

SUPREME COURT OF THE UNITED STATES

IN THE SUPREME COURT OF THE UNITED STATES

COMMISSIONER OF INTERNAL REVENUE,)

Petitioner,)

v.) No. 24-416

JENNIFER ZUCH,)

Respondent.)

Pages: 1 through 58

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Petitioner,)

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JENNIFER ZUCH,)

Respondent.)

Washington, D.C.

Tuesday, April 22, 2025

The above-entitled matter came on for oral argument before the Supreme Court of the United States at 12:39 p.m.

APPEARANCES:

ERICA L. ROSS, Assistant to the Solicitor General, Department of Justice, Washington, D.C.; on behalf of the Petitioner.

SHAY DVORETZKY, ESQUIRE, Washington, D.C.; on behalf of the Respondent.

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P R O C E E D I N G S

(12:39 p.m.)

CHIEF JUSTICE ROBERTS: We will hear argument next in Case 24-416, Commissioner of Internal Revenue versus Zuch.

Ms. Ross.

ORAL ARGUMENT OF ERICA L. ROSS

ON BEHALF OF THE PETITIONER

MS. ROSS: Mr. Chief Justice, and may it please the Court:

Section 6330 of the Internal Revenue Code is all about levies, using the word "levy" nearly 30 times. The statute provides a levy-specific exception to the general rule that taxpayers must pay their taxes first and dispute them later in a refund suit.

When the IRS proposes to collect a tax by levying on the taxpayer's property, that is, by seizing and selling it, Section 6330 allows the taxpayer to dispute the particular method of collection before it occurs.

A taxpayer cannot use Section 6330's prepayment mechanism unless the IRS seeks to levy on her property. The proposed levy is her ticket to the IRS's Appeals Office and later to

1 the Tax Court.

2 But the Tax Court is one of limited
3 jurisdiction. Under Section 6330, Congress has
4 given the court only the power to review the
5 Appeals Office's "determination" whether a levy
6 may proceed. Where, as here, the IRS no longer
7 has a basis to enforce its proposed levy, the
8 Tax Court lacks jurisdiction, just as it would
9 lack jurisdiction if the IRS had never proposed
10 a levy at all.

11 Respondent contends that even after
12 the levy has dropped out of the case, the Tax
13 Court may continue to consider arguments about
14 the taxpayer's unpaid tax or underlying tax
15 liability. But, in this case, the IR -- IRS
16 cannot levy on the taxpayer's property because
17 she has already paid, so there is no unpaid tax
18 or underlying tax liability.

19 And, more generally, the statute
20 instructs the Appeals Office to consider those
21 subsidiary issues only in service of making the
22 ultimate determination whether a levy may
23 proceed. They are not the determination itself,
24 and nothing in the statute suggests those
25 subsidiary questions are independent bases for

1 Tax Court jurisdiction.

2 Indeed, even if the Tax Court agreed
3 with Respondent on those issues, it could afford
4 her no relief in the absence of a threatened
5 levy. The Tax Court, therefore, lacks
6 jurisdiction, although Respondent may pursue
7 challenges to the taxes she has paid in a
8 post-refund suit, just like any other taxpayer
9 subject to the general rule.

10 JUSTICE THOMAS: Should we look at
11 this case as statutory jurisdiction as opposed
12 to mootness?

13 MS. ROSS: So, Justice Thomas, I think
14 you can look at this case in a variety of ways,
15 but they sort of all get you to the same place.
16 I think you can think about it sort of as
17 statutory mootness. The statute requires
18 something that's no longer present. It requires
19 that the parties be fighting over a levy. As I
20 mentioned earlier this morning, the entire
21 statute is about levies.

22 And I think we know this not only
23 because the statute talks about levies 29 or 30
24 times but also because there's no relief that
25 can be given at this point to the taxpayer when

1 there's no longer a levy proposed.

2 JUSTICE THOMAS: Well, the taxpayer
3 says that it still wants to litigate the
4 liability -- underlying liability. But why
5 wouldn't the Tax Court or -- have jurisdiction,
6 the -- since, at the beginning of the
7 litigation, there was a levy in place?

8 MS. ROSS: So I think, Your Honor, the
9 Tax Court wouldn't have jurisdiction when
10 there's no longer a levy because, again, the --
11 the jurisdiction is very much tied to the levy.

12 So the question here is whether the --
13 the -- the determination that the Appeals Office
14 has made, which is whether the levy can go
15 forward, that's the language of (d)(1), the
16 question here is whether the Respondent can
17 continue litigating questions that are
18 subsidiary --

19 JUSTICE THOMAS: But --

20 MS. ROSS: -- to that ultimate
21 determination.

22 JUSTICE THOMAS: -- I -- I think my
23 point is, why is that so? At the beginning of
24 the litigation, there was a levy involved. Why
25 does it have to extend throughout the

1 litigation? It's already in court.

2 MS. ROSS: Sure, Your Honor. So two
3 answers to that question. One, by analogy to
4 this Court's recent decision in Royal Canin, I
5 think there are some things that happen during
6 the course of the litigation that so
7 fundamentally alter the litigation that
8 statutory jurisdiction is ousted. So, in that
9 case, it was a question about federal question
10 jurisdiction and supplemental jurisdiction. The
11 court was exercising supplemental jurisdiction
12 over state law claims in addition to Section
13 1331 jurisdiction. And this Court said that
14 when the federal claims fell out, there was no
15 more Section 1367 supplemental jurisdiction
16 because the federal claims were the anchor.

17 Similarly here, I think it's
18 impossible to read this statute all the way
19 through and not come away with the sense that
20 the levy is the anchor to federal court, to Tax
21 Court jurisdiction here.

22 But if I could discuss the statutory
23 provisions specifically because I think they
24 also really show this point. The whole question
25 here or a piece of the question here at least is

1 about this meaning of "determination" on page
2 5a, Section (d)(1) of the statute.

3 And I think everyone agrees that the
4 determination is sort of your source of Tax
5 Court jurisdiction. And what my friend suggests
6 is that anything that goes into that
7 determination is sort of independently
8 appealable even in the absence of a levy.

9 But I think we know that's not true
10 because, if you just step back one page in the
11 appendix -- so this is on page 4a of the gray
12 brief and we're looking at (c)(3) -- this tells
13 us the basis for the determination. It says,
14 "The determination by an appeals officer under
15 this subsection shall take into consideration,"
16 and then it provides a few different things.
17 The one that Respondent is focused on is (B),
18 the issues raised under paragraph (2).

19 So we know, whatever those issues are,
20 they're not the determination itself. They are
21 inputs to the determination. And so, therefore,
22 they're not an independent basis for Tax Court
23 jurisdiction.

24 And if you flip back a page further to
25 page 3a of our appendix, you see the --

1 JUSTICE GORSUCH: I'm sorry, I -- I --
2 I hate to interrupt because it's a good
3 explanation, but I just want to make sure I
4 track you.

