No. 18-1534

In the Supreme Court of the United States

STACI HARRINGTON, ET AL., PETITIONERS

v.

ANDREW M. SAUL, COMMISSIONER OF SOCIAL SECURITY

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

BRIEF FOR THE RESPONDENT IN OPPOSITION

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QUESTIONS PRESENTED

In *Astrue* v. *Ratliff*, 560 U.S. 586 (2010), this Court held that an award of attorney's fees under the Equal Access to Justice Act (EAJA), Pub. L. No. 96-481, Tit. II, 94 Stat. 2325, "is payable to the litigant"—not to his attorney—"and is therefore subject to a Government [administrative] offset to satisfy a pre-existing debt that the litigant owes the United States." 560 U.S. at 589. The questions presented are as follows:

1. Whether the district courts erred in awarding attorney's fees under the EAJA to petitioners, instead of to their attorneys, thereby subjecting the awards to administrative offsets to satisfy petitioners' preexisting debts to the government.

2. Whether the court of appeals correctly held that the district courts lacked ancillary jurisdiction to consider various state-law, common-law, statutory, and constitutional challenges that petitioners' attorneys asserted to the regulations governing the administrative offsets.

ADDITIONAL RELATED PROCEEDINGS

United States District Court (N.D. Ind.):

Banks v. *Commissioner of Social Security*, No. 15-cv-400 (Aug. 23, 2017)

United States District Court (S.D. Ind.):

Harrington v. *Berryhill*, No. 16-cv-129 (Oct. 5, 2017)

United States Court of Appeals (7th Cir.):

Harrington v. *Berryhill*, No. 17-3179 (Oct. 10, 2018)

Banks v. *Berryhill*, No. 17-3194 (Oct. 10, 2018)

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases:

Constitution, statutes, and regulations:

Statutes and regulations—Continued: Page

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1-17) is reported at 906 F.3d 561. The order of the district court in No. 16-cv-129 (Pet. App. 18-25) is not published in the Federal Supplement but is available at 2017 WL 6517570. The opinion and order of the district court in No. 15-cv-400 (Pet. App. 26-38) is not published in the Federal Supplement but is available at 2017 WL 3634300.

JURISDICTION

The judgment of the court of appeals was entered on October 10, 2018. A petition for rehearing was denied on January 23, 2019 (Pet. App. 50-51). On April 19, 2019, Justice Kavanaugh extended the time within which to file a petition for a writ of certiorari to and including June 7, 2019, and the petition was filed on that

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

STATEMENT

Petitioners prevailed in separate actions against the Social Security Administration on their respective claims for benefits. The district courts overseeing the cases awarded attorney's fees, but directed that those awards be paid to petitioners—not to petitioners' attorneys—thereby subjecting the awards to administrative offsets to help satisfy petitioners' preexisting governmental debts. The courts rejected the attorneys' state-law, common-law, statutory, and constitutional challenges to the regulations governing the administrative offsets. The court of appeals affirmed the awarding of the fees to petitioners instead of to their attorneys, but held that the district courts lacked ancillary jurisdiction to consider the attorneys' additional challenges.

1. a. Under the Debt Collection Improvement Act of 1996 (DCIA), Pub. L. No. 104-134, Tit. III, Ch. 10, § 31001, 110 Stat. 1321-358, federal agencies may use "administrative offset" to collect certain outstanding debts owed to them. 31 U.S.C. 3716(a); see 31 U.S.C. 3711(a). An administrative offset is the "withholding [of] funds payable by the United States * * * to * * * a person to satisfy a claim." 31 U.S.C. 3701(a)(1). The Treasury Department administers a centralized offset program. 31 C.F.R. 285.5(a); see 31 C.F.R. 285.1 *et seq.*; cf. 31 U.S.C. 3716(b). Creditor agencies generally report their delinquent, nontax debts to that centralized program. See 31 C.F.R. 285.5(c) and (d).

When a person is entitled to payment from the government, the agency that owes the money generally submits a payment voucher in the person's name to the Treasury Department, which processes the payment.

