No. 20-1472

In the Supreme Court of the United States

BOECHLER, P.C., PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE

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

BRIEF FOR THE RESPONDENT IN OPPOSITION

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QUESTION PRESENTED

Whether the statutory deadline for seeking Tax Court review of a determination of the Internal Revenue Service Office of Appeals following a collection-due-process hearing, 26 U.S.C. 6330(d)(1), is jurisdictional.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-12a) is reported at 967 F.3d 760. The order of the Tax Court (Pet. App. 13a-15a) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on July 24, 2020. A petition for rehearing was denied on November 17, 2020 (Pet. App. 16a-17a). On March 19, 2020, this Court extended the time within which to file a petition for a writ of certiorari to 150 days from the date of the lower-court judgment, order denying discretionary review, or order denying a timely petition for rehearing. The effect of that order was to extend the deadline for filing a petition for a writ of certiorari in this case to April 16, 2021, and the petition was filed on that date. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. a. The Internal Revenue Code generally requires an employer to provide to each of its employees a Form W-2 showing the wages that the employee was paid and the taxes that the employer has withheld. 26 U.S.C. 6051(a); see generally 26 U.S.C. 3402. The employer must also send a copy of its employees' W-2s to the Social Security Administration, along with a Form W-3 reporting the employer's aggregate wages and withheld taxes. 26 U.S.C. 6051(d); 26 C.F.R. 31.6051-2(a). In addition, the employer must report to the Internal Revenue Service (IRS) on Form 941 the taxes that it has withheld from its employees. See 26 C.F.R. 31.6011(a)-4(a).

In June 2015, the IRS sent a letter to petitioner, a law firm, noting a discrepancy between the amounts of its employees' earnings and tax withholdings that petitioner had reported on its own tax returns (Form 941) and the amounts that petitioner reported to the Social Security Administration (Forms W-2 and W-3). Pet. App. 2a; C.A. App. 6. The IRS informed petitioner that it would assess a penalty against petitioner under 26 U.S.C. 6721(e)(2)(A) if petitioner did not file corrected forms or explain the discrepancy within 45 days. C.A. App. 6. Section 6721 imposes a penalty, which is treated as a tax for purposes of the Internal Revenue Code, see 26 U.S.C. 6671(a), for a failure to file a timely return, for a failure to include all required information, or for "the inclusion of incorrect information." 26 U.S.C. 6721(a)(2). If the failure (or inclusion of incorrect information) was "due to intentional disregard of the filing requirement (or the correct information reporting requirement)," then the penalty for the type of return at issue here is the greater of $500 and "10 percent of the

aggregate amount of the items required to be reported correctly." 26 U.S.C. 6721(e)(2)(A).

The IRS did not receive a response from petitioner to its June 2015 letter. Pet. App. 2a. In September 2015, the IRS assessed against petitioner a ten-percent intentional-disregard penalty of $19,250.37. Gov't C.A. Br. 5; C.A. App. 6. Petitioner did not pay the penalty. Pet. App. 2a.

b. In July 2016, the IRS mailed to petitioner a notice of intent to levy on petitioner's property to collect the unpaid amount plus interest. C.A. App. 10. In October 2016, after petitioner still had not paid, the IRS mailed to petitioner a final notice of intent to levy. *Id.* at 5, 12.

The IRS's final notice of intent to levy informed petitioner of its right to request what is known as a collection-due-process hearing under 26 U.S.C. 6330, within what is now called the IRS Independent Office of Appeals (previously known as the Office of Appeals). C.A. App. 5, 12; see Taxpayer First Act, Pub. L. No. 116-25, Tit. I, Subtit. A, § 1001(b)(1)(C) and (3), 133 Stat. 985 (changing Office's name). Section 6330, enacted in 1998, see Taxpayer Bill of Rights 3, Pub. L. No. 105-206, Tit. III, § 3401(b), 112 Stat. 747, entitles a taxpayer whose property the IRS seeks to levy to request a hearing before an impartial officer in the Independent Office of Appeals. See 26 U.S.C. 6330. The taxpayer may raise at the hearing "any relevant issue relating to the unpaid tax or the proposed levy," including challenges to the appropriateness of the collection action and offers of collection alternatives, 26 U.S.C. 6330(c)(2)(A)—and, "if the person did not receive any statutory notice of deficiency for such tax liability or did not otherwise have an opportunity to dispute such tax liability,"

"challenges to the existence or amount of the underlying tax liability," 26 U.S.C. 6330(c)(2)(B).

The IRS generally may not make a levy on property to satisfy a tax debt before it notifies the taxpayer of its right to request a collection-due-process hearing. 26 U.S.C. 6330(a)(1). A taxpayer's request for such a hearing generally suspends the levy proceedings—as well as limitation periods applicable to tax collection, criminal prosecution, and other tax-related actions. 26 U.S.C. 6330(e)(1). Section 6330 expressly authorizes a court (including the Tax Court) to enjoin any levy actions commenced during that suspension. *Ibid.*

At the conclusion of a collection-due-process hearing, the Independent Office of Appeals issues to the taxpayer a notice of determination setting forth its findings and decision. See 26 U.S.C. 6330(c)(3); see also 26 C.F.R. 301.6330-1(e)(3). Section 6330(d)(1) makes the Independent Office of Appeals' determination at the conclusion of the collection-due-process hearing reviewable in the Tax Court. It provides that the taxpayer "may, within 30 days of a determination under this section, petition the Tax Court for review of such determination (and the Tax Court shall have jurisdiction with respect to such matter)." 26 U.S.C. 6330(d)(1). Section 6320 establishes substantially the same framework, including collection-due-process hearings and review in the Tax Court, for tax liens. 26 U.S.C. 6320(c); see generally 26 U.S.C. 6320.

c. Petitioner timely requested a collection-due-process hearing. C.A. App. 5, 11. The Independent Office of Appeals conducted a hearing, and on July 28, 2017, it mailed a notice of determination to petitioner sustaining the proposed levy. Pet. App. 2a; see C.A.

App. 3-9. The notice of determination advised petitioner that, if petitioner "want[ed] to dispute this determination in court, [it] must file a petition with the United States Tax Court within a 30-day period beginning the day after the date of this letter" and that "[t]he law limits the time for filing your petition to the 30-day period * * * . The courts cannot consider your case if you file late." C.A. App. 3.

