No. _____

In the Supreme Court of the United States

PDX NORTH, INC.,

Petitioner,

v.

ROBERT ASARO-ANGELO, IN HIS OFFICIAL CAPACITY AS THE COMMISSIONER OF THE DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT OF THE STATE OF NEW JERSEY,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Third Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

I. Federal courts have a "virtually unflagging obligation" to hear and decide cases within their jurisdiction. In *Younger v. Harris*, 401 U.S. 37 (1971), this Court recognized a narrow exception to that duty. Under *Younger*, a federal court should abstain when there is a parallel, pending state criminal proceeding. This Court has extended *Younger*, permitting courts to abstain when there are pending state proceedings that are civil, but "only [in] exceptional circumstances" when the action is "akin to a criminal prosecution." *Sprint Commc'ns, Inc. v. Jacobs*, 571 U.S. 69, 77–78, 82 (2013) (quoting *New Orleans Pub. Serv., Inc. v. Council of City of New Orleans (NOPSI)*, 491 U.S. 350, 368 (1989)). Here, the New Jersey Department of Labor ("NJDOL") audited Petitioner regarding unemployment insurance contributions, with no pending quasi-criminal proceedings, and Petitioner requested a hearing with the state administrative courts. When Petitioner also filed a declaratory judgment action in federal court challenging the constitutionality of the definition of "employment," the district court below and the Third Circuit on appeal declined to exercise jurisdiction, finding *Younger* abstention appropriate.

The question presented is: Whether *Younger* abstention is applicable and the district court may decline jurisdiction when there is a state administrative proceeding brought under a civil statute, where only civil remedies are sought and where no criminal or quasi-criminal provisions or remedies are involved.

PARTIES TO THE PROCEEDINGS

Petitioner PDX North, Inc. was the appellant in the court below. Respondent Robert Asaro-Angleo, in his official capacity as the Commissioner of the Department of Labor and Workforce Development of the State of New Jersey, was the appellee. SLS Delivery Services, Inc. was an intervenor in the district court and appellant in the consolidated appeals.

RULE 29.6 STATEMENT

Petitioner is a non-governmental corporation that does not have a parent corporation, nor is there any publicly held corporation that owns 10% or more of Petitioner's stock.

STATEMENT OF RELATED PROCEEDINGS

United States District Court for the District of New Jersey:

PDX North, Inc. v. Robert Asaro-Angelo, in his capacity as Commissioner of the New Jersey Department of Labor and Workforce Development, No. 3:15-cv-07011-BRM-TJB (July 29, 2019).

New Jersey Office of Administrative Law:

PDX North Inc. v. New Jersey Department of Labor and Workforce Development, OAL Docket No. LID 02451-2015.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner PDX North, Inc. ("PDX") petitions for a writ of certiorari to review the Judgment of the United States Court of Appeals for the Third Circuit in this case.

INTRODUCTION

The abstention doctrine under *Younger v. Harris*, 401 U.S. 37 (1971), excuses the federal courts from their virtually unflagging responsibility to hear and decide a case. *Younger* only permits federal courts to abstain in a narrow class of cases including: (1) ongoing state criminal prosecutions; (2) certain "civil enforcement proceedings" quasi-criminal in nature; and (3) pending "civil proceedings involving certain orders . . . uniquely in furtherance of the state courts' ability to perform their judicial functions." *New Orleans Pub. Serv., Inc. v. Council of City of New Orleans (NOPSI)*, 491 U.S. 350, 368 (1989). Relevant here, this Court in *Sprint Communications*, *Inc. v. Jacobs* reaffirmed that *Younger* abstention only applies in "exceptional circumstances" to state civil enforcement proceedings "akin to a criminal prosecution" in "important respects." 571 U.S. 69, 77–78, 82 (2013) (quoting *Huffman v. Pursue*, *Ltd.*, 420 U.S. 592, 604 (1975)).

Despite this unequivocal limit to the application of *Younger*, the Third Circuit panel (the "Panel") affirmed the district court's dismissal declining jurisdiction. Citing *Younger*, the Panel concluded that the pending administrative proceeding was a "civil enforcement proceeding." It thus dismissed the federal action, reasoning that in the same statutory chapter as the

civil statute under which the Respondent initiated the audit and assessment against PDX, N.J.S.A. 43:21-14, there is another cause of action available to the NJDOL with a quasi-criminal remedy, N.J.S.A. 43:21-16(e). The Panel erred because although New Jersey courts have held that N.J.S.A. 43:21-16(e) is a quasi-criminal provision, the NJDOL has never asserted that PDX intended to evade or defraud, a requisite element under section 16(e). Nor did the NJDOL initiate an administrative proceeding pursuant to that statutory section. Thus, the Panel's error is plain in that it impermissibly extended the boundaries of *Younger* abstention to a purely civil action.

