No. 24-416

In the Supreme Court of the United States

COMMISSIONER OF INTERNAL REVENUE, PETITIONER

v.

JENNIFER ZUCH

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

REPLY BRIEF FOR THE PETITIONER

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As respondent acknowledges (Br. 1), Section 6330 of the Internal Revenue Code "provides taxpayers with procedural protections before the IRS may levy their property to collect taxes." At every turn, the statute is narrowly focused on the prospect of collection that will occur via levy (*i.e.*, a legal seizure of the taxpayer's property). Where, as here, the IRS no longer has a basis for pursuing "the levy action[] which [is] the subject of the requested hearing," 26 U.S.C. 6330(e)(1), the Tax Court can provide no relief, and the Section 6330 proceeding is moot.

Respondent offers no persuasive defense of the court of appeals' contrary rule. Respondent primarily contends that even when no levy is threatened, the Tax Court retains jurisdiction to address issues concerning a taxpayer's "underlying tax liability" or "unpaid tax." 26 U.S.C. 6330(c)(2)(A) and (B). But where the IRS has disclaimed a levy because it considers the tax fully paid,

there is no liability *underlying* a collection action. Nor is there an *unpaid* tax. More fundamentally, Section 6330's text makes clear that disputes over a taxpayer's "underlying tax liability" or "unpaid tax" are merely "consideration[s]" that the Appeals Office must take into account in making the ultimate "determination" whether a levy may proceed. 26 U.S.C. 6330(c)(2)(A)-(B) and (3). Because Section 6330(d)(1) vests the Tax Court with limited "jurisdiction" to "review" only that ultimate "determination," the court lacks jurisdiction when the IRS no longer seeks to enforce the levy it once proposed. 26 U.S.C. 6330(d)(1). This Court should therefore reverse the judgment of the court of appeals.

A. The Text Of Section 6330 Makes Clear That A Pre-Levy Proceeding Is Moot When The IRS No Longer Seeks To Levy On A Taxpayer's Property

1. Respondent does not contest that the Tax Court is "a court of limited jurisdiction," *Commissioner* v. *McCoy*, 484 U.S. 3, 7 (1987) (per curiam), and it may exercise "only the power 'expressly conferred by Congress,'" Pet. App. 14a (quoting *Sunoco Inc.* v. *Commissioner*, 663 F.3d 181, 187 (3d Cir. 2011)). Nor does respondent dispute that Section 6330(d)(1) provides the relevant grant of Tax Court jurisdiction. See, *e.g.*, Br. 29.

As we have explained (Gov't Br. 16-24), that jurisdiction is limited to review of the IRS Appeals Office's "'determination' regarding the legitimacy of the proposed levy." *Willson* v. *Commissioner*, 805 F.3d 316, 320 (D.C. Cir. 2015) (quoting 26 U.S.C. 6330(c)(3)). Section 6330's text focuses squarely on the "levy action[] which [is] the subject of the requested hearing." 26 U.S.C. 6330(e)(1). The statute requires the IRS to provide notice and an opportunity for a hearing only when it plans to levy on a taxpayer's property or right to prop-

erty; it requires that the notice include several pieces of levy-related information; and it provides that the "levy actions which are the subject of the requested hearing" and certain limitations periods "shall be suspended for the period during which such hearing, and appeals therein, are pending." *Ibid.*; see 26 U.S.C. 6330(a); see also 26 U.S.C. 6331. Absent a threatened levy, Section 6330 simply does not apply.

2. Contrary to respondent's suggestion (Br. 28-29), the statutory focus on the appropriateness of a proposed levy applies equally to the Tax Court. Once the IRS no longer has a basis for enforcing a levy, the case is moot, and the Tax Court lacks jurisdiction.

a. If the Appeals Office holds that the IRS may enforce the challenged levy, then Section 6330(d)(1) provides that the taxpayer "may, within 30 days of a determination under this section, petition the Tax Court for review of such determination." 26 U.S.C. 6330(d)(1). The statute vests the Tax Court with "jurisdiction with respect to such matter," *ibid.*—*i.e.*, the taxpayer's "petition for review of [the Appeals Office's] determination." *Boechler, P.C.* v. *Commissioner*, 596 U.S. 199, 204 (2022).

