No. 25-108

# In the Supreme Court of the United States

DONALD WAYNE BUSH AND KIMBERLY ANN BUSH,
PETITIONERS

*v.*

UNITED STATES OF AMERICA

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

**BRIEF FOR THE UNITED STATES IN OPPOSITION**

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## QUESTION PRESENTED

Whether a bankruptcy court has jurisdiction to determine the amount of a tax penalty that has no potential to affect the bankruptcy estate or the claims of other creditors.

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## OPINIONS BELOW

The final opinion of the court of appeals (Pet. App. 1a-3a) is available at 2025 WL 1232494. The final opinion of the district court (Pet. App. 4a-14a) is available at 2024 WL 4721688. The amended interlocutory opinion of the court of appeals (Pet. App. 15a-27a) is reported at 100 F.4th 807. The initial interlocutory opinion of the court of appeals (Pet. App. 28a-40a) is reported at 939 F.3d 839. The initial opinion of the district court (Pet. App. 41a-50a) is available at 2016 WL 4261867. The bench ruling of the bankruptcy court (Pet. App. 54a-62a) is unreported. The order of the bankruptcy court denying reconsideration (Pet. App. 63a-69a) is available at 2015 WL 12516007.

## JURISDICTION

The judgment of the court of appeals was entered on April 29, 2025. The petition for a writ of certiorari was

filed on July 25, 2025. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

**STATEMENT**

1. "The jurisdiction of the bankruptcy courts, like that of other federal courts, is grounded in, and limited by, statute." *Celotex Corp.* v. *Edwards*, 514 U.S. 300, 307 (1995). Under 28 U.S.C. 1334(a), "the district courts shall have original and exclusive jurisdiction of all cases under title 11," *i.e.*, the Bankruptcy Code. And under 28 U.S.C. 1334(b), "the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11." The district courts may refer cases and proceedings under Section 1334(a) and (b) to the bankruptcy courts. 28 U.S.C. 157(a). But, even where they have bankruptcy jurisdiction, district and bankruptcy courts may, "in the interest of justice, * * * abstain[] from hearing a particular proceeding." 28 U.S.C. 1334(c)(1).

Separately, the Bankruptcy Code prescribes various procedures for bankruptcy courts to use in adjudicating cases. With exceptions not relevant here, "the court may determine the amount or legality of any tax, any fine or penalty relating to a tax, or any addition to tax." 11 U.S.C. 505(a)(1).

2. In a September 2013 notice of deficiency, the Internal Revenue Service (IRS) determined that petitioners, a husband and wife, had fraudulently underreported their income in 2009, 2010, and 2011. Pet. App. 5a. Petitioners challenged that determination in Tax Court. *Ibid.* They ultimately stipulated that they had underpaid their taxes by $100,136, but they disputed the appropriate penalty. *Ibid.* The IRS contended that petitioners owed a 75% fraud penalty under 26 U.S.C.

6663(a), while petitioners contended that they owed at most a 20% negligence penalty under 26 U.S.C. 6662(a). Pet. App. 5a.

On the day the Tax Court trial was set to begin, September 30, 2014, petitioners filed a Chapter 13 bankruptcy petition in the United States Bankruptcy Court for the Southern District of Indiana. Pet. App. 6a. That petition automatically stayed the Tax Court case. *Ibid.* The government filed an emergency motion to modify the stay to permit the trial to proceed, but the bankruptcy court denied the motion. *Ibid.* Two weeks later, petitioners converted their Chapter 13 case to a Chapter 7 case. *Ibid.* The IRS filed a proof of claim to which petitioners objected. *Ibid.*

In December 2014, petitioners moved under Section 505(a)(1) for the bankruptcy court to determine the amount of penalties on their 2009, 2010, and 2011 taxes.* Pet. App. 6a-7a. The government responded that the bankruptcy court lacked subject-matter jurisdiction because the amount of the penalties would not affect the distribution of the bankruptcy estate. Bankr. Ct. Doc. 66-1, at 11-17 (May 19, 2015). In the alternative, the government asked the bankruptcy court to abstain in favor of the Tax Court under 28 U.S.C. 1334(c)(1). Bankr. Ct. Doc. 66-1, at 17-21. The bankruptcy court held that it had jurisdiction and declined to abstain. Pet. App. 51a-53a. The court subsequently denied reconsideration. *Id.* at 63a-69a.

