No. 23-1361

In the Supreme Court of the United States

WILLIAM EDWARD POWELL, PETITIONER

v.

JANET L. YELLEN,
SECRETARY OF THE TREASURY, ET AL.

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

ELIZABETH B. PRELOGAR
Solicitor General
Counsel of Record
DAVID A. HUBBERT
Deputy Assistant Attorney General
JACOB EARL CHRISTENSEN
MATTHEW S. JOHNSHOY
Attorneys

Department of Justice
Washington, D.C. 20530-0001
SupremeCtBriefs@usdoj.gov
(202) 514-2217

QUESTION PRESENTED

Whether the Freedom of Information Act, 5 U.S.C. 552, provides an adequate remedy in a court for persons seeking the disclosure of tax records from a federal agency so as to preclude an independent cause of action under the Administrative Procedure Act, 5 U.S.C. 551 *et seq.*, 701 *et seq.*, to compel the production of tax records under 26 U.S.C. 6103.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-6a) is not published in the Federal Reporter but is available at 2023 WL 8947132. The opinion of the district court (Pet. App. 7a-12a) is not published in the Federal Supplement but is available at 2022 WL 2355419.

JURISDICTION

The judgment of the court of appeals was entered on December 28, 2023. A petition for rehearing was denied on February 29, 2024 (Pet. App. 14a-15a). On May 23, 2024, Chief Justice Roberts extended the time within which to file a petition for a writ of certiorari to and including June 28, 2024. The petition for a writ of certiorari was filed on June 27, 2024. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. This case involves an individual's ability to access agency records and implicates the interaction of three statutes: the Freedom of Information Act (FOIA), 5 U.S.C. 552, a provision of the Internal Revenue Code, 26 U.S.C. 6103, and the Administrative Procedure Act (APA), 5 U.S.C. 551 *et seq.*, 701 *et seq.*

a. Congress enacted FOIA in 1966 as an amendment to Section 3 of the APA. See FOIA, Pub. L. No. 89-487, 80 Stat. 250; *United States Dep't of Justice* v. *Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 754 (1989). Under FOIA, a federal agency must generally make agency records available to "any person" who has submitted "any request for [such] records." 5 U.S.C. 552(a)(3)(A).

FOIA's disclosure obligation, however, "does not apply to matters" identified in several exemptions. 5 U.S.C. 552(b). As relevant here, Exemption 3 provides that disclosure need not be made as to information that is "specifically exempted from disclosure by statute" if the statute affords the agency "no discretion" as to whether to withhold the information "from the public" and "establishes particular criteria for withholding" the information or "refers to particular types of matters to be withheld." 5 U.S.C. 552(b)(3)(A)(i) and (ii).

Through FOIA, Congress created a judicially enforceable public right to secure certain information from federal agencies, authorizing district courts "to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant." 5 U.S.C. 552(a)(4)(B). In such a case, a district court's review is "de novo" and "the burden is on the agency to sustain its action." *Ibid.*

b. Section 6103 of the Internal Revenue Code addresses the confidentiality of and disclosure conditions for tax returns and return information. Enacted as part of the Tax Reform Act of 1976, Pub. L. No. 94-455, § 1202(a), 90 Stat. 1667, Section 6103 "lays down a general rule that 'returns' and 'return information' as defined therein shall be confidential." *Church of Scientology* v. *IRS*, 484 U.S. 9, 10 (1987) (quoting 26 U.S.C. 6103). Section 6103 includes several narrowly drawn exceptions, defining specific circumstances in which the IRS may or must disclose tax records. 26 U.S.C. 6103(c)-(*o*). One such exception requires disclosure to certain "persons having material interest" in the records "upon written request." 26 U.S.C. 6103(e)(1). Section 6103 does not provide its own private right of action to compel disclosure of tax records.

c. The APA confers a general cause of action upon persons "adversely affected or aggrieved by agency action within the meaning of a relevant statute." 5 U.S.C. 702; *Block* v. *Community Nutrition Inst.*, 467 U.S. 340, 345 (1984). Under the APA, courts may "compel agency action unlawfully withheld or unreasonably delayed," 5 U.S.C. 706(1), and may "set aside agency action, findings, and conclusions found to be * * * arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law," 5 U.S.C. 706(2)(A). Judicial review of an agency action is available under the APA only if "there is no other adequate remedy in a court." 5 U.S.C. 704; *United States Army Corps of Engineers* v. *Hawkes Co.*, 578 U.S. 590, 600 (2016).