2. a. The 30-day period for filing a petition for review ended on August 27, 2017, a Sunday. Pet. App. 14a. The deadline for petitioner to file a petition in the Tax Court for review of the notice of determination was therefore Monday, August 28, 2017. *Ibid.*; see 26 U.S.C. 7503. For filings sent by mail, the Internal Revenue Code treats a document received after the applicable filing deadline as timely if the document was mailed within the time for filing. 26 U.S.C. 7502(a). To file a timely petition by mail, petitioner therefore had to mail its petition on or before August 28, 2017. Pet. App. 2a.

Petitioner mailed a petition for review to the Tax Court, but it did so one day late, on August 29, 2017. Pet. App. 2a, 14a. On September 1, 2017, the Tax Court received the petition and docketed the case. *Id.* at 14a.

b. The Tax Court dismissed the case for lack of jurisdiction based on petitioner's failure to file its petition within the period prescribed by Section 6330(d)(1). Pet. App. 13a-15a. The court rejected petitioner's contention that its untimely filing should be excused based on principles of equitable tolling. *Id.* at 14a-15a. The court observed that it had "repeatedly held that 'the 30-day period provided in section 6330(d)(1) for the filing for a petition for review is jurisdictional.'" *Id.* at 15a (citing *Gray* v. *Commissioner*, 138 T.C. 295, 299 (2012)) (brack-

ets omitted). The court explained that, "because the statutorily prescribed filing period is jurisdictional, the period is not subject to equitable tolling." *Ibid.* (citing *Sebelius* v. *Auburn Reg'l Med. Ctr.*, 568 U.S. 145, 154 (2013), *Guralnik* v. *Commissioner*, 146 T.C. 230, 237-238 (2016), and *Pollock* v. *Commissioner*, 132 T.C. 21, 29 (2009)).

3. The court of appeals affirmed. Pet. App. 1a-12a.

a. The court of appeals agreed with the Tax Court that Section 6330(d)(1)'s filing deadline is jurisdictional and therefore not subject to equitable tolling. Pet. App. 3a-8a. The court of appeals explained that "a statutory time limit is jurisdictional when Congress clearly states that it is" and that courts "determine whether Congress made the necessary clear statement by examining 'the text, context, and relevant historical treatment of the provision at issue.'" *Id.* at 4a-5a (quoting *Musacchio* v. *United States*, 577 U.S. 237, 246 (2016)). The court recognized that "Congress must do something special, beyond setting an exception-free deadline, to tag a time limit as jurisdictional and so prohibit a court from tolling it," *id.* at 4a-5a (quoting *United States* v. *Kwai Fun Wong*, 575 U.S. 402, 410 (2015)) (brackets omitted), and that "[m]ere proximity to a jurisdictional provision is insufficient," *id.* at 4a (citing *Auburn Reg'l Med. Ctr.*, 568 U.S. at 155-156). The court explained, however, that "Congress does not have to 'incant magic words' to make a deadline jurisdictional if the 'traditional tools of statutory construction . . . plainly show that Congress imbued a procedural bar with jurisdictional consequences.'" *Id.* at 5a (quoting *Kwai Fun Wong*, 575 U.S. at 410).

Applying that standard, the court of appeals determined that "[t]he statutory text of § 6330(d)(1) is a rare instance where Congress clearly expressed its intent to

make the filing deadline jurisdictional." Pet. App. 6a. The court reasoned that "[t]he parenthetical '(and the Tax Court shall have jurisdiction with respect to such matter)' is clearly jurisdictional" and that the link between that phrase and "the remainder of the sentence" renders the entire provision jurisdictional. *Ibid.*; see *id.* at 6a-7a. The court observed that "the phrase '*such matter*' refers to a petition to the [T]ax [C]ourt that: (1) arises from 'a determination under this section' and (2) was filed 'within 30 days' of that determination." *Id.* at 6a-7a. The court determined that Congress's "use of '*such matter*' 'plainly shows that Congress imbued a procedural bar with jurisdictional consequences,'" by "provid[ing] [a] link between the 30-day filing deadline and the grant of jurisdiction to the [T]ax [C]ourt that other statutory provisions lack." *Id.* at 7a (quoting *Kwai Fun Wong*, 575 U.S. at 410) (brackets omitted); see *ibid.* (citing *Auburn Reg'l Med. Ctr.*, 568 U.S. at 154, *Gonzalez* v. *Thaler*, 565 U.S. 134, 146-147 (2012), and *Henderson* v. *Shinseki*, 562 U.S. 428, 438 (2011)). The court acknowledged that "there might be alternative ways that Congress could have stated the jurisdictional nature of the statute more plainly," but it concluded that Congress "has spoken clearly enough to establish that § 6330(d)(1)'s 30-day filing deadline is jurisdictional." *Id.* at 7a-8a.

In reaching that conclusion, the court of appeals stated that it found "persuasive" the Ninth Circuit's reasoning in *Duggan* v. *Commissioner*, 879 F.3d 1029 (2018), which had "held that § 6330(d)(1) is jurisdictional." Pet. App. 6a. The court of appeals noted the Ninth Circuit's observations that "§ 6330(d)(1) 'expressly contemplates the Tax Court's jurisdiction' and 'makes timely filing of the petition a condition of the Tax Court's jurisdiction,'"

and that "'the filing deadline is given in the same breath as the grant of jurisdiction.'" *Ibid.* (quoting *Duggan*, 879 F.3d at 1034). In contrast, the court of appeals was unpersuaded by petitioner's reliance on *Myers* v. *Commissioner*, 928 F.3d 1025 (D.C. Cir. 2019), in which a divided panel had held that a different but similarly worded provision in a separate section of the Internal Revenue Code, 26 U.S.C. 7623(b)(4), is not jurisdictional. Pet. App. 5a-6a.

b. Judge Kelly issued an opinion concurring in part and concurring in the judgment. Pet. App. 10a-12a. In her view, the panel majority's conclusion that Section 6330(d)(1)'s filing deadline is jurisdictional was compelled by Eighth Circuit precedent. See *id.* at 10a (citing *Hauptman* v. *Commissioner*, 831 F.3d 950, 953 (8th Cir. 2016)). Judge Kelly stated, however, that as an original matter she would not have concluded that Section 6330(d)(1)'s filing deadline is jurisdictional. See *id.* at 12a.

