Nos. 25-406, 25-567

IN THE

Supreme Court of the United States

FEDERAL COMMUNICATIONS COMMISSION, ET AL.,
Petitioners,
v.
AT&T, INC.,
Respondents.

VERIZON COMMUNICATIONS INC.,
Petitioners,
v.
FEDERAL COMMUNICATIONS COMMISSION, ET AL.,
Respondents.

On Writs of Certiorari to the United States Courts of Appeals for the Second and Fifth Circuits

BRIEF OF *AMICUS CURIAE* T-MOBILE USA, INC. IN SUPPORT OF AT&T, INC. AND VERIZON COMMUNICATIONS INC.

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INTEREST OF *AMICUS CURIAE* [1]

T-Mobile USA, Inc. ("T-Mobile") is one of the nation's largest providers of mobile wireless communication services. T-Mobile has a vital interest in the outcome of these cases because the Federal Communications Commission ("FCC") imposed a penalty of more than $80 million on T-Mobile in a materially identical forfeiture order raising the same Seventh Amendment and Article III issues. The FCC also imposed a penalty of more than $12.2 million on Sprint Corp., whose successor entity is a subsidiary of T-Mobile.[2]

T-Mobile and Sprint thus faced the same stark choice as AT&T and Verizon ("petitioners"): either pay the penalties under protest to secure judicial review in the court of appeals, or violate the final orders by refusing to pay and await a possible collection action under 47 U.S.C. § 504(a). Like petitioners, T-Mobile and Sprint paid the penalties and petitioned for review, raising the same constitutional arguments presented here. The D.C. Circuit denied the petitions.

Because the FCC is T-Mobile's primary regulator, the company has a substantial interest in ensuring that the Seventh Amendment and Article III are properly applied not only in this matter but to the agency's forfeiture regime more broadly. T-Mobile's

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[1] Pursuant to Supreme Court Rule 37.6, counsel for *amicus* states that no counsel for a party authored this brief in whole or in part, and no person or entity other than *amicus* or its counsel made a monetary contribution intended to fund the preparation or submission of this brief.

[2] T-Mobile's corporate parent merged with Sprint Corp. in 2020, but the FCC initiated its investigation prior to the merger and imposed separate forfeiture orders on T-Mobile and Sprint in 2024. The orders were thus litigated in consolidated proceedings under T-Mobile's and Sprint's names.

recent experience litigating materially identical forfeiture orders also places it in a unique position to explain why the government's waiver theory under § 504(a) is unsound and untenable.

SUMMARY OF ARGUMENT

The government's waiver theory rests on a faulty premise: that any collection action under 47 U.S.C. § 504(a) secures *de novo* review of all legal and factual findings in an FCC forfeiture order, thus satisfying the constitutional promise of a jury trial in an Article III court. That premise is legally incorrect under this Court's precedents for all the reasons petitioners explain. It is also wrong as a practical matter.

In reality, courts have reached divergent conclusions about whether § 504(a) even allows legal challenges to the underlying FCC forfeiture order. Despite § 504(a)'s reference to a "trial de novo," many courts—including the Fifth Circuit—have held that forfeiture subjects *cannot* raise some or all legal challenges to FCC forfeiture orders. *E.g.*, *United States* v. *Stevens*, 691 F.3d 620, 622 (5th Cir. 2012); *United States* v. *Neely*, 595 F. Supp. 2d 662, 669 (D.S.C. 2009); *United States* v. *TravelCenters of Am.*, 597 F. Supp. 2d 1222, 1227 (D. Or. 2007); *United States* v. *Rhodes*, 2022 WL 17484847, *3–*4 (D. Mont. Dec. 7, 2022); *United States* v. *Dudley*, 2020 WL 4284052, *3 (N.D. Ala. July 27, 2020); *United States* v. *Metzger*, 2008 WL 11336647, at *2–*3 (M.D. Fla. July 7, 2008). Other courts restrict challenges to penalty amounts. *E.g.*, *United States* v. *Hodson Broad.*, 666 F. App'x 624, 628 (9th Cir. 2016). And many courts have not addressed these issues. While some courts hold that § 504(a) allows both legal and factual challenges, the U.S. Department of Justice ("DOJ") controls the forum for

§ 504(a) collection actions—and the Communications Act provides for nationwide venue. 47 U.S.C. § 504(a). Forfeiture subjects thus have no assurance that a § 504(a) action (if one is filed) would allow all challenges to a forfeiture order. Indeed, DOJ has every incentive to select a forum that restricts such challenges.

