SUPREME COURT OF THE UNITED STATES

No. 03–475

RICHARD B. CHENEY, VICE PRESIDENT OF THE UNITED STATES, ET AL., PETITIONERS *v.* UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA ET AL.

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

[June 24, 2004]

JUSTICE KENNEDY delivered the opinion of the Court.

The United States District Court for the District of Columbia entered discovery orders directing the Vice President and other senior officials in the Executive Branch to produce information about a task force established to give advice and make policy recommendations to the President. This case requires us to consider the circumstances under which a court of appeals may exercise its power to issue a writ of mandamus to modify or dissolve the orders when, by virtue of their overbreadth, enforcement might interfere with the officials in the discharge of their duties and impinge upon the President's constitutional prerogatives.

I

A few days after assuming office, President George W. Bush issued a memorandum establishing the National Energy Policy Development Group (NEPDG or Group). The Group was directed to "develo[p] . . . a national energy policy designed to help the private sector, and government

at all levels, promote dependable, affordable, and environmentally sound production and distribution of energy for the future." App. 156–157. The President assigned a number of agency heads and assistants—all employees of the Federal Government—to serve as members of the committee. He authorized the Vice President, as chairman of the Group, to invite "other officers of the Federal Government" to participate "as appropriate." *Id.*, at 157. Five months later, the NEPDG issued a final report and, according to the Government, terminated all operations.

Following publication of the report, respondents Judicial Watch and the Sierra Club filed these separate actions, which were later consolidated in the District Court. Respondents alleged the NEPDG had failed to comply with the procedural and disclosure requirements of the Federal Advisory Committee Act (FACA or Act), 5 U. S. C. App. §2, p. 1.

FACA was enacted to monitor the "numerous committees, boards, commissions, councils, and similar groups [that] have been established to advise officers and agencies in the executive branch of the Federal Government," §2(a), and to prevent the "wasteful expenditure of public funds" that may result from their proliferation, *Public Citizen* v. *Department of Justice,* 491 U. S. 440, 453 (1989). Subject to specific exemptions, FACA imposes a variety of open-meeting and disclosure requirements on groups that meet the definition of an "advisory committee." As relevant here, an "advisory committee" means

> "any committee, board, commission, council, conference, panel, task force, or other similar group, or any subcommittee or other subgroup thereof . . . , which is—
>
> . . . . .
>
> "(B) established or utilized by the President, . . .
>
> except that [the definition] excludes (i) any committee

> that is composed wholly of full-time, or permanent part-time, officers or employees of the Federal Government . . . ." 5 U. S. C. App. §3(2).

Respondents do not dispute the President appointed only Federal Government officials to the NEPDG. They agree that the NEPDG, as established by the President in his memorandum, was "composed wholly of full-time, or permanent part-time, officers or employees of the Federal Government." *Ibid.* The complaint alleges, however, that "non-federal employees," including "private lobbyists," "regularly attended and fully participated in non-public meetings." App. 21 (Judicial Watch Complaint ¶25). Relying on *Association of American Physicians & Surgeons, Inc.* v. *Clinton*, 997 F. 2d 898 (CADC 1993) *(AAPS)*, respondents contend that the regular participation of the non-Government individuals made them *de facto* members of the committee. According to the complaint, their "involvement and role are functionally indistinguishable from those of the other [formal] members." *Id.*, at 915. As a result, respondents argue, the NEPDG cannot benefit from the Act's exemption under subsection B and is subject to FACA's requirements.

Vice President Cheney, the NEPDG, the Government officials who served on the committee, and the alleged *de facto* members were named as defendants. The suit seeks declaratory relief and an injunction requiring them to produce all materials allegedly subject to FACA's requirements.

All defendants moved to dismiss. The District Court granted the motion in part and denied it in part. The court acknowledged FACA does not create a private cause of action. On this basis, it dismissed respondents' claims against the non-Government defendants. Because the NEPDG had been dissolved, it could not be sued as a defendant; and the claims against it were dismissed as

well. The District Court held, however, that FACA's substantive requirements could be enforced against the Vice President and other Government participants on the NEPDG under the Mandamus Act, 28 U. S. C. §1361, and against the agency defendants under the Administrative Procedure Act (APA), 5 U. S. C. §706. The District Court recognized the disclosure duty must be clear and nondiscretionary for mandamus to issue, and there must be, among other things, "final agency actions" for the APA to apply. According to the District Court, it was premature to decide these questions. It held only that respondents had alleged sufficient facts to keep the Vice President and the other defendants in the case.

