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No. 6776

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IN THE SUPREME COURT OF THE UNITED STATES

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SUPREME COURT, U.S.

CAROL ENGEN, Petitioner

v.

UNITED STATES, Respondent

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

PETITION FOR A WRIT OF CERTIORARI

Carol Engen
26811 W. Firehawk Dr.
Buckeye, AZ 85396
(425) 577-0677
washnative@comcast.net
Pro Se Petitioner

QUESTIONS PRESENTED

Whether a summary judgment entered in a 26 U.S.C. § 7403 lien foreclosure proceeding— whose purpose is limited to enforcing a tax lien and where taxpayers cannot bring refund claims, seek monetary relief, or adjudicate tax liability—constitutes a “final judgment on the merits” for purposes of claim preclusion, thereby barring a later refund suit under the Tucker Act, 28 U.S.C. § 1491.

Whether applying claim preclusion to bar a taxpayer’s refund suit violates the Due Process Clause where the taxpayer had no full and fair opportunity to litigate the validity of assessments in the § 7403 proceeding, and whether the Federal Circuit’s rule conflicts with this Court’s precedent in *Williams*, *Flora*, *Richards*, and *Taylor*.

Whether 26 U.S.C. § 7403 violates the Fifth Amendment’s guarantee of due process by authorizing the forced sale of a taxpayer’s home based solely on an irrebuttable presumption that IRS tax liens are valid, while denying the taxpayer any opportunity in the foreclosure proceeding to challenge the legality of the underlying assessment or lien—a deficiency the Treasury Inspector General has recognized deprives taxpayers of the protections available in the seizure process.

PARTIES TO THE PROCEEDINGS BELOW

Petitioner is Carol Engen. Respondent is the United States.

RELATED PROCEEDINGS

U. S. Court of Appeals for the Federal Circuit:

Engen v. United States, No. 2025-1088 (Oct. 23, 2024)

Court of Federal Claims:

Engen v. United States, 172 Fed. Cl. 651 (Feb. 14, 2024)

U.S. Court of Appeals for the Ninth Circuit:

United States v. Engen, No. 21-35804 (Sept. 24, 2021)

U.S. District Court for the Western District of Washington:

United States v. Engen, No. 2:18-cv-00712-RSM (May 16, 2018)

TABLE OF CONTENTS

Questions Presented.....	i
Parties to the Proceedings Below.....	ii
Related Proceedings.....	ii
Opinions Below.....	1
Jurisdiction.....	1
Constitutional and Statutory Provisions.....	1
Introduction.....	2
Statement of the Case	
A. Statutory Background.....	3
B. Factual Background	3
C. The § 7403 Lien-Foreclosure Action	3
D. Refund Claim and Tucker Act Suit.....	4
E. Court of Federal Claims Dismissed - Federal Circuit Affirmed.....	4
Reasons for Granting the Writ.....	5
I. A § 7403 foreclosure judgment is not a determination of tax liability, yet the Federal Circuit treated it as one.	
A. Section 7403 is a lien enforcement mechanism, not a liability-adjudication forum.....	5
B. Section 7403 proceedings also rest on conclusive irrebuttable presumptions that violate due process.....	6
II. Applying claim preclusion here violates due process because petitioner had no full and fair opportunity to litigate tax liability in the § 7403 action.....	
	6
III. The decision conflicts with this Court's precedent distinguishing lien enforcement from refund litigation.....	
	7
IV. The decision extinguishes a congressionally created refund remedy..	
	8
V. The issues are nationally important and recurring.....	
	8
Conclusion.....	9

Appendix A - Federal Circuit Appeals opinion (Sept. 9, 2025).....	2a
Appendix B - Court of Federal Claims opinion (Aug. 16, 2024).....	5a
Appendix C - Ninth Circuit Court of Appeals Memorandum (Mar. 17, 2023).....	11a
Appendix D - District Court Judgment (excerpts) (Sept. 24, 2021).....	14a
Appendix E - Statutory Provisions	
26 U.S.C. § 7403.....	22a
26 U.S.C. § 7422.....	22a
28 U.S.C. § 1346(a)(1).....	23a
28 U.S.C. § 1491.....	23a
28 U.S.C. § 1254(1).....	23a
Appendix F - Federal Circuit Court Order (Oct. 1, 2025).....	24a

