

SUPREME COURT OF THE UNITED STATES

IN THE SUPREME COURT OF THE UNITED STATES

BOECHLER, P.C.,)
 Petitioner,)
 v.) No. 20-1472
COMMISSIONER OF INTERNAL REVENUE,)
 Respondent.)

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v.) No. 20-1472

COMMISSIONER OF INTERNAL REVENUE,)

Respondent.)

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Washington, D.C.

Wednesday, January 12, 2022

The above-entitled matter came on for oral argument before the Supreme Court of the United States at 10:00 a.m.

APPEARANCES:

MELISSA ARBUS SHERRY, ESQUIRE, Washington, D.C.; on behalf of the Petitioner.

JONATHAN C. BOND, Assistant to the Solicitor General, Department of Justice, Washington, D.C.; on behalf of the Respondent.

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P R O C E E D I N G S

(10:00 a.m.)

CHIEF JUSTICE ROBERTS: Justice Sotomayor is participating remotely.

We'll hear argument this morning in Case 20-1472, Boechler versus the Commissioner of Internal Revenue.

Ms. Sherry.

ORAL ARGUMENT OF MELISSA ARBUS SHERRY
ON BEHALF OF THE PETITIONER

MS. SHERRY: Mr. Chief Justice, and may it please the Court:

This Court has repeatedly held that time limits are rarely jurisdictional and that if Congress wants to make them jurisdictional, it has to speak clearly. Section 6330(d)(1) does not have the needed clarity.

The first clause reads like an ordinary statute of limitations. It says what the taxpayer may do, and it says nothing about the Tax Court's jurisdiction. The second clause does speak to jurisdiction, but the only reference back to the first is through the two words "such matter."

Now we think "such matter" refers to a

1 petition to the Tax Court for review of a CDP
2 determination. The Commissioner agrees, but he
3 says it also refers to the 30-day deadline to
4 file that petition.

5 Our reading is more natural. It stops
6 at the closest reasonable antecedent, and it
7 uses the word "matter" as it's ordinarily
8 understood. The Commissioner's reading
9 requires more work, and it requires this Court
10 to treat the time limit the same as subject
11 matter in the context of subject matter
12 jurisdiction. If nothing else, it is far from
13 clear.

14 The statutory history resolves any
15 doubt. As originally enacted, the same time
16 limit governed the Tax Court and the district
17 courts and it was not jurisdictional. The
18 relevant language has not changed. It has to
19 mean the same thing today as it did in 1998.

20 Congress enacted this collection due
21 process regime in order to protect taxpayers
22 from IRS abuses. It would not have included a
23 rare and harsh jurisdictional deadline to close
24 those courthouse doors, let alone through a
25 vague parenthetical reference to "such matter."

1 And equitable tolling easily follows
2 from that. That is the presumption, and it is
3 not overcome here. The limitations period
4 looks just like the one in Irwin, and it looks
5 nothing like the deadlines in Brockamp. The
6 CDP regime is remedial, and it is a place where
7 equity finds a comfortable home.

8 I welcome the Court's questions.

9 JUSTICE THOMAS: Ms. Sherry, why would
10 Congress permit the Tax Court to take into --
11 to consider an untimely action but then not
12 allow it to enjoin a levy action?

13 MS. SHERRY: So I think that goes to
14 that final sentence in (e)(1). And our view is
15 that the word "timely" in that final sentence
16 is not self-defining. When you -- (e)(1) does
17 not decide what is timely. If you want to
18 decide what is timely, you have to look at the
19 statute of limitations itself in (d)(1) and the
20 rules that govern that statute of limitations.
21 That includes things like the mailbox rule. It
22 includes statutory tolling. And so -- and it
23 includes equitable tolling.

24 And so our view is whether or not
25 equitable tolling is available is a separate

1 question, but (e)(1) doesn't answer that. And
2 so just to directly answer Your Honor's
3 question, our reading of the final sentence in
4 (e)(1) is that it gives the Tax Court authority
5 to enjoin as long it has authority to actually
6 decide the merits of the case. And if
7 equitable tolling is available and warranted,
8 then those petitions are deemed timely under
9 that final sentence.

10 And so the incongruity that the
11 Commissioner points to we just don't think
12 exists. We think -- looking at the language of
13 the statute of limitations itself in (d)(1), we
14 think we have the better reading of that
15 language, but we think at the very least the
16 Commissioner's reading is very far from clear.

17 The statutory history, we think, is
18 really compelling here. It's on page 14a of
19 the blue brief. And if you look at that
20 language at the time, it's the very same 30-day
21 time limit. It just applied to two different
22 courts.

23 CHIEF JUSTICE ROBERTS: Before you get
24 too far along on the legislative history, I
25 want to focus a little more on the actual

1 language.

2 As it reads, it's not just a filing
3 rule. It refers to the jurisdiction of the
4 court and how that jurisdiction is confirmed.
5 It's by the filing within 30 days.

6 I mean, I understand if it were a
7 provision that said, you know, the petition for
8 review shall be filed within 30 days and --
9 and, you know, take it from there. That's one
10 that I think we would clearly apply equitable
11 estoppel to.

12 But it triggers the jurisdiction of
13 the court, and there we usually have a stricter
14 rule. You don't want jurisdiction, the power
15 of the court, to be, oh, okay, it's 30 days;
16 well, maybe it's 60 days, maybe it's 90 days,
17 depending upon the facts, and you go into a
18 factual inquiry of some length about whether or
19 not you should accept it.

20 Talking about the power of the court.
21 And, here, that is directly connected to the
22 filing.

23 MS. SHERRY: So -- so we don't think
24 it's directly connected. You're absolutely
25 right the word "jurisdiction" appears in this

1 provision, and this is a
2 jurisdiction-conferring provision. It does
3 give jurisdiction to the Tax Court to hear
4 these sorts of petitions.

5 The question is whether the
6 jurisdiction is actually linked to the time
7 limit. And we don't think it is. If you look
8 at the language of (d)(1), the only link that
9 they point to is in this parenthetical phrase,
10 and it's the words "such matter."

11 The ordinary meaning of "matter" is
12 subject matter, case, controversy. And it's
13 perfectly natural to say that a court or a
14 tribunal has jurisdiction over a notice of
15 appeal or a petition for review. It's also
16 perfectly natural to say they have jurisdiction
17 with respect to a particular kind of petition
18 for review, here, a CDP determination.

19 It is a stretch to say that "matter"
20 refers back to time limit. That's just not how
21 the term is ordinarily used. And I think that
22 is emphasized further by this Court's --

23 CHIEF JUSTICE ROBERTS: Well, but, I
24 mean, I guess -- we can diagram the sentence,
25 and it's been a while since I've done that, but

1 it refers back to "such matter," the matter is
2 a determination, and it's a -- it's a
3 determination of something, filed within 30
4 days.

5 MS. SHERRY: And so I don't think
6 that's the clear antecedent here. I mean, let
7 me start with the fact that we're talking about
8 "such matter," and -- and the initial
9 difficulty is the word "matter" doesn't appear
10 anywhere else in the sentence. So, under, you
11 know, Garner's usage guide, there -- there's an
12 automatic sort of vague question there of what
13 we're referring to.

14 The other problem is, when you try to
15 go back and find a reference point, you know,
16 we both agree that it has to refer to the
17 petition, but the petition here is a verb. We
18 have to convert it to a noun, so we're already
19 both doing some work to try to make this
20 sentence make some grammatical sense.

21 But I think the other thing I would
22 point Your Honor to is this Court's decision in
23 Weinberger v. Salfi and as -- and also Auburn
24 Regional. I mean, in Weinberger, the provision
25 that had the time limit was the jurisdictional

1 conferring provision. It was 50 -- 405(g). It
2 was the only reason that the court had
3 jurisdiction because the court had said that
4 1331 didn't apply. And 405(g) had both, you
5 know, the conferral of jurisdiction and also
6 the time limit, and yet that time limit was
7 deemed to be non-jurisdictional.

8 I'd also point to Auburn Regional. I
9 mean, there, there was a provision -- it was
10 the same conditional clause. It said a
11 provider can get a hearing if three things
12 happen. Number one, there's a final
13 determination. Number two, there's a certain
14 amount in controversy. And, number three,
15 there's a particular time limit.

16 And the court-appointed amicus there
17 argued, well, 1 and 2 are jurisdictional, and
18 so 3 should be as well, the time limit. And
19 this Court unanimously rejected that reading.

20 And so I think, you know, we can
21 certainly start by looking at the fact that
22 this is a jurisdiction-conferring provision,
23 but it doesn't really answer the question
24 because there has to be a more direct link
25 between the time limit and the phrase "such

1 matter."

2 JUSTICE SOTOMAYOR: Counsel --

3 JUSTICE BARRETT: Ms. Sherry --

4 JUSTICE SOTOMAYOR: -- the Chief just
5 said that "matter" referred to determination in
6 his question, because that's logical, isn't it?
7 "Matter" suggests a noun, and the closest
8 antecedent noun is "determination."

9 Yet -- and, in fact, if you read
10 Section 6330(d)(3), it provides that the IRS
11 appeals office shall retain jurisdiction with
12 respect to any determination made under this
13 section.

14 So the statute by its own terms in
15 another provision is making clear that
16 jurisdiction is tied to determination, not
17 petition.

18 The 30-day period, the 30-day
19 limitation, is tied to the petition, not to the
20 determination, correct?

21 MS. SHERRY: It is. And -- and let me
22 be clear. I mean, we -- we think that it --

23 JUSTICE SOTOMAYOR: Counsel, I'm not
24 trying to hurt you. I'm actually trying to
25 help you.

1 MS. SHERRY: And -- and I -- I agree
2 with you.

3 CHIEF JUSTICE ROBERTS: I'm the one
4 she's trying to hurt.

5 (Laughter.)

