No.

IN THE

Supreme Court of the United States

MAYO FOUNDATION FOR MEDICAL EDUCATION AND RESEARCH; MAYO CLINIC; AND REGENTS OF THE UNIVERSITY OF MINNESOTA,

Petitioners,

v.

UNITED STATES,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Eighth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the Treasury Department can categorically exclude all medical residents and other full-time employees from the definition of "student" in 26 U.S.C. § 3121(b)(10), which exempts from Social Security taxes "service performed in the employ of a school, college, or university" by a "student who is enrolled and regularly attending classes at such school, college, or university."

PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT

The caption contains the names of all parties to the proceedings below.

Pursuant to this Court's Rule 29.6, undersigned counsel state that Mayo Foundation for Medical Education and Research ("Mayo Foundation") and Mayo Clinic are both nonprofit corporations, that the sole member of Mayo Foundation is Mayo Clinic, and that no publicly held company owns 10% or more of the stock of either Mayo Foundation or Mayo Clinic. The University of Minnesota is a public institution of higher education established by the Constitution of the State of Minnesota.

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PETITION FOR A WRIT OF CERTIORARI

Petitioners Mayo Foundation for Medical Education and Research and Mayo Clinic ("Mayo"), and petitioner Regents of the University of Minnesota ("University"), respectfully submit this petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eighth Circuit.

OPINIONS BELOW

The court of appeals' opinion is reported at 568 F.3d 675. Pet. App. 1a. The order denying the petition for rehearing and rehearing en banc is unreported. *Id.* at 66a. The opinion of the United States District Court for the District of Minnesota in *Mayo Foundation for Medical Education & Research v. United States* is reported at 503 F. Supp. 2d 1164. *Id.* at 20a. The opinion of the district court in *Regents of the University of Minnesota v. United States* is unpublished but is electronically reported at 2008 WL 906799. *Id.* at 47a.

JURISDICTION

The court of appeals filed its opinion on June 12, 2009. It denied petitioners' timely petition for rehearing and rehearing en banc on September 17, 2009. On December 7, 2009, Justice Alito extended the time within which to file a petition for a writ of certiorari to and including January 15, 2010. No. 09A545. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

The relevant provisions of the Internal Revenue Code and the Treasury Department's implementing regulations are set forth in the appendix to this petition.

STATEMENT

The circuits are irreconcilably divided on the question whether medical residents can be categorically excluded from the Student Exemption to the Federal Insurance Contribution Act ("FICA"). That provision exempts from Social Security taxes all compensation for "service performed in the employ of a school, college, or university" by a "student who is enrolled and regularly attending classes at such school, college, or university." 26 U.S.C. § 3121(b)(10). According to the government—and to the Eighth Circuit in the decision below—medical residents who are enrolled and regularly attending classes at a school can be categorically excluded from the Student Exemption because they work more than forty hours per week. Pet. App. 18a-19a. Four other circuits disagree, creating intolerable disuniformity on a question that the government itself describes as "an issue of great administrative and fiscal importance, involving, for medical residents nationwide, at least $2.1 billion in pending refund claims and an estimated $700 million per year in taxes." Br. of the United States at i, Regents of Univ. of Minn. v. United States (8th Cir. filed Sept. 2, 2008) (No. 08-2193).

This circuit split arose as a direct result of the Treasury Department's effort to overturn a series of judicial decisions holding that medical residents are eligible for the Student Exemption. Although it dis-

agreed with those decisions, the Treasury Department declined to seek an amendment of the statute from Congress; it instead promulgated a regulation that purports to narrow the scope of the Student Exemption by excluding all full-time employees—including medical residents—even where those employees meet the statutory criteria for "student" status. Treas. Reg. § 31.3121(b)(10)-2(d)(3)(iii).

