No. 24-416

In the Supreme Court of the United States

COMMISSIONER OF INTERNAL REVENUE, PETITIONER

v.

JENNIFER ZUCH

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

BRIEF IN OPPOSITION

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QUESTION PRESENTED

The Internal Revenue Code authorizes the IRS to levy—that is, seize—a taxpayer's property to collect unpaid taxes, but only after providing the taxpayer with notice and an opportunity for an administrative hearing before the IRS Independent Office of Appeals. (Appeals Office). *See* I.R.C. § 6330. At the hearing, the taxpayer may raise "any relevant issue relating to the unpaid tax or the proposed levy." I.R.C. § 6330(c)(2)(A). The taxpayer may also challenge her underlying tax liability if she did not previously have an opportunity to do so. I.R.C. § 6330(c)(2)(B). After the Appeals Office renders its decision, the taxpayer may "petition the Tax Court for review of such determination," "and the Tax Court shall have jurisdiction with respect to such matter." I.R.C. § 6330(d)(1).

The question presented is whether the Tax Court retains jurisdiction under I.R.C. § 6330 to review and issue declaratory relief as to the Appeals Office's determination of the taxpayer's underlying liability when, despite the parties' live dispute about that liability, the IRS stops pursuing the levy.

PARTIES TO THE PROCEEDING AND RELATED PROCEEDINGS

Petitioner's lists of the parties to the proceeding and directly related proceedings are complete and correct.

TABLE OF CONTENTS

Page

QUESTION PRESENTED.......................................i

PARTIES TO THE PROCEEDING AND RELATED PROCEEDINGS............................... ii

TABLE OF AUTHORITIES.......................................v

INTRODUCTION...1

STATEMENT 4

- A. Legal background 4
- B. Factual and procedural background..............7

REASONS FOR DENYING THE PETITION..........11

I. The court of appeals' decision is correct.............14

- A. The Tax Court had jurisdiction under I.R.C. § 6330 to review and declare Zuch's tax liability. 14
  - 1. The Tax Court had, and retained, jurisdiction to review the Appeals Office's determination of Zuch's disputed underlying tax liability. 14
  - 2. The Tax Court had authority to declare whether and to what extent Zuch was liable. 19
- B. Zuch's case didn't become moot when the IRS decided to stop pursuing the levy, because the parties disputed, and the Tax Court had the power to decide, Zuch's underlying tax liability. 20
- C. The IRS's counterarguments lack merit......22

TABLE OF CONTENTS
(continued)

Page

II. There is no circuit split. 25

A. The Third Circuit's decision doesn't conflict with the decisions of the D.C. or Fourth Circuits. 25

1. The D.C. and Fourth Circuits hold that a § 6330 review proceeding is moot when the IRS concedes that the taxpayer was not liable and stops pursuing the levy. . 26

2. Those holdings that a § 6330 review proceeding is moot when there is no liability dispute do not conflict with the Third Circuit's holding that the Tax Court retains jurisdiction where there is a live liability dispute. 28

B. The other decisions the IRS cites don't conflict with the decision below, either. 30

III. The petition doesn't warrant review for any other reason, either. 31

CONCLUSION 33

TABLE OF AUTHORITIES

Page(s)

CASES

B&B Hardware, Inc. v. Hargis Industries, Inc.,
575 U.S. 138 (2015)..21

Bob Jones University v. Simon,
461 U.S. 725 (1974)..24

Boechler, P.C. v. Commissioner,
596 U.S. 199 (2022)......................................5, 13, 31

Borenstein v. Commissioner,
919 F.3d 746 (2d Cir. 2019) 31

Byers v. Commissioner,
740 F.3d 668 (D.C. Cir. 2014)..................................5

Campbell-Ewald Co. v. Gomez,
577 U.S. 153 (2016)..20, 24

Caterpillar Inc. v. Lewis,
519 U.S. 61 (1996)..16, 17

Chafin v. Chafin,
568 U.S. 165 (2013)..25

CIC Services, LLC v. Internal Revenue Service,
925 F.3d 247 (6th Cir. 2019).................................24

Coba v. Ford Motor Co.,
932 F.3d 114 (3d Cir. 2019) 17, 18

Cohen v. United States,
650 F.3d 717 (D.C. Cir. 2011) (en banc)................24

Conolly v. Taylor,
27 U.S. (2 Pet.) 556 (1829)....................................16

Farhy v. Commissioner,
100 F.4th 223 (D.C. Cir. 2024) 6

TABLE OF AUTHORITIES
(continued)

Page(s)

Federal Election Commission v. Cruz,
596 U.S. 289 (2022)..20

Franklin v. Massachusetts,
505 U.S. 788 (1992)..21

Grupo Dataflux v. Atlas Global Group, L.P.,
541 U.S. 567 (2004)..16

Guerrero-Lasprilla v. Barr,
589 U.S. 221 (2020)..23

Haaland v. Brackeen,
599 U.S. 255 (2023)..19

Herrera v. Wyoming,
587 U.S. 329 (2019)..21

Keene Corp. v. United States,
508 U.S. 200 (1993)..17, 18

Kress Stores of Puerto Rico, Inc. v. Wal-Mart Puerto Rico., Inc.,
121 F.4th 228 (1st Cir. 2024).................................17

Larson v. Valente,
456 U.S. 228 (1982)..20

Lujan v. Defenders of Wildlife,
504 U.S. 555 (1992)..20

McLane v. Commissioner,
24 F.4th 316 (4th Cir. 2022) 27, 28,
....29, 30, 31 32

Medtronic, Inc. v. Mirowski Family Ventures, LLC,
571 U.S. 191 (2014)..19

TABLE OF AUTHORITIES
(continued)

Page(s)

Montgomery v. Commissioner,
122 T.C. 1 (2004) 6

Moore v. Commissioner,
114 T.C. 171 (2000) 15

Parklane Hosiery Co. v. Shore,
439 U.S. 322 (1979) 22

Petro-Hunt, LLC v. United States,
862 F.3d 1370 (Fed. Cir. 2017) 18

Reed v. Goertz,
598 U.S. 230 (2023) 21

Republic National Bank of Miami v. United States,
506 U.S. 80 (1992) 17

Rosado v. Wyman,
397 U.S. 397 (1970) 17

Saint Paul Mercury Indemnity Co. v. Red Cab Co.,
303 U.S. 283 (1938) 17

Sanders v. Commissioner,
813 F.2d 859 (7th Cir. 1987) 31

Simon v. Eastern Kentucky Welfare Rights Organization,
426 U.S. 26 (1976) 20, 21

Steffel v. Thompson,
415 U.S. 452 (1974) 23

TransUnion LLC v. Ramirez,
594 U.S. 413 (2021) 20, 21

TABLE OF AUTHORITIES
(continued)

Page(s)

United States v. Clintwood Elkhorn Mining Co.,
553 U.S. 1 (2008) 16, 32

Uzuegbunam v. Preczewski,
592 U.S. 279 (2021) 20

Willson v. Commissioner,
805 F.3d 316 (D.C. Cir. 2015) 26, 27,
.... 29, 30, 31

CONSTITUTION, STATUTES, AND REGULATION

U.S Const. art. III 24, 25

Class Action Fairness Act of 2005,
28 U.S.C. § 1332 16

28 U.S.C. § 1332(a) 16

28 U.S.C. § 1332(d) 17

28 U.S.C. § 1332(d)(2) 17

28 U.S.C. § 1491 17

28 U.S.C. § 1500 .... 17, 18

Declaratory Judgment Act,
28 U.S.C. § 2201 *et seq*. 23, 24

28 U.S.C. § 2201(a) 23, 24

I.R.C. § 6212(a) 4

I.R.C. § 6213(a) 4

I.R.C. § 6214(a) 4, 5

I.R.C. § 6330 (2000) 15

TABLE OF AUTHORITIES
(continued)

