No. 24-_____

In the Supreme Court of the United States

CHARLES K. BRELAND, JR.,

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

In the Petitioner's Chapter 11 bankruptcy proceeding, the IRS filed multiple proofs of claim asserting that Petitioner owed federal income tax for years 2004-2008. The Petitioner also filed a reorganization plan that provided the IRS would be paid less than the full amount of its claims. Petitioner and IRS agreed to entry of a consent order to resolve their disputes related to Breland's income tax debt for years 2004-2008. The bankruptcy court interpreted the consent order as adjudicating the IRS's priority tax claims for taxes owed for years 2004-2008 and preventing assessment of additional taxes for years 2004-2008. However, the United States Tax Court and the United States Court of Appeals for the Eleventh Circuit held that the IRS could assert that Petitioner owed additional taxes for years 2004-2008 despite the bankruptcy court's orders to the contrary. Petitioner requests that the Court grant its petition to consider the following questions:

1. Is the IRS bound by the terms of a consent order entered by a United States Bankruptcy Court providing that the IRS gave up collection rights, including but not limited to the right to assess additional taxes for the years in question?

2. Are orders entered by a United States Bankruptcy Court adjudicating a debtor's tax liability res judicata in subsequent proceedings brought in the United States Tax Court?

PARTIES TO THE PROCEEDINGS

Petitioner and Petitioner-Appellant below

- Charles K. Breland, Jr. ("Breland").

Respondent and Respondent-Appellee below

- Commissioner of Internal Revenue (the "Commissioner"). The Commissioner is acting on behalf of the IRS, an agency of the United States.

RULE 29.6 STATEMENT

Petitioner is an individual, and thus no Rule 29.6 Statement is required.

LIST OF PROCEEDINGS

The following proceedings are "directly related" to this proceeding as that term is defined in Supreme Court Rule 14.1(b)(iii):

The United States Tax Court entered an Order of Dismissal and Decision on April 17, 2023 in a matter styled *Charles K. Breland, Jr. v. Commissioner of Internal Revenue*, Case No. 21940-12.

Breland appealed the Tax Court's final judgment to the United States Court of Appeals for the Eleventh Circuit in an appeal styled *Charles K. Breland, Jr. v. Commissioner of Internal Revenue*, Case No. 23-12345. The Eleventh Circuit issued its opinion on May 31, 2024.

In addition to these directly related proceedings, the consideration of this appeal also involves other proceedings filed in the United States Bankruptcy Court for the Southern District of Alabama (the "Bankruptcy Court") and the United States District Court for the Southern District of Alabama (the "District Court"). This appeal involves the Tax Court and Eleventh Circuit's rulings regarding the effect of orders entered by the Bankruptcy Court and District Court. Breland has filed two Chapter 11 proceedings in the Bankruptcy Court, though the second is not related to the issues presented herein. The first is styled *In re Charles K. Breland, Jr.* and bears Case No. 09-11139 (Confirmation Order entered on December 10, 2010, and case closed on October 7, 2016), and the second is styled *In*

re Charles K. Breland, Jr. and bears Case No. 16-02272 (Confirmation Order entered on June 6, 2022; case remains open). The United States and/or IRS appealed certain orders of the Bankruptcy Court in the first bankruptcy case to the District Court in two separate appeals in the District Court. The first of those District Court appeals is styled *United States of America v. Charles K. Breland, Jr.* and bears Case No. 12-cv-00208-KD-C (Order for Remand entered on May 14, 2012). The second such appeal is styled *United States of America v. Charles K. Breland, Jr.* and bears Case No. 12-cv-00512-KD-C (Judgment entered on December 27, 2012).

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Charles K. Breland, Jr. ("Breland"), respectfully petitions for a writ of certiorari to review the United States Court of Appeals for the Eleventh Circuit's decision affirming the judgment of the United States Tax Court.

OPINIONS BELOW

The Eleventh Circuit's opinion, issued on May 31, 2024, included in the Appendix ("App.") at App.1a-14a, is not reported in the Federal Reporter but is reported at 133 A.F.T.R.2d 2024-1640, and it is also available on Westlaw at 2024 WL 2796450. The judgment of the Tax Court, entered on April 17, 2023, included in the Appendix at App.15a-17a, does not appear to have been reported in any reporter and is not available on Westlaw. However, the opinion of the Tax Court at issue in this appeal is the Tax Court's opinion denying Breland's motion for summary judgment entered on March 28, 2019, which is included in the Appendix at App.19a-42a. The opinion on Breland's motion for summary judgment in the Tax Court is reported at 152 T.C. 156.

JURISDICTION

This Court has jurisdiction under 28 U.S.C. § 1254(1). The Eleventh Circuit rendered its opinion on May 31, 2024. App.1a-14. Therefore, this Petition is timely filed pursuant to Supreme Court Rule 13.1.

STATUTORY PROVISIONS INVOLVED[1]

11 U.S.C. § 505(a)(1)

> (a)(1) Except as provided in paragraph (2) of this subsection,[2] the court may determine the amount or legality of any tax, any fine or penalty relating to a tax, or any addition to tax, whether or not previously assessed, whether or not paid, and whether or not contested before and adjudicated by a judicial or administrative tribunal of competent jurisdiction.

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[1] Breland includes the statutory language of certain provisions at issue in this appeal. However, the primary issues of federal law for which Breland asserts Court review is warranted relate to federal law on res judicata and the effect of consent orders or consent decrees entered by federal courts. These issues in this appeal do not turn on the specific statutory language of these provisions.

[2] Section 505(a)(2) does not apply to this case and is therefore not included in these statutory excerpts.

11 U.S.C. § 507(a)(8)

(a) The following expenses and claims have priority in the following order: . . .

(8) Eighth, allowed unsecured claims of governmental units, only to the extent that such claims are for—

(A) a tax on or measured by income or gross receipts for a taxable year ending on or before the date of the filing of the petition. . . .

11 U.S.C. § 523(a)(1)(A)

A discharge under section 727, 1141, 11921 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor from any debt-

(1) for a tax or a customs duty-

(A) of the kind and for the periods specified in section 507(a)(3) or 507(a)(8) of this title, whether or not a claim for such tax was filed or allowed;

11 U.S.C. § 1141(d)(2)

A discharge under this chapter does not discharge a debtor who is an individual from any debt excepted from discharge under section 523 of this title.

26 U.S.C. § 6212(a)

IN GENERAL. If the Secretary determines that there is a deficiency in respect of any tax imposed by subtitles A or B or chapter 41, 42, 43, or 44 he is authorized to send notice of such deficiency to the taxpayer by certified mail or registered mail.