The government cannot cure this uncertainty by invoking *McLaughlin Chiropractic Associates, Inc.* v. *McKesson Corp.*, 606 U.S. 146 (2025). *McLaughlin* held, in the context of a lawsuit between private parties, that district courts are not bound by the FCC's interpretation of the Telephone Consumer Protection Act ("TCPA"). No court that restricts the scope of government-initiated § 504(a) collection actions has yet addressed whether *McLaughlin* requires expanding these proceedings. And *McLaughlin* certainly cannot support a waiver finding here. Petitioners needed to decide whether to seek review under the Hobbs Act, 28 U.S.C. § 2344, by June 28, 2024. This Court had not even granted certiorari in *McLaughlin* at that time. Waiver cannot turn on doctrinal developments that had not yet occurred.

There is ultimately a straightforward reason why AT&T, Verizon, T-Mobile, and Sprint each decided to seek review under the Hobbs Act, 28 U.S.C. § 2342(1), even though it meant paying tens of millions of dollars in penalties: The FCC's final orders imposed immediate, real-world harms, and a hypothetical, government-initiated § 504(a) collection action of uncertain scope in an unknown venue at an unknown time was not a viable alternative. Petitioners did not intentionally relinquish their constitutional rights by invoking

the only statutory mechanism that secured them. The Court should reject the government's waiver theory.

If the Court rejects the waiver theory, it should also hold that the Communications Act provisions governing the FCC's assessment and enforcement of monetary forfeitures violate the Seventh Amendment and Article III. All parties—including the government—have asked this Court to address that constitutional question. And notably, the government does not dispute "the Fifth Circuit's holdings that (a) a case in which the FCC seeks a forfeiture penalty to enforce Section 222 of the Act is a suit at common law and (b) such a suit falls outside the public-rights exception to the Seventh Amendment and Article III." Petition for a Writ of Certiorari, *FCC* v. *AT&T Inc.*, No. 25-406, at 7 (Oct. 2, 2025) ("FCC Pet.").

For good reason: Under *SEC* v. *Jarkesy*, 603 U.S. 109 (2024), the civil penalties the FCC imposed are classic legal remedies intended to punish or deter, which is all but dispositive of the Seventh Amendment's applicability. Furthermore, the FCC's claim that carriers failed to take reasonable measures to protect certain customer data is analogous to common-law negligence. Because these proceedings seek civil penalties for conduct analogous to traditional common-law suits, they fall far outside the narrow "public rights" exception to Article III adjudication. These questions are logically antecedent to the government's waiver theory, and addressing them now will avoid protracting this litigation longer than necessary and ensure the expeditious resolution of these cases.

The context of these cases further demonstrates why it is essential to protect the constitutional right to a jury trial overseen by an independent Article III judge that resolves questions of law. The FCC initiated investigations against all four major carriers in reaction to press coverage of a rogue sheriff's criminal conduct—an incident the agency had previously known about for months without saying a word to the carriers. During the investigation, at least one Commissioner publicly pressured the agency to take action. The FCC then issued to each carrier a Notice of Apparent Liability ("NAL") that proposed to base liability on an entirely novel and overbroad interpretation of "customer proprietary network information," or "CPNI," that contradicted the FCC's own prior guidance. The FCC further proposed tens of millions of dollars in penalties, blowing past the $2 million inflation-adjusted statutory cap. Several Commissioners issued statements alongside the NALs arguing that the FCC should have gone even further, suggesting they had made up their minds before receiving the carriers' responses.

Having served as investigators, rulemakers, and prosecutors in these proceedings, the Commissioners proceeded to adjudicate the very charges they had brought. A bare majority imposed nearly $200 million in total penalties on the four carriers, concluding—under the newly announced CPNI definition—that the carriers had "willfully and repeatedly violated" the Communications Act and FCC rules and that an "upward adjustment" was warranted for purportedly "egregious" conduct. FCC Pet. App. 105a–107a, 131a; Verizon Pet. App. 122a–124a, 138a. The FCC further asserted authority to impose *hundreds of trillions* of

dollars in penalties—more than the entire world's GDP—by measuring the number of violations by the number of subscribers. The orders did not merely recommend a penalty; they "ORDERED" that each carrier "IS LIABLE" and required payment "within thirty (30) calendar days after the release of this Forfeiture Order." FCC Pet. App. 131a; Verizon Pet. App. 138a–139a.

Against that backdrop, the government cannot credibly claim that the carriers should have simply ignored the FCC's adverse findings, refused to pay the forfeitures, allowed the Hobbs Act's 60-day review window to close, and waited up to five years to see whether and where DOJ filed a § 504(a) collection action. The constitutional right to a jury trial in an Article III court is intended to protect against the very dangers that materialized in this case by serving as "an inestimable safeguard" of a neutral and independent adjudicator. *Duncan* v. *Louisiana*, 391 U.S. 145, 156 (1968). The proceedings here violated the Seventh Amendment and Article III.