In the decision below, the Eighth Circuit upheld the Treasury Department's full-time employee regulation. In so doing, the court of appeals acknowledged that "four of [its] sister circuits have recently declared . . . that the student exception statute is unambiguous" and can include medical residents; the Eighth Circuit nevertheless concluded that those circuits' "interpretation of [the Student Exemption] . . . cannot be correct." Pet. App. 9a-10a.

This Court's review of that decision is warranted to resolve this direct and acknowledged circuit split on a question that implicates billions of dollars in tax liability, to provide the Nation's 8,000 medical residency programs and 100,000 medical residents with authoritative guidance regarding their tax obligations, and to reject the Treasury Department's arbitrary and unreasonable attempt to narrow the Student Exemption.

1. To fund the Social Security system, FICA imposes a payroll tax on "wages" that is assessed on both employers and employees. 26 U.S.C. §§ 3101, 3111. FICA defines "wages" as "remuneration for employment" (*id.* § 3121(b)), but excludes from the definition of "employment" "service performed in the employ of a school, college, or university" by a "student who is enrolled and regularly attending classes

at such school, college, or university." *Id.* § 3121(b)(10).

Congress enacted this Student Exemption provision in 1939. A year later, the Treasury Department adopted regulations that stated that "student" status shall be determined "on the basis of the relationship of such employee with the organization for which the services are performed" and that an employee who performs services "as an incident to and for the purpose of pursuing a course of study" is a "student" within the meaning of the Student Exemption. Treas. Reg. § 31.3121(b)(10)-2(c) (2004). That regulation, which remained substantially unchanged for the next six decades, permitted medical residents to qualify for the Student Exemption even if they worked more than forty hours per week. Pet. App. 42a & n.12.

2. Petitioners sponsor medical residency programs that educate recent medical school graduates through a combination of classroom instruction, reading assignments, and hands-on patient care. Pet. App. 22a, 38a n.8, 63a. Medical residency programs generally last between three and five years; upon completion of the program, residents become eligible to sit for a specialty board examination. U.S. C.A. App. 300 (No. 08-2193).

Petitioners' medical residency programs are accredited by the Accreditation Council on Graduate Medical Education. Pet. App. 22a; U.S. C.A. App. 300 (No. 08-2193). Like other students, medical residents register for specific courses (called "rotations"), attend lectures, take written examinations, and can choose to pursue electives, to spend time researching academic topics, and to participate in journal clubs. Pet. App. 22a, 41a n.10, 63a. They

also spend, on average, forty or more hours per week caring for patients under the supervision of attending physicians, who evaluate the residents' performance in the program. *Id.* at 19a, 48a-49a. While on patient rounds, the residents and attending physicians move from patient to patient, and the attending physicians conduct didactic sessions with the residents that draw out the salient educational points of each patient's condition. *United States v. Mayo Found. for Med. Educ. & Research*, 282 F. Supp. 2d 997, 1003 (D. Minn. 2003) ("*Mayo I*").

Medical residency programs do not exist to provide hospitals with services. Pet. App. 64a-65a. Indeed, hospitals "could provide patient care far more cost-efficiently *without* residents because of the time and effort required to supervise and teach them." *Mayo I*, 282 F. Supp. 2d at 1014 (emphasis in original). All the residents' hands-on patient care is designed to be educational; to that end, petitioners "ensure that" nurses and other "allied healthcare personnel perform ancillary procedures that have no 'educational value,' such as drawing blood [and] starting IVs." *Id.* at 1015.

To cover cost-of-living expenses, petitioners pay their medical residents an annual stipend of between approximately $40,000 and $60,000, depending on experience. Pet. App. 17a.