The District Court deferred ruling on the Government's contention that to disregard the exemption and apply FACA to the NEPDG would violate principles of separation of powers and interfere with the constitutional prerogatives of the President and the Vice President. Instead, the court allowed respondents to conduct a "tightly-reined" discovery to ascertain the NEPDG's structure and membership, and thus to determine whether the *de facto* membership doctrine applies. *Judicial Watch, Inc.* v. *National Energy Policy Dev. Group*, 219 F. Supp. 2d 20, 54 (DC 2002). While acknowledging that discovery itself might raise serious constitutional questions, the District Court explained that the Government could assert executive privilege to protect sensitive materials from disclosure. In the District Court's view, these "issues of executive privilege will be much more limited in scope than the broad constitutional challenge raised by the government." *Id.*, at 55. The District Court adopted this approach in an attempt to avoid constitutional questions, noting that if, after discovery, respondents have no evidentiary support for the allegations about the regular participation by lobbyists and industry executives on the NEPDG, the Government can prevail on statutory grounds. Further-

more, the District Court explained, even were it appropriate to address constitutional issues, some factual development is necessary to determine the extent of the alleged intrusion into the Executive's constitutional authority. The court denied in part the motion to dismiss and ordered respondents to submit a discovery plan.

In due course the District Court approved respondents' discovery plan, entered a series of orders allowing discovery to proceed, see CADC App. 238, 263, 364 (reproducing orders entered on Sept. 9, Oct. 17, and Nov. 1, 2002), and denied the Government's motion for certification under 28 U. S. C. §1292(b) with respect to the discovery orders. Petitioners sought a writ of mandamus in the Court of Appeals to vacate the discovery orders, to direct the District Court to rule on the basis of the administrative record, and to dismiss the Vice President from the suit. The Vice President also filed a notice of appeal from the same orders. See *Cohen* v. *Beneficial Industrial Loan Corp.,* 337 U. S. 541 (1949); *United States* v. *Nixon*, 418 U. S. 683 (1974).

A divided panel of the Court of Appeals dismissed the petition for a writ of mandamus and the Vice President's attempted interlocutory appeal. *In re Cheney*, 334 F. 3d 1096 (CADC 2003). With respect to mandamus, the majority declined to issue the writ on the ground that alternative avenues of relief remained available. Citing *United States* v. *Nixon, supra*, the majority held that petitioners, to guard against intrusion into the President's prerogatives, must first assert privilege. Under its reading of *Nixon*, moreover, privilege claims must be made "'with particularity.'" 334 F. 3d, at 1104. In the majority's view, if the District Court sustains the privilege, petitioners will be able to obtain all the relief they seek. If the District Court rejects the claim of executive privilege and creates "an imminent risk of disclosure of allegedly protected presidential communications," "mandamus might well be

appropriate to avoid letting 'the cat . . . out of the bag.'" *Id.*, at 1104–1105. "But so long as the separation of powers conflict that petitioners anticipate remains hypothetical," the panel held, "we have no authority to exercise the extraordinary remedy of mandamus." *Id.*, at 1105. The majority acknowledged the scope of respondents' requests is overly broad, because it seeks far more than the "limited items" to which respondents would be entitled if "the district court ultimately determines that the NEPDG is subject to FACA." *Id.*, at 1105–1106; *id.*, at 1106 ("The requests to produce also go well beyond FACA's requirements"); *ibid.* ("[Respondents'] discovery also goes well beyond what they need to prove"). It nonetheless agreed with the District Court that petitioners "'shall bear the burden'" of invoking executive privilege and filing objections to the discovery orders with "'detailed precision.'" *Id.*, at 1105 (quoting Aug. 2, 2002, Order).

