No. 25-739

In the Supreme Court of the United States

HERBERT HIRSCH, ET AL., PETITIONERS

v.

UNITED STATES TAX COURT

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

BRIEF FOR THE COMMISSIONER OF INTERNAL REVENUE IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether, when the Tax Court denies a demand for a jury trial, a court of appeals should grant mandamus without applying the traditional mandamus standard (*i.e.*, without considering whether the party has an adequate alternative means of obtaining relief or whether the party's right to relief is clear and indisputable).

2. Whether the Seventh Amendment requires the Tax Court to conduct a jury trial when a taxpayer seeks a redetermination of a fraud penalty contained in a deficiency notice issued by the Internal Revenue Service.

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OPINIONS BELOW

The orders of the court of appeals (Pet. App. 1a-2a) and Tax Court (Pet. App. 3a-5a, 7a-9a) are not reported.

JURISDICTION

The judgment of the court of appeals was entered on May 30, 2025. A petition for rehearing, which the court of appeals treated as a motion for reconsideration, was denied on August 20, 2025 (Pet. App. 11a). On November 13, 2025, Justice Thomas extended the time within which to file a petition for a writ of certiorari to and including December 18, 2025, and the petition was filed on that date. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Petitioners filed petitions in the Tax Court seeking redeterminations of federal income-tax deficiencies and civil tax penalties (including fraud penalties) contained in a notice of deficiency issued by the Internal Revenue Service (IRS). Gov't C.A. Resp. Br. 1. The court denied petitioners' motions for jury trials as to the fraud penalties. Pet. App. 3a-5a, 7a-9a. The Eleventh Circuit denied petitioners' petitions for writs of mandamus directing the Tax Court to hold jury trials. *Id.* at 1a-2a.*

1. If the IRS determines that a taxpayer has failed to correctly report his income-tax liability, it may issue a notice of deficiency. See 26 U.S.C. 6212(a). Such a notice may include a determination that a taxpayer owes tax penalties, which are "assessed, collected, and paid in the same manner as taxes." 26 U.S.C. 6665(a); see 26 U.S.C. 6671(a). The tax penalty at issue here, the fraud penalty, applies "[i]f any part of any underpayment of tax required to be shown on a return is due to fraud." 26 U.S.C. 6663(a).

A taxpayer who receives a notice of deficiency has three options. First, the taxpayer may (without paying the taxes and penalties) file a petition in the Tax Court, a non-Article III tribunal. See 26 U.S.C. 6213(a). Subject to exceptions that are not at issue here, the IRS may not assess or collect taxes or penalties while the Tax Court's proceedings remain pending. See *ibid.* No jury is available in the Tax Court. See Boris I. Bittker

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* This brief is filed on behalf of the Commissioner of Internal Revenue, who was a party below and is a respondent in this Court. See Sup. Ct. R. 12.6. The Tax Court judge, a nominal respondent to the petition for a writ of mandamus, has elected not to participate in the proceedings. See 24-10420 C.A. Doc. 11 (Mar. 24, 2025).

& Lawrence Lokken, *Federal Taxation of Income, Estates, and Gifts* ¶ 118.1 (2024).

Second, the taxpayer may pay the taxes and penalties and seek a refund from the IRS. See *Flora* v. *United States*, 357 U.S. 63, 75 (1958). If the IRS denies the claim (or fails to act on it within six months), the taxpayer may file a refund suit in a district court or the Court of Federal Claims. See 26 U.S.C. 6532(a)(1), 7422(a); 28 U.S.C. 1346(a)(1). If the taxpayer sues in district court, either party may demand a jury trial. See 28 U.S.C. 2402.

Third, a taxpayer who receives a notice of deficiency may do nothing, in which case the IRS may attempt to collect the taxes and penalties through administrative proceedings. See 26 U.S.C. 6213(c). If those efforts fail, the government may file a collection suit in district court. See 26 U.S.C. 7401, 7402(a). The taxpayer may demand a jury trial in that suit. See *United States* v. *McMahan*, 569 F.2d 889, 890-892 (5th Cir. 1978) (en banc).