ARGUMENT

I. Many Courts Forbid Legal Challenges To Forfeiture Orders In § 504(a) Collection Actions, Precluding A Finding Of Waiver.

The forfeiture orders before the Court are final agency actions that command the payment of massive civil penalties within 30 days. *E.g.*, FCC Pet. App. 131a; Verizon Pet. App. 138a–139a. The FCC imposed the penalties itself pursuant to 47 U.S.C. § 503(b)(4), after rejecting petitioners' legal and factual objections—including their contention that the imposition of monetary penalties without a jury trial in federal

court would violate the Seventh Amendment and Article III under *SEC* v. *Jarkesy*, 603 U.S. 109 (2024).

The only statutory mechanism for petitioners to secure judicial review of these forfeiture orders was to pay the penalties and petition for review under the Hobbs Act within 60 days—and that is what they did. 28 U.S.C. §§ 2342(1), 2344; 47 U.S.C. § 402(a); *AT&T Corp.* v. *FCC*, 323 F.3d 1081, 1083–85 (D.C. Cir. 2003). Petitioners challenged the forfeitures on numerous legal and factual grounds, including by arguing that the FCC-imposed penalties violated their constitutional right to a federal jury trial. T-Mobile and Sprint took the same approach to materially identical forfeiture orders that collectively imposed more than $92 million in penalties. See *T-Mobile USA, Inc.* v. *FCC*, No. 24-1225 (D.C. Cir. June 27, 2024); *Sprint Corp.* v. *FCC*, No. 24-1224 (D.C. Cir. June 27, 2024).

The government nevertheless contends that the carriers "waived" their constitutional right to a federal jury trial by petitioning for review in the court of appeals. According to the government, the carriers should have *violated* the FCC's final orders by refusing to pay the forfeitures, allowed the Hobbs Act's 60-day review period to lapse, and waited to see whether DOJ would initiate a collection action under 47 U.S.C. § 504(a). See FCC Pet. 11. Because § 504(a) refers to a "trial de novo," the government assumes that a § 504(a) collection action (if one were filed) would satisfy the Seventh Amendment and Article III. *Id.* at 10.

Petitioners have identified the doctrinal flaws in that position (at Op. Br. 31–36). The possibility of an after-the-fact, government-initiated collection action—subject to a five-year statute of limitations—does not cure the constitutional defects created when

the agency itself adjudicates liability and imposes punishment. Such a collection action is possible only after the forfeiture subject defies a final agency order, forgoes Hobbs Act review, and suffers the "real-world impacts" of an unreviewed forfeiture order. *AT&T* v. *FCC*, 149 F.4th 491, 503 (5th Cir. 2025). This Court has made clear that the jury-trial right cannot be subject to such unconstitutional conditions. *United States* v. *Jackson*, 390 U.S. 570, 581–83 (1968); *Capital Traction Co.* v. *Hof*, 174 U.S. 1, 20, 45 (1899). Under *Jarkesy*, "initial adjudication" in an Article III court is required. *Jarkesy*, 603 U.S. at 128.

The government's waiver theory fails for an additional reason: It assumes that a § 504(a) collection action would allow carriers to raise all legal and factual challenges to the forfeiture order and penalty. But as explained below, many courts have held otherwise, curtailing challenges to the underlying forfeiture order. And because DOJ selects the forum for these lawsuits under § 504(a)'s nationwide venue provision, carriers have no ability to ensure that any collection action is filed in a jurisdiction that would entertain their arguments. Petitioners cannot be deemed to have waived their constitutional right to a jury trial in an Article III court by declining to rely on a hypothetical proceeding that would not reliably secure those rights.

Multiple courts have held that—notwithstanding § 504(a)'s reference to a "trial de novo"—§ 504(a) permits *factual* challenges to forfeiture orders but forbids some or all *legal* challenges. The Fifth Circuit, for example, has held that "[p]ersons aggrieved by a final FCC forfeiture order must raise legal challenges to the validity of the order in a timely petition for review in the appropriate court of appeals." *United States* v.