For similar reasons, the majority rejected the Vice President's interlocutory appeal. In *United States* v. *Nixon*, the Court held that the President could appeal an interlocutory subpoena order without having "to place himself in the posture of disobeying an order of a court merely to trigger the procedural mechanism for review." 418 U. S., at 691. The majority, however, found the case inapplicable because Vice President Cheney, unlike then-President Nixon, had not yet asserted privilege. In the majority's view, the Vice President was not forced to choose between disclosure and suffering contempt for failure to obey a court order. The majority held that to require the Vice President to assert privilege does not create the unnecessary confrontation between two branches of Government described in *Nixon*.

Judge Randolph filed a dissenting opinion. In his view *AAPS*' *de facto* membership doctrine is mistaken, and the Constitution bars its application to the NEPDG. Allowing discovery to determine the applicability of the *de facto*

membership doctrine, he concluded, is inappropriate. He would have issued the writ of mandamus directing dismissal of the complaints. 334 F. 3d, at 1119.

We granted certiorari. 540 U. S. ___ (2003). We now vacate the judgment of the Court of Appeals and remand the case for further proceedings to reconsider the Government's mandamus petition.

II

As a preliminary matter, we address respondents' argument that the Government's petition for a writ of mandamus was jurisdictionally out of time or, alternatively, barred by the equitable doctrine of laches. According to respondents, because the Government's basic argument was one of discovery immunity—that is, it need not invoke executive privilege or make particular objections to the discovery requests—the mandamus petition should have been filed with the Court of Appeals within 60 days after the District Court denied the Government's motion to dismiss. See Fed. Rule App. Proc. 4(a)(1)(B) ("When the United States or its officer or agency is a party, the notice of appeal may be filed by any party within 60 days after the judgment or order appealed from is entered"). On this theory, the last day for making any filing to the Court of Appeals was September 9, 2002. The Government, however, did not file the mandamus petition and the notice of appeal until November 7, four months after the District Court issued the order that, under respondents' view, commenced the time for appeal.

As even respondents acknowledge, however, Rule 4(a), by its plain terms, applies only to the filing of a notice of appeal. Brief for Respondent Sierra Club 23. Rule 4(a) is inapplicable to the Government's mandamus petition under the All Writs Act, 28 U. S. C. §1651. Because we vacate the Court of Appeals' judgment and remand the case for further proceedings for the court to consider

whether a writ of mandamus should have issued, we need not decide whether the Vice President also could have appealed the District Court's orders under *Nixon* and the collateral order doctrine. We express no opinion on whether the Vice President's notice of appeal was timely filed.

Respondents' argument that the mandamus petition was barred by laches does not withstand scrutiny. Laches might bar a petition for a writ of mandamus if the petitioner "slept upon his rights . . . , and especially if the delay has been prejudicial to the [other party], or to the rights of other persons." *Chapman* v. *County of Douglas,* 107 U. S. 348, 355 (1883). Here, the flurry of activity following the District Court's denial of the motion to dismiss overcomes respondents' argument that the Government neglected to assert its rights. The Government filed, among other papers, a motion for a protective order on September 3; a motion to stay pending appeal on October 21; and a motion for leave to appeal pursuant to 28 U. S. C. §1292(b) on October 23. Even were we to agree that the baseline for measuring the timeliness of the Government's mandamus petition was the District Court's order denying the motion to dismiss, the Government's active litigation posture was far from the neglect or delay that would make the application of laches appropriate.

We do not accept, furthermore, respondents' argument that laches should apply because the motions filed by the Government following the District Court's denial of its motion to dismiss amounted to little more than dilatory tactics to "delay and obstruct the proceedings." Brief for Respondent Sierra Club 23. In light of the drastic nature of mandamus and our precedents holding that mandamus may not issue so long as alternative avenues of relief remain available, the Government cannot be faulted for attempting to resolve the dispute through less drastic means. The law does not put litigants in the impossible

position of having to exhaust alternative remedies before petitioning for mandamus, on the one hand, and having to file the mandamus petition at the earliest possible moment to avoid laches, on the other. The petition was properly before the Court of Appeals for its consideration.

III

We now come to the central issue in the case—whether the Court of Appeals was correct to conclude it "ha[d] no authority to exercise the extraordinary remedy of mandamus," 334 F. 3d, at 1105, on the ground that the Government could protect its rights by asserting executive privilege in the District Court.