Such notice shall include a notice to the taxpayer of the taxpayer's right to contact a local office of the taxpayer advocate and the location and phone number of the appropriate office.

26 U.S.C. § 6213(a)

(a) TIME FOR FILING PETITION AND RESTRICTION ON ASSESSMENT. Within 90 days, or 150 days if the notice is addressed to a person outside the United States, after the notice of deficiency authorized in section 6212 is mailed (not counting Saturday, Sunday, or a legal holiday in the District of Columbia as the last day), the taxpayer may file a petition with the Tax Court for a redetermination of the deficiency. . . . The Tax Court shall have no jurisdiction to enjoin any action or proceeding or order any refund under this subsection unless a timely petition for a redetermination of the deficiency has been filed and then only in respect of the deficiency that is the subject of such petition.

26 U.S.C. § 6501(a)

(a) GENERAL RULE. Except as otherwise provided in this section, the amount of any tax imposed by this title shall be assessed within 3 years after the return was filed (whether or not such return was filed on or after the date prescribed) or, if the tax is payable by stamp, at any time after such tax became due and before the expiration of 3 years after the date on which any part of such tax was paid, and no proceeding in court without assessment

for the collection of such tax shall be begun after the expiration of such period.

STATEMENT OF THE CASE

I. Basis for Federal Jurisdiction in Tax Court

Breland's petition involves the effect of contradictory orders and/or judgments entered by the Bankruptcy Court and the Tax Court in related proceedings. The IRS issued a statutory notice of deficiency on June 4, 2012, asserting that Breland owed additional taxes for tax years 2004, 2005, and 2008. App.146a. Breland initiated the Tax Court proceeding by filing a petition pursuant to 26 U.S.C. § 6213 with the Tax Court. App.146a. Thus, the Tax Court had jurisdiction under 26 U.S.C. §§ 6213 and 7442.

II. Facts and Proceedings Material to Consideration of Questions Presented.

A. Proceedings in Bankruptcy Court and District Court in Southern District of Alabama.

Breland is a real estate developer who resides in Alabama and develops real estate projects on the Gulf Coast. On March 11, 2009, Breland filed a petition under Chapter 11 of the Bankruptcy Code. See App.142a. On April 16, 2009, the IRS, on behalf of the United States of America, filed a proof of claim in the bankruptcy case bearing Claim No. 5-1 in the amount of $5,986,305.90 for alleged income taxes and penalties for the years 2004, 2005, and 2008. App.142a. Between January 29, 2010 and December 6, 2010, the IRS

amended its claims four times, bearing Claims No. 5-2, 5-3, 5-4, and 5-5, with its final claim prior to confirmation in the amount of $6,843,878.26. App.142a-143a. Each of these claims included both priority claims for income taxes and general unsecured claims for penalties for tax years 2004 through 2008, inclusive. Breland filed an objection to Claim 5-3, specifically objecting to the penalties sought by the IRS. App.143a.

On December 6, 2010, Breland and one of his creditors jointly filed the "Chapter 11 Amended Plan of Reorganization" (referred to herein as the "Plan"). App.93a-131a. The IRS filed an objection to the Plan, arguing, *inter alia*, that the Plan did not provide for payment of the entire amount of taxes the IRS claimed Breland owed. App.144a. Breland did not agree that he owed the amount stated in the IRS's proofs of claim. To resolve their disputes regarding the amounts the IRS claimed Breland owed for tax years 2004 through 2008, Breland and the IRS engaged in negotiations and stipulated to the entry of a consent order (the "Consent Order"). App.73a-75a. On December 10, 2010, the Bankruptcy Court entered an order confirming the Plan (the "Confirmation Order"). App.77a-92a. In the Confirmation Order, the Bankruptcy Court acknowledged that the United States withdrew its objection based on an agreement with Breland that would be provided for in a separate order submitted to the Bankruptcy Court. App.91a. The Bankruptcy Court entered the Consent Order on December 17, 2010. The Consent Order set forth the compromise between the IRS and Breland. In the Consent Order, the IRS agreed to withdraw its proof of claim filed on December 6, 2010 (Claim 5-5) and reinstate Claim 5-4. Claim 5-4 totaled $2,020,697.01 and consisted of an unsecured priority

tax claim totaling $671,318.55 for income tax owed (the "priority claim") and a general unsecured claim totaling $1,349,378.46 for penalties and interest (the "general unsecured claim"). App.62a-63a. The parties agreed that the priority claim would be allowed in full and paid in accordance with the terms of the Plan, while Breland preserved the existing objection as to the general unsecured claim, which would be deemed disputed until resolved. The Court set a hearing on Breland's objection. Finally, the Consent Order provided that Section 11.9 of the Plan would be modified to read as follows:

> Plan Default Relating to Taxes. Upon any default under the Plan relating to the non-payment of any Administrative Expense, Priority Tax Claims or Unsecured Claim, the administrative collection powers and the rights of the United States shall be reinstated as they existed prior to the filing of the bankruptcy petition, including, but not limited to, the assessment of taxes, the filing of Notice of Federal Tax Lien and the powers of levy, seizure, and sale under Title 26 of the United States Code.

App.75a. The Consent Order was not appealed, nor did the government seek to vacate or modify the Consent Order. App.144a. The Consent Order by its express terms provided that the IRS's administrative collection powers, including the right to assess additional taxes, would only be reinstated upon a default by Breland.

On or about December 27, 2010, the Plan was substantially consummated, including payment of the United States's priority claim of $671,318.55. App.144a-145a. Breland also placed $1,349,378.46 in escrow for

payment of the general unsecured claim provided in the Consent Order pending resolution of his objection to the general unsecured claim. App.145a. Breland also made the required payments to other creditors under the Plan. App.145a. On February 16, 2011, consistent with the terms of the Consent Order, the United States again amended its proof of claim (Claim 5.6), revising the amount owed for tax years 2004 through 2008 to be consistent with the Consent Order. App.145a.

After confirmation of the Plan, the IRS sought discovery regarding Breland's income and expenses during the years 2004-2008. App.63a. On October 31, 2011, the United States filed a motion for leave to file an amended priority claim exceeding $45 million, asserting that Breland had underreported his income for the years in question. App.63a, 145a-146a. The IRS also included a motion to compel additional discovery. App.63a-64. On December 22, 2011, the Bankruptcy Court denied the United States's motion to amend the priority tax claim. App.59a-72a. The Bankruptcy Court in its order noted that the IRS was paid the full amount of the priority claim, that the entire amount for the general unsecured claim had been paid in escrow, and that Breland also paid more than $3 million to other unsecured creditors. App.62a.

