No. 20-1472

In the Supreme Court of the United States

BOECHLER, P.C.,
PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE,
RESPONDENT

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

BRIEF OF FEDERAL TAX CLINICS, LEGAL AID GROUPS, AND TAX PROFESSORS AS AMICI CURIAE IN SUPPORT OF PETITIONER

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QUESTION PRESENTED

Section 6330(d)(1) of the Internal Revenue Code establishes a 30-day time limit to file a petition for review in the Tax Court of a notice of determination from the Commissioner of Internal Revenue. 26 U.S.C. § 6330(d)(1). The question presented is:

Whether the time limit in § 6330(d)(1) is a jurisdictional requirement or a claim-processing rule subject to equitable tolling.

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INTEREST OF AMICI CURIAE

Amici include the Federal Tax Clinic at Villanova University's Charles Widger School of Law, the Center for Social Justice Impact Litigation Clinic at Seton Hall University School of Law, the Fordham Law School Low-Income Taxpayer Clinic, and twenty-three other groups and individuals listed in the Appendix.* Amici advise indigent individuals and represent low-income taxpayers in controversies before the Internal Revenue Service (IRS), the United States Tax Court, and the federal courts of appeals, with the goals of maximizing these clients' financial well-being and protecting their rights.

Amici have a substantial interest in the resolution of this case because low-income taxpayers suffer disproportionately when courts treat 26 U.S.C. § 6330(d)(1)'s 30-day deadline for filing a petition as jurisdictional. Low-income taxpayers are more likely to be audited and more likely to petition the United States Tax Court than other taxpayers. They also face challenges navigating the tax code and IRS procedures without the aid of counsel, and their petitions are not infrequently dismissed for lack of jurisdiction. Treating § 6330(d)(1) as jurisdictional can deprive these taxpayers of their only opportunity for judicial review before the IRS seizes their property—sometimes for taxes they do not even owe.

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* The parties have consented to the filing of this brief. No counsel for any party authored this brief in whole or in part. No person or entity other than amici curiae or their counsel made a monetary contribution to the brief's preparation or submission.

INTRODUCTION AND SUMMARY OF ARGUMENT

For decades, taxpayers' hands were tied when the IRS made a mistake. Their only option: pay now, challenge later. That changed in 1998, when Congress created a comprehensive "collection due process" (CDP) scheme for administrative and judicial review of IRS collection decisions. This critical reform, codified at 26 U.S.C. § 6330, gave taxpayers the right to an adversarial process *before* the agency takes their property. Congress determined that such review was necessary because the IRS often seized property for taxes that were not in fact owed, and taxpayers had no prepayment recourse.

Treating § 6330(d)(1) as jurisdictional will, in many cases, eliminate this important check on the IRS's authority—and frequently to the disproportionate detriment of low-income taxpayers. Low-income taxpayers often must navigate complex IRS rules alone and may not know when or where to file their petition. Interpreting § 6330(d)(1) as a jurisdictional requirement may deprive these taxpayers of their only chance to have the Tax Court review the CDP determination before seizing their property, even when equitable reasons counsel otherwise.

One such taxpayer is Josefa Castillo, whose case is pending before the Second Circuit. The IRS sent Ms. Castillo a collection letter claiming that she owed $57,000 for failing to pay 2014 taxes on her small business. But Ms. Castillo had sold that business *in 2009*. When she asked for a CDP hearing, the agency ruled against her—without providing notice—and closed her case. Then, after Ms. Castillo discovered the agency's decision and sought judicial review, the IRS convinced the Tax Court to dismiss for lack of jurisdiction, since Ms. Castillo had not filed within 30 days of its CDP determination. It is unfair—and contrary to Congress's intent—to let the IRS use § 6330(d)(1) to shield erroneous assessments like Ms. Castillo's from judicial review.

ARGUMENT

I. Treating § 6330(d)(1) As Jurisdictional Undermines Congressional Intent

A. When Congress overhauled the tax code in 1998 and adopted § 6330(d)(1), it created a more adversarial system to protect taxpayer rights before the IRS seized their property. Before that time, a "taxpayer could not enjoin the government or prevent collection—he or she had to pay the tax and pursue a claim for a refund." Pippa Browde, *A Reflection on Tax Collecting: Opening a Can of Worms to Clean Up a Collection Due Process Jurisdictional Mess*, 65 Drake L. Rev. 51, 56-57 (2017). Under that system, business owners and their employees could report to work in the morning only to find that the IRS had padlocked the doors, and families could come home in the evening to find they were suddenly homeless because the IRS had seized their property. *See Practices and Procedures of the Internal Revenue Service: Hearings Before the S. Comm. on Fin.*, 105th Cong. 1-4 (1997) (opening statement of Sen. William V. Roth, Jr., Chairman, S. Comm. on Fin.).