3. In 1990, the Social Security Administration—adopting the position that medical residents are categorically ineligible for the Student Exemption—issued a formal notice of assessment to the University for unpaid Social Security taxes on its medical residents' stipends. *See Minnesota v. Apfel*, 151 F.3d 742, 743 (8th Cir. 1998). The Eighth Circuit overturned that assessment, holding that stipends paid

to medical residents at the University were exempt from Social Security taxes because the residents qualified for the Social Security Act's Student Exemption (42 U.S.C. § 410(a)(10)), which is identical to FICA's Student Exemption. *Apfel*, 151 F.3d at 748. That exception applied, the court explained, because "the primary purpose for the residents' participation in the program is to pursue a course of study rather than to earn a livelihood." *Id.*[1]

Several years later, the District of Minnesota held that Mayo's medical residents were also exempt from Social Security taxes. *Mayo I*, 282 F. Supp. 2d at 1018. Rejecting the government's argument that medical residents' long hours categorically disqualified them from the Student Exemption, the district court held that "[t]ime alone cannot be the sole measure of the relationship between services performed and a course of study." *Id.* The court concluded that, in contrast to the government's categorical approach, medical residents' eligibility for the Student Exemption depends on a "fact-specific, case-by-case examination" of whether the residents satisfy the criteria set forth in the Exemption. *Id.* at 1007. In the case of Mayo's medical residents, the court

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[1] For the tax periods at issue in *Apfel*, the University's status as a state entity meant that it was covered under a Social Security coverage agreement between the State of Minnesota and the federal government. Accordingly, the Eighth Circuit held both that medical residents were not "employees" under the coverage agreement and that, even if medical residents were "employees," they were statutorily excluded from coverage under the Social Security Act's Student Exemption. 26 U.S.C. § 3121(b)(10). In 1987, Social Security taxation of state employees was transferred to the FICA provisions of the Internal Revenue Code. Pub. L. No. 99-509, § 9002(b)(1)(A), 100 Stat. 1874, 1971-72 (1986).

found that the educational purpose of their patient care predominated over its service aspect and that they were accordingly covered by the Student Exemption. *Id.* at 1018. The government filed a notice of appeal to the Eighth Circuit but subsequently dismissed that appeal.

Less than two months later, the Treasury Department attempted to create through the regulatory process what it had repeatedly failed to secure in court and had refused to seek from Congress: a categorical exclusion of medical residents and all other full-time employees from the Student Exemption. Explicitly acknowledging its desire to overturn the decisions holding that medical residents at Mayo and the University are students and therefore exempt from Social Security taxes, the Treasury Department promulgated amendments to its regulations interpreting the Student Exemption. Student FICA Exception, 69 Fed. Reg. 76,404 (Dec. 21, 2004); *see also* Reply Br. of the United States at 9, *Regents of Univ. of Minn.* (filed Oct. 9, 2008) (No. 08-2193) ("the regulation was amended partly in response to the recent wave of litigation concerning the status of medical residents as 'students'").

One of the new regulations categorically excludes "full-time employees" from the Student Exemption. Treas. Reg. § 31.3121(b)(10)-2(d)(3)(iii). According to the full-time employee regulation, an employee whose "normal work schedule" is at least 40 hours per week is a full-time employee and "[t]he determination of an employee's normal work schedule is not affected by the fact that the services performed by the employee may have an educational, instructional, or training aspect." *Id.* As a specific example of a full-time employee, the regulation lists a medical resident whose "normal work schedule, which in-

cludes services having an educational, instructional, or training aspect, is 40 hours or more per week." *Id.* § 31.3121(b)(10)-2(e), Ex. 4.

4. Mayo and the University filed separate tax refund actions in the District of Minnesota that challenged the Treasury Department's attempt to use the full-time employee regulation to categorically exclude their medical residents from the Student Exemption. The district court invalidated that regulation.

In Mayo's suit, the district court concluded "that the term 'student' is not ambiguous" because it "is well defined and commonly understood outside the context of the Student Exclusion." Pet. App. 39a. It found the government's contrary position to be "quite puzzling" because, "in *Mayo I*, this Court expressly determined that the Student Exclusion was not ambiguous and cited to an extensive factual record as to . . . why medical residents qualify for the 'student' exclusion from FICA taxation." *Id.* at 31a n.3 (citing *Mayo I*, 282 F. Supp. 2d at 1007, 1013-18). The district court explained that the "full-time employee exception arbitrarily narrows [the ordinary definition of 'student'] by providing that a 'full-time' employee is not a 'student' even if the educational aspect of an employee's service predominates over the service aspect." *Id.* at 40a.