4. The court of appeals denied petitioner's petition for panel rehearing or rehearing en banc. Pet. App. 16a-17a. Judges Loken, Colloton, and Kelly noted that they would have granted rehearing en banc. *Id.* at 16a.

ARGUMENT

Petitioner contends (Pet. 15-22) that the Tax Court erred in dismissing for lack of jurisdiction its petition for review of the Independent Office of Appeals' determination following a collection-due-process hearing, based on petitioner's failure to file the petition before the deadline set forth in 26 U.S.C. 6330(d)(1). The court of appeals correctly rejected that contention, and its decision does not conflict with any decision of this Court or of another court of appeals. That question also lacks practical significance because the Section 6330(d)(1)

deadline would not be subject to equitable exceptions even if it were not jurisdictional. In any event, petitioner would have no sound claim to an equitable exception even if Section 6330(d)(1) permitted that approach. Further review is not warranted.

1. The court of appeals held that the deadline imposed by 26 U.S.C. 6330(d)(1) for seeking Tax Court review of a notice of determination is jurisdictional. Pet. App. 3a-8a. That holding is correct and does not warrant further review.

a. To determine whether a statutory deadline for seeking judicial review is jurisdictional, courts ask whether "traditional tools of statutory construction * * * plainly show that Congress imbued [the] procedural bar with jurisdictional consequences." *United States* v. *Kwai Fun Wong*, 575 U.S. 402, 410 (2015). Although Congress must "speak clearly" to give a deadline jurisdictional significance, it need not "incant magic words." *Sebelius* v. *Auburn Reg'l Med. Ctr.*, 568 U.S. 145, 153 (2013). Instead, in ascertaining whether "Congress has made the necessary clear statement," courts "examine the 'text, context, and relevant historical treatment' of the provision at issue." *Musacchio* v. *United States*, 577 U.S. 237, 246 (2016) (quoting *Reed Elsevier, Inc.* v. *Muchnick*, 559 U.S. 154, 166 (2010)). Thus, for example, although the statutory text itself may provide a clear indication that a time limit is jurisdictional by "expressly refer[ring] to subject-matter jurisdiction or speak[ing] in jurisdictional terms," *ibid.*, "'precedent and practice in American courts'" may also demonstrate that Congress chose to "rank a time limit as jurisdictional." *Auburn Reg'l Med. Ctr.*, 568 U.S. at 155 (quoting *Bowles* v. *Russell*, 551 U.S. 205, 209 n.2 (2007)); see *John R. Sand & Gravel Co.* v. *United States*,

552 U.S. 130, 133-139 (2008). The court of appeals here properly applied those principles in determining, in accord with a longstanding lower-court consensus addressing analogous provisions prior to Section 6330(d)(1)'s enactment, that Section 6330(d)(1) establishes a jurisdictional deadline. Pet. App. 4a-8a.

i. This Court has recognized that "Congress may make * * * prescriptions jurisdictional by incorporating them into a jurisdictional provision, as Congress has done with the amount-in-controversy requirement for federal-court diversity jurisdiction" in 28 U.S.C. 1332(a). *Fort Bend Cnty.* v. *Davis*, 139 S. Ct. 1843, 1849 (2019). Congress did just that in Section 6330(d)(1). That provision states that "[t]he person" whose property is the subject of a collection-due-process hearing "may, within 30 days of a determination under [Section 6330], petition the Tax Court for review of such determination (and the Tax Court *shall have jurisdiction* with respect to such matter)." 26 U.S.C. 6330(d)(1) (emphasis added). Section 6330(d)(1) "speak[s] in jurisdictional terms" by "expressly refer[ring] to" the Tax Court's "subject matter jurisdiction." *Musacchio*, 577 U.S. at 246. Its jurisdictional language "is given in the same breath as" the phrase prescribing the statutory deadline for seeking Tax Court review, which appears in the same sentence. *Duggan* v. *Commissioner*, 879 F.3d 1029, 1034 (9th Cir. 2018).

"[T]he filing period and the grant of jurisdiction," moreover, "are explicitly linked." *Guralnik* v. *Commissioner*, 146 T.C. 230, 237 (2016). As the court of appeals observed, the phrase "such matter" in the parenthetical clause conferring jurisdiction—"(and the Tax Court shall have jurisdiction with respect to such matter)"—most naturally refers to both the "determination under

this section" of which a person seeks judicial review and the "petition * * * for review of such determination" by which such review may be sought if filed "within 30 days of [the] determination." 26 U.S.C. 6330(d)(1); see Pet. App. 6a-7a. By tethering the grant of jurisdiction to the determination and time-limited petition described earlier in the same sentence, the "such matter" phrase reflects that both the collection-due-process determination and a timely petition are essential predicates of the Tax Court's jurisdiction. The statute's language and logic thus demonstrate that Congress "condition[ed] the Tax Court's jurisdiction on the timely filing of a petition for review." *Duggan*, 879 F.3d at 1035.

ii. The statutory context reinforces that understanding of Section 6330(d)(1)'s text. Another, nearby portion of Section 6330 specifies that, if a collection-due-process hearing is requested, "the levy actions which are the subject of the requested hearing * * * shall be suspended for the period during which such hearing, and appeals therein, are pending." 26 U.S.C. 6330(e)(1). To enforce that suspension, Section 6330(e)(1) authorizes "the proper court, including the Tax Court," to "enjoin[]" a "levy or proceeding during the time the suspension * * * is in force." *Ibid.* But Section 6330(e)(1) makes the Tax Court's jurisdiction to grant such relief contingent on the filing of a timely petition, by providing that "[t]he Tax Court shall have no jurisdiction under this paragraph to enjoin any action or proceeding unless a timely appeal has been filed under subsection (d)(1)." *Ibid.*

As courts of appeals have recognized in the context of other, similar provisions of the Internal Revenue Code, it would be incongruous for Congress to make the filing of a timely petition a jurisdictional prerequisite to

that particular remedy, but not a jurisdictional prerequisite to the proceeding itself. See, *e.g.*, *Organic Cannabis Found., LLC* v. *Commissioner*, 962 F.3d 1082, 1094 (9th Cir. 2020) (concluding that 26 U.S.C. 6213(a)'s filing deadline for a petition for redetermination of a tax deficiency is jurisdictional, in part because it "seems clearly to reflect an understanding that the manner in which the Tax Court *acquires* jurisdiction over a deficiency dispute is through the filing of a 'timely petition'"), cert. denied, Nos. 20-1014 and 20-1031 (May 3, 2021); *Tilden* v. *Commissioner*, 846 F.3d 882, 886 (7th Cir. 2017) (similar); *Nauflett* v. *Commissioner*, 892 F.3d 649, 653 (4th Cir. 2018) (concluding that 26 U.S.C. 6015(e)(1)'s filing deadline for a petition for review of an innocent-spouse determination is jurisdictional based in part on a similar provision addressing injunctive relief); *Matuszak* v. *Commissioner,* 862 F.3d 192, 197 (2d Cir. 2017) (per curiam) (same).

