Nos. 23-436 and 23-571

In the Supreme Court of the United States

VIKKI E. PAULSON, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA, ET AL.

MADELEINE PICKENS, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITIONS FOR WRITS OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

The Internal Revenue Code imposes personal liability for unpaid estate taxes on a person described therein "who receives, or has on the date of the decedent's death, property included in the gross estate" under certain Code provisions. 26 U.S.C. 6324(a)(2). The question presented is whether the phrase "on the date of the decedent's death" modifies only the immediately preceding word "has" (as the court of appeals held) or also the term "receives" (as petitioners contend).

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-78a) is reported at 68 F.4th 528.[1] The order of the district court dismissing the government's claim under 26 U.S.C. 6324(a)(2) against petitioners Paulson and Christensen (Pet. App. 95a-128a) is reported at 204 F. Supp. 3d 1102. The order of the district court granting

[1] References to "Pet. App." are to the appendix filed in *Paulson*, No. 23-436.

petitioner Pickens's motion for summary judgment on the government's Section 6324(a)(2) claim against her is reported at 331 F. Supp. 3d 1066.

JURISDICTION

The judgment of the court of appeals was entered on May 17, 2023. Petitions for rehearing were denied on July 25, 2023 (Pet. App. 129a-131a).

The petition for a writ of certiorari in *Paulson* was filed on October 23, 2023. On October 10, 2023, Justice Kagan extended the time within which to file a petition for a writ of certiorari in *Pickens* to and including November 22, 2023, and the petition was filed on that date.

The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. The Internal Revenue Code of 1986, 26 U.S.C. 1 *et seq.* (Code), imposes a tax on the transfer of a decedent's taxable estate, defined as the decedent's gross estate less allowable deductions for items such as certain debts, administrative expenses, and bequests. 26 U.S.C. 2001, 2051; see 26 U.S.C. 2053-2058. When a will is administered by an executor in the probate process, the executor is responsible for paying the estate tax. 26 U.S.C. 2002, 2203. An executor who distributes the estate's assets before satisfying the estate's federal tax liability is personally liable for any resulting shortfall. 31 U.S.C. 3713(b); see 26 C.F.R. 20.2002-1. Heirs may be liable in certain circumstances, as well. See 26 U.S.C. 6901(a)(1)(A)(ii).

A decedent's gross estate may also include assets that pass outside of the probate process (and therefore outside of the executor's control). As relevant here, assets held in a revocable trust at the time of the grantor's death are included in the gross estate, 26 U.S.C.

2038(a), even though they are not part of the probate estate. To guard against the risk of non-payment of estate tax attributable to non-probate assets, the Code imposes personal liability for unpaid estate taxes on:

> the spouse, transferee, trustee * * * , surviving tenant, person in possession of the property by reason of the exercise, nonexercise, or release of a power of appointment, or beneficiary, who receives, or has on the date of the decedent's death, property included in the gross estate under sections 2034 to 2042, inclusive, to the extent of the value, at the time of the decedent's death, of such property.

26 U.S.C. 6324(a)(2).

2. Allen Paulson died testate on July 19, 2000, leaving a gross estate for federal estate tax purposes of over $193 million. Pet. App. 7a, 81a. He was survived by his wife Madeleine Pickens, three sons—Richard Paulson, James Paulson, and John Michael Paulson (Michael)—and several grandchildren, including Crystal Christensen. *Id*. at 7a.[2] Richard has since died, too; Vikki Paulson is Richard's widow. *Ibid.*

All of Allen's valuable assets were held by the Allen E. Paulson Living Trust, a revocable trust created by Allen in 1986. Pet. App. 7a-8a, 80a-81a. Upon Allen's death, Michael (along with another individual not pertinent here) was appointed co-executor of the estate (the Estate). *Id.* at 82a. He also became co-trustee of the Living Trust. *Ibid.*

After receiving an extension of time, the Estate filed its federal estate tax return in October 2001. Pet. App. 82a. The return listed a net taxable estate of $9,234,172,

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[2] Because many of the relevant individuals share the surname Paulson, this brief refers to those individuals by their first names.

and a resulting estate tax of $4,459,051. *Id.* at 99a. The return stated that "[a]ll assets reported on this return are assets of" the Living Trust, other than certain shares of stock valued at $0. *Id.* at 84a (citation omitted). The Estate paid $706,296 in taxes with the return and elected to pay the remaining tax and interest over 15 years. *Id.* at 8a & n.3; see 26 U.S.C. 6166(a) and (f). Following an audit, in January 2006, the IRS assessed an additional $6,669,477 of estate tax, which was payable under the Section 6166 installment arrangement. Pet. App. 8a-9a.