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* Only the 2011 penalty remains at issue. See Pet. 11. In a separate adversary proceeding filed by petitioners, the bankruptcy court held, and the district court affirmed, that the 2009 and 2010 penalties were dischargeable because they were related to events that predated the bankruptcy petition by more than three years. Pet. App. 7a n.2; see 11 U.S.C. 523(a)(7)(B).

3. In August 2016, the district court reversed. Pet. App. 41a-50a. The court explained that "bankruptcy jurisdiction is limited to 'civil proceedings arising under title 11, or arising in or related to cases under title 11.'" *Id.* at 45a (quoting 28 U.S.C. 1334(b)). The determination of petitioners' penalty did not "'arise under' Title 11," but "under the Internal Revenue Code." *Id.* at 46a. And the penalty did not satisfy "'arising in' jurisdiction," which is limited to "matters that arise *only* in bankruptcy cases." *Id.* at 45a (citation omitted).

That left the question whether the amount of the tax penalty was "related to" the bankruptcy case. Pet. App. 47a. Under circuit precedent, the penalty amount would be related to the bankruptcy case if it had an effect on "the amount of property for distribution [*i.e.*, the debtors' estate] or the allocation of property among creditors." *Ibid.* (quoting *In re FedPak Sys., Inc.*, 80 F.3d 207, 213-214 (7th Cir. 1996)) (brackets in original). That test was not met, the district court held, because the tax penalty had lower priority than other claims, which the estate "clearly" lacked sufficient funds to pay. *Id.* at 49a.

4. Petitioners appealed to the Seventh Circuit. While their appeal was pending, the bankruptcy trustee filed his final report certifying that the bankruptcy "case [had been] fully administered" and all estate assets had been distributed to creditors. Bankr. Ct. Doc. 226, at 1 (June 6, 2019). The estate ultimately lacked funds to pay any claims except those for administrative expenses and part of the government's priority claim for the underlying tax liability (but not its lower-priority claim for the tax penalty). *Id.* at 2, 5.

a. In an initial September 2019 opinion, the court of appeals vacated the district court's decision, concluding

that the bankruptcy court had jurisdiction but that the exercise of that jurisdiction would no longer be appropriate. Pet. App. 28a-40a. To start, the court of appeals rejected petitioners' argument that 11 U.S.C. 505 is an independent grant of subject-matter jurisdiction. Pet. App. 30a-31a. Section 505, like "[a]lmost the entirety of the Bankruptcy Code," "prescribes tasks for bankruptcy judges" but is "unrelated to jurisdiction." *Id.* at 31a.

The court of appeals looked instead to Congress's detailed grant of bankruptcy jurisdiction in 28 U.S.C. 1334. Pet. App. 35a. The court accepted that, to establish jurisdiction, petitioners need to show that the tax penalty would "affect other creditors' entitlements." *Id.* at 36a. In its initial opinion, the court thought that requirement satisfied because, at the outset of the proceeding, only three creditors had filed claims. *Id.* at 37a. Nevertheless, the court determined that "the exercise of that authority is no longer appropriate." *Id.* at 40a. It observed that "[t]he bankruptcy appears to be over," and "[t]here is no reason why this residual dispute about tax penalties should stick with the bankruptcy judge, who otherwise is done with the case, rather than the specialist judges in the Tax Court." *Id.* at 39a.

b. Both sides sought rehearing. Petitioners argued (C.A. Pet. for Reh'g 3-8) that the court of appeals should have left the abstention decision to the district court. The government argued (C.A. Pet. for Reh'g 7-8) that the panel had overlooked petitioners' bankruptcy schedules, which established that the tax penalty could not affect the claims of any other creditors.