Respondent emphasizes (Br. 23) that the "determination" must "take into consideration" certain subsidiary issues raised by the taxpayer, including "relevant issue[s] relating to the unpaid tax" and, in some cases, "challenges to the existence or amount of the underlying tax liability." 26 U.S.C. 6330(c)(2)(A)-(B) and (3). And respondent contends that the Tax Court may continue considering those issues even if there is no longer a proposed levy. See, *e.g.*, Br. 26-31. That is incorrect. Section 6330 provides that the taxpayer's challenges to her unpaid tax or underlying liability are simply "con-

sideration[s]" that the IRS's Appeals Office must take into account when making its ultimate "determination" whether a challenged levy may proceed. 26 U.S.C. 6330(c)(3); see Gov't Br. 24-27. Those considerations do not constitute independent claims or bases for jurisdiction. Section 6330 is not a freestanding grant of authority for anyone—whether the Appeals Office or the Tax Court—to consider those issues in the absence of a dispute about a proposed levy.

As our opening brief explained (at 24-27), the text of Section 6330(c)(2)(B) makes that particularly clear. In order for there to be an "[u]nderlying liability," 26 U.S.C. 6330(c)(2)(B), the taxpayer must continue to owe money to the IRS (*i.e.*, have a liability); and that debt must form the basis of (*i.e.*, must underlie) the "levy actions which are the subject of" the Section 6330 proceeding, 26 U.S.C. 6330(e)(1). See, *e.g.*, *McLane* v. *Commissioner*, 24 F.4th 316, 319 (4th Cir.), cert. denied, 143 S. Ct. 408 (2022). Where, as here, the IRS has determined that it cannot proceed with the levy because the taxpayer's debt is satisfied, there is no remaining "liability"—and certainly not one that "underl[ies]" a threatened levy. 26 U.S.C. 6330(c)(2)(A) and (B); see, *e.g.*, *Willson*, 805 F.3d at 320; Gov't Br. 21. Nor is there an "*unpaid* tax." 26 U.S.C. 6330(c)(2)(A) (emphasis added); Gov't Br. 25 n.3. Indeed, respondent offers no contrary understanding of those terms. See Br. 32-33.

The surrounding provisions underscore the point. Section 6330(c)(3) requires that "[t]he determination by an appeals officer * * * take into consideration" not only a taxpayer's challenge to her "unpaid tax" or "underlying tax liability," 26 U.S.C. 6330(c)(2)(A)-(B) and (3); see 26 U.S.C. 6330(c)(3)(B), but also "whether any proposed collection action balances the need for the ef-

ficient collection of taxes with the legitimate concern of the person that any collection action be no more intrusive than necessary." 26 U.S.C. 6330(c)(3)(C). Respondent does not explain how or why the Tax Court could retain jurisdiction to consider that question about the "proposed collection action," *ibid.*, when such action no longer exists.

Section 6330(e) likewise confirms the Tax Court's limited jurisdiction. As noted above, that provision suspends the "levy actions which are the subject of the requested hearing * * * for the period during which such hearing, and appeals therein, are pending." 26 U.S.C. 6330(e)(1). It further states that "[n]otwithstanding the provisions of" the Tax Anti-Injunction Act, 26 U.S.C. 7421(a), the Tax Court may "enjoin[]" "the beginning of a levy or proceeding" during that time, *if* "a timely appeal has been filed." 26 U.S.C. 6330(e)(1). That focus on the proposed levy would make little sense if the Tax Court retained jurisdiction in the absence of a levy.