Stevens, 691 F.3d 620, 623 (5th Cir. 2012). In that circuit, a district court's jurisdiction in a § 504(a) collection action is "limited to considering the factual basis for the agency action," such that the forfeiture subject may raise only "a factual defense to enforcement of the forfeiture." *Id.* at 622. Other courts have similarly held that a district court's authority in a § 504(a) collection action "does not include the power to entertain challenges, raised in defense of a forfeiture recovery action, to the validity of an underlying FCC regulation." *United States* v. *Neely*, 595 F. Supp. 2d 662, 669 (D.S.C. 2009); *United States* v. *TravelCenters of Am.*, 597 F. Supp. 2d 1222, 1227 (D. Or. 2007) (similar); *United States* v. *Rhodes*, 2022 WL 17484847, *3–*4 (D. Mont. Dec. 7, 2022) (similar); *United States* v. *Dudley*, 2020 WL 4284052, *3 (N.D. Ala. July 27, 2020) (similar); *United States* v. *Metzger*, 2008 WL 11336647, at *2–*3 (M.D. Fla. July 7, 2008) (similar). The Eighth Circuit has reached a similar conclusion in the context of *in rem* forfeitures under 47 U.S.C. § 510, relying on § 504(a) precedents. *United States* v. *Any and All Radio Station Transmission Equip.*, 207 F.3d 458, 463 (8th Cir. 2000).

Still other courts refuse to conduct de novo review of the penalty amount, instead applying a deferential reasonableness or abuse-of-discretion standard—much like Hobbs Act review of an agency order. The Ninth Circuit, for example, has reviewed de novo the FCC's liability determination but reviewed the forfeiture amount only to determine whether it reflects a "reasonable application of the statute and the 'adjustment criteria' set out in § 1.80(II) of the FCC's rules" because "[t]he determination of the amount of a forfeiture is committed to the discretion of the FCC." *United States* v. *Hodson Broad.*, 666 F. App'x 624, 628 (9th Cir. 2016); see also *United States* v. *Sutton*, 2024

WL 2926594, at *12 (W.D. Ark. Mar. 27, 2024), *report and recommendation adopted*, 2024 WL 2922991 (W.D. Ark. June 10, 2024) (applying *Hodson*).

At least one court has even questioned whether a jury is available *at all* in a § 504(a) collection action. According to that court, "[f]orfeiture is a sui generis process, which may curtail any jury involvement." *United States* v. *Pennington*, 2023 WL 2542594, at *4 n.10 (E.D. Ky. Mar. 16, 2023). And many courts have not weighed in on these questions.

A proceeding limited in any of these ways could not satisfy the Seventh Amendment and Article III. The right to a "[t]rial by jury" in an Article III court guarantees a trial by a 12-person jury conducted "in the presence and under the superintendence of a judge empowered to instruct them on the law and to advise them on the facts, and (except on acquittal of a criminal charge) to set aside their verdict, if, in his opinion, it is against the law or the evidence." *Hof*, 174 U.S. at 13–14. Civil penalties, moreover, are assessed and enforced "in courts of law," not deferred to based on extrajudicial agency adjudication. *Jarkesy*, 603 U.S. at 123 (quoting *Tull* v. *United States*, 481 U.S. 412, 422 (1987)). Accordingly, when the government seeks civil penalties, the claim "must" be decided by "an Article III court . . . with a jury." *Id.* at 127. A § 504 collection action that bars legal challenges, limits review of the penalty amount, or dispenses with a jury cannot satisfy the requirements of the Seventh Amendment and Article III.

To be sure, some courts have held that § 504(a)'s reference to a "trial de novo" allows a forfeiture subject to raise both legal and factual defenses. *E.g.*, *AT&T Corp.*, 323 F.3d at 1083–85; *United States* v. *Unipoint Techs., Inc.*, 159 F. Supp. 3d 262, 273 (D.

Mass. 2016); *United States* v. *Ne. Commc'ns of Wis., Inc.*, 608 F. Supp. 2d 1049, 1053 (E.D. Wis. 2008); cf. *United States* v. *Any and All Radio Station Transmission Equip.*, 204 F.3d 658, 667 (6th Cir. 2000) (similar reasoning under § 510). But that does not solve the constitutional problem. Forfeiture subjects cannot control where DOJ brings suit, and § 504(a) provides nationwide venue for collection actions against carriers. 47 U.S.C. § 504(a) (collection action may be filed "in any district through which the line or system of the carrier runs"). DOJ thus could file in a jurisdiction that limits challenges to the underlying forfeiture order—or in one that has not addressed the question. It has every incentive to do so.

Given § 504(a)'s nationwide venue provision and the "divergent case law regarding a district court's jurisdiction" in collection actions, *Rhodes*, 2022 WL 17484847, at *3, the carriers took the only sensible course to preserve their constitutional rights and other arguments—they petitioned for review under the Hobbs Act and argued that the orders were unconstitutional and otherwise unlawful. It cannot be inferred that petitioners *waived—i.e.*, voluntarily and intentionally relinquished, *Wood* v. *Milyard*, 566 U.S. 463, 474 (2012)—their Seventh Amendment and Article III rights by pursuing that statutory avenue rather than awaiting a hypothetical § 504(a) collection action. The cases discussed above confirm that even if such an action were filed, its scope would be uncertain. Petitioners invoked the only mechanism that guaranteed judicial consideration of their legal and constitutional arguments.