The district court applied that holding in the University's suit, and concluded that medical residents at the University, like those at Mayo, are "students" within the meaning of the Student Exemption. Pet. App. 65a.

5. The Eighth Circuit heard the government's appeals together and reversed in a single opinion. Acknowledging that the case presented a "difficult issue," the court of appeals held that the full-time

employee regulation is valid under *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984), because the term "student" is ambiguous and the full-time employee regulation is a reasonable interpretation of the statutory Student Exemption. Pet. App. 12a, 18a. In so holding, the panel expressly acknowledged that "four of our sister circuits have recently declared, in cases arising under the former regulations, that the student exception statute is unambiguous" and can include medical residents enrolled in medical residency programs and regularly attending classes. *Id.* at 9a (citing *United States v. Mem'l Sloan-Kettering Cancer Ctr.*, 563 F.3d 19, 27 (2d Cir. 2009); *United States v. Detroit Med. Ctr.*, 557 F.3d 412, 417-18 (6th Cir. 2009); *Univ. of Chi. Hosps. v. United States*, 545 F.3d 564, 567 (7th Cir. 2008); *United States v. Mount Sinai Med. Ctr. of Fla., Inc.*, 486 F.3d 1248, 1251-56 (11th Cir. 2007)). The Eighth Circuit conceded that, "[i]f that interpretation of the statute is correct, we must affirm." *Id.*

The Eighth Circuit nevertheless expressly rejected the decisions of the Second, Sixth, Seventh, and Eleventh Circuits. Pet. App. 10a. According to the Eighth Circuit, those courts' "interpretation of [the Student Exemption] . . . cannot be correct" because the Student Exemption is ambiguous and can reasonably be construed as categorically excluding all full-time employees, including medical residents. *Id.* "[W]hen the context is a provision of the Internal Revenue Code," the court asserted, "a Treasury Regulation interpreting the words is nearly always appropriate." *Id.* at 12a.

The Eighth Circuit denied rehearing en banc over the dissents of Judge Melloy and Judge Shepherd. Pet. App. 67a.

REASONS FOR GRANTING THE PETITION

The Eighth Circuit's holding that the statutory term "student" in FICA's Student Exemption is ambiguous and can be narrowed by the Treasury Department to categorically exclude all medical residents and other full-time employees directly conflicts with the decisions of four other circuits. *See, e.g.*, *United States v. Mem'l Sloan-Kettering Cancer Ctr.*, 563 F.3d 19, 27 (2d Cir. 2009); *United States v. Detroit Med. Ctr.*, 557 F.3d 412, 417-18 (6th Cir. 2009). The Eighth Circuit itself acknowledged that the Second, Sixth, Seventh, and Eleventh Circuits have each held that the Student Exemption *unambiguously* encompasses medical residents who otherwise satisfy the Exemption's statutory criteria. Pet. App. 9a. The Eighth Circuit nevertheless upheld the full-time employee regulation because it concluded that those circuits' interpretation of the Student Exemption "cannot be correct." *Id.* at 10a.

As a result of this conflict, medical residency programs and their residents are liable for Social Security taxes in the Eighth Circuit, are exempt from those taxes in the Second, Sixth, Seventh, and Eleventh Circuits (if the residents otherwise satisfy the Student Exemption's statutory requirements), and are left in a state of uncertainty regarding their tax obligations in other circuits. Only this Court can authoritatively resolve this frequently recurring question that has generated what the Eighth Circuit described as an "avalanche" of costly and protracted litigation. Pet. App. 3a.