See 31 U.S.C. 3325(a), 3528. Before it disburses any funds, however, the Treasury Department checks the centralized offset program to determine whether the recipient owes any delinquent debts to a federal agency. See 31 U.S.C. 3325(a)(3). If so, and unless the payment voucher is of a type that falls within certain exceptions, see 31 U.S.C. 3716(c)(3)(A)(i); 31 C.F.R. 285.5(e)(2), the Treasury Department uses an administrative offset—that is, it applies the payment to satisfy or reduce the preexisting debt rather than transmitting the money to the debtor, 31 U.S.C. 3701(a); 31 C.F.R. 285.5(a). "When an offset occurs, the debtor has received payment in full for the underlying obligation represented by the payment," 31 C.F.R. 285.5(e)(9); see 31 C.F.R. 285.5(f)(1), because his prior debt to the government has been satisfied or reduced by the amount of the offset. A debtor generally cannot avoid the offset by assigning his requested payment to someone else. With few exceptions, "[a]n assigned payment will also be subject to offset to collect delinquent debts owed by the assignor." 31 C.F.R. 285.5(e)(6)(ii).

b. The Equal Access to Justice Act (EAJA), Pub. L. No. 96-481, Tit. II, 94 Stat. 2325, provides in relevant part that, under specified conditions, "a court shall award to a prevailing party other than the United States fees and other expenses * * * in any civil action" against the government. 28 U.S.C. 2412(d)(1)(A). In *Astrue* v. *Ratliff*, 560 U.S. 586 (2010), this Court held that an EAJA award is "payable to the litigant," not to the attorney, "and is therefore subject to a Government [administrative] offset to satisfy a pre-existing debt that the litigant owes the United States." *Id.* at 589.

2. Petitioners are Social Security claimants who sought disability benefits. Pet. App. 3. Each petitioner

retained the same law firm and signed a document that assigned to the firm "any and all attorney fees and costs that may be due and payable under the [EAJA]." *Id.* at 52; accord *id.* at 53. Petitioners all prevailed in their respective actions against the government, and the district courts awarded attorney's fees to each under the EAJA. See *id.* at 26-35, 39-49.

Over petitioners' objections, the district courts determined that, under *Ratliff*, the fee awards were payable to petitioners, not to the law firm, and therefore would be subject to administrative offsets if petitioners owed any debts to the government. See Pet. App. 18-25, 35-38. The courts rejected petitioners' arguments that the purportedly valid assignment agreements caused those fees to be payable directly to the law firm. See *ibid.*; cf. 31 C.F.R. 285.5(e)(6)(ii). The courts also rejected additional arguments that the administrative offsets here were unconstitutional and violated various statutory provisions and common-law rules. See Pet. App. 18-25, 35-38; see also 16-cv-129 D. Ct. Doc. 47, at 18-20 (Sept. 18, 2017); 16-cv-129 D. Ct. Doc. 37, at 4-14 (Aug. 7, 2017); 15-cv-400 D. Ct. Doc. 28, at 9-20 (June 26, 2017).

After the district courts issued their respective orders, the Social Security Administration submitted payment vouchers in petitioners' names to the Treasury Department, which found that petitioners had outstanding governmental debts that required administrative offsets. See Pet. C.A. App. 33-34, 72-73. The entire fee awards were applied to reduce the debts, which exceeded the award amounts. See *ibid.*; see also Pet. App. 3-4.

3. The court of appeals affirmed. Pet. App. 1-17.

a. The court of appeals held that the district courts had acted correctly in ordering that the EAJA fee awards

be paid directly to petitioners, thereby subjecting those awards to administrative offsets. The court of appeals explained that the district courts had "awarded fees to the 'prevailing party' as the statute directs, * * * *Ratliff* requires that such payment go directly to the litigant rather than to her attorney[,] * * * and the prevailing litigants received value through the reduction of their outstanding debts." Pet. App. 8.

Petitioners contended that the withholding of the fee awards to reduce their preexisting debts meant that they had not been "paid" those awards under the EAJA. See Pet. App. 8-9. The court of appeals rejected that argument, explaining that petitioners had "each received more than $11,000 in economic value through a reduction of their outstanding debts." *Id.* at 9. Petitioners relied in part on dicta in *United States* v. *Isthmian Steamship Co.*, 359 U.S. 314 (1959), that petitioners viewed as "distinguish[ing] * * * the concepts of payment and withholding payment to offset a prior debt." Pet. App. 9. The court observed that the disputed issue in *Isthmian Steamship* was "whether a setoff in a non-admiralty context could serve as a defense to suit in admiralty jurisdiction," and that the Court's decision therefore was inapposite here. *Ibid.* In this context, the court explained, "[w]hen an offset occurs, the debtor has received payment in full for the underlying obligation represented by the payment." *Id.* at 9-10 (quoting 31 C.F.R. 285.5(e)(9)).