In April 2024, the court of appeals issued an amended opinion, which remanded the case to district court. Pet. App. 15a-27a. The court of appeals reaffirmed its conclusion that Section 505 is not a grant of

subject-matter jurisdiction. *Id.* at 17a-19a. To establish "related to" jurisdiction under Section 1334(b), the court reaffirmed that a dispute must have "a potential effect on other creditors." *Id.* at 26a. But the court now recognized a factual dispute over that question and remanded for the district court to decide whether "a decision could have affected the allocation of assets among the creditors with outstanding claims" on the date of petitioners' Section 505 motion. *Ibid.*

The court of appeals also ordered the district court, if it found jurisdiction, to consider whether to abstain. Pet. App. 26a. The court of appeals reiterated that "[t]he bankruptcy appears to be over" and it "may well" be "'in the interest of justice'" to defer in favor of the Tax Court. *Id.* at 26a-27a (quoting 28 U.S.C. 1334(c)(1)). But the court now agreed with petitioners that the abstention decision should be made by the district court, not the court of appeals. *Ibid.*

5. On remand, the district court found that petitioners' "sworn bankruptcy schedules" established that the estate assets, as of the date of the Section 505 motion, were insufficient to pay any part of the 2011 tax-fraud penalty. Pet. App. 11a-12a. There was thus "no realistic possibility" that the penalty "would have any effect on the administration of the estate and distribution to creditors," and the bankruptcy court lacked jurisdiction. *Id.* at 12a.

The court of appeals affirmed in a per curiam order. Pet. App. 1a-3a.

## ARGUMENT

Petitioners contend (Pet. 22-36) that the bankruptcy court had jurisdiction under either 28 U.S.C. 1334(b) or 11 U.S.C. 505(a)(1) to determine the amount of their tax penalty. The court of appeals correctly rejected that

contention, and its decision does not conflict with the decision of any other circuit. A determination that has no potential to affect the bankruptcy estate is not "related to" the bankruptcy case under 28 U.S.C. 1334(b). And 11 U.S.C. 505(a)(1)'s procedures for determining the amount of a tax penalty do not expand the bankruptcy court's subject-matter jurisdiction. In any event, further review is unwarranted because, even if the bankruptcy court had jurisdiction, the lower courts could and should abstain from reopening this long-concluded bankruptcy to decide a tax dispute that has been ready for trial in the Tax Court since September 2014.

1. The court of appeals correctly concluded that the bankruptcy court lacked jurisdiction.

a. Under 28 U.S.C. 1334(b), "the district courts" (and by reference the bankruptcy courts) "shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11." *Ibid.*; see 28 U.S.C. 157(a). Accordingly, to be within a bankruptcy court's jurisdiction, a "proceeding[]" must qualify as: (1) "arising under title 11"; (2) "arising in" a bankruptcy case; or (3) "related to" a bankruptcy case. *Celotex Corp.* v. *Edwards*, 514 U.S. 300, 307 (1995) (citation omitted). The court of appeals recognized that the determination of the amount of petitioners' tax penalty does not "aris[e] under title 11" or "in" a bankruptcy case, Pet. App. 22a, and petitioners do not challenge those holdings here. With respect to Section 1334(b), they exclusively contend (Pet. 33-36) that this proceeding is "related to" the bankruptcy case.

This Court addressed the scope of "related to" bankruptcy jurisdiction in *Celotex*. There, the bankruptcy court had entered an injunction under 11 U.S.C. 105(a)

that prevented creditors from recovering a supersedeas bond that a Chapter 11 debtor had posted with a third party. *Celotex*, 514 U.S. at 302-303. The creditors argued that the bankruptcy court lacked jurisdiction to issue that injunction. *Id.* at 307. This Court disagreed, holding that the injunction was "related to" the bankruptcy case. *Id.* at 309. The phrase "related to," the Court observed, gives bankruptcy courts "comprehensive jurisdiction to * * * deal efficiently and expeditiously with all matters connected with the bankruptcy estate." *Id.* at 308 (citation omitted). Because allowing the creditors to execute on the bond "would have a direct and substantial adverse effect on [the debtor's] ability to undergo a successful reorganization," the bankruptcy court had jurisdiction to enjoin the execution. *Id.* at 310.

At the same time, this Court recognized "that a bankruptcy court's 'related to' jurisdiction cannot be limitless." *Celotex*, 514 U.S. at 308. Thus, it noted that "bankruptcy courts have no jurisdiction over proceedings that have no effect on the estate of the debtor." *Id.* at 308 n.6.