The Eighth Circuit's holding also conflicts with this Court's decision in *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984). The statutory term "student" unambiguously

encompasses medical residents who are enrolled in a residency program sponsored by a school, college, or university and who are pursuing their medical training through a curriculum that includes classroom instruction, reading assignments, and hands-on patient care. The Eighth Circuit's reasoning that an otherwise commonly understood term is presumed to be ambiguous when used in a tax statute effectively nullifies the first step of *Chevron* analysis in tax cases and conflicts with numerous decisions of this Court invalidating tax regulations as contrary to the plain language of a statute. *See*, *e.g.*, *Rowan Cos. v. United States*, 452 U.S. 247, 263 (1981). Moreover, even if the Student Exemption were ambiguous, it would be arbitrary and unreasonable for the Treasury Department to categorically exclude all full-time employees from the definition of "student" without regard to whether those employees are pursuing a course of study through their employment.

The staggering financial implications of the Eighth Circuit's decision underscore the need for this Court's review. As the government itself has acknowledged, the question of the Student Exemption's application to medical residents involves billions of dollars in pending refund claims and hundreds of millions of dollars per year in taxes. Br. of the United States at i, *Regents of Univ. of Minn.* (No. 08-2193). This Court should grant certiorari to resolve the irreconcilable circuit split on this question of exceptional importance to the Nation's medical residency programs and medical residents.

I. THE DECISION BELOW CONFLICTS WITH THE DECISIONS OF FOUR OTHER CIRCUITS.

This Court's review is warranted because the Eighth Circuit's holding that medical residents can be categorically excluded from FICA's Student Exemption directly conflicts with the decisions of four other circuits and creates intolerable disuniformity and uncertainty on a tax issue that should be governed by a single, nationwide standard.

A. The Second, Sixth, Seventh, and Eleventh Circuits have all held that the Student Exemption unambiguously includes medical residents who are enrolled in and regularly attending classes at a school, college, or university—even if they spend more than forty hours per week providing patient care.

In *United States v. Mount Sinai Medical Center of Florida, Inc.*, 486 F.3d 1248 (11th Cir. 2007), the Eleventh Circuit squarely held that "the statutory language of [FICA's Student Exemption] is not ambiguous" and that, under the plain statutory language, "the services performed by medical residents are not categorically ineligible for the student exemption from FICA taxation." *Id.* at 1249-50, 1251. "Whether a medical resident is a 'student,'" the Eleventh Circuit explained, "depend[s] on the nature of the residency program" and a "case-by-case analysis" of whether the program's medical residents satisfy the Student Exemption's statutory criteria. *Id.* at 1252, 1253. Declining "to create an ambiguity where there is none," the court explicitly "reject[ed] the government's assertion that courts should defer to a 'bright-line' rule that medical residents can never be exempted from FICA taxation as students." *Id.* at 1252, 1253. "If Congress had wanted to make medi-

cal residents ineligible for the student exemption," the Eleventh Circuit concluded, "it could have easily crafted a specific exclusion." *Id.* at 1252.

The Seventh Circuit reached the same conclusion in *University of Chicago Hospitals v. United States*, 545 F.3d 564 (7th Cir. 2008), where it held that "there is nothing in [FICA's Student Exemption] itself that categorically excludes medical residents from eligibility for the student exception." *Id.* at 567. The Seventh Circuit explained that the "student exception unambiguously does *not* categorically exclude medical residents as 'students' potentially eligible for exemption from payment of FICA taxes," and labeled the interpretation advanced by the government—"that the student exception is categorically inapplicable to residents"—"textually untenable." *Id.* at 565, 567 (emphasis in original). In contrast with the government's categorical approach, the Seventh Circuit endorsed "a case-by-case analysis . . . to determine whether medical residents qualify for the statutory exemption from FICA taxation." *Id.* at 570.

Similarly, in *United States v. Detroit Medical Center*, 557 F.3d 412 (6th Cir. 2009), the Sixth Circuit rejected the government's argument "that as a per se matter a resident can never be a student" within the meaning of the Student Exemption. *Id.* at 418. Like the Seventh and Eleventh Circuits, the Sixth Circuit held that the Student Exemption instead mandates a case-by-case approach and that, "[t]o determine whether the doctors in . . . [a] residency program are students, we thus need to know what the residents in the program do and under what circumstances." *Id.* at 417-18.