2. For nearly a decade, petitioner has repeatedly sued the IRS seeking to compel the production of tax records under FOIA and the Privacy Act, 5 U.S.C.

552a.[1] After receiving some but not all of the records that he sought in those cases, petitioner employed a different tactic in this case. Petitioner filed a pro se complaint seeking an order requiring the IRS to produce tax records regarding himself, his deceased relatives, and related entities, citing Section 6103 of the Internal Revenue Code as the sole basis for the action. Pet. App. 2a-3a; see D. Ct. Doc. 19, at 1-9 (Apr. 22, 2022) (Second Amended Complaint). Counsel for the government emailed petitioner to suggest that he file an amended complaint seeking relief under FOIA or the Privacy Act, noting that Section 6103 does not provide a cause of action for the disclosure of tax records. Pet. App. 3a. Petitioner declined to follow that suggestion. *Ibid.* The government then moved to dismiss the complaint for lack of subject-matter jurisdiction. D. Ct. Doc. 20 (May 6, 2022).

The district court granted the government's motion and dismissed the case. Pet. App. 7a-12a. The court reasoned that it lacked subject-matter jurisdiction because Section 6103 "does not 'provide an independent basis for subject matter jurisdiction' over claims seeking disclosure of return information." *Id.* at 10a (citation omitted). The court explained that Section 6103 "operates as part of the larger Freedom of Information

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[1] See *Powell* v. *IRS*, No. 14-cv-12626, 2015 WL 5271943 (E.D. Mich. Sept. 9, 2015); *Powell* v. *IRS*, No. 15-cv-11033, 2016 WL 7473446 (E.D. Mich. Dec. 29, 2016); *Powell* v. *IRS*, No. 15-cv-11616, 2016 WL 5539777 (E.D. Mich. Sept. 30, 2016); *Powell* v. *IRS*, 280 F. Supp. 3d 155 (D.D.C. 2017); *Powell* v. *IRS*, No. 17-cv-278, 2019 WL 4247246 (D.D.C. Sept. 6, 2019); *Powell* v. *IRS*, No. 18-cv-453, 2019 WL 1980973 (D.D.C. May 3, 2019); *Powell* v. *IRS*, No. 18-cv-2675, 2021 WL 1061528 (D.D.C. Mar. 18, 2021); *Powell* v. *IRS*, No. 21-cv-2838, 2022 WL 4009971 (D.D.C. Aug. 29, 2022), aff'd, No. 22-5232, 2023 WL 3729964 (D.C. Cir. May 31, 2023).

Act framework." *Ibid.* (brackets and citation omitted). The court noted that petitioner "kn[ew] this well" from his prior suits seeking tax records, yet petitioner did not "seek to bring his claims under the Freedom of Information Act" in this case and had instead "expressly state[d] that he is *not* seeking his records under FOIA." *Id.* at 11a. Accordingly, the district court dismissed petitioner's case for lack of subject-matter jurisdiction. *Id.* at 12a.

3. The court of appeals affirmed. Pet. App. 1a-6a. On appeal, the court appointed an amicus to present arguments in support of petitioner's position. C.A. Docket Entry (Feb. 1, 2023); Pet. App. 3a. The court-appointed amicus contended that the district court erred in concluding that it lacked subject-matter jurisdiction and further contended that petitioner's complaint asserts a valid cause of action under the APA to enforce petitioner's asserted right to disclosure under Section 6103. Although the court agreed—as the government acknowledged—that the district court erred in dismissing the complaint for a lack of subject-matter jurisdiction, the court affirmed on the alternative ground that the complaint failed to state a claim upon which relief could be granted because "§ 6103 and the APA do not provide a cause of action that is independent of FOIA." Pet. App. 4a; see *id.* at 3a-4a. The court explained that its conclusion was "mandated" by its prior decisions in *Church of Scientology* v. *IRS*, 792 F.2d 146 (D.C. Cir. 1986), and *Maxwell* v. *Snow*, 409 F.3d 354 (D.C. Cir. 2005), which "establish that FOIA provides an adequate remedy for plaintiffs seeking records from the IRS, and that no cause of action under § 6103 and the APA is available." Pet. App. 2a, 4a; see *id.* at 4a-5a. Those precedents had rejected the argument that Section 6103

