**NOT FOR PUBLICATION**

In the
# United States Court of Appeals
## For the Eleventh Circuit

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No. 24-13401
Non-Argument Calendar

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STANLEY BATTAT,
ZMIRA BATTAT,

*Petitioner-Appellant,*

*versus*

COMMISSIONER OF INTERNAL REVENUE,

*Respondent-Appellee.*

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Petition for Review of a Decision of the
U.S. Tax Court
Agency No. 17784-12

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Before LAGOA, KIDD, and BLACK, Circuit Judges.

PER CURIAM:

Stanley and Zmira Battat ("the Battats") initiated proceedings in the U.S. Tax Court to contest a determination by the

Commissioner of Internal Revenue ("the Commissioner") that they owed approximately $2 million in back taxes and associated penalties for the 2008 tax year. During the proceedings, the Battats argued (1) 26 U.S.C. § 7443(f), a statutory provision permitting the President to remove a Tax Court judge only for cause, is unconstitutional based either on the President's authority to remove Executive Branch officials or on the Constitution's separation of powers, and (2) the Commissioner violated 26 U.S.C. § 6751(b)(1) because the tax examiner responsible for their case did not obtain approval from her immediate supervisor when she made the initial determination that the Battats were required to pay certain tax penalties. The Tax Court ultimately rejected both of these arguments, and the Battats appealed. After review,[1] we affirm the Tax Court.

## I. BACKGROUND

In July 2012, the Battats filed in the U.S. Tax Court a petition for redetermination of deficiency of income tax liability, seeking to contest the Commissioner's determination that they owed approximately $2 million in back taxes and associated penalties for the 2008 tax year. Specifically, the Battats sought to contest a notice of deficiency mailed to them by the Commissioner on April 23, 2012, which stated they owed $1,722,175 in back taxes for the 2008 tax year, in addition to $82,337.25 in penalties for failure to file a tax return within the necessary time limit under 26 U.S.C. § 6651(a)(1)

[1] We review the Tax Court's legal conclusions *de novo*. *Kroner v. Comm'r of Internal Revenue*, 48 F.4th 1272, 1276 (11th Cir. 2022).

and $344,435 in "accuracy-related" penalties for underpayment of taxes under 26 U.S.C. § 6662(a).

The Battats moved to disqualify all Tax Court judges and declare unconstitutional 26 U.S.C. § 7443(f), a provision that permits the President to remove a Tax Court judge "after notice and opportunity for public hearing, for inefficiency, neglect of duty, or malfeasance in office, but for no other cause." 26 U.S.C. § 7443(f). They argued that § 7443(f) was unconstitutional because it violated the Constitution's separation of powers. The Tax Court denied that motion, concluding that § 7443(f) did not violate separation of power principles.

The Battats also moved for partial summary judgment as to the accuracy-related penalty, arguing that penalty could not be assessed because the Commissioner failed to comply with 26 U.S.C. § 6751(b)(1), a provision requiring that the initial determination of the assessment of certain penalties be approved in writing by the immediate supervisor of the individual who makes the determination. 26 U.S.C. § 6751(b)(1). Specifically, the Battats stated that they received a letter and report on November 28, 2011, which stated, among other things, that they were required to pay $345,142.60 in accuracy-related penalties for the 2008 tax year. The forms were only signed by Internal Revenue Service ("IRS") Agent Michelle Ribaudo. The letter to the Battats stated that, if they agreed with the report, they needed to sign it and pay all owed back taxes, penalties, and interest, but, if they did not agree, they should contact the examiner.

In response to the Battats' summary judgment motion, the Commissioner argued that § 6751(b)(1) did not require that Ribaudo's supervisor sign the November 28 letter and report, adding that documents signed by Ribaudo's supervisor after November 28 and before the issuance of the April 23, 2012, notice of deficiency satisfied § 6751(b)(1). The Commissioner asserted that two documents satisfied § 6751(b)(1) in this case: (1) a civil penalty approval form, which was signed on December 8, 2011, by Larry Stagliano, who was acting group manager on that day for Ribaudo's assigned supervisor, Angela Krumenacker, and (2) a letter sent to the Battats on December 8, 2011, discussing an examination report with proposed changes to the Battats' tax liability and penalties, which Stagliano stated he signed "in the name of" Krumenacker.