The Panel's reasoning contravenes *Sprint*'s requirement that *Younger* cannot be divorced from the quasi-criminal context lest *Younger* be extended to "virtually all parallel state and federal proceedings." *Sprint*, 571 U.S. at 81. The Panel's approach also conflicts with this Court's decision in *Sprint* and cases from the Seventh, Eighth and Ninth Circuits that require the underlying state civil proceeding itself to be quasi-criminal in nature, such that it is a "civil enforcement proceeding." This case thus presents a critical question as to the proper method of determining whether a state proceeding is a "civil enforcement proceeding" to which abstention under *Younger* may be ordered. This Court should accept certiorari and reverse.

OPINIONS BELOW

The opinion of the Third Circuit is reported at 978 F.3d 871 (Mem.) and reproduced in the appendix hereto ("App.") at App. 1. The opinion of the United States

District Court for the District of New Jersey (App. 29) is unreported but is available at 2019 WL 3416836.

JURISDICTION

The Third Circuit entered judgment on October 22, 2020. (App. 27). Under this Court's March 19, 2020 order, the time for filing a petition for a writ of certiorari was extended to March 21, 2021. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

N.J.S.A. 43:21-14 (App. 53) and N.J.S.A. 43:21-16(e) (App. 63).

STATEMENT OF THE CASE

A. The NJDOL Audit Process

The NJDOL audits employers as part of its comprehensive field audit program required by the United States Department of Labor. *See N.J. Dep't of Lab. and Workforce Dev., Emp. Handbook, Audit Process*, available at https://www.nj.gov/labor/handbook/chap1/chap1sec7AuditProcess.html. Audits may be initiated randomly, resulting in audits of thousands of employers per year.

The NJDOL may pursue civil remedies under one statute, if an audit reveals that an employer has not kept up with unemployment insurance contributions. Additionally, the NJDOL may initiate a quasi-criminal action under a separate statute if the facts show an intent to evade or defraud the NJDOL. A "mere failure to pay the appropriate contributions," standing alone,

triggers civil liability under N.J.S.A. 43:21-14. *State v. Witrak*, 194 N.J. Super. 526, 531 (App. Div. 1984). To remedy that deficiency, "the State may (1) charge interest on the deficiency, (2) make a demand for payment and (3) obtain a judgment upon issuing a certificate." *Id.* at 530. A different section in the same statutory chapter can expose an employer to potential quasi-criminal liability when the NJDOL avers that the employer failed to stay current on its contributions and that it did so with the intent to evade or defraud the NJDOL. *See* N.J.S.A. 43:21-16. Section 16(e), in particular, empowers the Commissioner of Labor (Respondent here) to initiate a quasi-criminal proceeding. *Id. See also Matter of Corbo*, 117 B.R. 109, 111 (Bankr. D.N.J. 1990) (identifying actions under subsection N.J.S.A. 43:21-16(e) as quasi-criminal); *Witrak*, 194 N.J. Super. at 529–32; *but see State v. Drake*, 79 N.J. Super. 458, 461 (App. Div. 1963) (explaining that under N.J.S.A. 43:21-16(a) "an action for a penalty is neither criminal nor quasi-criminal in nature, but civil").

B. PDX's Business and Audits by the NJDOL

PDX facilitates and brokers transportation and delivery services of wholesale automotive parts to dealers and third party suppliers in several states, including New Jersey. To meet customer demand, PDX contracts with entrepreneurial individuals ("Drivers") on an "as-needed," "on-demand" basis to provide delivery services. Drivers pick up and deliver automotive parts and tires from automotive part suppliers and regional warehouses and deliver them to

repair shops, retailers, and automotive dealers that request them (the "Customers").

Since 2006, the NJDOL audited PDX multiple times to determine if it properly categorized its drivers as independent contractors, each time concluding that PDX did not prove that all Drivers were independent contractors. For each of the audits, the NJDOL calculated contributions, interest, and penalties that the auditor believed PDX owes, pursuant to N.J.S.A. 43:21-14. No action was ever filed against PDX pursuant to N.J.S.A. 43:21-16(e). Following the audits, the Commissioner issued a written notice of determination and PDX submitted a Request for Hearing, contesting that determination, which initiated the administrative appeal. *See* N.J.A.C. 12:16-22.2(a). The administrative appeals have been stayed by the administrative law judge, pending this federal litigation.