In this case, the court of appeals correctly held that, under a straightforward application of *Celotex*, the bankruptcy court lacked jurisdiction. As petitioners do not dispute in this Court, their bankruptcy schedules conclusively established that the tax penalty had lower priority than claims that would (and did) consume all of the estate's assets. Pet. App. 13a. At the time of the Section 505 motion, the tax penalty therefore had "no potential effect" on "the allocation of assets among their other creditors." *Id.* at 2a. As a result, the bankruptcy court lacked jurisdiction to decide the penalty because

that decision would "have no effect on the estate of the debtor." *Celotex*, 514 U.S. at 308 n.6.

Petitioners make no attempt to reconcile their view (Pet. 34) that the dispute need not have an "effect on estate distribution" with this Court's contrary statement in *Celotex*. Instead, petitioners appear to contend (Pet. 16-17) that the amount of the tax penalty is "related to" whether the penalty is dischargeable. But that argument misapprehends Section 1334(b), which vests jurisdiction in relevant part over civil proceedings that are "related to *cases* under title 11," 28 U.S.C. 1334(b) (emphasis added)—in this instance, related to the larger Chapter 7 bankruptcy case that had been referred to the bankruptcy court from the district court. See 11 U.S.C. 301(a); 28 U.S.C. 157(a), 1334(a). Section 1334(b) does not supply jurisdiction over a proceeding just because it is *related to* a proceeding "arising under title 11" (such as a core proceeding about the dischargeability of a debt, see 28 U.S.C. 157(b)(1) and (2)(I)).

In any event, the amount of petitioners' tax penalty is not "related to" its dischargeability. Petitioners filed two separate requests in bankruptcy court: an adversary proceeding to determine whether the tax penalties were dischargeable and a motion under Section 505(a)(1) to determine the amount of the penalties. See p. 3 & n.*, *supra*. In the adversary proceeding about dischargeability, the bankruptcy court concluded that the 2011 penalty was not dischargeable because it related to a tax return filed within three years of the bankruptcy petition. 549 B.R. 707, 712; see 11 U.S.C. 523(a)(7)(B). But to determine the amount of the penalty, the court would have needed to decide whether petitioners committed "fraud" on a tax return within the meaning of 26 U.S.C. 6663(a). That fact-intensive ques-

tion of tax law had no relationship to whether the penalty was dischargeable.

Petitioners invoke (Pet. 34-35) Section 17c(3) of the pre-Code Bankruptcy Act, ch. 541, 30 Stat. 544, which authorized courts, in declaring debts nondischargeable, to "determine the remaining issues, render judgment, and make all orders necessary for the enforcement thereof." 11 U.S.C. 35(c)(3) (1976). But the text of Section 17c(3) did not suggest that courts could resolve the amount of a nondischargeable debt in a proceeding over which they would otherwise lack jurisdiction. Regardless, "[t]he starting point in discerning congressional intent is the existing statutory text, and not the predecessor statutes." *Lamie* v. *United States Trustee*, 540 U.S. 526, 534 (2004) (citation omitted). Petitioners offer no meaningful account of how the determination of their tax penalty is "related to" the bankruptcy case under 28 U.S.C. 1334(b).

b. The court of appeals also correctly rejected petitioners' argument (Pet. 22-33) that 11 U.S.C. 505(a)(1) provides a freestanding grant of subject-matter jurisdiction, even in proceedings that are not related to the bankruptcy case. While there is no magic-words requirement, this Court demands "a clear statement" before treating a provision as jurisdictional. *MOAC Mall Holdings LLC* v. *Transform Holdco LLC*, 598 U.S. 288, 298 (2023). Only in "rare contexts" will this Court "read[] a provision containing no express reference to jurisdiction" to "'expand[]'" federal-court jurisdiction. *Badgerow* v. *Walters*, 596 U.S. 1, 14 (2022) (citation omitted).

Section 505 comes nowhere close to being a clearly jurisdictional provision. Section 505(a)(1) provides that courts "may determine the amount or legality of any tax, any fine or penalty relating to a tax, or any addition

to a tax." Section 505(a)(2) then sets out various situations where "[t]he court may not so determine." And Section 505(b) sets forth additional procedures for determining tax amounts in bankruptcy cases.

But nothing in that mine-run procedural provision evinces a congressional intent to create a freestanding grant of subject-matter jurisdiction—much less with a clear statement. Like other provisions that this Court has found non-jurisdictional, Section 505(a)(1) "does not refer to either district court or bankruptcy court 'jurisdiction.'" *Stern* v. *Marshall*, 564 U.S. 462, 480 (2011). And Section 505(a)(1) sharply contrasts with Congress's express grant of "original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11" in 28 U.S.C. 1334(b).