b. The attorneys also argued that the contractual assignment to them of the EAJA fee awards was valid under Indiana law and the Anti-Assignment Act, 31 U.S.C. 3727, and that those assignments took priority over any federal administrative offsets. They further argued that the ad-

ministrative offsets violated the Fifth Amendment's Takings Clause; constitutional separation of powers; the equitable rule of mutuality; and the Judgment Setoff Act of 1875, 31 U.S.C. 3728. The court of appeals declined to rule on those contentions. Pet. App. 10-16; see *id.* at 6-7. The court explained that "[f]ederal courts are courts of limited jurisdiction," *id.* at 10 (quoting *Kokkonen* v. *Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994)), and that its "appellate jurisdiction is limited by the extent of the subject matter jurisdiction exercised by the courts of first instance," *id.* at 11. The court of appeals observed that the district courts here had exercised subject-matter jurisdiction under only the Social Security Act, 42 U.S.C. 405(g), and the EAJA, 28 U.S.C. 2412(d) (2012). Pet. App. 10-11.

The court of appeals held that neither of those "jurisdictional grants" authorized the district courts to resolve the attorneys' claims about the validity and effect of the fee assignment under state law or their independent statutory and constitutional challenges to the administrative-offset scheme. Pet. App. 11. The court of appeals recognized that federal courts may exercise ancillary jurisdiction over "some matters (otherwise beyond their competence) that are incidental to other matters properly before them." *Ibid.* (quoting *Kokkonen*, 511 U.S. at 378). The court explained, however, that such ancillary jurisdiction is appropriate only "to enable a court to function successfully, that is, to manage its proceedings, vindicate its authority, and effectuate it[s] decrees." *Ibid.* (quoting *Kokkonen*, 511 U.S. at 380). The court found that none of those rationales was applicable here, and that the additional claims instead were "essentially free-standing challenges to the actions of an agency [*i.e.*, the Treasury Department] that is not a

party to this lawsuit by attorneys who themselves are not the original parties." *Id.* at 14.

The court of appeals concluded that "[a] new suit under the Administrative Procedure Act * * * is the proper vehicle for this litigation." Pet. App. 15. The court observed that *Ratliff* was an independent suit under the Administrative Procedure Act (APA), 5 U.S.C. 701 *et seq.*, brought by the Social Security claimant's attorney. Pet. App. 15. The court explained that a "separate suit would also alleviate the potential for a conflict of interest between the attorneys * * * and the clients whom they claim to represent on appeal" because "victory for the attorneys would necessarily result in the reinstatement of their clients' government debts (and in the case of [one of the petitioners], recoupment of money already paid to the mother of his child)." *Id.* at 15-16.

ARGUMENT

Petitioners contend (Pet. 30-38) that a federal administrative offset is not a "payment" under the EAJA, and that the fee awards here thus should have been paid directly to petitioners' attorneys. They also challenge (Pet. 23-29) the court of appeals' determination that the district courts lacked ancillary jurisdiction over the attorneys' statutory and constitutional challenges to the administrative-offset scheme, and they seek summary reversal on that basis. Those arguments lack merit. The court of appeals' decision is correct and does not conflict with any decision of this Court or another court of appeals. Further review is not warranted.

1. The court of appeals correctly held that the administrative offsets at issue here—*i.e.*, the withholding of petitioners' EAJA fee awards to satisfy or reduce their preexisting delinquent debts to the government—constituted "payments" under the EAJA. In *Astrue* v.

Ratliff, 560 U.S. 586 (2010), this Court held that EAJA fee awards to successful Social Security claimants were subject to administrative offsets under the DCIA. See *id.* at 589. And as the court below recognized (Pet. App. 9-10), a Treasury regulation implementing the administrative-offset scheme states that, "[w]hen an offset occurs, the debtor has received payment in full for the underlying obligation represented by the payment." 31 C.F.R. 285.5(e)(9). Petitioners' contention that such offsets violate the EAJA is incompatible both with *Ratliff* and with that regulation.

Petitioners' reliance (Pet. 32-33) on the Judgment Setoff Act of 1875, 31 U.S.C. 3728, is misplaced. That provision requires the Secretary of the Treasury to "withhold paying that part of a judgment against the United States * * * that is equal to a debt the plaintiff owes the Government," 31 U.S.C. 3728(a), and then either to "discharge the debt if the plaintiff agrees to the setoff" or to "have a civil action brought" if the plaintiff does not agree, 31 U.S.C. 3728(b)(1) and (2)(B). From those provisions, petitioners infer (Pet. 32) that "a judgment offset is not 'payment,'" and that the administrative offsets here are not "payment[s]" of petitioners' EAJA awards. But Section 3728 has no bearing on the EAJA or the DCIA. The question here is whether fee awards under the former law are subject to administrative offsets under the latter. The Court in *Ratliff* squarely held that they are. Section 3728 is immaterial to that inquiry.