The Tax Court initially granted the Battats' summary judgment motion because it found that the Commissioner had violated § 6751(b)(1). It concluded that, for the accuracy-related penalty to be assessed, § 6751(b)(1) required that the November 28, 2011, report and letter be approved by Ribaudo's supervisor because it constituted the "initial determination" of the penalty.

The Commissioner moved for reconsideration of the grant of partial summary judgment. The Commissioner argued that the Tax Court's order was contrary to *Kroner v. Comm'r of Internal Revenue*, 48 F.4th 1272 (11th Cir. 2022), a case decided after the Tax Court's order, in which we held that § 6751(b)(1) is satisfied as long as a supervisor approves an initial determination of a penalty assessment before the penalty is assessed.

The Battats then moved for a second time for the Tax Court to declare § 7443(f) unconstitutional, raising the alternative argument that, if the Tax Court was part of the Executive branch, then the for-cause removal requirement in § 7443(f) unconstitutionally limited the President's authority to remove Executive Branch officials.

The Tax Court denied the Battats' motion, concluding based on its earlier order that § 7443(f) was constitutional and rejecting the Battats' alternative arguments. Then, the court granted the Commissioner's motion to reconsider its summary judgment order and vacated that order. It reasoned that *Kroner* required that it reach a different conclusion from its first order, noting that our precedent was binding on it because the case was appealable to us.

The Battats then moved for the Tax Court to enter a decision consistent with the notice of deficiency because they stipulated to the allegations in the notice. However, they stated that they preserved their right to appeal the orders denying their motions for partial summary judgment and to declare § 7443(f) unconstitutional. On July 30, 2024, the Tax Court entered an order and decision finding the Battats liable for the amount described in the notice of deficiency pursuant to the stipulation.

The Battats filed a notice of appeal.

## II. DISCUSSION

The Battats first argue that the Tax Court erred by rejecting their constitutionality challenge as to § 7443(f). Second, they argue that the Tax Court erred by denying its motion for partial

summary judgment because the Commissioner violated § 6751(b)(1). We address each argument in turn.

*A. Constitutionality of § 7443(f)*

The Battats' constitutional argument is based on two alternative positions. On the one hand, if the Tax Court is part of the Executive Branch, they contend that § 7443(f)'s for-cause removal requirement violates the President's Article II authority to remove Executive Branch officials. On the other hand, if the Tax Court is not part of the Executive Branch, they contend that § 7443(f) violates the Constitution's separation of powers because it authorizes the President to remove officials belonging to another branch.

We decline to address these constitutional arguments because the Battats have failed to show they suffered any compensable harm stemming from the asserted unconstitutionality of § 7443(f). *See Lyng v. Nw. Indian Cemetery Protective Ass'n*, 485 U.S. 439, 445-46 (1988) ("A fundamental and longstanding principle of judicial restraint requires that courts avoid reaching constitutional questions in advance of the necessity of deciding them. . . . This principle required the courts below to determine, before addressing the constitutional issue, whether a decision on that question could have entitled respondents to relief beyond that to which they were entitled on their statutory claims. If no additional relief would have been warranted, a constitutional decision would have been unnecessary and therefore inappropriate." (citations omitted)); *Ashwander v. Tenn. Valley Auth.*, 297 U.S. 288, 347 (1936) (explaining that courts "will not pass upon a constitutional question although

properly presented by the record, if there is also present some other ground upon which the case may be disposed of"); *Fort Lauderdale Food Not Bombs v. City of Fort Lauderdale*, 11 F.4th 1266, 1291 (11th Cir. 2021) (stating that we will not address a constitutional argument "in keeping with the judicial restraint princip[les] of constitutional avoidance" when the resolution of alternative issues renders such an argument "a wholly academic question").

