No. 21-1599

In the Supreme Court of the United States

HANNA KARCHO POLSELLI, ET AL.,
PETITIONERS

v.

INTERNAL REVENUE SERVICE

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

BRIEF FOR THE RESPONDENT

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QUESTION PRESENTED

Congress authorized the Internal Revenue Service (the Service) to issue summonses to obtain records necessary for enforcement of the tax laws. See 26 U.S.C. 7602(a). When the Service summonses records from a third party such as a bank, as opposed to from the taxpayer directly, the Service is required in some circumstances to notify persons identified in the summons, and a person entitled to such notice may sue the government to quash the summons. 26 U.S.C. 7609(a) and (b)(2)(A). But Congress made an express exception to that notice requirement and waiver of sovereign immunity for "any summons * * * issued in aid of the collection of—(i) an assessment made or judgment rendered against the person with respect to whose liability the summons is issued; or (ii) the liability at law or in equity of any transferee or fiduciary of any person referred to in clause (i)." 26 U.S.C. 7609(c)(2)(D).

The question presented is whether the exception in Section 7609(c)(2)(D)(i) from the general notice requirement applies to any summons issued in aid of the collection of an assessment made against a taxpayer, or instead applies only to a subset of those summonses seeking records from an account in which the taxpayer has a legal interest.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-30a) is reported at 23 F.4th 616. A subsequent order of the court of appeals (Pet. App. 43a-44a) is not reported. The order of the district court (Pet. App. 31a-42a) is not published in the Federal Supplement but is available at 2020 WL 12688176.

JURISDICTION

The judgment of the court of appeals was entered on January 7, 2022. A petition for rehearing en banc was denied on March 28, 2022 (Pet. App. 45a-46a). The petition for a writ of certiorari was filed on June 24, 2022, and was granted on December 9, 2022. The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

STATUTORY PROVISIONS INVOLVED

Pertinent statutory provisions are reprinted in the appendix to this brief. App., *infra*, 1a-15a.

STATEMENT

A. Statutory Background

1. The process of tax administration has two phases that are relevant here. In the first phase, the Internal Revenue Service (the Service or IRS) conducts audits and inquiries to determine whether individuals or businesses are liable for taxes owed. See 26 U.S.C. 7601(a). In the second, the Service seeks to collect on a previously determined liability. 26 U.S.C. 6301.

The government may begin efforts to collect a tax liability before it has made a formal assessment of that liability. See, *e.g.*, 26 U.S.C. 6501(c)(1)-(3). An assessment is "essentially a bookkeeping notation" that officially records a liability. *Laing* v. *United States*, 423 U.S. 161, 170 n.13 (1976). While an assessment triggers certain administrative mechanisms (such as liens) that assist in collection, *e.g.*, 26 U.S.C. 6321, 6322, it is not a prerequisite to the commencement of the phase-two collection efforts.

In the collection phase, the Service has two basic avenues for collecting taxes. First, it may collect the amount of tax liability directly from a delinquent taxpayer's property. *E.g.*, 26 U.S.C. 6331(a). Second, it may collect that amount from the derivative "liability, at law or in equity, of a transferee of [the taxpayer's] property," or the derivative "liability of a fiduciary" of the taxpayer's estate, "in the same manner and subject to the same provisions and limitations as in the case of taxes" collected directly from the delinquent taxpayer. 26 U.S.C. 6901(a)(1)(A) and (B). A transferee is "a person who takes the property of another without full, fair

and adequate consideration," 14A Carina E. Bryant, *Mertens The Law of Federal Income Taxation* § 53:11, at 53-33 (July 2020 Supp.) (*Mertens*), and "includes [a] donee, heir, legatee, devisee, and distributee," 26 U.S.C. 6901(h).

During both the liability and collection phases of tax administration, the Service "has broad power to require the submission of tax-related information that it believes helpful" to its inquiries. *CIC Servs., LLC* v. *IRS*, 141 S. Ct. 1582, 1586-1587 (2021); see 26 U.S.C. 6201(a). Among other things, "Congress has granted the Service broad latitude to issue summonses" requiring the production of financial records. *United States* v. *Clarke*, 573 U.S. 248, 250 (2014). The Service may issue a summons directly to a "person liable for tax," as well as to "any person having possession, custody, or care of books of account containing entries relating to the business of the person liable for tax" or to "any other person the Secretary may deem proper." 26 U.S.C. 7602(a)(2).

2. This case concerns Section 7609, entitled "Special procedures for third-party summonses." 26 U.S.C. 7609 (emphasis omitted). A third-party summons is one "served on a party that * * * is not the taxpayer under investigation." *Tiffany Fine Arts, Inc.* v. *United States*, 469 U.S. 310, 315-316 (1985). Congress enacted Section 7609 in part "in response to" an earlier decision of this Court, *Donaldson* v. *United States*, 400 U.S. 517 (1971). *Tiffany Fine Arts*, 469 U.S. at 314. In *Donaldson*, the Court had considered third-party summonses issued in aid of an IRS investigation into a taxpayer's potential liability for taxes owed. 400 U.S. at 518-520. The Court held that a taxpayer may not "intervene as of right" in the government's suit to enforce such a summons "simply because it is [the taxpayer's potential] tax lia-

bility that is the subject of the summons." *Id.* at 530. The Court deemed insufficient the taxpayer's asserted interest "in the fact that [the] records presumably contain[ed] details of * * * payments possessing significance" to his potential tax liability. *Id.* at 531.

Five years after *Donaldson*, Congress enacted Section 7609. Tax Reform Act of 1976, Pub. L. No. 94-455, § 1205(a), 90 Stat. 1699-1702. Under Section 7609, as it has been amended, when the Service issues a third-party summons in aid of an investigation into potential tax liability, it must generally notify any person identified in the summons, and a person who is entitled to such notice may intervene in or initiate a proceeding against the government to quash the summons. 26 U.S.C. 7609(a), (b)(1), (2)(A), (c)(1), and (h)(1). Thus, Section 7609(c)(1) requires notice and waives the government's sovereign immunity when the Service issues a third-party summons "[f]or the purpose of ascertaining the correctness of any return, making a return where none has been made, [or] determining the liability of any person for any internal revenue tax or the liability at law or in equity of any transferee or fiduciary of any person in respect of any internal revenue tax." 26 U.S.C. 7602(a); see 26 U.S.C. 7609(c)(1).

But the adjoining provision carves out several "[e]xceptions" to that notice requirement and sovereign-immunity waiver. 26 U.S.C. 7609(c)(2) (emphasis omitted). The one that is relevant here applies at the "collection" phase, as distinct from the liability-investigation phase. It provides that the special procedures for third-party summonses

> shall not apply to any summons—
>
> * * * * *
>
> (D) issued in aid of the collection of—

> (i) an assessment made or judgment rendered against the person with respect to whose liability the summons is issued; or
>
> (ii) the liability at law or in equity of any transferee or fiduciary of any person referred to in clause (i)[.]

26 U.S.C. 7609(c)(2)(D).

B. Factual And Procedural Background

1. This case relates to the government's effort to collect unpaid taxes owed by non-party Remo Polselli. Pet. App. 3a. The Service has determined that Mr. Polselli is liable for unpaid individual income taxes and trust-fund recovery penalties from several tax years. *Id.* at 65a-66a. The Service made liability assessments against Mr. Polselli for the relevant years, which exceeded $2 million. *Id.* at 66a.

The government undertook an investigation to locate assets that it could collect to satisfy Mr. Polselli's assessed liability. Pet. App. 66a-67a. Through its investigation, the government learned that Mr. Polselli has incorporated "several businesses," D. Ct. Doc. 9-2, at 1 (Sept. 4, 2019), and has previously "used entities to shield assets from collection," Pet. App. 3a. For example, the investigation "suggest[ed] that Mr. Polselli may have an ownership interest in, or control over funds held by, Dolce Management, LLC," which he had used to make payments on his behalf. *Id.* at 67a. The government thus suspected that Mr. Polselli could be "concealing the balance of his assets elsewhere to shield them from the IRS." *Id.* at 3a.

Among other things, the investigation examined the extensive financial dealings between Mr. Polselli and his wife, petitioner Hanna Karcho Polselli. See D. Ct.

Doc. 9-2. The investigation revealed that Mr. and Mrs. Polselli have both been organizers and/or managing members of several of the same LLCs. *Ibid.*; see D. Ct. Docs. 9-3, 9-4, 9-5 (Sept. 4, 2019). And the investigation revealed that Mrs. Polselli purchased real property that was subsequently assigned to an LLC of which Mr. Polselli was a member. See D. Ct. Docs. 9-2, 9-6, 9-7 (Sept. 4, 2019).

Given Mr. and Mrs. Polselli's financial dealings, the government determined that Mr. Polselli "may have access to, and use of" bank accounts held in his wife's name. Pet. App. 66a. And in turn, the government determined that obtaining Mrs. Polselli's bank records may aid in locating assets that Mrs. Polselli held as Mr. Polselli's nominee or alter ego, which could be collected to satisfy Mr. Polselli's tax liability. *Ibid.* Accordingly, in April 2019, the Service issued a summons to Wells Fargo Bank, N.A., seeking financial records dating back to January 2018 of Mrs. Polselli, Mr. Polselli, and Dolce Hotel Management LLC. *Id.* at 71a; see *id.* at 66a, 70a-77a.

In addition, the government's investigation revealed that Mr. Polselli was a long-time client of petitioner Abraham and Rose, P.L.C., a law firm. Pet. App. 67a-68a. The government determined that obtaining records disclosing the accounts or funds that Mr. Polselli used to pay the firm could assist in its efforts to locate Mr. Polselli's assets. *Id.* at 68a.

The government initially issued a summons directly to Abraham and Rose, seeking documents concerning Mr. Polselli's payments to the firm, such as invoices, billing notices, cancelled checks, or wire transfer and credit documents. Pet. App. 67a-68a. The firm asserted that it had no responsive documents. *Ibid.* The govern-

ment asked to interview a firm representative about the firm's efforts to comply with the summons. *Id.* at 68a; see 26 U.S.C. 7602(a)(3). But the firm refused to make a representative available. Pet. App. 68a.

Because of the firm's resistance, the government pursued an alternative avenue to obtain records concerning Mr. Polselli's payments to Abraham and Rose. Pet. App. 4a. In April 2019, the Service issued summonses to two banks where Abraham and Rose and a related entity, petitioner Jerry R. Abraham, P.C., held accounts: JP Morgan Chase Bank, N.A., and Bank of America, N.A. *Id.* at 67a-68a, 78a-84a, 85a-91a. Those summonses sought financial records dating back to January 2017 that might show (i) the source of funds that Mr. Polselli used to pay the law firm, (ii) the bank accounts in which those funds are held, (iii) the entities that Mr. Polselli owned or controlled, or (iv) the bank accounts associated with those entities. *Ibid.*

2. The government did not notify petitioners of the three bank summonses, on the ground that the summonses were "issued in aid of the collection of * * * an assessment made" against Mr. Polselli, 26 U.S.C. 7609(c)(2)(D)(i). Pet. App. 4a. The three banks, however, unilaterally informed petitioners of the summonses, and petitioners filed this action asking the United States District Court for the Eastern District of Michigan to quash the summonses. *Id.* at 5a.