6 MS. SHERRY: No, no, no, and -- and I
7 -- you know, I agree with you. We have this on
8 page 30 of our blue brief. We offer such
9 determination up as an alternative way of
10 reading this.

11 Frankly, the -- the reason we didn't
12 put it as our primary is we understand that
13 normally Congress uses the same words to mean
14 the same things, but we also recognize that
15 this Court's cases say that's not always the
16 case. And so --

17 JUSTICE SOTOMAYOR: It's not always
18 the case, but it's the logical grammatical
19 rule, which is the last antecedent is to the
20 last thing spoken of. And the last thing
21 spoken of in this provision is determination.

22 MS. SHERRY: That's absolutely right.
23 And I'm certainly not going to fight that
24 because I think it's really easy to see that if
25 the reference point is determination, then the

1 time limit is not jurisdictional because
2 there's no link at all in those -- in those
3 circumstances. And --

4 JUSTICE ALITO: What do you make of
5 the -- I'm sorry.

6 MS. SHERRY: No, go ahead.

7 JUSTICE ALITO: Were you finished?
8 What do you make of the fact that this
9 reference to jurisdiction is in a
10 parenthetical?

11 MS. SHERRY: I think it helps us. You
12 know, usually jurisdiction is something that is
13 very important, particularly with respect to
14 time limits. And so normally something in a
15 parenthetical is a bit of an aside. And so it
16 seems strange to have this harsh and rare
17 jurisdictional rule when it comes up only in --
18 in a parenthetical.

19 I think, if you go to the original
20 enactment, it's maybe easier to understand why
21 Congress put this in and why Congress put it in
22 a parenthetical. At that time, both the
23 district court and the Tax Court had
24 jurisdiction, but Congress didn't have to
25 confer jurisdiction on the district court to

1 hear these cases because it already had
2 jurisdiction under 1331, under 1340.

3 The Tax Court didn't. The Tax Court's
4 jurisdictional authority comes from 7442, and
5 that provision essentially just says the Tax
6 Court shall have jurisdiction as conferred
7 elsewhere in this title.

8 And so Congress had to give the Tax
9 Court jurisdiction over this new CDP petition.
10 And so that's why it's in the Tax Court
11 subparagraph and it's not in the district court
12 subparagraph.

13 But that just, you know, emphasizes
14 the fact that normally, when you're talking
15 about subject matter jurisdiction, you're
16 talking about a class of cases. And so it's
17 perfectly natural for it to refer to what the
18 determination is or what the petition is.

19 It is a big stretch to say that it
20 links back to the time limit.

21 And the reason why is the reason why
22 we have a clear statement rule in the first
23 place, because there are really harsh
24 consequences for calling a time limit
25 jurisdictional.

1 I mean, we're here today talking about
2 equitable tolling, but it's not just --

3 JUSTICE KAVANAUGH: Well -- well, can
4 I interrupt right there?

5 MS. SHERRY: Yes.

6 JUSTICE KAVANAUGH: Because I think
7 this is somewhat different contextually than
8 some of the other provisions we've had over the
9 years because, here, if you miss the time
10 limit, you're not boxed out entirely, as the
11 government points out.

12 You could pay and -- and sue for a
13 refund. So there is that avenue for
14 proceeding. And there's also -- maybe not
15 applicable to this case, but in many of the
16 cases covered by this -- also the opportunity
17 for the -- the pre-assessment determination as
18 well.

19 So it seems to me contextually
20 Congress has a scheme here where there are
21 other paths for someone to proceed even if you
22 miss the deadline.

23 What's your response to that?

24 MS. SHERRY: Yeah. So I think two
25 responses. One is, you know, those two

1 alternatives existed at the time in 1998, and
2 Congress obviously didn't think they were
3 sufficient to protect the taxpayer. And the
4 reason Congress thought that is neither of
5 those provided protection to prevent a levy
6 before it actually happens.

7 And what Congress was trying to do
8 here is to have the IRS be treated more like a
9 private creditor where there actually was an
10 external judicial check before the IRS is able
11 to levy on a taxpayer's property.

12 The -- the second answer I have -- and
13 I think you alluded to this -- is those options
14 are not available to everyone. Deficiency
15 proceedings are only available if it's a type
16 of tax or penalty for which you can get a
17 notice of deficiency. You know, my client's an
18 example of where that's not the case.

19 But there's also a number of cases in
20 which someone just doesn't get the notice of
21 deficiency and so misses the opportunity to
22 bring an action through the deficiency
23 proceedings, which is why Congress provided in
24 this particular provision that if you don't get
25 a notice of deficiency, you can challenge the

1 underlying tax through --

2 JUSTICE KAVANAUGH: What about paying
3 and -- and suing for a refund? Is that always
4 available?

5 MS. SHERRY: Yeah, and so -- so yes
6 and no. I mean, it -- it -- it's available to
7 the extent you have the ability to pay in full
8 and seek a refund, but it doesn't really
9 redress the harm that Congress was getting at
10 here because it's not -- you know, some people
11 challenge the underlying tax, but the majority
12 of people are really asking for collection
13 alternatives. They're saying there's a
14 hardship. There -- there's a reason why you
15 shouldn't levy on this particular piece of
16 property.

17 And a refund action after the fact
18 once a levy's already occurred is not going to
19 solve for any of those harms, which is what
20 Congress was really trying to get at here.

21 And so, you know, I think, if you're
22 looking at -- at what Congress was intending to
23 do, it's just implausible to think that the
24 same Congress that put this into a Taxpayer
25 Bill of Rights to protect taxpayers was sort of

1 simultaneously deciding that this is the case
2 where we should have a harsh, you know, 30-day
3 time limit with -- no matter what the excuse
4 is, no matter what the reason.

5 JUSTICE KAVANAUGH: Well, Congress did
6 put an exception in for bankruptcy, right --

7 MS. SHERRY: It -- it -- it did, and
8 --

9 JUSTICE KAVANAUGH: -- late -- later
10 on.

11 MS. SHERRY: Yeah. So it put it in in
12 2015. But, you know, the -- the same was true
13 in Holland. In Holland, in the habeas case,
14 there was an argument made that there was
15 statutory tolling for when a state
16 post-conviction review proceeding was pending.

17 And the Court said, well, that's
18 easily explained. You can't be in state court
19 and federal court at the same time, and a year
20 can come and go before you have an opportunity
21 to get into federal court.

22 I think it's the exact same rationale
23 when it comes to the bankruptcy exception. You
24 can't file a petition while you are in
25 bankruptcy. And the 30 days is going to very

1 quickly come and go before you have an
2 opportunity to get into federal court.

3 I mean, I think, as far as exceptions
4 more general, again, we pointed this out in the
5 reply brief, you know, it -- it feels like the
6 Commissioner is maybe trying to have the best
7 of both worlds.

8 You argue if there's no exceptions at
9 all, then Congress really meant it. It's meant
10 to be this harsh jurisdictional deadline. But,
11 if you have exceptions, it means that maybe
12 Congress already spoke to it and the Court
13 shouldn't add additional exceptions in equity.

14 And I think the difficult part of that
15 --

16 JUSTICE GORSUCH: Ms. Sherry, if I --
17 if I might, speaking of equity, you -- you
18 argue in the second part of your argument about
19 -- about the -- the necessity for equitable
20 tolling here, how it's appropriate.

21 And I understand your -- your -- your
22 points about the -- the -- the statutory
23 language. But we normally think of equitable
24 tolling, I -- I thought, as a traditional
25 common law rule that we don't assume Congress

1 displaces lightly. It legislates against the
2 backdrop of the common law.

3 But, here, we don't have a court of
4 law. The Tax Court, you can call it an Article
5 I court, one might call it an Article II
6 agency, but, whatever it is, it's not an
7 Article III court.

8 So to what extent does that
9 presumption about the common law and rules
10 applicable to courts transfer over, or do we
11 even need to decide that question?

12 MS. SHERRY: I -- I mean, I -- I think
13 it does transfer over, and let me try to answer
14 it in a couple of different ways.

15 The veterans court is also an Article
16 I court. And this Court in Henderson didn't
17 reach the equitable tolling question.

18 JUSTICE GORSUCH: The whole Article I
19 court thing is kind of funny, isn't it, right?
20 I mean, in Congress --

21 MS. SHERRY: And -- and I -- you know,
22 I don't think I need to -- to -- you know, to
23 go down that road too far here.

24 JUSTICE GORSUCH: Yeah, fair enough.

25 MS. SHERRY: But -- but, you know, it

1 -- it is an Article I court. And the Court in
2 Henderson --

3 JUSTICE GORSUCH: I'll spot you that,
4 okay?

5 MS. SHERRY: The Court in Henderson,
6 you know, didn't decide it, but the veterans
7 court has been applying equitable tolling both
8 before the Federal Circuit's decision in
9 Henderson and -- and after that.

10 But this Court's also applied the
11 presumption outside of the sort of strict
12 Article III context, and let me just point to
13 two examples. I mean, one is Young involving
14 the bankruptcy court. But the other is -- is
15 June. So June was the companion case to Wong,
16 and it involved the administrative deadline for
17 an FTCA claim. Wong involved the judicial one,
18 and --

19 JUSTICE GORSUCH: But the bankruptcy
20 one, I mean, they're adjuncts, right, to
21 Article III, and, you know, at least they're
22 somewhere knocking around, you know, one -- one
23 could say.

