

No. 25-966

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**In The Supreme Court of the United States**

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DEPARTMENT OF LABOR AND LORI CHAVEZ-DEREMER,  
SECRETARY OF LABOR,

*Petitioners,*

v.

SUN VALLEY ORCHARDS, LLC,

*Respondent.*

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

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**BRIEF IN OPPOSITION**

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**QUESTION PRESENTED**

Respondent objects to the government's formulation of the Question Presented on the ground that it wrongly assumes that Congress has authorized the Department of Labor to adjudicate H-2A enforcement proceedings, when that issue was disputed by the parties and not resolved below. Respondent also objects that the government's use of the phrase "terms and conditions of participating in the H-2A visa program" is inaccurate given that the statute the government relies on authorizes the agency to enforce "terms and conditions of employment." 8 U.S.C. § 1188(g)(2). Respondent instead suggests the following alternative formulation:

Whether Article III of the Constitution precludes the Department of Labor from adjudicating proceedings to collect monetary remedies from employers who have allegedly violated the terms and conditions of employment of H-2A workers and domestic workers in corresponding employment.

**CORPORATE DISCLOSURE STATEMENT**

Sun Valley Orchards, LLC certifies that it has no parent corporation and that no publicly held company owns 10% or more of its stock.

**RELATED PROCEEDINGS**

Respondent is not aware of any related proceedings in addition to those identified in the Petition.

## TABLE OF CONTENTS

	Page
Question Presented .....	i
Corporate Disclosure Statement .....	ii
Related Proceedings .....	ii
Table of Authorities .....	iv
Introduction.....	1
Statement .....	4
1. Regulatory Background .....	4
2. The DOL Adjudication .....	7
3. The Federal Court Proceedings .....	10
Argument.....	13
I. This Case Does Not Warrant Review	
Under The Standard For Certiorari .....	13
A. The Decision Below Did Not	
Invalidate Any Federal Statute.....	14
B. No Federal Court of Appeals	
Disagrees With The Third Circuit.....	16
C. The Decision Below Is Correct.....	18
II. If The Court Grants Review, The Court	
Should Revise The Question Presented .....	25
III. Respondent Agrees There Is No Reason	
To Hold This Case For <i>FCC v. AT&amp;T</i> .....	27
Conclusion .....	27

## TABLE OF AUTHORITIES

	Page(s)
<b>Cases</b>	
<i>Butler Amusements, Inc. v. DOL</i> , No. 24-cv-1042, 2025 WL 2457687 (D.D.C. Aug. 26, 2025) .....	17
<i>Chauffeurs Loc. 391 v. Terry</i> , 494 U.S. 558 (1990).....	2, 20
<i>Frank’s Nursery, LLC v. Walsh</i> , No. 21-cv-3485, 2022 WL 2757373 (S.D. Tex. July 14, 2022) .....	6, 27
<i>Jarkesy v. SEC</i> , 34 F.4th 446 (5th Cir. 2022) .....	15
<i>Lem Moon Sing v. United States</i> , 158 U.S. 538 (1895).....	23
<i>Lloyd Sabaudo v. Elting</i> , 287 U.S. 329 (1932).....	23
<i>Murray’s Lessee v. Hoboken Land &amp; Improvement Co.</i> , 59 U.S. (18 How.) 272 (1856).....	18
<i>N. Pipeline Constr. Co. v. Marathon Pipe Line Co.</i> , 458 U.S. 50 (1982).....	3
<i>Nishimura Ekiu v. United States</i> , 142 U.S. 651 (1892).....	22

<i>Oceanic Steam Navigation Co. v. Stranahan</i> , 214 U.S. 320 (1909).....	23
<i>Oil States Energy Servs., LLC v. Greene’s Energy Grp., LLC</i> , 584 U.S. 325 (2018).....	18, 19
<i>SEC v. Jarkesy</i> , 603 U.S. 109 (2024) .....	2, 3, 11, 19, 20, 21, 22, 24, 25
<i>Tull v. United States</i> , 481 U.S. 412 (1987).....	19, 20
<i>United States ex rel. Turner v. Williams</i> , 194 U.S. 279 (1904).....	24
<i>Wong Wing v. United States</i> , 163 U.S. 228 (1896).....	22
<i>Yamataya v. Fisher</i> , 189 U.S. 86 (1903).....	24
<b>Constitutional Provisions</b>	
U.S. Const. art. III, § 2, cl. 1.....	18
<b>Statutes</b>	
5 U.S.C.	
§ 704 .....	6, 10
§ 706 .....	6, 10
8 U.S.C. § 1188(g)(2) .....	i, 1, 4, 14, 26
28 U.S.C. § 2461(a).....	15