5 You agree that the Tax Court's
6 jurisdiction hinges on a -- a determination?

7 MS. ROSS: So I agree that the
8 determination is necessary. I think we have
9 additional arguments about what remedy the Tax
10 Court could provide at this point, but I agree
11 the --

12 JUSTICE GORSUCH: Right. Just to
13 start.

14 MS. ROSS: -- determination is
15 necessary.

16 JUSTICE GORSUCH: We can get to remedy
17 later. We'll -- I'm sure we'll get there.

18 But -- but a determination. And --
19 and there was a determination here by the
20 Appeals Office?

21 MS. ROSS: Yes, there was a
22 determination that the tack -- that the IRS's
23 threatened levy could go forward.

24 JUSTICE GORSUCH: And has that been
25 withdrawn?

1 MS. ROSS: There is no basis for there
2 to be a levy in this case at this point.

3 JUSTICE GORSUCH: That -- that wasn't
4 my question. It was a good answer, but it
5 wasn't my question.

6 (Laughter.)

7 JUSTICE GORSUCH: Has that
8 determination been withdrawn?

9 MS. ROSS: So I think it's
10 important -- so -- so I think the answer to your
11 question, just to give it, is not exactly,
12 but -- but there's a reason why that is, and
13 that's because --

14 JUSTICE GORSUCH: How about no?

15 (Laughter.)

16 MS. ROSS: -- we're talking about --
17 well, we're talking about an Appeals Office
18 here, which is not -- this isn't a district
19 court decision that, you know, you would need to
20 be --

21 JUSTICE GORSUCH: Oh, I'm well aware
22 of that.

23 MS. ROSS: -- vacated or something
24 like that. This is an appeals officer. It's an
25 extremely informal determination, and so this

1 person may not be a lawyer. The IRS is
2 generally not represented before the Appeals
3 Office. So the determination lacks any
4 practical significance at this point.

5 JUSTICE GORSUCH: The government
6 didn't ask the Appeals Office to withdraw its
7 determination at any point, right?

8 MS. ROSS: I'm not aware of that being
9 in the record, but, again, I don't think that
10 would normally happen because we've just said
11 that it's moot. The IRS has no lawful basis to
12 proceed with a levy at this point.

13 JUSTICE GORSUCH: Well, you say it's
14 moot, but you say don't do mootness in that
15 footnote because it's not an Article III --
16 we're -- we're in the executive branch over
17 here, right, and Article III mootness principles
18 don't apply, and you encourage us not to decide
19 that issue in that footnote of yours. It's a
20 good footnote.

21 MS. ROSS: So I think --

22 JUSTICE GORSUCH: So it's about
23 statutory jurisdiction, your argument, and that
24 hinges at least at the front end on a
25 determination. And to this day, there's still a

1 determination.

2 MS. ROSS: So there's a determination
3 that has no practical effect in the world.

4 JUSTICE GORSUCH: Well, I don't --

5 MS. ROSS: There's no way for the IRS
6 to proceed with a levy.

7 JUSTICE GORSUCH: I -- I do appreciate
8 that -- that answer. Yeah. Okay. Thank you.

9 MS. ROSS: Sure.

10 JUSTICE KAVANAUGH: You were going to
11 say something on 3(A).

12 MS. ROSS: Sure. So on --

13 JUSTICE KAVANAUGH: And I was waiting
14 for it.

15 MS. ROSS: So -- so 3(B), I think, is
16 the -- the set of issues that are raised under
17 paragraph (2). So then we have to flip back
18 another page. And the issues that are raised
19 under paragraph (2) that Respondent has focused
20 on are the issues relevant -- any relevant issue
21 relating to the unpaid tax or the proposed levy.
22 So, in this case, there's no unpaid tax and
23 there's no longer a proposed levy.

24 And then --

25 JUSTICE GORSUCH: Well, isn't that --

1 MS. ROSS: -- under (B) --

2 JUSTICE GORSUCH: I hate to stop --
3 stop you there, but -- but that's the dispute,
4 is whether there's an unpaid tax.

5 MS. ROSS: No, Your Honor. So, just
6 as a matter of fact, this tax has been fully
7 paid. The IRS --

8 JUSTICE GORSUCH: Yes.

9 MS. ROSS: -- has Respondent's money
10 in full for 2010, so there is therefore --

11 JUSTICE GORSUCH: Because of the way
12 you credited it, but --

13 MS. ROSS: Because the IRS exercised
14 the authority that Congress --

15 JUSTICE GORSUCH: Right.

16 MS. ROSE: -- gave it in Section 6402
17 to apply overpayments as a credit, but --

18 JUSTICE GORSUCH: It seems a little
19 circular, though. Is there an issue relating to
20 the -- to an unpaid tax? One side says yes.
21 The other side says no and -- and no because
22 we -- because -- because of what we did.

23 MS. ROSS: Well, because we exercised
24 authority again that Congress has given, and I
25 think, you know, I want to finish the answer

1 on -- on how --

2 JUSTICE GORSUCH: Please.

3 MS. ROSS: -- the jurisdictional
4 provisions play out, but I just want to point
5 out that Congress could have decided to stay the
6 offset authority during a Section 6330
7 proceeding, but it did not do that. That's
8 undisputed in this case. And so I don't think
9 there's any question here that the IRS, you
10 know, lawfully authorized that authority. That
11 may be something they want to raise in their
12 refund action, but I don't think it's before
13 this Court at this point.

14 So, to go back to -- to what we were
15 talking about with respect to the unpaid tax, I
16 think, as a factual matter, there is no unpaid
17 tax in this case. There is also no pending
18 levy. And then she also would like to raise
19 underlying liability questions --

20 JUSTICE GORSUCH: If there were
21 underlying liability --

22 JUSTICE KAVANAUGH: Why underlying
23 liability, right?

24 JUSTICE GORSUCH: Yeah.

25 MS. ROSS: Sure. So -- so we also

1 think that there's no underlying liability at
2 this point because, again, there's no liability.
3 She has paid. And what she really wants is a
4 refund or a determination that she's overpaid,
5 but it's not a liability at this point and it's
6 not underlying anything of significance because,
7 as the Fourth Circuit recognized in McLane --

8 JUSTICE KAVANAUGH: Isn't that parsing
9 underlying tax liability a little thin?

10 MS. ROSS: So, Your Honor, I don't
11 think so. I think that's the natural
12 consequence of those words. But, even if you
13 disagree with me on all of this, I think we're
14 still obviously correct for at least two
15 reasons. One -- and -- and two reasons that are
16 just specific to this provision before I even
17 get to remedy.

18 One is that these are things that the
19 appeals officer shall take into consideration in
20 making the determination. We know from (c)(3)
21 that they're not the determination itself and so
22 they're not the source of that Tax Court
23 jurisdiction.

24 And, two, if you go down to (c)(3)(C),
25 something that the Tax Court must take -- or,

1 excuse me, the appeals officer must take into
2 account in every case is this balancing
3 question. I'm going to paraphrase because the
4 statute is wordy, but it's essentially whether
5 the taxpayer has -- or whether the proposed
6 collection action balances the -- or
7 appropriately balances the need for the
8 efficient collection of taxes with the
9 taxpayer's interest in this being no more
10 intrusive than necessary.

11 And so I think, on Respondent's view
12 of this statute, that's an independently
13 appealable issue even in the absence of a levy.
14 And that just can't be right. There's no reason
15 to still be fighting about that when there's no
16 longer a levy.

