Congress of the United States

Washington, DC 20515

October 26, 2026

Andres Garcia
Internal Revenue Service
Room 6526, 1111 Constitution Avenue NW
Washington, DC 20224
delivered electronically via email to pra.comments@irs.gov

Re: **Comment of Members of Congress on the Addition of a Citizenship Question to the Draft 2026 Form 1040**; OMB Control No. 1545-0074, Agency Information Collection Activities; Comment Request on U.S. Individual Income Tax Returns and Related Forms, Schedules, Attachments, and Published Guidance, 91 Fed. Reg. 54,920 (Aug. 25, 2026)

Dear Mr. Garcia and to whom it may concern,

The undersigned Members of the United States Congress write in response to the notice above and to the draft 2026 Form 1040 and 1040-X that the Internal Revenue Service (IRS) posted on September 17, 2026.

For the first time, the draft form asks every individual filer, and each spouse on a joint return, the following question: "At the time you file your return, are you, and your spouse if filing jointly, a U.S. citizen, U.S. national, or an alien lawfully authorized to work in the U.S.?"[i] (called herein the "citizenship question").

The citizenship question lacks any tax purpose, and the IRS has failed to offer any rationale for it. Due to the lack of nexus to tax liability, it is outside the IRS's authority. It would also be counter to the IRS's mission, as it would discourage filing by noncitizen taxpayers, including Individual Taxpayer Identification Number (ITIN) filers, who owe federal taxes under the Internal Revenue Code (the Code). Further, it contradicts decades of IRS policy and regulations, as well as the statutory and regulatory scheme approved by Congress in many iterations of refinements to the programs in question. The question is also likely to produce widespread confusion among taxpayers who will feel they must answer it and will do so under penalty of perjury.

Members of Congress have defended the confidentiality of immigrant taxpayers' return information in three cases, and we object to a form change that would ask this unlawful question on every return. We urge the IRS to remove the question from the draft form before submitting this collection to the Office of Management and Budget (OMB).

1. Congress wrote the rules of tax liability without any reference to immigration status, and it gave the IRS authority to prescribe forms only for information relevant to tax liability.

The Code decides who owes federal income tax by a statutory test that turns on presence and income. A noncitizen is taxed as a resident on worldwide income if he or she holds a green card or meets the substantial presence test, which generally turns on physical presence (subject to statutory exceptions); everyone else is a nonresident taxed on U.S.-connected income.[ii]

The law defines gross income as "all income from whatever source derived," and the Supreme Court settled long ago that the Code reaches income whether or not the activity that produced it was lawful.[iii] Citizenship appears in the Code only to reach citizens who live abroad, and work authorization appears nowhere in the rules of liability.[iv] Income earned without work authorization remains taxable, and employers generally must withhold and report taxes on employee wages, regardless of the employee's work authorization. Those wages remain subject to applicable income and employment taxes; lack of citizenship or work authorization does not eliminate these obligations.

When Congress has wanted immigration status to affect a tax benefit, it has written a requirement into the specific credit, and it has done so through the type of Social Security Number (SSN) or other Tax Identification Number (TIN) the filer has, rather than through a declaration of status, including as recently as 2025.[v]

Congress specifically chose identifiers over declarations for a multitude of reasons, as explained below. Congress authorized the IRS to require returns and statements on the basis of the forms it prescribes, and the Treasury to make rules "for the enforcement of this title," so that the IRS can determine and collect the taxes the Code imposes.[vi] The IRS has not explained how the proposed question would help determine a filer's filing status, rate, deduction, or credit, and a question with no such purpose falls outside that authority.

The Paperwork Reduction Act (PRA) permits OMB to approve only a collection that is necessary to the agency's functions and has practical utility.[vii] The IRS has not established that this collection is necessary or has any practical utility, and the question does not supply information the IRS needs for any tax administration purpose. Generally speaking, ITIN applicants report their citizenship, visa, and date of entry on Form W-7, and the IRS receives weekly Social Security Administration data carrying a citizenship code for each SSN holder, which it maintains to administer the earned income tax credit.[viii]

The Privacy Act directs every agency to maintain "only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required to be accomplished by statute or by executive order."[ix] Immigration status is irrelevant to the tax the Code imposes and unnecessary to the credit rules, so the citizenship question collects information that is neither relevant nor necessary to any purpose Congress assigned the IRS. The IRS has not explained why the information requested by this question is relevant and necessary to determining tax liability or administering any other function Congress assigned the IRS. Because the Act protects citizens and lawful permanent residents, the question also raises a Privacy Act concern for the more than 150 million citizen filers who must answer it.