In *Collins v. Yellen*, the Supreme Court considered a constitutional challenge to a statutory restriction on the President's power to remove the Director of the Federal Housing Finance Agency ("FHFA"). 594 U.S. 220, 242 (2021). After the Court concluded that the removal provision violated the separation of powers, it considered whether the appellants had a proper request for relief. *Id.* at 250-57. It noted that the appellants' sole request for relief was retrospective: They sought to undo an action taken by the FHFA that they claimed had harmed them. *Id.* at 257.

The Court rejected an argument that the challenged action was "void *ab initio*" merely because the President's authority to remove the FHFA Director was unconstitutionally limited since there was no constitutional defect as to the appointment of the Director. *Id.* at 257-58. It explained that this did not mean that the appellants had no potential entitlement to retrospective relief because it was "possible for an unconstitutional [removal] provision to inflict compensable harm." *Id.* at 259. The Court provided two examples of how such harm might occur: It reasoned that an unconstitutional removal provision could cause compensable harm if

(1) "the President had attempted to remove a Director but was prevented from doing so by a lower court decision holding that he did not have 'cause' for removal," or (2) "the President had made a public statement expressing displeasure with actions taken by a Director and had asserted that he would remove the Director if the statute did not stand in the way." *Id.* at 259-60. Ultimately, because it was not clear in the case before it whether the appellants had suffered compensable harm as a result of the unconstitutional removal provision, the Court remanded for further proceedings on that issue. *Id.* at 260-61.

In *Rodriguez v. Soc. Sec. Admin.*, we applied *Collins'* discussion of compensable harm to a constitutional challenge to a statutory provision regarding the removal of the Commissioner of Social Security, members of the Social Security Appeals Council, and Social Security Administration Administrative Law Judges ("ALJs") in an appeal of a denial of Social Security benefits. 118 F.4th 1302, 1314-1315 (11th Cir. 2024). We did not address the constitutionality of the removal provisions as to the Appeals Council members or the ALJs because the appellant failed to show how those provisions caused him any harm. *Id.* After noting that, like in *Collins*, there was no question that the relevant officials were properly appointed, we stated, "[t]here is nothing in the record which suggests, for example, that the Commissioner or the President were considering dismissing or terminating the ALJ who adjudicated [the appellant's] case (or the Appeals Council members who denied review) but were prevented from doing so by the for-cause removal provisions." *Id.* at 1315. Further, relying on a Ninth Circuit case

addressing *Collins*, we did not remand the case for further proceedings like the Supreme Court did in *Collins* because the appellant failed to submit any evidence or provide any arguments that he was harmed by the removal provisions. *Id.* (citing *Decker Coal Co. v. Pehringer*, 8 F.4th 1123, 1137 (9th Cir. 2021)).

We conclude under *Collins* and *Rodriguez* that, even if the Battats are correct that § 7443(f)'s for-cause removal requirement is unconstitutional, they are not entitled to relief because they have failed to show that they have suffered any compensable harm as a result of the asserted unconstitutionality of § 7443(f). *See Collins*, 594 U.S. at 257-60; *Rodriguez*, 118 F.4th at 1314-15. Like in *Rodriguez*, the Battats have failed to provide any evidence or arguments that they were harmed by § 7443(f), so remand is not warranted as it was in *Collins*. *See Collins*, 594 U.S. at 260-61; *Rodriguez*, 118 F.4th at 1315.