The common-law writ of mandamus against a lower court is codified at 28 U. S. C. §1651(a): "The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law." This is a "drastic and extraordinary" remedy "reserved for really extraordinary causes." *Ex parte Fahey*, 332 U. S. 258, 259–260 (1947). "The traditional use of the writ in aid of appellate jurisdiction both at common law and in the federal courts has been to confine [the court against which mandamus is sought] to a lawful exercise of its prescribed jurisdiction." *Roche* v. *Evaporated Milk Assn.,* 319 U. S. 21, 26 (1943). Although courts have not "confined themselves to an arbitrary and technical definition of 'jurisdiction,'" *Will* v. *United States*, 389 U. S. 90, 95 (1967), "only exceptional circumstances amounting to a judicial 'usurpation of power,'" *ibid.*, or a "clear abuse of discretion," *Bankers Life & Casualty Co.* v. *Holland,* 346 U. S. 379, 383 (1953), "will justify the invocation of this extraordinary remedy," *Will*, 389 U. S., at 95.

As the writ is one of "the most potent weapons in the judicial arsenal," *id.*, at 107, three conditions must be satisfied before it may issue. *Kerr* v. *United States Dist.*

Court for Northern Dist. of Cal., 426 U. S. 394, 403 (1976). First, "the party seeking issuance of the writ [must] have no other adequate means to attain the relief he desires," *ibid.*—a condition designed to ensure that the writ will not be used as a substitute for the regular appeals process, *Fahey*, *supra*, at 260. Second, the petitioner must satisfy "'the burden of showing that [his] right to issuance of the writ is "clear and indisputable."'" *Kerr, supra,* at 403 (quoting *Banker's Life & Casualty Co.*, *supra*, at 384). Third, even if the first two prerequisites have been met, the issuing court, in the exercise of its discretion, must be satisfied that the writ is appropriate under the circumstances. *Kerr, supra,* at 403 (citing *Schlagenhauf* v. *Holder,* 379 U. S. 104, 112, n. 8 (1964)). These hurdles, however demanding, are not insuperable. This Court has issued the writ to restrain a lower court when its actions would threaten the separation of powers by "embarrass[ing] the executive arm of the Government," *Ex parte Peru,* 318 U. S. 578, 588 (1943), or result in the "intrusion by the federal judiciary on a delicate area of federal-state relations," *Will, supra*, at 95, citing *Maryland* v. *Soper (No. 1)*, 270 U. S. 9 (1926).

Were the Vice President not a party in the case, the argument that the Court of Appeals should have entertained an action in mandamus, notwithstanding the District Court's denial of the motion for certification, might present different considerations. Here, however, the Vice President and his comembers on the NEPDG are the subjects of the discovery orders. The mandamus petition alleges that the orders threaten "substantial intrusions on the process by which those in closest operational proximity to the President advise the President." App. 343. These facts and allegations remove this case from the category of ordinary discovery orders where interlocutory appellate review is unavailable, through mandamus or otherwise. It is well established that "a President's communications and

activities encompass a vastly wider range of sensitive material than would be true of any 'ordinary individual.'" *United States* v. *Nixon*, 418 U. S., at 715. Chief Justice Marshall, sitting as a trial judge, recognized the unique position of the Executive Branch when he stated that "[i]n no case . . . would a court be required to proceed against the president as against an ordinary individual." *United States* v. *Burr*, 25 F. Cas. 187, 192 (No. 14,694) (CC Va. 1807). See also *Clinton* v. *Jones*, 520 U. S. 681, 698–699 (1997) ("We have, in short, long recognized the 'unique position in the constitutional scheme' that [the Office of the President] occupies" (quoting *Nixon* v. *Fitzgerald*, 457 U. S. 731, 749 (1982))); 520 U. S., at 710–724 (BREYER, J., concurring in judgment). As *United States* v. *Nixon* explained, these principles do not mean that the "President is above the law." 418 U. S., at 715. Rather, they simply acknowledge that the public interest requires that a coequal branch of Government "afford Presidential confidentiality the greatest protection consistent with the fair administration of justice," *ibid.*, and give recognition to the paramount necessity of protecting the Executive Branch from vexatious litigation that might distract it from the energetic performance of its constitutional duties.