Page(s)

I.R.C. § 6330 .... 1, 2, 3, 4, 5, 6, 10, 12, 13, 14, 15, 16, 18, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33

I.R.C. § 6330(b) 5

I.R.C. § 6330(c) 4

I.R.C. § 6330(c)(2) 14, 22

I.R.C. § 6330(c)(2)(A) 6

I.R.C. § 6330(c)(2)(B) 1, 2, 5, 9, 10, 11, 14, 15, 18, 19, 29, 31, 32

I.R.C. § 6330(c)(3) 1

I.R.C. § 6330(c)(3)(B) 6, 14, 15, 18, 19, 22

I.R.C. § 6330(d) 14, 22, 23

I.R.C. § 6330(d)(1) 1, 2, 4, 6, 14, 15, 18, 19, 22, 28, 29, 32

I.R.C. § 6330(e)(1) 23, 24, 32

I.R.C. § 6331(a) 5

I.R.C. § 6331(b) 5

I.R.C. § 6512(b)(1) 4, 5

I.R.C. § 6532(a)(1) 32

I.R.C. § 7122(a) 8

TABLE OF AUTHORITIES
(continued)

Page(s)

Anti-Injunction Act,
I.R.C. § 7421(a) 24

I.R.C. § 7422 ....4, 12,
....13, 16, 21, 25

I.R.C. § 7422(a) 3, 5, 32

I.R.C. § 7482(a)(1)..5, 6

26 C.F.R. § 301.6330-1(g) 32

OTHER AUTHORITIES

18 Charles A. Wright & Arthur R. Miller
Federal Practice and Procedure
(3d ed. updated June 2024) 21

Michael I. Saltzman & Leslie Book,
IRS Practice & Procedure
(updated Oct. 2024)...19, 25

S. Rep. No. 105-174 (1998)..6

INTRODUCTION

This case doesn't warrant the Court's intervention. The court of appeals reached the correct result, and its decision does not conflict with any decision of this Court or another court of appeals. And despite the government's efforts to frame a broad question presented, the actual question presented is narrow and arises rarely, and then only as a result of the government's own choices to retain the taxpayer's money despite a live dispute over liability. The Court should deny review.

The petition arises from the IRS's continuing attempt to bar the Tax Court from reviewing the IRS Independent Office of Appeals' (Appeals Office) "determination" of "the existence or amount of" Respondent Jennifer Zuch's "underlying tax liability." I.R.C. § 6330(c)(2)(B), (c)(3), (d)(1). By statute, "the Tax Court shall have jurisdiction" to review the Appeals Office's "determination." I.R.C. § 6330(d)(1).

The parties' liability dispute arises from the IRS's choices about how to apply payments from Zuch and her ex-husband. The IRS and Zuch agree that Zuch owed about $27,000 for the 2010 tax year. After Zuch and her ex-husband made $50,000 in prepayments to the IRS in 2010 and 2011, they asked the IRS to apply those payments to Zuch's $27,000 balance. But the IRS refused. It instead applied the $50,000 to Zuch's ex-husband's separate tax balance and sought to collect Zuch's balance by levying—seizing—her property.

Zuch exercised her right to a hearing under I.R.C. § 6330, challenging the proposed levy and her underlying tax liability, and claiming that the IRS incorrectly applied the $50,000 to her ex-husband's balance rather than hers. While her challenge was

pending, Zuch overpaid her taxes for later years, meaning the IRS should have sent her refund payments. But the IRS kept the money instead, using the overpayments to offset the $27,000 balance it insisted the $50,000 prepayments hadn't covered. And once it had collected $27,000 in overpayments, the IRS asked the Tax Court to dismiss the § 6330 proceeding as moot. In the IRS's view, even though Zuch still disputed her underlying liability, it had taken her money, so the case was over.

The Tax Court granted the motion and dismissed Zuch's petition. But the Third Circuit reversed. As the court of appeals explained, the Tax Court had jurisdiction to review the Appeals Office's determination regarding, and declare, Zuch's underlying liability because the parties continued to dispute that liability. That decision was correct and doesn't conflict with any decision of this Court or any other court of appeals. The D.C. Circuit and Fourth Circuit decisions that the government claims create a circuit split found mootness only where the parties no longer disputed the taxpayer's underlying liability. The question here—whether the case is moot when the parties continue to dispute liability—is narrow and rarely arises, and the Third Circuit's resolution of the question presents no practical concerns, especially since taxpayers can file refund suits anyway. But there is no reason in judicial economy or workable administration of the tax laws to force taxpayers to do that rather than to allow the Tax Court to decide the question.

1. The decision below is correct. Under § 6330, the Tax Court had jurisdiction to review the Appeals Office's "determination" of Zuch's "underlying tax liability," because she didn't have an earlier opportunity to dispute that liability. I.R.C. § 6330(c)(2)(B), (d)(1).

That jurisdiction allows the Tax Court to declare that Zuch does not in fact have any underlying liability—because, for instance, the estimated payments should have been credited to her account rather than her ex-husband's. And if Zuch prevails, the IRS is likely to send her a refund. But even if it doesn't, the judgment would have preclusive effect in a later tax refund suit under I.R.C. § 7422(a). The IRS's counterarguments—that once it no longer needs the levy, a § 6330 proceeding is moot—contradict the text of the statute, discount the role of declaratory relief, and misunderstand mootness doctrine.

2. The court of appeals' decision doesn't conflict with any decision of this Court or any other court of appeals. The government claims that the Third Circuit split from the D.C. and Fourth Circuits. But those courts' decisions hold only that a § 6330 Tax Court proceeding becomes moot when the government stops pursuing the levy *and* the parties don't dispute the underlying tax liability. The Third Circuit didn't answer that question. And the D.C. and Fourth Circuits, conversely, did not address the question presented here: whether the Tax Court retains jurisdiction where there is a live dispute about the taxpayer's underlying liability despite the IRS's decision to stop pursuing the levy. There is no circuit conflict.

The IRS also claims that the Third Circuit's alternative holding that the Tax Court has "implicit" jurisdiction to review IRS offsets in § 6330 proceedings splits from a few decisions stating that the Tax Court can exercise jurisdiction only when Congress expressly grants it. But none of the decisions the IRS cites addresses that question—indeed, two of the three don't even involve § 6330 proceedings. And there

is no reason to review an alternative holding that does not change the outcome anyway.

3. The decision below doesn't warrant this Court's intervention for any other reason, either. The question presented doesn't arise in the vast majority of § 6330 proceedings. That's because it can arise only where the IRS itself decides to keep the taxpayer's money to satisfy a claimed liability, all while avoiding judicial review of that disputed liability. And contrary to the government's suggestion, the Third Circuit's decision doesn't open the canal lock doors, much less the floodgates. After all, if the IRS wrongly withholds a refund, the taxpayer can head to court under I.R.C. § 7422—meaning that the government's approach actually undermines judicial economy. Nor is there merit to the IRS's argument that the decision below will turn § 6330 proceedings into forums for general grievances about tax liabilities. Section 6330 proceedings necessarily *start* with a notice of levy, and the Tax Court's jurisdiction under that statute is limited to reviewing the Appeals Office's determination. *See* I.R.C. § 6330(c), (d)(1). Section 6330 is not, and will not become, a general forum for tax-liability challenges.

The Court should deny review.