The district court granted the government's motion to dismiss the action for lack of jurisdiction. Pet. App. 31a-42a. The court noted that Section 7609 gives district courts "jurisdiction over a petition to quash only if the petitioner is entitled to notice" of a third-party summons. *Id.* at 34a. And "[a]ccording to the plain language of § 7609(c)(2)(D)(i)," the court reasoned, "notice

is not required whenever a summons is issued to a third party to aid the IRS in the collection of a taxpayer's assessment." *Id.* at 38a. That "plain-text reading," the court emphasized, is most "consistent" with the baseline rule of federal sovereign immunity. *Ibid.* Applying Section 7609(c)(2)(D)(i) to this case, the court explained that "the IRS has assessed an aggregate tax liability of over $2 million against Remo Polselli" and "the IRS issued the summonses in question to aid in the collection of these assessed liabilities." *Id.* at 38a-39a. "As a result," the court concluded, "[p]etitioners were not entitled to notice." *Id.* at 39a.

The district court rejected petitioners' argument that following Section 7609(c)(2)(D)(i)'s plain text "would render the language in § 7609(c)(2)(D)(ii) meaningless." Pet. App. 39a. Unlike Clause (i)—which addresses summonses issued in aid of the collection of "an assessment made or judgment rendered" against a delinquent taxpayer—Clause (ii) addresses summonses issued in aid of the collection of "the liability at law or in equity of any transferee or fiduciary of" a delinquent taxpayer. 26 U.S.C. 7609(c)(2)(D). The court explained that "if the summons seeks to collect, for example, the unassessed liability of a transferee or fiduciary, then § 7609(c)(2)(D)(i) may not apply," and yet Clause (ii) would. Pet. App. 40a. Accordingly, the court determined that Clause (ii) "expands the situations where notice is not required." *Ibid.*

3. The court of appeals affirmed in a divided opinion. Pet. App. 1a-30a.

a. The majority began with the premise that, "[a]s a government agency, the IRS is immune from suit absent an explicit statutory waiver" of immunity. Pet. App. 8a. And the majority found no explicit waiver here.

To the contrary, the majority determined that Section 7609(c)(2)(D)(i) "unequivocally provides that the IRS may summon the third-party recordkeeper of any person without notice to that person if (1) an assessment was made or a judgment was entered against a delinquent taxpayer and (2) the summons was issued 'in aid of the collection' of that delinquency." *Id.* at 10a-11a. "[A]s long as the IRS demonstrates that these conditions are satisfied," the majority explained, no waiver exists. *Id.* at 11a.

The majority found that the government had "satisfied its burden here." Pet. App. 11a. It explained "that the IRS issued assessments against [Mr. Polselli] totaling over $2 million," and that the IRS "issued the summonses to the banks solely to 'locate assets' to satisfy [Mr. Polselli's] 'existing assessed federal tax liability.'" *Ibid.* (citation omitted). Accordingly, the majority held that the IRS had issued the summonses "'in aid of the collection' of 'an assessment made . . . against the person with respect to whose liability the summons is issued' as authorized by § 7609(c)(2)(D)(i)." *Ibid.*

The majority rejected petitioners' invocation of *Ip* v. *United States*, 205 F.3d 1168 (9th Cir. 2000), in which the court "examined § 7609's legislative history and concluded that the statute's stated purpose was generally to facilitate notice to taxpayers and to enable them to challenge summonses in district court." Pet. App. 13a. Based on its conception of the statutory purpose and history, the Ninth Circuit in *Ip* held that Section 7609(c)(2)(D)(i)'s notice exception applies solely where the assessed taxpayer "has a recognizable legal interest in the records summoned." *Ibid.* (quoting *Ip*, 205 F.3d at 1176) (brackets omitted). "[D]eclin[ing] to adopt" the Ninth Circuit's legal-interest limitation, the majority

emphasized that the notice requirement still "applies to many summonses issued in aid of IRS functions other than collection." *Id.* at 14a, 18a.

The majority also rejected petitioners' argument that adding an unwritten legal-interest limitation to Clause (i) was necessary to avoid "render[ing] clause (ii) meaningless." Pet. App. 15a. The majority explained that Clause (ii) clarifies "that the IRS may issue a summons in aid of [a transferee's or fiduciary's] unassessed liability rather than [the taxpayer's] assessment (which would fall under clause (i))." *Id.* at 16a. And the majority noted that Clause (ii) also reflects a standard "belt and suspenders approach to" legislative drafting. *Ibid.* (citation and internal quotation mark omitted).

Finally, the majority emphasized the "other provisions in the Internal Revenue Code" that "limit[] the scope" of summonses and protect parties' private information. Pet. App. 20a-21a. The majority concluded that Congress balanced petitioners' asserted privacy concerns with "the IRS's 'expansive information-gathering authority,'" *id.* at 23a (quoting *United States* v. *Arthur Young & Co.*, 465 U.S. 805, 816 (1984)), by generally requiring notice except where notice would "'frustrat[e] the collection activity of the Service,'" *ibid.* (citation omitted).

b. Judge Kethledge dissented. Pet. App. 25a-30a. To avoid what he viewed as "the 'vitiation' of" Sections 7609(a), (b), and (c)(2)(D)(ii) Judge Kethledge would have "read 'in aid of [the] collection of' more narrowly than it would ordinarily be read." *Id.* at 30a. Specifically, he would have read that phrase to require what he called a "direct connection between the summons and the 'collection' of the liability" at issue, which he said would be present "'only where the assessed taxpayer,'

* * * or a fiduciary or transferee, * * * 'has a recognizable legal interest in the records summoned.'" *Ibid.* (quoting *Ip*, 205 F.3d at 1176) (brackets omitted). While Judge Kethledge did not dispute that the statutory text itself contains no legal-interest limitation, he considered his reading to be "the least bad interpretation available to us here." *Ibid.*

4. The court of appeals denied rehearing, with no judge requesting a vote on whether to rehear the case en banc. Pet. App. 45a-46a.

SUMMARY OF ARGUMENT

The exception in 26 U.S.C. 7609(c)(2)(D)(i) from the general notice requirement for third-party summonses applies to "any summons" that is "issued in aid of the collection of" a taxpayer's assessed liability, without regard to whether the taxpayer has a legal interest in the summonsed records or account.

A. The text of Section 7609(c)(2)(D)(i) does not require the taxpayer to have a legal interest in the object of the third-party summons. The provision states that the general notice requirement and sovereign-immunity waiver for a third-party summons "shall not apply to any summons * * * issued in aid of the collection of * * * an assessment made or judgment rendered against the person with respect to whose liability the summons is issued." 26 U.S.C. 7609(c)(2)(D)(i).

1. By its terms, Section 7609(c)(2)(D)(i) unambiguously applies when a third-party summons will "aid in the collection" of a taxpayer's "assess[ed]" "liability." A summons issued in aid of collection is one that helps the government obtain payment of taxes due. And the other terms of the exception are satisfied when there has been an assessment against the taxpayer whose liability the Service seeks to collect.

Petitioners' primary textual argument rests on an unduly narrow reading of the phrase "in aid of * * * collection." Contrary to petitioners' submission, that broad phrase simply requires that the summons help the Service obtain payment from the relevant taxpayer.

2. Petitioners stake their case on engrafting a legal-interest limitation onto Section 7609(c)(2)(D)(i), which they derive from the Ninth Circuit's decision in *Ip* v. *United States*, 205 F.3d 1168 (2000). Relying on its view of the statutory history and purpose, *Ip* held that Section 7609(c)(2)(D)(i) "applies only where the assessed taxpayer has a recognizable legal interest in the records summoned." *Id.* at 1176 (brackets, citation, and internal quotation marks omitted). But that legal-interest limitation appears nowhere in Section 7609(c)(2)(D)(i)'s text. A provision in the very next section of the Internal Revenue Code (Code) shows that if Congress wanted to impose such a limitation, it knew how to do so expressly. And petitioners offer no theory for how courts would apply the atextual legal-interest limitation.

B. The plain-text reading of Section 7609(c)(2)(D)(i) fits naturally within the context of Section 7609 as a whole.

1. Petitioners err in contending that the government's reading of Section 7609(c)(2)(D)(i) would render the adjoining clause superfluous. That clause, Section 7609(c)(2)(D)(ii), creates a distinct exception from Section 7609's general notice requirement by applying to two categories of summonses that are not clearly covered under the plain-text reading of Clause (i). First, Clause (ii) applies to a summons issued in aid of collection from a transferee or fiduciary where the government cannot collect directly from the delinquent taxpayer—for instance, because the taxpayer is a dissolved

corporation or has obtained a bankruptcy discharge. Second, Clause (ii) also applies to a pre-assessment summons issued in aid of collection of the derivative liability of a transferee or fiduciary. Because Clause (ii) thus serves independent functions, petitioners err in asserting that the government's reading renders Clause (ii) redundant.

2. Even if Clauses (i) and (ii) did overlap, that would simply reflect a standard "belt and suspenders approach" to legislative drafting. *Atlantic Richfield Co.* v. *Christian*, 140 S. Ct. 1335, 1350 n.5 (2020). In Clauses (i) and (ii), Congress naturally addressed the two basic avenues of tax collection: (i) directly from the delinquent taxpayer; and (ii) from a transferee or fiduciary. Had Congress omitted Clause (ii), transferees and fiduciaries would have argued that the omission was intentional. To remove any doubt about the notice exception's scope, Congress added Clause (ii). And Congress had good reason for that cautious approach given its experience with another tax statute, the Anti-Injunction Act, 26 U.S.C. 7421.

3. The plain-text reading of Section 7609(c)(2)(D)(i) also fits seamlessly with the rest of Section 7609. While Section 7609(a) and (b) generally require notice and waive sovereign immunity for a third-party summons issued in aid of an IRS investigation of liability, Section 7609(c)(2)(D) "[e]xcept[s]" a summons issued in aid of *collection* from those requirements. 26 U.S.C. 7609(c)(2) (emphasis omitted). That does not make subsections (a) and (b) superfluous; it simply means that they "shall not apply" where Congress specifically made them inapplicable. *Ibid.*

C. The statutory history and purpose confirm that Section 7609(c)(2)(D)(i)'s notice exception applies even

when the taxpayer lacks a legal interest in the summonsed records or accounts. In Section 7609, Congress generally established a notice requirement and sovereign-immunity waiver for a third-party summons issued in aid of an IRS investigation into a taxpayer's potential liability. At the same time, however, Congress made clear that those requirements "will not apply in the case of a summons used solely for purposes of collection." H.R. Rep. No. 658, 94th Cong., 1st Sess. 310 (1975). Congress drew the line between the Service's investigation of liability and its collection efforts because Congress knew that taxpayers, transferees, and fiduciaries could use the delay created by notice and petition-to-quash litigation "to withdraw the money in [their] account, thus frustrating the collection activity of the Service." *Ibid.* Instead of respecting the balance that Congress struck in Section 7609, petitioners mistakenly treat the provision as an unqualified pro-notice guarantee.

D. Even if petitioners' legal-interest limitation were a plausible inference from the text, context, and history, the clear-statement rule guarding the federal government's sovereign immunity would compel this Court to reject it. Congress did not unambiguously license suits against the government based on petitioners' legal-interest formulation.

E. Finally, petitioners' policy arguments (to the extent relevant at all) are mistaken. Additional Code provisions protect the privacy interests of the subjects of third-party summonses. And petitioners' conjecture about possible overbroad summonses disregards real-world experience and the presumption of regularity.