Finally, in *United States v. Memorial Sloan-Kettering Cancer Center*, 563 F.3d 19 (2d Cir. 2009),

the Second Circuit "agree[d] with the Sixth, Seventh, and Eleventh Circuits that the [Student Exemption] is unambiguous and that whether medical residents are 'students' . . . is a question of fact, not a question of law." *Id.* at 27. Quoting the Seventh Circuit, the court held that the Student Exemption "'unambiguously does not categorically exclude medical residents from eligibility for the student exception.'" *Id.* at 28 (quoting *Univ. of Chi. Hosps.*, 545 F.3d at 570). Indeed, the Second Circuit emphasized in at least five places throughout its opinion that the Student Exemption unambiguously encompasses medical residents who satisfy the statutory eligibility requirements. *See, e.g.*, *id.* ("the student exception is unambiguous"); *id.* ("we find the statute unambiguous").

B. The Eighth Circuit's holding in the decision below directly conflicts with the holdings of the Second, Sixth, Seventh, and Eleventh Circuits. Acknowledging that "four of [its] sister circuits have recently declared . . . that the student exception statute is unambiguous" and can include medical residents enrolled in medical residency programs and regularly attending classes, the Eighth Circuit declared that those decisions "cannot be correct." Pet. App. 9a-10a. According to the Eighth Circuit, the full-time employee regulation's categorical exclusion of all medical residents "is a permissible interpretation of the statutory student exception" because words (like "student") that have a "common or plain meaning in other contexts" are nearly always ambiguous "when the context is a provision of the Internal Revenue Code." *Id.* at 10a, 18a. Having identified a purported ambiguity in the text of the Student Exemption, the Eighth Circuit concluded that the narrow interpretation of "student" in the full-time em-

ployee regulation is reasonable because it allegedly "harmonizes . . . with the plain language of the statute" and is consistent with Congress's legislative objectives. *Id.* at 13a (internal quotation marks omitted).[2]

The government itself has acknowledged the existence of this conflict between the decisions of the four circuits that have held the Student Exemption to be unambiguous, and the Eighth Circuit's holding that the Student Exemption is ambiguous and can reasonably be interpreted to categorically exclude all medical residents. *See* Br. of the United States at 42, *Regents of Univ. of Minn.* (No. 08-2193) ("[t]he taxpayer's position (that residents are not *per se* ineligible, but that the question depends on the facts and circumstances to be established at trial) has been accepted not only by the court in *Mayo I* (which

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[2] While conceding that it would be required to "affirm" the district court's decisions "[i]f th[e] interpretation of the" Student Exemption adopted by the Second, Sixth, Seventh, and Eleventh Circuits "is correct" (Pet. App. 9a), the Eighth Circuit also cryptically suggested in a footnote that those decisions were distinguishable because they "did not address the validity of the amended regulations, which in [its] view raises an entirely different issue." *Id.* at 9a n.2. The Eighth Circuit's effort to distinguish the four prior circuit court decisions is ineffectual because each of those decisions held that the language of the Student Exemption is *unambiguous* and cannot be narrowed to categorically exclude medical residents. *See, e.g., Univ. of Chi. Hosps.*, 545 F.3d at 565; *Mem'l Sloan-Kettering Cancer Ctr.*, 563 F.3d at 28. As the Eighth Circuit recognized in other parts of its opinion, that reasoning compels invalidation of the full-time employee regulation (and conflicts with the Eighth Circuit's decision upholding that provision) because the regulation arbitrarily and unreasonably excludes all medical residents and other full-time employees from the unambiguous scope of the Student Exemption. Pet. App. 9a-10a.

tried the case to conclusion), but in decisions reserving the matter for trial," including *"United States v. Mt. Sinai Med. Ctr. of Fla.*, 486 F.3d 1248 (11th Cir. 2007)").