C. PDX Files This Suit

On September 22, 2015, PDX commenced this action, asserting express and implied preemption, to declare void the definition of "employment" and the applicable exception for certain motor carriers, *see* N.J.S.A. 43:21-19(i)(6) and (7)(X) (together, the "Statute"), and enjoin enforcement and use of these constructs. The Federal Aviation Administration Authorization Act of 1994 ("FAAAA"), and its predecessor the Motor Carrier Act of 1980, deregulated the trucking industry and expressly preempted state trucking regulations. *Dan's City Used Cars, Inc. v. Pelkey*, 569 U.S. 251, 256 (2013). PDX alleges that it is entitled to relief because Congress enacted the FAAAA

in an effort to ensure that "transportation rates, routes, and service reflect 'maximum reliance on competitive market forces' to stimulate 'efficiency, innovation, and low prices' as well as variety and quality." Congress included broad preemption language in the FAAAA to prevent states from impermissibly restricting motor carriers engaged in interstate commerce. *Id.* at 263. States are prohibited from enacting or enforcing any law, regulation, or other provision "related to a price, route, or service" of a motor carrier. *Id.* at 256. PDX alleges that New Jersey law substantially and adversely affects PDX's prices, routes, and/or services and is preempted by the FAAAA.

The Statute provides that an individual, who performs services in New Jersey for payment, is presumed to be an employee unless the three conditions of the so-called "ABC Test" are met: (A) the individual is "free from control or direction over the performance of such service"; (B) the "service is either outside the usual course of the business for which such service is performed, or that such service is performed outside of all the places of business" of the company; and (C) the "individual is customarily engaged in an independently established trade, occupation, profession or business." N.J.S.A. 43:21-19(i)(6); *Hargrove v. Sleepy's, LLC*, 220 N.J. 289, 305 (2015). The ABC Test is a stricter standard than that used under federal law to differentiate between employees and independent contractors, and "may cast a wider net" than the federal standard as well. *Id.* at 313–14.

N.J.S.A. 43:21-19(7)(X) exempts certain motor carriers from having to overcome the Statute's

presumption that its drivers are employees. Those motor carriers that are not exempt under N.J.S.A. 43:21-19(7)(X) must overcome the Statute's employment presumption. Thus, the Statute excuses some, but not all motor carriers from overcoming the presumption that drivers are employees in violation of the FAAAA.

D. The District Court Declined to Hear the Case, Citing *Younger* Abstention

After several years of litigation, expert reports and discovery, the district court abstained from hearing PDX's challenge to the Statute on the basis of *Younger*, classifying the pending NJDOL audit and appeal as a quasi-criminal civil enforcement proceeding.

On consolidated appeals, the Third Circuit affirmed.

REASONS FOR GRANTING THE PETITION

I. The Panel's Opinion and Analysis Expand the Application of *Younger* Abstention Beyond the Limits Defined in *Sprint*.

Certiorari is appropriate because the Panel's opinion and analysis is contrary to the limits on *Younger* abstention announced by this Court in *Sprint* in so far as the Panel: (1) concluded that the civil action was a "civil enforcement proceeding" and rejected the classification of the statute at issue as civil by relying on a different civil statute rather than a parallel criminal statute; and (2) concluded that the administrative proceeding was necessarily initiated to sanction PDX because penalties were issued, despite state law's classification of the penalties as civil. The

Panel's conclusion is at odds with the conclusions of the other courts of appeal both in its reliance on a civil statute held to be quasi-criminal in nature, rather than a parallel criminal statute, and its consideration of the possibility of future criminal proceedings.

Federal courts' "'obligation' to hear and decide a case is 'virtually unflagging.'" *Sprint*, 571 U.S. at 77 (quoting *Colo. River Water Conservation Dist. v. United States*, 424 U.S. 800, 817 (1976)). There are limited exceptions, however, in which a court may abstain from hearing a case otherwise within its jurisdiction. Under *Younger v. Harris*, a federal court may abstain if there is a related state proceeding that is a: (1) criminal prosecution; (2) civil enforcement proceeding that is quasi-criminal in nature; or (3) civil proceeding specifically in furtherance of the state courts' judicial functions. *Sprint*, 571 U.S. at 78–79. The relevant category here, civil enforcement proceedings, are state proceedings "'akin to a criminal prosecution' in 'important respects.'" *Id.* at 79. (quoting *Huffman*, 420 U.S. at 604).

To determine whether an action is a civil enforcement proceeding quasi-criminal in nature, courts consider whether: "(1) the action was commenced by the State in its sovereign capacity, (2) the proceeding was initiated to sanction the federal plaintiff for some wrongful act, and (3) there are other similarities to criminal actions, such as a preliminary investigation that culminated with the filing of formal charges." *ACRA Turf Club, LLC v. Zanzuccki*, 748 F.3d 127, 138 (3d Cir. 2014) (citing *Sprint*, 571 U.S. at 78–80). In determining whether a pending proceeding

is a quasi-criminal civil enforcement proceeding, courts may consider whether there is a parallel criminal statute under which the State could have vindicated its interests. *See Trainor v. Hernandez*, 431 U.S. 434, 444 (1977); *Huffman*, 420 U.S. at 604.[1]