Moreover, if Section 6330(d)(1)'s deadline allowed the Tax Court to exercise jurisdiction over untimely petitions, then the ban on levy actions by the IRS to collect the tax until the time for seeking Tax Court review has expired (or during the pendency of such review) would *lapse* at the end of the 30-day period for seeking such review, but the ban would then *revive* if the Tax Court subsequently accepted a late-filed petition, a possibility that petitioner appears (Pet. 20 n.5) to embrace. See *Organic Cannabis,* 962 F.3d at 1094 (making the same observation in the context of 26 U.S.C 6213(a)). But "the Tax Court would then unquestionably lack jurisdiction to enjoin violations of that prohibition—thereby necessitating a *separate* court proceeding in the district court to do so." *Ibid.* "Nothing in the statute suggests

that Congress intended to pointlessly require such a peculiar dual-track mode of procedure." *Ibid.*

The jurisdictional character of Section 6330(d)(1)'s deadline for seeking Tax Court review is confirmed by that provision's place in the broader, highly reticulated statutory scheme for tax collection. When a collection-due-process hearing is requested, multiple other, enumerated "periods of limitations" that govern tax collection and enforcement are also "suspended for the period during which such hearing, and appeals therein, are pending." 26 U.S.C. 6330(e)(1). Those periods include the time that the government has to collect a tax, 26 U.S.C. 6502; to prosecute a tax offense, 26 U.S.C. 6531; and to collect an erroneous refund, 26 U.S.C. 6532(b). They also include the period available to taxpayers for bringing a tax-refund suit. 26 U.S.C. 6532(a); see 26 U.S.C. 6330(e)(1). As the Third Circuit observed in determining that the statutory period under Section 6015(e) for seeking Tax Court review of innocent-spouse determinations is jurisdictional, the "period is meant to allocate when different components of the tax system have the authority to act." *Rubel* v. *Commissioner*, 856 F.3d 301, 305 (2017). The statutory "structure" thus further "reflects Congress's intent to set the boundaries of the Tax Court's authority" by making the filing of a petition within the prescribed period a jurisdictional requirement for review. *Ibid.*

iii. Finally, longstanding judicial interpretation of provisions of the Internal Revenue Code that are similar in structure and purpose confirms that Section 6330(d)(1)'s filing deadline is jurisdictional. For example, 26 U.S.C. 6213(a), which addresses Tax Court review of a petition for a redetermination of a tax deficiency, provides that, "[w]ithin 90 days * * * after the

notice of deficiency * * * is mailed" to a taxpayer in the United States, "the taxpayer may file a petition with the Tax Court for a redetermination of the deficiency." *Ibid.* By 1998, when Section 6330(d)(1) was enacted, the jurisdictional nature of Section 6213(a)'s time limit was well established in the courts of appeals. See *Tadros* v. *Commissioner*, 763 F.2d 89, 91 (2d Cir. 1985); *Pugsley* v. *Commissioner*, 749 F.2d 691, 692 (11th Cir. 1985) (per curiam); *Johnson* v. *Commissioner*, 611 F.2d 1015, 1018 (5th Cir. 1980); *Shipley* v. *Commissioner*, 572 F.2d 212, 213 (9th Cir. 1977) (per curiam); *Andrews* v. *Commissioner*, 563 F.2d 365, 366 (8th Cir. 1977) (per curiam); *Ryan* v. *Alexander*, 118 F.2d 744, 750 (10th Cir.), cert. denied, 314 U.S. 622 (1941). This Court "normally assume[s] that, when Congress enacts statutes, it is aware of relevant judicial precedent." *Merck & Co.* v. *Reynolds*, 559 U.S. 633, 648 (2010). By including in Section 6330(d)(1) a very similar statutory deadline for Tax Court review that employs even stronger textual and contextual indications of its jurisdictional character, Congress presumably intended the same settled understanding to apply to that new deadline. See *ibid.*

That settled body of precedent also puts the Tax Court on "equal footing" with another Article I court, the Court of Federal Claims. *Tilden*, 846 F.3d at 887. In light of history and purpose, this Court has construed the statutory deadline for filing suit in the Court of Federal Claims as a jurisdictional rule. *John R. Sand & Gravel Co.*, 552 U.S. at 133-139. The court of appeals correctly held that Section 6213(a)'s deadline for seeking Tax Court review is likewise jurisdictional.

b. Petitioner's contrary arguments lack merit.

Petitioner correctly observes that "statutory time limits are presumptively subject to equitable tolling

* * * whether the defendant is a private party or the government." Pet. 15 (citing *Kwai Fun Wong*, 575 U.S. at 407-408, and *Irwin* v. *Department of Veterans Affairs*, 498 U.S. 89, 95-96 (1990)). But as this Court has made clear, and as petitioner acknowledges (*ibid.*), that presumption is "'rebuttable,'" and it is rebutted if, *inter alia*, "Congress made the time bar at issue jurisdictional." *Kwai Fun Wong*, 575 U.S. at 408 (quoting *Irwin*, 498 U.S. at 95).