"supersedes FOIA" and had concluded, instead, that "§ 6103 operates within FOIA's scheme as part of Exemption 3, which explicitly accommodates other laws by excluding from FOIA's disclosure requirement documents specifically exempted from disclosure by other statutes." *Id.* at 4a-5a (brackets, citations, and internal quotation marks omitted). The court thus held that "[b]ecause FOIA offers an adequate vehicle to challenge the IRS's failure to disclose tax records, the APA offers no avenue for relief." *Id.* at 5a.

The court of appeals rejected petitioner's reliance on *Lake* v. *Rubin*, 162 F.3d 113 (D.C. Cir. 1998), cert. denied, 526 U.S. 1070 (1999)—a case interpreting the Privacy Act that did not address FOIA. Pet. App. 5a. The court also rejected petitioner's argument that FOIA does not cover taxpayers who seek their own records, explaining that its decision in *Maxwell* had specifically rejected an argument "that FOIA requirements cannot be applicable to * * * requests for personal information, but only to requests for public information." *Id.* at 6a (quoting *Maxwell*, 409 F.3d at 357); see *id.* at 5a-6a.

4. The court of appeals denied rehearing and rehearing en banc. Pet. App. 14a-15a.

ARGUMENT

The court of appeals correctly held that APA review is precluded because FOIA provides an adequate judicial remedy for persons seeking disclosure of tax records from a federal agency. As the court recognized, FOIA Exemption 3 accounts for the disclosures that are required (and not required) under Section 6103. That decision does not conflict with the result reached by any other court of appeals. Further review is not warranted.

1. Petitioner's contention that the APA provides a cause of action to enforce Section 6103 fails because judicial review under the APA is available only where "there is no other adequate remedy in a court." 5 U.S.C. 704. Here, FOIA provides an adequate remedy for petitioner to compel the disclosure of any tax records that have been improperly withheld from him by the IRS.

a. FOIA is specifically designed to require agencies to respond to requests for federal agency records and to make such records available unless they fall within a particular exemption. 5 U.S.C. 552(a)(3) and (b). Through FOIA, Congress empowered district courts to "order the production of any agency records improperly withheld from the complainant." 5 U.S.C. 552(a)(4)(B). FOIA thus offered petitioner access to the exact remedy he seeks in this case—the disclosure of tax records that he alleges the IRS has improperly withheld from him. As this Court has explained, "Congress did not intend the general grant of review in the APA to duplicate existing procedures for review of agency action." *Bowen* v. *Massachusetts*, 487 U.S. 879, 903 (1988). Thus, the APA "does not provide additional judicial remedies in situations where the Congress has provided special and adequate review procedures." *Ibid.* (citation omitted). Because FOIA provides such procedures, the APA has no role to play in this case.

In an opinion by then-Judge Scalia, the D.C. Circuit effectively recognized the adequacy of FOIA's procedures when addressing the "relation between FOIA and Section 6103." *Church of Scientology* v. *IRS*, 792 F.2d 146, 148 (1986). The court explained that "FOIA is a structural statute, designed to apply across-the-board to many substantive programs" while "explicitly accommodat[ing] other laws by excluding from its disclosure

requirement documents 'specifically exempted from disclosure' by other statutes." *Id.* at 149 (quoting 5 U.S.C. 552(b)(3)). Far from providing an inadequate remedy to effectuate Section 6103, the court described the two statutes as functioning "entirely harmonious[ly]" as though they were "quite literally made for each other." *Ibid.* FOIA "establishes the procedures the IRS must follow in asserting the § 6103 (or any other) exemption." *Ibid.* Indeed, the only respect in which the court viewed FOIA as potentially "'frustrat[ing]' the purposes of § 6103" was through FOIA's "place[ment] upon the IRS [of] the burden of sustaining its claimed exemption in de novo judicial review" rather than the arbitrary and capricious review available under the APA—a result that redounds to the benefit of those requesting tax-return information. *Id.* at 150.