F. If the Court adopts petitioners' legal-interest limitation, it should vacate and remand so that the lower

courts can decide in the first instance whether the government can satisfy that limitation in this case.

ARGUMENT

SECTION 7609(c)(2)(D)(i)'S NOTICE EXCEPTION APPLIES TO "ANY SUMMONS" THAT IS "ISSUED IN AID OF THE COLLECTION OF" A TAXPAYER'S ASSESSED LIABILITY, EVEN WHEN THE TAXPAYER DOES NOT HAVE A LEGAL INTEREST IN THE OBJECT OF THE SUMMONS

Although the Service must generally give notice of a third-party summons, an exception to that requirement applies to "any summons" that is "issued in aid of the collection of * * * an assessment made or judgment rendered against the person with respect to whose liability the summons is issued." 26 U.S.C. 7609(c)(2)(D)(i). Rather than adhering to Section 7609(c)(2)(D)(i)'s plain meaning, petitioners would further limit that exception to circumstances where the taxpayer has a legal interest in the records or the accounts that are summonsed. But that legal-interest limitation appears nowhere in the statutory text, and petitioners (like the dissent below) do not meaningfully contend otherwise. They instead resort to the presumption against redundant language, their conception of the statutory history and purpose, and policy considerations. Those arguments fail on their own terms and cannot, in any event, overcome Section 7609(c)(2)(D)(i)'s plain language.

A. The Text Of Section 7609(c)(2)(D)(i)'s Notice Exception Does Not Require The Taxpayer To Have A Legal Interest In The Records Or Accounts That Are Summonsed

To resolve a question of statutory interpretation, this Court "start[s] with the text of the statute." *Babb* v. *Wilkie*, 140 S. Ct. 1168, 1172 (2020). Where "[t]he plain meaning of the statutory text" yields a clear an-

swer to the question presented, "it is not necessary to go any further." *Ibid.*

That is the case here. The summonses here were issued in aid of the collection of an assessment made against Mr. Polselli. Accordingly, the government had no obligation to notify petitioners of the summonses, and petitioners had no right to bring this action to quash them. Petitioners' attempt to avoid that result by inserting a legal-interest limitation into Section 7609(c)(2)(D)(i) is misconceived.

1. Section 7609(c)(2)(D)(i) applies when a third-party summons is issued "in aid of the collection of" a taxpayer's assessed liability

Congress's special procedures for third-party summonses generally require notice of, and waive sovereign immunity for, summonses that are issued in aid of IRS investigations into a taxpayer's potential liability. See 26 U.S.C. 7609(a), (b), and (c)(1). But Congress created several "[e]xceptions" to those procedures. 26 U.S.C. 7609(c)(2) (emphasis omitted). As relevant here, those procedures "shall not apply to any summons * * * issued in aid of the collection of * * * an assessment made or judgment rendered against the person with respect to whose liability the summons is issued." 26 U.S.C. 7609(c)(2)(D)(i).

a. That provision contains three components. First, it references summonses issued "in aid of * * * collection." 26 U.S.C. 7609(c)(2)(D)(i). "[A]id" means "to give help or support to." *Webster's Third New International Dictionary* 44 (1976) (emphasis omitted); see *Black's Law Dictionary* 63 (5th ed. 1979) ("To support, help, assist, or strengthen."). And "'collection'" means "obtaining payment of taxes due." *Direct Mktg. Ass'n* v. *Brohl*, 575 U.S. 1, 10 (2015). Thus, a summons issued

in aid of collection is one that helps the government obtain payment of taxes due.

Second, the provision references "an assessment made or judgment rendered." 26 U.S.C. 7609(c)(2)(D)(i). An assessment is "essentially a bookkeeping notation" that the Service makes to officially record a taxpayer's liability. *Laing* v. *United States*, 423 U.S. 161, 170 n.13 (1976); see 26 U.S.C. 6203. And a court may render a judgment against a delinquent taxpayer to affirm that liability. 26 U.S.C. 7402(a).

Third, the provision references "the person with respect to whose liability the summons is issued." 26 U.S.C. 7609(c)(2)(D)(i). That phrase points to the taxpayer. Accord Pet. Br. 27. Congress used that phrase seven other times in Section 7609 and 7610—each time to reference the taxpayer whose liability is at issue. See 26 U.S.C. 7609(c)(2)(A), (e)(1), (2), (f), and (3); 26 U.S.C. 7610(b)(1) and (2).

b. By their terms, the three components of Section 7609(c)(2)(D)(i) were satisfied by the summonses here. First, the summonses were issued "in aid of * * * collection," 26 U.S.C. 7609(c)(2)(D)(i), because they sought to help the Service obtain payment from Mr. Polselli. The Service reasonably believed that Mrs. Polselli may have been holding Mr. Polselli's assets in her bank accounts as his nominee or alter ego, Pet. App. 66a, and it also reasonably believed that Mr. Polselli had paid the petitioner law firm and its affiliate from bank accounts in which he (or his many entities) held assets, *id.* at 68a. In turn, the summonses sought petitioners' bank records to help "locate [Mr. Polselli's] assets," which the government could then collect from Mr. Polselli. *Id.* at 66a; see 26 U.S.C. 6331(a) (authorizing IRS to levy delinquent taxpayer assets). Because locating a delin-

quent taxpayer's assets assists in collecting the taxpayer's liability, the summonses here were issued in aid of collection of Mr. Polselli's liability.

Second, when the Service issued the summonses, it had already made "assessment[s]" against Mr. Polselli for over $2 million in tax liability. 26 U.S.C. 7609(c)(2)(D)(i); see Pet. App. 66a. And it would have used any assets collected to satisfy that "existing assessed federal tax liability." Pet. App. 66a.

Third, Mr. Polselli is "the person with respect to whose liability the summons[es] [were] issued." 26 U.S.C. 7609(c)(2)(D)(i). He is the delinquent taxpayer whose liability the government sought to collect via information gathered from the summonses. Pet. App. 66a-68a.

Accordingly, the Service issued the summonses "in aid of the collection of * * * an assessment made * * * against" Mr. Polselli, who is "the person with respect to whose liability the summons[es] [were] issued." 26 U.S.C. 7609(c)(2)(D)(i). Because the government does not need to provide notice of "any summons" falling within that category, it did not need to provide notice of the summonses here. 26 U.S.C. 7609(c)(2). And because petitioners were not "entitled to notice of [the] summons[es]," they were not entitled to initiate "a proceeding to quash such summons[es]." 26 U.S.C. 7609(b)(2)(A). The statutory text, therefore, forecloses petitioners' action.

c. Petitioners offer only two counterarguments about Section 7609(c)(2)(D)(i)'s plain meaning, and neither is persuasive.

Petitioners primarily focus (Br. 21-25) on the phrase "in aid of * * * collection," 26 U.S.C. 7609(c)(2)(D)(i). In petitioners' view, that phrase requires a "direct con-

nection" between the summons and the Service's collection of tax liability. Pet. Br. 24 (citation omitted).

Petitioners' interpretation of "in aid of * * * collection" is at odds with that phrase's ordinary meaning. Petitioners themselves acknowledge that "'aid'" ordinarily means to "'support, help, [or] assist,'" and that "'collection'" ordinarily means "obtaining payment" of taxes owed. Pet. Br. 21, 23 (citation omitted; brackets in original). Yet when reading the entire phrase together, petitioners ignore that it is "broad general language * * * not limited by a requirement that actual collection must be imminent or immediately possible." *Haber* v. *United States*, 823 F.3d 746, 751 (2d Cir. 2016). The phrase thus has a "broadening effect" similar to the phrases "in connection with" and "relating to." Pet. Br. 21 (citation omitted). And at minimum, it certainly does not have the *narrowing* effect that petitioners attribute to it.

An analogy to discovery in post-judgment execution proceedings in private civil litigation illustrates the point. Federal Rule of Civil Procedure 69 states that judgment creditors may obtain discovery "[i]n aid of the judgment or execution." Fed. R. Civ. P. 69(a)(2). This Court has recognized that Rule 69(a)(2)'s "[i]n aid of," *ibid.*, language is "quite permissive" and would allow third-party discovery seeking "information about [the debtor's] worldwide assets generally, so that [the creditor] can identify where [the debtor] may be holding property." *Republic of Argentina* v. *NML Capital, Ltd.*, 573 U.S. 134, 138, 145 (2014). It is therefore "not uncommon to seek asset discovery from third parties, including banks, that possess information pertaining to the judgment debtor's assets"; and such discovery is in aid of the judgment under Rule 69(a)(2) when it is "cal-

culated to assist in collecting on a judgment." *EM Ltd.* v. *Republic of Argentina*, 695 F.3d 201, 207 (2d Cir. 2012), aff'd, 573 U.S. 134 (2014). Similarly, a third-party summons is in aid of collection under Section 7609(c)(2)(D)(i) so long as it is calculated to assist in collecting an assessed tax liability.

Petitioners' only other textual argument is that the phrase "the person with respect to whose liability the summons is issued" would be superfluous under the government's reading. Pet. Br. 26-27 (citation omitted). But as explained above, see p. 17, *supra*, that phrase plainly refers to the delinquent taxpayer (as it does in seven other places in Sections 7609 and 7610). And Congress naturally included that phrase in Clause (i) to clarify the difference between Clauses (i) and (ii). Whereas Clause (i) creates a notice exception for summonses issued in aid of collection from the delinquent taxpayer, Clause (ii) creates a notice exception for summonses issued in aid of collection from a transferee or fiduciary. 26 U.S.C. 7609(c)(2)(D). Cf. 26 U.S.C. 7609(e)(1) (referring to either "the person with respect to whose liability the summons is issued" or someone who "is the agent, nominee, or other person acting under the direction or control of such person"). That distinction between the directly liable taxpayer and one who has derivative liability would be blurred if Congress had not referenced the delinquent taxpayer in Clause (i).

2. Petitioners' asserted legal-interest limitation has no textual basis

a. Petitioners stake their case on engrafting an additional limitation onto Section 7609(c)(2)(D)(i), which stems from the Ninth Circuit's decision in *Ip* v. *United States*, 205 F.3d 1168 (2000). That court candidly rec-

ognized that "the literal language of clause (i)" favors the government's interpretation, but it nonetheless rejected that interpretation based on its "ascertain[ment of] the legislative purpose by the examination of legislative history." *Id.* at 1174-1175. According to the Ninth Circuit, "proper statutory construction * * * requires recognition and implementation of the underlying legislative intention or purpose" and an "accommodat[ion of] the societal claims and demands reflected in that inquiry." *Id.* at 1175. Relying on its view of Congress's purpose, the Ninth Circuit held that Section 7609(c)(2)(D)(i)'s notice exception "applies only where the assessed taxpayer has a recognizable legal interest in the records summoned." *Id.* at 1176 (brackets, citation, and internal quotation marks omitted).

Like the dissent below, Pet. App. 30a, petitioners embrace the Ninth Circuit's legal-interest test. *E.g.*, Pet. Br. 24. For the first time in this Court, petitioners also occasionally introduce a variation on that test under which Section 7609(c)(2)(D)(i) applies only to summonses of an "account" in which "the delinquent taxpayer has a legal interest." *E.g.*, *id.* at 19. Petitioners never explain the origins of their new account-focused variation. Yet under either the original formulation or petitioners' refinement, the legal-interest limitation lacks any textual basis. The Ninth Circuit never identified any textual foothold for the limitation. And Judge Kethledge's dissent acknowledged that the limitation cannot be squared with how Section 7609(c)(2)(D)(i)'s words "would ordinarily be read." Pet. App. 30a.