## Regulations

20 C.F.R.	
§ 655.121(a)(1).....	4
§ 655.122(a).....	4
§ 655.122(c).....	4
§§ 655.122 (d)-(p).....	4
§ 655.122(g).....	7
§ 655.122(q).....	4, 20
29 C.F.R.	
pt. 501.....	5
§ 501.0.....	20
§ 501.16(a).....	5
§ 501.19(a).....	5
§ 501.30.....	5, 16
§ 501.33(a).....	5
§ 501.34(b).....	6
§ 501.42.....	6
85 Fed. Reg. 13,186 (Mar. 6, 2020).....	6

## Other Authorities

Inspector General, <i>Wage and Hour Division</i> <i>Needs to Strengthen Management</i> <i>Controls for Back Wage Distributions</i> (Mar. 2015), <a href="https://perma.cc/M3JR-NEQU">https://perma.cc/M3JR-NEQU</a> .....	5
Restatement (Third) of Agency (2006).....	9

## INTRODUCTION

The Department of Labor imposed over half a million dollars in liability on Respondent Sun Valley Orchards, LLC—a fourth-generation family farm located in rural New Jersey—for alleged violations of employment contracts involving things like kitchen access, beverage sales, bald tires, and window screens. The farm was forced to defend itself in DOL’s in-house agency courts, where agency employees served as prosecutor, witness, and judge. After the agency’s hand-picked judges affirmed the agency’s proposed penalties, the Third Circuit held that agency adjudication violated Article III.

The Third Circuit’s decision does not meet the standard for further review under Rule 10. The Petition’s primary argument for certiorari is based on a misconception: The government asserts that “[t]his Court ordinarily grants certiorari when a court of appeals invalidates a federal statute, even absent a circuit conflict.” Pet. 5. However, the Third Circuit did not invalidate any federal statute. The statute cited by the government provides that the Secretary of Labor can “impos[e]” penalties on H-2A employers, 8 U.S.C. § 1188(g)(2), but the statute does not say anything about where such cases should be adjudicated, and nothing in the Third Circuit’s decision would bar DOL from seeking to “impose” liability on H-2A employers in the federal district courts.

Setting aside the government’s misconception, the government does not explain why this issue warrants immediate review. There is no circuit split, and, in fact, the Third Circuit is the first circuit to address

this question after *SEC v. Jarkesy*, 603 U.S. 109 (2024). While this issue will continue to arise in other cases, it is entirely possible that the other circuits will decide to follow the Third Circuit’s decision. And while the right to a real judge is undoubtedly important—indeed, it is important to Sun Valley—this Court does not review every important question decided by the lower courts.

Review is particularly unnecessary because the decision below is correct. DOL imposed penalties, and “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 (marks and citation omitted). On top of that, DOL imposed back wages, which are a “traditional form of relief offered in the courts of law.” *Chauffeurs Loc. 391 v. Terry*, 494 U.S. 558, 570-71 (1990). And DOL itself has repeatedly recognized the contractual nature of the underlying claims. *See, e.g.*, Pet. App. 65a (agency decision concluding that “Respondent failed to honor the terms of each worker’s job contract, resulting in a violation for each worker Respondent employed”). A claim for penalties and back wages on a breach-of-contract theory therefore implicates private rights that the government must adjudicate in the Article III courts.

As below, the government’s contrary argument amounts to an assertion that these employment-related proceedings are transformed into issues of “public right” because some of the employees are in the country on H-2A visas. Note the word “some.” Sun Valley employed both domestic and foreign workers, and DOL imposed penalties and back wages related to both. *See* Pet. App. 4a; *see also id.* 150a & n.150.

The government’s broad view of the public rights doctrine cannot be squared with *Jarkesy*. This Court (citing the same cases the government relies on its in Petition) recognized a public rights exception that applies where Congress “prohibit[s] immigration by certain classes of persons and enforce[s] those prohibitions with administrative penalties.” 603 U.S. at 129. However, liability here was not imposed based on “immigration by certain classes of persons,” and was, instead, imposed based on the conditions of employment at a farm in New Jersey. There is no precedent or history supporting agency adjudication of such employment-related issues. The government’s contrary argument would vastly expand the public rights exception for immigration-related claims to encompass myriad issues involving temporary workers, notwithstanding this Court’s caution that, “[e]ven with respect to matters that arguably fall within the scope of the ‘public rights’ doctrine, the presumption is in favor of Article III courts.” *Id.* at 132 (quoting *N. Pipeline Constr. Co. v. Marathon Pipe Line Co.*, 458 U.S. 50, 69 n.23 (1982) (plurality opinion)).

Finally, if this Court does instead decide to address this issue now, the Court should revise the Question Presented. In the Third Circuit, Sun Valley argued that no statute authorizes DOL to adjudicate H-2A enforcement proceedings, and the Third Circuit declined to reach that issue. Yet the government’s formulation of the Question Presented presumes the answer to that unresolved issue by referring to adjudication authorized by “Congress.” In addition, the government’s formulation inaccurately refers to the “terms and conditions of participating in the H-2A visa program” when the statute the government relies

on, 8 U.S.C. § 1188(g)(2), instead authorizes DOL to “impose[ ]” liability to enforce “terms and conditions of employment” of both H-2A workers and domestic workers in corresponding employment. Below and on page (i), Sun Valley proposes an alternative formulation of the Question Presented.