In a series of high-profile hearings in 1997, witnesses explained to Congress that their lives had been upended by their inability to contest the IRS's assessments before the IRS summarily seized their property, often for taxes they did not owe. *See id.* at 75-120. For instance, one witness explained that she was forced to move her family into a rented room and use her elderly parents' retirement savings to satisfy an IRS tax assessment that she did not owe—all because the tax code did not permit her to seek prepayment review from the Tax Court. *See id.* at 75-82.

In response to this testimony, Congress decided "that the problem is [the IRS] has too much unchecked power": it had the "ability to investigate, evaluate, and basically prosecute, all wrapped up into one." *IRS Oversight: Hearing Before the S. Comm. on Fin.*, 105th Cong. 210-11 (1998) (opening statement of Sen. Phil Gramm). Members of Congress therefore declared that "reform must go beyond a few minor improvements of strengthening taxpayer protections to literally addressing the balance of power between the taxpayer and the agency." *IRS Restructuring: Hearings Before the S. Comm. on Fin.*, 105th Cong. 4 (1998) (opening statement of Sen. William V. Roth, Jr., S. Comm. on Fin.).

The 1998 IRS Restructuring and Reform Act sought to achieve that balance by implementing "adversarial check[s]" that were "needed to cure these abuses." Bryan T. Camp, *Tax Administration as Inquisitorial Process and the Partial Paradigm Shift in the IRS Restructuring and Reform Act of 1998*, 56 Fla. L. Rev. 1, 86 (2004). Congress accordingly granted citizens the right to prepayment CDP hearings before the IRS seizes the taxpayer's property. *See Giamelli v. Commissioner*, 129 T.C. 107, 118 (2007) (Wherry, J., concurring) ("Congress enacted section 6330 as a part of remedial legislation … to ensure taxpayer rights against alleged Internal Revenue Service mistreatment by affording taxpayers 'formal procedures designed to ensure due process where the IRS seeks to collect taxes by levy (including by seizure).'" (citation omitted)). CDP hearings are conducted before the IRS Office of Appeals, *see* 26 U.S.C. §§ 6320(b), 6330(b), which Congress made independent by insulating it from other functions of the IRS, *see* Browde, *supra*, at 54. Congress reemphasized its intent in 2019 by renaming the office the "Independent Office of Appeals." *See* Taxpayer First Act, Pub. L. No. 116-25, § 1001, 133 Stat. 981, 983 (2019). After the CDP hearing, the Independent Office of Appeals issues a notice of determination. *Id.* § 6330(c)(3).

Congress further protected taxpayer rights by providing an avenue for judicial review of CDP determinations. Section 6330(d)(1), the provision at issue in this case, provides that a taxpayer may petition the Tax Court to review a CDP determination within 30 days. *Id.* § 6330(d)(1). By allowing taxpayers to petition the Tax Court to review CDP determinations *before* the IRS seizes their property, § 6330(d)(1) represents "one of the most significant modern developments in the operation of the Tax Court." Harold Dubroff & Brant J. Hellwig, *The United States Tax Court: An Historical Analysis* 481 (2d ed. 2014).

Through this comprehensive regime of administrative and judicial review, Congress intended to "afford taxpayers due process in collections" and thereby "increase fairness to taxpayers." *Lunsford v. Commissioner*, 117 T.C. 183, 194 (2001) (Laro, J., dissenting) (citations omitted).

B. The Tax Court has long held—incorrectly—that it lacks jurisdiction over petitions filed outside § 6330(d)(1)'s 30-day filing requirement. *See, e.g.*, *Gray v. Commissioner*, 138 T.C. 295, 299 (2012) (citing *McCune v. Commissioner*, 115 T.C. 114, 117 (2000)).

Treating § 6330(d)(1) as jurisdictional thwarts congressional intent because it threatens to eliminate a critical adversarial check on the IRS's authority.