The Bankruptcy Court stated that there were four issues to address in considering the IRS's motion: (1) res judicata; (2) waiver/estoppel; (3) the standard for allowing amendments to claims; and (4) what discovery was appropriate. App.64a. The Bankruptcy Court considered the priority claims for taxes owed and the general unsecured claims separately, first finding that the Plan "clearly bound the IRS and the debtor as to the priority debt owed by Breland for

2004-2009." App.65a. The Bankruptcy Court reasoned that the parties in the Consent Order agreed that the priority claims for those years "shall be allowed" in accordance with the Plan, and the Plan defines "Allow" to mean that the claim had been adjudicated. App.65a. The Bankruptcy Court also recognized that the IRS had agreed that it could exercise its right to assess only upon an event of default, stating that "[c]learly that power was given up in the Consent Order and plan, or there would have been no need for this provision." App.65a. The Bankruptcy Court further held that the Confirmation Order was "equivalent to a final judgment in an ordinary civil action, which extinguishes the claim and substitutes it for a judgment, which defines the new obligations of the parties. . . . " App.65a (citing *IRT Partners, L.P. v. Winn-Dixie Stores, Inc. (In re Winn-Dixie Stores, Inc.)*, 639 F.3d 1053, 1056 (11th Cir. 2011)).

The Bankruptcy Court also rejected the IRS's contention that its claims could not be bifurcated such that the entire claimed amount for a year was final or none of its claim for that year was. App.66a. The Bankruptcy Court noted that claims of taxing authorities in bankruptcy are divided into separate claims and accorded different treatment depending on if the claims are secured, priority, or unsecured. App.66a. The Bankruptcy Court noted that unsecured claims may be paid nothing or in full and can be discharged. App.66a. Furthermore, in Breland's case, there was no attempt to leave any priority claims for later resolution after consummation of the Plan; the IRS was paid the entire amount of its Allowed priority claim on December 27, 2010. App.66a. Therefore, the Bankruptcy Court concluded that the parties agreed to separate their claims,

and this agreement was binding and "would provide the debtor with the right to assert issue preclusion as to the tax amounts for 2004-2009 as well." App.66a-67a.

The Bankruptcy Court additionally held that the IRS was bound to the amount stated in Claim 5-6 and the Consent Order on grounds of waiver and estoppel. App.67a-68a. The Bankruptcy Court stated:

> Breland and all of the other creditors relied on the IRS position on the claims in resolving the highly contentious plan proceedings. The IRS's claim, as well as others, was necessarily resolved at a certain amount ... There is no question that Breland and others relied on the IRS position. The IRS freely entered the Consent Order and withdrew its objection to Plan as well and waived any right to claims that were not consistent with those actions.

App.68a. The Bankruptcy Court also determined that the IRS should not be permitted to amend its priority claim under Eleventh Circuit law regarding amendment of claims. App.68a-70a. The Bankruptcy Court again noted that creditors and Breland relied on the agreement reached between Breland and the IRS, finding that "[t]here was no evidence that anyone (except perhaps the IRS) thought that any of the priority claims could be amended later." App.69a. It specifically further noted that if the IRS were permitted to assess a $45 million priority tax debt after consummation of the Plan, "either the plan would have to somehow be undone, which could prove impossible due to the sale of assets that was an integral part of it, or Breland will be left

with no assets and a tax debt to pay that he believed he had compromised and paid." App.69a.

The Bankruptcy Court also rejected the IRS's argument that public policy weighed in favor of permitting amendment, noting first that the IRS's position was based only on its view of what records showed. App.70a. The Bankruptcy Court noted that the years in question saw shocks to the Gulf Coast real estate market from Hurricanes Ivan and Katrina, and concluded that "[i]t is just as possible that the issues raised by the IRS are without merit." App.70a. The Bankruptcy Court would not accept as true the IRS's position, particularly in light of "the fact that the IRS willingly agreed to allow Breland's priority tax claims, withdrew its objection to the Plan, and accepted payment for the priority claims as agreed upon." App.70a. The Bankruptcy Court also emphasized that the IRS had ample time to review and audit Breland's tax returns prior to confirmation. App.70a. The Bankruptcy Court further stated that the Consent Order "displays that the parties knew how to prevent finality as to a claim because the parties did that in regard to the general unsecured claim. The contrast between the treatment of the two types of claims in **the Consent Order makes the intent of the parties abundantly clear**." App.70a-71a (emphasis added). The Bankruptcy Court held that the priority claims were final. App.71a.

Given the denial of the motion for leave to amend the IRS's claim, the Bankruptcy Court specifically directed the parties to discuss discovery issues to narrow the IRS's requests because "[w]ith the finality of the priority tax payments, the IRS and Breland must start from the fact that the tax return amounts of income are valid." App.71a. Ultimately, Breland

chose not to adjudicate the objection to the general unsecured claim, and the funds that were placed in escrow ($1,349,378.46) were paid to the IRS. App.148a. Therefore, Breland never defaulted on any of his tax obligations under the Plan.

The United States appealed the Bankruptcy Court's denial of its motion for leave to amend its claim to the District Court. App.146a. On May 14, 2012, the District Court remanded the case to the Bankruptcy Court for the Bankruptcy Court to address two issues: (1) whether the Consent Order constituted an adjudication of the claim of the IRS sufficient to override the rationale of the Eleventh Circuit in *United States v. Gurwitch (In re Gurwitch)*, 794 F.2d 584 (11th Cir. 1986); and (2) whether the additional taxes the IRS asserted that Breland owed for years 2004-2008 were nondischargeable under 11 U.S.C. § 523. App.56a-58a.

On July 5, 2012, the Bankruptcy Court entered its order on remand to address the issues raised by the District Court. App.47a-55a. The Bankruptcy Court considered *Gurwitch*, in which the Eleventh Circuit held that, in general, 11 U.S.C. § 1141(d)(2) provides that confirmation of a Plan does not fix tax liabilities that are non-dischargeable under 11 U.S.C. § 523(a)(1). *See Gurwitch*, 794 F.2d at 585. However, the Bankruptcy Court held that *Gurwitch* was distinguishable because the Consent Order "detailed the extent of the taxes owed by [Breland], a fact not present in *Gurwitch*." App.52a. The Bankruptcy Court cited this Court's opinion in *United States v. International Building Company*, 345 U.S. 502, 505-06 (1953) for the proposition that joint stipulations between a taxpayer and the IRS are res judicata in subsequent proceedings. App.52a. The Bankruptcy Court held that the Consent Order "is the

controlling document as to the extent of the Debtor's tax obligations to the IRS." App.53a. The Bankruptcy Court further discussed the effect of the Consent Order it entered by the parties' agreement:

> The Consent Order contains a clear statement of the total IRS claim amount and divides that amount into priority and general unsecured values. Its terms were negotiated by the Debtor and the IRS and approved by this Court. The Consent Order settled a confirmation dispute and the IRS had notice. Moreover, by its terms, the Consent Order appears binding and complete. No specific limitation on the Consent Order's effect is indicated in its terms. **The IRS did not reserve the right to assert additional claims. Indeed, the Consent Order did not reserve any rights to the IRS, only to the Debtor. The purpose of the Consent Order is unclear if it was not meant to bind the IRS to its terms**.