17 Now I take some of the concerns that
18 Justice Gorsuch was maybe hinting at as to, you
19 know, she's in court already, she just really
20 wants to finish this out, to be talking about
21 this is inefficient, and I certainly --

22 JUSTICE GORSUCH: Well, no. The whole
23 thing's crazy.

24 (Laughter.)

25 MS. ROSS: It is certainly a dense and

1 technical statute, Your Honor.

2 JUSTICE GORSUCH: No. I don't know
3 what's -- I don't know what's most efficient,
4 but I -- I -- I -- I do think that there is a
5 dispute about the underlying tax liability.

6 MS. ROSS: Sure. And I think Congress
7 expected that dispute when there is no levy.

8 JUSTICE GORSUCH: And I do think
9 there's a determination made that hasn't -- the
10 government hasn't withdrawn. And so I'm --
11 that's where I'm stuck.

12 MS. ROSS: So, Your Honor, I -- I
13 don't think it's right to think about this as a
14 determination that the government has to
15 withdraw because that determination, again, by
16 the Appeals Office doesn't even bind the IRS
17 going forward.

18 The IRS is not committing itself to
19 taking the position that that was -- you know,
20 whatever subsidiary issues are decided by the
21 appeals officer are not sort of the -- the final
22 position of the IRS for future litigation, for
23 example.

24 JUSTICE GORSUCH: Oh, I understand --
25 I appreciate that too. I -- I -- I -- but --

1 but the statutory jurisdiction hooks on a
2 determination. We have a determination. In
3 making that determination, you can contest your
4 underlying tax liability.

5 MS. ROSS: So you can contest that,
6 but I think it's important to situate us in
7 the -- the type of proceeding that Congress
8 provided here. So, again, you only get into
9 this proceeding if there is a levy. There is --
10 this is an extra level of protection that
11 Congress provided in order to protect people
12 because, while levies are well established and
13 constitutional, they are more intrusive than
14 other means of tax collection, and so I think it
15 makes perfect sense that you might consider the
16 person's underlying liability when you're
17 deciding whether the government can finish out
18 its -- can enforce its levy.

19 JUSTICE GORSUCH: I can totally --

20 JUSTICE JACKSON: And, Ms. Ross, so
21 what is the determination? I mean, we see a lot
22 of textual evidence here that the jurisdiction
23 is being provided to make a determination, the
24 determination. So, in your view, can you just
25 tell us what that is?

1 MS. ROSS: That is the determination
2 whether the levy can go forward.

3 JUSTICE JACKSON: All right. And so
4 your point is sort of a common-sense one, I
5 think, that to the extent that Congress is
6 providing this extra process when someone is
7 targeted for this particular treatment, having a
8 levy imposed, if for -- and I'm going to -- I'm
9 going to ask you about if for whatever reason,
10 but in this case, because the underlying tax
11 liability is resolved through the credits, the
12 levy is no longer going to be imposed.

13 MS. ROSS: Precisely.

14 JUSTICE JACKSON: Then the whole point
15 of the proceeding is done and we don't have any
16 other cause, I think you're saying, to be
17 looking into whether the underlying tax
18 liability is lawful or not.

19 MS. ROSS: That's precisely correct,
20 Justice Jackson. And I think, you know, the way
21 that we would normally look into an underlying
22 tax liability is that the taxpayer would pay
23 their money and then they would file a refund
24 action. And so all we are saying here is that
25 Section 6330 has no work left to do because --

1 JUSTICE GORSUCH: Ms. Ross, I could --
2 I understand that would be a perfectly sensible
3 statute to write and Congress could have done
4 that. But Congress I think also, a rational
5 Congress could say: Hey, once you issue a levy,
6 taxpayer can bring anything about his underlying
7 tax liability in that -- in that proceeding too,
8 and maybe they thought that was more efficient,
9 maybe they didn't think about it.

10 You know, maybe -- I mean, that would
11 be -- it's not irrational to think that Congress
12 would want to do that, is it?

13 MS. ROSS: So, Justice Gorsuch, I
14 don't think it's irrational, but I think we know
15 from the text of the statute that that's not
16 what Congress intended here. This is not
17 one-stop-shopping to resolve all of a taxpayer's
18 issues.

19 And if I could point the Court to a
20 provision we haven't discussed yet this morning,
21 (e)(1), on pages 6a to 7a of our appendix, this
22 is the provision that effectively stays the levy
23 during the pendency of the Section 6330
24 proceeding, but in response to your question,
25 Justice Gorsuch, it also does some other stuff.

1 It tolls certain statutes of limitations, and
2 one of the statutes of limitations that it's --
3 that it's tolling is 6532. 6532, although it's
4 somewhat unhelpfully summarized here as relating
5 to other suits, it's actually the statute of
6 limitations for a refund action.

7 So we know very well that Congress
8 didn't design the -- the most efficient system
9 where it thought everything was going to get
10 resolved in a refund -- excuse me, in a Section
11 6330 proceeding. Instead, it expected that
12 there would be follow-on refund suits. And I
13 think we know that for two more reasons.

14 One is that there's no refund
15 jurisdiction here. It's very important that the
16 Tax Court is a court of limited statutory
17 jurisdiction. Respondent has not claimed that
18 there is jurisdiction to provide a refund here
19 and it's lacking.

20 And the other is that a Section 6330
21 proceeding can be resolved on any one of a
22 number of issues that will not actually tell us
23 anything about a person's unpaid tax or
24 underlying liability.

25 And, again, that makes sense because,

1 to Justice Jackson's point, it's really just
2 about the levy. And, of course, you might have
3 to figure out whether the person actually owes
4 money --

5 JUSTICE KAVANAUGH: But --

6 MS. ROSS: -- in the service of
7 deciding whether the levy can go forward, but
8 that's not primarily what this statute is doing.

9 JUSTICE KAVANAUGH: -- how often does
10 this situation arise?

11 MS. ROSS: Justice Kavanaugh,
12 unfortunately, I don't have empirics for you on
13 that. You know, we cited a statistic in our
14 opening brief that there are about 30,000
15 Section 6330 proceedings a year. My sense
16 anecdotally is that the number, you know, in a
17 year that might have a mootness question like
18 this is in the tens, you know, I would say
19 probably less than a hundred, but I don't know
20 for sure.

21 JUSTICE KAGAN: What -- what is
22 usually at issue in these suits if not the
23 underlying tax liability? What are people
24 fighting about?

25 MS. ROSS: Sure. So, Justice Kagan,

1 if you look at pages, again, 3a to 4a of our
2 appendix, one of the things that you can do in a
3 Section 6330 proceeding is bring a spousal
4 defense. You know, another one is offer a
5 collection alternative, so you might say, yes, I
6 owe this tax or I'm not even going to fight with
7 you at this point about whether I owe this tax,
8 but I can pay it on an installment plan, please
9 don't take my car.

10 And that, I think, to the point I was
11 making to Justice Gorsuch earlier, you know,
12 makes a lot of sense when we're talking about
13 this informal hearing that can often be by
14 telephone, through an exchange of
15 correspondence, where we're just trying to get
16 the liability paid.