b. Petitioner nevertheless contends (Pet. 21) that the court of appeals' decision "contravenes [the] bedrock principle" that "a general statute shall not override a specific one." But the court of appeals' decision does not interpret FOIA to "override" Section 6103. Rather, it recognizes that FOIA provides the process by which individuals may seek access to the records that Section 6103 makes disclosable. See *Church of Scientology*, 792 F.2d at 149. Petitioner therefore errs in asserting that applying FOIA "frustrates" Section 6103, which he reads as providing that "taxpayers need only make 'written request' for their returns," upon which "the IRS 'shall' disclose them." Pet. 22 (citation omitted). FOIA and Section 6103 have overlapping disclosure requirements—with FOIA providing additional detail as to how disclosures should be requested and provided—but that does not make them so incompatible that petitioner may opt to use only Section 6103. Indeed, as

this Court recognized, Exemption 3 makes it "evident" that, when Congress was crafting FOIA, it "knew that other statutes created overlapping disclosure requirements." *United States Dep't of Justice* v. *Tax Analysts*, 492 U.S. 136, 154 (1989). Such instances of overlap simply mean that, under FOIA, an agency is generally required "to provide disclosure of materials whose disclosure is *mandated* by another statute." *Ibid.* "The courts are not at liberty to pick and choose among congressional enactments, and when two statutes are capable of co-existence, it is the duty of the courts, absent a clearly expressed congressional intention to the contrary, to regard each as effective." *Morton* v. *Mancari*, 417 U.S. 535, 551 (1974). Because FOIA and Section 6103 readily work together, both should be given effect, and neither should displace the other.

Petitioner's invocation of the canon that a specific enactment will control over a general enactment also ignores that such a canon applies only when "there is no clear intention otherwise." *Morton*, 417 U.S. at 550. Here, two provisions indicate that the general procedures in FOIA should control. First, the APA expressly commands that APA review applies only where "there is no other adequate remedy in a court." 5 U.S.C. 704. Because FOIA provides an adequate remedy for obtaining records described as disclosable in Section 6103, the APA is unavailable. Second, FOIA is covered by the provision stating that a "[s]ubsequent statute may not be held to supersede or modify this subchapter * * * except to the extent that it does so expressly." 5 U.S.C. 559. Because Section 6103 was enacted after FOIA and does not "expressly" supersede or modify FOIA, *ibid.*, the court of appeals properly read Section 6103 to function as a part of FOIA Exemption 3, not separately from

it, see *Church of Scientology*, 792 F.2d at 149. Thus, the express statutory commands in Sections 704 and 559 plainly trump the general canon of statutory construction on which petitioner relies.

c. Petitioner next asserts (Pet. 26-28) that reversing the court of appeals' decision would correct what he views as an "anomaly" in the caselaw in which some courts, including the D.C. Circuit, have held that Section 6103 displaces the Privacy Act but does not displace FOIA. See*, e.g.*, *Lake* v. *Rubin*, 162 F.3d 113 (D.C. Cir. 1998), cert. denied, 526 U.S. 1070 (1999). But the D.C. Circuit has had no difficulty "read[ing] th[o]se cases in harmony." *Maxwell* v. *Snow*, 409 F.3d 354, 358 (2005). Unlike in the FOIA context, the D.C. Circuit recognized that the Privacy Act may not provide an adequate remedy to those requesting tax records because a separate provision "withdrew the power of the federal courts to force the IRS to comply with the Privacy Act." *Id.* at 357 (citing 26 U.S.C. 7852(e)). In any event, even if there were any inconsistency in the D.C. Circuit's decisions, this Court does not grant review to resolve an intra-circuit conflict. See *Wisniewski* v. *United States*, 353 U.S. 901, 902 (1957) (per curiam).