Meanwhile, disputes arose between Michael (still acting as co-trustee) and the beneficiaries of the Living Trust, culminating in a settlement agreement in early 2003. Pet. App. 100a. As a result of that agreement, Ms. Pickens received assets worth at least $19 million—including two residences, an ownership interest in a country club, and $750,000—from the Living Trust. *Id.* at 9a, 36a n.24, 100a. The settlement agreement also named Michael as the sole trustee of the Living Trust. D. Ct. Doc. 111-23, at 29 (Feb. 20, 2018).

Michael continued to serve as sole trustee until March 2009, when the California probate court removed him and appointed Vikki and James as co-trustees in his place. Pet. App. 86a. At that point, the Estate had not defaulted on its tax installment payments (although it had obtained a one-year extension to pay the April 2008 annual installment), and there were still sufficient assets in the Living Trust to satisfy its tax obligations. *Ibid.* But in May 2010, the IRS terminated the Estate's Section 6166 election due to missed installment payments. *Ibid.*; see 26 U.S.C. 6166(g)(3).

The probate court subsequently removed James as co-trustee of the Living Trust and appointed Ms. Chris-

tenson in his place. Pet. App. 101a. At that time, the Living Trust still held assets worth approximately $8.8 million. *Ibid.* After the Tax Court sustained the termination of the Estate's Section 6166 election in May 2011, *ibid.*, the United States promptly recorded notices of federal tax liens against the Estate in the property records of San Diego and Los Angeles counties, *id.* at 101a-102a.

3. In September 2015, the United States commenced this action against Ms. Pickens, Michael, James, Vikki, and Ms. Christensen in their individual and representative capacities. Pet. App. 11a. The government sought a judgment against the Estate and the Living Trust for the outstanding estate tax liability, which, with interest and penalties, then exceeded $10 million. *Id.* at 11a-12a; see 26 U.S.C. 2002; Cal. Prob. Code § 19001(a) (West 2016) (subjecting the assets of a revocable trust to claims against the grantor's probate estate). The government also sought judgments against the defendants in their personal capacities under Section 6324(a)(2) for the lesser of the unpaid estate tax liability or the value of the Living Trust property they had received. Pet. App. 12a; C.A. E.R. 103-109.

a. The district court dismissed the government's Section 6324(a)(2) claims against Vikki and Ms. Christensen. Pet. App. 119a-120a. Construing the statutory language "who receives, or has on the date of the decedent's death, property included in the gross estate," 26 U.S.C. 6324(a)(2), the court held that the limiting phrase "on the date of the decedent's death" modifies both "has" and "receives." Pet. App. 119a-120a. And it found that the government had failed to allege that either Vikki or Ms. Christensen was "in possession of Estate property or received such property immediately af-

ter [Allen's] death." *Id*. at 120a. The court later relied on that same statutory interpretation to reject the government's Section 6324(a)(2) claims against Ms. Pickens and James. 331 F. Supp. 3d at 1084-1085.[3]

b. The court of appeals reversed. Pet. App. 1a-78a. It agreed with the government that Section 6324(a)(2) imposes personal liability on those listed in the statute who (1) receive estate property on or after the date of the decedent's death, or (2) have estate property on the date of death. *Id*. at 15a-16a.

The court began with the statutory text, which imposes liability on a covered person "*who receives, or has on the date of the decedent's death*, property included in the gross estate" under certain Code provisions "to the extent of the value, at the time of decedent's death, of such property." Pet. App. 14a (quoting and adding emphasis to 26 U.S.C. 6324(a)(2)). The court framed the interpretive question as "whether the phrase 'on the date of the decedent's death' modifies only the immediately preceding verb 'has,' or if it also modifies the more remote verb, 'receives.'" *Id.* at 15a.