Respondent nonetheless suggests that "the provisions that authorize the *Tax Court* to review a taxpayer's liability challenge—§ 6330(c)(2)(B) and (d)(1)—do *not* 'focus[] on' a levy." Br. 33 (brackets in original). But Section 6330(c)(2)(B) says nothing about the Tax Court's jurisdiction. And despite respondent's serial attempts to read individual provisions of the statute in isolation, the statute as a whole makes plain that the Tax Court's jurisdiction is limited to considering the determination whether a levy may proceed. A taxpayer may challenge the tax liability underlying the "levy actions which are the subject of the requested hearing" before the Appeals Office, 26 U.S.C. 6330(e)(1); the Appeals Office's ultimate "determination" as to whether the levy may proceed "shall take into consideration * * * the

issues raised" by the taxpayer, 26 U.S.C. 6330(c)(3)(B); and the Tax Court shall have jurisdiction to review "such determination," 26 U.S.C. 6330(d)(1)—not a free-ranging license to consider any and all constituent issues in the absence of a threatened levy.[1]

b. Respondent cannot escape Section 6330's text by resorting to a requirement that "jurisdictional prerequisites be clearly stated." Br. 16 (citing *Boechler*, 596 U.S. at 203). This Court has required a "clear statement" from Congress before it will deem certain "procedural rule[s]" to be "jurisdictional," such that a court cannot excuse noncompliance and "must enforce the rule even if no party has raised it." *Harrow* v. *Department of Def.*, 601 U.S. 480, 484 (2024). In particular, the Court has repeatedly held that certain "claim-processing rules" like filing deadlines, "which 'seek to promote the orderly progress of litigation by requiring that the parties take certain procedural steps at certain specified times,'" are not jurisdictional absent a clear statement from Congress. *Fort Bend County* v. *Davis*, 587 U.S. 541, 548-549 (2019) (quoting *Henderson* v. *Shinseki*, 562 U.S. 428, 435 (2011)).

That clear-statement rule has no application here. The question in this case is not whether a particular fil-

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[1] Respondent's own invocation (Br. 24) of "[s]tatutory context" fails. Respondent cites (Br. 25) a provision added in 2015, which requires that the Commissioner "ensure that [IRS] employees" "are familiar with and act in accord with taxpayer rights as afforded by *other provisions of this title*." 26 U.S.C. 7803(a)(3) (emphasis added); see Protecting Americans from Tax Hikes Act of 2015, Pub. L. No. 114-113, Div. Q, § 401(a), 129 Stat. 3117. None of those other provisions—and none of the rights listed in Section 7803(a)(3)—states that a Section 6330 proceeding may continue once the IRS lacks any basis for, or intention of, enforcing a previously proposed levy.

ing deadline or other procedural requirement is jurisdictional. Rather, it is whether Section 6330(d)(1)—which plainly grants subject-matter jurisdiction to the Tax Court—encompasses cases in which there is no longer a dispute over a once-threatened levy. When this Court has considered the scope of statutes that, on their face, clearly define a set of cases within the subject-matter jurisdiction of the federal courts, it has explained that "[o]rdinary principles of statutory construction apply." *Exxon Mobil Corp.* v. *Allapattah Servs., Inc.*, 545 U.S. 546, 558 (2005); see, *e.g.*, *Turkiye Halk Bankasi A.S.* v. *United States*, 598 U.S. 264, 269 (2023) (declining to "create a new clear-statement rule requiring Congress to 'clearly indicate its intent' to include foreign states and their instrumentalities within [18 U.S.C.] 3231's jurisdictional grant") (brackets and citation omitted); *Romero* v. *International Terminal Operating Co.*, 358 U.S. 354, 360 (1959) (describing the interpretation of 28 U.S.C. 1331 as involving "the ordinary task" of "apply[ing] the words of a statute according to their proper construction"); see also *Badgerow* v. *Walters*, 596 U.S. 1, 11 (2022) ("[T]he jurisdiction Congress confers may not 'be expanded by judicial decree.'") (citation omitted).