d. Petitioner acknowledges (Pet. 28-29) that this Court's decision in *Church of Scientology* v. *IRS*, 484 U.S. 9 (1987), "does not address the Question Presented," but nevertheless claims that the Court's reasoning favors his position because the Court focused on Section 6103's descriptions of information that the IRS must keep confidential, rather than considering FOIA's requirements. Yet, as petitioner notes (Pet. 28), the parties in *Church of Scientology* "agreed * * * that § 6103 of the Internal Revenue Code is the sort of statute referred to by the FOIA in 5 U.S.C. § 552(b)(3) re-

lating to matters that are 'specifically exempted from disclosure by statute,'" and the Court operated under that premise. 484 U.S. at 11. The Court's decision thus illustrates that proceeding under FOIA leaves ample room for considering the "elaborate description of the sorts of information related to [tax] returns that [the IRS] is compelled to keep confidential" under Section 6103. *Id.* at 15. In other words, FOIA accommodates Section 6103 without displacing it.

2. Petitioner asserts (Pet. 13-20) that this Court's review is warranted to address a conflict among the courts of appeals on whether disclosure of tax records is governed by FOIA or Section 6103. No such review is warranted. The only court to have held that Section 6103 governs also adopted an alternative holding that Section 6103 would be incorporated into FOIA through Exemption 3. That alternative holding is consistent with the decision below and with the decisions of every other regional court of appeals.

a. In *King* v. *IRS*, 688 F.2d 488 (1982), the Seventh Circuit addressed whether the disclosure of tax records "is controlled exclusively by section 6103 or by the FOIA." *Id.* at 495. The court quoted extensively from a decision of the United States District Court for the District of Columbia that discussed the "elaborate detail" of Section 6103, indicating that Section 6103 should apply. *Ibid.* (quoting *Zale Corp.* v. *IRS*, 481 F. Supp. 486 (D.D.C. 1979)). The Seventh Circuit stated that it was "persuaded[] by the *Zale* court's analysis." *Ibid.* Nevertheless, the Seventh Circuit went on to explain that "even if [it] were to find that the documents were subject to the FOIA, they would be exempt from disclosure under exemption (b)(3)." *Id.* at 496. As a result, it "conclude[d] that the provisions of section 6103 apply,

either independently *or through FOIA exemption (b)(3)*." *Ibid.* (emphasis added). In other words, the court expressly rested its conclusion on alternative holdings, one of which is fully consistent with the D.C. Circuit's decision in petitioner's case. Accordingly, there is no direct conflict with *King* for this Court to resolve.

The Seventh Circuit's single line of analysis in *Cheek* v. *IRS*, 703 F.2d 271 (1983) (per curiam), does not indicate otherwise. The court there held that *King*'s "holding that disclosure of tax return information is governed by section 6103 rather than by the Freedom of Information Act[] disposes of [the plaintiff's] Freedom of Information Act" challenge. *Id.* at 271. But as in *King*, the result likely would have been the same had the court analyzed Section 6103 as an Exemption 3 statute. See *ibid.* (noting that the IRS had refused to turn over documents because they were shielded from disclosure by Section 6103(a)(1) and (e)(7)).

Notably, with the exception of two early rulings,[2] district courts within the Seventh Circuit have cited *King* exclusively for its holding that Section 6103 *is* a FOIA Exemption 3 statute and have accordingly proceeded under FOIA. See *Kozacky & Weitzel, P.C.* v. *United States Dep't of Treasury*, No. 07 C 2246, 2008 WL 2188457, at *3 (N.D. Ill. Apr. 10, 2008) ("It has long been held that section 6103(a) qualifies as an exempting statute under exemption (b)(3).").[3] As those rulings demon-

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[2] See *Stephens* v. *IRS*, No. 82 C 0421, 1984 WL 744, at *2 (N.D. Ill. Jan. 27, 1984); *O'Neal* v. *IRS*, No. IP 86-797-C, 1987 WL 19758, at *2 (S.D. Ind. Nov. 12, 1987).