Petitioners' view (Pet. 23) that any provision which speaks "to the authority of the * * * court" is jurisdictional would have startling implications. By its own terms, Section 505(a)(1) is not limited to bankruptcy cases, suggesting that—on petitioners' view—Congress granted bankruptcy courts sweeping jurisdiction to decide tax disputes even outside of bankruptcy. Moreover, the Bankruptcy Code is replete with provisions, like Section 505(a)(1), that "prescribe[] tasks for bankruptcy judges." Pet. App. 18a. One provision, for example, says that "the court, after notice and a hearing, shall determine the amount of [the] claim." 11 U.S.C. 502(b). Another identifies situations in which "the court may * * * subordinate * * * all or part of an allowed claim." 11 U.S.C. 510(c). And under another, "the court may order the trustee to abandon any property of the estate that is burdensome to the estate." 11 U.S.C. 554(b); see Pet. App. 18a (collecting additional provi-

sions). Petitioners' theory would seemingly transform such ordinary procedural provisions into heretofore unrecognized sources of bankruptcy jurisdiction.

Petitioners' theory is also in serious tension with *Celotex*, which carefully parsed whether an injunction issued under 11 U.S.C. 105(a) was "related to" the bankruptcy case under 28 U.S.C. 1334(b). 514 U.S. at 307-310. Section 105 is titled "Power of court" and provides that "[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. 105(a). If a provision becomes jurisdictional simply by speaking "to the authority of the bankruptcy court" (Pet. 23) by specifying that it may do something, then Section 105(a) would seem to qualify, and much of this Court's analysis in *Celotex* would be superfluous.

Petitioners seize (Pet. 23) on a definition of "'[j]urisdiction'" as referring to "a court's adjudicatory authority." Pet. i, 23 (quoting *Reed Elsevier, Inc.* v. *Muchnick*, 559 U.S. 154, 160 (2010)). Petitioners' definition is plucked from cases about *restrictions* on a court's jurisdiction, not *grants* of jurisdiction. *Reed Elsevier*, 559 U.S. at 157. Regardless, Section 505(a)(1) does not speak to the court's "adjudicatory authority" in the sense of granting the court authority to decide an additional class of cases. The provision simply permits courts to determine certain tax questions within existing disputes over which they already have jurisdiction.

Petitioners again invoke (Pet. 27) the predecessor Bankruptcy Act, which, in Section 2a(2A), vested bankruptcy courts with "such jurisdiction at law and in equity as will enable them to exercise original jurisdiction in proceedings under this title * * * to * * * [h]ear and determine, or cause to be heard and determined, any

question arising as to the amount or legality of any unpaid tax." 11 U.S.C. 11(a)(2A) (1976). Petitioners are correct that Section 2a(2A) was a grant of subject-matter jurisdiction since, unlike Section 505(a)(1), it expressly referenced jurisdiction. But petitioners overlook that the Bankruptcy Act tied courts' power to determine tax amounts to "proceedings under" the Bankruptcy Act. 11 U.S.C. 11(a) (1976). The Bankruptcy Act was thus *narrower* than the current 28 U.S.C. 1334(b), which grants jurisdiction over proceedings that are merely "related to" the bankruptcy case.

c. Petitioners' policy arguments for jurisdiction are unpersuasive. Petitioners contend (Pet. 35) that it would be "a waste of judicial resources" not to resolve the dischargeability and the amount of the tax penalty together. Accord Pet. 19-20. But, as explained, pp. 9-10, *supra*, the dischargeability and the amount of the penalty involve wholly separate legal inquiries: Dischargeability turns on the timing of bankruptcy petition, while the amount of the penalty turns on whether petitioners committed fraud under the Internal Revenue Code.