For example, in *Exxon Mobil*, the Court considered whether 28 U.S.C. 1367, which grants federal district courts supplemental jurisdiction over certain claims, applies to claims that would not by themselves satisfy the amount-in-controversy requirement for diversity jurisdiction. See 545 U.S. at 549. The Court explained that it "must not give jurisdictional statutes a more expansive interpretation than their text warrants" or "adopt an artificial construction that is narrower than what the text provides." *Id.* at 558. "No sound canon of

interpretation," the Court stated, "requires Congress to speak with extraordinary clarity in order to modify the rules of federal jurisdiction within appropriate constitutional bounds." *Ibid.* The Court thus applied "[o]rdinary principles" in "determin[ing] the scope of supplemental jurisdiction authorized by § 1367," considering "the statute's text in light of context, structure, and related statutory provisions." *Ibid.* This Court should do the same here.

In any event, applying a clear-statement rule to Section 6330 would make no difference. The Court's clear-statement cases apply the "traditional tools of statutory construction" to determine whether the statute is sufficiently clear. *United States* v. *Kwai Fun Wong*, 575 U.S. 402, 410 (2015); accord *Boechler*, 596 U.S. at 203. Those tools include reading the statutory text in context and as part of the whole. See, *e.g.*, Antonin Scalia & Bryan A. Garner, *Reading Law* 167-168 (2012). Thus, although respondent emphasizes (Br. 34) that Section 6330(d)(1) does not *itself* use the word "levy," that is not dispositive. Even under the clear-statement rule, Congress is not required to "incant magic words." *Wong*, 575 U.S. at 409 (citation omitted). Here, Section 6330(d)(1) states that a taxpayer "may, within 30 days of a determination under this section, petition the Tax Court for *review of such determination* (and the Tax Court *shall have jurisdiction with respect to such matter*)." 26 U.S.C. 6330(d)(1) (emphases added). The Tax Court's jurisdiction is thus limited to reviewing the Appeals Office's "determination." And the rest of Section 6330 makes it pellucid that the "determination" is a decision whether a levy may proceed. See Gov't Br. 16-21. Once that issue drops out of the case, there is nothing

left for the Tax Court to decide, and that court lacks jurisdiction.[2]

B. Section 6330's History And Function Within The Code Confirm That A Pre-Levy Proceeding Becomes Moot When There Is No Longer A Live Dispute Over A Proposed Levy

As we have explained, under the text of Section 6330, a pre-levy proceeding is moot when the IRS no longer seeks to levy on the taxpayer's property. Respondent's arguments (Br. 36) based on the statute's history and purportedly "remedial purpose" do not support continuing Tax Court jurisdiction, either.

1. As to statutory history, when Congress added the pre-levy procedure to the Code in 1998, it was focused on establishing procedural protections for cases in

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[2] In *Boechler*, this Court applied the clear-statement rule and held that the 30-day limit for appealing to the Tax Court is not jurisdictional. The Court observed that the phrase "'such matter'" in Section 6330(d)(1) had "multiple plausible interpretations," including that "'such matter' might refer" to Section 6330(c)'s "list of '[m]atters' that may be considered during the collection due process hearing." *Boechler*, 596 U.S. at 205 (quoting 26 U.S.C. 6330(c)) (brackets in original); see *ibid.* (noting that no party had suggested that interpretation). Respondent does not proffer that construction of the statute, and for good reason. That reading would change "matter" in Section 6330(d)(1) to "matter[s]," and it would ignore multiple textual indications that the "[m]atters" referenced in Section 6330(c) are simply "consideration[s]" that an appeals officer must take into account in making the relevant "determination"—not independent issues or sources of Tax Court jurisdiction. 26 U.S.C. 6330(c)(3); see 26 U.S.C. 6330(c) (subsection is entitled "Matters considered at hearing"); 26 U.S.C. 6330(c)(2) (describing the relevant matters as "Issues at hearing"); 26 U.S.C. 6330(c)(3)(B) (explaining that "[t]he determination by an appeals officer under this subsection shall take into consideration," *inter alia*, "the issues raised under paragraph (2)").