This conclusion is consistent with how other courts of appeals have applied *Collins* in similar contexts. *See, e.g.*, *Leachco, Inc. v. Consumer Prod. Safety Comm'n*, 103 F.4th 748, 755-58 (10th Cir. 2024) ("To establish harm under *Collins*, [the appellant] would need to make a showing that the challenged removal provisions actually impacted, or will impact, the actions taken by the [appellee] against it."); *Calcutt v. Fed. Deposit Ins. Corp.*, 37 F.4th 293, 313-17 (6th Cir. 2022) ("*Collins* thus provides a clear instruction: To invalidate an agency action due to a removal violation, that constitutional infirmity must 'cause harm' to the challenging party."), *rev'd on other grounds by* 598 U.S. 623 (2023); *Cmty. Fin. Servs. Ass'n of Am., Ltd. v.*

*Consumer Fin. Prot. Bureau*, 51 F.4th 616, 631-33 (5th Cir. 2022) ("We distill from [*Collins*'] hypotheticals three requisites for proving harm: (1) a substantiated desire by the President to remove the unconstitutionally insulated actor, (2) a perceived inability to remove the actor due to the infirm provision, and (3) a nexus between the desire to remove and the challenged actions taken by the insulated actor."), *rev'd on other grounds by* 601 U.S. 416 (2024).

In *Walmart, Inc. v. Chief Admin. L. Judge of Off. of Chief Admin. Hearing Officer*, an appeal concerning the constitutionality of a statutory provision regarding the removal of ALJs in the Department of Justice, we addressed the merits of the constitutional arguments because we concluded that the case before us was distinct from *Rodriguez*. 144 F.4th 1315, 1337-39, 1342-48 (11th Cir. 2025). We concluded that *Rodriguez*'s application of *Collins* did not apply because the appellant sought only prospective relief, and the district court had declared the removal provision unconstitutional. *Id.* at 1338-39. As to the latter point, we explained "[s]imply vacating the district court's remedy [under *Rodriguez*] without addressing the merits of the constitutional issue would not be appropriate here." *Id.* at 1339.

This appeal is more like *Rodriguez* than *Walmart* because the Battats seek retrospective relief—the reversal of the Tax Court's final order and decision and new proceedings before a different judge—and the Tax Court did not declare § 7443(f) unconstitutional. *See Rodriguez*, 118 F.4th at 1314-15; *Walmart*, 144 F.4th

at 1338-39. Therefore, like in *Rodriguez*, we decline to address the merits of the Battats' constitutional arguments.

The Battats argue that they do not need to prove harm based on language from *Seila Law LLC v. Consumer Fin. Prot. Bureau*, 591 U.S. 197 (2020), another case addressing the constitutionality of a removal provision. In that case, the Supreme Court stated,

> We have held that a litigant challenging governmental action as void on the basis of the separation of powers is not required to prove that the Government's course of conduct would have been different in a "counterfactual world" in which the Government had acted with constitutional authority. . . . In the specific context of the President's removal power, we have found it sufficient that the challenger "sustain[s] injury" from an executive act that allegedly exceeds the official's authority.

*Seila Law*, 591 U.S. at 211 (quoting *Free Enter. Fund v. Pub. Co. Acct. Oversight Bd.*, 561 U.S. 477, 512 n.12 (2010), and *Bowsher v. Synar*, 478 U.S. 714, 721 (1986)).

However, the Supreme Court rejected a similar argument in *Collins*, stating that neither *Seila Law* nor *Bowsher* stood for the proposition that a governmental action could be voided simply because of an unconstitutional removal provision. *See Collins*, 594 U.S. at 258-59; *see also id.* at 258 n.24 ("We held [in *Seila Law*] that a plaintiff that challenges a statutory restriction on the President's power to remove an executive officer can establish standing by showing that it was harmed by an action that was taken by such an

officer and that the plaintiff alleges was void. . . . But that holding on standing does not mean that actions taken by such an officer are void *ab initio* and must be undone." (citation omitted)).

For these reasons, we affirm the Tax Court's denial of the Battats' constitutional challenge to § 7443(f).

*B. Supervisor Approval*

The Battats also argue that the Commissioner violated § 6751(b)(1) because the November 28, 2011, letter and report constituted the initial determination of the accuracy-related penalty but was not approved by the examiner's immediate supervisor. We disagree because this argument is foreclosed by *Kroner*.