24 Here, there's no -- there's a lot less
25 relationship to -- to -- to -- to Article III.

1 But -- but -- but fine. Can you just
2 address -- I got your point. It's a good one.
3 The -- the second part of that question is, do
4 we need to address whether equitable tolling
5 exists, or do we need to merely allow for that
6 possibility for the Tax Court to resolve that
7 question?

8 MS. SHERRY: Yeah. And so, you know,
9 certainly, the Court can decide it's not
10 jurisdictional and -- and send it back. We
11 think it does make sense for the Court to
12 decide both questions. I think there's a lot
13 of uncertainty on this front, and other
14 taxpayers -- Ms. Castillo has a case in -- in
15 the Second Circuit raising this question, and
16 so I think it would be helpful to resolve it
17 since it's been fully briefed here.

18 And just one more point, you know, to
19 go --

20 JUSTICE GORSUCH: Sure.

21 MS. SHERRY: -- to add to --

22 JUSTICE GORSUCH: Please.

23 MS. SHERRY: -- the distinction
24 between the two. I mean, in -- in this Court's
25 decision in Freytag, it said that the Tax Court

1 is just like a district court in terms of
2 judicial power. And if you look, you know, at
3 things like the standard of review that's
4 provided by statute, it says treat it just like
5 a district court.

6 And so Tax Court has exercised
7 equitable powers in other areas, whether it's
8 waiver or estoppel or reformation, and that's
9 the Pollock decision we cite.

10 JUSTICE GORSUCH: So let me see if
11 I've got the argument. I'm sorry to interrupt.
12 But that Congress has decided that we should
13 treat it like a court even if it isn't a court
14 and therefore should -- we should continue to
15 do so here?

16 MS. SHERRY: I mean, I -- I -- I think
17 -- I think that is true. I mean, again,
18 whether that stretches the bounds of -- of
19 Article I and how you define that, I don't
20 think it's something the Court has to address
21 here, but I think, for purposes of equitable
22 tolling, there's no basis to distinguish the
23 two. And, again, just to go back to the
24 original enactment when it was both the
25 district court --

1 JUSTICE GORSUCH: Yeah.

2 MS. SHERRY: -- and the Tax Court, it
3 would be a little strange to say that the
4 district court can equitably toll, but the Tax
5 Court --

6 JUSTICE GORSUCH: Right.

7 MS. SHERRY: -- can't. They basically
8 had concurrent jurisdiction. The only
9 difference was the underlying type of tax --

10 JUSTICE GORSUCH: Very helpful.

11 MS. SHERRY: -- at issue.

12 JUSTICE GORSUCH: Thank you.

13 JUSTICE KAGAN: Can I take you back to
14 the jurisdictional question and just ask what
15 would it take to convert this into a
16 jurisdictional provision?

17 MS. SHERRY: So the short answer is,
18 if you look at 6015, which is the innocent
19 spouse provision, it was enacted the very same
20 legislation as this provision, and it has
21 conditional language. And so it's on page 1a
22 of our blue brief. And it essentially says --
23 you know, has a similar parenthetical, but it
24 says "if" it was filed within 90 days.

25 And so I think the easiest way to do

1 it -- I'm not saying it's the only way -- but I
2 think the easiest way to do it is to actually
3 include conditional language.

4 JUSTICE KAGAN: Right. I guess -- I
5 guess what I was sort of driving at is, you
6 know, we've always said that there are no magic
7 words. So how do we draw that line? Like, how
8 -- how can we insist that there are no magic
9 words and yet insist that there be conditional
10 language of some kind?

11 MS. SHERRY: So I -- I don't think it
12 has to be conditional. I think that's the
13 easiest way. I could -- I could give you a
14 couple other ways I think Congress could do it.

15 Usually, when the court -- Congress is
16 talking about jurisdiction, it starts by
17 talking about the court. And so, if you look
18 at jurisdictional provisions, they tend to
19 start with the court, you know, shall have
20 jurisdiction of or over, and then fill in the
21 blank.

22 And so, here, if it started by saying
23 the Tax Court shall have jurisdiction over
24 petitions for review filed within 30 days, I
25 think it would be -- you know, we would have a

1 much harder argument to make.

2 I think there are other circumstances
3 too -- you know, I don't think a
4 cross-reference is the best way to go about it,
5 certainly not a parenthetical one. But, if
6 Congress wanted to do that, use a different
7 phrase besides "such matter." Say "such
8 period." Include, you know, the time limit
9 within that.

10 So I think there are a variety of
11 different ways that Congress could have spoken
12 more clearly. I think the reason Congress
13 didn't do so here is because it's not at all
14 what Congress in -- intended in this particular
15 review scheme, to have it be that rare -- rare
16 deadline.

17 CHIEF JUSTICE ROBERTS: But you're --
18 you're -- you're asking an awful lot of
19 Congress when you say that, basically, the Tax
20 Court shall have jurisdiction if it's at the
21 first part of the sentence rather than in a
22 parenthetical, it makes -- makes all the
23 difference.

24 And, you know, "such matter," yes, it
25 is not the clearest thing. Maybe it refers to

1 such determination. Maybe it refers to the
2 whole thing, the petition. File a petition in
3 30 days. That's the matter.

4 And if that's the matter, then you
5 lose, right? Because it's the petition that's
6 filed within 30 days that it has jurisdiction
7 over.

8 MS. SHERRY: So I -- I don't think we
9 lose on that, but -- but you started by saying
10 it's a lot to ask of Congress. I think that is
11 the point of the clear statement rule. It does
12 ask a lot of Congress but on purpose because
13 it's something you want Congress to focus on
14 and affirmatively decide. And so, you know, in
15 other contexts, when you're dealing with --

16 CHIEF JUSTICE ROBERTS: Well, in other
17 contexts, I think we've had an unfortunately
18 large number of cases where we do this type of
19 parsing, but usually "courts shall have
20 jurisdiction" seems to me to be a pretty
21 significant piece of evidence on the question
22 of whether or not this is jurisdictional.

23 And a -- a -- a lot of your argument
24 is sort of, you know, well, but that's in a
25 parenthetical; well, but it comes in the middle

1 of the sentence. And I don't know that that's
2 enough to say that you haven't made a clear
3 statement when the statement is the Tax Court
4 shall have jurisdiction.

5 MS. SHERRY: And so let -- let me, you
6 know, respond in two ways. One is I think, you
7 know, when -- when the Court applies a clear
8 statement rule -- and I'm now going outside of
9 the context of the long line of jurisdictional
10 and equitable tolling cases -- but, if you
11 look, for example, at the decision in FAA
12 versus Cooper, it's in the context of waiving a
13 state sovereign immunity, the Court has said,
14 you know, if there's multiple plausible
15 interpretations, we're going to go with the one
16 there that didn't waive the state's sovereign
17 immunity. And the majority there said, you
18 know, the dissent has an interpretation that
19 seems plausible. It's just not required.

20 And I think the same is the case here.
21 Now we -- to be clear, we think we have the
22 better reading of -- of the -- of the
23 provision, and I think that's in part because
24 of this Court's case law where there is a
25 difference between a time limit and subject

1 matter.

2 And if you look back, again, at the
3 original enactment, I think it's really clear
4 why it's talking about jurisdiction. It's not
5 to say that the time limit is jurisdictional.
6 It's to say that the subject matter, this new
7 CDP petition that did not exist before, that
8 the Tax Court has jurisdiction to adjudicate
9 that particular kind of petition.

10 And that is normally how
11 jurisdictional statutes are written. And so,
12 you know, there's no question Congress can make
13 a time limit jurisdictional, but, if it wants
14 to do so, it has to speak clearly.

15 JUSTICE KAVANAUGH: That's six --
16 6015(e)(1)(A) on --

17 MS. SHERRY: It is.

18 JUSTICE KAVANAUGH: -- on page 1a of
19 the blue brief you cited?

20 I mean, that's not crystal-clear
21 either.

22 MS. SHERRY: I mean, I don't -- I
23 don't dispute that, but at least it has
24 conditional language, which -- which gets a lot
25 closer to saying that the time limit is

1 conditional. I mean, it still has the -- the
2 difficulty of having it in a parenthetical, and
3 --

4 JUSTICE KAVANAUGH: It's just the
5 paren- --

6 MS. SHERRY: -- it's a long-winding,
7 you know, sentence, but it is conditional.

8 And there's another provision. It's
9 the interest abatement provision. It's 6404.
10 It's one that this Court talked about in the
11 Hincks decision. That one has similar
12 conditional language in that it says, you know,
13 if it's filed -- I think there it's within 180
14 days.

15 And so, you know, that is a much
16 closer case, where it's conditional. Here, it
17 doesn't have conditional language. It still
18 has it in a parenthetical. The phrase is "such
19 matter." It's not normally what you think
20 "matter" means.

21 And we know the same language was in
22 the original enactment, and it didn't mean it
23 was jurisdictional there. And nothing, you
24 know, relevant with respect to that language
25 has changed in the ensuing years.

1 JUSTICE KAVANAUGH: On equitable --

2 JUSTICE ALITO: It's -- go ahead.

3 JUSTICE KAVANAUGH: No, go ahead.

4 JUSTICE ALITO: It's pretty artificial
5 to think that Congress actually intended
6 anything on these issues, assuming that it can
7 intend anything. So what we're left with is
8 the language and maybe what we can infer from
9 the nature of these proceedings that may or may
10 not be subject to, on the one hand, a clear but
11 harsh rule and, on the other hand, a more
12 flexible rule that may lead to a lot of
13 proceedings as to whether there was an
14 equitable ground for tolling the statute of
15 limitations.

16 So what can you tell us about the
17 nature of the proceeding and what might be
18 inferred from it with respect to that issue?