The Act also requires a form that collects personal information to state the authority for the collection, whether answering is mandatory, the principal purpose, the routine uses, and the effect of not answering; no such notice addressing the citizenship question has been published.[x]

2. The only lawful purpose for the IRS is tax administration, and Congress has never permitted return information to be used for immigration enforcement.

The answer to the citizenship question becomes return information the moment it is filed, and no officer or employee of the United States may disclose it unless a provision of Title 26 expressly permits the disclosure.[xi] Congress enacted that rule in 1976 after the Watergate disclosures showed what an administration could do with tax files, and Congress has controlled every exception since.[xii]

No exception permits disclosure for immigration enforcement. The IRS said so in its regulations in 2024: "There is no provision in the United States Code that authorizes the disclosure or redisclosure of returns or return information for enforcement of immigration laws."[xiii] In 2006, the Senate considered amendments to § 6103 that would have given the Department of Homeland Security (DHS) access to return information for immigration purposes, and none became law.[xiv]

The courts have enforced these limits against this Administration in the past year. In *Center for Taxpayer Rights*, the District Court for the District of Columbia enjoined the automated procedure the IRS built to answer Immigration and Customs Enforcement (ICE) requests, finding that the IRS had violated § 6103 "approximately 42,695 times." On September 8, 2026, a unanimous D.C. Circuit Court of Appeals affirmed the injunction.[xv] In federal court in Massachusetts, Judge Talwani separately enjoined DHS and ICE from using the return information the IRS had already disclosed to them.[xvi] Adding this new question to every return would not make such sharing lawful.

Undocumented immigrants paid $59.4 billion in federal taxes in 2022.[xvii] The Commissioner of Internal Revenue made clear to Congressional committees on several occasions that the tax system does not distinguish by immigration status. In 2004, Commissioner Mark Everson testified to the Committee on Ways and Means that the tax laws "make no distinction" between immigrants who are legally employed and those who are not, and that "any sharing of confidential taxpayer information, directly or indirectly, with immigration authorities would have a chilling effect on efforts to bring ITIN holders, and potential ITIN holders, into the U.S. tax system" and would "deprive the Federal Government of tax revenue."[xviii]

In 2006, he told the full Committee that the IRS collects tax from everyone who earns income here, "whether that income is legally obtained, and whether the individual is working here legally."[xix] The National Taxpayer Advocate warned in 2003 that burdensome status-related procedures would drive workers into the cash economy.[xx]

Congress legislated on that basis. We funded Volunteer Income Tax Assistance sites and low-income taxpayer clinics that serve immigrant taxpayers, and in 2015 we wrote ITIN renewal rules into the Code, treating the program as a permanent part of the tax system.[xxi] Millions of taxpayers filed their taxes in reliance on this understanding and the law.

The record contains no authority, purpose, or analysis for the question. The 60-day notice omitted any burden estimate for it, and the burden definition the notice uses excludes "psychological costs," so the consternation and confusion that such a status question would produce is not under consideration by IRS, although it is certainly relevant to Congress.[xxii] Nothing in the record addresses the question's likely and predictable effects on filing, compliance, or revenue. We note that an agency acts arbitrarily when it "entirely failed to consider an important aspect of the problem."[xxiii]

The question also leaves any filer who cannot safely answer "yes" with untenable choices. Every return is signed under penalty of perjury, and the Treasury's rulemaking recites the felony exposure for a false status statement.[xxiv] A noncitizen who mistakenly answers "yes" risks being treated as having falsely claimed citizenship, a federal crime and a permanent bar to admissibility.[xxv] A truthful "no" goes to an agency that shared return information with ICE through a procedure the courts have enjoined. Not filing taxes for those who owe them violates § 6012 of the Code. This process also does not discern if filers are lawfully present, just their citizenship status. Collecting and sharing that status with ICE instead places an undiscerning target on all filers. Further, more than 96 percent of individual returns are prepared with software that follows the IRS's e-file rules. If those rules or software require an answer to the citizenship question, most filers would be unable to leave it blank.[xxvi]

The question would also be very likely to both intimidate and confuse taxpayers who are trying to follow federal law, contrary to the intent of Congress. The question asks whether a person is "lawfully authorized to work," but this is a condition that attaches to dozens of immigration statuses in a myriad of ways.