2. In 2010, the IRS issued deficiency notices determining that petitioners had underpaid their income taxes and were liable for associated penalties, including fraud penalties, for the 2003 to 2006 tax years. Gov't C.A. Resp. Br. xviii, 5. In response, petitioners chose to proceed in the Tax Court, filing petitions there in December 2010 and March 2011, asking it to redetermine their liabilities. *Ibid.* In May 2022, they requested that the Tax Court use jury trials with respect to their liability for the fraud penalties. *Id.* at xix, 5-6; Pet. App. 5a, 9a.

In two separate orders, the Tax Court denied petitioners' demands for jury trials. Pet. App. 3a-5a, 7a-9a. The court explained that there is no constitutional right

to a jury trial when an individual sues the United States pursuant to a waiver of sovereign immunity. *Id.* at 4a, 8a. Even so, the court added that petitioners "ha[d] the option" under federal statutes "to pay the deficiency asserted by the IRS and sue for a refund in federal district court, which would have entitled them to elect trial by jury." *Id.* at 5a n.3, 9a n.3 (citing 28 U.S.C. 1346(a)(1) and 2402).

3. Petitioners filed petitions for writs of mandamus in the court of appeals, which consolidated the petitions and directed the Commissioner to respond. 24-10420 C.A. Doc. 7 (Mar. 12, 2025).

After briefing, the court of appeals denied the petitions for writs of mandamus. Pet. App. 1a-2a. The court stated that a party seeking mandamus must show that it has "'no other adequate means'" of obtaining relief, that its right to relief is "'clear and indisputable,'" and that mandamus is "appropriate under the circumstances." *Id.* at 2a (citation omitted). The court determined that petitioners had not carried their burden of showing that they had "no other avenue of relief" or that their "right to relief is clear and indisputable." *Ibid.*

Petitioners filed a petition for rehearing. Pet. App. 11a. The court of appeals construed that petition as a motion for reconsideration and denied it. *Ibid.*

ARGUMENT

With respect to the first question presented, petitioners contend (Pet. 10-19) that, whenever a trial court wrongly denies a demand for a jury trial, a court of appeals should grant mandamus without applying the traditional mandamus standard (*i.e.*, without considering whether the party has an adequate alternative means of

obtaining relief or whether the party's right to relief is clear and indisputable). The court of appeals correctly rejected that contention. Although courts of appeals have disagreed about what mandamus standard applies in cases involving an Article III court's denial of a jury trial, this case arising from the Tax Court does not squarely implicate that conflict and would be a poor vehicle for resolving it.

With respect to the second question presented, petitioners contend (Pet. 19-33) that the Seventh Amendment entitles them to a jury trial in the Tax Court on their liability for tax fraud penalties. That contention is incorrect, is not the subject of any circuit conflict, and was not addressed in the decision below. The petition for a writ of certiorari should be denied.

A. Petitioners' Objection To Application Of The Traditional Mandamus Standard Does Not Warrant Further Review

1. The twelve regional courts of appeals are authorized to review the Tax Court's decisions "in the same manner and to the same extent as decisions of the district courts." 26 U.S.C. 7482(a)(1). In general, a court of appeals may review a district court's decision only when the decision is final—*i.e.*, when it resolves the entire case. See 28 U.S.C. 1291; *GEO Group, Inc.* v. *Menocal*, 146 S. Ct. 774, 781 (2026). That rule "prevent[s] piecemeal appeals," "'promotes the efficient administration of justice,'" and "'preserves the proper balance between trial and appellate courts.'" *GEO Group*, 146 S. Ct. at 781 (citation omitted).

Under a narrow exception to the ordinary finality rule, a court of appeals may review a lower court's interlocutory decision through a writ of mandamus. See *Mohawk Industries, Inc.* v. *Carpenter*, 558 U.S. 100, 111 (2009). Mandamus "is a 'drastic and extraordinary' rem-

edy 'reserved for really extraordinary causes.'" *Cheney* v. *United States District Court*, 542 U.S. 367, 380 (2004) (citation omitted). "[T]hree conditions must be satisfied before [the writ] may issue": (1) the party seeking the writ must have "'no other adequate means'" of obtaining relief; (2) the party's right to relief must be "'clear and indisputable'"; and (3) mandamus must be "appropriate under the circumstances." *Id.* at 380-381 (citations omitted).