App.53a (emphasis added). The Bankruptcy Court rejected the IRS's argument that the Plan's inclusion of 11 U.S.C. § 1141 preserves from discharge any liability that would be excepted from discharge under 11 U.S.C. § 523 because the Consent Order controlled and "relying on 11 U.S.C. § 507, 523, and 1141(d)(2) would ignore the voluntarily entered Consent Order completely and render it meaningless." App.53a-54a. Likewise, the Bankruptcy Court held that § 523 would not justify permitting IRS to assess additional taxes against Breland for the years at issue because § 523 would only be relevant if the Consent Order did not "operate[] as a determination of the debtor's tax liability." App.54a.

The Bankruptcy Court determined that the "issue is not whether tax debts are nondischargeable. . . . [because] the Consent Order's treatment, characterization, and limitation of the tax debt owed by Debtor controls." App.54a. Therefore, the Bankruptcy Court held that the "IRS is bound by the terms of the Consent Order which sets out the amount and character of the tax debt at issue." App.54a.

The United States again appealed the Bankruptcy Court's ruling to the District Court, and the District Court affirmed. App.43a-46a. The District Court stated that the IRS was "seek[ing] to back out of its agreement with the debtor and overturn the consent order" because it had "decided that its prior compromise and settlement may have undesirable consequences in a later proceeding." App.45a. The District Court further found that the Bankruptcy Court's application of *Gurwitch* was correct. App.45a-46a. The United States appealed this order to the Eleventh Circuit, but the parties ultimately stipulated to dismissal of that appeal. App.24a.

B. IRS's Administrative Collection Efforts and Tax Court Proceedings.

On June 4, 2012, while the IRS's motion for leave to amend its claims in the Bankruptcy Case was on remand from the District Court, the IRS issued a statutory notice of deficiency ("SNOD") to Breland and his spouse, asserting that Breland owed in excess of $16 million in deficiencies and penalties for tax years 2004, 2005, and 2008. App.132a-133a. Given that 26 U.S.C. § 6213(a) requires a taxpayer to file a petition with the Tax Court within ninety (90) days of mailing of a SNOD, Breland filed a petition in the Tax Court,

disputing the specific adjustments to income the IRS asserted in the SNOD and also asserting that the amounts sought to be assessed by the IRS were barred by estoppel, waiver, and res judicata. App.146a.

The Tax Court case was stayed given the pending bankruptcy proceedings. As noted above, during the course of the continued bankruptcy proceedings, Breland ultimately withdrew his objection and paid the full amount of the United States's general unsecured claim. App.148a. The 2009 bankruptcy case was closed on October 7, 2016. App.148a. Breland filed a second Chapter 11 proceeding on July 8, 2016, and the United States also filed claims (and amended claims) in that case for tax years 2004-2008 (inclusive), 2010, and 2015. App.148a-149a. The Bankruptcy Court in the 2016 bankruptcy case entered an order lifting the automatic stay so that the Tax Court case could proceed. App.149a.

On September 28, 2017, Breland filed a motion for summary judgment in the Tax Court case, asserting that the Consent Order entered by the Bankruptcy Court precluded the IRS from asserting additional tax liabilities. App.149a. On March 28, 2019, the Tax Court entered an opinion rejecting Breland's assertions in his summary judgment motion. App.18a-42a. Despite the clear language of the Consent Order and the Bankruptcy Court's orders providing that the Consent Order constituted an adjudication Debtor's federal income tax liability for years 2004-2008, the Tax Court held that the Consent Order was not res judicata or otherwise preclusive of the IRS's ability to assert that additional income taxes for the years in question were owed through assessment. The Tax Court held that the causes of action were not the same for purposes of

res judicata because it reasoned that the Consent Order only resolved the IRS's objection to confirmation of the Plan. App.26a-27a.

The Tax Court also held that collateral estoppel did not apply because Breland's total income tax liability for 2004-2008 was not an issue in the 2009 bankruptcy case. App.26a-28a. The Tax Court relied on § 523(a)(1)(A) of the Bankruptcy Code because certain tax debts are nondischargeable "whether or not a claim for such tax was filed or allowed." App.29a. The Tax Court also held, contrary to the orders of the Bankruptcy Court and District Court interpreting the Consent Order, that *Gurwitch* applied. App.29a-30a. The Tax Court additionally relied on *DePaolo v. United States (In re DePaolo)*, 45 F.3d 373, 377 (10th Cir. 1995), in which the Tenth Circuit held that sections 1141 and 523 of the Bankruptcy Code permit the IRS to make a claim for taxes for a certain year in a bankruptcy case, agree to an allowed amount with the debtor, and then assert additional claims regarding the tax owed for that same year. App.30a. However, the Tax Court also recognized that a bankruptcy court determination of tax deficiency claims can have preclusive effect but found that did not occur in Breland's case because the Consent Order did not reference 11 U.S.C. § 505. *See* App.34a. The Tax Court interpreted the Consent Order differently than the Bankruptcy Court (which entered the Consent Order and stated in subsequent orders that the parties intended it to be an adjudication of Breland's income tax liability for the years in question), finding that the IRS did not waive any of its rights under the Bankruptcy Code with respect to nondischargeable tax debts. App.34a. The Tax Court ultimately concluded that the Consent Order did not

determine Breland's tax liability for each year at issue, and thus the IRS was permitted to pursue alleged deficiencies by issuing the SNOD and attempting to assess the taxes set forth in the SNOD. App.41a-42a. On April 10, 2019, the Tax Court issued an Order denying Breland's motion for summary judgment based on its reasoning in the March 28, 2019 opinion. App.18a.