Some people are employment authorized incident to status and automatically receive employment authorization documents (EADs), such as permanent residents, refugees, and asylees; that authorization is distinct from the documentation used to prove it. Other immigrants may be employment authorized incident to their status but do not receive an EAD automatically, such as derivative U nonimmigrants. Other immigrants must apply for an EAD, such as recipients of Deferred Action for Childhood Arrivals or pending asylum or adjustment of status applicants. In addition, employment authorization can be extended by regulation or Federal Register notice, suspended and restored by court order, or lost on a date the person may not know.

The question also is unreasonable because it would require taxpayers to reckon with unfamiliar terminology and potentially changing circumstances and lacks facial clarity. Children who derived citizenship through a parent often hold no certificate. Similarly, many filers may never have encountered the term "U.S. national" or

understand what it means. The question also asks about each spouse's status "at the time you file," which may differ from the spouse's status during the relevant tax year. Moreover, on a joint return a filer must answer for a spouse whose status he or she may not understand. No instructions have been published, and tax preparers cannot investigate or verify a client's status.

Census Bureau research found that noncitizens were 36 percentage points less likely than citizens to report a status consistent with administrative records, and that a citizenship question would depress census self-response 5.8 percentage points more in households that may include noncitizens.[xxvii] These findings raise concerns about both the accuracy of responses to a citizenship question and its effect on participation in tax filing. The notice invites comment on the clarity and practical utility of the collection, and this question would not produce information accurate enough to serve any purpose.[xxviii]

3. After losing in court, the IRS added the question in an attempt to end-run those decisions, and it reversed decades of policy without acknowledging the change.

When the IRS created the ITIN in 1995, it stated that the numbers were "intended for tax use only" and would create "no inference regarding the immigration status of a foreign person or the right of that person to be legally employed in the United States."[xxix] The IRS even today assures the public that it issues ITINs "regardless of immigration status."[xxx]

An agency that reverses a longstanding position must acknowledge the change, explain it, and account for the reliance interests the prior position created.[xxxi] Two federal courts found in the past year that the IRS abandoned its confidentiality commitments in 2025 without acknowledging the change or considering taxpayers' reliance interests.[xxxii] With the draft form, the IRS is replicating the same failure because it reverses the "no inference" assurance on the face of every return while offering no explanation.

The IRS was enjoined in November 2025 and conceded tens of thousands of unlawful disclosures in February 2026. In May 2026, while its appeal was pending and three months before the Treasury proposed the credit rule, the IRS was reported to be drafting a Form 1040 with a check-box for filers who are "a non-U.S. citizen or have dual citizenship" and to be discussing codes to mark filers' immigration status.[xxxiii] The D.C. Circuit Court of Appeals affirmed on September 8, and the draft form appeared nine days later.

A status answer on every return would place, inside the IRS's files, a list of filers who lack work authorization together with their current addresses, which ICE sought and could not lawfully obtain, and the law would still forbid sharing it. Because the answer has no tax use and cannot be disclosed, the purposes that remain are a null set. Reviewing courts are "not required to exhibit a naiveté from which ordinary citizens are free."[xxxiv] Neither is Congress.

Members of Congress have filed five amicus briefs in the § 6103 litigation over the past eighteen months, and 163 different Members have signed one or more of them.[xxxv] As the briefs made clear, the tax system does not distinguish by immigration status and return information simply cannot be used for immigration enforcement purposes.