In its Fifth Circuit rehearing petition, the government argued that waiver was proper because *Stevens*

and similar decisions limiting § 504(a) collection action were abrogated by *McLaughlin Chiropractic Assocs., Inc.* v. *McKesson Corp.*, 606 U.S. 146 (2025). That argument fails for two independent reasons.

First, none of the courts adopting restrictive views of § 504(a) has held that *McLaughlin* abrogates those decisions. See *AT&T*, 149 F.4th at 503 n.16 (noting only that "*Stevens* has possibly been called into question"). The decisions therefore remain in force, and the government's suggestion that these courts would now reach different conclusions is pure speculation. *McLaughlin* held that a district court is not bound by the FCC's interpretation of the TCPA in the context of a private lawsuit; it did not expressly address the scope of a § 504(a) collection action. 606 U.S. at 159. A court that views § 504(a) proceedings as "sui generis" thus may well adhere to its prior, restrictive holdings. *Pennington*, 2023 WL 2542594, at *4 n.10. In these circumstances, the carriers' decision to seek Hobbs Act review and assert their Seventh Amendment and Article III objections cannot be characterized as a waiver. Regulated parties cannot be expected to roll the dice on how an unidentified district court might resolve unsettled jurisdictional questions bearing on foundational constitutional rights. See *Axon Enter., Inc.* v. *FTC*, 598 U.S. 175, 212 (2023) (Gorsuch, J., concurring in judgment) ("Jurisdictional rules, this Court has often said, should be 'clear and easy to apply.'"); accord *Hertz Corp.* v. *Friend*, 559 U.S. 77, 94 (2010).

Second, even assuming *McLaughlin* abrogates these § 504(a) decisions, they indisputably governed in June 2024, when the 60-day Hobbs Act deadline expired. 28 U.S.C. § 2344; see FCC Pet. App. 46a; Verizon Pet. App. 41a. This Court had not even granted

certiorari in *McLaughlin* by that date, let alone issued its decision (which itself was divided). Waiver cannot rest on the premise that petitioners should have predicted this doctrinal development and staked their constitutional rights on it.

In short, there is a straightforward reason why all four national carriers—AT&T, Verizon, T-Mobile, and former Sprint—decided to seek Hobbs Act review, even though that meant paying tens of millions of dollars under protest. It was the only mechanism that guaranteed judicial consideration of their constitutional and other objections to the forfeiture orders.

The government's waiver theory ignores that reality and would put carriers in an impossible position. It would force them to "choose" between (i) pursuing direct appellate review of legal issues while supposedly "waiving" their constitutional right to a jury trial in an Article III court, or (ii) violating a final order of their primary regulator, forgoing the right to immediate review, and suffering the consequences of an unreviewed forfeiture order—with no guarantee that DOJ will file a § 504(a) collection action at all, much less in a timely manner and in a venue that allows both legal and factual challenges. That review regime would impose an "undue obstruction on the right to a jury trial," *In re Peterson*, 253 U.S. 300, 310 (1920)—a right that "is 'of such importance and occupies so firm a place in our history and jurisprudence that any seeming curtailment of the right' has always been and 'should be scrutinized with the utmost care.'" *Jarkesy*, 603 U.S. at 121 (quoting *Dimick* v. *Schiedt*, 293 U.S. 474, 486 (1935)).

Petitioners did not waive their Seventh Amendment and Article III rights by challenging the FCC's forfeiture orders under the Hobbs Act.

II. The Court Should Reach The Merits Of The Constitutional Question, As All Parties Request.

In addition to rejecting the government's waiver theory, the Court should reach the merits and hold that the forfeiture orders violate the Seventh Amendment and Article III. The constitutional question is squarely presented, and the government does not dispute that the Fifth Circuit correctly applied *Jarkesy* and the public-rights exception.

The questions presented in both *AT&T* and *Verizon* ask the Court to address the Seventh Amendment and Article III on the merits. The government frames the question presented as "[w]hether the Communications Act provisions that govern the FCC's assessment and enforcement of monetary forfeitures are consistent with the Seventh Amendment and Article III." FCC Pet. I. AT&T and Verizon similarly frame the question as "[w]hether the Communications Act violates the Seventh Amendment and Article III by authorizing the FCC to order the payment of monetary penalties for failing to reasonably safeguard customer data, without guaranteeing the defendant carrier a right to a jury trial." Petition for a Writ of Certiorari, *Verizon Commc'ns Inc.* v. *FCC*, No. 25-567, at I (Nov. 6, 2025); see also Response to Petition, *FCC* v. *AT&T Inc.*, No. 25-406, at i (Dec. 5, 2025). These formulations place the constitutionality of the FCC's forfeiture scheme—not merely the waiver issue—directly before the Court, which is why petitioners address the merits at length in their brief. See Op. Br. 20–24.