The Commissioner and Breland subsequently entered stipulations of fact that established the amounts that would be owed by Breland in the event an appeal of the Tax Court's legal conclusions regarding the preclusive effect of the Consent Order were unsuccessful. App.132a-151a. Based on these stipulations, on April 17, 2023, the Tax Court entered an "Order of Dismissal and Decision" whereby it held that there was a deficiency in income tax for 2004, no deficiency in income tax for 2008, and that the SNOD was issued too late for tax year 2005 such that the statute of limitations under 26 U.S.C. § 6501(a) had expired for that year. App.15a-17a. The Tax Court recognized in the Order of Dismissal and Decision that Breland intended to appeal the summary judgment orders and final judgment. App.15a-16a.

C. Eleventh Circuit Appeal

Breland appealed the Tax Court's final judgment to the United States Court of Appeals for the Eleventh Circuit. On May 31, 2024, the Eleventh Circuit issued its opinion affirming the judgment of the Tax Court. App.1a-14a. The Eleventh Circuit held that the Consent Order was not a final determination of Breland's tax liability for the tax years at issue because, according to the Eleventh Circuit, the Bankruptcy Court only resolved the amount to be allowed and paid under the

Plan. App.7a-8a. The Eleventh Circuit further held that the Consent Order did not prevent the IRS from assessing additional taxes beyond those taxes contemplated by the Plan. App.8a. The Eleventh Circuit discussed the procedures for administratively assessing taxes, noting that a tax "assessment is a recording of the amount a taxpayer owes the government and is the 'official recording of liability that triggers levy and collection efforts.'" App.8a (citing *Hibbs v. Winn*, 542 U.S. 88, 101 (2004)). The Eleventh Circuit acknowledged that "issuing a notice of deficiency and then making an assessment is the typical way the IRS collects." App.8a. However, the Eleventh Circuit noted that the IRS can bring a proceeding in court without assessment for collection of taxes owed. App.8a-9a (citing *Polselli v. Internal Rev. Serv.*, 598 U.S. 432, 442 (2023)). The Eleventh Circuit also held that the Consent Order did not constitute an adjudication of Breland's tax liability for years 2004-2008 because the Consent Order did not explicitly reference 11 U.S.C. § 505 nor did Breland or IRS file a motion requesting the Bankruptcy Court finally determine tax liability. *See* App.9a-10a.

Like the Tax Court, the Eleventh Circuit held that *Gurwitch* applied, contrary to the Bankruptcy Court's determination. App.10a. The Eleventh Circuit also relied on the Tenth Circuit's holding in *DePaolo*, 45 F.3d 373. App.11a. The Eleventh Circuit emphasized that tax debts are not dischargeable under 11 U.S.C. § 523 even if the IRS does not file a claim in the bankruptcy case. App.10a. The Eleventh Circuit also rejected Breland's interpretation of the Consent Order, finding that the IRS did not give up its administrative rights, including the right to assess additional taxes for the years in question, but instead only restricted

the IRS's ability to assess the taxes specifically set forth in the Plan and Consent Order. App.12a-14a. The Eleventh Circuit contradicted the interpretation of the Bankruptcy Court and found that nothing in the language of the Consent Order indicated that it was intended to apply to the IRS's ability to assess taxes not contemplated by the Plan or that the IRS forfeited rights to collect additional unpaid income taxes from the relevant years. App.13a-14a. Thus, the Eleventh Circuit considered the Consent Order and Plan as amended by the Consent Order to only prevent the IRS from assessing or collecting the taxes set forth in its allowed claims. App.14a. The Eleventh Circuit also held that the Consent Order did not prevent the IRS from issuing the SNOD, reasoning that even if the Consent Order states the IRS could not assess additional taxes, it does not prevent the IRS from issuing notices of deficiency because a "contractual restriction on assessment is not coextensive with a restriction on filing a notice of deficiency." App.14a n.7.

REASONS FOR GRANTING THE PETITION

Breland respectfully asserts that the Eleventh Circuit's legal conclusions regarding the preclusive effect of the Consent Order were incorrect as a matter of law and that compelling reasons exist for Court review of the questions presented herein. Breland notes that there are no factual disputes in question given that the parties stipulated to all material facts at issue.

I. The Eleventh Circuit's Order Improperly Permits the IRS to Repudiate Consent Orders or Stipulations in a Manner That Conflicts with Relevant Decisions of the Court, Decisions of Other United States Circuit Courts of Appeal, and Sanctions the Tax Court's Departure from the Accepted and Usual Course of Judicial Proceedings.

Breland respectfully asserts that the Eleventh Circuit and Tax Court have permitted the IRS to renege on a negotiated settlement agreement despite it having ample opportunity to conduct discovery related to the taxes at issue prior to confirmation. The potential consequences of the Eleventh Circuit's and Tax Court's judgments are massive given the effect those rulings have on taxpayers' ability to resolve disputes with taxing authorities. In this case, as recognized by the Bankruptcy Court, Breland negotiated his tax debts for the years in question, resulting in a Consent Order that provided that the IRS relinquished its administrative collection powers, including but not limited to the right to assess, unless Breland defaulted under the Plan. App.65a, 73a-75a. It is undisputed that Breland did not default under the Plan and paid the amounts stated in the Consent Order.

It is well-established by precedent of this Court and the United States Courts of Appeal that stipulations or consent orders entered by agreement of the parties are binding on the parties and interpreted according to principles of contract law. *See, e.g.*, *United States v. ITT Cont'l Baking Co.*, 420 U.S. 223, 236-37 (1975) ("[S]ince consent decrees and orders have many of the attributes of ordinary contracts, they should be construed basically as contracts. . . ."); *Ballou v. Asset*

Mktg. Servs., LLC, 46 F.4th 844, 862 (8th Cir. 2022) ("Courts construe a consent decree using principles of contract interpretation, and . . . discern the parties' intent from the unambiguous terms of the written consent decree.") (internal citations and quotations omitted); *Pottinger v. City of Miami*, 805 F.3d 1293, 1298 (11th Cir. 2015).