To begin with, nothing in Section 7609(c)(2)(D)(i)'s text references a "legal interest" or an "account." Petitioners attempt to ground the legal-interest limitation in the "direct connection" requirement that they also in-

fer without any textual basis. Pet. Br. 24 (citation omitted). Even accepting that there is some direct-connection requirement, but see pp. 18-20, *supra*, petitioners never link that requirement to the legal-interest limitation. They simply assume that a direct connection between a summons and collection can "exist[] *only* when the delinquent taxpayer * * * 'has a recognizable legal interest in the records summoned.'" Pet. Br. 24 (emphasis added; citation omitted). And they never explain why such a direct connection is absent when (as here) a summons seeks to locate the taxpayer's assets for collection. Petitioners' reliance on two separate unwritten limitations on the text flouts this Court's "ordinar[y] resist[ance to] reading words or elements into a statute that do not appear on its face." *Dean* v. *United States*, 556 U.S. 568, 572 (2009) (citation omitted).

b. Petitioners' legal-interest limitation is especially unwarranted because Congress manifestly knew how to impose a limitation of that sort. In the very next section of the Code, Congress precluded the government from reimbursing a summoned party for its costs of compliance if "the person with respect to whose liability the summons is issued *has a proprietary interest in the books, papers, records or other data required to be produced*." 26 U.S.C. 7610(b)(1) (emphasis added). By contrast, Section 7609(c)(2)(D)(i) conspicuously fails to limit its application to records in which "the person with respect to whose liability the summons is issued" has any particular interest. 26 U.S.C. 7609(c)(2)(D)(i). And "where Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or

exclusion." *Sebelius* v. *Cloer*, 569 U.S. 369, 378 (2013) (brackets and citation omitted).

Petitioners observe (Br. 41) that the "legal interest" language they would add to Section 7609(c)(2)(D)(i) is not identical to the "proprietary interest" language in Section 7610(b)(1). But that misses the point. What matters is that when Congress sought to impose *any* limitation based on the taxpayer's interest in certain records, it did so expressly. Because Section 7609(c)(2)(D)(i) contains no similar limitation, this Court should reject petitioners' invitation to invent one.

c. Petitioners also never explain how courts would apply the legal-interest limitation. It is far from clear what would suffice to give a taxpayer "'a recognizable legal interest'" in the "'records'" (or "account") "summoned." Pet. Br. 24 (citation omitted). Neither the statute nor petitioners' brief says whether any property interest is enough to be "recognizable" or what source of law would govern that determination.

Experience in the Ninth Circuit illustrates the potential difficulties. "[I]n considering whether a taxpayer had a sufficient legal interest in the object of the summons," the Ninth Circuit analyzes "whether there was an employment, agency, or ownership relationship between the taxpayer and third party." *Viewtech, Inc.* v. *United States*, 653 F.3d 1102, 1106 (2011). And it conducts that analysis "non-technically." *Id.* at 1105. As a result, courts in the Ninth Circuit embark on totality-of-the-circumstances inquiries into the closeness of the relationship between the taxpayer and the third party whose records are summonsed. See, *e.g.*, *Lund* v. *United States*, No. 13-mc-314, 2013 WL 6901242, at *1 n.1 (D. Ore. Dec. 31, 2013) (emphasizing that the third party "shares the same post office box address as" the

taxpayer); *Cranford* v. *United States*, 359 F. Supp. 2d 981, 987-988 (E.D. Cal. 2005) (considering the marriage date of the taxpayer and the third party and the contents of their prenuptial agreement). That regime ignores that "administrative simplicity is a major virtue in a jurisdictional statute" like Section 7609(c)(2)(D)(i). *Hertz Corp.* v. *Friend*, 559 U.S. 77, 94 (2010). More fundamentally, it ignores that the statutory text—not a judge-made legal-interest standard—should determine when the government must give notice and has waived its sovereign immunity.

Petitioners' novel account-based variation on the legal-interest test only exacerbates the problems. *E.g.*, Pet. Br. 1 (claiming that Section 7609(c)(2)(D)(i) applies only where the delinquent taxpayer "has a legal interest in the summonsed *account*") (emphasis added). Of course, nothing can prove whether that variation or the original *Ip* formulation is correct—because both are equally absent from the text. But critically, the account-based variation ignores that the Service may issue third-party summonses to entities other than banks (including accounting firms or employers, among others). 26 U.S.C. 7602(a)(2). In those scenarios, no "account" would be summonsed, so petitioners' account-based test could not even apply. Petitioners do not address that lacuna—further confirming that the entire "legal interest" enterprise is an extra-statutory invention.

B. The Plain-Text Reading Of Section 7609(c)(2)(D)(i) Fits Naturally Within The Context Of Section 7609 As A Whole

Statutory provisions "do[] not exist in a vacuum" and must be read within the context of the statute "'as a whole.'" *Territory of Guam* v. *United States*, 141 S. Ct.

1608, 1612-1613 (2021) (citation omitted). Here, the plain-text interpretation of Section 7609(c)(2)(D)(i) articulated above fits naturally within Section 7609 as a whole. Petitioners contend (Br. 25-27) that the government's reading would render an adjoining provision superfluous. But Clauses (i) and (ii) of Section 7609(c)(2)(D) create two different exceptions to the general notice requirement in Section 7609—and even if they did overlap, that would merely reflect a standard belt-and-suspenders approach to legislation, not a reason to depart from the plain text of Clause (i). And the straightforward reading of Clause (i) is also consistent with other aspects of the structure of Section 7609, which distinguish between the Service's liability investigations and its efforts to collect after it has deemed a taxpayer liable.

1. Clause (ii) creates an exception from Section 7609's requirements that is distinct from Clause (i)

The provision that immediately follows Section 7609(c)(2)(D)(i) creates another exception from Section 7609's general notice requirement. Clause (ii) applies to "any summons * * * issued in aid of the collection of * * * the liability at law or in equity of any transferee or fiduciary of any person referred to in clause (i)." 26 U.S.C. 7609(c)(2)(D)(ii). In petitioners' view (Br. 25-27), Clause (i) must be read narrowly to keep from rendering Clause (ii) superfluous. But Clause (ii) excepts two categories of summonses that are not clearly covered under the plain-text reading of Clause (i). Because Clause (ii) does at least "modest work" under the government's reading, *Wisconsin Cent. Ltd.* v. *United States*, 138 S. Ct. 2067, 2073 (2018), petitioners' unnaturally narrow construction of Clause (i) is not required to avoid redundancy.

a. Clause (ii) applies to a summons issued in aid of collection from a transferee or fiduciary where the government cannot collect directly from the taxpayer

As explained above, see pp. 2-3, *supra*, the Code provides the Service with two basic avenues for collecting tax liability. First, the government may collect directly from a delinquent taxpayer. *E.g.*, 26 U.S.C. 6331(a). Second, the government may collect on the derivative "liability, at law or in equity, of a transferee of property," or on the derivative "liability of a fiduciary," "in the same manner and subject to the same provisions and limitations as in the case of taxes" collected directly from the delinquent taxpayer. 26 U.S.C. 6901(a)(1)(A) and (B).

In some circumstances, "[t]he Government may proceed against property in the hands of a transferee after it has lost its right to proceed against the taxpayer." *Mertens* § 53:48, at 100 (Aug. 2022 Supp.). For instance, a taxpayer corporation may dissolve; a taxpayer's estate may terminate; a taxpayer may obtain a discharge of his personal liability in bankruptcy; or the statute of limitations may bar collection from the taxpayer. In each of those circumstances, the government would be precluded from collecting liability from the taxpayer directly, but (assuming all other prerequisites were satisfied) it would be permitted to collect the liability from the taxpayer's transferee or fiduciary. See, *e.g.*, *Stanko* v. *Commissioner*, 209 F.3d 1082, 1086 (8th Cir. 2000) (collection from transferee after taxpayer corporation dissolved); *Coffee Pot Holding Corp.* v. *Commissioner*, 113 F.2d 415, 417 (5th Cir. 1940) (same); *United States* v. *Floersch*, 276 F.2d 714, 717 (10th Cir.) (collection from transferee where statute of limitations barred col-

lection from taxpayer but not transferee), cert denied, 364 U.S. 816 (1960); see also *Mertens* § 53:33, at 88 (Aug. 2022 Supp.) (explaining that "if it is clear that a proceeding against the [taxpayer] will bring no results, the liability of the transferee may be enforced at once," and citing dissolutions of corporations and terminations of trusts and estates as "common" examples).

If the government were then to issue a summons "in aid of the collection of * * * the liability * * * of [the] transferee or fiduciary," Clause (ii) would exempt that summons from Section 7609's general notice requirement and sovereign-immunity waiver. 26 U.S.C. 7609(c)(2)(D)(ii). But Clause (i) would provide no such exemption, because the summons would not be issued "in aid of the collection of * * * an assessment made or judgment rendered against the" delinquent taxpayer. 26 U.S.C. 7609(c)(2)(D)(i). That is because, in the above scenarios, the government could no longer collect any prior assessment made or judgment rendered against the taxpayer—so any summons could not be issued *in aid of the collection* of that obsolete assessment or judgment.

b. Clause (ii) also applies to a pre-assessment summons that is issued in aid of collection of the derivative liability of a transferee or fiduciary

In addition, Clause (ii) creates an exception for a pre-assessment summons issued in aid of the collection of a transferee's or fiduciary's liability. Clause (i) applies to any summons "issued in aid of the collection of * * * *an assessment made or judgment rendered* against the person with respect to whose liability the summons is issued." 26 U.S.C. 7609(c)(2)(D)(i) (emphasis added). Clause (ii), in contrast, applies to any summons "issued in aid of the collection of * * * the *liability* at law or in

equity of any transferee or fiduciary of any person referred to in clause (i)." 26 U.S.C. 7609(c)(2)(D)(ii) (emphasis added).

Under the Code, tax liability is distinct from a tax assessment. Tax liability is an obligation to pay taxes, which arises "on the date it accrues, not on the date of [an] assessment." *In re Columbia Gas Transmission Corp.*, 37 F.3d 982, 985 (3d Cir. 1994), cert. denied, 514 U.S. 1082 (1995) (citation omitted). After the Service has determined that a taxpayer is liable for taxes owed, it can elect to make an assessment by "official[ly] recording * * * a taxpayer's liability." *Direct Mktg. Ass'n*, 575 U.S. at 9; see 26 U.S.C. 6203. By making an assessment, the Service triggers certain "administrative enforcement methods to collect the tax." *United States* v. *Galletti*, 541 U.S. 114, 122 (2004); *e.g.*, 26 U.S.C. 6321, 6322. But "an assessment is not a prerequisite to tax liability." *Williams-Russell & Johnson, Inc.* v. *United States*, 371 F.3d 1350, 1353 (11th Cir.), cert. denied, 543 U.S. 1022 (2004) (citation omitted); *e.g.*, *Goldston* v. *United States (In re Goldston)*, 104 F.3d 1198, 1200-1201 (10th Cir. 1997).