19 MS. SHERRY: Absolutely.

20 And may I answer?

21 CHIEF JUSTICE ROBERTS: Certainly.

22 MS. SHERRY: So the nature of the
23 proceeding, I think, helps us a lot. I mean,
24 in Henderson, the Court said that that was a
25 very telling indication there. We think it's

1 similarly telling here.

2 The CDP proceeding is infused with
3 equity at every turn. Number one, the reason
4 it exists is because Congress wanted to put a
5 court between the IRS and levy and give
6 taxpayer protections.

7 But, number two, the substance of the
8 proceeding is about collection alternatives,
9 whether an offer-in-compromise should be
10 accepted. And one of the reasons you would
11 accept an offer-in-compromise is if public
12 policy and equity suggests that that is the
13 best option.

14 Congress imposed a balancing test to
15 balance the interests in tax collection on the
16 one hand with the interests of the individual
17 taxpayer on the other and having that
18 collection occur in as least intrusive a forum
19 as possible.

20 The innocent spouse defense is one of
21 the things that can be raised in the context of
22 a collection due process proceeding. That's
23 equitable in nature too.

24 And so, if we're looking at the nature
25 of the CDP regime, it's equitable at every turn

1 and it's an additional reason why, you know, to
2 the extent the Court thinks that Congress
3 didn't think about it, it -- it is, again, I
4 think, pretty implausible to think that this
5 Congress who enacted this regime would have
6 wanted it to be the harsh deadline.

7 CHIEF JUSTICE ROBERTS: Justice
8 Thomas, anything further?

9 JUSTICE THOMAS: Nothing for me,
10 Chief.

11 CHIEF JUSTICE ROBERTS: Justice
12 Breyer?

13 Justice Sotomayor, anything further?

14 JUSTICE SOTOMAYOR: No. Thank you.

15 CHIEF JUSTICE ROBERTS: Justice Kagan?
16 Justice Gorsuch?

17 JUSTICE KAVANAUGH: I have --

18 CHIEF JUSTICE ROBERTS: Justice
19 Kavanaugh?

20 JUSTICE KAVANAUGH: Yeah, I have one
21 additional question. The government makes the
22 argument that if equitable tolling is
23 available, it should only be in extraordinary
24 circumstances and wants to make sure that it's
25 pretty tightly cabined.

1 I just wanted to get your response of
2 how you would say equitable -- equitable
3 tolling should apply, when it should be
4 available, anything you want to say on that.

5 MS. SHERRY: Yeah. I mean, we -- we
6 don't dispute that we think the standard for
7 equitable tolling has been well established for
8 some time. The Court has cases, you know,
9 fairly recent cases saying what that two-part
10 standard is.

11 And we think the standard should be
12 exactly the same here as it is in other cases.

13 JUSTICE KAVANAUGH: Thank you.

14 CHIEF JUSTICE ROBERTS: Justice
15 Barrett? No?

16 Thank you, counsel.

17 Mr. Bond.

18 ORAL ARGUMENT OF JONATHAN C. BOND

19 ON BEHALF OF THE RESPONDENT

20 MR. BOND: Mr. Chief Justice, and may
21 it please the Court:

22 Section 6330(d)(1) contains what most
23 statutory deadlines lack: text that expressly
24 addresses the Court's jurisdiction and ties it
25 to the time limit for seeking review.

1 The second clause states the -- the
2 Tax Court shall have jurisdiction with respect
3 to such matter. Petitioner agrees that "such
4 matter" refers to the petition described in the
5 first clause, which permits a person within 30
6 days to petition for review of a collection due
7 process determination.

8 And it is common ground that the Tax
9 Court's jurisdiction is contingent on the
10 filing of a petition described in the first
11 clause. The narrow dispute is whether "such
12 matter" refers to a petition that meets both of
13 the first clause's requirements or selectively
14 incorporates just one.

15 The clear meaning of the text in
16 context is that "such matter" refers to a
17 petition that satisfies both. The first clause
18 describes a single act, filing a petition that
19 meets two criteria. And the time limit is
20 embedded in the verb phrase.

21 That is confirmed by paragraph (e)(1)
22 at page 14a of our appendix, which undisputedly
23 makes the Tax Court's jurisdiction to grant an
24 injunction contingent on a timely petition.
25 Petitioner cannot explain why Congress would

1 make a timely petition a jurisdictional
2 prerequisite to that remedy but not to the
3 Court's authority to decide the case.

4 The interlocking statutory structure
5 and nearly a century of decisions addressing
6 analogous Tax Court provisions reinforce that
7 understanding.

8 Petitioner's argument at bottom is
9 that various non-jurisdictional readings can be
10 posited. But none of them clouds the clear
11 statement that Congress provided because none
12 is ultimately tenable after all the
13 interpretive tools are applied.

14 But, at a minimum, the deadline is
15 mandatory, not subject to ad hoc exceptions.
16 If there are to be exceptions, they must come
17 from Congress, which not only can strike a
18 context-specific balance, as it has in other
19 areas of the code, but also can address
20 unintended spillover effects in a way that
21 courts cannot.

22 I welcome the Court's questions.

23 JUSTICE THOMAS: Mr. Bond, under
24 current practices, are -- is this -- are these
25 time limits ever tolled for any reason?

1 MR. BOND: Yes, there are statutory
2 grounds for tolling that apply that are
3 different fundamentally from equitable tolling,
4 and if I could address those specifically.

5 There's one in this provision itself,
6 630 -- 6330(d)(2) for cases of bankruptcy.

7 There are also general statutory
8 tolling provisions that apply to this and many
9 other provisions in the code for cases where a
10 person is in a combat zone or a disaster area.

11 What's fundamentally different about
12 those -- about each of those areas is that the
13 information the IRS needs to know in order to
14 determine whether it can proceed with
15 collection is in its possession and is
16 automatically processed by its system.

17 The IRS gets monthly data from the
18 Department of Defense on whether someone is in
19 a combat zone. It has -- its systems
20 automatically query whether someone's ZIP code
21 is affected by a disaster declaration. And the
22 IRS is served with a bankruptcy petition and
23 knows whether to put a freeze code on that
24 person's account.

25 Equitable tolling is fundamentally

1 different. And the open-ended exception that I
2 think Petitioner is proposing would not be
3 workable for the IRS because, when the IRS
4 issues these 26,000-plus collection due process
5 determinations, it would have no way of knowing
6 whether a particular taxpayer who doesn't pay
7 or doesn't file their petition on time is
8 subject to an equitable circumstance or an
9 extraordinary circumstance that stands in their
10 way.

11 CHIEF JUSTICE ROBERTS: Do they get
12 monthly reports from the Department of Defense
13 over who's in a combat zone?

14 MR. BOND: They receive monthly data
15 from the Department of Defense that is -- that
16 flows into the IRS's data system, that's
17 correct.

18 CHIEF JUSTICE ROBERTS: Well, how do
19 they even know that -- I mean, when do they
20 find out? I mean, nobody knows if they're
21 going to make -- file a claim for something
22 until they file a claim.

23 I mean, I -- I'm just -- there are a
24 lot of people, and the Department of Defense --
25 I -- I -- I just am struck by the difficulty

1 that that presents and want to make sure I
2 understand what's involved.

3 MR. BOND: Sure. As -- as -- as we
4 understand it, the Department of Defense
5 provides this data that goes into the IRS's
6 system addressing taxpayers generally, not just
7 those --

8 CHIEF JUSTICE ROBERTS: Taxpayers
9 generally? Like every taxpayer in the country?

10 MR. BOND: Those -- those who are in
11 combat zones, that data is provided by the
12 Department of Defense.

13 CHIEF JUSTICE ROBERTS: So there is
14 somewhere in there something said, you know,
15 Fred Smith not in combat zone. And we don't
16 even know if Fred Smith's going to file
17 something in the Tax Court or not.

18 JUSTICE BARRETT: And do you
19 cross-reference it when the list comes in and
20 -- and -- and --

21 MR. BOND: Yes, this is processed by
22 the IRS's computers. And that -- that's
23 because this doesn't just affect collection due
24 process but a number of other deadlines and
25 provisions in --

1 CHIEF JUSTICE ROBERTS: Yeah, I know.
2 But my point is that your name is there even
3 though you've got nothing to do with -- there's
4 no reason the IRS should worry about you, or --

5 MR. BOND: Well, if -- if you're a
6 taxpayer. It's not all persons generally but
7 all taxpayers.

8 CHIEF JUSTICE ROBERTS: Wow. Okay.

9 MR. BOND: And so too with disaster
10 relief. That's not by name but by ZIP code.
11 And for bankruptcy, you receive the petition.
12 So these exceptions that Congress have created
13 fit with the system that Congress --

14 JUSTICE BARRETT: Mr. Bond, can I ask
15 you what your response would be to Ms. Sherry's
16 point that this process is equitable at every
17 turn?

18 I mean, you make some strong
19 arguments, but, you know, Ms. Sherry points out
20 that the nature of these CDP proceedings might
21 reflect, as Justice Alito said, what is
22 Congress's intent or might -- might be more
23 consistent with a plan to permit equity.

24 MR. BOND: So CDP proceedings are not
25 equitable in the sense of trying to achieve

1 global fairness in the face of the code's
2 requirements. They are instead an
3 accommodation of specific interests, including
4 intrusion into the -- the taxpayer's affairs
5 and their ability to pay that Congress provided
6 on top of all of the other mechanisms of
7 review.

8 It's important to understand this
9 additional layer against that backdrop. The
10 default mechanism for seeking review is a
11 refund suit. And this Court has held for a
12 century that that satisfies due process.