Petitioner also correctly observes that "a 'time bar' will be treated as jurisdictional 'only if Congress has "clearly stated" as much.'" Pet. 16 (quoting *Kwai Fun Wong*, 575 U.S. at 409) (brackets omitted). But as this Court has repeatedly recognized, and as petitioner further acknowledges, no specific "magic words" are required to establish a requirement's jurisdictional character. *Ibid.* (quoting *Kwai Fun Wong*, 575 U.S. at 410); see, *e.g.*, *Fort Bend Cnty.*, 139 S. Ct. at 1850 (citation omitted); *Patchak* v. *Zinke*, 138 S. Ct. 897, 905 (2018) (plurality opinion); *Hamer* v. *Neighborhood Hous. Servs.*, 138 S. Ct. 13, 20 n.9 (2017); *Kwai Fun Wong*, 575 U.S. at 410; *Auburn Reg'l Med. Ctr.*, 568 U.S. at 153. This Court has construed particular statutory deadlines for seeking review in both Article III and Article I courts as satisfying that standard, even in the absence of explicit statutory references to the courts' "jurisdiction." See *John R. Sand & Gravel Co.*, 552 U.S. at 133-139 (construing 28 U.S.C. 2501, governing time for bringing action in Court of Federal Claims); *Bowles*, 551 U.S. at 208-215 (construing 28 U.S.C. 2107(a) (2006), governing time for filing notice of appeal in civil cases); see also *Patchak*, 138 S. Ct. at 905 (plurality opinion) (construing Section 2(b) of the Gun Lake Trust Land Reaffirmation Act, Pub. L. No. 113-179, 128 Stat. 1913,

which provides that "an action * * * relating to the land described in subsection (a) shall not be filed or maintained in a Federal court and shall be promptly dismissed"). That conclusion follows *a fortiori* for Section 6330(d)(1), which explicitly refers to the Tax Court's "jurisdiction" in the same sentence that prescribes the filing deadline and which links the filing of a timely petition to the conferral of Tax Court jurisdiction. See p. 10, *supra*.

Petitioner contends (Pet. 17) that the "fact that the deadline and the jurisdictional grant are both located in Section 6330(d)(1)" without more "does not mean that the deadline is 'jurisdictional.'" But the jurisdictional character of Section 6330(d)(1)'s deadline is supported by much more than the mere "proximity[ ]" of those two things in the statute. *Ibid.* (citation omitted). As the court of appeals observed, the grant of jurisdiction is textually and logically linked to the requirement of a timely petition by Section 6330(d)(1)'s language establishing Tax Court jurisdiction over "such matter," a phrase that refers to the Independent Office of Appeals' determination and the petition seeking review of it. Pet. App. 6a-7a. "Th[at] phrase provides the link between the 30-day filing deadline and the grant of jurisdiction to the [T]ax [C]ourt" that this Court found "lack[ing]" in "other statutory provisions" it has construed as imposing nonjurisdictional deadlines. *Id.* at 7a (citing cases); see pp. 10-11, *supra*.

Petitioner posits that, even though the first clause of Section 6330(d)(1) describes a "petition to the tax court that: (1) arises from 'a determination under this section' *and* (2) was filed 'within 30 days' of that determination,'" the phrase "such matter" in the second clause refers only to the first of those things. Pet. 19 (quoting Pet. App.

6a-7a). No sound basis exists for that selective parsing of the provision's language. See *Myers* v. *Commissioner*, 928 F.3d 1025, 1039 (D.C. Cir. 2019) (Henderson, J., concurring in part and dissenting in part) (addressing similar argument in the context of 26 U.S.C. 7623(b)(4)). Petitioner suggests that "such matter" might refer to "the type of appeal" the Tax Court may adjudicate. Pet. 19 (citation omitted). But petitioner identifies no reason why Congress would have worded and structured the provision as it did if it intended to make jurisdictional only a petition's "subject matter," *ibid.*(citation omitted), and not its compliance with another requirement set forth in the same clause of the same sentence. Cf. *Mount Lemmon Fire Dist.* v. *Guido*, 139 S. Ct. 22, 26 (2018) (rejecting as "strange" an interpretation of a statutory provision under which a particular requirement would apply to the provision's "first sentence," then "lift that restriction for [one] portion of [its] second sentence, and then reimpose it for the [final] portion of that sentence").

Drawing on a nearby subsection entitled "Matters considered at hearing," 26 U.S.C. 6330(c) (emphasis omitted), petitioner alternatively suggests that "such matter" might refer to "everything 'considered at the hearing' and addressed in the determination or the petition for review." Pet. 19 (quoting 26 U.S.C. 6330(c)). The subsection that petitioner invokes, however, sets forth various parameters for the hearing conducted and determination made by the Independent Office of Appeals. Apart from both provisions' use of the word "matters," Section 6330(c) and (d)(1) do not overlap, and nothing in the text or context of either subsection indicates that Congress intended the phrase "such matter" in Section 6330(d)(1) to incorporate the entirety of a

separate subsection addressing different issues. It is much more likely that "such" was referring back to the things described in the first clause of the same sentence in which it appears, which addresses the same topic. See 17 *The Oxford English Dictionary* 101 (2d ed. 1989) (explaining that "[*s*]*uch* is a demonstrative word used to indicate the quality or quantity of a thing by reference to that of another," and, "syntactically," it has a "backward * * * reference" when it describes a person or thing previously mentioned).

Petitioner contends that Section 6330(d)(1) cannot be read to "'confer jurisdiction on the Tax Court if (and only if) a petition for review is filed in that court within thirty days of the IRS's determination'" because "the word 'if' does not appear at all." Pet. 18 (quoting *Duggan*, 879 F.3d at 1034) (brackets omitted). Petitioner observes that Section 6015(e)—a similar provision that petitioner acknowledges courts of appeals have consistently determined does make filing a timely petition a jurisdictional prerequisite—does include the word "if," providing that "an individual 'may petition the Tax Court (and the Tax Court shall have jurisdiction) to determine the appropriate relief available to the individual under this section if such petition is filed' by certain time deadlines." *Ibid.* (quoting 26 U.S.C. 6015(e)(1)(A)) (emphasis omitted). But neither petitioner's articulation of a different linguistic formulation that would yield the same result, nor its identification of another provision that uses such language, provides a valid basis for disregarding the ordinary import of the formulation that Congress enacted. A statement may identify a necessary condition without prefacing the condition with "if." For example, the statement, "Give me $100 by Friday and the baseball tickets are yours," unambiguously

conveys an intent to provide tickets only if the money is provided by the deadline.

In any event, petitioner's contention that the text of Section 6330(d)(1) standing alone does not render its filing deadline jurisdictional disregards the provision's context and history. Surrounding subsections and related provisions of the Internal Revenue Code, coupled with precedent interpreting analogous provisions extant before Section 6330(d)(1) was enacted, make clear that Congress intended to provide for Tax Court jurisdiction in collection-due-process proceedings only when a timely petition has been filed. See pp. 11-14, *supra*.