The court of appeals correctly held that petitioners cannot satisfy the first and second conditions under the traditional mandamus standard. See Pet. App. 2a. Petitioners have adequate alternative means of raising their claim: appealing from the Tax Court's final decision. Petitioners also cannot show that their constitutional claim is even meritorious, much less that it is clearly and indisputably correct. See pp. 11-17, *infra*.

2. Petitioners do not dispute the court of appeals' determination that they cannot satisfy the traditional mandamus standard. Instead, they contend (Pet. 16-19) that a different standard applies in this context, such that a court of appeals must issue the writ whenever a lower court erroneously declines to empanel a jury.

That contention conflicts with the principles underlying the final-judgment rule and the exception to that rule for mandamus. By permitting interlocutory review as a matter of course in cases concerning an asserted right to a jury trial, petitioners' approach would encourage piecemeal appeals and undermine trial courts' authority to manage ongoing litigation. And by effectively making mandamus automatic, petitioners' approach would deprive appellate courts of the discretion to determine when mid-course appellate intervention is appropriate. For instance, it would require an appellate

court to grant the extraordinary writ of mandamus even when a case might otherwise soon be resolved at summary judgment, when the legal issue presented is novel or complex, or when the mandamus proceedings would disrupt a long-scheduled trial.

Petitioners identify no principled basis for carving out a special jury-trial exception to the usual mandamus standard. Petitioners correctly describe the right to a jury trial as "important," Pet. 12 (citation omitted), but "the nature of the right does not dictate whether review comes in mid-course or at the end of the district court's proceedings," *First National Bank of Waukesha* v. *Warren*, 796 F.2d 999, 1002 (7th Cir. 1986). Petitioners also note the "inconvenience" of needing to hold a second trial after a successful appeal, Pet. 16 (citation omitted), but that argument proves too much. "Many kinds of error"—such as the denial of a discovery request or a wrongful evidentiary ruling—"may require retrials." *Caldwell-Baker Co.* v. *Parsons*, 392 F.3d 886, 889 (7th Cir. 2004).

Petitioners err in contending (Pet. 16-19) that the court of appeals' application of the traditional mandamus standard conflicts with this Court's decisions in *Ex parte Simons*, 247 U.S. 231 (1918), *Beacon Theatres, Inc.* v. *Westover*, 359 U.S. 500 (1959), and *Dairy Queen, Inc.* v. *Wood*, 369 U.S. 469 (1962). Each of those cases involved both legal claims that were triable by a jury and equitable claims that were triable by a judge. See *First National Bank*, 796 F.2d at 1003-1004. "The judgment on the equitable claim, invulnerable on appeal, might have foreclosed the legal claim because of issue preclusion (collateral estoppel) or claim preclusion (res judicata)." *Id.* at 1003. "So the timing of the trials might have deprived the party of a jury and the appel-

late court of the authority to adjudicate whether there should be a jury trial." *Ibid.* The cited decisions accordingly establish, at most, that mandamus may be available "[i]f denial of a jury trial threatens injury that is irreparable in the sense that appellate review would not avail * * * because the judge's decision would be preclusive." *Caldwell-Baker*, 392 F.3d at 888. Petitioners have not suggested that their cases will raise similar concerns.

3. Even if a different standard should govern applications for writs of mandamus directing lower courts to hold jury trials, petitioners' own applications would still fail. A court of appeals could not issue a writ directing the Tax Court to hold a jury trial, for the Tax Court lacks the statutory authority to do so. See, *e.g.*, Bittker & Loken ¶ 118.1 ("Trial by jury is available in the district court but not in the Tax Court.").