The Fifth Circuit correctly resolved the merits in the *AT&T* case, holding that the FCC's "in-house adjudication[s] violated the Constitution by denying

[AT&T] an Article III decisionmaker and a jury trial." *AT&T*, 149 F.4th at 494. The government does not challenge that holding; it "does not seek review" of it, see FCC Pet. 7, even though it asks the Court to decide whether the relevant provisions of the Communications Act "are consistent with the Seventh Amendment and Article III," *id.* at I. The government's decision not to "contes[t] the point" is well founded, because *Jarkesy*'s application to FCC forfeiture proceedings is straightforward. Op. Br. 20–21; see *Jarkesy*, 603 U.S. at 200 (Sotomayor, J., dissenting) (acknowledging that the FCC's civil penalty regime would be affected by *Jarkesy*).

The Seventh Amendment guarantees "the right of trial by jury" in "Suits at common law." U.S. Const. amend. VII. *Jarkesy* confirmed that this right "extends to" all federal suits not within equity or admiralty jurisdiction, including statutory claims that are "legal in nature." 603 U.S. at 122 (quotation marks omitted). Courts consider both the nature of "the cause of action and the remedy it provides" in determining whether a suit is legal, with the remedy being the "more important" factor. *Id.* at 123 (quotation marks omitted).

Here, the FCC imposed civil penalties on petitioners for allegedly failing to take reasonable measures to protect certain customer data. See 47 U.S.C. § 503(b)(4). Civil penalties are "a type of remedy at common law that could only be enforced in courts of law." *Jarkesy*, 603 U.S. at 123 (quotation marks omitted). They are intended to "punish or deter," *ibid.*, as reflected in the statutory factors the FCC must consider, "which instruct the Commission to set penalties by reference to 'the nature, circumstances, extent, and

gravity of the violation' as well as the violator's 'degree of culpability,'" *AT&T*, 149 F.4th at 498 (quoting 47 U.S.C. § 503(b)(2)(E)). The punitive nature of the penalties is "all but dispositive" of the Seventh Amendment's applicability. *Jarkesy*, 603 U.S. at 123; see also *Tull*, 481 U.S. at 422–25 (civil penalties under the Clean Water Act were "punitive" and "traditionally available only in a court of law").

The "close relationship" between the charge against petitioners and the common law confirms that conclusion. *Jarkesy*, 603 U.S. at 125. The FCC's claim that petitioners failed to take "reasonable measures" to protect data "is analogous to common law negligence." *AT&T*, 149 F.4th at 498. Both types of claims "target the same basic conduct," *Jarkesy*, 603 U.S. at 125, by asking whether the party breached a duty to refrain from unreasonable actions that might harm others. Compare 47 U.S.C. § 222(a) (imposing a "duty to protect the confidentiality of" CPNI), and 47 C.F.R. § 64.2010(a) ("carriers must take reasonable measures"), with *Air & Liquid Sys. Corp.* v. *DeVries*, 586 U.S. 446, 452 (2019) (negligence imposes a "'duty to exercise reasonable care' on those whose conduct presents a risk of harm to others").

Nor does the public-rights exception to Article III adjudication salvage the FCC's proceedings. That exception is confined to a narrow "class of cases" falling within well-defined "historic categories," like the collection of government revenue, immigration, tribal relations, public-land administration, and the granting of public benefits, pensions, and patent rights. *Jarkesy*, 603 U.S. at 128, 130. This case does not fit within any of those categories. See *AT&T*, 149 F.4th at 500–02. Under *Jarkesy*, the Constitution therefore

requires adjudication before a jury in an Article III court.

There is good reason for this Court to address the merits. *Jarkesy*'s application here is straightforward, as the parties "apparently accep[t]." Op. Br. 24; see, *e.g.*, *Groff* v. *DeJoy*, 600 U.S. 447, 470 (2023) (rejecting lower-court interpretation of Title VII that "both parties agree . . . is not right"); *Reno* v. *Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999) (similar); *Chao* v. *Mallard Bay Drilling, Inc.*, 534 U.S. 235 (2002) (parties did not dispute certain regulations were preempted). Moreover, whether the forfeiture orders required adjudication before a jury in an Article III court is logically antecedent to the government's claim that a hypothetical § 504(a) collection action suffices to satisfy that requirement.