Section 6751(b)(1) states, "[n]o penalty under this title shall be assessed unless the initial determination of such assessment is personally approved (in writing) by the immediate supervisor of the individual making such determination or such higher level official as the Secretary may designate." 26 U.S.C. § 6751(b)(1). There are certain exceptions to that rule, but it applies to § 6662(a) accuracy-related penalties based on underpayment of income tax in various circumstances. *Id.* § 6751(b)(2).

In *Kroner*, a taxpayer received a letter from a tax examiner stating he owed back taxes and penalties, which was not signed by the examiner's supervisor. *Kroner*, 48 F.4th at 1274. Subsequently, the examiner's supervisor sent the taxpayer a signed letter approving the penalties discussed in the first letter. *Id.* When negotiations failed, the IRS sent the taxpayer a notice of deficiency, and the taxpayer initiated Tax Court proceedings. *Id.* The Tax Court

concluded that the imposition of the specified penalties was contrary to § 6751(b)(1) because that provision required supervisor approval at the time of the first letter. *Id.*

We held that the Tax Court erred because "the IRS satisfies Section 6751(b) so long as a supervisor approves an initial determination of a penalty assessment before it assesses those penalties." *Id.* at 1276. First, we reasoned that "the initial determination of such assessment" described in § 6751(b)(1) "has nothing to do with communication and everything to do with the formal process of calculating and recording an obligation on the IRS's books," which meant that the first letter did not constitute an "initial determination" for purposes of § 6751(b)(1). *Id.* at 1277-78. Second, we rejected the argument "that an IRS supervisor must approve the initial determination of assessment before any penalty is communicated to the taxpayer" because we saw "nothing in the text [of § 6751(b)(1)] that requires a supervisor to approve penalties at any particular time before assessment." *Id.* at 1278-79. Lastly, we rejected the reasoning of a Second Circuit decision that reached a different outcome. *Id.* at 1279-81. For those reasons, we reversed the Tax Court's order disallowing the penalties. *Id.* at 1281.

The facts of this case are identical to *Kroner*. Like in *Kroner*, the Battats initially received a letter from a tax examiner describing certain penalties to be imposed, which was not signed by the examiner's supervisor. *Id.* at 1274. Then, before the IRS issued a notice of deficiency, the Battats received an additional letter signed by the examiner's acting supervisor, and the supervisor signed a form

approving the penalties. *Id.* We are bound to reject the Battats' argument based on our holding in *Kroner* that "the IRS satisfies Section 6751(b) so long as a supervisor approves an initial determination of a penalty assessment before it assesses those penalties." *Id.* at 1276.

The Battats' arguments on this issue for the most part are based on the contention that *Kroner* was wrongly decided. However, under the prior-panel-precedent rule, we must follow *Kroner* because it has not been overruled or abrogated by this Court sitting *en banc* or the Supreme Court. *See Sabal Trail Transmission, LLC v. 18.27 Acres of Land in Levy Cnty.*, 59 F.4th 1158, 1164 (11th Cir. 2023) ("[W]e have categorically rejected any exception to the prior panel precedent rule based upon a perceived defect in the prior panel's reasoning or analysis as it relates to the law in existence at that time." (alteration and quotation marks omitted)).

The Battats contend that *Kroner* is contrary to our earlier decision in *Huff v. Comm'r of IRS*, 743 F.3d 790 (11th Cir. 2014), because that case requires us to follow out-of-circuit precedent in tax cases where our caselaw is contrary to prevailing out-of-circuit precedent. This argument is contrary both to the prior-panel-precedent rule and *Huff* itself. The Battats point to language in *Huff* where we stated that the Tax Court decision on review "produced a split of authority in an area of law in which uniformity is of particular importance," and explained that we would consider the appeal "[w]ith the benefit of our sister courts' reasoning." *Huff*, 743 F.3d at 795. However, nothing in that decision stands for the

proposition that we *must* follow out-of-circuit precedent even though there is on-point, binding precedent from our circuit that requires the opposite conclusion. *See id.* at 795-802. In fact, nothing in *Huff* indicates that we are ever bound to follow out-of-circuit caselaw under these circumstances. *See id.*