17 JUSTICE KAGAN: So it's like don't
18 levy, I promise to pay this, let's try to work
19 out a schedule?

20 MS. ROSS: Exactly.

21 JUSTICE KAGAN: That's the idea?

22 MS. ROSS: That's the idea. I mean, I
23 think (c)(3)(C), that big C that I was talking
24 about earlier, this balancing test, goes to that
25 point as well because that's something that the

1 appeals officer has to consider in every case
2 whether the taxpayer raises it or not. It's
3 just does this make sense. Does it make sense
4 to take this more drastic remedial measure in
5 this case.

6 JUSTICE KAGAN: And the statute of
7 limitations provision that you talked about,
8 does that ensure that in -- I -- I was going to
9 ask before you talked about that provision,
10 like, what happens to somebody --

11 MS. ROSS: Sure.

12 JUSTICE KAGAN: -- like Ms. Zuch when,
13 you know, the months have rolled by, the years
14 have rolled by? Is she always able to bring a
15 refund suit?

16 MS. ROSS: So, Justice Kagan, I think
17 that that will depend on whether she has brought
18 an administrative claim for a refund because,
19 generally, and, you know, I'm going to speak in
20 generalities because the tax law is obviously
21 quite complicated, but, generally, a taxpayer
22 must make an administrative refund claim before
23 she can file a refund action.

24 And so, if you just report an
25 overpayment on your tax return, that counts, so

1 it's not necessarily a particularly high burden,
2 but it would depend on whether the person had
3 also done that because that is not stayed, I
4 believe.

5 JUSTICE KAGAN: So, if the person did
6 nothing and then there was a levy action, but
7 then, for reasons such as this, the levy went
8 away, then she'd be out of luck because she did
9 nothing in the first place?

10 MS. ROSS: Well, I think it would
11 depend on what her tax return said. If she had
12 sort of claimed an overpayment at that point or
13 filed another -- so it's a little hard to say if
14 she did nothing because, presumably, she's at
15 least filed a tax return. And so I think I
16 would need to know --

17 JUSTICE KAGAN: I see. I see.

18 MS. ROSS: -- you know, what happened
19 there.

20 But I think that whatever issue she
21 would have there would have nothing to do with
22 the Section 6330. It would be her own issue
23 with respect to whether she had filed the
24 administrative claim in the first place.

25 JUSTICE JACKSON: Would it matter to

1 you that the levy was resolved for other
2 reasons? I mean, here, there's no need for a
3 levy because the IRS continued to credit these
4 tax payments and so, eventually, there was no
5 underlying liability.

6 Does it matter to your argument the
7 reason why the levy disappears?

8 MS. ROSS: So I think you can imagine
9 situations in which the IRS says, you know, for
10 some reason, we're not proceeding with this levy
11 right now, but we are not saying it's off the
12 table. That might raise a different case. But
13 I think, in the main, when we're talking about a
14 tax that's either been fully paid, as in this
15 case, or abated is one of the ones that you see
16 a lot of times in the case law, then the levy's
17 just off the table, and so, no, I don't think
18 the -- the precise reason matters.

19 JUSTICE SOTOMAYOR: It does bother
20 me --

21 JUSTICE KAVANAUGH: You said --

22 MS. ROSS: If I could ---

23 JUSTICE SOTOMAYOR: I'm sorry.

24 JUSTICE KAVANAUGH: Go ahead.

25 JUSTICE SOTOMAYOR: It does bother me,

1 following up on Justice Kagan's question, of
2 whether or not the IRS can sandbag somebody.
3 She doesn't know that the offset's not being
4 made until you move for a levy. She then
5 challenges the levy because she says I paid my
6 tax, and the IRS says no. And that gets fully
7 litigated in 6330. And five, ten, whatever
8 number of years it takes the IRS to decide it
9 collected what it needed, it drops the 6330.

10 You're now saying to me that because
11 she didn't say something administratively, (e)
12 doesn't toll her statute of limitations.

13 MS. ROSS: No, Justice Sotomayor. I
14 want to be clear about this. So all I'm saying
15 is that (e) includes a -- a tolling mechanism
16 for these statute of limitations to bring your
17 refund action.

18 There is a different requirement that
19 anyone, whether they faced a levy or not, would
20 have to satisfy, and that is that --

21 JUSTICE SOTOMAYOR: So does she
22 satisfy that here by the fact that she sent you
23 a letter saying I'm owed this money and you guys
24 said no?

25 MS. ROSS: So, Your Honor, my

1 understanding is that consistent with the way
2 that Respondent has pled their refund suit,
3 which they've now filed in the -- the District
4 of New Jersey, they have satisfied that for most
5 of the years in question.

6 I think they would know better than I
7 do if the underlying theory here is that they
8 can recover.

9 JUSTICE SOTOMAYOR: He can answer
10 that. I think, in their brief, they said about
11 \$20,000 is up in the air.

12 MS. ROSS: Right. And my point is
13 that that just, as far as we can tell, has
14 nothing to do with the Section 6330 proceeding.
15 That is because those are the 2014 and 2015 tax
16 years. And in the time required to do that as
17 an administrative matter, they just haven't
18 asked -- they haven't stated that they overpaid
19 as to those years.

20 JUSTICE JACKSON: And you're pointing
21 to the statute of limitations provision to
22 demonstrate that Congress also thought that
23 prepayment had nothing to do -- or seeking --
24 challenging the underlying tax liability had
25 nothing to do with this 630-30 action?

1 MS. ROSS: So maybe we're -- we're
2 saying the same thing.

3 JUSTICE JACKSON: Yeah, yeah.

4 MS. ROSS: But the way that I'm
5 thinking about it is that what we know from the
6 tolling of the refund suit is that Congress knew
7 that this -- this 6330 proceeding wasn't going
8 to resolve all issues.

9 JUSTICE JACKSON: Right.

10 MS. ROSS: There might --

11 JUSTICE SOTOMAYOR: Can I go back to
12 the --

13 MS. ROSS: -- need to be -- oh, I'm
14 sorry.

15 JUSTICE SOTOMAYOR: Sorry. Finish
16 your --

17 MS. ROSS: There might well need to be
18 refund actions. I would still really love at
19 some point to talk about the -- the remedial
20 issue here, but, Justice Sotomayor, please.

21 JUSTICE SOTOMAYOR: Just one
22 collateral estoppel question.

23 MS. ROSS: Sure.

24 JUSTICE SOTOMAYOR: Assume you said we
25 can't use that Tax Court determination as

1 collateral estoppel in the lawsuit. Why? Why
2 not?

3 MS. ROSS: So, Justice Sotomayor, I --
4 I -- what I meant to say was that you can't use
5 the appeals officer's determination because that
6 just has sort of no legal effect going forward.

7 The -- what happens here is that the
8 appeals officer decides whether the levy can go
9 forward or whether there's an installment plan
10 or something else that could forestall
11 collection.

12 All I meant to say was that there's no
13 need to kind of vacate that appeals officer
14 determination because, once there's no reason,
15 no lawful basis for the IRS to levy, they're not
16 going to levy. There's sort of nothing else to
17 be done here. We are done with the Section 6330
18 proceeding.