which the IRS sought to seize a taxpayer's property by levy (and it adopted similar procedures where the IRS has filed a notice of a federal tax lien). See Gov't Br. 22-23. Respondent appears to acknowledge as much, highlighting statements from the legislative history trained on the IRS's "liens-and-seizure authority," Br. 36 (quoting 143 Cong. Rec. 25,507 (1997) (statement of Sen. Roth))—authority that becomes irrelevant when the IRS no longer seeks to enforce a lien or levy. Cf. Br. 3 (acknowledging that "the whole point of § 6330 is to make sure that levy proceedings are fair").

Respondent also suggests, however, that Section 6330 was more generally intended to "increase fairness to taxpayers." Br. 36 (quoting S. Rep. No. 174, 105th Cong., 2d Sess. 67 (1998) (Senate Report)). And she asserts (Br. 8) that the statute therefore serves as a "backstop" to ensure that *all* taxpayers "ha[ve] an opportunity to dispute [their] underlying tax liability" if they were "not able to do so earlier." But even if respondent were correct about the statutory purpose, "no law pursues its purposes at all costs." *Luna Perez* v. *Sturgis Pub. Sch.*, 598 U.S. 142, 150 (2023) (brackets, citation, ellipsis, and internal quotation marks omitted). And here, the committee report that respondent quotes echoes the text, confirming that Section 6330 is limited to cases "where the IRS seeks to collect taxes by levy." Senate Report 67. In other situations—whether because the IRS never sought a levy, or because it no longer seeks to enforce a levy it previously proposed—the traditional rule applies, and the taxpayer may contest the assessment of the tax in a post-payment refund suit (or, in the case of certain taxes, a pre-payment deficiency action). See Gov't Br. 3-4, 23-24.

2. Respondent's reliance on subsequent legislative history fares no better. She observes (Br. 23-24) that some pre-levy determinations were initially appealable to district court and that in 2006, Congress consolidated review of Section 6330 proceedings in the Tax Court. Respondent cites two staff reports stating that under the new rule, the Tax Court would have jurisdiction "over issues arising from a collection due process hearing." Br. 23 (quoting Staff of the Joint Comm. on Taxation, 109th Cong., 2d Sess., *Description of the Revenue Provisions Contained in the President's Fiscal Year 2007 Budget Proposal* 231 (Joint Comm. Print 2006) (*Description of Revenue Provisions*), and citing Staff of the Joint Comm. on Taxation, 109th Cong., 2d Sess., *Technical Explanation of H.R. 4, The "Pension Protection Act of 2006," as Passed by the House on July 28, 2006, and as Considered by the Senate on August 3, 2006*, at 201-202 (Joint Comm. Print 2006)).

Those reports are irrelevant. The 1998 amendment added the key language in Section 6330(d)(1); the 2006 amendment simply eliminated the option of proceeding in district court. Compare 26 U.S.C. 6330(d) (2000), with the Pension Protection Act of 2006, Pub. L. No. 109-280, § 855(a), 120 Stat. 1019. Stray statements in staff reports relating to a later amendment cannot overcome the statute's plain text. See, *e.g.*, *Bruesewitz* v. *Wyeth LLC*, 562 U.S. 223, 242 (2011) ("Post-enactment legislative history (a contradiction in terms) is not a legitimate tool of statutory interpretation."). And in any event, the reports do not suggest that Congress expanded the *scope* of Tax Court review to include all "issues" in the absence of a threatened levy. Rather, they explain that, in consolidating appellate review in the Tax Court, the 2006 amendment sought to "provide simplification ben-

efits to taxpayers and to the IRS" by eliminating disputes over the proper venue for review of the Appeals Office's determination in a pre-levy proceeding. *Description of Revenue Provisions* 231.