STATEMENT

A. Legal background

1. Taxpayers have various ways to dispute the amount of taxes the IRS claims they owe. If the IRS determines that a taxpayer owes more taxes than she reported on her tax return—*i.e.*, that there is a deficiency—the IRS typically sends her a notice of deficiency. I.R.C. § 6212(a). Within 90 days, the taxpayer may challenge the deficiency in Tax Court. I.R.C. § 6213(a). In the deficiency proceeding, the Tax

Court can determine the correct amount of tax owed and whether the taxpayer made overpayments, entitling the taxpayer to a refund or credit. I.R.C. §§ 6214(a), 6512(b)(1). The Tax Court's final order is reviewable by a federal court of appeals. I.R.C. § 7482(a)(1). If the taxpayer does not challenge the deficiency, she can pay the disputed amount and seek a refund in district court or the Court of Federal Claims. *See* I.R.C. § 7422(a).

2. This case centers on a third way a taxpayer can challenge the taxes the IRS assesses when the IRS seeks to levy the taxpayer's property. Sometimes, a tax remains unpaid even after a taxpayer receives a notice of deficiency. Or perhaps a taxpayer hasn't paid the amount the IRS claims she owes, but she didn't receive a notice of deficiency or otherwise have an opportunity to dispute her liability. In either situation, the IRS may pursue a levy. I.R.C. § 6331(a), (b).

If the IRS issues a levy notice, the taxpayer has 30 days to request an administrative hearing before the Appeals Office under I.R.C. § 6330, sometimes called a "collection due process" hearing, to challenge the proposed levy and her underlying tax liability. I.R.C. § 6330(b), (c)(2)(B); *see Boechler, P.C. v. Commissioner*, 596 U.S. 199, 202 (2022); *Byers v. Commissioner*, 740 F.3d 668, 671-72 (D.C. Cir. 2014). This case involves a § 6330 proceeding where the parties dispute the taxpayer's underlying liability.

The issues a taxpayer may raise in a collection due process hearing depend in part on whether the taxpayer received a notice of deficiency or had another opportunity to dispute her liability. If not, she may raise "challenges to the existence or amount" of her liability. I.R.C. § 6330(c)(2)(B). In this way, a collection

due process hearing serves as a backstop, ensuring that a taxpayer has an opportunity to dispute her underlying tax liability. Indeed, the whole point of § 6330 proceedings is to "increase fairness to taxpayers" before the IRS deprives them of their property. S. Rep. No. 105-174, at 67 (1998); *see Montgomery v. Commissioner*, 122 T.C. 1, 10 (2004) ("6330 reflect[s] congressional intent that the Commissioner should collect the correct amount of tax, and do so by observing all applicable laws and administrative procedures"). And liability challenges aside, all taxpayers in collection due process proceedings may raise "any relevant issue relating to the unpaid tax or the proposed levy, including" "appropriate spousal defenses," "challenges to the appropriateness of collection actions," and "offers of collection alternatives." I.R.C. § 6330(c)(2)(A). The Appeals Office then makes a "determination" that "shall take into consideration" the taxpayer's challenge to her underlying liability and other issues. I.R.C. § 6330(c)(3)(B).

Although it is an important backstop, a collection due process hearing "lacks the typical hallmarks of a judicial hearing" and is "far from … a formal hearing." *Farhy v. Commissioner*, 100 F.4th 223, 227 (D.C. Cir. 2024). "There are no formal discovery procedures, and the taxpayer has no right to subpoena documents or witnesses." *Id.* Rather, the hearing "provides the taxpayer 'an opportunity for an informal oral or written conversation with the IRS.'" *Id.*

After the Appeals Office issues its "determination," the taxpayer may "petition the Tax Court for review of such determination (and the Tax Court shall have jurisdiction with respect to such matter)." I.R.C. § 6330(d)(1). The Tax Court's decision is subject to review in a federal court of appeals. I.R.C. § 7482(a)(1).

B. Factual and procedural background

This case arises from a dispute over whether the IRS properly credited $50,000 in overpayments from Zuch and her ex-husband, Patrick Gennardo, to Gennardo's tax liability rather than Zuch's in the wake of their divorce. Both Zuch and Gennardo maintain that the IRS should have credited Zuch's account, but the IRS instead credited Gennardo's, sought to levy Zuch's property, and unilaterally decided to withhold overpayments Zuch made in later tax years.

1. Zuch and Gennardo were married from 1983 to 2014. Pet. App. 7a. They separated in 2010, and Zuch initiated divorce proceedings in 2012. CA3 App. A118. During that time, the IRS assessed substantial taxes against Zuch and Gennardo, prompting years of litigation.

a. In 2010 and 2011, Zuch and Gennardo submitted $50,000 in prepayments to the IRS for what they estimated would be their 2010 tax liability. Pet. App. 8a. In particular, in June 2010, they submitted an estimated payment of $20,000 using a check drawn from a bank account listing both their names. Pet. App. 8a & n.11. The form accompanying the check also listed both names. Pet. App. 8a n.11, 51a. In January 2011, Gennardo sent the IRS a check for $30,000. Pet. App. 8a. The subject line of the letter accompanying the check read "Re: Patrick J. Gennardo and Jennifer Zuch," and although the check was from Zuch and Gennardo's joint bank account, the check listed only Gennardo's name. Pet. App. 8a n.12, 51a. At the time, Zuch and Gennardo didn't tell the IRS how to allocate the payments. Pet. App. 8a.

b. In 2012 and 2013, Zuch and Gennardo filed untimely, and later amended, tax returns for 2010,

and the IRS applied the $50,000 in prepayments to Gennardo's, rather than Zuch's, tax liabilities. Pet. App. 7a-8a. The IRS's decision gave rise to the parties' dispute over Zuch's underlying tax liability.

In September 2012, Zuch and Gennardo filed separate married-filing-separately returns. Pet. App. 7a. Zuch's return showed an adjusted gross income of $74,493 and a $731 overpayment, and didn't mention the prepayments from 2010 and 2011. Pet. App. 7a-8a & n.9. Gennardo's return showed an adjusted gross income of $1,077,213 and $385,393 in taxes owed. Pet. App. 8a. The same day that Gennardo filed his return, he also filed an offer-in-compromise, seeking to settle his accumulated tax debts at less than the amount due. *Id.*; *see* I.R.C. § 7122(a). The IRS later notified him that it had applied the $50,000 in prepayments towards the $385,393 in taxes he owed. Pet. App. 8a.

Zuch then filed an amended return for 2010 to report $71,000 in additional income from a retirement account distribution. Pet. App. 9a. Zuch's amended return showed that she owed the IRS $27,682. *Id.* She claimed that the $50,000 in prepayments should be credited to her and requested a refund of $21,918. *Id.* The IRS assessed the additional $27,682 in taxes that Zuch reported, but it refused to credit her for the $50,000 or issue any refund. *Id.*

In March 2013, while his offer-in-compromise was pending, Gennardo filed an amended return for 2010. Pet. App. 9a. He indicated that the $50,000 in prepayments should be credited to Zuch, but the IRS still refused to allocate it to her tax bill. Pet. App. 9a-10a; *see* Pet. App. 55a.

c. Gennardo later submitted an amended offer-in-compromise, which the IRS accepted. Pet. App. 10a.

Even though Gennardo had asked the IRS to credit the $50,000 to Zuch, the IRS credited the entire sum to him. *Id.*

2. Zuch never received a notice of deficiency from the IRS. Pet. App. 9a n.13. But in August 2013, the IRS notified her that it intended to levy her property because she had failed to pay her 2010 tax liability and explained that she had 30 days to request a collection due process hearing before the Appeals Office. Pet. App. 10a.