The court explained that the two verbs "are in separate independent clauses, set off from each other by a comma and the conjunction 'or,'" and that "the first verb 'receives' is set off from the limiting phrase ('on the date of the decedent's death') by a comma." Pet. App. 17a (citation omitted). The court observed that "[a] term or phrase 'set aside by commas' and 'separated . . . by a conjunctive word' from a limiting clause 'stands independent of the language that follows.'" *Ibid.* (quoting

[3] The district court separately ruled for Michael on the ground that any personal liability had been discharged under 26 U.S.C. 2204(b). Pet. App. 87a-88a, 93a. The government did not appeal that ruling. *Id.* at 6a n.1.

United States v. *Ron Pair Enters., Inc.*, 489 U.S. 235, 241 (1989)) (brackets omitted). The court therefore found that "the structure of § 6324(a)(2) supports the conclusion" that the limiting phrase, "'on the date of the decedent's death,'" "does not modify the remote verb 'receives.'" *Ibid.* (citation omitted). As additional support for that construction, the court invoked "'the rule of the last antecedent,'" which "provides that 'a limiting clause or phrase ... should ordinarily be read as modifying only the noun or phrase that it immediately follows.'" *Id.* at 17a-18a (quoting *Lockhart* v. *United States*, 577 U.S. 347, 351 (2016)).

The court then turned to statutory context. Pet. App. 21a. It noted that Section 6324(a)(2) applies to "property included in the gross estate under sections 2034 to 2042, inclusive." *Id.* at 22a (citation omitted). Several of the cross-referenced provisions encompass property that is *receivable* on the date of death, but will not actually be received until later. The court explained that petitioners' interpretation would deprive those cross-references of meaning. *Id.* at 22a-23a.

The court of appeals rejected petitioners' invocation of the absurdity canon as a ground for disregarding the plain language and structure. Pet. App. 27a-35a. Petitioners reasoned that, under the government's interpretation, covered persons "could be personally liable for estate taxes that exceed the value of the property they received," since Section 6324(a)(2) imposes liability to the extent of the value of such property at the time of the decedent's death and the property may have depreciated in the meantime. *Id.* at 27a-28a. But the court concluded that this possibility "does not meet the high bar for showing absurdity," and that "Congress rationally could have concluded that such risk is * * * out-

weighed by the benefit of ensuring the collection of estate taxes." *Id.* at 29a, 34a-35a.

The court of appeals further found that petitioners' fears about the effects of such changes in value are unwarranted. Pet. App. 35a. After spelling out the multiple "events, some of which are remote and unlikely," that would have to occur "before those who receive estate property could be subjected to tax liability that exceeds the value of the property they received," the court noted "the government's avowals in its briefing and at oral argument that estate tax liability cannot exceed the value of the property received." *Id.* at 36a, 38a. The court posited that "[t]hese representations, coupled with the doctrine of judicial estoppel, provide additional safeguards against the hypothetically unfair application of personal liability under § 6324(a)(2)." *Id.* at 39a.

The court of appeals also rejected petitioners' reliance on the supposed canon that "ambiguities in tax statutes must be resolved in favor of the taxpayer and against the government." Pet. App. 44a. Although the court expressed skepticism about petitioners' framing of that canon, it ultimately saw no need to "decide the modern validity of the rule of lenity as applied to all tax provisions because that rule * * * 'applies only when, after consulting traditional canons of statutory construction, we are left with an ambiguous statute.'" *Id.* at 45a-46a (quoting *Shular* v. *United States*, 140 S. Ct. 779, 787 (2020)). And in this case, the court found no ambiguity to which the canon might apply. *Id.* at 46a.

Finally, the court of appeals noted that petitioners "grossly overstate the weight of the authority"—comprising "one decades-old tax court case * * * and one unpublished district court decision relying on" that decision—"that supposedly supports their" interpreta-

tion. Pet. App. 46a-47a (discussing *Englert* v. *Commissioner*, 32 T.C. 1008 (1959), and *United States* v. *Johnson*, No. 11-cv-87, 2013 WL 3924087 (D. Utah July 29, 2013)). The court declined to follow those decisions, criticizing both opinions for defaulting to a taxpayer rule of lenity "without any attempt to construe the statutes by applying the traditional tools." *Id.* at 47a.

