25-7700 ORIGINAL

No. 23-3108

IN THE

SUPREME COURT OF THE UNITED STATES



ANASTASIOS SMALIS,

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

On Petition for a Writ of Certiorari

to the United States Court of Appeals

for the Third Circuit

PETITION FOR A WRIT OF CERTIORARI

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# I. QUESTION PRESENTED

Whether the Due Process Clause of the Fifth Amendment permits the Internal Revenue Service to assess and collect a tax deficiency when the government cannot establish that the statutorily required Notice of Deficiency was properly mailed to the taxpayer, thereby depriving the taxpayer of the pre-payment judicial review guaranteed by 26 U.S.C. §§ 6212 and 6213. Section 6213(a) of the Internal Revenue Code guarantees taxpayers a prepayment forum in the United States Tax Court upon issuance of a statutory Notice of Deficiency. Here, the Internal Revenue Service represented—and the Tax Court accepted—that no Notice of Deficiency was ever issued to Petitioner. The Tax Court accordingly dismissed for lack of jurisdiction, leaving Petitioner without access to the prepayment review Congress designed as the principal safeguard against erroneous assessments. Consistent with this Court's instruction that pro se filings are to be liberally construed and not defeated by technical formalisms, see Haines v. Kerner, 404 U.S. 519, 520–21 (1972), the question presented is:

Whether the Due Process Clause of the Fifth Amendment is violated when the Internal Revenue Service proceeds in a manner that deprives a taxpayer of meaningful pre-deprivation judicial review while simultaneously acknowledging that no statutory Notice of Deficiency—the jurisdictional predicate for Tax Court review—was ever issued.

Whether the Due Process Clause of the Fifth Amendment permits the Internal Revenue Service to assess and collect taxes and deprive a taxpayer of property where the government admits that no statutory Notice of Deficiency was ever issued, yet the Tax Court and court of appeals dismiss the case for lack of jurisdiction.

## II PARTIES TO THE PROCEEDING

Petitioner is Anastasios Smalis, who was the petitioner in the United States Tax Court and the appellant in the United States Court of Appeals for the Third Circuit.

Respondent is the Commissioner of Internal Revenue, who was the respondent in the courts below.

There are no other parties.

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## III TABLE OF AUTHORITIES

Cases

Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306 (1950)

Jones v. Flowers,

547 U.S. 220 (2006)

Commissioner v. Shapiro,

424 U.S. 614 (1976)

Constitution

U.S. Const. amend. V

Statutes

26 U.S.C. § 6212

26 U.S.C. § 6213

OPINIONS BELOW

The judgment of the United States Court of Appeals for the Third Circuit is reproduced Order The order of the United States Tax Court granting respondent's motion to dismiss for lack of jurisdiction is reproduced at App. 1.

The opinion of the United States Court of Appeals for the Third Circuit is unpublished but reproduced in the Appendix at App. 2.

The opinion of the United States Court of Appeals for the Third Circuit full Court en banc is unpublished but reproduced in the Appendix at App. 3.

OPINIONS BELOW (brief but proper)

The order of the United States Tax Court granting respondent's motion to dismiss for lack of jurisdiction is reproduced at App. 1.

The opinion of the United States Court of Appeals for the Third Circuit is unpublished but reproduced in the Appendix at App. 2.

The opinion of the United States Court of Appeals for the Third Circuit full Court en banc is unpublished but reproduced in the Appendix at App. 3.

JURISDICTION

The Third Circuit Court of appeals entered judgment on December 18, 2024.

The Third Circuit Court of appeals "denied rehearing en banc" on October 3, 2025

Justice Alito granted an extension of time to file a petition for a writ of certiorari until March 2,

2026. This petition is timely under 28 U.S.C. § 1254(1).

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth Amendment provides:

No person shall be deprived of life, liberty, or property, without due process of law.

Relevant provisions of 26 U.S.C. §§ 6212 and 6213 are reproduced in the Appendix.

## STATEMENT OF THE CASE

This case concerns whether the federal government may assess and collect taxes without providing the constitutionally required Notice of Deficiency. This case presents an unusual and important due process question arising from the government's admitted failure to issue a statutory Notice of Deficiency.

Petitioner is a 79-year-old taxpayer whose sole income consists primarily of Social Security benefits. The Internal Revenue Service assessed and proceeded to collect taxes from petitioner.