3. Zuch timely requested a hearing. *Id.* At the hearing, Zuch challenged her "underlying tax liability" because she did not receive a notice of deficiency or otherwise have an opportunity to dispute it. I.R.C. § 6330(c)(2)(B); Pet. App. 10a. Zuch argued that the $50,000 in prepayments should have been credited to her, reducing her tax liability to $0 and entitling her to a refund. Pet. App. 10a.

In September 2014, the Appeals Office sustained the proposed levy. It told Zuch that it was "not in a position" to credit her for the $50,000 because the IRS had credited the money to Gennardo. Pet. App. 11a.

4. Zuch petitioned the Tax Court for review. *Id.* She sought review of her tax liability and a ruling that the $50,000 should have been applied to her individual tax balance. *Id.* After the IRS moved for summary judgment, *id.*, the Tax Court remanded to the Appeals Office because it wasn't clear why the IRS had applied the $50,000 towards Gennardo's liability rather than Zuch's, Pet. App. 11a-12a.

5. In June 2017, the Appeals Office again sustained the proposed levy. Pet. App. 12a. It reasoned that the levy "balance[d] the need for efficient collection of taxes with the taxpayer's legitimate concern

that any collection action be no more intrusive than necessary." CA3 App. A270.

6. The case returned to the Tax Court. Pet. App. 12a. Meanwhile, over the course of the six years the § 6330 proceedings had been pending, Zuch kept paying her taxes for later years. In fact, she overpaid. But rather than issuing her refunds, the IRS kept Zuch's overpayments and used them to offset her claimed 2010 liability. Pet. App. 12a-13a. The IRS did so six times: "once each in 2013, 2014, 2015, and 2019, and twice in 2016." *Id.* And in April 2019, after the case had returned to the Tax Court, the IRS kept Zuch's money a final time to offset the rest of her claimed 2010 tax balance, reducing it to $0. Pet. App. 13a.

The IRS then moved to dismiss the Tax Court proceedings as moot. *Id.* The Tax Court granted the motion. *Id.* The Tax Court concluded that it lacked jurisdiction over the case and that the case was moot because "there [was] no unpaid liability … upon which a levy could be based," and the IRS was no longer seeking to levy Zuch's property. Pet. App. 43a.

7. The Third Circuit vacated the Tax Court's decision, held that the Tax Court had jurisdiction under § 6330 to decide Zuch's challenge to her tax liability and that the case wasn't moot, and remanded for proceedings on the merits. Pet. App. 1a-39a.

The court first held that the Tax Court had jurisdiction to review the Appeals Office's determination of Zuch's liability. Because Zuch had neither received a notice of deficiency nor had an opportunity to contest her liability before her collection due process hearing, Zuch could challenge "the existence or amount of [her] underlying tax liability" during the hearing. Pet. App. 14a-15a; *see* I.R.C. § 6330(c)(2)(B). The Tax

Court, in turn, had jurisdiction to consider the Appeals Office's resolution of Zuch's challenge. Pet. App. 14a-15a. Indeed, the IRS didn't dispute that the Tax Court had jurisdiction at the outset to review whether the IRS improperly allocated the prepayments. Pet. App. 15a n.22. And, the court explained, "Zuch's argument that her estimated tax payments were erroneously allocated to her ex-husband is a challenge to her underlying tax liability under § 6330(c)(2)(B)." Pet. App. 19a.

The court of appeals then held that the Tax Court had jurisdiction over Zuch's challenge, and that Zuch's challenge was not moot, for two independent reasons. Pet. App. 19a-38a. *First*, the court held that Zuch could continue challenging her underlying liability because the IRS unlawfully offset it using her overpayments in later years. Pet. App. 19a-25a. The IRS's unilateral, illegal actions, the court held, could not moot the case. Pet. App. 25a. *Second*, in a part of the opinion joined by two panel members, the court held that the Tax Court had jurisdiction to review the Appeals Office's determination of Zuch's liability and issue a declaratory judgment because the parties continued to dispute Zuch's tax liability. Pet. App. 25a-26a; *see* Pet. App. 25a-38a. And a declaratory judgment, the court concluded, would redress Zuch's injuries. Pet. App. 37a-38a.

8. The IRS sought rehearing en banc, which the court of appeals denied. Pet. App. 68a-69a.

REASONS FOR DENYING THE PETITION

The case doesn't warrant further review. The decision below is correct; there is no circuit split; and the narrow question presented rarely arises and is of little

practical importance to the workable administration of the tax laws.

1. The court of appeals' decision is correct. Section 6330 authorizes the Tax Court to review the Appeals Office's determination of a taxpayer's underlying liability and to issue declaratory relief accordingly, notwithstanding the IRS's decision to stop pursuing a levy. Here, that means the Tax Court can review Zuch's rights to the $50,000 estimated payments and whether, had those payments been properly allocated, they would have eliminated Zuch's $27,000 liability. The case thus isn't moot. If the Tax Court rules in Zuch's favor, the IRS is likely to abide by the judgment and issue her a refund. But even if it doesn't, the judgment would have preclusive effect in any refund lawsuit Zuch could bring under § 7422 to force the IRS to give her money back.

2. There is no circuit split. The Third Circuit here held that a § 6330 review proceeding isn't moot when the parties continue to dispute the taxpayer's liability, even if the IRS decides to stop pursuing a levy. The D.C. and Fourth Circuits have not addressed that question. Instead, those courts have held only that a § 6330 proceeding becomes moot if the IRS decides to stop pursuing the levy *and* no dispute about the taxpayer's liability remains. Indeed, in both cases, the IRS *conceded* that the taxpayer was not liable, so there was no longer a live issue for the Tax Court's determination. The Third Circuit's holding thus doesn't conflict with the holdings of the D.C. and Fourth Circuits. Put differently, the Third Circuit is free to agree with the D.C. and Fourth Circuits in a future case without a live liability dispute, and the D.C. and Fourth Circuits are likewise free to agree with the Third Circuit in a future case *with* a liability

dispute. And the IRS's one-paragraph backup argument about the Third Circuit's alternative holding on offsets doesn't move the needle both because that holding was unnecessary to the outcome and because none of the decisions the IRS cites even addresses the offset question. Simply put, there is no split on the offset question, much less a certworthy one.

3. The petition doesn't warrant review for any other reason, either. To start, the question presented rarely arises—and when it does, "the IRS's own recalcitrance," *Boechler*, 596 U.S. at 207, is to blame. The IRS cannot claim a floodgates problem just because it must keep litigating an issue *it* raised in the first place by assessing the taxpayer's liability and then tried to moot out by unilaterally keeping the taxpayer's money. And there is no credible floodgates concern anyway. No matter whether the Tax Court retains jurisdiction to review and declare a taxpayer's liability under § 6330 if the IRS decides to stop pursuing the levy, the taxpayer can separately sue the government for a refund under § 7422. Thus, prematurely cutting off review under § 6330 serves only to multiply the proceedings and undermine judicial economy—contrary to a 2006 amendment making clear that the Tax Court, and not sometimes district courts instead, could decide the underlying tax liability. And the IRS's claim that the decision below could transform § 6330 proceedings into general forums for tax liability challenges is unmoored from the statute's text, which authorizes review of the Appeal's Office's determination, not any unrelated issue the taxpayer might wish to raise.

I. The court of appeals' decision is correct.

A. The Tax Court had jurisdiction under I.R.C. § 6330 to review and declare Zuch's tax liability.

The court of appeals correctly held that the Tax Court had jurisdiction under § 6330 to review the Appeals Office's determination of Zuch's challenge to her tax liability because the parties continued to dispute it. The Tax Court thus had authority to declare Zuch's right to have the estimated payments credited to her and thus whether she remained liable for $27,000.