Contrary to *Younger* and its progeny, the Panel never references a parallel criminal statute or criminal code provision. The Panel erroneously held that N.J.S.A. 43:21-16(e) is the criminal analog to the relevant civil statute, N.J.S.A. 43:21-14(a), pursuant to which the Commissioner initiated the audits. PDX disputes that N.J.S.A. 43:21-16(e) is a parallel statute to N.J.S.A. 43:21-14 under which the state could have vindicated its interests because N.J.S.A. 43:21-16(e) requires a showing of intent to evade or defraud and further requires the Commissioner to initiate suit in the Superior Court of New Jersey or municipal court in a county of New Jersey. There is no such proceeding here, nor has the Commissioner indicated the existence of any facts in the record, which could even support such a claim. Setting aside whether N.J.S.A. 43:21-14 and N.J.S.A. 43:21-16(e) are parallel, the error committed by the Panel is plain because New Jersey courts have determined that N.J.S.A. 43:21-16(e) is merely a quasi-criminal statute, and not a criminal statute. *See Witrak*, 194 N.J. Super. at 529–32. As such, it cannot be a "parallel criminal statute" and thus, it cannot justify a conclusion that *Younger* applies. *ACRA Turf Club, LLC*, 748 F.3d at 138 (citing

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[1] This Court has not reexamined the parallel criminal statute analysis relied on in *Trainor*, 431 U.S. at 444, and *Huffman*, 420 U.S. at 604, post-*Sprint*.

Huffman, 420 U.S. at 604; *Trainor*, 431 U.S. at 444). If this Court permits the precedential decision below to stand, courts in the Third Circuit may abstain from exercising jurisdiction if the pending action is purely civil and brought pursuant to a statute that happens to be located within the same statutory framework as a quasi-criminal provision.

Permitting a federal court to abstain under the circumstances here would flip this Court's precedent on its head. *Younger*'s narrow and exceptional applicability would become the norm if a statutory scheme includes a quasi-criminal provision, even if not at issue in the pending state case. This Court has explained, however, that abstention is only appropriate when the state proceeding "currently pending" is "the type of 'exceptional' civil enforcement proceeding from which *Younger* would compel abstention." *ACRA Turf Club, LLC*, 748 F.3d at 138 (citing *Sprint*, 571 U.S. at 73); *see id.* (holding that the "state proceeding at issue in this appeal does not bear any of the hallmarks that *Sprint* and its predecessors identify with quasi-criminal actions.").

A. The Panel Impermissibly Extends *Younger* Abstention to Civil Actions with a Quasi-Criminal Analog.

The Panel's reasoning expands *Younger* beyond the contours of *Sprint* by permitting abstention where there is a quasi-criminal statute within the same civil statutory scheme. The Panel further erred by invoking a quasi-criminal section of the statute that would require the NJDOL to prove an additional element of intent to evade or defraud, which was not alleged by

the NJDOL in the underlying proceeding. In finding that abstention under *Younger* was appropriate, the Panel held that PDX's administrative action before the NJDOL for the classification of its workers is a "civil enforcement proceeding," and therefore, is more akin to a criminal action than a civil case. In making that determination, the Panel reasoned that N.J.S.A. 43:21-16(e) was a criminal analog to N.J.S.A. 43:21-14, the civil statute under which the NJDOL audit and assessment proceeded. N.J.S.A. 43:21-16(e), however, is not a criminal statute, but rather a quasi-criminal civil statute, a status that has been explicitly announced by New Jersey courts. *Witrak*, 194 N.J. Super. at 529–32.

1. N.J.S.A. 43:21-14 is a civil statute that provides civil remedies.

Overall, "the clear intent of [the Unemployment Compensation law ("UCL")] is to provide a civil remedy." *Drake*, 79 N.J. Super. at 461. The pending New Jersey administrative action at issue is proceeding pursuant to N.J.S.A. 43:21-14(a) and (b), where the Commissioner does not need to show that the employer had specific intent to evade or defraud, but rather, that there is mere disagreement about the proper classification of the worker. In concluding that the underlying proceeding initiated under N.J.S.A. 43:21-14 was a civil enforcement proceeding quasi-criminal in nature, the Panel explicitly rejected the statutory interpretation and classification of New Jersey courts. The statute itself states that the actions initiated thereunder are civil, *see* N.J.S.A. 43:21-14, and New Jersey courts interpreting the statutory sections

regarding proceedings under the UCL have determined that the UCL generally provides for purely civil, not quasi-criminal proceedings, *Drake*, 79 N.J. Super. at 461. A federal court is "bound by the [state court's] interpretation of state law." *Johnson v. United States*, 559 U.S. 133, 138 (2010); *see New York v. Ferber*, 458 U.S. 747, 767 (1982) (reiterating that "the construction that a state court gives a state statute is not a matter subject to [federal court] review"); *Exxon Corp. v. Wis. Dep't of Revenue*, 447 U.S. 207, 226 n.9 (1980) (stating that the final arbiter of Wisconsin state law is the Wisconsin Supreme Court); *Wainwright v. Stone*, 414 U.S. 21, 22 (1973) (holding that any judgment of federal courts as to the interpretation of a state statute "must be made in the light of prior state constructions of the statute."); *Minnesota ex rel. Pearson v. Prob. Ct.*, 309 U.S. 270, 273 (1940) (federal courts "must take the statute as though it read precisely as the highest court of the State has interpreted it.").