No statute affirmatively authorizes the Tax Court to conduct jury trials, and that court may not conduct them without such an authorization. As a non-Article III court, the Tax Court possesses only those powers that Congress has conferred upon it by statute. See *Commissioner* v. *McCoy*, 484 U.S. 3, 7 (1987); *Maier* v. *Commissioner*, 360 F.3d 361, 363 (2d Cir. 2004); see also 26 U.S.C. 7442 ("The Tax Court and its divisions shall have such jurisdiction as is conferred upon them by this title."). Further, under general principles of sovereign immunity, plaintiffs who sue the United States have no right to a jury trial unless the Congress has "clearly and unequivocally" granted them that right. *Lehman* v. *Nakshian*, 453 U.S. 156, 162 (1981).

Multiple statutory provisions rest on the understanding that the Tax Court may not conduct jury trials. For example, the court must issue a "report" containing "its

findings of fact" in "any proceeding" filed before it. 26 U.S.C. 7459(a) and (b). Those directives to the court leave no room for factfinding by a jury. Similarly, courts of appeals may review the Tax Court's decisions "in the same manner and to the same extent as decisions of the district courts *in civil actions tried without a jury*." 26 U.S.C. 7482(a)(1) (emphasis added). It would be incongruous for juries to render verdicts in the Tax Court, only for courts of appeals to review those verdicts as though they had been rendered without juries. Further, Congress has empowered district courts to devise plans for maintaining lists of potential jurors, summoning jury panels, and selecting jurors, see 28 U.S.C. 1861 *et seq.*, and it has specifically extended those powers to the Court of International Trade, see 28 U.S.C. 1876. But it has included no such powers among its provisions for the Tax Court. See 26 U.S.C. 7441 *et seq.*

Historical practice leads to the same conclusion. The government is aware of no case in which the Tax Court or its predecessor, the Board of Tax Appeals, has ever conducted a jury trial. And courts of appeals have long recognized that jury trials are unavailable in the Tax Court. See, *e.g.*, *Dorl* v. *Commissioner*, 507 F.2d 406, 407 (2d Cir. 1974); *Mathes* v. *Commissioner*, 576 F.2d 70, 71-72 (5th Cir. 1978), cert. denied, 440 U.S. 911 (1979); *Blackburn* v. *Commissioner*, 681 F.2d 461, 462 (6th Cir. 1982); *Funk* v. *Commissioner*, 687 F.2d 264, 266 (8th Cir. 1982); *Olshausen* v. *Commissioner*, 273 F.2d 23, 27 (9th Cir. 1959), cert. denied, 363 U.S. 820 (1960).

Constitutional avoidance provides a final reason to conclude that the Tax Court may not conduct jury trials. Though Congress has affirmatively authorized certain non-Article III federal adjudicators (magistrate judges

and bankruptcy judges) to conduct jury trials, it has limited that authority to cases that have been referred to them by an Article III court with the parties' consent. See 28 U.S.C. 157(a) and (e), 636(b) and (c)(1). Allowing the Tax Court to conduct jury trials without a referral or the parties' consent would raise serious doubts under Article III. See *Wellness International Network, Ltd.* v. *Sharif*, 575 U.S. 665, 676-678 (2015).

Thus, even if petitioners' underlying constitutional claim were meritorious, the remedy that they have sought—a writ of mandamus directing the Tax Court to conduct a jury trial—would not be appropriate. Their application for mandamus accordingly fails under any standard. To the extent that petitioners wish to seek some other remedy for the purported constitutional violation, such as simply setting aside the fraud penalties, they remain free to request that in the Tax Court and on appeal after the Tax Court's final decision.