1. The Tax Court had, and retained, jurisdiction to review the Appeals Office's determination of Zuch's disputed underlying tax liability.

a. Section 6330(d)'s plain text makes clear that the Tax Court has jurisdiction to review the Appeals Office's "determination" of a taxpayer's challenge to her "underlying tax liability."

During the collection due process hearing, the Appeals Office can determine a taxpayer's "underlying tax liability" if the taxpayer "did not receive any statutory notice of deficiency or did not otherwise have an opportunity to dispute [her] tax liability." I.R.C. § 6330(c)(2)(B). The taxpayer may then "petition the Tax Court for review of [the Appeals Office's] determination," "and the Tax Court shall have jurisdiction with respect to such matter," I.R.C. § 6330(d)(1)—*i.e.*, the "determination" of all "the issues" raised during the hearing, I.R.C. § 6330(c)(2), (3)(B). So when the Tax Court reviews the Appeals Office's determination, it can resolve any dispute about the taxpayer's underlying tax liability that the taxpayer properly raised before the Appeals Office.

The Tax Court doesn't lose its jurisdiction to resolve the dispute just because the IRS decides to stop pursuing the levy. Congress provided that the Tax Court "*shall* have jurisdiction" to review the Appeals Office's determination. I.R.C. § 6330(d)(1). That review necessarily reaches all live "issues" involved in the Appeal's Office's determination, which expressly includes the taxpayer's "underlying tax liability," I.R.C. § 6330(c)(2)(B), (3)(B). So long as a liability issue remains disputed, nothing in § 6330 suggests the Tax Court's jurisdiction to review the question vanishes when the IRS collects the amount due another way and no longer needs the levy.

To the contrary, § 6330's history makes clear that Congress wanted the Tax Court to have and retain jurisdiction to decide disputes over underlying liability. Before 2006, § 6330 provided that an appeal of the Appeals Office's determination would go to district court "if the Tax Court [did] not have jurisdiction of the underlying tax liability," I.R.C. § 6330 (2000)—that is, the liability wouldn't otherwise be within its deficiency jurisdiction outside the § 6330 context, *Moore v. Commissioner*, 114 T.C. 171, 175 (2000). Section 6330's current text, in contrast, makes clear that the Tax Court "shall" declare the taxpayer's disputed liability in *all* cases.

b. Congress's decision to give the Tax Court continuing jurisdiction to resolve live liability disputes, so long as the IRS was pursuing a levy at the time of filing, makes sense. It also aligns with time-of-filing jurisdictional rules in other contexts.

i. Statutory text and context show why Congress likely gave the Tax Court authority to review the issues underlying the Appeals Office's determination.

As noted (at 4-5), a taxpayer can sometimes challenge her assessed liability through a deficiency suit in Tax Court before the IRS collects. But sometimes the taxpayer doesn't have that opportunity before the IRS seeks to levy the taxpayer's property. To address that circumstance, Congress gave taxpayers the right to dispute their liability and required the Appeals Office and Tax Court to resolve those challenges. Even if the IRS is able to terminate the levy after initiating levy proceedings, it makes sense for the Tax Court to finish resolving the liability dispute if it remains live. After all, if the dispute continues past the levy, closing the Tax Court's doors would simply require the taxpayer to file *another* lawsuit, this time seeking a refund under § 7422.

The tax "scheme is designed '… to insure an orderly administration of the revenue'" and "to allow the IRS to avoid unnecessary litigation." *United States v. Clintwood Elkhorn Mining Co.*, 553 U.S. 1, 11 (2008). Requiring the taxpayer to start new litigation does just the opposite.

ii. Section 6330 is also not unusual among federal statutes in making jurisdiction "depend[] upon the state of things at the time of the action brought," *Grupo Dataflux v. Atlas Global Group, L.P.*, 541 U.S. 567, 570 (2004); *see, e.g.*, *Conolly v. Taylor*, 27 U.S. (2 Pet.) 556, 565 (1829)—that is, on whether the IRS is pursuing a levy when the taxpayer starts proceedings.

Take diversity jurisdiction under 28 U.S.C. § 1332. Under that provision, federal district courts "shall have original jurisdiction of all civil actions where" the amount in controversy is more than $75,000 and the parties are completely diverse. 28 U.S.C. § 1332(a); *see Caterpillar Inc. v. Lewis*, 519

U.S. 61, 68 (1996). So long as there really was $75,000 in controversy when the plaintiff sued, "subsequent" developments that "reduce the amount recoverable below" $75,000 don't deprive the court of jurisdiction. *Saint Paul Mercury Indemnity Co. v. Red Cab Co.*, 303 U.S. 283, 289-90 (1938); *accord Republic National Bank of Miami v. United States*, 506 U.S. 80, 88 (1992) ("jurisdiction survives reduction of amount in controversy" after filing). Likewise, the court doesn't lose jurisdiction just because a party's domicile changes after filing and destroys complete diversity. *See, e.g.*, *Rosado v. Wyman*, 397 U.S. 397, 406 n.6 (1970).

Courts take a similar approach to the Class Action Fairness Act (CAFA), 28 U.S.C. § 1332(d). Under CAFA, "district courts shall have original jurisdiction of any" "class action" "in which the matter in controversy exceeds" $5 million, and the parties are minimally diverse. *Id.* § 1332(d)(2). If "jurisdiction was properly invoked as of the time of filing," *Coba v. Ford Motor Co.*, 932 F.3d 114, 120 (3d Cir. 2019), the court doesn't lose jurisdiction if it declines to certify the class, *e.g.*, *Kress Stores of Puerto Rico, Inc. v. Wal-Mart Puerto Rico., Inc.*, 121 F.4th 228, 234-35 & n.2 (1st Cir. 2024) (collecting cases). "[L]ong-standing principles apply—post-filing developments do not defeat jurisdiction." *Coba*, 932 F.3d at 119-20.

The same goes for longstanding jurisdictional rules for the Court of Federal Claims. That court has jurisdiction over many claims against the United States, *see, e.g.*, 28 U.S.C. § 1491, but it "shall not have jurisdiction of any claim" that the "plaintiff or his assignee has pending" in an action against the United States "in any other court," *id.* § 1500. The "general rule" that jurisdiction "turns on the facts upon filing" applies: whether the Court of Federal Claims has

jurisdiction depends on whether, "*upon filing*," the plaintiff had "an action pending in any other court" that presented the same claim. *Keene Corp. v. United States*, 508 U.S. 200, 208-09 (1993) (emphasis added). A later-filed district court action thus doesn't extinguish the Court of Federal Claims' jurisdiction under § 1500. *See Petro-Hunt, LLC v. United States*, 862 F.3d 1370, 1383-84 (Fed. Cir. 2017). So too here. If the Tax Court had jurisdiction under § 6330 at the outset, the IRS's decision to stop pursuing a levy doesn't destroy that jurisdiction.

c. Here, the Tax Court had jurisdiction under § 6330 to review the Appeals Office's determination, including its resolution of Zuch's underlying tax liability. Pet. App. 19a-33a. Zuch raised her assessed underlying tax liability in the collection due process hearing, as she had a right to do because she did not receive a notice of deficiency or otherwise have an opportunity to challenge the assessed liability. Pet. App. 10a. After the Appeals Office made its determination, Zuch timely petitioned the Tax Court for review. CA3 App. A24-A30; *see* CA3 App. A266-270; Pet. App. 42a. The Tax Court then had jurisdiction over the Appeals Office's decision, including the dispute over Zuch's tax liability. *See* I.R.C. § 6330(c)(2)(B), (c)(3)(B), (d)(1).