This principle has been explicitly recognized by this Court with respect to stipulations between the IRS and a taxpayer. For example, in *United States v. International Building Company*, 345 U.S. 502 (1953), the IRS assessed deficiencies in 1942 for three tax years (1933, 1938, and 1939), and the taxpayer filed a petition with the Tax Court, asserting that the alleged deficiencies were based on improper tax basis used by the IRS with respect to a leasehold owned by taxpayer. *Id.* at 503. While those proceedings were pending, the taxpayer filed for bankruptcy. *Id.* The United States filed a proof of claim in the bankruptcy case but later withdrew it under a stipulation that the withdrawal was without prejudice and did not constitute a determination of any liability for any tax year. *Id.* After the withdrawal of the claim in the bankruptcy case, the IRS and taxpayer filed stipulations in the Tax Court proceedings, which provided that there was no deficiency or tax liability for the years in question. *Id.* at 503-04. The Tax Court entered orders consistent with the stipulations. *Id.* at 504. This Court noted however that, "[t]he Tax Court ... held no hearing; no stipulations of fact were entered into; no briefs were filed or argument had." *Id.* In 1948, the IRS assessed deficiencies for years not at issue in the prior proceedings. However, the primary dispute between the IRS and taxpayer still involved the tax basis for the

leasehold that was the basis of the taxpayer's petition filed with the Tax Court after the 1942 assessment of deficiencies for 1933, 1938, and 1939. *See id.*

The taxpayer filed a second petition with the Tax Court and asserted that the Tax Court's judgment entered on the stipulation of the parties that no deficiency existed for 1933, 1938, and 1939 was res judicata of the fact that the taxpayer's asserted basis was correct. *Id.* The Court noted that the general rule of res judicata is that "[a] judgment is an absolute bar to a subsequent action on the same claim." *Id.* at 504-05 (citing *Cromwell v. County of Sac*, 94 U.S. 351, 352-53 (1876)). In applying this principle, the Court held that the first Tax Court judgment entered on stipulation of the parties that no deficiency existed was res judicata for tax years 1933, 1938, and 1939, "whether or not the basis of the agreements on which they rest reached the merits." *Id.* at 506. In other words, even though the Tax Court judgment and stipulations did not include specific statements of fact, nor were any briefs filed on the issue of the proper tax basis, the final order of the Tax Court on the claim for taxes owed for 1933, 1938, and 1939 was still a final determination of the amounts owed for those specific years. *Id. See also Arizona v. California*, 530 U.S. 392, 414 (2000) ("In most circumstances, it is recognized that consent agreements ordinarily are intended to preclude any further litigation on the claim presented.").

Breland respectfully asserts that the Eleventh Circuit and Tax Court's decisions in this matter conflict with the Court's judgment in *International Building Company* and the Circuit Courts of Appeals decisions referenced above holding that consent orders or orders entered subsequent to stipulations by the parties are

binding and interpreted like contracts. The Bankruptcy Court specifically acknowledged in its order denying the United States's motion for leave to amend its claim that the IRS had agreed in the Consent Order that its priority claims for taxes owed for tax years 2004 through 2008 were "allowed" and thus "adjudicated" under the terms of the Plan. App.65a. Thus, even if the Consent Order did not include specific findings of fact regarding the taxes owed by Breland, the amounts owed by Breland for tax years 2004 through 2008 were still adjudicated pursuant to the principles set forth by the Court in *International Building Company*. Notably, the IRS did not seek to conduct discovery or an audit until after confirmation and agreed to an Order adjudicating Breland's liability for the tax years in question. App.62a, 70a.

Furthermore, not only do the judgments of the Tax Court and Eleventh Circuit conflict with precedent of this Court and Circuit Courts of Appeal on the effect of consent orders or judgments entered based on stipulations, but they also reflect a departure from the accepted and usual course of judicial proceedings because those courts permit the government to essentially renege on settlements entered with a taxpayer who files bankruptcy. It is a well-accepted principle of interpretation of contracts that provisions of judgments and consent orders should not be rendered meaningless. *See Gosiger, Inc. v. Elliott Aviation, Inc.*, 823 F.3d 497, 502 (8th Cir. 2016) ("[A]n interpretation which gives a reasonable, lawful, and effective meaning to all terms is preferred to an interpretation which leaves a part unreasonable, unlawful, or of no effect."); *Claimant ID 100218776 v. BP Expl. & Prod., Inc.,* No. 16-30849*,* 712 F. App'x 372, 375 (5th Cir. Oct. 27, 2017)

("It is axiomatic that, to the extent possible, a court should interpret all the terms in a contract without rendering any of them meaningless or superfluous.") (internal quotations and citations omitted); *Pan Am. Realty Trust v. Twenty One Kings, Inc.*, 408 F.2d 937, 940 (3d Cir. 1969) ("A written contract is to be construed so as to give effect to all of its parts, and any construction which would render the agreement meaningless should be avoided."). The Bankruptcy Court held that the Consent Order did not permit the IRS to assess additional taxes for the years covered by the proof of claim unless Breland defaulted on his obligations under the Plan (and it is undisputed that he did not default). App.65a. The Bankruptcy Court even held that the IRS "clearly" gave up its right to assess additional taxes for the years referenced in the Consent Order. App.65a.

Breland respectfully requests that the Court grant the petition and issue a writ of certiorari to review the decision of the Eleventh Circuit as this case involves important federal matters regarding the settlement of tax debts between taxpayers and governmental authorities. Taxpayers and other creditors in bankruptcy cases need to be able to rely on the settlements reached with the IRS, and the Bankruptcy Court recognized that these parties did rely on the Consent Order. Breland believed he had compromised and paid the income tax owed for years 2004 through 2008, and the Bankruptcy Court agreed. App.69a. The District Court affirmed its orders. Despite the order denying its motion for leave to amend the claim expressly stating that the IRS had relinquished its administrative collection powers and rights, including the right of assessment of any additional taxes, the IRS went ahead and issued the SNOD

to Breland anyway. Because 26 U.S.C. § 6213(a) requires a taxpayer to file a petition in the Tax Court within ninety (90) days of mailing of a notice of deficiency, Breland had no choice but to initiate a Tax Court proceeding.

The Eleventh Circuit's judgment operates to bless the IRS's reneging on clearly negotiated adjudications of tax claims and restrictions on the IRS's ability to collect and assess taxes. The Court, respectfully, should step in and grant the petition to establish that negotiated adjudications between the IRS and taxpayers are binding such that a taxpayer can rely on such negotiated adjudications. It would be improper to permit such overreach by taxing authorities and also would promote settlement of tax claims by allowing taxpayers to rely on settlements reached with the IRS or other taxing authorities.