These separation-of-powers considerations should inform a court of appeals' evaluation of a mandamus petition involving the President or the Vice President. Accepted mandamus standards are broad enough to allow a court of appeals to prevent a lower court from interfering with a coequal branch's ability to discharge its constitutional responsibilities. See *Ex parte Peru*, *supra*, at 587 (recognizing jurisdiction to issue the writ because "the action of the political arm of the Government taken within its appropriate sphere [must] be promptly recognized, and . . . delay and inconvenience of a prolonged litigation [must] be avoided by prompt termination of the proceedings in the district court"); see also *Clinton* v. *Jones*, *supra,* at 701

("We have recognized that '[e]ven when a branch does not arrogate power to itself . . . the separation-of-powers doctrine requires that a branch not impair another in the performance of its constitutional duties.'" (quoting *Loving* v. *United States*, 517 U. S. 748, 757 (1996))).

IV

The Court of Appeals dismissed these separation-of-powers concerns. Relying on *United States* v. *Nixon*, it held that even though respondents' discovery requests are overbroad and "go well beyond FACA's requirements," the Vice President and his former colleagues on the NEPDG "shall bear the burden" of invoking privilege with narrow specificity and objecting to the discovery requests with "detailed precision." 334 F. 3d, at 1105–1106. In its view, this result was required by *Nixon*'s rejection of an "absolute, unqualified Presidential privilege of immunity from judicial process under all circumstances." 418 U. S., at 706. If *Nixon* refused to recognize broad claims of confidentiality where the President had asserted executive privilege, the majority reasoned, *Nixon* must have rejected, *a fortiori*, petitioners' claim of discovery immunity where the privilege has not even been invoked. According to the majority, because the Executive Branch can invoke executive privilege to maintain the separation of powers, mandamus relief is premature.

This analysis, however, overlooks fundamental differences in the two cases. *Nixon* cannot bear the weight the Court of Appeals puts upon it. First, unlike this case, which concerns respondents' requests for information for use in a civil suit, *Nixon* involves the proper balance between the Executive's interest in the confidentiality of its communications and the "constitutional need for production of relevant evidence in a criminal proceeding." *Id.*, at 713. The Court's decision was explicit that it was "not . . . concerned with the balance between the President's gen-

eralized interest in confidentiality and the need for relevant evidence in civil litigation . . . . We address only the conflict between the President's assertion of a generalized privilege of confidentiality and the constitutional need for relevant evidence in criminal trials." *Id.*, at 712, n. 19.

The distinction *Nixon* drew between criminal and civil proceedings is not just a matter of formalism. As the Court explained, the need for information in the criminal context is much weightier because "our historic[al] commitment to the rule of law . . . is nowhere more profoundly manifest than in our view that 'the twofold aim [of criminal justice] is that guilt shall not escape or innocence suffer.'" *Id.*, at 708–709 (quoting *Berger* v. *United States,* 295 U. S. 78, 88 (1935)). In light of the "fundamental" and "comprehensive" need for "every man's evidence" in the criminal justice system, 418 U. S., at 709, 710, not only must the Executive Branch first assert privilege to resist disclosure, but privilege claims that shield information from a grand jury proceeding or a criminal trial are not to be "expansively construed, for they are in derogation of the search for truth," *id.*, at 710. The need for information for use in civil cases, while far from negligible, does not share the urgency or significance of the criminal subpoena requests in *Nixon*. As *Nixon* recognized, the right to production of relevant evidence in civil proceedings does not have the same "constitutional dimensions." *Id.*, at 711.