To be sure, while the case was at the Tax Court—after more than six years of litigation—the IRS announced that it would no longer pursue the levy. But that didn't deprive the Tax Court of jurisdiction under § 6330, where jurisdiction "was properly invoked as of the time of filing." *Coba*, 932 F.3d at 120. Nothing in § 6330 purports to condition the Tax Court's ongoing jurisdiction on the IRS's continued pursuit of a levy. As the court of appeals explained, the Tax Court could still resolve Zuch's underlying liability, and it could

decide whether the IRS properly offset Zuch's tax balance using her overpayments from later tax years. *See* Pet. App. 19a-25a.

2. The Tax Court had authority to declare whether and to what extent Zuch was liable.

The Tax Court not only had jurisdiction to review the Appeals Office's determination of Zuch's underlying liability; it also had authority to issue declaratory relief as to that liability. As noted, the Appeals Office's "determination" "shall take into consideration" "the issues raised" at the hearing, I.R.C. § 6330(c)(3)(B), including "the existence or amount of the underlying tax liability." I.R.C. § 6330(c)(2)(B). And because the Tax Court "shall have jurisdiction" to review "such determination," I.R.C. § 6330(d)(1), the Tax Court can decide and declare a taxpayer's underlying tax liability, too. *Accord* Michael I. Saltzman & Leslie Book, *IRS Practice & Procedure* § 14B.16[4][a] (updated Oct. 2024). A declaratory judgment is just a "definitive determination of the legal rights of the parties." *Medtronic, Inc. v. Mirowski Family Ventures, LLC*, 571 U.S. 191, 200 (2014); *accord Haaland v. Brackeen*, 599 U.S. 255, 293 (2023). Here, that's what the Tax Court does when it reviews and decides the underlying liability question as part of reviewing the Appeals Office's determination. And in Zuch's case, that means the Tax Court can declare Zuch's tax liability by deciding whether she is entitled to credit for the estimated payments. *See* Pet. App. 33a-34a, 42a.

B. Zuch's case didn't become moot when the IRS decided to stop pursuing the levy, because the parties disputed, and the Tax Court had the power to decide, Zuch's underlying tax liability.

The Third Circuit correctly held that Zuch's case didn't become moot when the IRS decided to stop pursuing the levy. The Tax Court retained the power to redress Zuch's injury by declaring her underlying liability invalid. If the Tax Court reached that conclusion, the IRS likely would abide by it and issue her a refund. And even if the IRS refused to do so, Zuch could pursue a refund suit, where a declaratory judgment from the Tax Court would have preclusive effect and require the IRS to issue a refund.

1. The mootness inquiry asks whether standing "exists throughout the proceedings." *Uzuegbunam v. Preczewski*, 592 U.S. 279, 282 (2021). The "irreducible constitutional minimum of standing contains three elements": (1) injury in fact, (2) causation (*i.e.*, traceability), and (3) redressability. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992). But mootness sets a lower bar than standing: "As long as the parties have a concrete interest, however small, in the outcome of the litigation, the case is not moot." *Campbell-Ewald Co. v. Gomez*, 577 U.S. 153, 161 (2016). Thus, redressability requires only that judicial relief "likely" will redress an injury, *FEC v. Cruz*, 596 U.S. 289, 296 (2022), not that "a favorable decision *will* relieve" "*every* injury," *Larson v. Valente*, 456 U.S. 228, 243-44 & n.15 (1982) (first emphasis added).

2. Zuch's challenge to her underlying liability isn't moot. Losing the $50,000 in estimated payments is a concrete injury, *e.g.*, *TransUnion LLC v. Ramirez*,

594 U.S. 413, 425 (2021), that is traceable to the IRS's refusal to issue her a refund, *see Simon v. Eastern Kentucky Welfare Rights Organization*, 426 U.S. 26, 41-42 (1976). And the Tax Court can redress that injury by declaring her entitled to the $50,000 in estimated payments, which satisfied and made her no longer liable for the $27,000 the IRS had assessed.

If the Tax Court declares that Zuch is entitled to the estimated payments, the IRS is likely to issue Zuch a refund. That's because the declaration would legally entitle her to a refund, and "it is substantially likely that [the IRS] would abide by" that "authoritative" holding "by the [Tax] Court." *Franklin v. Massachusetts*, 505 U.S. 788, 803 (1992); *accord Reed v. Goertz*, 598 U.S. 230, 234 (2023); Pet. App. 38a.

But even if the IRS doesn't issue Zuch a refund, Zuch could institute a refund action under I.R.C. § 7422, and the Tax Court's judgment would have preclusive effect. "Under the doctrine of issue preclusion, 'a prior judgment forecloses successive litigation of an issue of fact or law actually litigated and resolved in a valid court determination essential to the prior judgment.'" *Herrera v. Wyoming*, 587 U.S. 329, 342 (2019) (alterations adopted). "The idea is straightforward: Once a court has decided an issue, it is 'forever settled as between the parties.'" *B&B Hardware, Inc. v. Hargis Industries, Inc.*, 575 U.S. 138, 147 (2015). That goes for declaratory relief issued in an earlier case, too. *E.g.*, 18 Charles A. Wright & Arthur R. Miller, *Federal Practice and Procedure* § 4421 (3d ed. updated June 2024).

Here, Zuch's entitlement to the estimated payments is an "issue of … law" that would be "actually litigated and resolved" in the Tax Court proceeding

and "essential to" the Tax Court's decision on Zuch's underlying liability. Thus, in a later refund suit, the Tax Court's declaratory judgment would be preclusive, and the district court would order the IRS to issue a refund. *See, e.g.*, *Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 325, 332-33 (1979).

C. The IRS's counterarguments lack merit.

1. The IRS contends that the Tax Court has jurisdiction to review underlying tax liability under § 6330 only so long as the IRS is pursuing a levy. Pet. 10-11. According to the IRS, the phrase "underlying tax liability" "presupposes the existence of a proposed levy," and so all the Tax Court can do is determine whether a levy can proceed. Pet. 11.

That argument ignores § 6330(d)'s plain text. Section 6330(d)(1) makes clear that the Tax Court has jurisdiction in § 6330 proceedings to review the Appeals Office's determination of the issues raised in a collection due process hearing. *Supra* pp. 14-15. It provides that "the Tax Court shall have jurisdiction" to review the Appeals Office's "determination"—which includes all the issues the Appeals Office was required to consider during the hearing, not just whether the levy can proceed. I.R.C. § 6330(d)(1); *see* I.R.C. § 6330(c)(2), (c)(3)(B). Nothing in § 6330 conditions exercise of that jurisdiction on the IRS's continued pursuit of a levy, even assuming the phrase "underlying tax liability" implies that there must be a proposed levy at the outset of the collection due process hearing. To the contrary, § 6330(d)(1) refers only to a "determination" by the Appeals Office, which indisputably exists here. *Supra* pp. 9-10. And that determination aggrieves taxpayers like Zuch by upholding the IRS's liability assessments over their objections.

In straining to read a continuing-levy-request condition into § 6330(d), the government ignores "the presumption favoring judicial review of administrative action." *Guerrero-Lasprilla v. Barr*, 589 U.S. 221, 229 (2020). That "strong presumption" directs that "when a statutory provision 'is reasonably susceptible to divergent interpretation,'" courts must "adopt the reading that accords with traditional understandings and basic principles: that executive determinations generally are subject to judicial review." *Id.* And here, the government cannot even show that its divergent interpretation makes sense, much less that it can overcome the presumption of judicial review.