Judge Ikuta dissented. Pet. App. 61a-78a. In her view, the language of Section 6324(a)(2) is "ambiguous," and the majority's reading "is not logical because it would allow a person who receives estate property years after the estate is settled to be held personally liable for estate taxes that potentially exceed the current value of the property received." *Id.* at 61a. And she criticized the majority's invocation of the doctrine of judicial estoppel, which she asserted "is not applicable" to the government in these circumstances. *Id.* at 75a.

4. Ms. Pickens, Vikki, and Ms. Christensen sought rehearing en banc. The court of appeals denied rehearing after no judge requested a vote. Pet. App. 131a.

ARGUMENT

The decision of the court of appeals is correct and does not conflict with any decision of this Court or another court of appeals. In any event, this case would be a poor vehicle for resolving the question presented. Further review is not warranted.

1. Section 6324(a)(2) of the Code imposes personal liability on a covered person "who receives, or has on the date of the decedent's death, property included in the gross estate under sections 2034 to 2042, inclusive." 26 U.S.C. 6324(a)(2). The court of appeals held that the limiting phrase "on the date of the decedent's death" modifies only the verb immediately preceding it ("has"),

and not the more remote verb ("receives"). On that reading, Section 6324(a)(2) imposes personal liability for unpaid estate taxes on a trustee or beneficiary who receives estate property even after the decedent's death, as petitioners did here. The court's interpretation is correct.

a. "Statutory construction must begin with the language employed by Congress and the assumption that the ordinary meaning of that language accurately expresses the legislative purpose." *Engine Mfrs. Ass'n* v. *South Coast Air Quality Mgmt. Dist.*, 541 U.S. 246, 252 (2004) (citation omitted).

Here, the grammar of Section 6324(a)(2) unambiguously answers the question presented in the government's favor. The relevant language includes two separate clauses, which function as separate list items. First, it refers to persons who "receive[ ]" estate property. 26 U.S.C. 6324(a)(2). Second, it refers to persons who "ha[ve]" estate property "on the date of the decedent's death." *Ibid.* The two clauses are set off by commas. Indeed, because the statute includes only two list items—rather than three or more, which would necessitate the use of commas—the *sole* purpose of the comma following "receives" is to segregate it from the limiting phrase applicable to "has." *Ibid.*; see, *e.g.*, *United States* v. *Ron Pair Enters., Inc.*, 489 U.S. 235, 241 (1989) (relying on comma placement to conclude that the relevant phrase "stands independent of the language that follows").

In short, "[t]he language and punctuation Congress used cannot be read in any other way." *Ron Pair*, 489 U.S. at 242. "Had Congress intended to limit [the provision's] reach as petitioner[s] contend[ ], it easily could have written" the provision a different way, *Ali* v. *Fed-*

eral Bureau of Prisons, 552 U.S. 214, 227 (2008), such as by imposing liability on a covered person "who, on the date of the decedent's death, receives or has" estate property. But it chose not to do so, and this Court should "give effect to the text Congress enacted." *Id.* at 228.

Because the provision is unambiguous on its face, no resort to interpretive canons is necessary to discern its meaning. But the relevant canon in this case supports the plain-text meaning. When faced with statutes that "include a list of terms or phrases followed by a limiting clause," the Court "typically applie[s] * * * the 'rule of the last antecedent,'" under which the "'limiting clause or phrase . . . should ordinarily be read as modifying only the noun or phrase that it immediately follows.'" *Lockhart* v. *United States*, 577 U.S. 347, 351 (2016) (quoting *Barnhart* v. *Thomas*, 540 U.S. 20, 26 (2003)). Here, that canon indicates that the limiting phrase "on the date of the decedent's death" modifies only the word it immediately follows, "has," but not the earlier list item, "receives." 26 U.S.C. 6324(a)(2); see *Lockhart*, 577 U.S. at 351-352.

b. The statutory context confirms the provision's plain meaning. See *Ali*, 552 U.S. at 227-228 (enforcing what the statute "literally says" because "[n]othing in the statutory context requires a narrowing construction").