The Court also observed in *Nixon* that a "primary constitutional duty of the Judicial Branch [is] to do justice in criminal prosecutions." *Id.*, at 707. Withholding materials from a tribunal in an ongoing criminal case when the information is necessary to the court in carrying out its tasks "conflict[s] with the function of the courts under Art. III." *Ibid.* Such an impairment of the "essential functions of [another] branch," *ibid.*, is impermissible. Withholding the information in this case, however, does not hamper another branch's ability to perform

its "essential functions" in quite the same way. *Ibid.* The District Court ordered discovery here, not to remedy known statutory violations, but to ascertain whether FACA's disclosure requirements even apply to the NEPDG in the first place. Even if FACA embodies important congressional objectives, the only consequence from respondents' inability to obtain the discovery they seek is that it would be more difficult for private complainants to vindicate Congress' policy objectives under FACA. And even if, for argument's sake, the reasoning in Judge Randolph's dissenting opinion in the end is rejected and FACA's statutory objectives would be to some extent frustrated, it does not follow that a court's Article III authority or Congress' central Article I powers would be impaired. The situation here cannot, in fairness, be compared to *Nixon*, where a court's ability to fulfill its constitutional responsibility to resolve cases and controversies within its jurisdiction hinges on the availability of certain indispensable information.

A party's need for information is only one facet of the problem. An important factor weighing in the opposite direction is the burden imposed by the discovery orders. This is not a routine discovery dispute. The discovery requests are directed to the Vice President and other senior Government officials who served on the NEPDG to give advice and make recommendations to the President. The Executive Branch, at its highest level, is seeking the aid of the courts to protect its constitutional prerogatives. As we have already noted, special considerations control when the Executive Branch's interests in maintaining the autonomy of its office and safeguarding the confidentiality of its communications are implicated. This Court has held, on more than one occasion, that "[t]he high respect that is owed to the office of the Chief Executive . . . is a matter that should inform the conduct of the entire proceeding, including the timing and scope of discovery,"

Clinton, 520 U. S., at 707, and that the Executive's "constitutional responsibilities and status [are] factors counseling judicial deference and restraint" in the conduct of litigation against it, *Nixon* v. *Fitzgerald*, 457 U. S., at 753. Respondents' reliance on cases that do not involve senior members of the Executive Branch, see, *e.g.*, *Kerr* v. *United States Dist. Court for Northern Dist. of Cal.,* 426 U. S. 394 (1976), is altogether misplaced.

Even when compared against *United States* v. *Nixon*'s criminal subpoenas, which did involve the President, the civil discovery here militates against respondents' position. The observation in *Nixon* that production of confidential information would not disrupt the functioning of the Executive Branch cannot be applied in a mechanistic fashion to civil litigation. In the criminal justice system, there are various constraints, albeit imperfect, to filter out insubstantial legal claims. The decision to prosecute a criminal case, for example, is made by a publicly accountable prosecutor subject to budgetary considerations and under an ethical obligation, not only to win and zealously to advocate for his client but also to serve the cause of justice. The rigors of the penal system are also mitigated by the responsible exercise of prosecutorial discretion. In contrast, there are no analogous checks in the civil discovery process here. Although under Federal Rule of Civil Procedure 11, sanctions are available, and private attorneys also owe an obligation of candor to the judicial tribunal, these safeguards have proved insufficient to discourage the filing of meritless claims against the Executive Branch. "In view of the visibility of" the Offices of the President and the Vice President and "the effect of their actions on countless people," they are "easily identifiable target[s] for suits for civil damages." *Nixon* v. *Fitzgerald*, *supra*, at 751.

Finally, the narrow subpoena orders in *United States* v. *Nixon* stand on an altogether different footing from the

overly broad discovery requests approved by the District Court in this case. The criminal subpoenas in *Nixon* were required to satisfy exacting standards of "(1) relevancy; (2) admissibility; (3) specificity." 418 U. S., at 700 (interpreting Fed. Rule Crim. Proc. 17(c)). They were "not intended to provide a means of discovery." 418 U. S., at 698. The burden of showing these standards were met, moreover, fell on the party requesting the information. *Id.,* at 699 ("[I]n order to require production prior to trial, the moving party must show that the applicable standards are met"). In *Nixon*, the Court addressed the issue of executive privilege only after having satisfied itself that the special prosecutor had surmounted these demanding requirements. *Id.*, at 698 ("If we sustained this [Rule 17(c)] challenge, there would be no occasion to reach the claim of privilege asserted with respect to the subpoenaed material"). The very specificity of the subpoena requests serves as an important safeguard against unnecessary intrusion into the operation of the Office of the President.