2. The IRS argues that the Tax Court cannot declare Zuch's liability, because the "only relief that Section 6330 authorizes is rejection of a proposed levy." Pet. 13-14 n.2. That is incorrect. *See* Pet. App. 34a-36a.

Section 6330 authorizes injunctive relief, I.R.C. § 6330(e)(1), which necessarily means it also authorizes declaratory relief. That's because an injunction necessarily rests on a declaration. An injunction prohibiting an act amounts to "a judicial declaration that [the act] is illegal." Pet. App. 36a. Indeed, as this Court has recognized, declaratory relief is a "milder" alternative to an injunction. *Steffel v. Thompson*, 415 U.S. 452, 466-67 (1974). Thus, the Tax Court's authority to issue an injunction under § 6330(e)(1) includes the authority to issue declaratory relief.

Contrary to the government's argument, the Declaratory Judgment Act doesn't withdraw the Tax Court's authority to issue declaratory relief. That statute authorizes federal courts to "declare the rights and other legal relations of any interested party seeking

such declaration," "except with respect to Federal taxes." 28 U.S.C. § 2201(a). But courts have uniformly held that the Declaratory Judgment Act must be read together with the Tax Code and the Anti-Injunction Act, I.R.C. § 7421(a), and that it does not prohibit declaratory relief where those other provisions permit injunctions. *E.g.*, *Cohen v. United States*, 650 F.3d 717, 727-28 (D.C. Cir. 2011) (en banc); *CIC Services, LLC v. IR*S, 925 F.3d 247, 250 n.3 (6th Cir. 2019), *rev'd on other grounds* 593 U.S. 209 (2021); *see Bob Jones University v. Simon*, 461 U.S. 725, 732-33 n.7 (1974). Both the plain text of § 6330(e)(1) and the Anti-Injunction Act, I.R.C. § 7421(a), authorize injunctions in § 6330 proceedings, so declaratory relief is authorized as well.

3. Trying to cast the issues in Article III terms, the IRS insists that there is no longer a live dispute in a § 6330 proceeding once the IRS decides to stop pursuing a levy because "the issue that prompted the proceeding is no longer 'live'" at that point. Pet. 9. That argument fails. The question isn't whether "the issue that prompted" a collection due process hearing is live. Rather, as the Court has made clear, "[a]s long as the parties have a concrete interest, however small, in the outcome of the litigation," the case is not moot. *Campbell-Ewald Co.*, 577 U.S. at 161.

To be sure, in some cases—as in the D.C. and Fourth Circuit cases discussed below (at 26-28)—if the IRS is no longer pursuing a levy *and* there is no longer any dispute over the taxpayer's underlying liability, the case may be moot because there is no longer any concrete interest in the case. But the narrow question here is whether, where the parties continue to dispute the taxpayer's underlying liability, the Tax Court still has statutory and Article III jurisdiction to resolve

that liability challenge. And the answer is yes. Zuch has a concrete interest in the outcome of the Tax Court review proceedings because the Tax Court can declare her underlying liability by determining her right to the estimated payments, and therefore to a refund, *accord IRS Practice and Procedure* § 14B.16[4][a], which, if necessary, she could further pursue in a refund action under § 7422. The IRS has a concrete interest, too: if the Tax Court declares that Zuch is not entitled to the estimated payments, the IRS keeps her money. The case thus isn't moot, because it is not "impossible for a court to grant any effectual relief what[so]ever" to whoever prevails. *Chafin v. Chafin*, 568 U.S. 165, 172 (2013).

II. There is no circuit split.

A. The Third Circuit's decision doesn't conflict with the decisions of the D.C. or Fourth Circuits.

The government claims that the Third Circuit here split from the D.C. and Fourth Circuits. That is incorrect. The Third Circuit here held that the Tax Court retains jurisdiction over a § 6330 proceeding because the parties continued to dispute the taxpayer's underlying liability. The D.C. and Fourth Circuits, in contrast, have held only that the Tax Court lacks jurisdiction over a § 6330 proceeding once the IRS concedes the taxpayer was never liable—so there is no live dispute about liability—and no longer seeks a levy. Simply put, the Third Circuit, on the one hand, and the D.C. and Fourth Circuits, on the other, have addressed different questions, and nothing prevents the Third Circuit from adopting the D.C. and Fourth Circuit's rule in a case without a live liability dispute or, conversely, the D.C. or Fourth Circuits from

adopting the Third Circuit's view in a case with a live liability dispute. There is no circuit conflict and no reason for this Court to intervene.

1. The D.C. and Fourth Circuits hold that a § 6330 review proceeding is moot when the IRS concedes that the taxpayer was not liable and stops pursuing the levy.

a. In *Willson v. Commissioner*, 805 F.3d 316, 321 (D.C. Cir. 2015), the D.C. Circuit held that a § 6330 proceeding was moot because there was neither "tax liability" nor a "proposed levy."

Willson arose from the IRS accidentally issuing the taxpayer a refund twice. *Id.* at 318. Once it realized its mistake, the IRS assessed a tax liability in the amount it over-refunded Willson. *Id.* The IRS later sought to levy his property to collect on that liability. *Id.* at 319. While his § 6330 proceeding was pending, Willson overpaid his taxes for later years, and the IRS used those payments to offset his liability. *Id.* at 318. Willson also sent the IRS $5,100 in voluntary payments "to begin returning" the money the IRS accidentally refunded him. *Id.* at 319; *see id.* at 318.

The Appeals Office sustained the proposed levy. *Id.* at 319. But while the case was before the Tax Court, the IRS conceded that it wasn't permitted to assess a tax liability where none existed in order to remedy its mistake. *Id.* The IRS thus extinguished the assessment of the liability. *Id.* The IRS "also determined that it was time barred from using its set-off power to retain the overpayment Willson reported" on his tax return for a later year "and refunded that amount to Willson." *Id.* The IRS then moved to dismiss the case as moot "[b]ecause neither an unpaid

liability nor a pending levy action remained for the tax court to review." *Id.* Willson, proceeding *pro se*, objected, arguing that the IRS should have returned his voluntary payments, too. *Id.*

The D.C. Circuit held the case moot in a brief opinion. The court underscored that there was no live dispute about the taxpayer's underlying liability. *Id.* at 320. "The debt created by [the IRS's] erroneous refund [was] *not* a tax liability." *Id.* So when "[t]he IRS retained" Willson's overpayments, it did so "not to satisfy a tax liability but to recover an erroneous refund sent as a result of a clerical error." *Id.* What's more, the IRS conceded that "it improperly assessed" the liability, "returned the [amount] it collected in satisfaction of that improper liability," and no longer sought a levy. *Id.* at 320-21. The IRS had thus issued Willson the "very relief" he "ostensibly sought when he requested the [§ 6330] hearing." *Id.* at 321.

b. Similarly, the Fourth Circuit held in a brief opinion in *McLane v. Commissioner*, 24 F.4th 316, 319 (4th Cir. 2022), that when the IRS "has already conceded that a taxpayer has no liability and that the lien should be removed," the § 6330 proceeding "is moot." The case arose when McLane filed a return claiming deductions for business losses. *Id.* at 317. The IRS denied most of the deductions and determined that McLane owed more than $23,000 in taxes. *Id.* at 317-18. But he failed to pay, so the IRS sought to levy his property. *Id.* at 318.