The government may begin efforts to collect a tax liability before it makes an assessment. See, *e.g.*, 26 U.S.C. 6501(c)(1)-(3) (authorizing the government to initiate a "proceeding in court for the collection of such tax * * * without assessment"). That includes efforts to collect a liability from a transferee or fiduciary. "Under the Code, it is not necessary for the Service to have made a formal assessment against the original [taxpayer] in order to enforce transferee liability." *Mertens* § 53:33, at 88 (Aug. 2022 Supp.); see Michael I. Saltzman & Leslie Book, *IRS Practice and Procedure* § 17.04 & n.197, at 17-59 (rev. 2d ed. 2022); 4 Laurence F. Casey,

Federal Tax Practice § 12:58 n.1, at 12-89 (Edward J. Smith ed., rev. Nov. 2015 Supp.) (*Casey*) (same with fiduciaries). Nor is it necessary for the Service to make a formal assessment against the transferee or fiduciary to collect from that transferee or fiduciary. See, *e.g.*, *United States* v. *Henco Holding Corp.*, 985 F.3d 1290, 1297-1305 (11th Cir. 2021). And critically here, it is not necessary for the Service to make a formal assessment to issue a summons "[f]or the purpose of * * * collecting *any* [tax] liability," including the liability of a transferee or fiduciary. 26 U.S.C. 7602(a) (emphasis added).[1]

Clause (ii) thus applies in circumstances distinct from Clause (i). The Clause (ii) exception from Section 7609 can apply to a summons issued in aid of the collection of a transferee's or fiduciary's liability *before* an assessment has been made or judgment has been rendered. 26 U.S.C. 7609(c)(2)(D)(ii). But the Clause (i) exception can apply to a summons issued in aid of the collection of a taxpayer's liability only *after* an assessment has been made or judgment has been rendered. 26 U.S.C. 7609(c)(2)(D)(i).

Petitioners' two responses (Br. 42-43) lack merit. First, petitioners assert that Clause (ii) "cannot apply before there has been a formal assessment or judgment," Pet. Br. 42, because Clause (ii) addresses "any

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[1] The court of appeals stated in passing that a transferee's or fiduciary's liability is "derivative of the taxpayer's *assessment*," such that "the former cannot exist without the latter." Pet. App. 15a (emphasis added). But as the source cited by the court indicates, a transferee's or fiduciary's liability in fact depends not on the assessment of the taxpayer, but on "the *liability* of the" taxpayer. *Casey* § 12:04, at 12-9 (emphasis added). Indeed, that source elsewhere states that "[i]t is not required that the tax be first assessed against the taxpayer as a condition to enforcement of transferee liability." *Casey* § 12:22, at 12-42.

transferee or fiduciary of *any person referred to in clause (i)*," 26 U.S.C. 7609(c)(2)(D)(ii) (emphasis added). But the "person referred to in clause (i)," *ibid.*, is the delinquent taxpayer—*i.e.*, "the person with respect to whose liability the summons is issued," 26 U.S.C. 7609(c)(2)(D)(i). Nothing in that phrase about *liability* requires an *assessment* to have been made (or a judgment rendered) against the delinquent taxpayer. As noted, see p. 28, *supra*, tax liability is distinct from an assessment. And Congress repeatedly used the phrase "person with respect to whose liability the summons is issued" in other provisions of Sections 7609 and 7610 that are unrelated to the presence of an assessment or judgment. See, *e.g.*, 26 U.S.C. 7609(c)(2)(A), 7610(b)(1) and (2).[2]

Second, petitioners question (Br. 42) why Congress would permit the Service to issue unnoticed pre-assessment summonses in aid of collection from transferees and fiduciaries but not from delinquent taxpayers (for whom a prior assessment or judgment is required). But that distinction simply suggests that Congress was especially concerned with ensuring effective collection from transferees. After all, a delinquent taxpayer may transfer assets "in anticipation of" an imminent assessment. *Fourth Inv. LP* v. *United States*, 720 F.3d 1058, 1071 (9th Cir. 2013). The incentive for such a pre-assessment transfer is strong because a lien on a delinquent taxpayer's "property and rights to property" attaches only after the Service makes an assessment. 26 U.S.C. 6321; see 26 U.S.C. 6322. To help the Service

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[2] The government said nothing to the contrary in the court of appeals. Contra Pet. Br. 42. The pages petitioners cite from the government's brief do not even address Clause (ii). Gov't C.A. Br. 24-25.

locate assets that a delinquent taxpayer transfers before receiving a formal assessment, Congress authorized the issuance of an unnoticed pre-assessment summons to aid in collecting transferee liability. If notice were required in such circumstances, that would increase the "possibility that the * * * transferee * * * would * * * withdraw the money in his account, thus frustrating the collection activity of the Service." H.R. Rep. No. 658, 94th Cong., 1st Sess. 310 (1975) (House Report).[3]

2. Any overlap between Clauses (i) and (ii) would reflect a standard belt-and-suspenders approach to legislative drafting

Petitioners contend (Br. 44) that under the government's reading, Clause (i) would "surely cover[]" all the summonses described above, thus rendering Clause (ii) redundant. But even if petitioners could be sure that the Service could fit all those summonses under Clause (i), Congress may have been less certain. That illustrates why "[r]edundancy is not a silver bullet." *Rimini St., Inc.* v. *Oracle USA, Inc.*, 139 S. Ct. 873, 881 (2019). And petitioners cite no case in which the Court has in-

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[3] Although petitioners do not cite it, the Internal Revenue Manual states (without further explanation) that the Service's practice is to issue unnoticed summonses under Clause (ii) only after an assessment has been made. See Internal Revenue Manual § 25.5.6.5.1(2) (Mar. 10, 2017). But that "unreasoned statement in the manual" merely conveys internal practices to IRS employees. *Central Laborers' Pension Fund* v. *Heinz*, 541 U.S. 739, 748 (2004). It does not purport to capture the precise scope of the statutory language, to bind the IRS, or to "confer rights on taxpayers." *Carlson* v. *United States (In re Carlson)*, 126 F.3d 915, 922 (7th Cir. 1997), cert. denied, 523 U.S. 1060 (1998); see *Electronic Privacy Info. Ctr.* v. *IRS*, 910 F.3d 1232, 1244-1245 (D.C. Cir. 2018).

voked concerns about surplusage to rewrite unambiguous statutory text in the manner they propose here.

Meanwhile, the Court has repeatedly validated Congress's prerogative to "legislat[e] in [a] hyper-vigilant way, to 'remov[e] any doubt' as to things not particularly doubtful in the first instance." *Cyan, Inc.* v. *Beaver Cnty. Emps. Ret. Fund*, 138 S. Ct. 1061, 1074 (2018) (quoting *Marx* v. *General Revenue Corp.*, 568 U.S. 371, 383-384 (2013)) (third set of brackets in original); see, *e.g.*, *Ali* v. *Federal Bureau of Prisons*, 552 U.S. 214, 226 (2008); *Fort Stewart Sch.* v. *FLRA*, 495 U.S. 641, 646 (1990). And the Court has recognized that "'sometimes the better overall reading of the statute contains some redundancy'" because Congress has "employed a belt and suspenders approach" out of an understandable abundance of caution. *Atlantic Richfield Co.* v. *Christian*, 140 S. Ct. 1335, 1350 n.5 (2020) (quoting *Rimini St.*, 139 S. Ct. at 881) (brackets omitted). Here, any redundancy in Section 7609(c)(2)(D) simply reflects Congress's use of such an approach.

Section 7609(c)(2)(D) addresses summonses issued in aid of *collection*, so it naturally addresses both avenues of collection. First, Clause (i) addresses summonses in aid of collection directly from the delinquent taxpayer. 26 U.S.C. 7609(c)(2)(D)(i). Second, Clause (ii) addresses summonses in aid of collection from the taxpayer's transferee or fiduciary. 26 U.S.C. 7609(c)(2)(D)(ii). If Congress had omitted Clause (ii), transferees and fiduciaries would have likely argued that the omission was intentional and that Clause (i)'s notice exception did not extend to summonses issued in aid of collection from them. To "remove any doubt" about the exception's scope, *Ali*, 552 U.S. at 226, Congress added Clause (ii).

That addition makes particular sense because certain summonses issued in aid of collection of a transferee's or fiduciary's liability "may seek information only obliquely related to the underlying taxpayer." Pet. App. 16a. The Code expressly recognizes the liability of a "transferee of a transferee," 26 U.S.C. 6901(c)(2), and taxpayers sometimes deliberately evade collection through complex webs of transfers to seemingly distance themselves from their assets. See, *e.g.*, *Billy F. Hawk, Jr., GST Non-Exempt Marital Trust* v. *Commissioner*, 924 F.3d 821, 824 (6th Cir.), cert. denied, 140 S. Ct. 38 (2019); *Shockley* v. *Commissioner*, 872 F.3d 1235, 1244-1246 (11th Cir. 2017); *Diebold Found., Inc.* v. *Commissioner*, 736 F.3d 172, 175-181 (2d Cir. 2013). To be sure, a summons issued to the bank of a transferee may well be "in aid of the collection of" the underlying taxpayer's liability and thus fall under Clause (i)'s plain language (assuming an assessment had been made and remained viable). 26 U.S.C. 7609(c)(2)(D)(i). But fearing "an error-prone judge," Congress may have included Clause (ii) to make the notice exception's scope "clear beyond peradventure." *Cyan*, 138 S. Ct. at 1074.

Indeed, given its prior experience with another tax statute, Congress had reason to worry. An early version of the Anti-Injunction Act (AIA) provided that "[n]o suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court." Rev. Stat. § 3224 (1875) (26 U.S.C. 1543(a) (Supp. VI 1932)). Despite that seemingly clear command, a federal court held that the provision applied only to suits to restrain the collection of a taxpayer's "primary liability," as opposed to the derivative liability of the taxpayer's transferee. *Owensboro Ditcher & Grader Co.* v. *Lucas*, 18 F.2d 798, 801 (W.D. Ky. 1927).

The next year, Congress responded by enacting an additional provision barring suits "for the purpose of restraining the assessment or collection of * * * the amount of the liability, at law or in equity, of a transferee of property of a taxpayer in respect of any income, war-profits, excess-profits, or estate tax." Revenue Act of 1928, ch. 852, § 604, 45 Stat. 873; see H.R. Rep. No. 2, 70th Cong., 1st Sess. 32 (1927); S. Rep. No. 960, 70th Cong., 1st Sess. 39 (1928). Courts then gave that new provision "effect according to its terms," "placing the transferee in the same category as a taxpayer." *Felland* v. *Wilkinson*, 33 F.2d 961, 962 (W.D. Wisc. 1928); see *Phillips* v. *Commissioner*, 283 U.S. 589, 596 (1931).

From that experience, Congress may have learned that courts do not always read references to collection of a taxpayer's liability as encompassing collection of a transferee's or fiduciary's derivative liability even if that would be the most natural reading. Since 1928, the AIA's jurisdictional bar has thus expressly included suits about the assessment or collection of the amount of liability of transferees and fiduciaries. 26 U.S.C. 7421(b). Congress has also addressed both the taxpayer, on one hand, and any transferees and fiduciaries, on the other, when authorizing the Service to issue a summons. 26 U.S.C. 7602(a). And Congress did so here in Section 7609(c)(2)(D). Thus, even if Clause (ii) were not strictly necessary, Congress may have added the clause "in a more general excess of caution—to safeguard [the Service's collection process] come whatever might." *Cyan*, 138 S. Ct. at 1074. This Court should respect that choice, especially when petitioners' alternative approach is "to devise a statute * * * of [their] own." *Id.* at 1075.