19 JUSTICE GORSUCH: If that's true --

20 JUSTICE ALITO: Before your --

21 JUSTICE GORSUCH: -- why are -- oh,
22 sorry, please.

23 JUSTICE ALITO: Well, I was just going
24 to say, before your time runs out, what would
25 you like to say about the remedial issue?

1 (Laughter.)

2 MS. ROSS: I very much appreciate
3 that, Justice Alito. So a few points. I think
4 some of these have been covered, but, you know,
5 I think it's important to just situate ourselves
6 in the Tax Court, where the Tax Court needs to
7 have specific statutory authority. It doesn't
8 have the tax equivalent of Section 1331
9 jurisdiction. It has these specific
10 proceedings. And it doesn't have general
11 remedial authority.

12 So there's no refund -- no refund
13 authority has been specifically given to the Tax
14 Court in this case, no overpayment authority. I
15 think my friend agrees with those. The only
16 statutory citation he's provided for a remedy in
17 this case, if he's right that the -- the Tax
18 Court proceeding can go forward, is (e)(1).

19 And so the theory is that (e)(1)
20 provides for the -- for an injunction against a
21 levy. And so, if it provides for an injunction,
22 it must on my friend's view also provide for the
23 milder form of declaratory relief.

24 I think, if you read (e)(1), there's
25 at least two problems with that. Number one is

1 that it actually only provides for an injunction
2 against the levy, and so there's no levy at this
3 point, and, therefore, there's no lesser
4 authority to provide declaratory relief.

5 The second problem is that it's
6 actually a stay much more than it's an
7 injunction. This is not a permanent injunction
8 provision. This is a provision that says in the
9 first sentence that the levy actions which are
10 the subject of the requested hearing shall be
11 suspended and then allows the Tax Court to come
12 along and enforce that suspension through an
13 injunction but, again, only during the period in
14 which the Section 6330 proceeding is pending.
15 And so that can't provide permanent relief in
16 either injunction or declaratory form.

17 JUSTICE GORSUCH: Ms. Ross, why -- why
18 couldn't the Tax Court simply vacate the Appeals
19 Office decision?

20 MS. ROSS: So, Justice Gorsuch, I
21 think, if the --

22 JUSTICE GORSUCH: Why wouldn't it have
23 jurisdiction to do that?

24 MS. ROSS: So -- so I guess my first
25 answer would be it really wouldn't make a

1 difference. It wouldn't give Respondent
2 anything because this levy is not going to go
3 forward. There's no longer a levy in this case.

4 And so vacating, you know, as I was
5 saying earlier, this has no sort of
6 forward-looking stare decisis effect, and so it
7 wouldn't give them anything.

8 JUSTICE GORSUCH: No. But it's -- we
9 just have two executive officers talking to one
10 another here anyway, right, and one could say,
11 well, that -- that -- that decision's -- that
12 decision's vacated. Couldn't it -- wouldn't it
13 have authority to do that?

14 MS. ROSS: You know, I mean, perhaps
15 it would, but I -- I -- I still really struggle
16 to see how that would be different than
17 dismissing the appeal for mootness purposes.

18 CHIEF JUSTICE ROBERTS: Do you want
19 any further exchange?

20 JUSTICE GORSUCH: I'm afraid I do have
21 one more question, but I'll wait my turn.

22 CHIEF JUSTICE ROBERTS: You can go
23 ahead right now.

24 JUSTICE GORSUCH: Oh. What do we do
25 with -- all right. Thank you, Chief, for your

1 indulgence, and my colleagues too, on tax law of
2 all things.

3 What do we do with the IRS's prior
4 position, it's in another footnote here, 36 of
5 your -- of the Pet. App. that suggested mootness
6 motions should be filed if the tax liability has
7 been fully paid and the taxpayer raises no other
8 relevant issues? It seems like the government's
9 changed its position with respect to what
10 follows after "and."

11 MS. ROSS: I'm sorry, Justice Gorsuch,
12 could you just give me the page again? I want
13 to make sure we're looking at the same thing.

14 JUSTICE GORSUCH: Pet. App. 32a,
15 Footnote 36.

16 MS. ROSS: I see. Sure. So I think I
17 would have two answers for you on that. The
18 first is sort of well in line with our -- our
19 colloquy so far this morning, is that IRS chief
20 counsel notices are not binding, and so I think,
21 even if there was a change, that is sort of
22 neither here nor there.

23 I also believe that the change that
24 was alleged here was, I think, the -- the second
25 notice, which I'm not seeing as I look at it

1 quickly, was sometimes -- sometime around 2005.
2 This statute was passed in 1998. And so I think
3 the fact that kind of the -- the chief counsel
4 was getting their head around how these things
5 would work in practice at that period, you know,
6 20 years ago really doesn't say much about what
7 the IRS's position should be at this point.

8 JUSTICE GORSUCH: Thank you.

9 CHIEF JUSTICE ROBERTS: Thank you,
10 counsel.

11 Justice Thomas?

12 Justice Alito?

13 Justice Sotomayor, anything further?

14 Justice Kavanaugh?

15 Justice Barrett?

16 Justice Jackson?

17 Thank you, counsel.

18 Mr. Dvoretzky.

19 ORAL ARGUMENT OF SHAY DVORETZKY

20 ON BEHALF OF THE RESPONDENT

21 MR. DVORETZKY: Mr. Chief Justice, and
22 may it please the Court:

23 The IRS can't evade the Tax Court's
24 jurisdiction to review the Appeals Office's
25 determination of a taxpayer's liability or

1 unpaid tax simply by keeping the taxpayer's
2 money through discretionary offsets.

3 In Section 6330(d), Congress gave the
4 Tax Court jurisdiction to review not just the
5 proposed levy but also the taxpayer's challenge
6 to her liability and unpaid tax. So, if a
7 taxpayer disputes the office's resolution of her
8 liability and unpaid tax, Section 6330 review
9 isn't moot just because the IRS stops pursuing a
10 levy. To the contrary, if the taxpayer wins,
11 she is entitled to and likely will receive
12 money.

13 Under (d)(1), a taxpayer may petition
14 the Tax Port for -- Tax Court for review of the
15 Appeals Office's determination. The court has
16 jurisdiction to review that determination, which
17 paragraphs (c)(2) and (3) make clear encompasses
18 the issues that the taxpayer raises, including
19 liability and unpaid tax.

20 Moreover, paragraph (d)(1), which is
21 the key provision creating Tax Court
22 jurisdiction, says nothing about needing a
23 continuing levy for Tax Court jurisdiction. It
24 requires only a determination.

25 That makes sense. Congress sought to

1 give taxpayers process and prevent unfair IRS
2 collection practices, not to reward IRS
3 gamesmanship and force taxpayers to challenge
4 adverse Appeals Office determinations by
5 starting over in district court.

6 The Tax Court's review jurisdiction
7 means that the case isn't moot. The
8 jurisdiction to review the Appeals Office's
9 determination under (d)(1) comes with
10 jurisdiction to rule, including reversing and
11 ruling in the taxpayer's favor on liability and
12 unpaid tax issues.