3. Respondent also asserts (Br. 37) that "Congress did not intend to enable the IRS to unilaterally deprive the Tax Court of jurisdiction to review unpaid tax or liability disputes by finding another way to take the taxpayer's money and then claiming it no longer seeks the levy." See Br. 25-26 (similar). But respondent mischaracterizes what happened here. The IRS's actions were not "unilateral": Rather, after respondent self-reported additional tax due for 2010, and the IRS assessed that liability, respondent overpaid her taxes for later years—something she was not required to do. Congress has expressly authorized the IRS to "credit the amount" of a taxpayer's overpayment against "*any liability* in respect of an internal revenue tax on the part of the [taxpayer]." 26 U.S.C. 6402(a) (emphasis added); see Gov't Br. 7. And while Congress has provided that a taxpayer's request for a Section 6330 hearing suspends "the levy actions which are the subject of the requested hearing" and certain limitations periods, 26 U.S.C. 6330(e)(1), it has not similarly stayed the IRS's offset authority during such a proceeding.

Contrary to respondent's contention, the IRS's decision to exercise that statutory authority is consistent with its obligation to "turn square corners in dealing with the people." Br. 25 (quoting *Department of Homeland Sec.* v. *Regents of the Univ. of Cal.*, 591 U.S. 1, 24 (2020)). In fact, the IRS's decision to credit an overpayment against an outstanding tax liability will often *benefit* the taxpayer by reducing or eliminating the interest and penalties she might otherwise have to pay on

the liability. And although the court of appeals found that the Tax Court had "*implicit*" jurisdiction to review the IRS's consideration of offsets, Pet. App. 20a, respondent has not defended that rationale in this Court. See Gov't Br. 32-33. She therefore cannot use any critique of the IRS's offset authority to support continued Tax Court jurisdiction in the absence of a levy.

More generally, as we have explained (Gov't Br. 3-4, 24), Section 6330 functions as a limited exception to the usual rule that taxpayers must pay their taxes before disputing their liability. Respondent would transform Section 6330's role by authorizing the Tax Court to review actions in which the IRS no longer seeks to collect taxes by levy (and perhaps did not seek to do so when the Tax Court petition was filed, see Br. 38). Respondent counters (Br. 39) that in the year since the Third Circuit's decision in this case, the Tax Court has not "wad[ed] into general liability determinations in § 6330 proceedings." But the Tax Court is bound to follow the Third Circuit's aberrant understanding of Section 6330 only in cases appealable to that court. *Golsen* v. *Commissioner*, 54 T.C. 742, 757 (1970), aff'd, 445 F.2d 985 (10th Cir. 1971), cert. denied, 404 U.S. 940 (1971). If this Court were to hold that the absence of a potential levy is "irrelevant" to the Tax Court's jurisdiction under Section 6330, Resp. Br. 38, then nothing would stop taxpayers from attempting to convert that provision from a limited opportunity for pre-levy review into a more general forum for considering challenges to tax liability. See Gov't Br. 23-24.

C. Respondent's Remaining Arguments Lack Merit

Section 6330's text, history, and function within the Internal Revenue Code all demonstrate that the Tax Court lacks jurisdiction over a Section 6330 proceeding

once the IRS no longer has a basis to enforce a levy. Respondent's remaining arguments lack merit.

1. Invoking Article III principles, respondent suggests (Br. 27) that the parties maintain a "concrete interest in the outcome" of the Tax Court proceeding even absent a threatened levy. On her view, the Tax Court may review the merits of her challenge, and if it "rule[s] that [she] is entitled to the estimated payments," the IRS "is likely" to "issue [her] a refund." *Ibid.* But respondent's argument simply assumes that the Tax Court can address her "underlying liability" and "unpaid tax" arguments after the IRS lacks any basis to proceed with its levy. *Ibid.* As already discussed, the plain text of Section 6330 demonstrates that the court cannot do so. The fact that the IRS would follow an "authoritative" ruling from a court that actually has jurisdiction, *id.* at 29 (citation omitted), cannot create that jurisdiction in the first place.