3. Section 7609(c)(2)(D) fits seamlessly with the rest of Section 7609

When read according to its plain terms, Section 7609(c)(2)(D) operates seamlessly within Section 7609 as a whole. Section 7609(a) generally requires the government to notify any person identified in a third-party summons. 26 U.S.C. 7609(a)(1). In turn, Section 7609(b) provides that any person entitled to such notice shall have the right to intervene in any proceeding to enforce the summons, as well as the right to petition to quash the summons. 26 U.S.C. 7609(b)(1) and (2)(A). In conjunction, then, Section 7609(a) and (b) require notice and waive sovereign immunity in a class of cases involving third-party summonses.

That class of cases encompasses the ordinary third-party summons issued in aid of an IRS investigation to determine possible tax liability. For instance, Section 7609's notice requirement and sovereign-immunity waiver apply to a third-party summons that is made "[f]or the purpose of ascertaining the correctness of any return, making a return where none has been made, [or] determining the liability of any person for any internal revenue tax or the liability at law or in equity of any transferee or fiduciary of any person in respect of any internal revenue tax." 26 U.S.C. 7602(a); see 26 U.S.C. 7609(c)(1). So, if the Service were to summons the bank records of a taxpayer's deposits and withdrawals in order to investigate the accuracy of the taxpayer's income-tax returns, it would ordinarily need to notify the taxpayer, and the taxpayer could challenge the summons in court. See House Report 308.

Petitioners contend that the government's reading "mak[es] subsections (a) and (b) entirely superfluous whenever the IRS is collecting a tax liability." Pet. Br.

45 (citation and internal quotation marks omitted). Petitioners do not dispute, however, that Section 7609(a) and (b) serve the critical purpose of requiring notice and waiving sovereign immunity for a summons issued in aid of a *liability investigation*. Section 7609(c)(2)(D) then displaces those subsections for a summons issued in aid of *collection*. That does not make subsections (a) and (b) superfluous; it simply means that they "shall not apply" where Congress specifically made them inapplicable. 26 U.S.C. 7609(c)(2).

C. The Statutory History And Purpose Confirm That Section 7609(c)(2)(D)(i) Applies Even When The Taxpayer Lacks A Legal Interest In The Summonsed Records Or Accounts

This Court often looks to "[s]tatutory history and purpose" as additional evidence of meaning. *Wooden* v. *United States*, 142 S. Ct. 1063, 1072 (2022). Here, those considerations point in the same direction as text and context: Congress sought to require notice of and to waive sovereign immunity for third-party summonses issued in aid of IRS liability investigations, but not third-party summonses issued in aid of IRS collection efforts.

1. Congress struck a balance between protecting privacy rights during tax-liability investigations and ensuring effective tax-collection efforts

a. As noted above, Congress enacted Section 7609 in part in response to this Court's decision in *Donaldson* v. *United States*, 400 U.S. 517 (1971), which had held that a taxpayer could not intervene as of right in the government's suit to enforce a third-party summons is-

sued during a liability investigation. See pp. 3-4, *supra*; House Report 306-307.[4]

In enacting Section 7609, Congress sought to require notice of the kind of summons at issue in *Donaldson*—one issued in aid of a liability investigation—without impairing the Service's ability to issue unnoticed summonses in aid of collection. On the one hand, the House and Senate Reports recognized that third-party summonses "should not unreasonably infringe on the civil rights of taxpayers, including the right to privacy." House Report 307; see S. Rep. No. 938, 94th Cong., 2d Sess. 368 (1976) (Senate Report). Thus, for a summons issued in aid of an investigation into a taxpayer's liability, Congress determined that the parties whose records are at issue should be "advised of the service" of the summons and "afforded a reasonable and speedy means to challenge the summons where appropriate." *Ibid.*

On the other hand, the House and Senate Reports emphasized that third-party summonses are "important" and "necessary tool[s] for the IRS." House Report 307; see Senate Report 368. And the Reports made clear that Congress "d[id] not wish" the procedures created by Section 7609 to "produce a problem for sound tax administration greater than the one they seek to solve." House Report 309; see Senate Report 371. Accordingly, Congress determined that those "proce-

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[4] Section 7609 also responded to this Court's decision in *United States* v. *Bisceglia*, 420 U.S. 141 (1975), which enforced an IRS John Doe summons that sought to identify an unnamed individual who had deposited money in deteriorated bills, *id.* at 150. See *Tiffany Fine Arts, Inc.* v. *United States*, 469 U.S. 310, 315 (1985); 26 U.S.C. 7609(f) (2018 & Supp. II 2020) (establishing procedures for John Doe summonses). Such John Doe summonses are not at issue here.

dure[s] will not apply in the case of a summons used solely for purposes of collection." House Report 310; see Senate Report 371.

b. Congress had good reason to draw that line between investigating liability and seeking to collect liability. When the Service is investigating potential tax liability, it has not yet determined that anyone has violated a duty to pay taxes. During that pre-liability fact-gathering phase, "the right to privacy" carries substantial weight. House Report 307. And because liability investigations focus on uncovering historical facts (like how much income a taxpayer earned in a given year), a taxpayer usually cannot use advance notice of a summons to alter those facts and thwart the investigation.

By contrast, when the Service seeks to collect on a tax liability, it has already determined that there has been a breach of the taxpayer's legal obligations. At that phase, the need for prompt collection of taxes owed outweighs the potential privacy interests of those whose records are summonsed. That is especially so because when the Service seeks to locate assets for collection, "there might be a possibility that the taxpayer, transferee or fiduciary" would use the time afforded by notice and petition-to-quash litigation "to withdraw the money in [their] account, thus frustrating the collection activity of the Service." House Report 310; see Senate Report 371-372. Indeed, delinquent taxpayers—including Mr. Polselli here—often control mazes of shell entities. Particularly in those circumstances, requiring the Service to provide advance notice and litigate the validity of third-party summonses would give taxpayers and their affiliates a sizeable "head start in hiding assets." *Haber*, 823 F.3d at 752.

2. Petitioners misconstrue the statutory history and purpose

Petitioners' arguments (Br. 39) about statutory history and purpose reduce to the proposition that Congress intended Section 7609 to be an unqualified "pro-notice guarantee." But that characterization misunderstands the compromise embodied in Section 7609.

Petitioners oversimplify (Br. 31-32) Section 7609's history. While they correctly observe (Br. 31) that Congress enacted Section 7609 in response to *Donaldson*, they ignore that *Donaldson* involved only summonses issued in aid of a liability investigation. See 400 U.S. at 518-520. And they likewise ignore Congress's reasonable concern that requiring the same level of notice during the collection phase would "frustrat[e] the collection activity of the Service." House Report 310; see Senate Report 371-372. Petitioners therefore err in asserting (Br. 31) that Congress sought exclusively to protect "the public's privacy rights." In fact, Congress sought to balance the protection of privacy rights with effective tax collection.

Moreover, nothing in the statutory history even hints at petitioners' legal-interest limitation. The House and Senate Reports state unequivocally that Section 7609's notice "procedure will not apply in the case of a summons used solely for purposes of collection." House Report 310; see Senate Report 371. And the Reports mention only one example in which Section 7609(c)(2)(D)'s notice exception would not be triggered: when the Service is "attempting to obtain information concerning the taxpayer's account for purposes *other than collection*." House Report 310 (emphasis added); see Senate Report 372. The committee reports never suggest any addi-

tional limitation tied to the taxpayer's lack of a sufficient legal interest in the summonsed records.

Petitioners insist (Br. 28-29) that Section 7609's "exceptions are narrow" because they are merely "carve-out[s] from the broad notice rule." "But this Court has made clear that statutory exceptions are to be read fairly, not narrowly, for they are no less part of Congress's work than its rules and standards—and all are worthy of a court's respect." *HollyFrontier Cheyenne Ref., LLC* v. *Renewable Fuels Ass'n*, 141 S. Ct. 2172, 2181 (2021) (citation and internal quotation marks omitted). After all, "[o]ften legislation becomes possible only because of [a] compromise[]," and the Court "ha[s] no right to place [its] thumbs on one side of the scale or the other." *BP p.l.c.* v. *Mayor & City Council of Balt.*, 141 S. Ct. 1532, 1539 (2021). Petitioners disregard those principles in asking (Br. 29) the Court to reflexively adopt the interpretation that most "furthers the purpose of § 7609's default rule."

Petitioners also incorrectly suggest (Br. 32) that their asserted legal-interest limitation would not impede IRS collection efforts. In fact, taxpayers who lack a sufficient legal interest under petitioners' view would plainly be able to thwart collection. Here, for instance, petitioners would require the Service to notify the petitioner law firm of the relevant summonses and would allow the firm to petition to quash those summonses. During the pendency of the firm's ensuing petition to quash, Mr. Polselli would have ample time to move his assets out of the accounts he used to pay the firm—even though the whole point of the summonses was to help collect Mr. Polselli's assets from those accounts, Pet. App. 66a-68a.

Contrary to petitioners' suggestion (Br. 32-33, 38), Section 7609(g) does not solve the problem. Section 7609(g) provides that the notice requirement and sovereign-immunity waiver do not apply if the government proves to a court "that there is reasonable cause to believe the giving of notice may lead to," *inter alia*, "attempts to conceal, destroy, or alter *records* relevant to the examination." 26 U.S.C. 7609(g) (emphasis added). Section 7609(c)(2)(D), in contrast, reflects a concern about giving taxpayers and their affiliates "a head start in hiding *assets*"—not records—during the collection phase. *Haber*, 823 F.3d at 752 (emphasis added). In the scenario posited above, for instance, neither Mr. Polselli nor the law firm would use the time afforded by notice and petition-to-quash litigation to conceal, destroy, or alter *records*. Rather, Mr. Polselli would use that time to move his *assets*. And Section 7609(g) would do nothing to address that problem; only Section 7609(c)(2)(D) can do so.

Nor do other features of the statute mitigate the harm that petitioners' position would inflict on IRS collection efforts. Petitioners emphasize (Br. 37) the "tight" statutory timelines, such as the 20-day period in which a notified party must file a petition to quash. See 26 U.S.C. 7609(b)(2)(A). But the litigation over such a petition could span months or years. And that delay would stall IRS collection efforts while inviting all manner of evasive asset maneuvers.

D. Any Ambiguity Should Be Construed Against A Waiver Of Federal Sovereign Immunity

Even if petitioners' legal-interest limitation were a plausible inference from the text, context, and history, the clear-statement rule protecting the federal government's sovereign immunity would require the Court to

reject that interpretation. "Absent a waiver, sovereign immunity shields the Federal Government and its agencies from suit." *FDIC* v. *Meyer*, 510 U.S. 471, 475 (1994). The Court has "said on many occasions that a waiver of sovereign immunity must be 'unequivocally expressed' in statutory text." *FAA* v. *Cooper*, 566 U.S. 284, 290 (2012) (citation omitted). Any ambiguities must be construed "in favor of immunity," *United States* v. *Williams*, 514 U.S. 527, 531 (1995), "so that the Government's consent to be sued is never enlarged beyond what a fair reading of the text requires," *Cooper*, 566 U.S. at 290. That principle applies not only where the question is whether the government has "consented to be sued" at all, but also to "any ambiguities in the scope of a waiver." *Id.* at 291.