In the Tax Court, respondent represented that it had conducted a diligent search of its records and determined that no notice of deficiency had been issued to petitioner. App. 3. The Tax Court acknowledged this representation.

Despite the government's admission that no statutory notice had been issued, the Tax Court granted respondent's motion to dismiss for lack of jurisdiction. App. 3. The court reasoned that because no notice of deficiency existed, petitioner could not invoke the Tax Court's jurisdiction.

Congress established the Notice of Deficiency as the taxpayer's critical procedural protection and gateway to Tax Court review. See 26 U.S.C. §§ 6212–6213. The government's failure to establish proper mailing of the Notice of Deficiency deprived petitioner of the statutory right to pre-payment review in the United States Tax Court.

Petitioner consistently maintained that he never received the required Notice of Deficiency and that the Internal Revenue Service failed to establish proper mailing sufficient to satisfy statutory and constitutional requirements.

Despite these defects, the IRS proceeded with assessment and collection activity. The Tax Court upheld the government's position, and the court of appeals affirmed.

The decision below permits the deprivation of property based on inadequate proof of notice and conflicts with this Court's due process jurisprudence.

Petitioner preserved the notice issue at every stage of the proceedings below.

## REASONS FOR GRANTING THE PETITION

I. The Decision Below Permits Deprivation of Property Without the Statutorily Required Notice. This case presents a fundamental due process problem. The government expressly represented to the Tax Court that, after a diligent search, it determined that no notice of deficiency had been issued to petitioner. App. 3.

The statutory notice of deficiency is the taxpayer's gateway to pre-payment judicial review and is the principal procedural protection Congress provided before assessment and collection. By dismissing for lack of jurisdiction in the face of the government's admission, the decision below permits the government to proceed with tax collection while the taxpayer is left without the very forum Congress created to protect against erroneous deprivation.

That result raises serious constitutional concerns under the Fifth Amendment.

II. This Case Presents an Important and Recurring Due Process Question.

The question presented is exceptionally important because the statutory deficiency notice is the cornerstone of the Tax Court's jurisdictional scheme and the taxpayer's primary pre-deprivation protection.

If the government may avoid judicial review simply by failing to issue the notice required by statute, taxpayers—particularly elderly and financially vulnerable individuals like petitioner—may suffer property deprivations without meaningful pre-payment review.

Petitioner respectfully request from This Court's review is warranted to clarify the constitutional limits of tax collection where the government concedes the statutory notice was never issued.

III. This Case Is an Excellent Vehicle.

This case cleanly presents the question. The government expressly represented that no notice of deficiency had been issued. The Tax Court relied on that absence to dismiss for lack of jurisdiction, and the court of appeals affirmed.

There are no disputed jurisdictional facts that would impede this Court's review. The constitutional issue is squarely presented.

I. The Decision Below Conflicts with This Court's Due Process Precedents

Due process requires notice reasonably calculated, under all the circumstances, to apprise interested parties of proceedings affecting their property rights. Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950).

This Court reaffirmed in Jones v. Flowers, 547 U.S. 220 (2006), that when the government is aware its attempt at notice has failed, it must take additional reasonable steps before taking property.

Here, the IRS was permitted to proceed without constitutionally adequate proof that the Notice of Deficiency was properly mailed. Allowing assessment to stand under these circumstances dilutes the fundamental protection recognized in Mullane and Jones.

Reason Certiorari is warranted.

## II. The Question Presented Is Recurring and Exceptionally Important

The statutory Notice of Deficiency is the cornerstone of taxpayer due process.

If the government may rely on incomplete mailing proof to sustain tax assessments, taxpayers nationwide—particularly elderly or medically vulnerable individuals—risk losing their right to pre-payment judicial review.

This Court's guidance is needed to ensure uniform constitutional standards.

## III. This Case Is an Appropriate Vehicle

This case cleanly presents the constitutional issue:

- whether adequate notice was provided;
- whether the statutory deficiency procedures were properly applied; and
- whether the courts below applied the correct due process standard.

There are no vehicle barriers to review.

## CONCLUSION

The petition for a writ of certiorari should be granted By This Honorable Court.

Respectfully submitted,

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Date: March 2, 2026