During his collection due process hearing, "McLane presented enough information to substantiate the losses reported on his return." *Id.* The IRS consequently "conceded that McLane was entitled to deductions exceeding those he initially claimed" and

"removed the assessment of liability." *Id.* In other words, there was no longer any live dispute about McLane's underlying liability. Separately, McLane later "asserted for the first time, in a telephone call with the Tax Court, that he overpaid his taxes" and "now sought a refund." *Id.*

The Tax Court dismissed for lack of jurisdiction, *id.*, and on appeal, the Fourth Circuit held that the case was moot, *id.* at 319. "When … the Commissioner has already conceded that a taxpayer has no tax liability" *and* that it would no longer pursue the levy, the court reasoned, "[n]o collection action remains, for which there is underlying tax liability, to appeal." *Id.*

McLane's separate later request for a refund didn't confer jurisdiction, either: McLane raised his overpayment concern for the first time before the Tax Court, but the Tax Court's jurisdiction is limited to "review" of issues determined by the Appeals Office, I.R.C. § 6330(d)(1), not "independent overpayment claims," *McLane*, 24 F.4th at 319.

2. Those holdings that a § 6330 review proceeding is moot when there is no liability dispute do not conflict with the Third Circuit's holding that the Tax Court retains jurisdiction where there is a live liability dispute.

a. As explained, the Third Circuit here held that the Tax Court retains jurisdiction over a § 6330 review proceeding, and the proceeding is not moot, where the parties continue to dispute the taxpayer's underlying liability, even if the IRS decides to stop pursuing the levy. Pet. App. 25a-38a. Zuch's "underlying tax liability" remained "very much in dispute," Pet. App. 25a: the IRS never conceded that Zuch's tax

liability was improper, but instead maintains that Zuch was liable for around $27,000 not offset by the $50,000 estimated payments.

That ruling does not conflict with the D.C. and Fourth Circuits' rulings that a § 6330 proceeding is moot where the IRS concedes there was "no tax liability" and drops the levy request. *McLane*, 24 F.4th at 319; *accord Willson*, 805 F.3d at 320-21. The Third Circuit has not considered that question, and its opinion here leaves it free to agree with the D.C. and Fourth Circuits on that question. Conversely, the D.C. and Fourth Circuits have not considered the question the Third Circuit resolved here, where the parties continue to dispute the taxpayer's liability even though the IRS decides to stop pursuing the levy.

What's more, in *McLane*, the taxpayer didn't even contend that he was entitled to a refund based on his supposed overpayments until *after* the Appeals Office issued its determination. *See* 24 F.4th at 318. Thus, even if McLane did raise a challenge to his "tax liability," that challenge was not part of the Appeals Court's "determination," and the Tax Court has jurisdiction only over the issues involved in that determination. I.R.C. § 6330(c)(2)(B), (d)(1).

b. The IRS points to the Fourth Circuit's statement that the phrase "underlying tax liability" must be read in the context of the proposed levy. Pet. 14-15. But that point doesn't help the IRS. True, the "underlying tax liability" is the liability that the IRS sought to collect with the levy. But whether the IRS continues to pursue the levy is a separate question from whether the IRS assessed that underlying tax liability and tried to levy on it in the first place. And here, the Third Circuit read "underlying tax liability" just that way,

to refer to the liability that gave rise to the levy. But none of that means that the Tax Court's jurisdiction to review the Appeals Office's determination evaporates when the IRS says it will no longer pursue the levy and the parties continue to dispute that very underlying tax liability. *Supra* pp. 22-23.

c. To be sure, the Third Circuit thought it was "part[ing] ways … with the Fourth and D.C. Circuits." Pet. App. 27a. But whatever it thought of the other courts of appeals' reasoning, the Third Circuit has not decided whether the Tax Court has jurisdiction over a § 6330 proceeding when neither a proposed levy nor an underlying tax liability dispute remains, like in *Willson* and *McLane*. And the D.C. and Fourth Circuits have not decided whether the Tax Court retains jurisdiction where there *is* a live liability dispute. What is dispositive is what the courts held, not the way the Third Circuit viewed the D.C. and Fourth Circuits' reasoning on a different question. Nothing in any of the courts of appeals' opinions bars the courts from aligning on the same question if they confront it in the future. There is no reason for this Court to intervene.

B. The other decisions the IRS cites don't conflict with the decision below, either.

The other decisions the IRS cites (Pet. 16) don't conflict with the decision below, either. The IRS claims that the Third Circuit's conclusion that the Tax Court had "implicit" jurisdiction to review offsets conflicts with other courts of appeals' decisions recognizing that the Tax Court has jurisdiction only when Congress expressly authorizes it. But there is no split. None of the cases the IRS cites addresses the Tax Court's jurisdiction to review offsets in § 6330

proceedings. And two out of the three decisions don't even involve § 6330 proceedings. *See Borenstein v. Commissioner*, 919 F.3d 746, 749 (2d Cir. 2019) (refund jurisdiction); *Sanders v. Commissioner*, 813 F.2d 859, 861 (7th Cir. 1987) (attorneys' fees). In any event, the question is entirely academic, because the Third Circuit's offset-review holding is an alternative holding that doesn't change the court's decision—on which there is also no split—that the Tax Court retained jurisdiction to resolve the live liability dispute.

III. The petition doesn't warrant review for any other reason, either.

The question presented isn't just splitless. It also rarely arises and isn't important to the workable administration of the tax laws.

A. The question presented rarely arises. The IRS must first deny the taxpayer an "opportunity to dispute" her underlying tax liability, I.R.C. § 6330(c)(2)(B). The taxpayer must then unsuccessfully challenge that liability in a collection due process hearing and seek Tax Court review, all while the IRS collects that liability through non-levy means rather than issuing refunds. Unsurprisingly, the Third Circuit's decision is the *only* circuit decision the IRS identifies as presenting that scenario. And even on the IRS's own argument, *McLane* and *Willson* are the only circuit decisions, over more than two decades, to address mootness in § 6330 cases.

What's more, the question presented must "arise from the IRS's own recalcitrance." *Boechler*, 596 U.S. at 207. The question arises only when the IRS unilaterally decides to keep the taxpayer's money rather than permit judicial resolution of the dispute.

B. Even if the IRS were correct that a § 6330 proceeding is moot whenever the IRS stops pursuing a levy, this case wouldn't warrant review. As the IRS admits (Pet. 14), a "taxpayer seeking a refund of taxes erroneously or unlawfully assessed or collected may bring an action against the Government" under § 7422(a). *Clintwood Elkhorn Mining Co.*, 553 U.S. at 4. Indeed, § 6330 expressly contemplates refund actions by tolling the statute of limitations during § 6330 proceedings. I.R.C. §§ 6330(e)(1), 6532(a)(1); *see* 26 C.F.R. § 301.6330-1(g). So the only consequence would be to require a refund suit that might otherwise be unnecessary. The possibility of multiplying proceedings doesn't warrant this Court's intervention.

C. The IRS claims this case is important because the Third Circuit's decision will allow taxpayers to convert many of the "tens of thousands of Section 6330 proceedings each year" "into a more general forum for considering challenges to tax liability." Pet. 16-17. That argument lacks merit. The statute specifies the issues taxpayers may raise in collection due process hearings, and limits liability challenges (the only issues here) to taxpayers without an earlier opportunity to challenge their assessed liability. I.R.C. § 6330(c)(2)(B). The Tax Court's liability, in turn, is limited to reviewing the Appeals Office's determination—it does not reach *new issues*. I.R.C. § 6330(d)(1). In *McLane*, for example, the Tax Court lacked jurisdiction to resolve a taxpayer's claim that he overpaid his taxes that he raised for the first time before the Tax Court. 24 F.4th at 319. Nothing in the Third Circuit's opinion allows taxpayers to raise new issues before the Tax Court. And more generally, the dearth of appellate decisions about mootness in § 6330 cases

only underscores that the fact pattern necessary to raise the question presented here arises rarely.

CONCLUSION

The petition should be denied.

Respectfully submitted.

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