Section 6324(a)(2) applies to "property included in the gross estate under sections 2034 to 2042, inclusive." 26 U.S.C. 6324(a)(2). Several of the cross-referenced provisions bring within the estate assets that are merely "*receivable*" on the date of a decedent's death, but that generally will not be *received* until later. Pet. App. 22a; see, *e.g.*, 26 U.S.C. 2039(a) (annuities and

other payments "receivable"); 26 U.S.C. 2042(1) and (2) (life insurance proceeds "[t]o the extent of the amount receivable"); see also 26 U.S.C. 2041(a)(2) (property over which the decedent has a power of appointment at the time of death, even when "the exercise of the power is subject to a precedent giving of notice" or "takes effect only on the expiration of a stated period after its exercise"). Petitioners' interpretation would drain those cross-references of meaning when the property in question is merely receivable, and not already received, on the date of death. See Pet. App. 22a-27a.

Moreover, if petitioners were correct that Section 6324(a)(2) is limited to property that has been received by or on the date of death, then the verb "receives" would be redundant of the statute's separate reference to property that the beneficiary "*has* on the date of the decedent's death," 26 U.S.C. 6324(a)(2) (emphasis added). Any property that is actually received on that date—see Pet. App. 23a-24a (discussing cross-references to types of property that automatically transfer upon death)—will also be property that the beneficiary can be said to have or possess on that date. By requiring receipt to occur on that date, petitioners' reading would make the term "receives" redundant and therefore run afoul of the presumption that Congress "used two terms because it intended each term to have a particular, nonsuperfluous meaning." *Bailey* v. *United States*, 516 U.S. 137, 146 (1995).

2. Petitioners contend that Section 6342(a)(2) imposes liability only on those who receive estate property on the date of the decedent's death (as well as those who have such property on that date). They do not dispute the textual analysis above. See, *e.g.*, *Paulson* Pet. 11-12 (criticizing court of appeals for ignoring "legislative his-

tory" and the "'illogical results'" of its interpretation) (citation omitted); *Pickens* Pet. 17-22 (invoking congressional purpose, supposed ratification, and purportedly illogical results). And the atextual arguments they do offer are unpersuasive.

a. Petitioners contend that the court of appeals' holding conflicts with the interpretation of "every court which has interpreted this statute * * * for more than sixty years." *Paulson* Pet. 6; see *Pickens* Pet. 17. But as the court of appeals observed, petitioners "grossly overstate the weight of the authority that supposedly supports their sweeping statements." Pet. App. 46a. Petitioners cite only a single published opinion—a "decades-old" Tax Court opinion, *ibid.*—purportedly addressing the question presented. See *Englert* v. *Commissioner*, 32 T.C. 1008 (1959) (interpreting Section 6324(a)(2)'s predecessor).

The *Englert* court's principal holding was that the petitioner in that case did not qualify as one of the covered persons (transferee, beneficiary, etc.) listed in the statute. See 32 T.C. at 1015 ("We do not think petitioner comes within any of the six designations listed in section 827(b), as amended, as being personally liable for the unpaid tax."); *id.* at 1016 ("We hold that petitioner is not a 'transferee' as that term is used in section 827(b)."). On that score, *Englert*'s reasoning is no longer good law, as the court of appeals explained and petitioners do not challenge. Pet. App. 48a-49a, 60a (holding that petitioners "fall within the categories of persons listed in the statute"); see *id.* at 53a-56a (explaining relevant changes to the statutory text since *Englert*).

The court in *Englert* addressed the question presented here only in the course of rebutting a potential counterargument, acknowledging that "[i]t might be ar-

gued that since Congress used the words 'who receives * * * property' includible in the gross estate under the named subsections of section 811, [the taxpayer] falls within the section because she received property includible in the gross estate under section 811(d)." 32 T.C. at 1016. But instead of confronting that textual argument, the court speculated (without citation or support) that "Congress used the word 'receives' to take care of property received by persons solely because of decedent's death such as insurance proceeds or property which was not in the possession of one of the persons described in section 827(b), as amended, at the moment of the decedent's death, but who immediately received such property solely because of the decedent's death." *Ibid.* And the court noted that "[i]f there is any doubt as to the meaning of the statute in that respect, that doubt must be resolved in [the taxpayer's] favor." *Ibid.*

Petitioners offer little defense of that nakedly purposivist interpretation. Instead, they contend that, even if *Englert* was wrongly decided, Congress should be presumed to have accepted the Tax Court's interpretation when it amended Section 6324 in 1966 and reenacted the relevant language. *Paulson* Pet. 11-12; *Pickens* Pet. 20-21.