13 If Zuch wins, the IRS will likely
14 refund or credit her in a future tax year. The
15 Tax Court's authority comes from the
16 jurisdictional grant in 6330(d), jurisdiction to
17 review and thus necessarily to affirm, vacate,
18 or reverse the Appeals Office's determination,
19 which includes liability and unpaid tax.

20 I welcome the Court's questions.

21 JUSTICE THOMAS: Do you have an
22 example where what you just articulated actually
23 has occurred?

24 MR. DVORETZKY: Meaning where the --

25 JUSTICE THOMAS: In any other

1 proceeding.

2 MR. DVORETZKY: I don't. And I think
3 that just goes to show how unusual this case is.
4 In a typical --

5 JUSTICE THOMAS: Or it could also show
6 that the -- that this proceeding, 6330, does no
7 more than decide whether or not there's a levy.

8 MR. DVORETZKY: Well, I -- I don't
9 think that's right, Justice Thomas, because,
10 under (c)(3) and under (c)(2)(B), if the
11 existence or amount of the underlying liability
12 are challenged, the Appeals Office has to
13 consider that, has to make a determination about
14 it.

15 Here, the Appeals Office did. It was
16 a determination adverse to my client, but it
17 was, in fact, considered.

18 JUSTICE JACKSON: But why --

19 JUSTICE THOMAS: So do you have any
20 example of -- under 6330 of anything other than
21 a determination with respect to a levy? Refund
22 or anything else?

23 MR. DVORETZKY: I don't. But, again,
24 if you think about the limited universe of cases
25 in which this is going to come up, the Appeals

1 Office is making a determination about the
2 existence or the amount of the underlying tax
3 liability, yes, in connection with a levy.

4 It is the rare case, like this one,
5 where the IRS then moots the case when it's
6 pending decision in the Tax Court, and --

7 JUSTICE THOMAS: But isn't the default
8 for money in this -- with the IRS, isn't it
9 post-deprivation review? I mean, isn't this an
10 unusual -- an exception to post-deprivation
11 review?

12 MR. DVORETZKY: It is -- it is an
13 exception. It is also an unusual statute that
14 Congress created. But, in creating it, Congress
15 hinged Tax Court jurisdiction not on a
16 continuing levy, which it easily could have said
17 in (d)(1). Just as -- as Ms. Ross pointed out,
18 Congress pointed to levies elsewhere in 6330.
19 But it did --

20 JUSTICE JACKSON: But, counsel, that's
21 the whole context of the statute, and your
22 argument seems to be equating determination with
23 consideration in (c)(3), right?

24 You -- you -- you say that the court
25 has jurisdiction to review the determination of

1 liability and unpaid tax as though what the
2 hearing officer is doing is making that
3 determination. But, when we look at the
4 statute, we say -- it says: The determination
5 under this subsection shall take into
6 consideration things like unpaid tax.

7 So it appears as though Congress was
8 very clear that there are considerations to
9 include the unpaid tax that should be thought
10 about when you're making the determination,
11 and -- and Ms. Ross says the determination is
12 whether or not the levy goes forward.

13 MR. DVORETZKY: Justice Jackson, I
14 think what the Appeals Office is doing is both.
15 It is making a determination about whether the
16 levy can go forward, which is necessary for the
17 Appeals Office to -- to issue its -- its
18 findings, but it is also making a determination
19 about the issues that were raised, and the --

20 JUSTICE JACKSON: That's not what the
21 statute says. The statute says: "The
22 determination shall take into consideration the
23 unpaid tax." "The determination."

24 And then, when we get down to Tax
25 Court jurisdiction, it says: "Such

1 determination," such matter -- determination,
2 singular, not plural.

3 I mean, it's pretty clear that this
4 statute is about a particular determination,
5 that is, whether the levy will go forward, and
6 Congress is providing people with notice and an
7 opportunity to be heard with respect to that
8 determination.

9 And so I guess the question is: Once
10 that determination is no longer necessary
11 because, for whatever reason, the IRS is no
12 longer seeking a levy, it just seems odd that
13 you say that there's some jurisdiction left to
14 still say something about the considerations
15 that the statute says you're supposed to look at
16 in making that determination.

17 MR. DVORETZKY: So, Justice -- Justice
18 Jackson, a couple points in response to that.

19 One, I don't ascribe much significance
20 to the singular determination given the
21 Dictionary Act that "singular" can also mean --
22 also means plural.

23 But, even with respect to this
24 determination, if you look at what the
25 determination was in this case, the initial

1 determination at -- at Cert Appendix 62A, it
2 talks about how the Appeals Office reviewed both
3 the tax payment transfer request and the request
4 for penalty abatement.

5 JUSTICE JACKSON: But how about we
6 look at it as it exists in the statute? I mean,
7 it's -- I -- I appreciate that "determination"
8 can be plural, but it says "the determination,"
9 "such determination."

10 There's nothing about that that
11 suggests that the appeals officer is vested with
12 the authority to make more than one
13 determination.

14 MR. DVORETZKY: There -- there's also
15 nothing in (d)(1), which doesn't mention a levy;
16 in (c)(3)(B), which doesn't mention a levy -- in
17 (c)(3)(B), which doesn't mention a levy; in
18 (c)(2)(B), which doesn't mention a levy; and in
19 (c)(2)(A), which distinguishes, it uses the
20 disjunctive "or" to distinguish between issues
21 relating to the unpaid tax or the proposed levy.

22 And so, in these key provisions in (c)
23 and (d), Congress didn't use the -- the levy
24 language --

25 JUSTICE JACKSON: Can I just ask you

1 one final question, and then I'm done.

2 Why is it gamesmanship for the IRS to
3 get rid of the terribly punitive and coercive
4 levy mechanism in the context of this particular
5 case or any case?

6 I mean, I understand you're saying,
7 oh, it's sort of gamesmanship, but, really, the
8 only reason why people are getting notice and a
9 hearing is because everybody recognizes that a
10 levy is a really big deal.

11 So, when the agency says: We're not
12 going to do a levy anymore, it seems strange to
13 me that that's considered, like, a bad thing.

14 MR. DVORETZKY: So -- so the
15 gamesmanship or the potential abuse comes from
16 letting the IRS, on the one hand, begin this
17 process with a levy and then 10-plus years later
18 pull the rug out from under the taxpayer, force
19 them to start again in a refund action and
20 potentially do so -- again, using the
21 government's sole discretion about whether to
22 apply an offset -- do so after they've lost a
23 determination before the Appeals Office in order
24 to moot out, on the government's view, the Tax
25 Court appeal.

1 That --

2 JUSTICE KAVANAUGH: Keep going.

3 MR. DVORETZKY: That's not what
4 Congress contemplated in 6330 when it pegged Tax
5 Court jurisdiction not to a continuing levy,
6 which, again, it could have said. It obviously
7 knew how to use the word "levy" throughout the
8 statute, but it didn't in (d)(1) when it just
9 talked about the determination.

10 JUSTICE KAVANAUGH: I just want to
11 make sure you've addressed 6532 relating to
12 other suits in (e)(1) that Ms. Ross raised.