As this Court has recognized, "[b]randing a rule as going to a court's subject-matter jurisdiction alters the normal operation of our adversarial system." *Henderson ex rel. Henderson v. Shinseki*, 562 U.S. 428, 434 (2011). Under the usual adversarial system, courts address only the "claims and arguments advanced by the parties"; but because courts have an obligation to ensure that they do not exceed the scope of their jurisdiction, they must raise and decide jurisdictional questions themselves, even if a party has declined to press the issue. *Id.* at 434-35. Indeed, treating rules as jurisdictional often introduces elements of an inquisitorial system where the Tax Court develops the facts and legal arguments rather than permitting that work to be done by the parties through the adversarial system. *See McNeil v. Wisconsin*, 501 U.S. 171, 181 n.2 (1991); *cf.* Camp, *supra*, at 86-89 (explaining how Congress's 1998 reforms to the tax code intended to transform it from an inquisitorial system to an adversarial system).

Experience shows that the consequences of this shift are significant. Interpreting § 6330(d)(1) as jurisdictional dilutes the adversarial process Congress created: the Tax Court expends its limited resources to determine whether a taxpayer filed his or her petition within 30 days of receiving the IRS's notice of CDP determination—even when the IRS declined to raise the argument, and regardless of whether the IRS contributed to the taxpayer's missing the deadline. *See, e.g.*, *Castillo v. Commissioner*, Docket No. 18336-19L (T.C. Mar. 25, 2020); *Garland v. Commissioner*, Docket No. 17921-19L (T.C. Nov. 25, 2019).

Moreover, because the Tax Court can dismiss at any time for lack of jurisdiction, the adversarial system Congress intended is often disrupted late in the process. Even when the IRS does not contest jurisdiction and the parties ultimately resolve their differences through settlement, the Tax Court will not endorse the settlement if it discovers that the taxpayer failed to timely file his or her petition. *See, e.g.*, *Williams v. Commissioner*, Docket No. 24954-17 (T.C. Jan. 26, 2018). Treating filing deadlines as jurisdictional can be especially disruptive to the adversarial process and can "unfairly prejudice litigants" when they are scrutinized at the conclusion of a case, wasting "months of work on the part of the attorneys and the court." *Henderson*, 562 U.S. at 434-35.

This seek-and-dismiss mission is all the more striking given how few CDP petitions are filed in the first place. On average, CDP petitions comprise approximately six percent of the Tax Court's annual caseload: roughly 1,750 out of 29,700 cases. *See* Tax Court Statistics, ABA Tax Section, Court Procedure Committee, at 11, 25, http://procedurallytaxing.com/wp-content/uploads/2019/08/Group-I-Releasable.pdf (last visited Nov. 19, 2021). There is thus little administrative efficiency gained by construing § 6330(d)(1) as jurisdictional, and certainly none that outweighs the detrimental ramifications for taxpayers.

II. Treating § 6330(d)(1) As Jurisdictional Disproportionately Harms Low-Income Taxpayers

Construing § 6330(d)(1) as jurisdictional has "'drastic' consequences" that are shouldered disproportionately by "low-income taxpayers." *Boechler, P.C.*

v. Commissioner, 967 F.3d 760, 767 (8th Cir. 2020) (Kelly, J., concurring) (citation omitted).

A. Low-income taxpayers are more likely to find themselves subject to an IRS audit. In 2018, for example, taxpayers earning the federal minimum wage were audited twice as often as those earning between $500,000 and $1,000,000—and four times as often as those earning between $50,000 and $500,000. *See* Tax Statistics on Compliance Presence, Table 17, IRS, https://www.irs.gov/statistics/compliance-presence (last visited Nov. 19, 2021). Notably, "Humphreys County, [Mississippi], has a higher audit rate than any other county in America. It's not because it's packed to the county line with money launderers or shell corporations. It's because Humphreys County is poor, and most of them claim the Earned Income Tax Credit." *The 2019 Tax Filing Season and the 21st-Century IRS: Hearing Before the S. Comm. on Fin.*, 116th Cong. 62 (2019) (prepared statement of Sen. Ron Wyden, Ranking Member, S. Comm. on Fin.); *see also Practices and Procedures of the Internal Revenue Service: Hearings Before the S. Comm. on Fin.* at 324, (prepared statement of Sen. William V. Roth, Jr., Chairman, S. Comm. on Fin.) ("[W]hy are these [low-income] Americans audited? Because it's easy. Most often, these are the taxpayers who can't afford to fight back.").