Indeed, the DCIA makes clear that administrative offsets are available for all payment vouchers *except* those falling into certain enumerated categories—a list that does not include EAJA fee awards. See 31 U.S.C. 3716(c)(3)(A)(i). And the DCIA itself provides only one

exception to its application: when another "statute *explicitly prohibits* using administrative offset or setoff to collect the claim or type of claim involved," 31 U.S.C. 3716(e)(2) (emphasis added)—and petitioners have identified no such statute here. Petitioners' purported assignments to their attorneys of their EAJA fee awards do not matter since, absent circumstances not relevant here, "[a]n assigned payment will also be subject to offset to collect delinquent debts owed by the assignor." 31 C.F.R. 285.5(e)(6)(ii). Moreover, Congress directed the "disbursing official in the executive branch" to "examine" all payment vouchers, including to determine whether to apply "payment intercepts or offsets pursuant to section 3716." 31 U.S.C. 3325(a)(2) and (3). Those authorities squarely foreclose petitioners' challenge to the administrative offsets at issue here.

Petitioners' reliance (Pet. 34-37) on *United States* v. *Isthmian Steamship Co.*, 359 U.S. 314 (1959), and *Grace Line, Inc.* v. *United States*, 255 F.2d 810 (2d Cir. 1958), also is misplaced. In *Isthmian Steamship*, the plaintiff billed the government for the carriage of government cargo on the plaintiff's ships; but instead of paying the full amount, the government withheld a large portion of it to satisfy a separate debt the plaintiff owed the government. 359 U.S. at 315. Citing *Grace Line*, this Court held that in admiralty law, such a setoff could not be invoked as a *defense* to the plaintiff's claim for payment; instead, the government would have to file a separate "cross-libel" (*i.e.*, a counterclaim) for the plaintiff's debt. See *id.* at 319-321, 324. The Court acknowledged the "anachronistic" nature of that prescribed procedure, but expressed its view that "if the law is to change it should be by rulemaking or legislation and not by [judicial] decision." *Id.* at 323.

This is not an admiralty case, and the "anachronistic" admiralty rule that the Court applied is inapposite here. *Isthmian Steamship*, 359 U.S. at 323; see Pet. App. 9. Instead, this case is governed by legislation—the EAJA and the DCIA—and implementing regulations. As discussed above, the Court construed those sources of law in *Ratliff* and unanimously held that EAJA fee awards are subject to administrative offsets under the DCIA. See 560 U.S. at 589. Whether a setoff constitutes a "payment" in other contexts, such as admiralty law, has no bearing on the situation here.

2. Petitioners contend (Pet. 23-29) that the court of appeals created a "proper-vehicle exception to appellate jurisdiction," and they seek summary reversal on that basis. Pet. 23 (emphasis omitted). The court created no such exception. Instead, it determined that the *district courts* did not have ancillary jurisdiction over the attorneys' independent challenges to the administrative offsets here. That holding was correct and does not warrant further review, let alone summary reversal.

Federal courts have jurisdiction "over some matters (otherwise beyond their competence) that are incidental to other matters properly before them." *Kokkonen* v. *Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 378 (1994). Such ancillary jurisdiction may be exercised "(1) to permit disposition by a single court of claims that are, in varying respects and degrees, factually interdependent; and (2) to enable a court to function successfully, that is, to manage its proceedings, vindicate its authority, and effectuate its decrees." *Id.* at 379-380 (citations omitted). Thus, for example, a federal court has "ancillary jurisdiction in subsequent proceedings for the exercise of [its] inherent power to enforce its judgments."