Petitioners' concern (Pet. 24) about "effectively writ[ing] §505(a)(1) out of the Code" is also misplaced. In Chapter 11 reorganization cases, for example, the debtor seeks to continue as a going concern, so the amount of a tax penalty is more likely to affect other creditors and thus be "related to" the bankruptcy case. See *Celotex*, 514 U.S. at 310 (recognizing that "[t]he jurisdiction of bankruptcy courts may extend more broadly" in Chapter 11 cases). And even in Chapter 7 liquidation cases, jurisdiction exists so long as a tax or penalty has the potential to affect the estate. Here, for example, while petitioners' tax *penalty* had no chance of affecting the estate, the IRS had a priority claim for the

tax itself that was ultimately paid in part. Bankr. Ct. Doc. 226, at 5. Had petitioners disputed the amount of the tax, the bankruptcy court could have determined the amount under Section 505(a)(1).

Petitioners also appeal (Pet. 22) to bankruptcy's "fresh start" policy. According to petitioners (Pet. 21), "the very purpose for bankruptcy filings" is "to determine the extent of the discharge," so it would be illogical to deny jurisdiction to determine the amount of a nondischargeable debt. But the exceptions to discharge (including for tax penalties, 11 U.S.C. 523(a)(1) and (7)) reflect Congress's judgment of where the creditors' interest in repayment "outweigh[s] the debtors' interest in a complete fresh start." *Grogan* v. *Garner*, 498 U.S. 279, 287 (1991). "[I]f a fresh start were all that mattered," the exceptions to discharge "would not exist." *Bartenwerfer* v. *Buckley*, 598 U.S. 69, 81 (2023). The "fresh start" policy cannot justify allowing bankruptcy courts to exercise jurisdiction over proceedings that, by definition, are *not* giving debtors a fresh start. In any event, "[n]o statute pursues a single policy at all costs." *Ibid.* Another "chief purpose of the bankruptcy laws" is "to secure prompt and effectual resolution of bankruptcy cases within a limited period." *Taggart* v. *Lorenzen*, 587 U.S. 554, 564 (2019) (citation and internal quotation marks omitted). Permitting bankruptcy courts to resolve protracted disputes that have no chance of affecting the bankruptcy estate would disserve that goal.

2. The decision below does not conflict with the decision of any other court of appeals.

a. Petitioners assert (Pet. 16) that the Fifth, Sixth, Eighth, Ninth, and Tenth Circuits have all held "that §1334(b) grants bankruptcy courts jurisdiction * * * to determine the amount of any nondischargeable debt."

Those decisions, which do not involve Section 505(a)(1) or taxes, do not conflict with the decision below.

All five of petitioners' cases share a common fact pattern: Private parties alleged that state-law debts were nondischargeable by virtue of the debtors' fraud or willful or malicious conduct. *Islamov* v. *Ungar* (*In re Ungar*), 633 F.3d 675, 677 (8th Cir. 2011); *Johnson* v. *Riebesell* (*In re Riebesell*), 586 F.3d 782, 788 (10th Cir. 2009); *Morrison* v. *Western Builders of Amarillo, Inc.* (*In re Morrison*), 555 F.3d 473, 477 (5th Cir. 2009); *Sasson* v. *Sokoloff* (*In re Sasson*), 424 F.3d 864, 867 (9th Cir. 2005), cert. denied, 547 U.S. 1206 (2006); *Longo* v. *McLaren* (*In re McLaren*), 3 F.3d 958, 960 (6th Cir. 1993). The bankruptcy courts determined that the debtors had engaged in the relevant misconduct (making the debts nondischargeable) and proceeded to enter money judgments. *Ungar*, 633 F.3d at 678; *Riebesell*, 586 F.3d at 788; *Morrison*, 555 F.3d at 478; *Sasson*, 424 F.3d at 867; *McLaren*, 3 F.3d at 960. The courts of appeals affirmed, holding that a "bankruptcy court, in addition to declaring a debt non-dischargeable, has jurisdiction to liquidate the debt and enter a monetary judgement against the debtor." *Morrison*, 555 F.3d at 478; accord *Ungar*, 633 F.3d at 679; *Riebesell*, 586 F.3d at 793; see *Sasson*, 424 F.3d at 867-868; *McLaren*, 3 F.3d at 966.

In so holding, those courts "relied principally on tradition and pragmatism." *Morrison*, 555 F.3d at 479. Like petitioners, those courts invoked Section 17c(3) of the pre-Code Bankruptcy Act, declaring that Congress "could not have intended to cut back on [a bankruptcy court's] ability to enter money judgments" despite "not specifically codify[ing] this authority." *Ibid.*; see *Sasson*, 424 F.3d at 868. And those courts reasoned that allowing a bankruptcy court to resolve a debt's dis-

chargeability and its amount in one proceeding would advance "judicial economy and efficiency." *Riebesell*, 586 F.3d at 793.