A decision from this Court on the merits would also promote the efficient resolution of this litigation. The NALs here issued in February 2020, and the April 2024 forfeitures collectively imposed nearly $200 million in penalties on all four national carriers—penalties the carriers contend are unlawful in multiple respects. All four carriers promptly sought review. Yet if this Court were to reject the government's waiver argument without addressing the merits, Verizon—along with T-Mobile and Sprint—would face further proceedings on remand to resolve those constitutional questions. That would unnecessarily prolong cases that have already been pending more than six years.

More broadly, lower courts are regularly tasked with applying *Jarkesy*. See, *e.g.*, *Ortega* v. *Off. of the Comptroller of the Currency*, 155 F.4th 394, 409 (5th Cir. 2025); *Axalta Coating Sys. LLC* v. *FAA*, 144 F.4th

467, 477 (3d Cir. 2025); *In re Tsay JBR LLC*, 136 F.4th 1176, 1179–81 (9th Cir. 2025); *NLRB* v. *Starbucks Corp.*, 159 F.4th 455, 474 (6th Cir. 2025). Additional guidance from this Court would be valuable. *Jarkesy* itself acknowledged that the Court's public-rights doctrine is "an 'area of frequently arcane distinctions and confusing precedents.'" 603 U.S. at 130 (quoting *Thomas* v. *Union Carbide Agricultural Products Co.*, 473 U.S. 568, 583 (1985)). Although the Fifth Circuit and other courts applying *Jarkesy* have correctly recognized that the public-rights exception is limited to historically defined categories, *AT&T*, 149 F.4th at 500–01, some courts have expressed uncertainty about the doctrine's contours, describing the Court's precedents as leaving "a theoretical scramble" and being "at war with itself." *Axalta Coating Sys.*, 144 F.4th at 482 (Bibas, J., concurring). This case provides an opportunity to clarify that framework. See, *e.g.*, *Seven Cnty. Infrastructure Coal.* v. *Eagle Cnty., Colo.*, 605 U.S. 168, 179 (2025) ("reiterat[ing] and clarify[ing]" the proper standard "[i]n light of the continuing confusion and disagreement in the Courts of Appeals").

The Seventh Amendment and Article III questions are squarely presented. The Court should resolve them.

III. The FCC's Self-Adjudicated Proceedings Illustrate The Need For A Jury Trial In An Article III Court.

In these proceedings, the FCC acted as investigator, rulemaker, prosecutor, judge, and jury. The record illustrates why the Constitution promises that civil penalties be imposed, if at all, before a jury in an Article III court.

The FCC launched the investigations that culminated in these massive forfeitures in reaction to a May 2018 *New York Times* article describing criminal misconduct by a rogue sheriff in Missouri who had misappropriated the carriers' location data through an unauthorized side program offered by a service provider. See Jennifer Valentino-DeVries, *Service Meant to Monitor Inmates' Calls Could Track You, Too*, N.Y. Times (May 10, 2018); see also Verizon Pet. App. 54a. The FCC had known about that incident for months before the article was published; a consumer advocacy group raised it with the agency in August 2017.[3] Yet the FCC did not raise the issue with petitioners or other carriers. It opened these enforcement proceedings only after the article—despite the fact that the carriers had already terminated the offending provider's access immediately after learning of it. *E.g.*, FCC Pet. App. 7a (AT&T "promptly terminated" access); Verizon Pet. App. 58a (Verizon terminated access May 11, 2018).

While the FCC's investigation was pending, one Commissioner publicly urged the agency in the *New York Times* to "act swiftly and decisively to stop" what he deemed to be "illegal and dangerous pay-to-track practices." Geoffrey Starks, *Why It's So Easy for a Bounty Hunter to Find You*, N.Y. Times (Apr. 2, 2019).

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[3] See *Joint Application of Securus Investment Holdings, LLC et al.*, Letters from Wright Pet'rs, WC Dkt. No. 17-126 (Aug. 4, 2017), https://www.fcc.gov/ecfs/document/10804689721322/1; *id.* (Aug. 5, 2017), https://www.fcc.gov/ecfs/document/10805871110099/1. While the FCC acknowledged the concerns, it nevertheless approved the application at issue. *Joint Application of Securus Inv. Holdings, LLC*, 32 FCC Rcd 9564, at ¶ 28 (2017), https://www.fcc.gov/ecfs/document/1030133504695/1.