Even if the IRS's willingness to provide a refund could keep the case alive for Article III purposes, it would not show that "the controversy * * * *also* fall[s] within the [Tax Court's] statutory grant of jurisdiction." *Willson*, 805 F.2d at 320; see Gov't Br. 21 n.2. Congress chose not to give the Tax Court any jurisdiction to order a refund in a Section 6330(d) proceeding. Thus, as respondent appears to acknowledge (Br. 29-31), even if the Tax Court agreed with her argument that the IRS should have allocated the estimated tax payments to her, it would be unable to order a refund. See Gov't Br. 29 n.4. That buttresses the conclusion that the court's role is limited to reviewing the Appeals Office's determination whether a levy can proceed—a determination that lacks any practical significance once the IRS has decided not to move forward with the levy. That deci-

sion is "the very relief [the taxpayer] ostensibly sought when [she] requested a [Section 6330] hearing to challenge the proposed levy in the first place," and "all the relief that section 6330 authorizes the tax court to grant." *Willson*, 805 F.3d at 321.

2. Respondent errs in suggesting (Br. 40) that jurisdiction exists because "the Tax Court can issue its ruling in the form of declaratory relief." Respondent appears (Br. 40-41) not to contest that the Tax Court lacks any general authority to issue declaratory judgments. See Gov't Br. 28. Instead, respondent contends (Br. 40) that because Section 6330(e)(1) authorizes the Tax Court to issue injunctive relief, it "necessarily * * * also authorizes declaratory relief." But Section 6330(e)(1) authorizes the Tax Court to issue injunctive relief only against "the beginning of a levy or proceeding during the time" that "the levy actions which are the subject of the requested hearing" are themselves stayed—and "then only in respect of the unpaid tax or proposed levy to which the determination being appealed relates." 26 U.S.C. 6330(e)(1). Where, as here, there is no longer a threatened levy, there is no authority to issue injunctive relief—and thus no "milder" alternative authority to issue a declaratory judgment. Resp. Br. 41 (quoting *Steffel* v. *Thompson*, 415 U.S. 452, 467 (1974)). Indeed, respondent never explains what action the Tax Court would still be able to enjoin once the IRS no longer seeks to enforce a levy.

3. Respondent also suggests (Br. 30) that the Tax Court retains jurisdiction on the theory that any judgment it might issue as to respondent's (now nonexistent) unpaid tax or underlying liability would "have preclusive effect" in respondent's recently filed refund suit. But "it is circular to argue that a judgment is not moot

because it may have preclusive effect, when it can have preclusive effect only if it is not moot." *Commodity Futures Trading Comm'n* v. *Board of Trade*, 701 F.2d 653, 656 (7th Cir. 1983). Instead, the mootness "determination must rest on more than the truism that a final judgment can collaterally estop parties (and sometimes nonparties) in future litigation." *Ibid.* In fact, "if the potential of a preclusive effect were enough to keep a case alive, the mootness doctrine itself would largely evaporate." *Tur* v. *YouTube, Inc.*, 562 F.3d 1212, 1214 (9th Cir. 2009) (per curiam). Thus, this Court has explained that even where "a favorable decision in [one] case might serve as a useful precedent" in a related case, that "cannot save [the first] case from mootness." *United States* v. *Juvenile Male*, 564 U.S. 932, 937 (2011) (per curiam). Respondent does not grapple with those decisions or the broader consequences of her theory.