13 On top of that, for many taxes, not
14 this particular one, but income, estate, and
15 gift taxes, there is deficiency review before
16 assessment occurs. Congress added this
17 procedure as an additional last clear chance
18 when the IRS is on the brink of collection to
19 address the collection steps themselves.

20 And it's only in cases where there
21 wasn't a prior deficiency opportunity to
22 challenge the underlying liability that the
23 merits even come into the picture.

24 JUSTICE KAVANAUGH: On the stat --

25 MR. BOND: So --

1 JUSTICE KAVANAUGH: Keep going.

2 Sorry.

3 MR. BOND: So it -- it is an
4 accommodation of those additional interests,
5 but it's a measured and balanced one that's
6 designed to be a brief pause, not to upend the
7 collect first and litigate later approach of
8 the tax code.

9 JUSTICE KAVANAUGH: On the statutory
10 language, the fact that, as you say, there's a
11 narrow dispute and there's reasonable arguments
12 both ways about how to read the parenthetical,
13 doesn't that, under our precedents going back
14 20 years or so now, kind of end the case?

15 Because there has to be a clear
16 statement, we have said, and we've been
17 increasingly strict about that, and the fact
18 that there's a reasonable debate about how to
19 read the parenthetical, you can read it one
20 way, you can read it the other, doesn't that
21 just end it?

22 MR. BOND: No, Your Honor, because,
23 here, Congress has provided the kind of clear
24 statement that this Court has said is most
25 important. The provision speaks to the Court's

1 power. The jurisdictional limitation is linked
2 back to that first clause.

3 I don't think the clear statement rule
4 requires the clearest possible statement that
5 each criterion is independently tied to
6 jurisdiction.

7 JUSTICE KAVANAUGH: But it's in the
8 same sentence, and that helps you no doubt, but
9 it's still, I think, debatable which part of
10 the sentence preceding the parenthetical it
11 applies to, right?

12 MR. BOND: I don't think it is for two
13 reasons. First, just --

14 JUSTICE KAVANAUGH: You don't think
15 it's debatable?

16 MR. BOND: First, just focusing on
17 that clause, I don't think the last antecedent
18 rule or principles like that help Petitioner
19 because the first clause describes one thing,
20 one act, filing a petition that meets two
21 requirements.

22 You can't use the last antecedent
23 rule, as Petitioner does, to pick up just the
24 last half of the first clause because that last
25 half describes a condition on a petition.

1 You can't grant jurisdiction over a
2 condition. You grant jurisdiction over the
3 matter. And, as Petitioner acknowledges,
4 that's best read to mean the petition.

5 But even if you look beyond (d)(1), I
6 think paragraph (e)(1) is dispositive because
7 Congress there --

8 JUSTICE ALITO: Well, before you --

9 MR. BOND: -- as it has --

10 JUSTICE ALITO: I'm sorry. Go ahead,
11 please.

12 MR. BOND: There, as it has done in
13 other provisions, has made clear that the Tax
14 Court's jurisdiction to grant an injunction is
15 dependent on a timely petition.

16 And on the point of timely, it's not
17 correct that in the context of equitable
18 tolling a -- a -- a -- an action that is done
19 untimely but is tolled is therefore deemed to
20 be timely. There are two reasons for that I
21 would give.

22 First, look at the Court's decision in
23 Irwin, Petitioner's leading tolling case. At
24 page 92, the Court holds that the complaint is
25 untimely. And then it goes on at page 93 to

1 address the argument that, even if it was not
2 timely, it should be excused on equitable
3 tolling grounds.

4 And the second reason is that (e)(1),
5 as everyone acknowledges, is jurisdictional,
6 makes a timely petition a jurisdictional
7 prerequisite. That's the last place you would
8 expect to see Congress using the word "timely"
9 as imprecise --

10 JUSTICE BREYER: So does that mean
11 it's well established -- look, the obvious
12 thing in English -- I don't know about the last
13 antecedent rule and so forth, but -- but just
14 in ordinary English, it says here "such
15 matter." Okay?

16 Now that could refer to the appeal of
17 such determination, or it could refer to the
18 appeal of such determination filed within 30
19 days. Okay?

20 Now I think that was Justice
21 Kavanaugh's point. And it got me why it
22 couldn't refer to either. And -- and then, if
23 you go back to (e), it does say timely, but, I
24 mean, you go back to laws -- Black's Law
25 Dictionary, I don't know, maybe you go back to

1 Justinian, and it says what tolling does is it
2 stops the clock. Okay? It stops the clock.

3 So, if you do have tolling and you
4 stop the clock for three days because the
5 person involved was very ill or his family was
6 or something, and the best reason in the world
7 he couldn't get to the post office, there was
8 black ice everywhere, I don't know, but then it
9 stopped three days later. Okay? Then it was
10 timely when he got around to filing it, and
11 they excused it.

12 I mean, can't it be read that way? I
13 mean, I guess everybody's asking the same
14 question, just emphasizing "can't."

15 MR. BOND: So I don't think "timely"
16 in (e)(1) can mean that --

17 JUSTICE BREYER: Why?

18 MR. BOND: -- again because -- because
19 -- again, for two reasons. First, that's not
20 how this -- that's the opposite of how this
21 Court has described the effect of tolling in
22 the equitable tolling context on which
23 Petitioner relies. And in this particular
24 provision, where Congress is saying a timely
25 petition is a jurisdictional prerequisite, it's

1 passing strange for Congress to say timely when
2 they -- if what they meant was timely only by
3 operation of equitable doctrines that do not
4 apply to jurisdictional prerequisites.

5 So I think that argument just doesn't
6 hold.

7 JUSTICE BREYER: The law dictionary
8 says equitable tolling is a court's
9 discretionary extension of a legal deadline.

10 MR. BOND: The practical --

11 JUSTICE BREYER: So they extended the
12 legal deadline, and, therefore, it is timely.

13 MR. BOND: The practical effect of
14 equitable --

15 JUSTICE BREYER: Right.

16 MR. BOND: -- tolling is to give
17 someone the benefit of that. But I think the
18 Court has distinguished equitable tolling from
19 statutory case -- tolling in cases like CalPERS
20 versus ANZ, where it says equitable tolling
21 isn't interpreting the statute to say it is
22 extended for this period.

23 JUSTICE BREYER: Okay. My only other
24 question is, what terrible thing will happen
25 if, in fact, we say, okay, yeah, you can have

1 equitable tolling? I mean, there are other
2 provisions that say you can't file a petition
3 that's going to interfere with the levying.
4 There's another provision that says it can't be
5 frivolous. So we have those two in operation.

6 So what awful thing will happen?

7 MR. BOND: So I would point you to two
8 things, one specific to this context and more a
9 -- a broader concern of spillover effects in
10 the code.

11 The specific consequence here is that
12 if tolling is available, then when the 30-day
13 deadline to petition runs, in the 26,000 cases
14 where the IRS issues these determinations, it
15 then will be in a state of uncertainty about
16 what, if anything, it can do to collect because
17 it will know that a taxpayer may file a late
18 petition, assert tolling, and months or years
19 later a court will conclude that tolling was,
20 in fact, available. And I think that puts the
21 IRS in an impossible position.

22 More broadly, I would -- I would point
23 the Court to spillover effects of interlocking
24 relationships in the code. The Ninth Circuit,
25 in the Organic Cannabis case, pointed to an

1 illustration of this if you apply Petitioner's
2 approach to Section 6213(a) governing
3 deficiency. And that's 95 percent of the
4 court's docket. And they explained that if you
5 apply equitable tolling there, because of the
6 interrelationships of the code, you'll end up
7 harming taxpayers by precluding them from
8 seeking -- or from bringing refund suits.

9 The Taxpayer Advocate has acknowledged
10 that and has explained --

11 JUSTICE BREYER: So don't do it there.

12 MR. BOND: I think the difficulty --

13 JUSTICE BREYER: "Equitable" means
14 equitable. So, if it's going to hurt
15 everybody, don't do it.

16 MR. BOND: And I don't think
17 Petitioner has offered a theory that wouldn't,
18 on their view, extend to that other
19 circumstance. But the point where -- I'm
20 trying to make is that adjusting one provision
21 in the code has spillover effects in others.

22 JUSTICE BREYER: Right.

23 MR. BOND: And it's the kind of thing
24 that Congress can address by looking at, in
25 this context, what would happen to (e)(1) and

1 the suspension periods if the deadline is not
2 -- not jurisdictional and subject to tolling.

3 Congress could decide what
4 circumstances warrant tolling. Maybe there
5 should be an outer limit on how much tolling is
6 available or what notice must be provided to
7 the IRS that a person is under such a
8 circumstance and needs additional time.

9 Congress can make all of those kinds
10 of judgments, but this Court, in deciding the
11 binary question whether it is jurisdictional
12 and, if not jurisdictional, whether traditional
13 tolling applies, can't make those kinds of
14 comprehensive judgments across the statute.

15 The other thing I would point you to,
16 Justice Breyer, is in terms of what Congress
17 actually understood at the time it enacted
18 this. 6213, the model for all of these
19 provisions, had been held at that point by
20 every circuit in a wall of precedent to be
21 jurisdictional for 70 years. Congress in this
22 provision added even more emphatic language,
23 this jurisdictional parenthetical.

24 So, in terms of expectations of
25 Congress or how Congress anticipated this and

1 other provisions would operate, I think
2 Congress sensibly understood that it would
3 operate in the same way. And it would upset
4 those expectations to say, well, no, we need
5 conditional language, or we need the word
6 "jurisdiction" to appear earlier in the
7 sentence.

8 That is a magic words requirement.
9 That is a clearest possible statement standard,
10 which is not what this Court's cases require.

