." *Whaley* v. *Belleque*, 520 F.3d 997, 1002 (9th Cir. 2008). The decision below is a good example: The Ninth Circuit relied on the IRS's representations and held that the United States would be estopped from arguing that "the language in § 6324(a)(2)" may "expose a person to liability that exceeds the value of the property that he or she personally had or received." Pet. App. 38a-39a.

That is a purely legal position on the proper interpretation of a statute.

In sharp contrast, the Second, Fourth, Sixth, and Tenth Circuits correctly hold that judicial estoppel applies to issues of fact but cannot apply to arguments of law.

The Tenth Circuit applies judicial estoppel to questions "of fact," but not "of law." *BancInsure, Inc.* v. *FDIC*, 796 F.3d 1226, 1240 (10th Cir. 2015). It applies judicial estoppel "narrowly and cautiously" because estoppel "is a powerful weapon," *id.* at 1240 (citation omitted), and has acknowledged a split with the Ninth Circuit's broader approach to judicial estoppel, *id.* at 1240 n.9. For example, the Tenth Circuit has declined to apply judicial estoppel against the United States when the Government "shifted on appeal from the position it held in the district court regarding the nature of its claim" because "that shift" was "legal in nature." *United States* v. *Supreme Ct. of N.M.*, 839 F.3d 888, 912 (10th Cir. 2016).

The Fourth, Sixth, and Second Circuits all similarly hold that judicial estoppel applies only to issues "of fact rather than law." *Minnieland Priv. Day Sch.*, 867 F.3d at 458; *see Law Office of John H. Eggertsen P.C.* v. *Comm'r*, 800 F.3d 758, 766 (6th Cir. 2015) (Sutton, J.) (judicial estoppel applies to "shifting factual arguments," not "shifting legal arguments"); *Mulvaney Mech., Inc.* v. *Sheet Metal Workers Int'l Ass'n, Local 38*, 288 F.3d 491, 504 (2d Cir. 2002) (changes in "legal conclusions are not inconsistent factual positions as would ordinarily justify judicial estoppel"),

certiorari granted and judgment vacated by In re Castle, 538 U.S. 918 (2003), *original decision affirmed on remand by* 351 F.3d 43, 46 (2d Cir. 2003).

The panel's application of judicial estoppel is at the heart of the decision below. The split on that issue is deep, acknowledged, and ripe for review. This Court should grant this petition and resolve the disagreement.

B. The Circuits Are Split Regarding The Proper Application Of The Revenue-Raising Canon.

In the decision below, the Ninth Circuit also departed from the majority of circuits on the question whether and when to apply the "traditional canon that construes revenue-raising laws against their drafter." *United Dominion Indus.*, 532 U.S. at 839 (Thomas, J., concurring).

Most courts of appeals continue to recognize the validity of the canon, and apply it in appropriate cases. The Fifth Circuit explained that it "heed[s] the longstanding canon of construction that if the words of a tax statute are doubtful, the doubt must be resolved against the government and in favor of the taxpayer." *United States* v. *Marshall*, 798 F.3d 296, 318 (5th Cir. 2015) (quotation marks omitted). That court has applied that canon to reject the Government's interpretation of another provision of Section 6324 that applies to gift taxes. *Id.* at 319-320.

The Second Circuit is likewise "particularly mindful" of "the longstanding canon of construction that where the words of a tax statute are doubtful, the doubt must be resolved against the government and in

favor of the taxpayer." *Borenstein* v. *Comm'r*, 919 F.3d 746, 752 (2d Cir. 2019) (cleaned up). It has applied that canon, for example, to reject an interpretation of the Internal Revenue Code relying on the "rule of the last antecedent" that "unreasonably harms the taxpayer." *Id.* at 750-752.

The Eighth Circuit also recognizes that "if doubt exists as to the construction of a taxing statute, the doubt should be resolved in favor of the taxpayer." *Clajon Gas Co.* v. *Comm'r*, 354 F.3d 786, 789 (8th Cir. 2004) (citation omitted). Applying that principle, the court has rejected the Government's interpretation of a Treasury Regulation governing property classifications for energy pipelines. *Id.* at 789-791.

The Sixth, Tenth, Eleventh, and Federal Circuits all hold similarly. *See Saginaw Bay Pipeline Co.* v. *United States*, 338 F.3d 600, 604-608 (6th Cir. 2003) (recognizing that "if doubt exists as to the construction of a taxing statute, the doubt should be resolved in favor of the taxpayer"); *Duke Energy Nat. Gas Corp.* v. *Comm'r*, 172 F.3d 1255, 1260 n.7 (10th Cir. 1999) (recognizing the "well-established method[] of interpreting revenue statutes" under which "doubt should be resolved in favor of the taxpayer"); *Royal Caribbean Cruises, Ltd.* v. *United States*, 108 F.3d 290, 294 (11th Cir. 1997) (per curiam) (applying "the general rule of construction that ambiguous tax statutes are to be construed against the government and in favor of the taxpayer"); *Xerox Corp.* v. *United States*, 41 F.3d 647, 658 (Fed. Cir. 1994) (applying "a special rule in tax cases" that "doubt should be resolved in favor of the taxpayer") (citation omitted).