4. Finally, respondent repeats the refrain that under "time-of-filing rules," "jurisdiction 'depends upon the state of things at the time' the plaintiff brings the action." Br. 38 (quoting *Grupo Dataflux* v. *Atlas Global Grp., L.P.*, 541 U.S. 567, 570 (2004)). But as we have explained (Gov't Br. 30), that principle is inapplicable "where a case becomes moot in the course of the litigation." *Cunningham Charter Corp.* v. *Learjet, Inc.*, 592 F.3d 805, 807 (7th Cir. 2010). Thus, it is not enough that "there *was* a pending levy" when respondent filed her petition in Tax Court, Resp. Br. 38—just as it would not be enough that a now-repealed statute was on the books when a plaintiff filed its petition for a writ of certiorari, see, *e.g.*, *New York State Rifle & Pistol Ass'n* v. *City of New York*, 590 U.S. 336, 337-339 (2020) (per curiam); or that a now-inapplicable legal requirement would have applied at that time, see, *e.g.*, *Hall* v. *Beals*, 396 U.S. 45,

48 (1969) (per curiam); cf. *Arizonans for Official English* v. *Arizona*, 520 U.S. 43, 67-68 (1997).

As we have also discussed (Gov't Br. 30), even outside of mootness, a court may lose subject-matter jurisdiction when a change in circumstances during the litigation "fundamentally alter[s] the basis" for the lawsuit. See *Rockwell Int'l Corp.* v. *United States*, 549 U.S. 457, 473 (2003); see also *Royal Canin U.S.A., Inc.* v. *Wullschleger*, 604 U.S. 22 (2025). Respondent attempts (Br. 38) to distinguish that principle on the theory that "[t]he basis of the Tax Court's jurisdiction under § 6330(d)(1) is the Appeals Office's determination—not the proposed levy." But as we have explained, the "determination" of the Appeals Office is a "'determination' regarding the legitimacy of the proposed levy." *Willson*, 805 F.3d at 320 (citing 26 U.S.C. 6330(c)(3)); see Gov't Br. 16-24; pp. 2-9, *supra*. Under Section 6330, the elimination of any threat of a proposed levy fundamentally alters the case and extinguishes the Tax Court's jurisdiction.

D. Respondent's Case Is Moot

In light of the foregoing principles, respondent's case is moot. See Gov't Br. 33-34. After respondent self-reported that she owed taxes for tax year 2010, the IRS assessed liability based on her representation. C.A. App. 280, 475. When the IRS proposed to collect the liability by administrative levy, respondent timely requested a pre-deprivation hearing under Section 6330. *Id.* at 566. During the pendency of her pre-levy proceedings, however, respondent made overpayments for later tax years, and the IRS exercised its authority under Section 6402(a) to credit those new payments against respondent's 2010 liability. Because there is no remaining unpaid tax, the IRS no longer has a basis to

proceed with the levy that respondent had challenged. And the Tax Court can grant her no relief in a Section 6330 proceeding.

As respondent repeatedly acknowledges (Br. 4, 16-17, 30-31, 35), she can vindicate her right to relief, if any, in a refund suit—the traditional mechanism for disputing the assessment or collection of a federal tax, and the one that she has recently invoked.[3] Respondent's reliance on "the presumption favoring judicial review of administrative action," Br. 34 (citation omitted), therefore fails. Respondent contends that "[t]he 'administrative action' at issue here is the Appeals Office's determination," and that if the Tax Court cannot review that "determination," then no court will be able to do so. Br. 35 (citation omitted). But respondent cannot simultaneously suggest that the Tax Court retains jurisdiction because its decision would be preclusive in her refund suit, see Br. 30, while *also* contending that the district court will consider different issues (or a different determination). More fundamentally, that no court can now review the Appeals Office's determination simply reflects that it really was a determination whether *the levy* could proceed. Because that determination now lacks all practical significance, the case is moot, and the Tax Court lacks jurisdiction under Section 6330.

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[3] Respondent states (Br. 15-16) that due to "onerous jurisdictional prerequisites to filing a refund suit," she is "unable to request the return of approximately $20,000 in overpayments * * * from the 2014 and 2015 tax years." But respondent does not identify the reason why she believes she is unable to seek return of those payments; nor does she suggest that it has anything to do with the Section 6330 proceeding.

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For the foregoing reasons and those stated in our opening brief, this Court should reverse the judgment of the court of appeals.

Respectfully submitted.

D. JOHN SAUER
Solicitor General

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