In light of this irreconcilable conflict, medical residency programs and their residents in different parts of the country are subject to different Social Security tax obligations. In the Eighth Circuit, all medical residency programs and their residents are obligated to pay Social Security taxes. In contrast, in the Second, Sixth, Seventh, and Eleventh Circuits, medical residency programs and their residents are exempt from Social Security taxes under the Student Exemption as long as the residents are enrolled in and regularly attending classes at a school, college, or university. And, in the remaining circuits, medical residency programs and their residents are left in a state of uncertainty regarding the rule of law that will be used to evaluate their Social Security tax obligations.

The imposition of such divergent tax burdens on similarly situated taxpayers is flatly at odds with the "uniformity" that is a "cardinal principle" of the federal "tax scheme." *United States v. Gilbert Assocs., Inc.*, 345 U.S. 361, 364 (1953); *see also United States v. Lee*, 455 U.S. 252, 261 (1982). This Court's review is necessary to restore that "uniformity" by establishing a single, nationally applicable rule of law for determining whether medical residents and other full-time employees are eligible for the Student Exemption.

II. THE DECISION BELOW CONFLICTS WITH THIS COURT'S PRECEDENT.

The extraordinary level of deference that the Eighth Circuit afforded to the Treasury Department's full-time employee regulation also conflicts with this Court's decision in *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984). That decision requires courts reviewing agency regulations to determine first whether "Congress has directly spoken to the precise question at issue" and, then, if the relevant statute is found to be ambiguous, to determine whether the agency's interpretation of the statute is reasonable. *Id.* at 842. The Eighth Circuit's decision misapplies both steps of the *Chevron* framework.

The Eighth Circuit's holding that the term "student" in FICA's Student Exemption is ambiguous disregards the statute's plain language. The text of the Student Exemption is clear and unequivocal: It exempts from Social Security taxation all compensation for "service performed in the employ of a school, college, or university" by a "student who is enrolled and regularly attending classes at such school, college, or university." 26 U.S.C. § 3121(b)(10). As the Second, Sixth, Seventh, and Eleventh Circuits have held, the term "student" in the Student Exemption is not ambiguous. *See Mem'l Sloan-Kettering Cancer Ctr.*, 563 F.3d at 27; *Detroit Med. Ctr.*, 557 F.3d at 417-18; *Univ. of Chi. Hosps.*, 545 F.3d at 567; *Mount Sinai Med. Ctr. of Fla., Inc.*, 486 F.3d at 1251-56. Rather, "student" is a "common word . . . intended to have its usual and ordinary meaning of a person pursuing studies at an appropriate institution." *Detroit Med. Ctr.*, 557 F.3d at 417-18; *see also Webster's New International Dictionary* 2502 (2d ed. 1954) (a "student" is a "person engaged in study . . .

esp[ecially], one who attends a school"); *Oxford Universal Dictionary* 2049-50 (3d ed. 1955) (a "student" engages in "study" by applying the mind "to the acquisition of learning, whether by means of books, observation, or experiment").

Medical residents who are enrolled in a school, college, or university and furthering their medical training by following a curriculum of classroom lectures, reading assignments, and hands-on patient care are unambiguously "students" within the meaning of the Student Exemption because they are engaged in a course of study that provides them with the skills and knowledge necessary to pursue their chosen profession.

The Eighth Circuit, however, held that a term in a tax statute is almost always ambiguous, even when the term has "a common or plain meaning in other contexts." Pet. App. 10a. The Eighth Circuit's extreme level of deference to tax regulations and refusal to adhere to the plain statutory language used by Congress effectively eliminates the first step of *Chevron* analysis in tax cases. It also squarely conflicts with the numerous decisions in which this Court has invalidated tax regulations that it held to be contrary to plain statutory language. *See Rowan Cos. v. United States*, 452 U.S. 247, 263 (1981) (invalidating Treasury Department regulations that conflicted with the "plain language" of the controlling tax statutes); *Maass v. Higgins*, 312 U.S. 443, 447 (1941) (invalidating the Treasury Department's estate tax regulation because it "is an unwarranted extension of the plain meaning of the statute and cannot, therefore, be sustained").