4. Petitioners correctly observe (Pet. 11-14) that different courts of appeals have long applied different standards when evaluating mandamus petitions that challenge district courts' denials of jury trials. Four courts (including the Eleventh Circuit) have applied the traditional mandamus standard in those circumstances. See *In re Pasquariello*, 16 F.3d 525, 528-529 (3d Cir. 1994); *First National Bank*, 796 F.2d at 1002 (7th Cir. 1986); *In re Don Hamilton Oil Co.*, 783 F.2d 151, 151 (8th Cir. 1986); Pet. App. 2a. Meanwhile, four other courts have been willing to grant mandamus in such cases without applying the usual mandamus standard. See *Higgins* v. *Boeing Co.*, 526 F.2d 1004, 1007 (2d Cir. 1975); *In re Lockheed Martin Corp.*, 503 F.3d 351, 353-354 (4th Cir. 2007), cert. denied, 553 U.S. 1017 (2008); *In re County of Orange*, 784 F.3d 520, 525-526 (9th Cir.

2015), cert. denied, 577 U.S. 1064 (2016); *Filmon Process Corp.* v. *Sirica*, 379 F.2d 449, 450-451 (D.C. Cir. 1967).

Petitioners count (Pet. 12-13) the First and Federal Circuits among the courts that have dispensed with the traditional mandamus standard in jury-trial cases. See *In re Union Nacional de Trabajadores*, 502 F.2d 113, 115-116 (1st Cir. 1974), vacated on other grounds, 527 F.2d 602 (1st Cir. 1975); *In re Lockwood*, 50 F.3d 966, 970 (Fed. Cir.), vacated on other grounds, 515 U.S. 1182 (1995). But the decisions they cite were vacated on other grounds and so lack binding precedential effect. See *O'Connor* v. *Donaldson*, 422 U.S. 563, 577 n.12 (1975).

Regardless, this case does not squarely implicate the decades-old circuit conflict and would be a poor vehicle to resolve it. The cited cases all involved mandamus petitions that were directed to district courts, which were indisputably empowered to conduct jury trials. None involved the Tax Court, which lacks the power to hold such a trial. Because a writ of mandamus directing the Tax Court to conduct a jury trial would be inappropriate under any standard, resolution of the conflict about the applicable standard would make no difference to the outcome of this case. But this Court does not sit to "decide abstract questions of law * * * which, if decided either way, affect no right" of the parties. *Supervisors* v. *Stanley*, 105 U.S. 305, 311 (1882). At a minimum, the Tax Court's distinctive status poses an obstacle that could prevent the Court from reaching and resolving the question presented.

B. Petitioners' Underlying Seventh Amendment Claim Does Not Warrant Further Review

1. Petitioners separately contend (Pet. 19-31) that the Seventh Amendment entitles a party to a jury trial

when the party sues the government in Tax Court to contest the IRS's determination that the party is liable for fraud penalties. That contention is incorrect for multiple independent reasons.

First, the statutory scheme preserves the right to a jury trial on liability for fraud penalties. A taxpayer who receives an IRS deficiency notice may pay the taxes and penalties and file a refund suit in district court, where he may demand a jury trial. See Pet. App. 5a n.3, 9a n.3; pp. 2-3, *supra*. But petitioners did not choose that course. Instead, they elected to file suit in the Tax Court, where no jury is available. Because a "trial by jury [wa]s open" to petitioners, "there is nothing left to [them] to complain of." *Bank of Columbia* v. *Okely*, 4 Wheat. 235, 244 (1819). Petitioners contend (Pet. 29-30) that the availability of a jury on the road they did not take does not satisfy the Seventh Amendment because they would need to pay the taxes and penalties before filing refund suits. But the "pay first and litigate later" principle is deeply rooted in American tax law, *Flora* v. *United States*, 357 U.S. 63, 75 (1958), and this Court has long recognized its constitutionality, see, *e.g.*, *G.M. Leasing Corp.* v. *United States*, 429 U.S. 338, 352 n.18 (1977); *Phillips* v. *Commissioner*, 283 U.S. 589, 599 & n.9 (1931); *Cheatham* v. *United States*, 92 U.S. 85, 89 (1876).