Low-income taxpayers accordingly are also more likely to seek CDP hearings. They often do so without the aid of a lawyer: more than half (61%) of CDP petitions in Tax Court are filed pro se. National Taxpayer Advocate, *Annual Report to Congress 2020* at 188 (Dec. 31, 2020).

B. Construing § 6330(d)(1) as jurisdictional threatens to render the Tax Court an illusory adversarial check for many low-income taxpayers.

First, "[u]nrepresented taxpayers may be less likely to anticipate the severe consequences of filing a Tax Court petition even one day late." National Taxpayer Advocate, *2021 Purple Book* 101 (Dec. 31, 2020). And those who do file late would categorically lose their opportunity for the Tax Court to review the merits—even if the taxpayer has good reason for having filed late. Indeed, taxpayers with counsel win their challenges to CDP determinations at twice the rate of pro se challengers. *See* National Taxpayer Advocate, *Annual Report to Congress 2020* at 168.

Second, the complexities of the tax code and inaccessibility of the IRS often impede low-income taxpayers from knowing when and where to challenge the IRS's assessments. The National Taxpayer Advocate has determined that several structural problems pose a serious access challenge for taxpayers unable to seek assistance from counsel. To begin, the IRS often sends taxpayers "on a voyage that requires them to interpret obscure IRS acronyms and function names, navigate a complex and multifaceted phone tree, and identify unnamed and often-changing responsible IRS officials." National Taxpayer Advocate, *Annual Report to Congress 2018* at 53 (Feb. 12, 2019).

When taxpayers actually complete this voyage, it can be for naught because they "often receive incorrect information about tax law or their own IRS accounts from IRS customer service representatives, and taxpayers usually have no way of contacting that representative or the representative's supervisor again." Villanova Federal Tax Clinic, Comment Letter on Proposed Rule on Procedures for Asylum Withholding of Removal; Credible Fear and Reasonable Fear Review (EOIR Docket No. 18-0002), at 5 (July 15, 2020), https://ssrn.com/abstract=3834701. Given low-income taxpayers' difficulties navigating the IRS's structure, some challenges in Tax Court are forfeited when those taxpayers fail to meet § 6330(d)(1)'s 30-day requirement.

C. These practical challenges arise frequently. Take, for example, the Ninth Circuit's decision in *Duggan v. Commissioner*, 879 F.3d 1029 (9th Cir. 2018). The IRS mailed Philip Duggan two notices of determination informing him that it intended to collect several years of back taxes. *Id.* at 1031. The notices told Mr. Duggan that he could contest the CDP determination by "fil[ing] a petition with the United States Tax Court within a 30-day period beginning the day after the date of this letter." *Id.* (alteration in original). Unaided by counsel, Mr. Duggan concluded that his 30-day clock began ticking the day after he received the letter and thus filed his challenge in Tax Court within 31 days. *Id.* Despite Mr. Duggan's reliance on the IRS's ambiguous letter, the Ninth Circuit held that the filing deadline was jurisdictional and thus filing one day late cost him his prepayment chance of litigating the CDP determination in Tax Court. *See id.* at 1035.

Mr. Duggan's experience is not uncommon: other pro se taxpayers likewise misunderstand the IRS's notices of CDP determination to require them to file their petitions 31 days after receiving their letter, rather than 31 days after the letter was created. *See, e.g.*, *Cunningham v. Commissioner*, 716 F. App'x 182, 184 (4th Cir. 2018) ("Cunningham claims she understood the language in the IRS letter to essentially count May 17 as 'day zero,' and onward from there, resulting in a cutoff date one day later than the true deadline.").