New Jersey has long recognized that "under N.J.S.A. 43:21-14, where an employer is deficient in paying unemployment insurance contributions, the State may (1) charge interest on the deficiency, (2) make a demand for payment and (3) obtain a judgment upon issuing a certificate." *Witrak*, 194 N.J. Super. at 530. These are "civil remedies" for the "mere failure to pay the appropriate contributions." *Id.* at 531. These are not "quasi-criminal sanctions fixed in N.J.S.A. 43:21-16" for "offenses" of knowingly false representations and willful violations of the statute. *Id.* Such sanctions would require the NJDOL to show "willfulness or intent to evade." *Id.*

Thus, the administrative proceeding below is a purely civil action. *Sprint* requires that the actual proceeding in the case be quasi-criminal. Indeed, abstention is only appropriate when the state proceeding "at issue" bears the hallmarks of a quasi-criminal action. *ACRA Turf Club, LLC*, 748 F.3d at 138 (citing *Sprint*, 571 U.S. at 73).

2. N.J.S.A. 43:21-16(e) is a civil statute that has been held to afford quasi-criminal remedies.

One way in which courts determine whether a civil action is a civil enforcement proceeding quasi-criminal in nature is to look to comparator criminal actions under which the State could have vindicated its interests. *See Trainor*, 431 U.S. at 444; *Huffman*, 420 U.S. at 604. The Panel erred in holding that N.J.S.A. 43:21-16(e) affords a parallel criminal action to the pending administrative proceeding below. As set forth in greater detail herein, N.J.S.A. 43:21-16(e) is a quasi-criminal enforcement provision, not a criminal statute, because the state courts of New Jersey have unequivocally so held.

N.J.S.A. 43:21-16 provides multiple different types of penalties that the NJDOL may bring against employers and employees for the failure to truthfully provide information required by the UCL. N.J.S.A. 43:21-16(e), specifically, has been examined and categorized as providing the Commissioner with the ability to initiate quasi-criminal proceedings. *See Matter of Corbo*, 117 B.R. at 111 (recognizing actions under subsection (e) as quasi-criminal); *Witrak*, 194 N.J. Super. at 529–32 (same). N.J.S.A. 43:21-16(e)

provides only "quasi-criminal sanctions for failure to remit employer contributions." *Witrak*, 194 N.J. Super. at 531. N.J.S.A. 43:21-16(e) cannot therefore serve as a criminal analog by which to apply *Younger* abstention without drastically broadening the scope of the extraordinary remedy provided by the *Younger* abstention doctrine.

Where this Court in *Sprint* unanimously sought to cabin the applicability of *Younger*, the Third Circuit's precedential analysis all but ensures that a State will prevail on abstention grounds if it simply can point to a quasi-criminal provision in a general statutory scheme, steps removed from any criminal action. The Panel's finding that the NJDOL administrative action is a civil enforcement proceeding quasi-criminal in nature is contrary to *Sprint*'s requirement that *Younger* only applies to civil actions that are quasi-criminal. Taken to its conclusion, the Panel's analysis would extend *Younger* to "virtually all parallel state and federal proceedings" where a party can "identify a plausibly important state interest." *Sprint*, 571 U.S. at 81. Permitting federal courts to do otherwise would eviscerate *Sprint* and this Court's *Younger* jurisprudence.

B. The Panel Erred in Finding That NJDOL Audits Are Initiated to Sanction Employers.

The Panel's reliance on N.J.S.A. 43:21-16(e) as a criminal analog, and rejection of the New Jersey state law classifying the penalties afforded under N.J.S.A. 43:21-14 as civil, also colors its determination that the audit and assessment under N.J.S.A. 43:21-14 was

initiated to "sanction" PDX and its overall conclusion that the audit and administrative appeal is a "civil enforcement proceeding" under *Younger*. Specifically, the Panel concluded that "[p]enalties are, by their very nature, retributive: a sanction for wrongful conduct," and that "[m]isclassification of workers that results in the non-payment of state taxes is 'wrongful conduct.'" *PDX North, Inc. v. Comm'r of N.J. Dep't of Lab. and Workforce Dev.*, 978 F.3d 871, 884 (3d Cir. 2020). The Panel's conclusion does not reflect the NJDOL's larger responsibilities as a state agency and is therefore unsupported by law.