The Battats also note that in *Kroner* we declined to address an argument from the Commissioner that the word "approve" in § 6751(b)(1) may impose a timing requirement on supervisor approval under that provision "because a supervisor cannot 'approve' something after she has lost the discretion to disapprove it." *Kroner*, 48 F.4th at 1279 n.1. They assert that we did not consider that issue in *Kroner* because in that case it was "undisputed that the supervisor had discretion when she approved the penalties at issue here," while in this case they contest whether the supervisor had discretion to approve the accuracy-related penalties in the December 8, 2011, letter and civil penalty approval form. *Id.* Their argument is that the supervisor lost discretion to approve the penalties after the issuance of the November 28, 2011, letter and report because the letter stated that, if they agreed with the report, they could sign it and pay all tax, penalty, and interest.

Even if *Kroner* did not bind us on this issue, and even if we accepted that a supervisor cannot approve a penalty for purposes of § 6751(b)(1) once he has lost the discretion to do so, we would still reject this argument because there is no indication that the supervisor in this case lacked the discretion to approve the accuracy-related penalties when he did so on December 8, 2011.

Other courts of appeals that have considered when a supervisor loses the discretion to approve a penalty for purposes of § 6751(b)(1) have agreed that the first major event that impacts such discretion is the issuance of a notice of deficiency. *See Laidlaw's Harley Davidson Sales, Inc. v. Comm'r of Internal Revenue*, 29 F.4th 1066, 1071 & n.4 (9th Cir. 2022) (explaining that a supervisor had the discretion to approve a penalty when he signed a civil penalty approval form before the notice of deficiency was issued, and explaining, "once the notice [of deficiency] is sent, the Commissioner begins to lose discretion over whether the penalty is assessed" (citing 26 U.S.C. § 6213(c)); *Swift v. Comm'r of Internal Revenue*, 144 F.4th 756, 769-71 (5th Cir. 2025) (agreeing with *Laidlaw's*); *Chai v. Comm'r of Internal Revenue*, 851 F.3d 190, 221 (2d Cir. 2017) ("[B]ecause a taxpayer can file a tax court petition at any time after receiving a notice of deficiency, the truly consequential moment of approval is the IRS's issuance of the notice of deficiency (or the filing of an answer or amended answer asserting penalties [in response to a taxpayer's petition to commence Tax Court proceedings])."). No binding or persuasive authority supports the Battats' position that the November 28, 2011, letter or report deprived the supervisor in this case of the discretion to approve the accuracy-related penalties.

It is possible that a supervisor might lose discretion to approve a tax penalty if, in response to a letter and report like the ones the Battats received on November 28, 2011, the taxpayer agrees to pay the calculated back taxes and penalties because at that point the supervisor might be no longer able to rescind the penalties.

However, even if that is the case, that did not happen here, so we cannot say that the supervisor in this case lacked discretion to approve of the penalties on December 8, 2011, before assessment and the issuance of the notice of deficiency. *See Laidlaw's*, 29 F.4th at 1071 & n.4; *Swift*, 144 F.4th at 769-71; *Chai*, 851 F.3d at 221.

For these reasons, we reach the same conclusion as we did in *Kroner* and conclude that the Commissioner did not violate § 6751(b)(1). *See Kroner*, 48 F.4th at 1276-81. Accordingly, we affirm the Tax Court's denial of the Battats' motion for partial summary judgment as to the accuracy-related penalties.

## III. CONCLUSION

The Battats cannot pursue their constitutional challenge to § 7443(f) because they have failed to show they were harmed by that provision. Further, the Commissioner complied with § 6751(b)(1) because a supervisor approved the accuracy-related penalties before assessment. Therefore, we affirm the Tax Court.

**AFFIRMED.**