Breland further asserts that the Eleventh Circuit erred in relying on § 523(a)(1)(A)'s provision that certain tax debts are non-dischargeable even if no claim is filed. Even if certain tax debts are not dischargeable and no claim is needed to be filed in a case, the fact of the matter is in this case, the IRS did file several claims asserting priority tax claims for years 2004-2008 and then entered into the Consent Order adjudicating those claims. 11 U.S.C. § 507(a)(8) provides that priority tax claims consists of "a tax on or measured by income or gross receipts for a taxable year ending on or before the date of the filing of the petition." 11 U.S.C. § 507(a)(8). In other words, the alleged deficiencies set forth by the IRS in the SNOD could have been filed as part of the priority claims included in the IRS's various proofs of claim. The IRS did not and instead agreed to an adjudication of its

priority claims without conducting discovery before confirmation. As noted by the United States Bankruptcy Court for the District of New Jersey in *In re Matunas*, 261 B.R. 129 (Bankr. D.N.J. 2001), permitting assertions that additional tax debt is owed solely on reliance on the nondischargeability of tax debts by operation of § 523(a)(1) renders consent orders or stipulations adjudicating such claims meaningless. 261 B.R. at 134-35. The Bankruptcy Court also acknowledged that the nondischargeability of tax debt should not render the Consent Order's adjudication of those tax debt claims meaningless. App.53a-54a. The Tax Court and Eleventh Circuit's reliance on *Gurwitch* was thus misplaced because that case did not involve an agreed adjudication of priority claims. Likewise, while the Tenth Circuit's decision in *DePaolo* did involve a stipulation as to an amount of the claim, there is nothing in that case suggesting the stipulation was entered as a final adjudication of the claim, nor is there any indication the IRS relinquished its administrative collection rights like the IRS did in Breland's case. *See DePaolo*, 45 F.3d 373. Here, the Bankruptcy Court specifically held that the Plan's definition of "Allow" includes an "adjudication" of the claim.[3] Thus, consistent with *International Building Company*, the Eleventh Circuit should have enforced the Consent Order and reversed the Tax Court's judgment.

Additionally, Breland asserts that the Eleventh Circuit's holding that there was not an adjudication of Breland's income tax liability in the bankruptcy case because neither Breland nor the IRS filed a motion

[3] To the extent the holding in *DePaolo* permits the IRS to assess additional taxes for the same year(s) at issue in a prior adjudicated tax claim, Breland requests that the Court overrule *DePaolo*.

specifically invoking 11 U.S.C. § 505 conflicts with the very Circuit Court of Appeal decision on which the Eleventh Circuit relied. The Eleventh Circuit quotes *Internal Revenue Service v. Taylor (In re Taylor)*, 132 F.3d 256, 262 (5th Cir. 1998) for the proposition that "to involve § 505, typically one of the parties must 'file a motion requesting that the bankruptcy court make the determination under 11 U.S.C. § 505.'" App.9a. However, the Eleventh Circuit misconstrued *Taylor* and effectively created a Circuit split on the issue of whether the tax determination process in bankruptcy cases can only be invoked by filing a motion under 11 U.S.C. § 505. In *Taylor*, the government filed an income tax proof of claim for unpaid income taxes for 1992, which it withdrew after debtor objected. 132 F.3d at 259. After confirmation, the IRS sent a notice to debtor that he was personally liable for a penalty under 26 U.S.C. § 6672 for his entity's failure to pay withholding taxes. *Id.* This penalty was not part of the IRS's claim for income taxes for 1992. The confirmed plan referenced § 505, but no motion was filed by the debtor nor was a proof of claim filed with respect to the § 6672 penalty. The debtor asserted that the confirmed plan was res judicata with respect to the § 6672 penalty.

The Fifth Circuit rejected debtor's argument, but it did not hold that a motion under § 505 is necessary for a bankruptcy court to adjudicate a debtor's tax liability. *See id.* at 261-62. On the contrary, it held that to invoke the tax determination process, the debtor could have also filed a proof of claim on behalf of the IRS related to the § 6672 penalty and then objected to it. *Id.* at 262. The Fifth Circuit explicitly held that, "we require an objection to a proof of claim or a § 505

motion to determine the amount of a tax debt." *Id.* at 263. In this case, the IRS filed several proofs of claim, and Breland objected to the IRS's claim and filed the Plan, which by its initial terms was not going to pay the IRS's stated claim in full. The Consent Order was entered after the IRS and debtor invoked the tax determination process for Breland's income tax liability for the years at issue based on the holding in *Taylor*. While the *Taylor* court rejected the debtor's assertion that the IRS's filing a proof of claim and his objection to it invoke the tax determination process, it did so because the tax debt in the proof of claim was for income taxes while the tax that debtor asserted was res judicata under the plan was a different type and based on debtor's liability for the taxes owed by another. Here, the tax debts at issue in the IRS's proofs of claim were Breland's 2004-2008 personal income taxes, which is exactly the same type of tax and years at issue in the Tax Court case. Had the Eleventh Circuit followed the Fifth Circuit's holding in *Taylor*, it would have held that the filing of the proof of claim and Breland's objection to it invoked the tax determination process without the necessity of a § 505 motion. There is thus a split in the Circuit Courts of Appeal regarding whether tax determinations require a § 505 motion. The Court, respectfully, should grant the petition in part to resolve this split.

Likewise, the Court should reject the Eleventh Circuit's interpretation of the Consent Order with respect to the administrative rights of the IRS. The Eleventh Circuit focused only on the Consent Order's restriction as to assessment and ignored that the IRS relinquished the "administrative collection powers and the rights of the United States," not merely the

right of assessment. The Eleventh Circuit essentially rendered meaningless this entire provision by focusing solely on assessment and noting the Consent Order did not include a restriction on the IRS's right to issue notices of deficiency. The Eleventh Circuit itself noted that the issuance of a notice of deficiency and a subsequent assessment "is the typical way the IRS collects." App.8a. It is nonsensical to state the IRS relinquished collection powers but did not relinquish its right to issue notices of deficiency. This is particularly the case given that the IRS issued the SNOD pursuant to 26 U.S.C. § 6212, which is located in Chapter 63 of the Internal Revenue Code. Chapter 63 governs "assessment." Therefore, the issuance of a notice of deficiency is merely a step in the assessment process. The Eleventh Circuit's judgment thus rendered the Consent Order meaningless in more ways than one because that court read the Consent Order to only include a restriction on assessment and not other collection powers.

Similarly, the fact that the IRS can file a suit to collect a tax debt without assessment under 26 U.S.C. § 6501(a) is not persuasive. First, there is no indication in the Consent Order that the relinquishment of administrative collection powers would not also include a relinquishment on the right to sue without assessment. Second, even if the IRS could sue without assessment, it did not do so in this case and attempted to assess taxes in the "typical" course by issuing the SNOD. This Court has noted that the term "assessment" "refers to the official recording of a taxpayer's liability that triggers levy and collection efforts." *Hibbs v. Winn*, 542 U.S. 88, 101 (2004). The Consent Order's plain terms restrict more than the mere official recording of

liability and applies to all administrative collection rights. This is yet another way in which the Eleventh Circuit deviated from the well-established legal principle that consent orders should not be rendered meaningless. Breland reached a settlement on the IRS's priority tax claims, and the Bankruptcy Court specifically interpreted the Consent Order to include an adjudication on the amount of taxes owed by Breland for the years at issue. The IRS reneged on that settlement in contravention of well-established legal principles, and the Tax Court and Eleventh Circuit blessed this reneging. Breland requests that the Court grant the petition to correct this error so that taxpayers will be entitled to the benefits of their bargains with the IRS.