11 JUSTICE ALITO: Suppose that (d) --

12 JUSTICE GORSUCH: Is it, though --

13 JUSTICE SOTOMAYOR: Mister --

14 JUSTICE GORSUCH: No, please.

15 JUSTICE ALITO: Suppose that (d)(1)
16 were worded just slightly differently, and this
17 is not the kind of language you usually see in
18 a statute, but indulge the hypothetical.

19 So suppose it said the person may
20 within 30 days of a determination under this
21 section petition the Tax Court for review of
22 such determination and, by the way, the Tax
23 Court shall have jurisdiction with respect to
24 such matter. What would you say then?

25 MR. BOND: I think the outcome would

1 be the same in that circumstance, both under
2 the language of this provision and especially
3 with (e)(1) in the backdrop.

4 JUSTICE ALITO: Really? Because, when
5 -- when you say "and, by the way," that signals
6 you're switching to a different subject.

7 MR. BOND: I don't think --

8 JUSTICE ALITO: You're breaking the
9 link between the 30-day filing requirement and
10 what you're going to say later about
11 jurisdiction, aren't you?

12 MR. BOND: I think it's a closer case,
13 but I think you would still need to figure out
14 what the -- what the antecedent is. And "such
15 matter" refers to the product of the process
16 described in that first clause. And even in
17 that variation, I still think it refers to a
18 process of filing a petition, the product of
19 which is a petition that satisfies those
20 criteria. And --

21 JUSTICE ALITO: All right. Well,
22 maybe that's -- maybe that's the case. The
23 reason I asked the question is I think that's
24 what you normally take -- make out of a
25 parenthetical. You're switching to something

1 else. It's an aside. It's something different
2 from what you've just said.

3 MR. BOND: I don't think it's an aside
4 here. I think the parenthetical shows you that
5 it's clearly related to and even more clearly
6 linked to the first clause. It's more closely
7 connected than if the second clause that's
8 currently in parentheses with the conjunction
9 were in a separate provision and all we had
10 were "such matter" in (e)(1). I think that
11 would be a closer case than -- than what you
12 have here.

13 Here, it's -- I think it's clear from
14 the placement of this parenthetical along with
15 the "such matter" reference, back to the first
16 clause, that all agree refers to the first
17 clause petition, that Congress is modifying or
18 is -- is clarifying the scope of the Tax
19 Court's jurisdiction.

20 Recall that the Tax Court is one of
21 very specified jurisdiction. There's not a
22 1331 equivalent. It only has the jurisdiction
23 that Congress has expressly conferred.

24 I think the odd thing on Petitioner's
25 view is that Petitioner can't explain why this

1 parenthetical is there at all because the
2 statement that a person may petition the Tax
3 Court for review of such determination would
4 necessarily signal that the Tax Court can
5 decide it.

6 I think the point of the parenthetical
7 is to make emphatic that the Court's
8 jurisdiction is limited to petitions that are
9 authorized in the first clause.

10 JUSTICE GORSUCH: Mr. Bond, on -- on
11 that score, just to follow up on Justice Alito,
12 "such matter" could, it seems to me, refer to
13 -- talking about last antecedents -- at least
14 three things here. One, it could refer to a
15 determination under this section, in which
16 case, as -- as -- as Justice Sotomayor
17 suggested, you might face difficulty because
18 there's been a determination under this
19 section. So that -- that -- that -- that
20 confronts the government with problems, number
21 one.

22 Number two, it could be a petition, as
23 -- as your colleague on the other side argues,
24 Ms. Sherry, without respect to time, in which
25 case that would also present the government

1 with problems.

2 Or, number three, it could be the
3 petition taking cognizance of the time, which
4 is the government's position.

5 So acknowledging that there are at
6 least three possibilities here and only one of
7 which obviously helps the government, what am I
8 supposed to do?

9 MR. BOND: So I think you have to look
10 carefully at each of those possibilities
11 because, as the Court says time and again,
12 ambiguity is not a function of --

13 JUSTICE GORSUCH: But do you agree
14 with me those are the three possibilities and
15 two of them are rather difficult for the
16 government?

17 MR. BOND: There are three things that
18 have been posited, but if I could explain why
19 the first two aren't tenable when you look at
20 the statutory context --

21 JUSTICE GORSUCH: Of course, you may,
22 but -- but before you do --

23 MR. BOND: Yes, that's the universe of
24 arguments that have been advanced.

25 JUSTICE GORSUCH: That's the universe,

1 and two of them are -- are challenging for the
2 government?

3 MR. BOND: They -- they would be if
4 they could be squared with this text and
5 context --

6 JUSTICE GORSUCH: All right. Okay.

7 MR. BOND: -- but they cannot.

8 JUSTICE GORSUCH: Now you can go
9 ahead. All right.

10 MR. BOND: Sure. I think, with
11 respect to "determination," that's not a
12 plausible reading in this context, not only
13 because of (e)(1) in the backdrop but just on
14 the word "determination," that word appears a
15 dozen times in this provision. And Congress
16 conspicuously switched to "matter" in this
17 parenthetical. If Congress meant
18 "determination," that would have been the
19 easiest way for it to say so. Petitioner
20 cannot explain that switch.

21 It's true that Congress sometimes uses
22 synonyms, but there needs to be a reason to
23 conclude that Congress did that here. And
24 there's no basis in the statute or in its
25 history to conclude that Congress used that

1 imprecise language.

2 JUSTICE GORSUCH: Well, I'll look
3 forward to hearing Ms. Sherry's thought on that
4 one.

5 MR. BOND: Sure.

6 JUSTICE GORSUCH: Okay.

7 MR. BOND: And on the second
8 possibility, that it refers only to a petition
9 of a particular kind, I don't think there's a
10 textual basis for disaggregating the
11 requirements that are in that first clause,
12 particularly when the time limit is embedded in
13 the verb phrase. It's "may within 30 days of
14 such determination petition."

15 I think Congress is signaling that
16 time is of the essence, that time is part and
17 parcel to this avenue of review that's meant to
18 be a limited pause and is consistent with the
19 way the model for these provisions had been
20 understood by lower courts for 70 years.

21 JUSTICE BARRETT: Mr. Bond, can I ask
22 you -- so Justice Gorsuch has just identified
23 the universe of possible interpretations.
24 Let's say that I think the government's
25 interpretation is maybe a little bit more

1 plausible but not a slam dunk.

2 In light of the backdrop of the clear
3 statement rule, what am I supposed to do with
4 that? I mean, how clear does it have to be?

5 MR. BOND: I think, once you've
6 exhausted the interpretive tools, you have to
7 conclude whether that other interpretation is
8 actually -- is -- is actually tenable. And so
9 it's -- it's not a clear as possible statement.
10 It just has to be that, after you've looked at
11 all of the context, you conclude that that
12 alternative interpretation --

13 JUSTICE BARRETT: But that sounds like
14 you're saying what we do in ordinary
15 interpretation, which is just conclude what the
16 most plausible interpretation of the ordinary
17 language would be. But a clear statement rule
18 requires a little bit more than that, doesn't
19 it?

20 MR. BOND: Well, I think, as this
21 Court has described the clear statement rule,
22 its goal is to approximate Congress's likely
23 intent in the setting, as I think the Court
24 said in Henderson. The clear statement rule is
25 justifiable if it's gauging what Congress would

1 have intended in this setting, not if it's
2 imposing drafting rules on Congress.

3 And so, if you look at the text and
4 the context and the history and conclude that,
5 in fact, Petitioner's reading at the end of the
6 day can't be reconciled with all of those
7 things, then the statute is clear in making it
8 jurisdictional.

9 It's only ambiguous if, after
10 exhausting everything, you don't have an
11 answer.

12 JUSTICE KAVANAUGH: I thought --

13 JUSTICE BARRETT: So you think that
14 the rule kicks in only in a case of ambiguity?

15 MR. BOND: That's right, yeah,
16 because, if it's unambiguous, then it's
17 necessarily a clear statement that something is
18 jurisdictional. And, here, Congress has
19 provided the kind of clear statement this Court
20 has called for by addressing the Court's
21 jurisdiction in the same provision, referring
22 back to the time limit, and then adding in the
23 year 2000 the (e)(1) language that appears
24 elsewhere in the code that says the Tax Court's
25 jurisdiction to grant a remedy that's necessary

1 to prevent mootness in some circumstances is
2 contingent on a timely petition.

3 And I don't think Petitioner can
4 explain why Congress would do that if timely --
5 timely means, as we say, one that actually
6 satisfies the timeline in the statute.

7 JUSTICE KAGAN: Mr. Bond --

8 JUSTICE SOTOMAYOR: Mr. Bond, my law
9 clerk tried to explain my simple thinking when
10 I was reading this provision, and I'm not sure
11 I fully understand her response, and perhaps
12 you can explain it to me.

13 If your reading is that the (d)
14 provision provides the court with -- is a
15 jurisdictional time limit, that means in my
16 mind that the Tax Court has no jurisdiction to
17 do anything unless the petition is filed on
18 time, correct?

19 MR. BOND: That's right.

20 JUSTICE SOTOMAYOR: So why do you need
21 (e)(1) at all?

22 MR. BOND: Because of the sentence
23 before the one we've been talking about in
24 (e)(1) that was added at the same time as the
25 final sentence, which granted the Tax Court and

1 another proper court -- or the proper court or
2 the Tax Court jurisdiction to enjoin levy
3 activities notwithstanding the injunction act.

4 So, as we understand the final
5 sentence, it's clarifying that this is not a
6 freestanding grant of authority to the Tax
7 Court to enjoin levy activities outside of
8 cases in which it has jurisdiction because
9 there's a timely petition.