Whether or not those decisions are correct, neither their holding nor their reasoning applies here. This case does not involve "a monetary judgement against the debtor," so the holding of those cases is inapplicable. *Morrison*, 555 F.3d at 478. And, as explained, pp. 9-10, *supra*, the pre-Code Act and judicial economy do not favor jurisdiction when the amount of a nondischargeable debt and its dischargeability are *not* related. Here, unlike in all of the other cases in petitioners' alleged conflict, determining the amount of the penalty is not "necessary to the determination" of dischargeability. *Riebesell*, 586 F.3d at 793. The amount of the penalty turns on the fact-intensive question whether petitioners committed fraud under the Internal Revenue Code, but determining dischargeability simply required the bankruptcy court to look at the date of the bankruptcy petition and petitioners' tax returns. See pp. 9-10, *supra*.

Notably, in a case analogous to those cited by petitioners—*i.e.*, one where a private party contended that a state-law debt was nondischargeable due to the debtor's misconduct—the Seventh Circuit itself reached the same conclusion as its sister circuits. In *N.I.S. Corp.* v. *Hallahan* (*In re Hallahan*), 936 F.2d 1496 (7th Cir. 1991), the court "allow[ed] bankruptcy courts ruling on the dischargeability of a debt to adjudicate the issues of liability and damages also." *Id.* at 1508. Many of petitioners' authorities therefore identify the Seventh Circuit as aligned with their rule. *Morrison*, 555 F.3d at 478; *Sasson*, 424 F.3d at 870; *McLaren*, 3 F.3d at 966. And petitioners relied on *Hallahan* below. 16-3244 Pet. C.A. Br. 20-21. To the extent petitioners now contend

the decision below conflicts with other circuits' decisions outside the tax context, they are effectively claiming that the panel failed to follow *Hallahan*—an intra-circuit conflict that would not warrant this Court's review. See *Wisniewski* v. *United States*, 353 U.S. 901, 902 (1957) (per curiam).

b. Petitioners likewise err in asserting (Pet. 14) that eight circuits have held "that §505(a)(1) is an independent grant of jurisdiction." See Pet. 18-19 (collecting additional cases). None of the cited cases addresses the question raised by the petition: whether Section 505(a)(1) confers jurisdiction in a case not within the bankruptcy court's jurisdiction under 28 U.S.C. 1334(b).

Instead, petitioners' cases (Pet. 14)—almost all of which predate this Court's decision in *Arbaugh* v. *Y&H Corp.*, 546 U.S. 500 (2006), clarifying the need for precision in using the term "jurisdiction"—used "jurisdiction" colloquially to describe whether a dispute fell within a bankruptcy court's authority under Section 505. For example, in *IRS* v. *Luongo* (*In re Luongo*), 259 F.3d 323 (5th Cir. 2001), the court held that the bankruptcy court had "jurisdiction" to resolve a tax dispute that was outside Section 505(a)(2)(B)'s exception for certain refunds claimed by the trustee. *Id.* at 328; cf. *City of Perth Amboy* v. *Custom Distrib. Servs.* (*In re Custom Distrib. Servs.*), 224 F.3d 235, 239-244 (3d Cir. 2000) (holding that bankruptcy court had no "jurisdiction" over refund claim that met the Section 505(a)(2)(B) exception); *Bunyan* v. *United States* (*In re Bunyan*), 354 F.3d 1149, 1151 (9th Cir. 2004) (describing Section 505(a)(2)(A) as "strip[ping] bankruptcy courts of jurisdiction"). Similarly, in *City Vending of Muskogee, Inc.* v. *Oklahoma Tax Commission*, 898 F.2d 122 (10th Cir.) (per curiam), cert. denied, 498 U.S.