Petitioner contends (Pet. 20-21) that "Congress would not have wanted to attach such 'drastic' jurisdictional consequences to the 30-day filing deadline in Section 6330(d)(1)," asserting that a collection-due-process proceeding "is the taxpayer's only opportunity to challenge the IRS's action *before* collection, which could entail the loss of a home, a car, or a savings account." In most cases, however, taxpayers will already have had the opportunity to challenge the IRS's determination of their tax liability in the Tax Court before a tax is assessed. 26 U.S.C. 6212-6213. IRS collection efforts begin only after assessment and after the taxpayer has had multiple opportunities to pay. 26 U.S.C. 6213, 6303. And a taxpayer may, at any time, attempt to settle or resolve its tax liability with the IRS via an installment agreement, offer in compromise, or administrative reconsideration. See 26 U.S.C. 6159, 6330(d)(3), 7122; IRS, United States Dep't of Treasury, Pub. No. 594, *The IRS Collection Process* (July 2018), https://go.usa.gov/xFqkn. In this particular case, petitioner was assessed a reporting penalty, not additional income tax, and so was not able to seek prepayment review of the penalty in the Tax

Court. See 26 U.S.C. 6212(a) (listing the types of taxes subject to deficiency procedures). But most collection-due-process cases involve income taxes, and most taxpayers requesting such hearings have already had the opportunity to seek Tax Court review of the liability. Congress was aware of this: it expressly provided that taxpayers who have had the opportunity to contest their underlying liability cannot do so again at a collection-due-process hearing. See 26 U.S.C. 6330(c)(2)(B).

Finally, petitioner and its amici assert that construing Section 6330(d)(1)'s filing deadline to be jurisdictional, and thus precluding equitable exceptions such as tolling, is unsound as a policy matter. Echoing Judge Kelly's separate opinion below, petitioner and some amici suggest that the unavailability of equitable tolling disproportionately affects low-income taxpayers, particularly those who proceed pro se. See Pet. 25 (citing, *inter alia*, Pet. App. 12a (Kelly, J., concurring in part and concurring in the judgment) (expressing concern that the "burden" of "deeming the 30-day filing deadline in [Section] 6330(d)(1) jurisdictional * * * may fall disproportionately on low-income taxpayers")); see also Federal Tax Clinic Amicus Br. 8-13. Another amicus posits that allowing equitable tolling would benefit many taxpayers who do not comply with Section 6330(d)(1)'s prerequisites to review. Center for Taxpayer Rights Amicus Br. 13-23.

Those policy arguments, however, are misdirected. The judgment whether to make a statutory requirement for seeking judicial review a precondition for jurisdiction is for Congress, which "is free to attach the conditions that go with the jurisdictional label to a rule that [a court] would prefer to call a claim-processing rule." *Henderson* v. *Shinseki*, 562 U.S. 428, 435 (2011).

And concerns about the "consequences that attach to the jurisdictional label" are already accounted for by the Court's requirement that Congress "speak clearly" when making a rule jurisdictional. *Id.* at 435-436; see, *e.g.*, *Kwai Fun Wong*, 575 U.S. at 409-410. As shown above, see pp. 10-14, *supra*, Congress did speak clearly in Section 6330(d)(1), expressing in the statutory text, confirmed by the provision's context and history, its judgment that the timely filing of a petition is a jurisdictional requirement for Tax Court review of determinations in collection-due-process proceedings.

2. Petitioner does not contend that the decision below conflicts with any decision of another court of appeals construing Section 6330(d)(1). As petitioner acknowledges (Pet. 14 & n.3), every court of appeals to consider the issue has recognized that Section 6330(d)(1)'s deadline is jurisdictional. See *Duggan*, 879 F.3d at 1031-1035; *Gray* v. *Commissioner*, 723 F.3d 790, 793 (7th Cir. 2013); *Springer* v. *Commissioner*, 416 Fed. Appx. 681, 683 & n.1 (10th Cir. 2011); *Boyd* v. *Commissioner*, 451 F.3d 8, 10-11 (1st Cir. 2006); accord *Guralnik*, 146 T.C. at 237; see also *Kaplan* v. *Commissioner*, 552 Fed. Appx. 77, 78 (2d Cir. 2014) (affirming dismissal for lack of jurisdiction over an untimely petition for review notwithstanding the taxpayer's contention that she did not receive actual notice of the determination); *Trivedi* v. *Commissioner*, 525 Fed. Appx. 587, 588 (9th Cir. 2013) (affirming dismissal for lack of jurisdiction over a petition for review filed before a determination issued and the statutory filing period commenced); *Tuka* v. *Commissioner*, 348 Fed. Appx. 819, 820 (3d Cir. 2009) (per curiam) (same).

Petitioner instead contends that the decision below conflicts with a decision of the D.C. Circuit construing a

different provision of the Internal Revenue Code, 26 U.S.C. 7623(b)(4), which addresses judicial review of determinations regarding awards to whistleblowers. See Pet. 10-13 (discussing *Myers*, *supra*). Although certain aspects of the reasoning of the decision below are in tension with that of the D.C. Circuit in *Myers*, no conflict exists that warrants this Court's review.

Unlike Section 6330, the provision that the D.C. Circuit addressed in *Myers* (Section 7623(b)(4)) does not concern judicial review of a taxpayer's own tax liability or related enforcement efforts. Instead, Section 7623(b) addresses awards to whistleblowers who provide information that leads to an IRS administrative or judicial action and to the collection of proceeds. Paragraphs (1)-(3) of Section 7623(b) establish and prescribe parameters for such whistleblower awards. 26 U.S.C. 7623(b)(1)-(3). Paragraph (4) then provides that "[a]ny determination regarding an award under paragraph (1), (2), or (3) may, within 30 days of such determination, be appealed to the Tax Court (and the Tax Court shall have jurisdiction with respect to such matter)." 26 U.S.C. 7623(b)(4).

In *Myers*, a divided panel of the D.C. Circuit held that Section 7623(b)(4)'s deadline to seek Tax Court review of the denial of a whistleblower award under Section 7623 is not jurisdictional and is subject to equitable tolling. See 928 F.3d at 1034-1036. In doing so, the majority acknowledged that Section 7623(b)(4) "comes closer to satisfying the clear statement requirement than any the Supreme Court has heretofore held to be non-jurisdictional." *Id.* at 1035. Judge Henderson dissented in relevant part; in her view, Section 7623(b)(4) does make timely filing a jurisdictional requirement.