10 Now, without that final sentence, I
11 think, as -- as you suggest, we would still say
12 the Tax Court doesn't have injunctive
13 authority. That would be the better reading.
14 But Congress left nothing to chance here given
15 its concern with having a judicial intrusion --

16 JUSTICE SOTOMAYOR: So --

17 MR. BOND: -- into collection causes
18 of --

19 JUSTICE SOTOMAYOR: -- under normal
20 circumstances, you would say we don't really
21 need (e)(1)?

22 MR. BOND: Under normal circumstances,
23 we would say it's -- in our view, it's not
24 strictly necessary, but it's there and it
25 serves the function of removing any doubt about

1 the Tax Court's jurisdiction.

2 JUSTICE SOTOMAYOR: So why doesn't
3 that add to your adversary's position that
4 there is enough ambiguity given that it is,
5 even by your definition, a belts-and-suspenders
6 provision?

7 MR. BOND: Oh, I don't think it -- it
8 helps Petitioner at all. I think quite the
9 opposite. The fact that Congress went further
10 than arguably necessary to make clear that the
11 Tax Court's jurisdiction over this remedy is
12 contingent on a timely petition, I think that
13 belt-and-suspenders approach points strongly in
14 our direction.

15 And I would add as well that this same
16 kind of language occurs in 6015(e), which
17 Petitioner was discussing earlier. In
18 particular, it appears at page 2a of our
19 appendix in a provision that I understand
20 Petitioner to agree is jurisdictional. We have
21 the same language there about the Tax Court
22 shall have no jurisdiction absent a timely
23 petition.

24 And, there, it performs the same
25 function of avoiding any doubt about the Tax

1 Court's injunctive authority. And if the Tax
2 Court can't enjoin act -- collection actions
3 that violate the suspension period, there's no
4 reason to think that Congress intended it to
5 have authority to adjudicate the underlying
6 collection due process proceeding.

7 JUSTICE SOTOMAYOR: Thank you,
8 counsel.

9 JUSTICE KAGAN: Mr. Bond, this may be
10 an out-of-left-field question, but how should I
11 think about this clear statement rule, how
12 should I think about applying it in this case
13 or more generally, if I'm -- if I have more
14 than a suspicion that Congress has no idea what
15 we're talking about in this area, that we keep
16 on saying these words and presuming that
17 Congress understands them, and I don't see any
18 evidence that Congress really does.

19 And if I think that's so, I mean, I
20 guess you can argue with me, because you can --
21 you've talked a lot about Congress signaling
22 this and Congress saying that. But, I mean, my
23 gut is that Congress has never read any of our
24 cases in this area.

25 What should I do then?

1 MR. BOND: I think you should resist a
2 version of a clear statement rule that requires
3 particular phrasing or adds new bells and
4 whistles to the -- the Court's past cases and
5 treats it as simply and directly as possible.
6 It's simply a tiebreaker rule to say whether
7 Congress has made a requirement jurisdictional
8 or not.

9 And I think the in -- the insight
10 underlying the clear statement rule is that
11 because of the consequences we don't think
12 Congress does this inadvertently.

13 But there's nothing inadvertent about
14 Congress's approach to jurisdiction in this
15 statute or in the Tax Court context.

16 JUSTICE BREYER: But I think Justice
17 Kagan's question is more general. You know
18 there have been efforts from time to time in
19 the lower federal courts to send opinions to
20 Congress. There is a drafting section in both
21 houses.

22 Does the Solicitor General's Office
23 ever get together with them and say: Look,
24 here -- here are some general statements in
25 these opinions, we're just calling them to your

1 attention?

2 JUSTICE KAGAN: Gosh, you could wipe
3 out half of our docket.

4 JUSTICE BREYER: Well, that's a good
5 question.

6 (Laughter.)

7 JUSTICE BREYER: But, I mean, as a --

8 CHIEF JUSTICE ROBERTS: Not to mention
9 the separation of powers between the executive
10 branch and Congress.

11 JUSTICE BREYER: They're always
12 sending stuff to Congress.

13 MR. BOND: So I can't speak to any
14 specific dialogue on -- on that kind of
15 drafting issue or on the lower court's
16 opinions.

17 I take the point that Congress may not
18 be paying as close attention to the Court's
19 opinions about which specific features of
20 statutes have jurisdictional significance. And
21 that's all the more reason not to ratchet up
22 the requirements or say --

23 JUSTICE BREYER: Well, so you could
24 help there. You could help. The SG's office,
25 I mean.

1 MR. BOND: And we will take that to
2 heart. But I think, as the Court decides the
3 case in front of you, I think the -- the answer
4 is not to say, well, Congress used the word
5 jurisdictional, but it didn't use if or where,
6 or it didn't put jurisdiction in the right
7 place in the sentence, or it used paren --
8 parentheses instead of a semicolon.

9 I think that does a disservice to
10 Congress and becomes a drafting instruction to
11 the legislature instead of approximating what
12 Congress would have had in mind.

13 JUSTICE KAVANAUGH: But the point of a
14 clear statement rule, to pick up on Justice
15 Kagan's question, is when legislation's
16 drafted, first of all, there are expert
17 drafters who are involved in the process and
18 who do know some of the background principles.

19 Usually, on something affecting the
20 IRS, Treasury people would be up there in the
21 room going through the language and they
22 presumably are aware of the Court's
23 jurisprudence.

24 And, therefore, maybe not all of
25 Congress or even many of Congress, but the

1 people typing it into the computer and the
2 people in the room negotiating the language are
3 often aware of the background principles and,
4 therefore, we should require a clearer
5 statement than what we have here -- the last
6 part of this you're not going to like --
7 because they are aware of the clear statement
8 rule that the Court's put forth over the last
9 couple decades.

10 MR. BOND: So I think, if the Court
11 stands in the shoes of -- of Congress in
12 enacting this in -- in -- in 1998 originally
13 and in 2006 when it took substantially its
14 current form or in the mind of experts who are
15 focused on the issue, you'd come to the same
16 conclusion.

17 In 1998, it was clear that the
18 statutes like this on which this were -- were
19 modeled were jurisdictional. Congress had no
20 reason to think that by enacting a
21 substantially similar provision, with even more
22 explicit jurisdictional language, would not
23 achieve jurisdictional effect.

24 And, in 2006, and this is after
25 Arbaugh, when Congress enacted it into -- into

1 its current form and got rid of district court
2 review, it removed the one structural feature
3 that Petitioner says historically led to a
4 different interpretation.

5 JUSTICE KAVANAUGH: Well, to pick up
6 on Justice Kagan's question some more, because
7 I think it is an important point, and the
8 separation of powers point, Treasury is
9 constantly going to Congress and saying we have
10 a problem with this, that, and the other thing,
11 right, in the legislative -- in the -- in the
12 statutes, right, and to fix this and fix that.

13 And one of the things presumably
14 Treasury could emphasize is we need to be clear
15 about the importance of these deadlines. We
16 need to be clear about the word jurisdiction.
17 That's very -- it wouldn't be the SG's office,
18 but Treasury, ledge affairs, would be up there
19 all the time, right?

20 MR. BOND: It certainly would be open
21 if the Court rules that way for Treasury to do
22 that. But I think against the backdrop of
23 decades of decisions of lower courts
24 consistently treating this and other deadlines
25 as jurisdictional, I think it -- it's, I think,

1 inappropriate for the Court to assume that if
2 we rule against the direction of our
3 precedents, it's fine because the executive
4 branch can go to Congress and seek --

5 JUSTICE KAVANAUGH: Well, it's not --

6 MR. BOND: -- a different
7 dispensation.

8 JUSTICE KAVANAUGH: -- this has been a
9 process over a bunch of cases but has
10 established a clear baseline instead of
11 muddling through.

12 And now everyone -- the ledge affairs
13 offices at IRS and Treasury know what the
14 situation is, and when they're discussing
15 legislative needs with Congress, which they do
16 all the time, with Ways and Means staff or
17 whatever, they can emphasize we need to be
18 clear about the word jurisdiction with these
19 time limits because that's the rule now. We
20 can't just assume anything.

21 Now I realize there's a transition
22 period, but I don't see why that's so hard.

23 MR. BOND: I think the difficulty, as
24 the argument this morning has illustrated, is
25 it's not even clear to me now what Petitioner

1 thinks would be sufficient and what the --
2 those in Congress or at Treasury could
3 conclude.

4 JUSTICE KAVANAUGH: The Tax Court
5 shall have jurisdiction only if it's filed
6 within 30 days. That would be sufficient.

7 MR. BOND: And so that's -- that's
8 even beyond what Petitioner has suggested here.

9 JUSTICE KAVANAUGH: I -- I agree, but
10 that would be sufficient.

11 MR. BOND: And that turns into a
12 clearest possible statement rule, which I don't
13 think accords with the justification for the
14 clear statement rule of Arbaugh, which is
15 trying to capture Congress's likely intent, and
16 it is out of step with, I think, the -- the
17 comment earlier that Congress may not be aware
18 of all of these decisions and we're simply
19 requiring the clearest possible statement, even
20 though Congress may not know in every single
21 context exactly what that phrase should be.

22 And there are settings where different
23 -- oh, I'm sorry.

24 CHIEF JUSTICE ROBERTS: You can finish
25 your sentence.

1 MR. BOND: There are settings where
2 different language may be appropriate for
3 specific -- context-specific reasons that
4 Congress may not appreciate without guidance
5 from this Court.

6 CHIEF JUSTICE ROBERTS: Thank you.
7 Justice Thomas?

8 JUSTICE THOMAS: One small question.
9 Mr. Bond, you mentioned several times that this
10 would have significant effect, a spillover
11 effect to other provisions if we rule against
12 you.