II. The Eleventh Circuit's Rejection of the Orders of the Bankruptcy Court and District Court Conflicts with Well-Accepted Principles of Res Judicata Established by This Court and the United States Circuit Courts of Appeal.

As noted above, this Court in *International Building Company* acknowledged that principles of res judicata and collateral estoppel apply to judgments entered on stipulations of the parties. The Courts of Appeal have also recognized that consent decrees entered on the agreement of the parties are still judgments with the same force of res judicata. *See, e.g.*, *Paradise v. Prescott*, 767 F.2d 1514, 1524 (11th Cir. 1985). With respect to res judicata, this Court has held that, "[a] final judgment on the merits of an action precludes the parties or their privies from relitigating issues that were or could have been raised in that action." *Federated Dept. Stores, Inc. v. Moitie*, 452 U.S. 394, 398 (1981). *International Building Company*

applied this principle to claims for tax years that were adjudicated by the agreement of the parties. *See* 345 U.S. at 504-06. Here, the Bankruptcy Court found that Breland's tax debt was adjudicated in the Consent Order given the terms of the Consent Order and Plan. App.65a. The Eleventh Circuit and Tax Court held that that case did not apply because the adjudication in *International Building Company* was made by the Tax Court and was an adjudication of total tax liability for the years in question, but they completely ignored that the Plan and Consent Order's terms provide that Breland's tax liability for the years in question was adjudicated. The fact that Breland and the IRS agreed to an adjudication of the priority tax claims for 2004-2008 puts this case squarely on point with *International Building Company*, and thus the Eleventh Circuit's Opinion is contrary to this Court's decisions on the application of res judicata in a tax case. The tax years at issue in the IRS's proofs of claim are the same as those involved in the Tax Court proceeding, and *International Building Company* instructs that any claims for additional taxes allegedly due for the same year are barred.

The Eleventh Circuit and Tax Court improperly held that the Consent Order and Plan did not constitute an adjudication of Breland's tax liability on the grounds that tax debts for income tax owed are not dischargeable even if no claim is filed in the bankruptcy case. App.9a-11a (citing *In re Gurwitch*, 794 F.2d at 585-86). A claim was filed, and Breland negotiated with the IRS under the belief he was settling his tax liability for the years at issue. App.69a. While it is true that the IRS typically can recover nondischargeable taxes owed without filing a claim in the bankruptcy

case, via the Consent Order, the IRS relinquished all administrative collection rights, including the right to recover nondischargeable taxes. The IRS traded its right to assess nondischargeable income taxes due in exchange for payment of its priority tax claims in full. Thus, the Court should reject the Eleventh Circuit's reasoning that *Gurwitch* and *DePaolo* apply to prevent operation of res judicata. The IRS's claims for taxes owed for years 2004-2008 were adjudicated by consent of the IRS, and it should be held to the Consent Order it negotiated with Breland.[4] The intent of the parties, as the Bankruptcy Court recognized, was to adjudicate Breland's tax liability for the years at issue. *See Consumer Fin. Prot. Bureau v. Ocwen Fin. Corp.*, 30 F.4th 1079, 1084 (11th Cir. 2022) ("To determine the preclusive effect of a consent judgment, we must apply traditional principles of contract law to ascertain the parties' intent.").

Breland respectfully asserts that the Court should grant the petition because the Eleventh Circuit and Tax Court clearly departed from this Court's prior rulings related to the doctrine of res judicata, including

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[4] With respect to collateral estoppel, the Tax Court held that there was no indication that the issue of Breland's total federal tax liability was at issue before the Bankruptcy Court. App.42a. However, the Tax Court and Eleventh Circuit improperly held that res judicata did not apply because the consent decree in fact included an adjudication of Breland's federal tax liability given the terms of the Consent Order and Plan. Thus, even if collateral estoppel does not apply given the basic principle that consent orders "ordinarily are intended to preclude further litigation on the claim presented but are not intended to preclude further litigation on any of the issues presented," *see Arizona v. California*, 530 U.S. 392, 414 (2000), the Eleventh Circuit's judgment is still legally improper given that res judicata applies.

but not limited to *International Building Company*. Furthermore, this departure from accepted principles of res judicata constitutes a severe departure from accepted and usual course of judicial proceedings. *See* Sup. Ct. R. 10. This Court has recognized repeatedly that the doctrine of res judicata exists to promote judicial economy and avoid uncertainty and confusion that arises from inconsistent judgments. *See, e.g.*, *Moitie*, 452 U.S. at 398-98 ("We have observed that the indulgence of a contrary view would result in creating elements of uncertainty and confusion and in undermining the conclusive character of judgments, consequences which it was the very purpose of the doctrine of res judicata to avert.") (internal quotations and citations omitted); *Parklane Hosiery Co., Inc. v. Shore*, 439 U.S. 322, 327 (1979) (res judicata and collateral estoppel have "the dual purpose of protecting litigants from the burden of relitigating an identical issue with the same party or his privy and of promoting judicial economy by preventing needless litigation").

The purposes of res judicata have been thwarted in this case by the IRS, by the Tax Court's ruling, and by the Eleventh Circuit's ruling. The IRS and Breland negotiated a settlement of Breland's tax liability; the Bankruptcy Court explicitly stated this was the effect of the Consent Order in its order denying the motion for leave to amend the priority tax claims. App.53a. When the IRS was unhappy with the Bankruptcy Court's determination that the IRS had via the Consent Order and Plan relinquished its rights, including the right to assess additional taxes for the tax years at issue in its proofs of claim, it went ahead and violated its agreement with Breland and issued the SNOD despite a lack of default by Breland. This required

needless litigation in a second forum, the Tax Court, except rather than properly apply res judicata and grant summary judgment, the Tax Court instead blessed the actions of the IRS. The Court should, respectfully, grant the petition to address the questions presented so that taxpayers in bankruptcy can be sure that if the IRS agrees to adjudicate its claims in the bankruptcy forum and consents to an order to that effect, that agreement will be binding and not subject to being ignored in subsequent proceedings. That is exactly what happened here despite this Court's established precedent.

CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be granted.

Respectfully submitted,

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