Splitting from its sister circuits, the Ninth Circuit refused to apply the revenue-raising canon in the decision below. Instead, the Ninth Circuit questioned the canon's "modern validity" and determined it rarely applies outside of tax statutes that "impose a penalty." Pet. App. 44a-45a (cleaned up). The Ninth Circuit then held that it would not apply the canon in this case, despite acknowledging the competing indicators of the statute's meaning. This Court should take this case to resolve this split on this important interpretive principle in tax cases.

III. THE ISSUES PRESENTED ARE IMPORTANT AND THIS CASE IS AN IDEAL VEHICLE.

The case raises critically important questions about the enforcement of the Nation's tax laws. This case is an excellent vehicle, and this Court's review is necessary to prevent IRS abuse.

First, the Government's interpretation of Section 6324(a)(2) creates profound unfairness for taxpayers. As the Eighth Circuit explained in rejecting this interpretation, the harsh "results flowing from" personal liability for trust beneficiaries "easily explain why Congress would not impose it." *Higley*, 69 F.2d at 163. The Tax Court agreed that the interpretation adopted below would place "real hardship on beneficiaries who would often be hopelessly unable to bear it." *Garrett*, 67 T.C.M. 2214, at *13. Congress enacted the statute to disincentivize individuals who control estate property at the time of death from "dispos[ing] of the property and possibly delay[ing] or defeat[ing] collection."

Higley, 69 F.2d at 163. But "Congress deemed payment of the tax sufficiently secured by a lien on the property and by imposing a personal liability on the trustee," such that Congress did not go further and impose liability on trust beneficiaries. *Id.* Instead, Congress determined that liability on the trustee and the lien "guarded against" abuse. *Id.*

Second, the unfairness of the Government's interpretation is compounded by the uncertainty it places on trust beneficiaries. As this Court has made clear, "tax administration requires predictability." *Oklahoma Tax Comm'n* v. *Chickasaw Nation*, 515 U.S. 450, 459-460 (1995). But the Government's interpretation results in unpredictable tax liability for trust beneficiaries. At the time a trust beneficiary receives assets, she may not know whether the executor and the trustee will pay the estate taxes. Tax liability will therefore turn on the conduct of third parties that may occur years in the future.

Nothing better illustrates this danger than the Government's conduct in this case. The Government failed to protect its interests in Allen Paulson's estate taxes through a special lien or surety bond with respect to John Michael Paulson. John Michael Paulson then committed misconduct in failing to pay estate taxes. Ms. Pickens had nothing to do with the misconduct. She received property as a beneficiary of her late husband's trust in 2003, at which time she had no way to know that John Michael Paulson would later fail to pay taxes. Then, twelve years later, the Government departed from the "accepted reading" of Section 6324, reneged on its acquiescence to that meaning, and "for the first time" proposed a new interpretation to spring

tax liability on the decedent's widow that could amount to millions of dollars. Pet. App. 66a (Ikuta, J., dissenting).

Because of the Ninth Circuit's creative use of judicial estoppel and its refusal to read Section 6324(a)(2) against its drafter, Ms. Pickens now faces potentially millions in tax liability, without having received the notice that citizens must be able to expect to organize their financial affairs.

Third, the interpretive contortions the Ninth Circuit engaged in to avoid the disquieting consequences of its holding raise significant concerns in their own right. By allowing representations made by government attorneys to dictate the meaning of a federal statute, the decision below "deliver[s] lawmaking power to the executive." *Marine Shale Processors*, 81 F.3d at 1348. It also permits the current Administration to bind future administrations, preventing future executives from "enforc[ing] the law and thus discharg[ing] [their] responsibilities under the Take Care Clause." *Id.* The constitutional concerns that result from the Ninth Circuit's creative invocation of judicial estoppel independently justify this Court's review.

Finally, this petition is an ideal vehicle. The question presented has been preserved throughout the case and was thoroughly ventilated in lengthy majority and dissenting opinions below. The question is outcome determinative for Ms. Pickens, and if this Court reverses the Ninth Circuit, she owes nothing.

Two of Allen Paulson's heirs were parties below and have separately sought certiorari in this Court. *See Paulson* v. *United States*, No. 23-436 (U.S. Oct. 23,

2023). This Court should grant both petitions and consolidate the cases for oral argument. In the alternative, the Court should grant this petition and hold the heirs' petition pending resolution of this case.

CONCLUSION

The petition for a writ of certiorari should be granted.

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