Second, the Seventh Amendment preserves the right to trial by jury only in "Suits at common law," U.S. Const. Amend. VII, and a Tax Court proceeding is not such a suit. Though the Tax Court may issue a decision that "redetermin[es]" whether there is a deficiency in a taxpayer's return, it lacks the authority to enter a final judgment ordering a taxpayer to pay taxes or penalties. 26 U.S.C. 6213(a); see *United States ex rel. Girard*

Trust Co. v. *Helvering*, 301 U.S. 540, 542-543 (1937). Even if the Tax Court upholds the IRS's tax and penalty determinations, the government may obtain a money judgment against the taxpayer only by filing a collection suit in district court. See 26 U.S.C. 7401, 7402(a). A Tax Court proceeding thus is not a suit at common law in which a court may make a binding award of damages, penalties, or other legal relief. See *Olshausen*, 273 F.2d at 27-28; *Swanson* v. *Commissioner*, 65 T.C. 1180, 1183-1184 (1976).

Third, "[i]t has long been settled that the Seventh Amendment right to trial by jury does not apply in actions against the Federal Government." *Lehman*, 453 U.S. at 160; see *Galloway* v. *United States*, 319 U.S. 372, 388-389 (1943); *McElrath* v. *United States*, 102 U.S. 426, 440 (1880). Because the United States is immune from being sued without its consent, "the plaintiff has a right to a trial by jury only where that right is one of 'the terms of the Government's consent to be sued.'" *Lehman*, 453 U.S. at 160 (brackets and citation omitted). Congress has waived sovereign immunity by allowing taxpayers to sue the government in the Tax Court, but it has not authorized jury trials in those proceedings.

Fourth, the Seventh Amendment does not guarantee jury trials in non-Article III federal tribunals such as the Tax Court. "This Court's precedents establish that, when Congress properly assigns a matter to adjudication in a non-Article III tribunal, 'the Seventh Amendment poses no independent bar to the adjudication of that action by a nonjury factfinder.'" *Oil States Energy Services, LLC* v. *Greene's Energy Group, LLC*, 584 U.S. 325, 345 (2018) (citation omitted); see *Granfinanciera, S.A.* v. *Nordberg*, 492 U.S. 33, 53-54 (1989). Petitioners do not claim that Article III bars the Tax Court from

redetermining their liability for taxes and penalties. It follows that the Seventh Amendment "poses no independent bar" to the Tax Court's resolution of petitioners' cases without juries. *Oil States*, 584 U.S. at 345 (citation omitted).

Finally, the public-rights doctrine allows the Tax Court to adjudicate these cases without juries. This Court has long recognized that, under that doctrine, an adjudicator other than an Article III court, sitting without a jury, may determine a taxpayer's liability for taxes and associated penalties. See *Wickwire* v. *Reinecke*, 275 U.S. 101, 105-106 (1927) (recognizing "the undoubted power of Congress to provide any reasonable system for the collection of taxes and the recovery of them * * * without a jury trial"); see also, *e.g.*, *Helvering* v. *Mitchell*, 303 U.S. 391, 401-404 (1938); *Phillips*, 283 U.S. at 593-601; *Ex parte Bakelite Corp.*, 279 U.S. 438, 446-447, 458 (1929); *Passavant* v. *United States*, 148 U.S. 214, 221-222 (1893); *Bartlett* v. *Kane*, 16 How. 263, 274 (1854). Petitioners emphasize (Pet. 20-27) that this case involves fraud penalties, but the Court has specifically determined that the public-rights doctrine extends to penalties for tax fraud. See *Mitchell*, 303 U.S. at 395-396, 401-404.

Petitioners primarily rely (Pet. i, 1, 3, 9, 19-21, 26, 27) on *SEC* v. *Jarkesy*, 603 U.S. 109 (2024), a decision in which this Court held that the Seventh Amendment entitles a person to a jury trial when the Securities and Exchange Commission (SEC) seeks civil penalties from him for securities fraud. In petitioners' view (Pet. 3), "*Jarkesy* dictates the outcome" on the second question presented. But *Jarkesy* is fully consistent with the arguments made above. Unlike the statutory scheme here, the statutory scheme in *Jarkesy* did not provide

the private party with any alternative path to a jury trial. See *id.* at 116-117. *Jarkesy* also involved an agency's binding order to pay penalties, not a redetermination of tax liability. See *id.* at 119. The penalty proceeding in *Jarkesy* was brought by the federal government, not against it. See *ibid.* The Court in *Jarkesy* held that Article III did not allow the SEC to adjudicate that proceeding on its own, see *id.* at 127-140; here, by contrast, petitioners do not contend that the Tax Court's proceedings violate Article III. And while the Court held in *Jarkesy* that securities-fraud penalties fall outside the public-rights doctrine, it specifically acknowledged that the doctrine encompasses cases involving "the collection of revenue." *Id.* at 129.