Any inference of congressional ratification in this case is weak. Congressional reenactment may imply acceptance of either this Court's prior interpretation of a statute, see *Ysleta Del Sur Pueblo* v. *Texas*, 596 U.S. 685, 700-701 (2022), or of a "judicial consensus so broad and unquestioned that [this Court] must presume Congress knew of and endorsed it," *BP p.l.c.* v. *Mayor & City Council*, 593 U.S. 230, 244 (2021) (quoting *Jama* v. *Immigration & Customs Enforcement*, 543 U.S. 335, 349 (2005)). But if a "smattering of lower court opin-

ions" is insufficient to justify an inference of ratification, *ibid.*, then so is a single opinion in which the relevant language was not even the court's principal holding and "the text and structure of the statute are to the contrary," *ibid.* (quoting *Jama*, 543 U.S. at 352).[4]

Petitioners' ratification argument also founders on this Court's observation that when "Congress has not comprehensively revised a statutory scheme but has made only isolated amendments," it "is impossible to assert with any degree of assurance that congressional failure to act represents affirmative congressional approval of a court's statutory interpretation." *AMG Cap. Mgmt., LLC* v. *Federal Trade Comm'n*, 593 U.S. 67, 81 (2021) (quoting *Alexander* v. *Sandoval*, 532 U.S. 275, 292 (2001)) (brackets omitted). Here, Congress's 1966 amendments to Section 6324 were directed to the statute's lien provisions. See Federal Tax Lien Act of 1966, Pub. L. No. 89-719, § 102, 80 Stat. 1132-1133; see also H.R. Rep. No. 1884, 89th Cong., 2d Sess. 12-13 (1966). The tangential nature of those amendments vis-à-vis the personal-liability provision of Section 6324(a)(2) undermines any inference that Congress focused on the question presented here.

Petitioners also contend that the Executive Branch previously endorsed the *Englert* interpretation, citing an IRS bulletin, *Englert* v. *Commissioner*, 32 T.C. 1008 (1959), acq. in result, 1960-2 C.B. 3, 1960 WL 62561

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[4] Petitioners suggest that *Higley* v. *Commissioner*, 69 F.2d 160 (8th Cir. 1934), was also part of the judicial backdrop when Congress amended Section 6324. *Paulson* Pet. 11; *Pickens* Pet. 17-19. But the provision at issue in *Higley*—Section 315(b) of the Revenue Act of 1926, ch. 27, 44 Stat. 9—did not contain the phrase "who receives, or has on the date of the decedent's death," 26 U.S.C. 6324(a)(2); see 69 F.2d at 162, so *Higley* adds nothing to petitioners' ratification argument.

(Dec. 31, 1960) (*Announcement*). See *Paulson* Pet. 7; *Pickens* Pet. 20. But the acquiescence decision that petitioners cite offers no reasoning, and it more likely pertained to *Englert*'s principal holding (concerning the persons covered by the predecessor statute) than to its secondary reasoning (concerning the language at issue in this case).

In any event, the acquiescence decision does not suggest that *Englert* was correctly decided. See *Announcement* (noting that acquiescence "does not necessarily mean acceptance and approval of any or all of the reasons assigned by the Court for its conclusions"). And this Court has made clear that the government's acquiescence in an erroneous decision will not bar it from later collecting a tax otherwise lawfully due. *Dixon* v. *United States*, 381 U.S. 68, 73 (1965); see *Quinn* v. *Commissioner*, 524 F.2d 617, 623 (7th Cir. 1975). Because the *Announcement* does not reflect an "administrative * * * interpretation of [the] statute" at all, *Pickens* Pet. 21 (citation omitted), it does not support petitioners' ratification argument.

b. The core of petitioners' position is their policy argument that the court of appeals' interpretation produces "illogical result[s]," Pet. App. 62a (Ikuta, J., dissenting), because a beneficiary who receives estate property well after the decedent's death could theoretically be held liable for an amount of estate tax that exceeds the value of property received in cases where the property has depreciated in value. See *Paulson* Pet. 12-13; *Pickens* Pet. 21-22. At the outset, this case would be a poor vehicle for addressing that possibility, as the government limited its claims to the value of the property that petitioners received (plus interest). See Pet. App. 38a; C.A. E.R. 104-109.