Moreover, even if the Second, Sixth, Seventh, and Eleventh Circuits were wrong when they con-

cluded that the Student Exemption is unambiguous, the Eighth Circuit nevertheless misapplied *Chevron*'s second step because the Treasury Department's full-time employee regulation is an unreasonable interpretation of the statute. The regulation provides that, when determining "student" status, the educational aspect of an employee's service must automatically be disregarded when the employee works more than forty hours per week. The result is an arbitrary bright-line rule that gives controlling weight to the number of hours worked by a full-time employee even when all the work performed by the employee is for educational purposes. But the fact that medical residents spend long hours developing their medical abilities through hands-on patient care does not detract from the fact that they are engaged in a course of study to expand their knowledge and hone their skills. As the Second, Sixth, Seventh, and Eleventh Circuits have recognized, the "student" status of medical residents should not turn upon the number of hours they devote to patient care but instead on "what the residents in the program do and under what circumstances." *Detroit Med. Ctr.*, 557 F.3d at 417-18. The Treasury Department's categorical exclusion of all medical residents and other full-time employees is arbitrary and unreasonable, and should be rejected by this Court.

III. THE EIGHTH CIRCUIT'S ERRONEOUS INTERPRETATION OF THE STUDENT EXEMPTION RAISES ISSUES OF EXCEPTIONAL IMPORTANCE TO MEDICAL RESIDENCY PROGRAMS AND THEIR RESIDENTS.

This Court should grant review and authoritatively interpret the scope of FICA's Student Exemp-

tion because that question has far-reaching implications for the Nation's 8,000 residency programs and 100,000 medical residents.

The question of the Student Exemption's application to medical residents "is an issue of great administrative and fiscal importance, involving, for medical residents nationwide, at least $2.1 billion in pending refund claims and an estimated $700 million per year in taxes." Br. of the United States at i, *Regents of Univ. of Minn.* (No. 08-2193). It should come as no surprise, then, that litigation on this issue has "exploded across the country" and that medical residency programs and their residents have "fil[ed] . . . more than 7,000 claims with the IRS." Pet. App. 3a, 4a. There is no uniform rule of law, however, to apply to these pending refund claims. As a result of the Eighth Circuit's arbitrary and unreasonable interpretation of the Student Exemption, medical residency programs and their residents in the Eighth Circuit are subject to tens of millions of dollars in annual Social Security tax obligations that Congress never intended to impose and that similarly situated taxpayers in the Second, Sixth, Seventh, and Eleventh Circuits are not required to pay.

In fact, the implications of the Eighth Circuit's decision extend well beyond medical residency programs and medical residents. As the Eighth Circuit acknowledged, "the amended regulations" promulgated by the Treasury Department in 2005 apply to *all* full-time employees and therefore "cover a broad[ ] range of issues" in addition to the application of the Student Exemption to medical residents. Pet. App. 6a. According to the Treasury Department, the question whether full-time employees are categorically ineligible for the Student Exemption "also applies to services performed by employees in other

fields, particularly regulated fields, where on the job training is often required to gain licensure." Student FICA Exception, 69 Fed. Reg. 8604, 8605 (Feb. 25, 2004). The issue therefore "has significant social security benefits and FICA tax implications" for employers and employees outside the medical residency setting. *Id.*

In light of the "significant . . . tax implications" of this frequently recurring issue—and the direct and acknowledged conflict that it has generated among the circuits—there are compelling reasons for this Court to grant review. *See Fid. Fed. Bank & Trust v. Kehoe*, 547 U.S. 1051, 1051 (2006) ("enormous potential liability, which turns on a question of federal statutory interpretation, is a strong factor in deciding whether to grant certiorari") (Scalia, J., concurring in denial of certiorari).

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted.

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