2. The second question presented does not warrant further review at this time. To start, there is no conflict in the circuits about whether the statutory procedures for determining fraud penalties violate the Seventh Amendment. Indeed, no court of appeals has yet issued a decision resolving that issue, though it has been raised in multiple cases since *Jarkesy*. See, *e.g.*, *HDH Group, Inc.* v. *United States*, No. 24-cv-988, 2025 WL 2711877, at *4-*13 (W.D. Pa. Sept. 23, 2025); *Riddle Aggregates, LLC* v. *Commissioner*, 165 T.C. No. 12, at 2-5 (2025); *Silver Moss Properties, LLC* v. *Commissioner*, 165 T.C. No. 3, at 9-10 (2025). If a conflict develops or a court holds that the statute violates the Constitution, the Court could consider whether to grant review at that time.

In any event, this case would be a poor vehicle for resolving the second question presented. The court of appeals denied the petition for a writ of mandamus because petitioners did not satisfy the mandamus standard. See Pet. App. 2a. It therefore did not even reach the merits of petitioners' Seventh Amendment claim.

See *ibid.* This Court, which is a "court of review, not of first view," should not consider that claim before the court of appeals has done so. *Cutter* v. *Wilkinson*, 544 U.S. 709, 718 n.7 (2005).

The interlocutory posture of this case provides a further reason to deny review. See *City of Ocala* v. *Rojas*, 143 S. Ct. 764, 765 (2023) (statement of Gorsuch, J., respecting the denial of certiorari). If petitioners prevail on other grounds after their proceedings in the Tax Court or the court of appeals, it may be unnecessary to reach the constitutional question that they have asked this Court to decide. And if they do not prevail, they will remain free to raise their Seventh Amendment claim, along with any other issues that arise on remand, in a single petition for a writ of certiorari after final judgment. See *Major League Baseball Players Ass'n* v. *Garvey*, 532 U.S. 504, 508 n.1 (2001) (per curiam).

3. The second question presented overlaps with the questions presented in *FCC* v. *AT&T*, No. 25-406 (argued Apr. 21, 2026), and *Department of Labor* v. *Sun Valley Orchards*, No. 25-966, cert. granted (Apr. 27, 2026). In *AT&T*, as in this case, the government is arguing that no Seventh Amendment violation occurs when a statute provides a path to a jury trial but a private party eschews that path and proceeds in a forum where no jury is available. See Gov't Br. at 22-23, *AT&T*, *supra* (No. 25-406). And *Sun Valley*, like this case, concerns the scope of the public-rights doctrine. See Pet. at I, *Sun Valley*, *supra* (No. 25-966).

Even so, this Court need not hold the petition for a writ of certiorari pending the resolution of *AT&T* or *Sun Valley*. The court of appeals resolved petitioners' cases based on the mandamus standard, not on the merits of the Seventh Amendment claim. Because *AT&T*

and *Sun Valley* do not concern the mandamus standard, there is no "reasonable probability" that the Court's decision in either of those cases will require the court of appeals to redo its analysis here. *Lawrence* v. *Chater*, 516 U.S. 163, 167 (1996) (per curiam). Further, because of the interlocutory posture here, this Court's decisions in *AT&T* and *Sun Valley* can be addressed in subsequent proceedings in the courts below. Cf. *United States* v. *Cooper*, 146 S. Ct. 348 (2025) (denying certiorari in an interlocutory posture instead of holding the case for *United States* v. *Hemani*, No. 24-1234 (argued Mar. 2, 2026)).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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