Even if the issue were presented in this case, petitioners offer no support for departing from "the clear statutory text" based on their "policy" preferences. *United States ex rel. Schutte* v. *SuperValu Inc.*, 598 U.S. 739, 758 (2023) (citation omitted).

Petitioners also fail to show that their concerns are more than speculative. Although the court of appeals had no occasion definitively to resolve the issue, it recognized "persuasive support" in gift-tax case law for the government's position that the statute caps a beneficiary's liability at the amount of property received. Pet. App. 39a n.27. And even assuming that the outcome petitioners posit is legally permissible, "[t]he hypotheticals [they] assert to support their arguments are speculative," and they fail to identify any actual instances "in which the government has attempted to impose personal liability for estate taxes that exceeded the value of the property received." *Id.* at 33a n.21, 42a. Various statutory mechanisms exist to prevent that outcome or ameliorate any potential unfairness associated with it. See, *e.g.*, 26 U.S.C. 2205 (providing for "reimbursement" from the estate or "just and equitable contribution" among beneficiaries); Pet. App. 34a; see also Boris I. Bittker & Lawrence Lokken, *Federal Taxation of Income, Estates and Gifts* ¶ 137.7.1 (Nov. 2023) (noting that contribution "is a matter for adjustment between the private parties, the equities of which do not affect the IRS in its choice of the persons to pursue"). Given the speculative nature of petitioners' concerns, Congress could easily have concluded that those concerns were outweighed by the need to collect lawfully owed taxes. Pet. App. 34a-35a.

Petitioners offer the related policy argument that the government's interpretation should be rejected be-

cause "Congress provided the IRS ample other authorities to collect estate taxes." *Pickens* Pet. 24; see, *e.g.*, *Paulson* Pet. 3. Petitioners overstate and oversimplify the availability of those alternative tools. See, *e.g.*, *Estate of Roski* v. *Commissioner*, 128 T.C. 113, 129-131 (2007) (setting aside IRS denial of Section 6166 election based on policy of requiring a bond or special lien). In any event, the existence of other collection tools—even tools that petitioners prefer—cannot displace Section 6324(a)(2)'s plain text. Cf. *United States* v. *Henco Holding Corp.*, 985 F.3d 1290, 1305 (11th Cir. 2021) (holding that a particular statutory procedure is not mandatory, but rather "is simply an additional tool for the government") (citing *Leighton* v. *United States*, 289 U.S. 506 (1933)).

c. Petitioners complain that the court of appeals "declined to apply the rule of taxpayer lenity." *Paulson* Pet. 13 (capitalization and emphasis omitted); see *Pickens* Pet. 25. But even on a broad understanding of that canon, it indicates only that "reasonable doubt about the meaning of a revenue statute is resolved in favor of those taxed." 3A Shambie Singer, *Sutherland Statutes and Statutory Construction* § 66:1, at 2 (8th ed. 2018) (cited at *Pickens* Pet. 25). Here, the text of Section 6324(a)(2) unambiguously forecloses petitioners' position. See pp. 10-11, *supra*. There is simply no role for the canon to play.

3. Petitioners allege that the decision below implicates three separate circuit conflicts. See *Paulson* Pet. 6-9; *Pickens* Pet. 17-20, 29-34. They are wrong as to all three.

a. Petitioners contend that the court of appeals' interpretation of Section 6324(a)(2) conflicts with the decisions of "the Tax Court and every federal court which

has considered the issue." *Paulson* Pet. 6 (capitalization altered; emphasis omitted); see *Pickens* Pet. 17-20. But as discussed, no court of appeals has reached a contrary conclusion. See pp. 13, 15 n.4, *supra*. And because Tax Court decisions are subject to review in the courts of appeals, see 26 U.S.C. 7482, a conflict with a decision of that court (like a decision of a district court) generally does not, in the absence of some other significant factor, suffice to justify this Court's review. See Stephen M. Shapiro et al., *Supreme Court Practice* 4-27 (11th ed. 2019) ("The Court tries to achieve uniformity in federal matters only among the various courts whose decisions are otherwise final in the absence of Supreme Court review.").

b. Petitioner Pickens next contends (Pet. 29) that the court of appeals' decision "entrenches" a "circuit split about whether a party can be judicially estopped from changing purely legal rather than factual positions." But the court of appeals did not decide that question; it did not apply judicial estoppel at all.