823 (1990), the court concluded that the district court "lacked jurisdiction" to resolve the legality of a tax that had been previously adjudicated by another court. *Id.* at 123; see 11 U.S.C. 505(a)(2)(A). And in *Michigan Employment Security Commission* v. *Wolverine Radio Co.* (*In re Wolverine Radio Co.*), 930 F.2d 1132 (6th Cir. 1991), cert. dismissed, 503 U.S. 978 (1992), the court concluded that "section 505 is not applicable" to the tax liability of a non-debtor because it found persuasive the Third Circuit's holdings that "section 505 does not *grant* jurisdiction to determine the tax liability of a non-debtor" and yet it "does not *limit* the bankruptcy court to determining only a debtor's tax liability." *Id.* at 1140.

Such loose usage of "jurisdictional" in other contexts does not evidence a circuit conflict. As this Court has noted, courts have "sometimes been profligate in [their] use of the term" "'jurisdictional.'" *Arbaugh*, 546 U.S. at 510. In recent years, this Court has "endeavored 'to bring some discipline' to this area" and imposed a clear-statement rule before treating "a provision as jurisdictional." *MOAC Mall*, 598 U.S. at 298 (citation omitted). As a result, "pre-*Arbaugh* lower court cases" that use the "jurisdictional" label often cannot be read as holding that a provision actually goes to subject-matter jurisdiction. *Santos-Zacaria* v. *Garland*, 598 U.S. 411, 422 (2023).

Petitioners also cite (Pet. 14) a pair of cases that describe Section 505 as jurisdictional in the sense that Congress has abrogated sovereign immunity with respect to Section 505. *United States* v. *Bond*, 762 F.3d 255, 259-260 (2d Cir. 2014); *United States* v. *Kearns*, 177 F.3d 706, 709 (8th Cir. 1999); see 11 U.S.C. 106(a)(1). "[S]overeign immunity is jurisdictional in nature." *United States* v. *Miller*, 604 U.S. 518, 527 (2025) (cita-

tion omitted). But a waiver of sovereign immunity is not the same thing as a grant of subject-matter jurisdiction. The Administrative Procedure Act, for example, waives federal sovereign immunity in certain cases, 5 U.S.C. 702, but does not supply "an implied grant of subject-matter jurisdiction to review agency actions." *Califano* v. *Sanders*, 430 U.S. 99, 105 (1977). Courts' recognition that the jurisdictional barrier of sovereign immunity does not apply with respect to Section 505 does not turn Section 505 into a freestanding grant of subject-matter jurisdiction.

Petitioners are therefore incorrect to state (Pet. 15) that "the Seventh Circuit acknowledged that its ruling was inconsistent with precedent from other circuits." The court of appeals merely acknowledged that other circuits have "used a 'jurisdictional' characterization." Pet. App. 18a. That recognition of loose language in other opinions does not endorse petitioners' mistaken view that other circuits would have reached a different conclusion on the facts here.

3. In any event, this case would be an unsuitable vehicle for resolving the question presented. With an exception not relevant here, the district court (and by reference the bankruptcy court) may, "in the interest of justice, * * * abstain[] from hearing a particular proceeding arising under title 11 or arising in or related to a case under title 11." 28 U.S.C. 1334(c)(1).

Even if the bankruptcy court had jurisdiction, abstention would plainly be appropriate. As the court of appeals noted, "[t]he bankruptcy appears to be over." Pet. App. 26a. "The estate's available assets have been used to pay debts," petitioners have received their discharge, and the trustee's final report is long complete. *Id.* at 26a-27a. As the court of appeals added in its ini-

tial opinion: "There is no reason why this residual dispute about tax penalties should stick with the bankruptcy judge, who otherwise is done with the case, rather than the specialist judges in the Tax Court." *Id.* at 39a. Were petitioners to prevail on the jurisdictional question, the district court could—and, in this posture, should—decline to exercise jurisdiction and abstain in favor of the Tax Court. Resolution of the question presented therefore would be unlikely to have any practical effect on the ultimate resolution of this case.

Instead, the practical effect of certiorari would be only further delay. In September 2014, petitioners delayed the Tax Court proceedings on the day of trial by filing for bankruptcy. See p. 3, *supra*. In 2023, however, petitioners asked the court of appeals for "a prompt determination" on rehearing, recognizing that—nine years later—further delay would "harm[]" both parties and risk "the potential loss of relevant evidence." 8/30/2023 C.A. Mot. 1-2. This Court should deny the petition and allow the Tax Court case to proceed.

## CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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