Petitioners have sued the federal government, so sovereign immunity would ordinarily bar this suit. While Congress has waived the government's immunity in proceedings to quash summonses in certain specified circumstances, see 26 U.S.C. 7609(b)(2) and (h)(1), it has also made explicit "[e]xceptions" to that waiver, 26 U.S.C. 7609(c) (emphasis omitted). "Therefore, if a summons is 'issued in aid of the collection' of a taxpayer's liability" and falls under the exception in Section 7609(c)(2)(D)(i), then "the United States has not waived its sovereign immunity." *Haber*, 823 F.3d at 750-751.

Because Section 7609(c)(2)(D)(i) is an exception to a sovereign-immunity waiver, it should be construed strictly "in favor of immunity." *Williams*, 514 U.S. at 531. That principle forecloses petitioners' effort to insert language into the statutory text that would license additional suits against the government. Congress would need to "unequivocally express[]" its intent to

waive immunity based on petitioners' legal-interest formulation. *Cooper*, 566 U.S. at 290 (citation omitted). But Congress did nothing of the kind. Accordingly, the baseline principle of sovereign immunity confirms the upshot of the text, context, and history: Petitioners' suit to quash the summonses is barred.

E. Petitioners' Policy Arguments Are Misplaced

Finally, petitioners resort (*e.g.*, Br. 31) to "policy" considerations. As this Court has explained, however, "even the most formidable policy arguments cannot overcome a clear statutory directive," like the one in Section 7609(c)(2)(D)(i). *BP p.l.c.*, 141 S. Ct. at 1542 (citation and internal quotation marks omitted). And that is doubly true when the statute at issue protects the federal government's sovereign immunity. See *Cooper*, 566 U.S. at 290-291. In any event, petitioners' policy concerns are unwarranted even on their own terms.

1. Petitioners emphasize (Br. 33) the "privacy interests" of "innocent persons" whose records may be subject to a summons. But Section 7609 protects those interests to a large extent—by requiring notice and a sovereign-immunity waiver for a summons issued in aid of a liability investigation. And the Court "do[es] not generally expect statutes to fulfill 100% of all of their goals." *Cyan*, 138 S. Ct. at 1073.

As to summonses that are exempted from the notice requirement by Section 7609(c)(2)(D), other Code provisions offer meaningful privacy protections. As an initial matter, the scope of a summons must be limited to information "as may be relevant or material" to an IRS inquiry. 26 U.S.C. 7602(a)(2). "Any information irrelevant to the collection of a taxpayer's assessed liability—in this case, bank account information that does not relate to [Mr. Polselli], his assets, or related entities—

would thus lie outside the scope of" an excepted summons. Pet. App. 21a.

In addition, Section 6103 generally bars the Service from disclosing "in any manner" any "return information" that it receives in response to a third-party summons. 26 U.S.C. 6103(a) (2018 & Supp. II 2020). "[T]he Code defines return information broadly," *Hull* v. *IRS*, 656 F.3d 1174, 1186 (10th Cir. 2011), to include:

> a taxpayer's identity, the nature, source, or amount of his income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, overassessments or tax payments, * * * or any other data, received by, recorded by, prepared by, furnished to, or collected by the [Service] with respect to a return or with respect to the determination of the existence, or possible existence, of liability (or the amount thereof) of any person under this title for any tax.

26 U.S.C. 6103(b)(2)(A). And the Code imposes potential civil and criminal liability for violations of Section 6103's disclosure bar. See 26 U.S.C. 7213(a) (2018 & Supp. II 2020); 26 U.S.C. 7431(a)(1). Accordingly, information produced to the government in response to a third-party summons covered by Section 7609(c)(2)(D) would be "return information" that is generally protected from disclosure in accordance with Section 6103. 26 U.S.C. 6103(a) (2018 & Supp. II 2020).

Petitioners also predict (Br. 35) that the government's interpretation will put banks "between a rock and a hard place" when deciding whether to comply with summonses. But the government's reading of Section 7609(c)(2)(D)(i) has long been the majority rule among courts nationwide, see *Atlantic Ave. D.B. Financial/Legal Support Grp.* v. *United States*, No. 08-81257, 2009

WL 2810449, at *2 (S.D. Fla. June 30, 2009) (collecting cases)—and yet petitioners identify no concrete practical problems in "the banking industry." Pet. Br. 35. Nor does anything in the statutory text or history suggest that Congress wished to prioritize bank convenience over federal tax collection.

2. Petitioners' fears (Br. 34) about the "potential for abuse" of third-party summonses are also meritless. In their primary example, the government had reason to believe that the person whose records were summonsed had "deposited sale proceeds into her bank accounts on behalf of [the delinquent taxpayer] and then wired the money to Hong Kong without paying taxes." *Ip*, 205 F.3d at 1171. That is hardly a "tenuous relationship to the delinquent taxpayer." Pet. Br. 34.

Petitioners also speculate (Br. 34-35) that the government has issued improper third-party summonses that have not been litigated. But "a presumption of regularity attaches to the actions of Government agencies," including the IRS. *United States Postal Serv.* v. *Gregory*, 534 U.S. 1, 10 (2001). Endorsing petitioners' unsupported conjecture (Br. 35) about the conduct of "single IRS agents" would contravene that presumption. And in fact, an IRS employee seeking to issue a third-party summons generally must obtain authorization from a supervisor.[5] That protocol was followed in this case. See Pet. App. 72a (showing signature of IRS supervisor); *id.* at 74a, 80a-81a, 87a-88a.

In any event, the person whose records are summonsed can in some circumstances obtain limited judicial review of whether the summons was issued pretextually, for a purpose other than collection. For in-

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[5] See IRS Delegation Order 25-1(8) (July 19, 2016), https://www.irs.gov/pub/fora/ig/spder/del_order_25-1_rev_2.pdf.

stance, if the Service were to issue a Section 7609(c)(2)(D) summons to a bank, and the bank were to notify the relevant customer, the customer could petition to quash the summons on the ground that the summons was not in fact "issued in aid of the collection" of tax liability, 26 U.S.C. 7609(c)(2)(D). See, *e.g.*, *Haber*, 823 F.3d at 751 (entertaining such a claim and "engag[ing] in a preliminary review of the IRS's contention that it issued the challenged summons in aid of collection"). The availability of such review helps guard against the remote possibility of a summons that invokes Section 7609(c)(2)(D) pretextually.

Contrary to petitioners' implication (Br. 36), nothing about the facts of this case "highlights the potential for abuse under the government's rule." Notably, in describing why the government's actions here were supposedly "manifestly unjust," *ibid.*, petitioners never take issue with the summons issued to Mrs. Polselli's bank. Nor could they: Mr. and Mrs. Polselli's extensive financial dealings gave the government sound reason to believe that Mr. Polselli "may have access to, and use of" Mrs. Polselli's accounts. Pet. App. 66a.

The government also had a strong justification for seeking the bank records of Mr. Polselli's long-time law firm. If the government could uncover how Mr. Polselli paid the firm, that information could lead to Mr. Polselli's assets. Pet. App. 68a. Petitioners suggest (Br. 36) that the bank records could have revealed information about clients other than Mr. Polselli. But as noted, the summons power is limited to seeking information that "may be relevant or material" to a particular IRS inquiry. 26 U.S.C. 7602(a)(2). Here, that would have excluded information about other clients.

Petitioners also ignore that the government first sought records from the law firm directly. Pet. App. 67a-68a. The government issued summonses to the firm's banks only because the firm had rebuffed the earlier inquiry. *Id.* at 68a. In short, the government's conduct in this case reflects the reasonable exercise of its "appropriate * * * powers." *United States* v. *Clarke*, 573 U.S. 248, 254 (2014) (citation omitted).

F. If The Court Adopts Petitioners' Legal-Interest Limitation, It Should Vacate And Remand For Further Proceedings

If the Court were to adopt petitioners' legal-interest limitation, it should vacate the judgment below and remand for further proceedings so that the government can establish that the summonses here satisfy that limitation.

In the district court, the government's motion to dismiss raised the alternative argument that it could satisfy the legal-interest test if the court adopted it. D. Ct. Doc. 6, at 14-16 (June 28, 2019). The government explained that Mr. and Mrs. Polselli's extensive financial dealings suggest that Mr. Polselli had a sufficient legal interest in Mrs. Polselli's bank records. *Id.* at 15; see D. Ct. Doc. 9-2. And the government explained that the petitioner law firm "clearly ha[s] an agency relationship with Mr. Polselli," D. Ct. Doc. 6, at 16; see Pet. App. 67a, a factor that the Ninth Circuit had considered relevant to applying the legal-interest limitation, see *Viewtech*, 653 F.3d at 1106.

In the court of appeals, the government maintained that if the court were to adopt the legal-interest limitation, "then the case should be remanded so that the District Court can make factual findings" about whether that limitation is satisfied. Gov't C.A. Br. 38. To the

extent this Court agrees with petitioners' interpretation of Section 7609(c)(2)(D)(i), remand would be similarly appropriate here. See, *e.g.*, *Collins* v. *Yellen*, 141 S. Ct. 1761, 1789 (2021) (remanding for factual issues to "be resolved in the first instance by the lower courts").

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

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APPENDIX

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1. 26 U.S.C. 7602 provides:

Examination of books and witnesses

(a) Authority to summon, etc.

For the purpose of ascertaining the correctness of any return, making a return where none has been made, determining the liability of any person for any internal revenue tax or the liability at law or in equity of any transferee or fiduciary of any person in respect of any internal revenue tax, or collecting any such liability, the Secretary is authorized—

(1) To examine any books, papers, records, or other data which may be relevant or material to such inquiry;

(2) To summon the person liable for tax or required to perform the act, or any officer or employee of such person, or any person having possession, custody, or care of books of account containing entries relating to the business of the person liable for tax or required to perform the act, or any other person the Secretary may deem proper, to appear before the Secretary at a time and place named in the summons and to produce such books, papers, records, or other data, and to give such testimony, under oath, as may be relevant or material to such inquiry; and

(3) To take such testimony of the person concerned, under oath, as may be relevant or material to such inquiry.

(b) Purpose may include inquiry into offense

The purposes for which the Secretary may take any action described in paragraph (1), (2), or (3) of subsection (a) include the purpose of inquiring into any offense connected with the administration or enforcement of the internal revenue laws.

(c) Notice of contact of third parties

(1) General notice

An officer or employee of the Internal Revenue Service may not contact any person other than the taxpayer with respect to the determination or collection of the tax liability of such taxpayer unless such contact occurs during a period (not greater than 1 year) which is specified in a notice which—

(A) informs the taxpayer that contacts with persons other than the taxpayer are intended to be made during such period, and

(B) except as otherwise provided by the Secretary, is provided to the taxpayer not later than 45 days before the beginning of such period.

Nothing in the preceding sentence shall prevent the issuance of notices to the same taxpayer with respect to the same tax liability with periods specified therein that, in the aggregate, exceed 1 year. A notice shall not be issued under this paragraph unless there is an intent at the time such notice is issued to contact persons other than the taxpayer during the period specified in such notice. The preceding sentence shall not prevent the issuance of a notice if the requirement of such sentence is met on the basis of the assumption that

the information sought to be obtained by such contact will not be obtained by other means before such contact.

(2) Notice of specific contacts

The Secretary shall periodically provide to a taxpayer a record of persons contacted during such period by the Secretary with respect to the determination or collection of the tax liability of such taxpayer. Such record shall also be provided upon request of the taxpayer.