[3] See also *Sutton* v. *IRS*, No. 05 C 7177, 2007 WL 30547, at *2 (N.D. Ill. Jan. 4, 2007); *Barmes* v. *IRS*, 60 F. Supp. 2d 896, 900 (S.D. Ind. 1998); *Goulding* v. *IRS*, No. 97 C 5628, 1998 WL 325202, at *4-*5 (N.D. Ill. June 8, 1998); *Fritz* v. *IRS*, 862 F. Supp. 234, 236 (W.D.

strate, the case law within the Seventh Circuit is aligned with the court of appeals' decision in this case, obviating any need for this Court's intervention.

b. Petitioner also errs in contending that the Sixth Circuit "followed the Seventh Circuit's lead" in holding that claims for tax information should be governed by Section 6103 rather than FOIA. Pet. 15 (citing *White* v. *IRS*, 707 F.2d 897 (1983)). In *White*, the Sixth Circuit reviewed a decision sustaining the IRS's action in withholding certain tax records. The court stated that it was "disposed to affirm the district court on the basis of the *Zale* and *King* rationale" that Section 6103 supersedes FOIA. 707 F.2d at 900. Stopping short of that, however, the court explained that "[t]here is another basis * * * for affirming the judgment precluding further disclosure of the remaining documents," which is that Section 6103 is a "'statute' within the purview of [5 U.S.C.] § 552(b)(3) and as such is exempt from the disclosure requirements of FOIA." *Ibid.* Significantly, the Sixth Circuit explained that it had previously "reached the same conclusion"—*i.e.*, that Section 6103 is a FOIA Exemption 3 statute—in *Fruehauf Corp.* v. *IRS*, 566 F.2d 574 (1977). *White*, 707 F.2d at 900. Bound by its earlier decision in *Fruehauf*, the Sixth Circuit held that the tax records at issue were the "type of documents discussed in *Fruehauf*" and were therefore "exempt under section 6103 as a statute intended to foreclose discovery of tax information under 5 U.S.C. § 552(b)(3)." *Id.* at 901. The Sixth Circuit has continued to adhere to that reasoning since. See *Osborn* v. *IRS*, 754 F.2d 195, 196 (1985) ("This circuit has held that section 6103 is an 'ex-

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Wis. 1994); *Becker* v. *IRS*, No. 91 C 1203, 1992 WL 67849, at *3 (N.D. Ill. Mar. 31, 1992); *Davenport* v. *Commissioner*, No. 85 C 8612, 1986 WL 8965, at *1 (N.D. Ill. Aug. 13, 1986).

emption three statute' which entitles the IRS to refuse to disclose certain tax return information under FOIA exemption (b)(3) despite a FOIA request.").

c. The court of appeals' decision in this case is likewise consistent with the precedent of every other regional court of appeals, each of which treats Section 6103 as a FOIA Exemption 3 statute. See *Aronson* v. *IRS*, 973 F.2d 962, 964 (1st Cir. 1992); *Breuhaus* v. *IRS*, 609 F.2d 80, 82-83 (2d Cir. 1979); *Grasso* v. *IRS*, 785 F.2d 70, 75 (3d Cir. 1986); *Solers, Inc.* v. *IRS*, 827 F.3d 323, 331 (4th Cir. 2016); *Linsteadt* v. *IRS*, 729 F.2d 998, 1001-1002 (5th Cir. 1984); *Stanbury Law Firm, P.A.* v. *IRS*, 221 F.3d 1059, 1062 (8th Cir. 2000) (per curiam); *Long* v. *United States IRS*, 742 F.2d 1173, 1177-1178 (9th Cir. 1984); *DeSalvo* v. *IRS*, 861 F.2d 1217, 1221 (10th Cir. 1988); *Currie* v. *IRS*, 704 F.2d 523, 526-527 (11th Cir. 1983).