The NJDOL initiates audits of employers pursuant to the requirements of the United States Department of Labor, which requires that the NJDOL employ a comprehensive field audit program. *See N.J. Dep't of Lab. and Workforce Dev., Emp. Handbook, Audit Process*, available at https://www.nj.gov/labor/handbook/chap1 /chap1sec7AuditProcess.html. The audits are initiated randomly, as well as in response to delinquencies and complaints, resulting in audits of thousands of employers per year. *Id.* To conclude that the NJDOL is initiating a quasi-criminal proceeding against thousands of employers per year, all of which are now barred from any challenge to the NJDOL in federal court, merely because the UCL provides for quasi-criminal proceedings in some circumstances, would do the very thing that this Court warned against, rendering abstention the rule rather than the exception.

Here, the NJDOL audited PDX and calculated contributions, interest, and penalties, pursuant to

N.J.S.A. 43:21-14, that the auditor believes PDX owes. PDX appealed stating that the classification of its workforce by the NJDOL is incorrect and, therefore, the amounts calculated by the NJDOL are not due and owing. There is nothing quasi-criminal about this circumstance. New Jersey courts specifically classify N.J.S.A. 43:21-14 as a set of civil remedies under the UCL for an employer's failure to pay the appropriate contributions. *See Witrak*, 194 N.J. Super. at 531.[2] In sum, the Panel's reasoning and application of *Younger* render *Sprint*'s limiting principles a nullity and permit a court to abstain as long as there is a quasi-criminal provision within the same statutory scheme at issue in the pending state proceeding.

II. The Circuits are Divided Over the Question Presented.

The decision below creates conflict among the courts of appeals for the Third Circuit, the Seventh Circuit, the Eighth Circuit and the Ninth Circuit. Because of the Panel's decision, the circuits now disagree as to whether a purely civil administrative proceeding with a purported quasi-criminal analog can be the basis for a federal court to abstain. Moreover, the Panel's decision sharply diverges from *Sprint* and the other circuits applying *Sprint* in that the decision below

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[2] If the NJDOL is initiating a quasi-criminal proceeding against every employer it audits, due process would dictate that at least a summary hearing be conducted before quasi-criminal sanctions are imposed. *See State v. Paladino*, 203 N.J. Super. 537, 547 (App. Div. 1985) (stating that the "process of instituting restitution implicates due process rights"); *see also* N.J.S.A. 43:21-16(e) and (f) (requiring a court proceeding for the enforcement of quasi-criminal penalties).

relies upon Petitioner's "fear" of a criminal prosecution or a hypothetical enforcement proceeding not at issue in this case.

This is a significant conflict among the courts of appeal because as it stands now, the discretion to abstain under *Younger* varies across forums whereby some courts have greater discretion to decline jurisdiction than do others. This in turn implicates important issues of federalism, the states' role in our constitutional system of government, and the ability of a business to seek relief from oppressive and overbearing government regulation. These issues warrant this Court's attention and review. Given the circuits' significant disagreement over the limits of *Younger*'s application to civil enforcement proceedings, only this Court can provide uniformity and clear guidance on this issue nationwide. Unlike the other circuit courts' faithful adherence to *Sprint*, where this Court unanimously sought to cabin the applicability of *Younger*, the Third Circuit's analysis all but ensures that a federal court will abstain if there is a quasi-criminal provision in a general civil statutory scheme, even if the State did not pursue the party for a violation of that quasi-criminal provision in the actual underlying proceeding.

A. Aside from the Panel's Decision Below, No Other Circuits Apply *Younger* Abstention to a Purely Civil Proceeding.

The Panel's decision below creates a circuit split between the Third Circuit and all other circuits because no other court applies *Younger* abstention to a purely civil proceeding.

The Panel's analysis, which conflicts with this Court's precedents and three other circuits cannot stand. The Panel's unrestrained view of *Younger* is an outlier among the other circuits nationwide, and this Court should accept certiorari to articulate the proper analysis for determining whether abstention is warranted in the case of a civil proceeding that is not quasi-criminal in nature.

In stark contrast to the Panel's decision in the Third Circuit, the Ninth Circuit has held that "the mere fact that [a civil enforcement] law refers to criminal statutes does not mean that [the] proceedings are quasi-criminal" for abstention purposes. *Rynearson v. Ferguson*, 903 F.3d 920, 926 (9th Cir. 2018). Following the Ninth Circuit's logic, the mere fact that a quasi-criminal provision exists within the same statutory scheme as the civil provision underlying the proceeding at issue does not automatically make abstention proper. As this Court noted in *Sprint*, "[a]bstention is not in order simply because a pending state-court proceeding involves the same subject matter." *Rynearson*, 903 F.3d at 926 (quoting 571 U.S. at 72).

