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IN THE SUPREME COURT OF THE UNITED STATES

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BOECHLER, P.C., )

Petitioner, )

v. ) No. 20-1472

COMMISSIONER OF INTERNAL REVENUE, )

Respondent. )

- - - - -

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 As originally enacted, the same time  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're going  
18 through a factual inquiry of some length about  
19 whether or not you should accept it.

20 We're talking about the power of the  
21 court, and, here, that is directly connected to  
22 the 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: Yeah. And so I don't  
6 think that's the clear antecedent here. I  
7 mean, let me start with the fact that we're  
8 talking about "such matter," and -- and the  
9 initial difficulty is the word "matter" doesn't  
10 appear anywhere else in the sentence. So,  
11 under, you know, Garner's usage guide, there --  
12 there's an automatic sort of vague question  
13 there of what 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 necessity for equitable tolling  
20 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's 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  
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: 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.

15            One, it could refer to a determination  
16     under this section, in which case, as -- as --  
17     as Justice Sotomayor suggested, you might face  
18     difficulty because there's been a determination  
19     under this section. So that -- that -- that --  
20     that confronts the government with problems,  
21     number 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 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 belt-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  
6 "where," or it didn't put "jurisdiction" in the  
7 right 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, legislative affairs, would be up  
19 there 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 legislative  
13      affairs offices at IRS and Treasury know what  
14      the 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 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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