TABLE OF AUTHORITIES

<i>Carson v. Dep't of Energy</i> , 398 F.3d 1369 (Fed. Cir. 2005).....	7
<i>Cleveland Bd. of Educ. v. LaFleur</i> , 414 U.S. 632 (1974).....	6
<i>Flora v. United States</i> , 362 U.S. 145 (1960).....	i, 3, 7
<i>Mpoyo v. Litton Electro-Optical Sys.</i> , 430 F.3d 985 (9th Cir. 2005).....	7
<i>Richards v. Jefferson County</i> , 517 U.S. 793 (1996).....	i, 7
<i>Taylor v. Sturgell</i> , 553 U.S. 880 (2008).....	i, 7
<i>United States Dep't of Agric. v. Murry</i> , 413 U.S. 508 (1973).....	6

<i>United States v. Boyd</i> , 246 F.2d 477 (5th Cir. 1957).....	5
<i>United States v. Miller</i> , 505 F.2d 1031 (5th Cir. 1974).....	5
<i>United States v. Williams</i> , 514 U.S. 527 (1995).....	i, 5, 7
<i>Vlandis v. Kline</i> , 412 U.S. 441 (1973).....	6

STATUTES

26 U.S.C. § 7403.....	i, 2, 3, 4, 5, 6, 7, 8, 9
26 U.S.C. § 7422.....	2, 3, 4, 8
28 U.S.C. § 1254(1).....	1
28 U.S.C. § 1346(a)(1).....	3, 8
28 U.S.C. § 1491.....	i, 2, 3, 8

OTHER AUTHORITIES

Supreme Court Rule 10(a).....	5
Treasury Inspector General for Tax Administration, Report No. 2022-30-026 (March 28, 2022).....	i, 6

PETITION FOR A WRIT OF CERIORARI

Petitioner respectfully asks this Court for a writ of certiorari to review the judgment of the United States Court of Appeals for the Federal Circuit in this case.

OPINIONS BELOW

The Federal Circuit's opinions (App. 2a and 24a) are unpublished.

The Court of Federal Claims' opinion (App. 6a) is reported at 172 Fed. Cl. 651 (2024).

The Ninth Circuit memorandum (App. 11a) is unpublished.

The district court's summary-judgment order is unpublished (App. 14a).

JURISDICTION

The Federal Circuit entered judgment on September 9, 2025, affirming dismissal of Engen's refund suit. On October 1, 2025, the court denied Engen's objection—which it erroneously construed as a petition for panel rehearing. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Due Process Clause of the Fifth Amendment provides: "*No person shall be deprived of life, liberty, or property, without due process of law.*" All relevant statutory provisions are set out in the appendix to this petition. App. 22a, 23a.

INTRODUCTION

This petition presents a fundamental question of federal tax administration: whether the Government may convert a limited § 7403 lien-foreclosure action—designed solely to enforce an existing tax lien against property—into a final, preclusive determination of tax liability that forever bars the congressionally authorized refund remedy.

Congress created two distinct procedural mechanisms. A § 7403 foreclosure action authorizes the Government to enforce an existing tax lien against specific property. It does not permit a taxpayer to raise a refund claim, seek monetary recovery, or litigate whether the underlying assessments were lawful. By contrast, Congress assigned adjudication of tax liability to refund litigation under the Tucker Act, 28 U.S.C. §§ 1491 and 1346(a)(1), following an administrative refund claim under § 7422.

The Federal Circuit collapsed these separate frameworks. It held that because Engen was a defendant in a § 7403 foreclosure action—and because that court entered summary judgment enforcing a lien—she is forever barred from seeking refund review, even though neither the district court nor the Ninth Circuit had jurisdiction to review the validity of the underlying assessments.

That ruling extinguishes a congressionally created remedy, conflicts with this Court's precedent, and raises profound due-process concerns. Certiorari is warranted.