In contrast to *Nixon*'s subpoena orders that "precisely identified" and "specific[ally] . . . enumerated" the relevant materials, *id.*, at 688, and n. 5, the discovery requests here, as the panel majority acknowledged, ask for everything under the sky:

> "1. All documents identifying or referring to any staff, personnel, contractors, consultants or employees of the Task Force.
>
> "2. All documents establishing or referring to any Sub-Group.
>
> "3. All documents identifying or referring to any staff, personnel, contractors, consultants or employees of any Sub-Group.
>
> "4. All documents identifying or referring to any other persons participating in the preparation of the Report or in the activities of the Task Force or any Sub-

Group.

"5. All documents concerning any communication relating to the activities of the Task Force, the activities of any Sub-Groups, or the preparation of the Report . . . .

"6. All documents concerning any communication relating to the activities of the Task Force, the activities of the Sub-Groups, or the preparation of the Report between any person . . . and [a list of agencies]." App. 220–221.

The preceding excerpt from respondents' "*First* Request for Production of Documents," *id.*, at 215 (emphasis added), is only the beginning. Respondents' "First Set of Interrogatories" are similarly unbounded in scope. *Id.*, at 224. Given the breadth of the discovery requests in this case compared to the narrow subpoena orders in *United States* v. *Nixon*, our precedent provides no support for the proposition that the Executive Branch "shall bear the burden" of invoking executive privilege with sufficient specificity and of making particularized objections. 334 F. 3d, at 1105. To be sure, *Nixon* held that the President cannot, through the assertion of a "broad [and] undifferentiated" need for confidentiality and the invocation of an "absolute, unqualified" executive privilege, withhold information in the face of subpoena orders. 418 U. S., at 706, 707. It did so, however, only after the party requesting the information—the special prosecutor—had satisfied his burden of showing the propriety of the requests. Here, as the Court of Appeals acknowledged, the discovery requests are anything but appropriate. They provide respondents all the disclosure to which they would be entitled in the event they prevail on the merits, and much more besides. In these circumstances, *Nixon* does not require the Executive Branch to bear the onus of critiquing the unacceptable discovery requests line by line. Our

precedents suggest just the opposite. See, *e.g., Clinton* v. *Jones*, 520 U. S. 681 (1997); *id.*, at 705 (holding that the Judiciary may direct "appropriate process" to the Executive); *Nixon* v. *Fitzgerald*, 457 U. S., at 753.

The Government, however, did in fact object to the scope of discovery and asked the District Court to narrow it in some way. Its arguments were ignored. See App. 167, 181–183 (arguing "this case can be resolved far short of the wide-ranging inquiries plaintiffs have proposed" and suggesting alternatives to "limi[t]" discovery); *id.*, at 232 ("Defendants object to the scope of plaintiffs' discovery requests and to the undue burden imposed by them. The scope of plaintiffs' requests is broader than that reasonably calculated to lead to admissible evidence"); *id.*, at 232, n. 10 ("We state our general objections here for purposes of clarity for the record and to preclude any later argument that, by not including them here, those general objections have been waived"). In addition, the Government objected to the burden that would arise from the District Court's insistence that the Vice President winnow the discovery orders by asserting specific claims of privilege and making more particular objections. App. 201 (Tr. of Status Hearing (Aug. 2, 2002)) (noting "concerns with disrupting the effective functioning of the presidency and the vice-presidency"); *id.*, at 274 ("[C]ompliance with the order of the court imposes a burden on the Office of the Vice President. That is a real burden. If we had completed and done everything that Your Honor has asked us to do today that burden would be gone, but it would have been realized"). These arguments, too, were rejected. See *id.*, at 327, 329 (Nov. 1, 2002, Order) (noting that the court had, "on numerous occasions," rejected the Government's assertion "that court orders requiring [it] to respond in any fashion to [the] discovery requests creates an 'unconstitutional burden' on the Executive Branch").