13 But, with that aside, how many appeals
14 are we talking about, these collection due
15 process appeals are we talking about?

16 MR. BOND: So the universe of cases in
17 which a person could petition is on average
18 26,000 or so a year.

19 JUSTICE THOMAS: No, how many are
20 there?

21 MR. BOND: Yes. So --

22 JUSTICE THOMAS: How many actual
23 appeals are there?

24 MR. BOND: Appeals that are taken, I
25 think, is around 1100 a year.

1 JUSTICE THOMAS: Okay. And -- and how
2 much -- if -- if we rule against you, how will
3 that number change? Not the universe, but
4 those numbers -- the 1100?

5 MR. BOND: So, of the 11- or 1200
6 petitions that are filed each year, roughly
7 22 percent or so, around 300 of them, are
8 dismissed for lack of jurisdiction. So that
9 universe of cases would be affected by
10 Petitioner's -- that's a five-year average --
11 would be affected by Petitioner's rule that
12 tolling is available in those -- in those
13 cases.

14 The broader point I only -- I meant to
15 make is that Petitioner's rule about equitable
16 tolling affects the IRS's collection efforts in
17 every case where a petition could be filed.
18 That's why the 26,000 is in the picture.

19 JUSTICE THOMAS: Thank you.

20 CHIEF JUSTICE ROBERTS: Justice
21 Breyer?

22 Justice Sotomayor?

23 JUSTICE SOTOMAYOR: No, thank you.

24 CHIEF JUSTICE ROBERTS: Justice Kagan?
25 Justice Gorsuch?

1 JUSTICE KAVANAUGH: I have two more
2 questions. One, I am concerned about what you
3 said about the implications for 6013(a) --
4 6213(a). I'm sorry. And -- but I thought the
5 language in there was clearer in tying it to
6 jurisdiction, so I'm not sure a holding that
7 you lose here would affect 6213 --

8 MR. BOND: We -- we agree that 6213(a)
9 should stand as it is, and courts have
10 understood it that way for a long time. All
11 I'm saying is that when Congress enacted
12 6330(d)(1) in 1998, it added on top of what
13 6213 had.

14 JUSTICE KAVANAUGH: I got that point.
15 But you're not worried -- or correct me if I'm
16 wrong, because I'd like to know this -- if we
17 rule against you here, you still have a good
18 argument that 6213(a) is jurisdictional?

19 MR. BOND: Yes.

20 JUSTICE KAVANAUGH: Correct?

21 MR. BOND: Yes.

22 JUSTICE KAVANAUGH: Okay. And then
23 the second argument, picking up on Justice
24 Barrett's question, I -- I struggle with the
25 question she asked too: How -- how clear is

1 clear?

2 I thought you were saying, to satisfy
3 the clear statement rule, so long as the word
4 "jurisdiction's" been used, then you go to the
5 best -- the best reading.

6 Is that not what you're saying? Maybe
7 that's not what you're saying.

8 MR. BOND: So I guess I'm saying two
9 things. When we're trying to determine whether
10 the statute --

11 JUSTICE KAVANAUGH: In other words,
12 the clear statement requires using the word
13 "jurisdiction." Once you've used that, then
14 just -- you've cleared that hurdle and then you
15 go to the best reading. Maybe I'm wrong.

16 MR. BOND: So I think there are two
17 separate things going on. One is, when we're
18 trying to figure out whether a particular
19 requirement is jurisdictional in a statute that
20 expressly addresses jurisdiction, I don't think
21 we continue to apply the clear statement rule
22 at every single requirement.

23 JUSTICE KAVANAUGH: That's what I
24 thought.

25 MR. BOND: Yeah, that's right. But I

1 think the -- the thing I was saying in response
2 to Justice Barrett is how do we know whether
3 something is clear. And I think it's like any
4 other context where you've -- like in Chevron
5 or something else, where we apply all the
6 interpretive tools before we conclude it's
7 ambiguous or not.

8 JUSTICE KAVANAUGH: Thank you.

9 CHIEF JUSTICE ROBERTS: Justice
10 Barrett? No?

11 Thank you, counsel.

12 Rebuttal, Ms. Sherry?

13 REBUTTAL ARGUMENT OF MELISSA ARBUS SHERRY

14 ON BEHALF OF THE PETITIONER

15 MS. SHERRY: Thank you. Let me try to
16 make three points.

17 First, with respect to the clear
18 statement rule, I think the Commissioner's view
19 of the clear statement rule is inconsistent
20 with how this Court applies it in other
21 contexts, and it would undermine it in other
22 contexts.

23 FAA versus Cooper says, number one, to
24 the point that was just made, it's not that you
25 just apply it at the threshold, whether there's

1 a waiver of sovereign immunity. You apply it
2 to actually decide the scope question. And
3 that's really what we're talking about here.
4 It's a jurisdiction-conferring provision. What
5 is the scope of that jurisdiction? It's the
6 exact same question the Court was asking in FAA
7 versus Cooper, and it has to apply in the same
8 way.

9 As far as whether Congress is thinking
10 about this, and we don't know what Congress's
11 preference is, we think that means that we have
12 to win on this because, as the Court said in
13 Henderson, this Court has a preference to treat
14 time limits like claim-processing rules. If
15 Congress has a different preference and
16 actually thinks about it, then Congress has to
17 speak clearly, and it hasn't done so here.

18 As far as (e)(1) goes, a few points on
19 that. Number one, it is very much the tail
20 wagging the dog. We think "timely" absolutely
21 has the interpretation we give it, which is it
22 includes equitable tolling. Look no further
23 than this Court's decision in Artis, which said
24 that tolling is pausing, it's stopping the
25 clock. Even the dissent that disagreed with

1 that with respect to that statute said in
2 Footnote 10 that is how we understand equitable
3 tolling. So we think that answers it, and
4 there's no incongruity at all.

5 But the other thing I think is worth
6 looking at is the first sentence in (e)(1).
7 That's the one that tells the IRS that it can't
8 collect. And that is not tied at all to
9 whether or not a petition is timely. As soon
10 as any petition is filed, there's an appeal
11 pending. Then the IRS cannot levy during that
12 period of time.

13 And then, Justice Sotomayor, to your
14 point, you know, does that mean that the final
15 sentence means nothing, the final sentence is
16 there to say that a taxpayer can't go to the
17 Tax Court and has to go to another court before
18 there's an appeal in the Tax Court. And so, to
19 the extent the IRS levies while a CDP hearing
20 is happening before the Office of Appeals, that
21 taxpayer has to go to the district court.

22 So the final sentence, understood our
23 way, makes complete sense. What Congress was
24 saying is that when you have an appeal that the
25 Tax Court is actually going to adjudicate on

1 the merits, you can go to Tax Court.
2 Otherwise, you have other courts that are
3 available to you.

4 As far as administrability goes, you
5 know, the idea that the -- you know, that this
6 certainty exists in the real world, I think, is
7 more a myth than anything. I heard for the
8 first time that there is a list of, you know,
9 combat zones and that they know what every
10 taxpayer is doing. I think that narrows those
11 exceptions.

12 I mean, it's not just those who are
13 serving in combat zones. It's a person
14 affected by a terrorist action. It covers a
15 relief worker assisting a disaster area. The
16 list goes on and on.

17 And it's not just those exceptions.
18 There's a mailbox rule. There's other
19 instances in which the 30 days are going to
20 come and go, and the IRS is not going to know
21 whether a petition may ultimately be accepted
22 as timely.

23 And administrability concerns, more
24 generally, to the number of cases, this looks
25 nothing like the refund actions that were at

1 issue in Brockamp, where there were 90 million
2 refunds that the IRS had to deal with. There
3 are about 1200 cases that are petitioned to the
4 Tax Court. And I know they said -- I forgot
5 what the number was, but however many are
6 dismissed right now for lack of jurisdiction,
7 that's not just because they weren't filed
8 within 30 days. There's a number of other
9 reasons why those cases are dismissed for lack
10 of jurisdiction.

11 And before the Eighth Circuit, the IRS
12 said we just don't know the numbers of how many
13 are dismissed because of timeliness when we're
14 dealing with a pro se or a low-income taxpayer.

15 And to get back to Congress's intent
16 here and to Henderson specifically, they say --
17 you know, the Commissioner says that 30 days
18 was meant to be very, very short and quick.
19 The same argument was made in Henderson and
20 rejected. The argument there was, before this
21 legislation was passed, there was absolutely no
22 judicial review at all. And so the government
23 argued, well, yeah, they gave you judicial
24 review, but they meant it to be strict and
25 jurisdictional. And the Court rejected that

1 argument there because it was veteran-friendly
2 legislation. The same is true here. It was
3 intended to protect the taxpayer.

4 If Congress wanted it to be especially
5 fast, it would have put in other deadlines to
6 require a CDP hearing to be heard in a
7 particular period of time, a determination to
8 be made. Instead -- I think we talked about
9 (d)(3) earlier -- it says that the Office of
10 Appeals retains jurisdiction with respect to
11 the determination.

12 This is an iterative process. There
13 is a back and forth. And in the end, it's
14 about providing equity to the taxpayer.

15 The amicus briefs are replete with
16 examples of individuals who did not get their
17 day in court because the Tax Court deemed this
18 deadline to be jurisdictional and not subject
19 to equitable tolling. Ms. Castillo's case is
20 currently pending in the Second Circuit. It is
21 a perfect example of why this Congress who
22 passed this statute would not have wanted this
23 to be the rare and harsh jurisdictional
24 deadline.

25 Thank you.

1 CHIEF JUSTICE ROBERTS: Thank you,
2 counsel. The case is submitted.

3 (Whereupon, at 11:08 a.m., the case
4 was submitted.)

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