STATEMENT OF THE CASE

A. Statutory Background

Federal tax law separates lien enforcement from liability adjudication. Under 26 U.S.C. § 7403, the Government may enforce an existing tax lien against specific property. Such actions resolve lien priority and authorize foreclosure and sale, but they do not allow a taxpayer to contest the validity of the underlying assessments or assert a refund claim. Challenges to liability must be brought through a refund suit after full payment, under 28 U.S.C. §§ 1491, 1346(a)(1), following an administrative refund claim under 26 U.S.C. § 7422. This Court has long held that refund litigation—not lien enforcement—is the exclusive vehicle for liability review. *Flora v. United States*, 362 U.S. 145 (1960).

B. Factual Background

Between 2008 and 2018, the IRS assessed Engen nineteen civil penalties for tax years 2004–2008, along with income-tax assessments for 2005 and 2007. Federal tax liens were recorded in both North Carolina and Washington, and additional notices attached to a residence Engen inherited in Washington.

C. The § 7403 Lien-Foreclosure Action

In 2018, at the IRS's request, the United States filed a § 7403 action in the Western District of Washington. Engen, as defendant, could not raise a refund claim or seek affirmative monetary relief; the court lacked jurisdiction

to hear such claims. The court entered summary judgment for the Government in the amount of \$292,802.13 without adjudicating the legality of any assessment, of which approximately 85% consisted of civil penalties and interest, not delinquent income taxes.

Engen appealed. The Ninth Circuit affirmed solely on lien-enforcement grounds. Before the foreclosure sale, Engen sold the property and paid the asserted liability under protest.

D. Refund Claim and Tucker Act Suit

Engen timely filed an administrative refund claim under 28 U.S.C. § 7422. After six months passed without IRS action, she filed a refund suit in the Court of Federal Claims under the Tucker Act seeking adjudication of liability and repayment of the amounts she had been compelled to satisfy.

E. Court of Federal Claims Dismissed - Federal Circuit Affirmed

The Government moved to dismiss on claim-preclusion grounds, arguing that the § 7403 judgment barred refund litigation. The Court of Federal Claims agreed. The Federal Circuit affirmed, holding that a § 7403 foreclosure judgment constitutes a “final judgment on the merits” for preclusion purposes—despite the district court’s lack of jurisdiction to consider liability.

Thus, no court has ever addressed whether the assessments against Engen were lawful.

REASONS FOR GRANTING THE WRIT

This case satisfies every traditional criterion for certiorari. Sup. Ct. R.

10(a). It presents recurring and nationally significant questions regarding due process, the refund remedy, and the proper boundary between lien enforcement and tax-liability adjudication.

I. A § 7403 foreclosure judgment is not a determination of tax liability, yet the Federal Circuit treated it as one.

A. Section 7403 is a lien-enforcement mechanism, not a liability-adjudication forum.

Section 7403 authorizes actions to enforce tax liens and distribute sale proceeds. It is an *in rem* proceeding. Courts of appeals—including the Fifth and Tenth Circuits—have long treated § 7403 actions as equitable foreclosure suits directed at property, not liability determinations. *United States v. Miller*, 505 F.2d 1031 (5th Cir. 1974); *United States v. Boyd*, 246 F.2d 477 (5th Cir. 1957); *United States v. Am. Nat'l Bank*, 255 F.2d 504, 507 (5th Cir. 1958); *United States v. Bonneville Distrib., Inc.*, 277 F.3d 1251 (10th Cir. 2002).

This Court confirmed the distinction between lien enforcement and liability review in *United States v. Williams*, 514 U.S. 527 (1995).

The Federal Circuit erased that distinction. By giving preclusive effect to a judgment that could not adjudicate liability, it rewrote § 7403 and undermined the statutory scheme Congress created.

B. Section 7403 proceedings also rest on conclusive irrebuttable presumptions that violate due process.

Foreclosure under § 7403 is among the most drastic tools available to the Government. Yet taxpayers have no opportunity in such proceedings to contest the legality of assessments or the validity of the lien. The Treasury Inspector General has expressly warned that § 7403 foreclosures lack the legal protections afforded by the seizure process, and recommends the IRS not use them for collection. TIGTA Report No. 2022-30-026 (Mar. 28, 2022).