Petitioner asserts (Pet. 18-19) that the First Circuit's decision in *Aronson* differs from that of the court of appeals below because the *Aronson* court applied a different standard of review. But as the First Circuit's analysis indicates, the standard of review is a separate question that is not encompassed by the question presented here. In *Aronson*, the First Circuit applied the two-step analysis set forth in *CIA* v. *Sims*, 471 U.S. 159, 167 (1985), for examining FOIA Exemption 3 claims. It first considered whether Section 6103 is an exempting statute under 5 U.S.C. 552(b)(3) and concluded, consistent with the decision below, that "[t]he tax statute falls squarely within FOIA Exemption 3." *Aronson*, 973 F.2d at 964. The court then moved on to step two of the analysis to determine whether the requested information was included within Section 6103's protection

from disclosure—specifically, Section 6103(m)(1).[4] Answering that question required the court to consider the proper standard of review to be applied in reviewing the IRS's interpretation of Section 6103(m)(1) and its application to the specific information requested in that case. *Id.* at 965. Noting that Section 6103(m)(1) granted the IRS "*permissive* authority" to disclose in specified circumstances, without *requiring* disclosure, the court determined that "ordinary, deferential principles of administrative law" governed. *Ibid.* The court took note of FOIA's de novo standard of review, see 5 U.S.C. 552(a)(4)(B), but explained that "once a court determines that the statute in question is an Exemption 3 statute, and that the information requested at least arguably falls within the statute, FOIA *de novo* review normally ends." *Aronson*, 973 F.2d at 967. Thus, the First Circuit did not view FOIA's de novo standard of review as precluding deference to the IRS's interpretation of the meaning and application of Section 6103(m)(1).

This case does not present the issue of the proper standard of review to be applied in a FOIA Exemption 3 case. The only issue facing the D.C. Circuit was whether the APA provides petitioner with a valid cause of action to enforce disclosure by the IRS under Section 6103. The D.C. Circuit's conclusion that the APA does not apply fully resolved petitioner's claim. Because petitioner has not asserted a FOIA claim in this case, the D.C. Circuit had no occasion to consider—as the *Aronson* court did—the proper standard of review to be applied in determin-

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[4] Section 6103(m)(1) provides that "[t]he Secretary *may disclose* taxpayer identity information to the press and other media for purposes of notifying persons entitled to tax refunds when the Secretary, after reasonable effort and lapse of time, has been unable to locate such persons." 26 U.S.C. 6103(m)(1) (emphasis added).

ing whether the requested information is within the scope of the exemption statute's protection.[5]

Finally, petitioner attempts (Pet. i, 13, 18 n.9, 25-26) to limit the degree of circuit consensus by distinguishing between cases in which a taxpayer is seeking his own tax returns and return information, as opposed to the tax returns and return information of another. Petitioner suggests (Pet. 26) that in the former situation, a suit may be brought under the APA, whereas in the latter, FOIA controls. But no court has ever endorsed that view, and for good reason: FOIA's provisions are clear that federal agencies "shall make the records promptly available to *any person*" upon "*any request* for records" that reasonably describes the records and that is made according to published rules. 5 U.S.C. 552(a)(3)(A) (emphases added). Consequently, as the court of appeals correctly held, FOIA provides the cause of action and the remedy, regardless of whether the requestor is seeking records about himself or about others. Pet. App. 5a-6a.

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[5] *Aronson*'s ruling regarding the proper standard of review to be applied to the agency's determination to withhold records in a FOIA Exemption 3 case also rested, at least in part, on the *Chevron* doctrine that was recently overruled by this Court in *Loper Bright Enterprises* v. *Raimondo*, 144 S. Ct. 2244 (2024). See *Aronson*, 973 F.2d at 965 (citing *Chevron U.S.A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U.S. 837, 843-845 (1984)). The First Circuit has yet to address the effect of *Loper Bright* on the proper standard of review to be applied to the agency's determination in FOIA Exemption 3 cases.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

ELIZABETH B. PRELOGAR
Solicitor General
DAVID A. HUBBERT
Deputy Assistant Attorney General
JACOB EARL CHRISTENSEN
MATTHEW S. JOHNSHOY
Attorneys

NOVEMBER 2024