Contrary to the District Court's and the Court of Ap-

peals' conclusions, *Nixon* does not leave them the sole option of inviting the Executive Branch to invoke executive privilege while remaining otherwise powerless to modify a party's overly broad discovery requests. Executive privilege is an extraordinary assertion of power "not to be lightly invoked." *United States* v. *Reynolds,* 345 U. S. 1, 7 (1953). Once executive privilege is asserted, coequal branches of the Government are set on a collision course. The Judiciary is forced into the difficult task of balancing the need for information in a judicial proceeding and the Executive's Article II prerogatives. This inquiry places courts in the awkward position of evaluating the Executive's claims of confidentiality and autonomy, and pushes to the fore difficult questions of separation of powers and checks and balances. These "occasion[s] for constitutional confrontation between the two branches" should be avoided whenever possible. *United States* v. *Nixon*, *supra,* at 692.

In recognition of these concerns, there is sound precedent in the District of Columbia itself for district courts to explore other avenues, short of forcing the Executive to invoke privilege, when they are asked to enforce against the Executive Branch unnecessarily broad subpoenas. In *United States* v. *Poindexter*, 727 F. Supp. 1501 (1989), defendant Poindexter, on trial for criminal charges, sought to have the District Court enforce subpoena orders against President Reagan to obtain allegedly exculpatory materials. The Executive considered the subpoenas "unreasonable and oppressive." *Id.*, at 1503. Rejecting defendant's argument that the Executive must first assert executive privilege to narrow the subpoenas, the District Court agreed with the President that "it is undesirable as a matter of constitutional and public policy to compel a President to make his decision on privilege with respect to a large array of documents." *Ibid.* The court decided to narrow, on its own, the scope of the subpoenas to allow the

Executive "to consider whether to invoke executive privilege with respect to . . . a smaller number of documents following the narrowing of the subpoenas." *Id.*, at 1504. This is but one example of the choices available to the District Court and the Court of Appeals in this case.

As we discussed at the outset, under principles of mandamus jurisdiction, the Court of Appeals may exercise its power to issue the writ only upon a finding of "exceptional circumstances amounting to a judicial 'usurpation of power,'" *Will,* 389 U. S., at 95, or "a clear abuse of discretion," *Bankers Life*, 346 U. S., at 383. As this case implicates the separation of powers, the Court of Appeals must also ask, as part of this inquiry, whether the District Court's actions constituted an unwarranted impairment of another branch in the performance of its constitutional duties. This is especially so here because the District Court's analysis of whether mandamus relief is appropriate should itself be constrained by principles similar to those we have outlined, *supra*, at 9–11, that limit the Court of Appeals' use of the remedy. The panel majority, however, failed to ask this question. Instead, it labored under the mistaken assumption that the assertion of executive privilege is a necessary precondition to the Government's separation-of-powers objections.

V

In the absence of overriding concerns of the sort discussed in *Schlagenhauf*, 379 U. S., at 111 (discussing, among other things, the need to avoid "piecemeal litigation" and to settle important issues of first impression in areas where this Court bears special responsibility), we decline petitioners' invitation to direct the Court of Appeals to issue the writ against the District Court. Moreover, this is not a case where, after having considered the issues, the Court of Appeals abused its discretion by failing to issue the writ. Instead, the Court of Appeals, rely-

ing on its mistaken reading of *United States* v. *Nixon*, prematurely terminated its inquiry after the Government refused to assert privilege and did so without even reaching the weighty separation-of-powers objections raised in the case, much less exercised its discretion to determine whether "the writ is appropriate under the circumstances." *Ante*, at 10. Because the issuance of the writ is a matter vested in the discretion of the court to which the petition is made, and because this Court is not presented with an original writ of mandamus, see, *e.g.*, *Ex parte Peru*, 318 U. S., at 586, we leave to the Court of Appeals to address the parties' arguments with respect to the challenge to *AAPS* and the discovery orders. Other matters bearing on whether the writ of mandamus should issue should also be addressed, in the first instance, by the Court of Appeals after considering any additional briefs and arguments as it deems appropriate. We note only that all courts should be mindful of the burdens imposed on the Executive Branch in any future proceedings. Special considerations applicable to the President and the Vice President suggest that the courts should be sensitive to requests by the Government for interlocutory appeals to reexamine, for example, whether the statute embodies the *de facto* membership doctrine.

The judgment of the Court of Appeals for the District of Columbia is vacated, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.