Section 7403 thus relies on two irrebuttable presumptions:

1. the IRS assessments underlying the liens are valid;
2. the taxpayer legally owed the taxes and penalties.

This Court has repeatedly invalidated governmental schemes that employ irrebuttable presumptions to deny individuals an opportunity to demonstrate the truth. *Vlandis v. Kline*, 412 U.S. 441 (1973); *Cleveland Bd. of Educ. v. LaFleur*, 414 U.S. 632 (1974); *United States Dep't of Agric. v. Murry*, 413 U.S. 508 (1973).

Section 7403 violates that same principle. It authorizes forced sale of homes based on administrative determinations the taxpayer is forbidden to challenge. The constitutional question is exceptionally important and recurring.

II. Applying claim preclusion here violates due process because petitioner had no full and fair opportunity to litigate tax liability in the § 7403 action.

Preclusion cannot apply when a litigant lacked a full and fair

opportunity to litigate. *Richards v. Jefferson County*, 517 U.S. 793 (1996); *Taylor v. Sturgell*, 553 U.S. 880 (2008).

Engen could not raise a refund claim, challenge the assessments, or obtain liability review in the § 7403 action. The district court expressly lacked jurisdiction. Under Federal Circuit and Ninth Circuit precedent, a claim is not precluded if it could not have been raised earlier. *Carson v. Dep't of Energy*, 398 F.3d 1369 (Fed. Cir. 2005); *Mpoyo v. Litton Electro-Optical Sys.*, 430 F.3d 985 (9th Cir. 2005).

Granting preclusive effect to a judgment entered in such a restricted proceeding deprives the taxpayer of any meaningful avenue to challenge the legality of the Government's claims. This Court has never permitted the Government to extinguish statutory refund rights by relying on a prior action in which the taxpayer could not raise the very claim later deemed barred.

This raises a pure Fifth Amendment due-process question appropriate for this Court's review.

III. The decision conflicts with this Court's precedent distinguishing lien enforcement from refund litigation.

This Court's decisions in *Flora* and *Williams* draw a sharp line between lien enforcement and liability adjudication. The Federal Circuit erased that line. Treating a § 7403 foreclosure as a liability determination allows the Government to foreclose property first and treat that limited judgment as binding on liability—barring refund suits Congress expressly preserved.

If that rule stands, lien enforcement becomes a functional bypass of refund procedure, allowing the Government to avoid judicial scrutiny of assessments by initiating collection first. No precedent authorizes this inversion of statutory design. It contradicts the framework Congress created and invites strategic sequencing that deprives taxpayers of the only forum in which liability can be adjudicated.

IV. The decision extinguishes a congressionally created refund remedy.

The refund suit is the exclusive mechanism for obtaining judicial review of tax liability after payment. 26 U.S.C. § 7422; 28 U.S.C. §§ 1346(a)(1), 1491.

Engen followed the statutory path exactly: payment under protest → administrative refund claim → Tucker Act suit. The Federal Circuit held that a foreclosure judgment barred this remedy.

That result grants the Executive a unilateral ability to eliminate refund rights merely by choosing to foreclose first. Congress never authorized such circumvention.

Such a result calls for correction by this Court.

V. The issues are nationally important and recurring.

The Government regularly brings § 7403 actions. If the decision below stands, taxpayers across the country may be permanently denied judicial review of assessments whenever the Government elects to pursue foreclosure first.

This creates inconsistent results, encourages strategic forum selection, and undermines the integrity of federal tax administration.

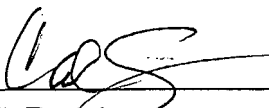
Only this Court can resolve the conflict and restore the statutory and constitutional framework.

CONCLUSION

The Federal Circuit's decision transforms a limited § 7403 foreclosure judgment—where tax liability cannot be litigated—into a final, preclusive merits determination that bars the only statutory mechanism Congress provided for taxpayers to obtain refund review. That ruling conflicts with this Court's precedent, extinguishes a congressionally created remedy, and raises grave due-process concerns.

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Pro Se Petitioner

December 16, 2025