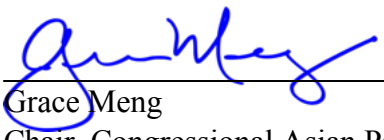
Congress requires every person with income above the filing threshold to file a return, under a promise of confidentiality that Congress wrote into law and the IRS repeated for thirty years. The tax return is not a citizenship registry. We ask the IRS to remove the citizenship question from the 2026 Form 1040 and to omit it from the collection submitted to OMB.

We ask that our request receive full and fair consideration consistent with all applicable laws, rules, and regulations.

Respectfully,



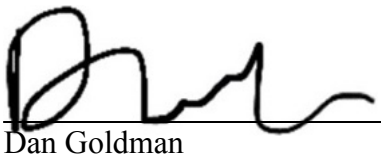
Adriano Espaillat
Chair
Congressional Hispanic Caucus



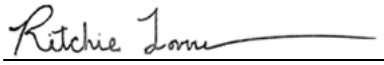
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Chair, Congressional Asian Pacific American Caucus

/s/

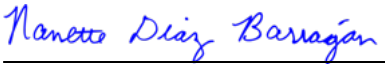
Yvette D. Clark
Chair
Congressional Black Caucus



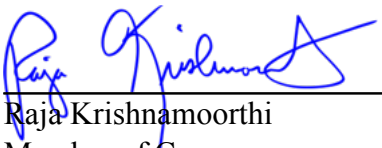
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Member of Congress



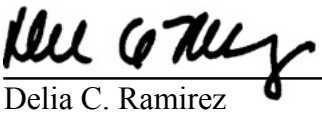
Ritchie Torres
Member of Congress



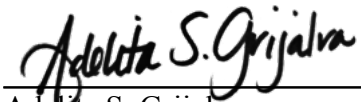
Nanette Diaz Barragán
Member of Congress



Raja Krishnamoorthi
Member of Congress



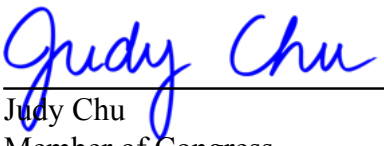
Delia C. Ramirez
Member of Congress



Adelita S. Grijalva
Member of Congress



Emanuel Cleaver, II
Member of Congress



Judy Chu
Member of Congress



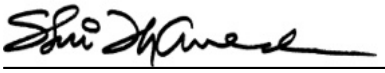
Suzanne Bonamici
Member of Congress



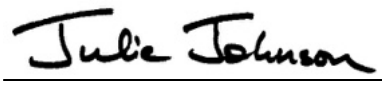
Kevin Mullin
Member of Congress



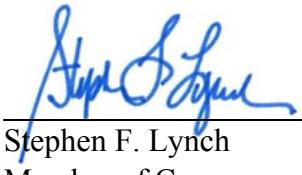
André Carson
Member of Congress



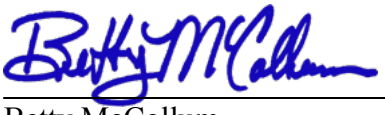
Shri Thanedar
Member of Congress



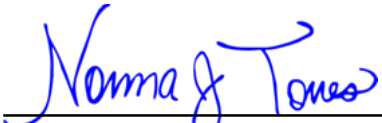
Julie Johnson
Member of Congress



Stephen F. Lynch
Member of Congress



Betty McCollum
Member of Congress



Norma J. Torres
Member of Congress



Vicente Gonzalez
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Al Green
Member of Congress

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Lateefah Simon
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Mark Pocan
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Diana DeGette
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Debbie Wasserman Schultz
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Mark DeSaulnier
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MARK TAKANO
Member of Congress

Glenn F. Ivey
Member of Congress

Julia Brownley
Member of Congress

Adam Smith
Member of Congress

Juan Vargas
Member of Congress

Sylvia R. Garcia
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Gilbert Ray Cisneros, Jr.
Member of Congress