(3) Exceptions

This subsection shall not apply—

(A) to any contact which the taxpayer has authorized;

(B) if the Secretary determines for good cause shown that such notice would jeopardize collection of any tax or such notice may involve reprisal against any person; or

(C) with respect to any pending criminal investigation.

(d) No administrative summons when there is Justice Department referral

(1) Limitation of authority

No summons may be issued under this title, and the Secretary may not begin any action under section 7604 to enforce any summons, with respect to any person if a Justice Department referral is in effect with respect to such person.

(2) Justice Department referral in effect

For purposes of this subsection—

(A) In general

A Justice Department referral is in effect with respect to any person if—

(i) the Secretary has recommended to the Attorney General a grand jury investigation of, or the criminal prosecution of, such person for any offense connected with the administration or enforcement of the internal revenue laws, or

(ii) any request is made under section 6103(h)(3)(B) for the disclosure of any return or return information (within the meaning of section 6103(b)) relating to such person.

(B) Termination

A Justice Department referral shall cease to be in effect with respect to a person when—

(i) the Attorney General notifies the Secretary, in writing, that—

(I) he will not prosecute such person for any offense connected with the administration or enforcement of the internal revenue laws,

(II) he will not authorize a grand jury investigation of such person with respect to such an offense, or

(III) he will discontinue such a grand jury investigation,

(ii) a final disposition has been made of any criminal proceeding pertaining to the enforcement of the internal revenue laws which was instituted by the Attorney General against such person, or

(iii) the Attorney General notifies the Secretary, in writing, that he will not prosecute such person for any offense connected with the administration or enforcement of the internal revenue laws relating to the request described in subparagraph (A)(ii).

(3) Taxable years, etc., treated separately

For purposes of this subsection, each taxable period (or, if there is no taxable period, each taxable event) and each tax imposed by a separate chapter of this title shall be treated separately.

(e) Limitation on examination on unreported income

The Secretary shall not use financial status or economic reality examination techniques to determine the existence of unreported income of any taxpayer unless the Secretary has a reasonable indication that there is a likelihood of such unreported income.

(f) Limitation on access of persons other than Internal Revenue Service officers and employees

The Secretary shall not, under the authority of section 6103(n), provide any books, papers, records, or other data obtained pursuant to this section to any person authorized under section 6103(n), except when such person requires such information for the sole purpose of providing expert evaluation and assistance to the In-

ternal Revenue Service. No person other than an officer or employee of the Internal Revenue Service or the Office of Chief Counsel may, on behalf of the Secretary, question a witness under oath whose testimony was obtained pursuant to this section.

2. 26 U.S.C. 7609 provides:

Special procedures for third-party summonses

(a) Notice

(1) In general

If any summons to which this section applies requires the giving of testimony on or relating to, the production of any portion of records made or kept on or relating to, or the production of any computer software source code (as defined in 7612(d)(2)) with respect to, any person (other than the person summoned) who is identified in the summons, then notice of the summons shall be given to any person so identified within 3 days of the day on which such service is made, but no later than the 23rd day before the day fixed in the summons as the day upon which such records are to be examined. Such notice shall be accompanied by a copy of the summons which has been served and shall contain an explanation of the right under subsection (b)(2) to bring a proceeding to quash the summons.

(2) Sufficiency of notice

Such notice shall be sufficient if, on or before such third day, such notice is served in the manner provided in section 7603 (relating to service of summons)

upon the person entitled to notice, or is mailed by certified or registered mail to the last known address of such person, or, in the absence of a last known address, is left with the person summoned. If such notice is mailed, it shall be sufficient if mailed to the last known address of the person entitled to notice or, in the case of notice to the Secretary under section 6903 of the existence of a fiduciary relationship, to the last known address of the fiduciary of such person, even if such person or fiduciary is then deceased, under a legal disability, or no longer in existence.

(3) Nature of summons

Any summons to which this subsection applies (and any summons in aid of collection described in subsection (c)(2)(D)) shall identify the taxpayer to whom the summons relates or the other person to whom the records pertain and shall provide such other information as will enable the person summoned to locate the records required under the summons.

(b) Right to intervene; right to proceeding to quash

(1) Intervention

Notwithstanding any other law or rule of law, any person who is entitled to notice of a summons under subsection (a) shall have the right to intervene in any proceeding with respect to the enforcement of such summons under section 7604.

(2) Proceeding to quash

(A) In general

Notwithstanding any other law or rule of law, any person who is entitled to notice of a summons under subsection (a) shall have the right to begin a proceeding to quash such summons not later than the 20th day after the day such notice is given in the manner provided in subsection (a)(2). In any such proceeding, the Secretary may seek to compel compliance with the summons.

(B) Requirement of notice to person summoned and to Secretary

If any person begins a proceeding under subparagraph (A) with respect to any summons, not later than the close of the 20-day period referred to in subparagraph (A) such person shall mail by registered or certified mail a copy of the petition to the person summoned and to such office as the Secretary may direct in the notice referred to in subsection (a)(1).

(C) Intervention; etc.

Notwithstanding any other law or rule of law, the person summoned shall have the right to intervene in any proceeding under subparagraph (A). Such person shall be bound by the decision in such proceeding (whether or not the person intervenes in such proceeding).

(c) Summons to which section applies

(1) In general

Except as provided in paragraph (2), this section shall apply to any summons issued under paragraph (2) of section 7602(a) or under section 6420(e)(2), 6421(g)(2), 6427(j)(2), or 7612.

(2) Exceptions

This section shall not apply to any summons—

(A) served on the person with respect to whose liability the summons is issued, or any officer or employee of such person;

(B) issued to determine whether or not records of the business transactions or affairs of an identified person have been made or kept;

(C) issued solely to determine the identity of any person having a numbered account (or similar arrangement) with a bank or other institution described in section 7603(b)(2)(A);

(D) issued in aid of the collection of—

(i) an assessment made or judgment rendered against the person with respect to whose liability the summons is issued; or

(ii) the liability at law or in equity of any transferee or fiduciary of any person referred to in clause (i); or

(E)(i) issued by a criminal investigator of the Internal Revenue Service in connection with the

investigation of an offense connected with the administration or enforcement of the internal revenue laws; and

(ii) served on any person who is not a third-party recordkeeper (as defined in section 7603(b)).

(3) John Doe and certain other summonses

Subsection (a) shall not apply to any summons described in subsection (f) or (g).

(4) Records

For purposes of this section, the term "records" includes books, papers, and other data.

(d) Restriction on examination of records

No examination of any records required to be produced under a summons as to which notice is required under subsection (a) may be made—

(1) before the close of the 23rd day after the day notice with respect to the summons is given in the manner provided in subsection (a)(2), or

(2) where a proceeding under subsection (b)(2)(A) was begun within the 20-day period referred to in such subsection and the requirements of subsection (b)(2)(B) have been met, except in accordance with an order of the court having jurisdiction of such proceeding or with the consent of the person beginning the proceeding to quash.

(e) Suspension of statute of limitations

(1) Subsection (b) action

If any person takes any action as provided in subsection (b) and such person is the person with respect to whose liability the summons is issued (or is the agent, nominee, or other person acting under the direction or control of such person), then the running of any period of limitations under section 6501 (relating to the assessment and collection of tax) or under section 6531 (relating to criminal prosecutions) with respect to such person shall be suspended for the period during which a proceeding, and appeals therein, with respect to the enforcement of such summons is pending.

(2) Suspension after 6 months of service of summons

In the absence of the resolution of the summoned party's response to the summons, the running of any period of limitations under section 6501 or under section 6531 with respect to any person with respect to whose liability the summons is issued (other than a person taking action as provided in subsection (b)) shall be suspended for the period—

(A) beginning on the date which is 6 months after the service of such summons, and

(B) ending with the final resolution of such response.

(f) Additional requirement in the case of a John Doe summons

Any summons described in subsection (c)(1) which does not identify the person with respect to whose liability the summons is issued may be served only after a court proceeding in which the Secretary establishes that—

(1) the summons relates to the investigation of a particular person or ascertainable group or class of persons,

(2) there is a reasonable basis for believing that such person or group or class of persons may fail or may have failed to comply with any provision of any internal revenue law, and

(3) the information sought to be obtained from the examination of the records or testimony (and the identity of the person or persons with respect to whose liability the summons is issued) is not readily available from other sources.

The Secretary shall not issue any summons described in the preceding sentence unless the information sought to be obtained is narrowly tailored to information that pertains to the failure (or potential failure) of the person or group or class of persons referred to in paragraph (2) to comply with one or more provisions of the internal revenue law which have been identified for purposes of such paragraph.

(g) Special exception for certain summonses

A summons is described in this subsection if, upon petition by the Secretary, the court determines, on the basis of the facts and circumstances alleged, that there

is reasonable cause to believe the giving of notice may lead to attempts to conceal, destroy, or alter records relevant to the examination, to prevent the communication of information from other persons through intimidation, bribery, or collusion, or to flee to avoid prosecution, testifying, or production of records.

(h) Jurisdiction of district court; etc.

(1) Jurisdiction

The United States district court for the district within which the person to be summoned resides or is found shall have jurisdiction to hear and determine any proceeding brought under subsection (b)(2), (f), or (g). An order denying the petition shall be deemed a final order which may be appealed.

(2) Special rule for proceedings under subsections (f) and (g)

The determinations required to be made under subsections (f) and (g) shall be made ex parte and shall be made solely on the petition and supporting affidavits.

(i) Duty of summoned party

(1) Recordkeeper must assemble records and be prepared to produce records

On receipt of a summons to which this section applies for the production of records, the summoned party shall proceed to assemble the records requested, or such portion thereof as the Secretary may prescribe, and shall be prepared to produce the records pursuant to the summons on the day on which the records are to be examined.

(2) Secretary may give summoned party certificate

The Secretary may issue a certificate to the summoned party that the period prescribed for beginning a proceeding to quash a summons has expired and that no such proceeding began within such period, or that the taxpayer consents to the examination.

(3) Protection for summoned party who discloses

Any summoned party, or agent or employee thereof, making a disclosure of records or testimony pursuant to this section in good faith reliance on the certificate of the Secretary or an order of a court requiring production of records or the giving of such testimony shall not be liable to any customer or other person for such disclosure.

(4) Notice of suspension of statute of limitations in the case of a John Doe summons

In the case of a summons described in subsection (f) with respect to which any period of limitations has been suspended under subsection (e)(2), the summoned party shall provide notice of such suspension to any person described in subsection (f).

(j) Use of summons not required

Nothing in this section shall be construed to limit the Secretary's ability to obtain information, other than by summons, through formal or informal procedures authorized by sections 7601 and 7602.

3. 26 U.S.C. 7610 provides:

Fees and costs for witnesses

(a) In general

The Secretary shall by regulations establish the rates and conditions under which payment may be made of—

(1) fees and mileage to persons who are summoned to appear before the Secretary, and

(2) reimbursement for such costs that are reasonably necessary which have been directly incurred in searching for, reproducing, or transporting books, papers, records, or other data required to be produced by summons.

(b) Exceptions

No payment may be made under paragraph (2) of subsection (a) if—

(1) the person with respect to whose liability the summons is issued has a proprietary interest in the books, papers, records or other data required to be produced, or

(2) the person summoned is the person with respect to whose liability the summons is issued or an officer, employee, agent, accountant, or attorney of such person who, at the time the summons is served, is acting as such.

(c) Summons to which section applies

This section applies with respect to any summons authorized under section 6420(e)(2), 6421(g)(2), 6427(j)(2), or 7602.