Id. at 1039-1041 (Henderson, J., concurring in part and dissenting in part).

Petitioner contends (Pet. 13) that the D.C. Circuit's interpretation of Section 7623(b)(4) "cannot be reconciled" with the construction, in the decision below, of Section 6330(d)(1). Although the language of each of those provisions in isolation is very similar, petitioner errs in asserting (*ibid.*) that the provisions are indistinguishable. As discussed above, the jurisdictional character of Section 6330(d)(1) rests not only on that provision's text, but also on multiple features of the statutory context. See pp. 11-13, *supra*. Those features include Section 6330(e)(1), which explicitly makes the Tax Court's "jurisdiction" to grant injunctive relief to enforce the suspension of levy actions during the pendency of a collection-due-process hearing (or of an appeal from a determination following such a hearing) contingent on the filing of a timely petition. See 26 U.S.C. 6330(e)(1). Section 7623 contains no comparable provision regarding remedies.

Sections 6330 and 7623 also serve different statutory purposes. Section 6330 is part of a complex, interconnected statutory scheme of tax collection. The pendency of a collection-due-process hearing or appeal suspends certain enumerated limitations periods for collecting taxes, prosecuting tax offenses, or litigating refunds. See p. 13, *supra*. Section 7623, in contrast, is a standalone provision concerning mandatory awards for whistleblowers; it is only tangentially related to tax collection, in that it incentivizes the public to provide information to the IRS to aid its tax-collection efforts. The process for determining those whistleblower awards occurs after, and does not affect, tax collection. Cf. 26 U.S.C. 7623(b)(1); 26 C.F.R. 301.7623-4(d); IRS Notice

2008-4, § 3.08, 2008-1 C.B. 253, 255. No aspect of the tax-collection process depends on the finality of a whistleblower award.

Petitioner cites (Pet. 12-13) the government's petition for rehearing of the D.C. Circuit panel's decision in *Myers*, which stated that it was "not possible to reconcile the decision in [*Myers*] with" the Ninth Circuit's decision construing Section 6330(d)(1) in *Duggan*, *supra*, with which the decision below has now agreed, see Pet. App. 6a; see also Gov't Pet. for Reh'g En Banc at 11, *Myers*, *supra* (No. 18-1003). Upon further consideration, however, the government has determined that the characterization in its unsuccessful rehearing petition in *Myers* overstated the extent of the disagreement between the Ninth and D.C. Circuits.

To be sure, the government maintains its position that the *Myers* majority's conclusion regarding Section 7623(b)(4) is incorrect and that aspects of its reasoning are inconsistent with portions of the Ninth Circuit's analysis of Section 6330(d)(1). But the tension between the results reached by those decisions may reflect differences in the contexts of the two provisions, for the reasons discussed above. See pp. 22-24, *supra*. Even a court that construes Section 7623(b)(4) to impose a nonjurisdictional filing deadline for appeals of whistleblower-award denials should still conclude that Section 6330(d)(1)'s deadline for seeking review in collection-due-process proceedings is jurisdictional.

Petitioner also errs in asserting (Pet. 23-24) that the considerations identified by the government in its *Myers* rehearing petition in support of en banc review show that this Court's review is warranted regarding a separate provision. As the rehearing petition in *Myers* noted, and petitioner emphasizes (Pet. 23-24), the D.C.

Circuit panel's interpretation of Section 7623(b)(4) in *Myers* had unusual significance because venue in such whistleblower appeals is proper only in that circuit. Gov't Pet. for Reh'g En Banc at 1-2, *Myers*, *supra* (No. 18-1003) (citing 26 U.S.C. 7482(b)(1)). No direct circuit conflict on the meaning of that provision is practically possible. Following the denial of rehearing in *Myers*, however, the government did not petition for a writ of certiorari. And it does not follow that the interpretation of Section 6330(d)(1) at issue here, which can arise in any circuit, warrants this Court's review in the absence of any direct conflict, merely because a decision of this Court construing Section 6330(d)(1) might also have a bearing on the proper interpretation of Section 7623(b)(4) in future cases arising in the D.C. Circuit.

3. Plenary review is unwarranted for the additional reason that the question presented lacks practical significance. If the government actually does collect petitioner's taxes by levy (or any other means), petitioner will still be able to seek judicial review in a refund suit. 28 U.S.C. 1346(a); 26 U.S.C. 7422. And even if the Court were to conclude that Section 6330(d)(1)'s filing deadline is not jurisdictional, allowing equitable tolling would be inconsistent with the statute, and no equitable exception would be available to petitioner under the circumstances here.

a. Although a nonjurisdictional time limit is generally subject to traditional rules of waiver and forfeiture, "[t]he mere fact that a time limit lacks jurisdictional force * * * does not render it malleable in every respect." *Nutraceutical Corp.* v. *Lambert*, 139 S. Ct. 710, 714 (2019). Some such limitations, "[t]hough subject to waiver and forfeiture, * * * are 'mandatory'—that is, they are 'unalterable' if properly raised by an opposing

party." *Ibid.* (citation omitted); see *id.* at 714-715 (holding that the deadline in Federal Rule of Civil Procedure 23(f) for appealing class certification is not jurisdictional but is mandatory and not subject to equitable tolling); *Hallstrom* v. *Tillamook Cnty.*, 493 U.S. 20, 25-31 (1989) (holding that requirement to give notice to certain entities before suing was mandatory, whether or not it was jurisdictional). Even for time limits established by rule rather than by statute, "[w]hether a rule precludes equitable tolling turns not on its jurisdictional character but rather on whether the text of the rule leaves room for such flexibility." *Nutraceutical*, 139 S. Ct. at 714. And where a rule "show[s] a clear intent to preclude tolling, courts are without authority to make exceptions merely because a litigant appears to have been diligent, reasonably mistaken, or otherwise deserving." *Ibid.*

Indeed, this Court has previously held that another deadline established by the Internal Revenue Code is not subject to equitable tolling. See *United States* v. *Brockamp*, 519 U.S. 347, 349-354 (1997). The *Brockamp* Court held the "equitable tolling" doctrine inapplicable to the deadline imposed by 26 U.S.C. 6511 for the filing of tax refund claims with the IRS. 519 U.S. at 354. Assuming without deciding that a presumption in favor of equitable tolling applied to that provision, the Court found that the presumption had been rebutted based on "strong reasons" for concluding that Congress did not intend tolling to be available. *Id.* at 350. One important reason was that "[t]ax law * * * is not normally characterized by case-specific exceptions reflecting individualized equities," and the large volume of claims that the IRS must address each year would make it burdensome to consider and possibly litigate "large numbers

of late claims[] accompanied by requests for 'equitable tolling.'" *Id.* at 352. The Court concluded that, in enacting that particular time bar, "Congress decided to pay the price of occasional unfairness in individual cases (penalizing a taxpayer whose claim is unavoidably delayed) in order to maintain a more workable tax enforcement system." *Id.* at 352-353.