Frederica S. Wilson
Member of Congress

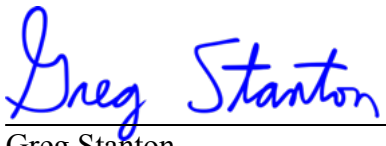
Rashida Tlaib
Member of Congress

James P. McGovern
Member of Congress

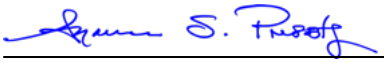
Ted W. Lieu
Member of Congress



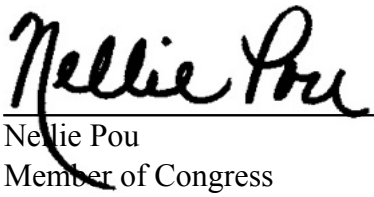
Robert J. Menendez
Member of Congress



Greg Stanton
Member of Congress



Ayanna Pressley
Member of Congress



Nellie Pou
Member of Congress



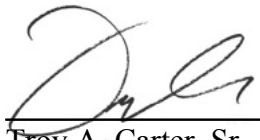
Emily Randall
Member of Congress



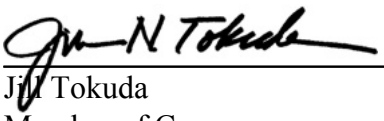
Paul D. Tonko
Member of Congress



George Latimer
Member of Congress



Troy A. Carter, Sr.
Member of Congress



Jill Tokuda
Member of Congress

cc: The Honorable Scott Bessent, Secretary of the Treasury; Frank Bisignano, Chief Executive Officer, Internal Revenue Service; Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget

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[i] IRS, Draft 2026 Form 1040, "Other Information" section (posted Sept. 17, 2026), https://www.irs.gov/pub/irs-dft/f1040--dft.pdf. The draft form provides separate "Yes/No" boxes for "You" and "Spouse."

[ii] 26 U.S.C. §§ 7701(b)(1)(A), (b)(3), 871, 872.

[iii] 26 U.S.C. § 61(a); James v. United States, 366 U.S. 213, 218–19 (1961).

[iv] Cook v. Tait, 265 U.S. 47 (1924); Treas. Reg. § 1.1-1(b).

[v] 26 U.S.C. §§ 24(h)(7), 25A(g)(1), 32(m).

[vi] 26 U.S.C. §§ 6001, 6011(a), 7805(a).

[vii] 44 U.S.C. §§ 3506(c)(3)(A), 3508; 5 C.F.R. § 1320.5(d).

[viii] IRS, Form W-7 (Rev. Dec. 2024), lines 6a, 6c, 6d; IRM 3.13.5.12, 3.13.5.14, 3.13.5.16; Treasury Inspector Gen. for Tax Admin., Ref. No. 2026-4S0-022, Reliable Data Is Needed To Effectively Reduce Improper Earned Income Tax Credit Payments for Nonwork Social Security Numbers (May 4, 2026).

[ix] 5 U.S.C. § 552a(e)(1).

[x] Id. § 552a(e)(3), (e)(4), (e)(11); Treasury/IRS 24.030, Customer Account Data Engine Individual Master File, 79 Fed. Reg. 73,702 (Dec. 11, 2014), reprinted in IRS inventory of systems of records, 80 Fed. Reg. 54,064 (Sept. 8, 2015).

[xi] 26 U.S.C. § 6103(a), (b)(2)(A).

[xii] Tax Reform Act of 1976, Pub. L. No. 94-455, § 1202, 90 Stat. 1520, 1667; S. Rep. No. 94-938, at 316–18 (1976).

[xiii] 89 Fed. Reg. 93,172, 93,174 (Nov. 26, 2024).

[xiv] S. Amdt. 4177 to S. 2611, 109th Cong., 152 Cong. Rec. 5013 (May 23, 2006); S. Amdt. 3267 to S. Amdt. 3192 to S. 2454, 109th Cong., 152 Cong. Rec. 2814 (Apr. 4, 2006); Staff of J. Comm. on Tax'n, JCX-32-06, Present Law and Background Relating to Tax Issues Associated With Immigration Reform (2006).

[xv] Ctr. for Taxpayer Rts. v. IRS, 815 F. Supp. 3d 1 (D.D.C. 2025); Ctr. for Taxpayer Rts. v. IRS, No. 25-cv-457, 2026 WL 551105 (D.D.C. Feb. 26, 2026); Ctr. for Taxpayer Rts. v. IRS, No. 26-5006, 2026 WL 2635380 (D.C. Cir. Sept. 8, 2026).