The consequences of depriving taxpayers of equitable tolling can be severe. Consider *Matuszak v. Commissioner*, 862 F.3d 192 (2d Cir. 2017), which involved the 90-day filing window under § 6015(e)(1)(A). Linda Matuszak sought to utilize the innocent-spouse exception to avoid tax liabilities created by false returns filed by her husband. The IRS successfully moved the Tax Court to dismiss for lack of jurisdiction because the petition had been filed on January 6 instead of January 5, as required by the statute. *Id.* at 195. Ms. Matuszak appealed, arguing that her petition was timely because "two IRS agents informed her she had until 'the end of business on January 7' to petition the Tax Court for review." *Id.* She also argued that it would be unfair for the IRS to deprive an unrepresented taxpayer of her prepayment petition rights by giving her incorrect information, especially since one of the IRS employees who gave her that information was an attorney. *See id.* Acknowledging the "drastic consequences" for Ms. Matuszak, the Second Circuit nevertheless affirmed, finding the statute to be jurisdictional and thus the equities to be irrelevant. *Id.* at 195-98 (citation omitted); *see also Rubel v. Commissioner*, 856 F.3d 301, 304 (3d Cir. 2017) (pro se taxpayer forfeited prepayment appeal to Tax Court by relying on erroneous filing date provided by the IRS in writing). As Petitioner explains, the language of § 6330(d)(1) compels a different result, making the harsh results of treating it as a jurisdictional requirement all the more troubling here than in *Matuszak*.

The draconian ramifications of interpreting § 6330(d)(1) as jurisdictional are particularly troubling when there is not only good reason for the late filing of the appeal, but the initial assessment is also plainly wrong. Take Josefa Castillo—a low-income, non-English-speaking taxpayer whose case is pending before the Second Circuit. Ms. Castillo's troubles began when she received a collection letter from the IRS. According to the letter, she had failed to pay 2014 taxes on the income from her small business, Castillo Seafood, and owed more than $57,000 in unpaid taxes, penalties, and interest. But here's the rub: Ms. Castillo sold the restaurant *five years* earlier, in 2009. *See* Brief of Petitioner-Appellant at 5-6, *Castillo v. Commissioner*, No. 20-1635 (2d Cir. Oct. 22, 2020) ("Castillo Br.").

In March 2018, Ms. Castillo's lawyer asked the agency for a CDP hearing. *See id.* at 5-6. While the request was pending, Ms. Castillo notified the IRS that she had replaced her counsel and was now being represented by amicus Fordham Law School Low-Income Taxpayer Clinic. *See id.* at 6-7. In September and October 2018, Fordham called the IRS repeatedly to explain that Ms. Castillo had sold the restaurant years before, had not been affiliated with it since, and thus was not liable for the back taxes. *See id.* at 7. Then, in follow-up calls and letters, Fordham asked whether the IRS had reached a decision in Ms. Castillo's CDP hearing. The agency never responded.

Despite further follow-up attempts, Ms. Castillo heard nothing from the IRS for most of 2019. *See id.* at 7-8. So when she finally obtained her IRS tax-account transcript in September 2019, Ms. Castillo was shocked to learn that the agency had issued its CDP determination and closed her case. Making matters worse, the IRS sent its notice of CDP determination to Ms. Castillo's former lawyer—but it sent nothing to

Fordham, her attorney at the time of that notice. *See id.* at 9.

Within 30 days of receiving her tax-account transcript—Ms. Castillo's first actual notice of the CDP determination—she petitioned the Tax Court for review. *See id.* at 8-9. The IRS conceded that Ms. Castillo never received its notice of CDP determination, which was lost in the mail. Yet it still moved to dismiss for lack of jurisdiction because Ms. Castillo failed to file her appeal within 30 days of December 11, 2018, the date of the CDP determination. *See id.* at 9-11.

The Tax Court agreed. Ignoring Ms. Castillo's plea that equitable tolling was warranted because she never received the notice of CDP determination, the court dismissed her petition for lack of jurisdiction. *See id.* at 11. Should this decision stand, Ms. Castillo would have just two options: (i) pay the back taxes—which she cannot afford—and then seek a refund, or (ii) file for bankruptcy and then sue for determination of tax liability under 11 U.S.C. § 505. *See* Castillo Br. at 9-10.

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The rule that the Commissioner seeks would resurrect the very problems that Congress sought to eliminate when it overhauled the tax code in 1998. Particularly when the IRS makes an erroneous assessment, and then fails to properly notify the taxpayer of its CDP determination, or misinforms a taxpayer about the deadline to appeal, it should not be able to use § 6330(d)(1)'s 30-day deadline as a shield to insulate its errors from the Tax Court's review. Interpreting § 6330(d)(1) to be jurisdictional, rather than a claim-processing rule subject to equitable tolling, would be fundamentally unfair and would contravene congressional intent.

CONCLUSION

The Court should reverse the decision below and hold that § 6330(d)(1) is not a jurisdictional requirement.

Respectfully submitted,

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APPENDIX

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