In responding to the argument that the government's interpretation could produce "absurd" results, the court of appeals first found that the alleged results were fully consistent with a rational taxing scheme and did not justify "reject[ing] the interpretation of [the] statute that is most consistent with its text, structure, punctuation, and other indicia of meaning." Pet. App. 35a. The court further noted that "defendants have not identified, and our research has not uncovered, any case in which the government has attempted to impose personal liability for estate taxes that exceeded the value of the property received." *Id.* at 42a. And in dicta, the court added that "[a]lthough the application of judicial estoppel is discretionary, it *could* be applied to bar the

government from later" seeking to impose such liability. *Id.* at 39a (emphasis added).

In short, the court of appeals had no occasion to apply judicial estoppel in this case, and it did not purport to do so. None of the parties briefed the issue. The court did not address the distinction between questions of fact and questions of law that petitioner Pickens now argues (Pet. 29-32) forms the basis of a circuit conflict. Any opinion from this Court on that question would be purely advisory.

c. Lastly, petitioner Pickens contends that the decision below departs from the decisions of other circuits "regarding the proper application of the revenue-raising canon." Pet. 32 (capitalization and emphasis omitted). The court of appeals in this case did express skepticism about application of the canon outside the context of tax penalties—a skepticism that finds some basis in this Court's precedents. See Pet. App. 45a-46a; compare *White* v. *United States*, 305 U.S. 281, 292 (1938) ("It is the function and duty of courts to resolve doubts. We know of no reason why that function should be abdicated in a tax case more than in any other."); *Bittner* v. *United States*, 598 U.S. 85, 101 (2023) (Gorsuch, J.) (applying rule of lenity to penalties) (cited at *Pickens* Pet. 25).

But the court of appeals did not ultimately rest its decision on that ground. See Pet. App. 45a (observing that "we need not decide the modern validity of the rule of lenity as applied to all tax provisions"). Instead, it held simply that the canon is inapplicable here because, "after reviewing the text of § 6324(a)(2), applying the canons of interpretation, and considering other indicia of its meaning, we are not 'left with an ambiguous statute.'" *Id.* at 46a (quoting *Shular* v. *United States*, 140

S. Ct. 779, 787 (2020)). Petitioners cite no court of appeals that would apply the canon to reach a different result in those circumstances.

4. Even if the question presented merited this Court's review, this case would be a poor vehicle for resolving it because it arises in an interlocutory posture, which "alone furnishe[s] sufficient ground for the denial" of the petitions. *Hamilton-Brown Shoe Co.* v. *Wolf Bros. & Co.*, 240 U.S. 251, 258 (1916) ("[E]xcept in extraordinary cases, the writ is not issued until final decree."); see *Brotherhood of Locomotive Firemen & Enginemen* v. *Bangor & Aroostook R.R.*, 389 U.S. 327, 328 (1967) (per curiam) (a case remanded to district court "is not yet ripe for review by this Court"); see also *Virginia Military Inst.* v. *United States*, 508 U.S. 946, 946 (1993) (opinion of Scalia, J., respecting the denial of the petition for writ of certiorari).

Here, the court of appeals "remand[ed] to the district court with instructions to enter judgment in favor of the government on these claims with any further proceedings necessary to determine the amount of each defendant's liability for the unpaid taxes." Pet. App. 61a. Adhering to the Court's normal practice of denying interlocutory review—and waiting for the district court to determine the precise amount of tax liability on remand—would be particularly wise in this case, where so much of the argument of petitioners and the dissent below hinges on the speculative notion that the government's interpretation may result in estate tax liability that exceeds the value of the property received. See pp. 16-17, *supra*. After the district court determines their tax burden, petitioners will then be free to reassert their current contention in a more complete factual context, along with any new arguments that arise on re-

mand, in new petitions for review by this Court. See *Major League Baseball Players Ass'n* v. *Garvey*, 532 U.S. 504, 508 n.1 (2001) (per curiam).

CONCLUSION

The petitions for writs of certiorari should be denied.

Respectfully submitted.

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