[xvi] Cmty. Econ. Dev. Ctr. of Se. Mass. v. Bessent, No. 1:25-cv-12822-IT, ECF No. 75, at 2, 41–42 (D. Mass. Feb. 5, 2026), appeal argued, No. 26-1329 (1st Cir. Oct. 7, 2026).

[xvii] Inst. on Tax'n & Econ. Pol'y, Tax Payments by Undocumented Immigrants (July 30, 2024).

[xviii] Social Security Number and Individual Taxpayer Identification Number Mismatches and Misuse: Joint Hearing Before the Subcomm. on Oversight and the Subcomm. on Soc. Sec. of the H. Comm. on Ways & Means, 108th Cong. 9–15 (2004) (Serial No. 108-53) (statement of Mark W. Everson, Comm'r of Internal Revenue) (chilling-effect statement at 12).

[xix] Hearing on Impacts of Border Security and Immigration on Ways and Means Programs: Hearing Before the H. Comm. on Ways & Means, 109th Cong. 16–18 (2006) (Serial No. 109-76) (statement of Mark W. Everson, Comm'r of Internal Revenue).

[xx] Nat'l Taxpayer Advocate, Fiscal Year 2004 Objectives Report to Congress 15–16 (June 30, 2003).

[xxi] 26 U.S.C. §§ 7526, 7526A; Consolidated Appropriations Act, 2016, Pub. L. No. 114-113, div. Q, § 203, 129 Stat. 2242, 3078.

[xxii] 91 Fed. Reg. at 54,920.

[xxiii] Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29, 43 (1983).

[xxiv] 26 U.S.C. § 6065; 91 Fed. Reg. at 53,817 (citing 26 U.S.C. §§ 7206, 7207; 18 U.S.C. §§ 1001, 1015(e)).

[xxv] 18 U.S.C. § 911; 8 U.S.C. § 1182(a)(6)(C)(ii).

[xxvi] 91 Fed. Reg. at 53,819.

[xxvii] J. David Brown et al., Predicting the Effect of Adding a Citizenship Question to the 2020 Census, 56 Demography 1173 (2019).

[xxviii] 91 Fed. Reg. at 54,920 (inviting comment on "ways to enhance the quality, utility, and clarity of the information to be collected").

[xxix] 60 Fed. Reg. 30,211, 30,213 (proposed June 8, 1995); T.D. 8671, 61 Fed. Reg. 26,788 (May 29, 1996).

[xxx] IRS, Individual Taxpayer Identification Number (ITIN), https://www.irs.gov/tin/itin/individual-taxpayer-identification-number-itin (last reviewed Oct. 28, 2025).

[xxxi] FCC v. Fox Television Stations, Inc., 556 U.S. 502, 515 (2009); Encino Motorcars, LLC v. Navarro, 579 U.S. 211, 221–22 (2016); Dep't of Homeland Sec. v. Regents of the Univ. of Cal., 591 U.S. 1, 30 (2020).

[xxxii] Ctr. for Taxpayer Rts. v. IRS, No. 25-cv-457, slip op. at 63–68 (D.D.C. Nov. 21, 2025), reported at 815 F. Supp. 3d 1; Cmty. Econ. Dev. Ctr., ECF No. 75, at 29.

[xxxiii] Jacob Bogage, Exclusive: U.S. Tax Officials Consider Adding Citizenship Question to Tax Forms, Reuters (May 22, 2026); Andrew Duehren & Zolan Kanno-Youngs, Trump Administration Pushes IRS to Identify Immigrants in the U.S. Illegally, N.Y. Times (May 13, 2026).

[xxxiv] Dep't of Com. v. New York, 588 U.S. 752, 785, 139 S. Ct. 2551, 2575 (2019).

[xxxv] Briefs of Members of Congress as amici curiae in Centro de Trabajadores Unidos v. Bessent (D.D.C. and D.C. Cir. No. 25-5181), Ctr. for Taxpayer Rts. v. IRS, No. 25-cv-457 (D.D.C.) and No. 26-5006 (D.C. Cir.), and Cmty. Econ. Dev. Ctr. of Se. Mass. v. Bessent, No. 26-1329 (1st Cir. filed July 30, 2026).