Similar considerations would counsel against equitable tolling in the context of Section 6330(d)(1), which likewise involves "tax collection." *Brockamp*, 519 U.S. at 352. Allowing equitable tolling for Section 6330(d)(1) petitions would significantly delay the IRS's collection of taxes. Without equitable tolling, a clear end date exists for the period during which the IRS is prohibited from collecting by levy: the date when the 30-day filing period in Section 6330(d)(1) expires. If equitable tolling were allowed, a delinquent taxpayer might be able to prolong the suspension period by filing a tardy petition in the Tax Court and then seeking to excuse that failure to file a timely petition on equitable-tolling grounds. That, in turn, could create uncertainty about whether the property previously seized by the levy would need to be returned after the fact—a result that would be in substantial tension with Congress's explicit determination in Section 6330(e)(1) that the Tax Court may not enjoin levy activities during the suspension period absent a timely filed petition for review, see pp. 11-13, *supra*. And the IRS would be unable to know with certainty when it could safely begin to collect. Moreover, such an approach not only would significantly delay tax collection, but it would also create the kind of administrative difficulties recognized in *Brockamp* by requiring the IRS to consider numerous late claims for relief.

Amendments to Section 6330 following its enactment further support the conclusion that Congress did not intend to allow equitable tolling. As originally enacted in 1998, Section 6330(d)(1) gave the Tax Court jurisdiction to review appeals from certain types of collection-due-process determinations and gave federal district courts jurisdiction to review any other collection-due-process appeals. 26 U.S.C. 6330(d)(1) (Supp. IV 1998). That version of the statute also provided that, if a taxpayer filed a petition in the wrong court, the time for filing in the correct court was 30 days after the court determined that jurisdiction was lacking in the original court. *Ibid.*

In 2006, Congress amended Section 6330(d)(1) to make the Tax Court the sole venue for collection-due-process appeals. Pension Protection Act of 2006, Pub. L. No. 109-280, § 855(a), 120 Stat. 1019. At the same time, Congress eliminated the separate deadline for taxpayers who had filed a petition in the wrong court. That change reflected in part Congress's awareness that it was being abused by taxpayers seeking to delay collection. See Staff of the Joint Comm. on Taxation, 107th Cong., 1st Sess., *Report of the Joint Committee on Taxation Relating to the Internal Revenue Service as Required by the IRS Reform and Restructuring Act of 1998*, JCX-53-03, at 88 (May 19, 2003), https://go.usa.gov/xF2Z8 ("Some taxpayers intentionally file in the wrong court, which creates a further delay."). Congress's elimination of that prior leeway supports the conclusion that the 30-day period of Section 6330(d)(1)'s time limit is not subject to tolling in light of equitable considerations.

In addition, in 2015, Congress inserted a new subsection that alters the deadline for a specific set of taxpayers. See Protecting Americans from Tax Hikes Act

of 2015, Pub. L. No. 114-113, Div. Q, § 424(b)(1)(D), 129 Stat. 3124. Under that subsection, when a taxpayer is "prohibited" by reason of a bankruptcy proceeding from filing a collection-due-process petition, the "running of the period prescribed by [Section 6330(d)(1)] * * * shall be suspended for the period during with the person is so prohibited from filing such a petition, and for 30 days thereafter." 26 U.S.C. 6330(d)(2). That Congress has subsequently identified a specific instance in which it views suspension of the deadline to be appropriate bolsters the conclusion that equitable tolling is not otherwise generally available. See *Brockamp*, 519 U.S. at 351-352; see also *United States* v. *Beggerly*, 524 U.S. 38, 48-49 (1998).

In any event, even if Section 6330(d)(1)'s filing deadline were subject to tolling in some circumstances that Congress has not already identified, no equitable exception would apply in this case. The Tax Court dismissed the petition for review filed by petitioner, a law firm, because petitioner simply did not comply with the applicable filing deadline. The question presented in the petition of whether that deadline is jurisdictional would have no practical significance in this case absent a determination by this Court or the courts below that equitable principles should excuse an untimely filing of a document commencing appellate review of an agency determination in that context. In light of its determination that Section 6330(d)(1) is jurisdictional, the court of appeals did not reach that factbound question of how equitable tolling—if available at all—would apply in these circumstances. See Pet. App. 8a n.3. At a minimum, substantial doubt exists as to whether the question presented would have any practical significance for

this case or any other in which a taxpayer seeks to excuse the untimely filing of a petition for review based on equitable tolling.

b. Petitioner suggests (Pet. 28) that this Court could resolve that uncertainty by deciding for itself whether equitable tolling would be available if Section 6330(d)(1)'s deadline were not jurisdictional. Cf. Center for Taxpayer Rights Amicus Br. 13. As petitioner acknowledges (Pet. 27), however, the court of appeals "did not separately decide whether, if Section 6330(d)(1) is nonjurisdictional, equitable tolling would be available." And contrary to petitioner's contention (Pet. 28), neither the availability of equitable tolling under Section 6330(d)(1) in general nor its applicability to this case is "included within" the question presented in the petition. See Pet. i. Those separate questions about whether that provision's deadline, if it is not jurisdictional, may be tolled for equitable reasons are logically subsequent, rather than antecedent, to the threshold question presented, whether the deadline is jurisdictional. Consistent with its ordinary practice as a "court of review, not of first view," *Timbs* v. *Indiana*, 139 S. Ct. 682, 690 (2019) (citation omitted), the Court should not address those issues in the first instance.

Moreover, petitioner identifies no reason for this Court itself to take up those separate equitable-tolling issues, apart from curing a defect in this case as a vehicle to address the question presented. To the contrary, as petitioner acknowledges (Pet. 28), the "splitless issue" of the availability of equitable tolling "is not independently worthy of the Court's review." Further review is not warranted.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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* The Acting Solicitor General is recused in this case.