13 MR. DVORETZKY: Yeah. So a couple
14 points on (e)(1) and on that argument.

15 One, the limitations argument that
16 Ms. Ross made could easily cut in exactly the
17 opposite direction. Congress could have thought
18 that the reason it was staying the limitations
19 period for a refund action was to avoid the need
20 for taxpayers to file a protective and
21 duplicative action because a Section 6330 action
22 might resolve the liability and tax issues.
23 There's no need to run to federal court at the
24 same time that the 6330 proceeding is pending.

25 In addition to that, as Ms. Ross's

1 colloquies with the Court showed, that tolling
2 in -- in (e)(1) doesn't protect taxpayers in all
3 circumstances because it doesn't absolve the
4 taxpayer of having to file the administrative
5 refund claim within that -- that two-year time
6 period. And, in fact, here, there are a couple
7 of years for which Ms. Zuch can't recover in the
8 refund action because she didn't file the timely
9 administrative refund claim.

10 So the -- the limitations provision
11 that Ms. Ross pointed to in (e)(1) doesn't solve
12 this problem and, if anything, points in our
13 favor.

14 JUSTICE KAVANAUGH: Thank you.

15 MR. DVORETZKY: So the statutory
16 argument here is ultimately quite simple.
17 (c)(2)(A) talks about any issue relevant to an
18 unpaid tax or proposed levy. (c)(2)(B) talks
19 about underlying liability. (c)(3) makes those
20 issues part of the determination. And (d)(1)
21 hinges Tax Court jurisdiction on a petition for
22 review of the determination.

23 Once the Tax Court has reviewed -- has
24 that jurisdiction, it has under (d)(1) the
25 authority to act that is read against background

1 principles of appellate review.

2 This is similar -- it's similar to APA
3 706 principles. The Tax Court can hold unlawful
4 or set aside agency findings and conclusions.
5 It can vacate the -- the appeals officer's
6 determinations about the unpaid tax and
7 liability issues.

8 The other analogy I would draw here,
9 it's similar to interlocutory appeal under
10 1292(b) or to review of remand orders under
11 1447(d). Once there is jurisdiction over an
12 order, which is analogous to the determination
13 here, that appellate jurisdiction also includes
14 issues that are fairly included within the order
15 and here fairly included within the -- the
16 determination.

17 With respect to mootness, there
18 remains a live disputed issue about unpaid
19 liability and unpaid tax. Ms. Zuch was injured
20 by the misallocation of her money by the IRS.
21 That injury is obviously traceable to the IRS.
22 And it's redressable by a favorable ruling
23 because, presumably, the IRS will comply and
24 will either credit Ms. Zuch in a future year or
25 refund her money if a court were to hold that

1 she was entitled to that.

2 In terms of empirical numbers, the
3 government has not come forward with any
4 statistics to show that the sky will fall if the
5 Court affirms the Third Circuit's ruling and
6 rules in our favor here. There is a recent -- a
7 report from the Taxpayer -- the IRS Taxpayer
8 Advocate showing that between 2004 and 2018,
9 only a little bit -- only a little over
10 1 percent of levy notices actually resulted in a
11 CDP hearing being sought. Less than 1 percent
12 then resulted in a Tax Court proceeding.

13 And the government has not come
14 forward with other examples of where cases like
15 this are being mooted out. And so the sky is
16 not going to fall and the Tax Court's not going
17 to have an overwhelming burden if the Court
18 rules in our favor. Ruling in the government --

19 JUSTICE SOTOMAYOR: There were two
20 other circuits --

21 MR. DVORETZKY: I'm sorry?

22 JUSTICE SOTOMAYOR: There were two
23 other circuits who have ruled against this
24 position. The Third Circuit was saying it
25 wasn't going to follow the D.C. or Fourth

1 Circuit, correct?

2 MR. DVORETZKY: Correct.

3 JUSTICE SOTOMAYOR: So the issue has
4 arisen at least twice other -- two times --
5 and -- and two other courts have said no.

6 MR. DVORETZKY: Sure. It -- it -- so
7 it's come up, as far as we can tell, a total of
8 three times over the course of decades. The --
9 my point is the sky is not going to fall, the
10 Tax Court's not going to be overburdened by our
11 position. Taxpayers in Ms. Zuch's position will
12 be burdened, and I think Congress's purpose
13 would be undermined by a ruling in the
14 government's favor.

15 Again, the IRS began this process with
16 a levy. It shouldn't be allowed to pull the rug
17 out from under taxpayers. Congress wanted to
18 make the Tax -- Tax Court an available forum.
19 It is a much more taxpayer-friendly forum than
20 district court, particularly for low-income
21 taxpayers. The Center for Taxpayer Rights'
22 brief at page 18 to 19 describes that.

23 And the limitations problems for
24 taxpayers in these sorts of situations --

25 JUSTICE KAVANAUGH: I guess that cuts

1 both ways, though, because, if it happened all
2 the time, I think there would be a stronger
3 sense that Congress wouldn't have wanted all
4 these cases, you know, the unfairness that you
5 point out, to be yanked around like this, where,
6 if it's happening very rarely, you know, you
7 might think Congress wouldn't have thought about
8 it.

9 MR. DVORETZKY: Well, but I -- I think
10 the real backstop here is that Congress said
11 that you can't bring an underlying liability
12 challenge in a 6330 action if you had a prior
13 opportunity to bring that liability challenge.

14 And so I would think, in a typical
15 case, you're going to have a deficiency notice
16 and that's going to be the opportunity to
17 challenge the underlying liability. It simply
18 doesn't come up that much that these issues are
19 resolved in 6330 proceedings, but where they
20 are, Congress meant to provide a meaningful
21 forum.

22 And just to -- to complete the point
23 for Justice Sotomayor, yes, there are two cases
24 over decades, but in those cases, the government
25 gave up not only on the levy but also on

1 liability, as we pointed out in our brief in
2 opposition to cert.

3 And so this is a highly unusual, as
4 far as I can tell, unprecedented case where the
5 government has given up on the levy but is still
6 keeping the taxpayer's money. And that, Justice
7 Gorsuch, to your point, is why this
8 determination still has significance. The
9 determination is what is justifying the
10 government keeping Ms. Zuch's money.

11 JUSTICE ALITO: Just out of curiosity,
12 does Ms. Zuch's tax liability for 2014 and 2015
13 have anything to do with the issues in this
14 case?

15 MR. DVORETZKY: Well, it -- it does
16 insofar as the --

17 JUSTICE ALITO: She's not seeking a
18 refund for those years, right?

19 MR. DVORETZKY: Well, she -- she is --
20 she is seeking a refund insofar as the -- the
21 government, the IRS, has offset her earlier
22 liability with overpayments for those years, and
23 she's saying -- and we're saying that that's
24 improper.

25 JUSTICE ALITO: For those two years?

1 MR. DVORETZKY: Correct.

2 JUSTICE ALITO: Okay.

3 MR. DVORETZKY: If the Court has no
4 further questions.

5 CHIEF JUSTICE ROBERTS: Okay.

6 Thank --

7 JUSTICE GORSUCH: I'm afraid I've got
8 a couple.

9 CHIEF JUSTICE ROBERTS: Oh. Plenty of
10 time.

11 (Laughter.)