Then, in the NALs, the FCC adopted—for the first time—a sweeping and erroneous interpretation of the statutory term CPNI that it proposed to apply to the carriers' past conduct, even though this interpretation contradicted the FCC's prior guidance. Compare, *e.g.*, *AT&T, Inc.*, Notice of Apparent Liability for Forfeiture and Admonishment, 35 FCC Rcd 1743, at ¶¶ 33–41 (2020) (AT&T NAL defining CPNI to include "customer location information" regardless of whether it relates a covered voice call) ("AT&T NAL"), with *In re Implementation of the Telecomms. Act of 1996*, Declaratory Ruling, 28 FCC Rcd 9609, at ¶¶ 22, 28 & n.66 (2013) (FCC order defining CPNI to include "the location of the device at the time of the calls" and the "location of a customer's use of a telecommunications service," but not information that "pertains to the device's access of the carrier's data network"). The NALs also proposed penalties far exceeding the statutory cap, *e.g.*, AT&T NAL ¶ 81, which (adjusted for inflation at the time of the Orders) limited penalties "for any single act or failure to act" to just $2,048,915. 47 U.S.C. § 503(b)(2)(B).

Two Commissioners issued press-release-style statements alongside the NALs. Before receiving the carriers' responses, one declared that the carriers' conduct was "a violation of the law," criticized the proposed fines as "too small," and emphasized her efforts to "t[ake] on this issue on my own." AT&T NAL, 35 FCC Rcd at 1777–78 (statement of Commissioner Rosenworcel). Another asserted that "there should be no dispute" about the critical statutory question, that the carriers committed "serious violations," and that "[s]ignificant penalties are more than justified" and in some cases "should be higher." *Id.* at 1779–84 (statement of Commissioner Starks).

Unsurprisingly, when the FCC ultimately ruled on the proposed forfeitures, a majority rejected all of carriers' merits arguments and unilaterally imposed nearly $200 million in total penalties, finding (based on the new CPNI definition) that they "willfully and repeatedly violated" the Communications Act and FCC rules and that an "upward adjustment" was warranted for purportedly "egregious" conduct. FCC Pet. App. 105a–107a, 131a; Verizon Pet. App. 122a–124a, 138a. The FCC itself "ORDERED" that each carrier "IS LIABLE" and required payment of tens of millions of dollars "within thirty (30) calendar days after the release of this Forfeiture Order." FCC Pet. App. 131a; Verizon Pet. App. 138a–139a. Commissioners Carr and Simington dissented in each case, with Commissioner Carr objecting that the orders "plainly fall outside the scope of the FCC's section 222 authority," "fin[d] no support in the Communications Act or FCC precedent," and imposed penalties "inconsistent with the law and basic fairness." FCC Pet. App. 137a–142a (dissenting statement of Commissioner Carr); see also FCC Pet. App. 143a–145a (dissenting statement of Commissioner Simington); Verizon Pet. App. 143a–151a.

The majority's rationale for exceeding the statutory cap was especially noteworthy. The FCC itself characterized each carrier's conduct as a single, continuing failure to act—namely, failing to terminate or adequately secure its location-based-service program, which enabled customers to access valuable services such as roadside assistance and medical alerts. *E.g.*, FCC Pet. App. 100a; Verizon Pet. App. 106a. Yet instead of applying the statutory cap, the FCC treated "each unique relationship" with a service provider as a separate violation. See FCC Pet. App. 104a–105a; Verizon Pet. App. 115a–116a. It further asserted that

it "could well have chosen to look to the total number of . . . subscribers when determining the number of violations," and that, given the "tens of millions of consumers" at issue, the penalties could have been "significantly higher." FCC Pet. App. 108a; Verizon Pet. App. 116a–117a. This claimed authority to impose *hundreds of trillions of dollars* in penalties on the carriers—more than the entire world's GDP—highlights the dangers of an agency that investigates, charges, and adjudicates its own case.

These dubious forfeiture proceedings underscore why civil penalties must be imposed, if at all, before an independent judge and jury in an Article III court—and why the carriers could not simply ignore the FCC findings, refuse to pay, forgo Hobbs Act review, and wait up to five years to see whether and where DOJ might file a § 504(a) collection action. The penalties were imposed without judicial involvement. The FCC investigated and prosecuted the cases, interpreted the governing statutes and regulations, adjudicated liability after making public comments, and imposed historically large punishments. The jury-trial right exists to guard against these sorts of dangers, serving as "an inestimable safeguard against the corrupt or overzealous prosecutor and against the compliant, biased, or eccentric judge." *Duncan* v. *Louisiana*, 391 U.S. 145, 156 (1968).

CONCLUSION

The Court should hold that the forfeiture orders violate the Seventh Amendment and Article III and, therefore, affirm the Fifth Circuit and reverse the Second Circuit.

Respectfully submitted.

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