In *Minnesota Living Assistance, Inc. v. Peterson*, the Eighth Circuit held that the underlying administrative wage proceeding qualified as a civil proceeding akin to a criminal prosecution because the alleged Minnesota Fair Labor Standards Act violations directly provided for criminal penalties for the same violation that resulted in an assessment of civil penalties against the plaintiff. 899 F.3d 548, 553 (8th Cir. 2018). There, unlike the proceeding below, the state authorities could

have charged the plaintiff with a misdemeanor on the same facts as relied upon for the imposition of civil penalties, but simply chose not to. *See id.* (citing *Trainor*, 431 U.S. at 444). Here, in N.J.S.A. 43:21-14, the statute pursuant to which the state administrative action is proceeding, there is no criminal sanction or imprisonment option available. Rather, the Commissioner would have to establish that PDX intended to evade or defraud the NJDOL under N.J.S.A. 43:21-16(e) in order to initiate a quasi-criminal action in municipal or Superior Court.

Consistent with *Sprint* and in conflict with the Panel below, the Seventh Circuit also strictly applies *Younger* to quasi-criminal proceedings that share a parallel criminal statute with criminal penalties. For example, the Seventh Circuit held that an election board meeting was "not the type of quasi-criminal proceeding that would warrant *Younger* abstention" after *Sprint*. *Mulholland v. Marion Cnty. Election Bd.*, 746 F.3d 811, 816 (7th Cir. 2014). Unlike the Panel below, the *Mulholland* Court concluded that *Younger* abstention was inappropriate after looking to whether the Board's procedures and the applicable election statute presented any "possibility of [a] criminal penalty." *Id.* at 816–17. Consistent with this Court's jurisprudence and other circuits, the Seventh Circuit applies *Younger* only to a quasi-criminal proceeding, which has a parallel criminal statute, not a civil proceeding with a purportedly parallel quasi-criminal statute. *See id. See also* N.J.S.A. 43:21-14; N.J.S.A. 43:23-16(e). Given the conflicting analytical approaches among the circuits, this Court should resolve the circuit conflict.

B. The Panel is the Only Court to Abstain Under *Younger* By Looking to a Hypothetical Criminal Proceeding Not At Issue In the Case.

The Panel also created a conflict among the circuits when it concluded that a speculative fear of future criminal prosecution is enough under *Sprint* to warrant a district court to abstain under *Younger*. The Panel reasoned that "the question is not whether the current action is criminal or whether criminal charges are warranted," but whether Petitioners "acknowledge[d] the risk of New Jersey criminally charging them in their pleadings." *PDX North, Inc.*, 978 F.3d at 884. There is no precedent to support the Panel's reasoning. The Panel's conclusion that the NJDOL action qualified as a civil enforcement proceeding based on a fear that the NJDOL could in future seek criminal penalties or sanctions conflicts with recent circuit precedent and *Sprint*.

To be sure, the Commissioner's state administrative action would not have been sufficient to support abstention in either the Seventh Circuit, the Eighth Circuit or the Ninth Circuit. *Sprint* requires a court to examine the "[underlying] state proceeding" at issue in the case. *See Bristol-Myers Squibb Co. v. Connors*, 979 F.3d 732, 738 (9th Cir. 2020) (applying *Sprint*); *Rynearson*, 903 F.3d at 925–26 (analyzing the "protection order proceedings" specific to "[the appellant's] case" and concluding that the "proceedings do not reflect any of the characteristics described in *Sprint*"); *Peterson*, 899 F.3d at 553 (assessing whether the "underlying proceeding resembles" one of the cases

in which this Court affirmed abstention); *Mulholland*, 746 F.3d at 816–17 (examining the "hearing in this case" under *Sprint*). The Panel's finding of abstention based on Petitioner's "fear" or vague "acknowledgment" that New Jersey could bring criminal charges at some future point cannot be reconciled with *Sprint*, *Connors*, *Rynearson*, *Peterson* or *Mulholland*.

For example, in conflict with the Panel's holding, the Ninth Circuit in *Connors* adhered to *Sprint* and determined that the question of whether *Younger* abstention was appropriate turned on whether the proceeding below was itself a "civil enforcement proceeding." 979 F.3d at 738. Without speculating on the attorney general's motives, the Ninth Circuit affirmed abstention because the "State's action has been brought under a statute that punishes those who engage in deceptive acts in commerce, and the State seeks civil penalties and punitive damages to sanction the companies for their allegedly deceptive labeling practices." *Id.* The Ninth Circuit's focus on whether the State's specific action "fits comfortably within the class of cases described in *Sprint*" directly conflicts with the Panel's insistence that "the question is not whether the current action is criminal or whether criminal charges are warranted," but whether Petitioners "acknowledge[d] the risk of New Jersey criminally charging them in their pleadings." *PDX North, Inc.*, 978 F.3d at 884. Petitioner's acknowledgement that the state could hypothetically initiate a criminal action has no place in this Court's precedential analysis. *See Sprint*, 571 U.S. at 78–80.

