

## 21-1599 KARCHO POLSELLI V. INTERNAL REVENUE SERVICE

DECISION BELOW: 23 F.4th 616

LOWER COURT CASE NUMBER: 21-1010

### QUESTION PRESENTED:

The Internal Revenue Code generally requires the IRS, when it serves a summons on a third-party recordkeeper for records pertaining to a person "identified in the summons," to give that identified person notice of the summons. I.R.C. § 7609(a)(1). If the IRS issues a summons directing a bank to produce an accountholder's records, for example, it must generally notify that accountholder of the summons. Section 7609 then provides that "any person who is entitled to notice of a summons under subsection (a) shall have the right to begin a proceeding to quash" that summons in district court. *Id.* § 7609(b)(2); see *id.* § 7609(h)(1). In other words, only a person entitled to notice of a summons can seek judicial review of that summons.

There are a few exceptions to the notice requirement. As relevant here, the IRS need not provide notice of "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)." *Id.* § 7609(c)(2)(D).

The question presented is whether the § 7609(c)(2)(D)(i) exception applies only when the delinquent taxpayer owns or has a legal interest in the summonsed records (as the Ninth Circuit holds), or whether the exception applies to a summons for anyone's records whenever the IRS thinks that person's records might somehow help it collect a delinquent taxpayer's liability (as the Sixth Circuit, joining the Seventh Circuit, held below).

CERT. GRANTED 12/9/2022