Peacock v. *Thomas*, 516 U.S. 349, 356 (1996); see *Wayman* v. *Southard*, 23 U.S. (10 Wheat.) 1, 23 (1825) (Marshall, C.J.). But courts do not have ancillary jurisdiction over claims that require determination of facts "separate from the facts to be determined in the principal suit," because exercising such jurisdiction "is in no way essential to the conduct of federal-court business." *Kokkonen*, 511 U.S. at 381. In accordance with those principles, the *Kokkonen* Court held that federal courts generally lack ancillary jurisdiction over claims for breach of a settlement agreement governed by state law, even if the settlement was of a federal lawsuit. *Ibid.*

The court of appeals correctly applied those principles in finding that the district courts lacked ancillary jurisdiction over the attorneys' independent claims here. Pet. App. 10-17. Like the claim in *Kokkonen* for breach of a settlement agreement, the attorneys' claim that the assignment of petitioners' EAJA fee awards is valid under Indiana law is factually independent of petitioners' claims in the principal suit, and it does not require resolution here to enable the courts below to function successfully or vindicate their decrees. See 31 C.F.R. 285.5(e)(6)(ii) (providing that an assigned claim remains subject to administrative offset to collect a debt owed by the assignor). The same is true of the attorneys' myriad common-law, statutory, and constitutional challenges to the Treasury regulations that govern administrative offsets under the DCIA.

The attorneys' claims here "are essentially freestanding challenges to the actions of an agency that is not a party to this lawsuit by attorneys who themselves are not the original parties." Pet. App. 14. After analyzing "the extent to which the new issues are closely con-

nected to the original dispute," *ibid.*, the court of appeals correctly held that the new claims "inject so many new issues that they create functionally a separate case," *id.* at 15 (brackets and citation omitted). Under those circumstances, the court did not err in holding that the district courts lacked ancillary jurisdiction over the attorneys' claims.

Petitioners assert (Pet. 23-29) that the court of appeals created a judge-made exception to the scope of its appellate jurisdiction. That is incorrect. The court made clear in its substantive analysis that the *district courts* exercised jurisdiction under 42 U.S.C. 405(g) and 28 U.S.C. 2412(d) (2012), and that its *appellate* jurisdiction therefore was "limited by the extent of the subject matter jurisdiction exercised by the courts of first instance." Pet. App. 11. Later in its opinion, the court of appeals reiterated that "[t]he district courts properly granted attorney fees" that were subject to administrative offsets, and that "[t]hose questions form the extent of our jurisdiction on appeal." *Id.* at 17. The court of appeals thus plainly understood that rules of ancillary jurisdiction apply to "the courts of first instance," *i.e.*, district courts, *id.* at 11, and that its own appellate jurisdiction simply mirrored those bounds. That in places the court of appeals imprecisely used the shorthand "we" and "our" to refer to federal courts generally does not mean that it misunderstood the nature of ancillary jurisdiction.

The court of appeals did not create a "proper-vehicle exception" to either appellate or original jurisdiction. Pet. 25 (emphasis omitted). The court's discussion of a "proper vehicle" was limited to its unremarkable observation that here, as in *Ratliff*, the attorneys could attempt to bring their claims in a separate suit under the APA. Pet. App. 15. The court explained that a separate

suit would alleviate potential conflicts of interest between the attorneys and petitioners, and also would allow the Treasury Department "the opportunity to defend its rule as a party to the case." *Ibid.* The court emphasized that it had "no opinion on the merits" of the attorneys' claims, and that the attorneys had raised "important questions that deserve their day in court." *Id.* at 16. Far from creating an exception to federal jurisdiction, the court simply observed that the lack of ancillary jurisdiction here did not foreclose the attorneys from attempting to pursue their claims in another federal lawsuit.

Petitioners' reliance (Pet. 37) on *Pam-to-Pee* v. *United States*, 187 U.S. 371 (1902), is misplaced. There, the Court held that a federal court that entered a judgment in favor of the Pottawatomie Indians of Michigan and Indiana had ancillary jurisdiction "to identify the particular individuals entitled to share in the amount found due." *Id.* at 380. Ancillary jurisdiction to identify the individual Pottawatomie Indians who were real parties in interest was essential there to execute the judgment in favor of a collective entity whose membership was not readily apparent. See *id.* at 382. The Court in *Pam-to-Pee* did not hold that courts have ancillary jurisdiction over tangential nonparty claims that are not essential to the execution of a judgment.

The attorneys' independent claims here, though related to the district courts' respective judgments, are not essential to their execution. To the contrary, the judgments in favor of petitioners already have been fully executed: the Social Security Administration issued payment vouchers in petitioners' names, and the Treasury Department offset the payments by applying

them to reduce petitioners' preexisting debts to the government. Those steps were taken in accordance with the EAJA, the DCIA, the pertinent Treasury Department regulations, and this Court's decision in *Ratliff*. Although the attorneys remain free to try to challenge any or all of those authorities, see Pet. App. 16, they (like the lawyer in *Ratliff*) must do so in a separate suit.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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