12 JUSTICE GORSUCH: Right. Yeah.

13 JUSTICE SOTOMAYOR: Oh, I'm sorry. In
14 answer to Justice Alito, we're only talking
15 about the refund for those two years that were
16 credited against her liability or something else
17 was credited?

18 MR. DVORETZKY: No. So there were
19 several years of overpayments that were --

20 JUSTICE SOTOMAYOR: Mm-hmm.

21 MR. DVORETZKY: -- that the IRS offset
22 against the earlier liability. And -- and she's
23 seeking to have the earlier liability erased
24 because the \$50,000 from 2010 and 2011, I think
25 it were, should have been credited to her, but

1 also to get those overpayments back that were
2 used in order to improperly offset the earlier
3 matter.

4 JUSTICE SOTOMAYOR: So she's looking
5 for refunds --

6 MR. DVORETZKY: Correct.

7 JUSTICE SOTOMAYOR: -- from those
8 overpayments?

9 MR. DVORETZKY: Correct.

10 JUSTICE SOTOMAYOR: Okay. Thank you.

11 JUSTICE GORSUCH: Can you explain to
12 me just one more time the statute of limitations
13 problem that you see arising from the
14 government's position?

15 MR. DVORETZKY: Sure. So, under --
16 under the government's position, 6330(e)(1) does
17 not toll the time for filing an administrative
18 refund claim, which is a prerequisite --

19 JUSTICE GORSUCH: All right.

20 MR. DVORETZKY: -- to them bringing a
21 refund claim in federal court.

22 JUSTICE GORSUCH: And you'd have no
23 notice that you need to file a refund claim
24 until there's a determination -- until they
25 pulled a switcheroo on the levy --

1 MR. DVORETZKY: Correct.

2 JUSTICE GORSUCH: -- and it's too
3 late?

4 MR. DVORETZKY: Correct.

5 JUSTICE GORSUCH: Yeah. Okay. And
6 then just curious, do you think Article III
7 mootness principles apply in an executive
8 tribunal like the Tax Court?

9 MR. DVORETZKY: Not to avoid the
10 question, but I don't think you need to decide
11 it.

12 JUSTICE GORSUCH: I understand. I
13 understand.

14 MR. DVORETZKY: The -- the -- the --

15 JUSTICE GORSUCH: You're a smart
16 lawyer in front of me, and I've got a chance to
17 ask you the question, and my colleagues are
18 being very patient. So, briefly, thoughts.

19 MR. DVORETZKY: So -- so -- so I
20 think, as a practical matter, it makes sense to
21 think that Article III mootness principles do
22 apply because the way this case would proceed,
23 it's going to go from the Appeals Office to the
24 Tax Court and then up to the Third Circuit. And
25 then we get to the Third Circuit, the Third

1 Circuit is going to apply Article III
2 principles. So it doesn't make a whole lot of
3 sense for the case to proceed all the way up to
4 that point without regard for Article III, only
5 for the Third Circuit to then throw up its hands
6 and say nothing we can do because Article III
7 doesn't apply.

8 JUSTICE GORSUCH: Thank you.

9 MR. DVORETZKY: So -- so -- so the Tax
10 Court does apply those principles, and I think
11 it makes sense.

12 JUSTICE GORSUCH: Thank you.

13 CHIEF JUSTICE ROBERTS: Thank you,
14 counsel.

15 MR. DVORETZKY: Thank you.

16 CHIEF JUSTICE ROBERTS: Rebuttal,
17 Ms. Ross?

18 REBUTTAL ARGUMENT OF ERICA L. ROSS

19 ON BEHALF OF THE PETITIONER

20 MS. ROSS: Thank you, Mr. Chief
21 Justice. I hope to make just three hopefully
22 quick points.

23 The first is that my friend spoke a
24 lot about review jurisdiction under 6330(d)(1)
25 and that being similar to sort of APA review. I

1 think that's not the right way to think about
2 this case. Again, the Tax Court needs very
3 specific authorization to provide any type of
4 relief. And so, if you look at Footnote 4 of
5 our brief, we discuss the fact that there's no
6 overpayment jurisdiction here.

7 I think what Respondent is really
8 asking for is something that looks like
9 overpayment jurisdiction. When Congress has
10 wanted the Tax Court to have the authority to
11 calculate someone's overpayment and, in fact, to
12 say, you know, you, Commissioner, need to go
13 back and give that money to the -- the taxpayer,
14 it has specifically provided for that.

15 So I would point the Court to the
16 Greene-Thapedi case that's cited in Footnote 4
17 of our brief. Section 6512(b) does this in
18 deficiency actions. I think it's really
19 important that there's not just sort of
20 free-floating general review jurisdiction in the
21 Tax Court.

22 The second point I would make, on
23 gamesmanship, Justice Jackson, I think you're
24 exactly right. I don't think it's correct to --
25 to think about, in the D.C. Circuit's words in

1 Willson, the taxpayer getting exactly what she
2 wanted when she came into the refund suit,
3 meaning for the levy to go away.

4 I don't think it's right for that to
5 think -- to -- to -- to think about that as
6 gamesmanship of any sort. I think, here, the
7 IRS used the tools that Congress gave it to have
8 this debt go away without having to finally
9 carry out a levy on Respondent's property.

10 I think this relates a little bit,
11 Justice Gorsuch, to your question about Section
12 6532. I don't think it's correct to say that
13 the taxpayer would not have been on notice that
14 she needed to file an administrative refund
15 claim unless and until the levy went away. She
16 would always need to file that, again, because
17 most taxpayers are never going to wind up in a
18 levy proceeding. And so, from the beginning,
19 they are supposed to file an administrative
20 refund claim if they think that they are due a
21 refund.

22 The third point, there was some
23 suggestion that there are some provisions in
24 this statute that don't speak specifically about
25 levies. I think they use "collection action" or

1 "unpaid tax." We've already spoken about unpaid
2 tax today. I -- I really hesitate to further
3 complicate this case, but I think the reason why
4 the language is broader in some places is that
5 6320, which is a statute that we cite in our
6 brief, applies the 6330 procedures when the
7 government has filed a notice of a federal tax
8 lien. And so that's why we're talking about
9 collection actions a little bit more broadly. I
10 don't think anything in there suggests, as I
11 took my friend to suggest, that -- that that
12 doesn't mean that we're focused on a levy when
13 the levy is what's before the Court.

14 To take a step back, you know,
15 Section 6330, I think, is dense. It's
16 technical, as we've explored this morning. But
17 I think it plainly provides a prepayment
18 mechanism for review of a challenged levy. In
19 this case, Ms. Zuch has fully paid her 2010
20 taxes and there is no longer a levy. Section
21 6330 is therefore just no longer the right
22 mechanism for her. And we would ask that the
23 Court reverse the court of appeals' contrary
24 judgment.

25 Thank you.

1 CHIEF JUSTICE ROBERTS: Thank you,
2 counsel.

3 The case is submitted.

4 (Whereupon, at 1:27 p.m., the case was
5 submitted.)

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