Like the Ninth Circuit and in conflict with the Panel below, the Eighth Circuit follows *Sprint* by looking to whether "the underlying proceeding is merely an administrative wage claim with no criminal analog," or a quasi-criminal proceeding with a parallel criminal statute that warrants abstention. *Peterson*, 899 F.3d at 553. As *Sprint* requires, the Eighth Circuit refused to consider a hypothetical proceeding and looked at whether the underlying proceeding and the State's allegations under the relevant provision "provide[] for criminal penalties in addition to the civil penalties pursued [by the State.]" *Id.*

Sprint does not permit a federal court to abstain if it can identify a quasi-criminal remedy within the same statutory scheme as the civil provision underlying a proceeding. *Sprint* requires that the actual proceeding in the case be a civil enforcement proceeding that is quasi-criminal in nature. *See Connors*, 979 F.3d at 738; *Rynearson*, 903 F.3d at 925–26; *Peterson*, 899 F.3d at 553; *Mulholland*, 746 F.3d at 816–17. In its analysis, the *Sprint* Court referred to the "pending" proceeding below fifteen times. *See, e.g.*, *Sprint*, 571 U.S. at 73 (*Younger* applies to a "pending state criminal proceeding"); *id.* at 80–81 ("Nothing here suggests that the IUB proceeding was 'more akin to a criminal prosecution than are most civil cases.'") (quoting *Huffman*, 420 U.S. at 604).

In contrast to the Panel, the Seventh, Eighth, and Ninth Circuits properly look to the nature of the actual underlying proceeding, not a hypothetical proceeding that the State never initiated, and consider whether there is a criminal analog to the civil provision the

State seeks to enforce in the underlying the proceeding. This Court should resolve the circuit conflict and clarify that the actual pending proceeding must be quasi-criminal in nature, as stated in *Sprint*, and neither a civil action with a quasi-criminal analog nor a hypothetical criminal action warrants abstention.

III. The Panel's Opinion and Analysis Will Significantly Hinder a Business's Ability to Challenge Unconstitutional Regulations.

For four years, Petitioner aggressively litigated this action seeking resolution of a federal question of first impression concerning the preemption of New Jersey law, among other issues.

By expanding *Younger* far beyond what this Court ever contemplated, the Panel's opinion and analysis deprived Petitioner of the opportunity to resolve its constitutional claims in the district court.

As discussed above, employers in the Third Circuit are particularly vulnerable to a State initiating a frivolous state proceeding to bar a business from raising meritorious claims in its defense. Under the Panel's analysis, a business's claims of preemption and other meritorious defenses, in the face of an unmitigated state court proceeding, will be futile because the State can presumptively seek federal abstention and obviate any constitutional challenge a business may raise. If this Court permits the Third Circuit's quasi-criminal analog analysis to predominate, and possibly spread to other circuits, innocent employers will be left with no viable way to raise constitutional challenges in federal court to

actions taken against them by state government officials.

IV. This Case Provides an Ideal Vehicle to Rein in the Third Circuit's Expansive Quasi-Criminal Analog Analysis and Reaffirm *Younger*'s Limited Application.

This case is an ideal vehicle to address the conflict among the circuits and important questions of abstention law presented. Four factors highlight this conclusion.

First, the record cleanly frames the questions presented. This case asks the Court to make a determination as a matter of law regarding the appropriate scope of *Sprint* in light of the conflicting statutory interpretations of the Panel and the New Jersey state court. Although a robust factual record was developed before the trial court below, this Court need not delve into factual discrepancies to resolve the unsettled questions of law before it.

Second, although the Panel's decision created a circuit split with the Seventh, Eighth, and Ninth Circuits, the Third Circuit's quasi-criminal analog analysis is the most tenuous extension of *Younger* and *Sprint* to date. As discussed above, employers are particularly vulnerable in the Third Circuit. Their claims of preemption and other meritorious defenses in the face of unbounded government action will be futile because a state entity can presumptively seek federal abstention and obviate any challenge a business may put forth. If this Court permits the Third Circuit's quasi-criminal analog analysis to predominate, and

possibly spread to other circuits, innocent employers will be left with no viable way to challenge allegations made against them.

Third, this case presents the ideal vehicle to clarify and reinvigorate this Court's unanimous holding in *Sprint* that sought to rein in *Younger*'s applicability and provide further guidance to the circuits as to the appropriate breadth of the definition of civil enforcement proceeding.

Fourth, the abstention issues presented to the Court are not ones that will benefit from further percolation in the circuit courts. This Court's consistent command that *Younger* abstention is the exception, not the rule, requires that the Court affirm the principle that federal courts have a "virtually unflagging" obligation to hear and decide cases within their jurisdiction.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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