## STATEMENT

### 1. Regulatory Background

To employ agricultural workers through the H-2A program, employers go through a two-stage application process involving two different federal agencies.

The first stage involves DOL. Employers must fill out a form called a “job order” and file it with DOL. *See* 20 C.F.R. § 655.121(a)(1). The job order sets out the “benefits, wages, and working conditions” that will be offered both to foreign workers and to domestic workers in the same role. *Id.* § 655.122(a). Federal regulations also spell out certain “minimum” standards that the terms and conditions of employment must meet, covering things like housing, meals, and transportation. *Id.* § 655.122(c); *see also id.* §§ (d)-(p). The terms provided in the job order—including the minimum terms and conditions set by federal law—must be set out in a written contract provided to the workers, or, absent a written contract, “the work contract at a minimum will be the terms of the job order and any obligations required under” federal regulations pertaining to the job order. *Id.* § 655.122(q).

After DOL approves the job order, the employer separately files a petition with the Department of

Homeland Security to issue H-2A visas to bring workers into the country.

DOL's Wage and Hour Division Administrator inspects agricultural employers to ensure that the terms and conditions of employment align with the requirements established in the job order. If the Administrator finds violations, "[a] civil money penalty may be assessed by the WHD Administrator for each violation of the work contract," including the minimum terms and conditions of employment that federal law specifies must be included in the job order. 29 C.F.R. § 501.19(a). In addition to penalties, DOL regulations also allow the Administrator to seek to recover "unpaid wages." *Id.* § 501.16(a).<sup>1</sup>

An employer that denies liability must defend itself in DOL's in-house agency courts. *See* 29 C.F.R. § 501.33(a) ("Any person desiring review of a [penalty] determination ... including judicial review, shall make a written request for an administrative hearing[.]"). The regulations governing these in-house adjudications are codified in a portion of the Code of Federal Regulations entitled "Enforcement of Contractual Obligations for Temporary Agricultural Workers Admitted Under Section 218 of the Immigration and Nationality Act." 29 C.F.R. pt. 501; *see also id.* § 501.30 (procedures for administrative enforcement apply to "the enforcement of provisions of the work

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<sup>1</sup> Back wages are paid to DOL, not directly to workers, but in theory DOL passes the wages onto the workers. In practice, that does not always happen. *See* DOL, Office of Inspector General, *Wage and Hour Division Needs to Strengthen Management Controls for Back Wage Distributions* (Mar. 2015), <https://perma.cc/M3JR-NEQU>.

contract”). Adjudication occurs before an Administrative Law Judge (“ALJ”) employed by the agency. The ALJ takes testimony, makes evidentiary rulings, and oversees the trial.<sup>2</sup>

If the ALJ upholds liability, an employer must next contest liability in a second round of internal agency proceedings—this time before an in-house appellate court called the Administrative Review Board (“ARB”). *See* 29 C.F.R. § 501.42 (“A respondent ... wishing review, including judicial review, of the decision of an ALJ, must ... petition the ARB to review the decision.”). After the ARB affirms liability, the Secretary of Labor can exercise his or her discretion to review the decision, but, otherwise, the ARB’s decision becomes the final decision of the agency. *See* 85 Fed. Reg. 13,186, 13,187 (Mar. 6, 2020).

Review of the agency decision is then available in district court under the Administrative Procedure Act. 5 U.S.C. §§ 704, 706; *see, e.g., Frank’s Nursery, LLC v. Walsh*, No. 21-cv-3485, 2022 WL 2757373, at \*5 (S.D. Tex. July 14, 2022) (explaining, in context of APA review of H-2A adjudication, that the “district judge sits as an appellate tribunal” and “it is the role of the agency to resolve factual issues to arrive at a decision that is supported by the administrative record”).

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<sup>2</sup> At the hearing, “[t]he Federal Rules of Evidence ... will not apply,” but the ALJ “may exclude evidence that is immaterial, irrelevant, or unduly repetitive.” 29 C.F.R. § 501.34(b).

## 2. The DOL Adjudication

This case involves penalties that were assessed against Sun Valley Orchards for its 2015 growing season, the first growing season that it participated in the H-2A program.

Sun Valley Orchards is a family farm in Swedesboro, New Jersey, owned and operated by two brothers—Joe and Russell Marino. During the time relevant to this case, the farm grew vegetables, including peppers, squash, cucumbers, and asparagus. Vegetable farming is a labor-intensive process, as the crops must be picked by hand, and the farm relied on seasonal agricultural workers. As it became increasingly difficult for the farm to find adequate numbers of domestic workers, for the 2015 season the farm decided it had no choice but to participate in the H-2A program. The farm employed 96 foreign workers and 51 domestic workers in corresponding employment.

In July 2015, an inspector from DOL spent two days at the farm. Then, nearly a year later, the Administrator issued a letter imposing hundreds of thousands of dollars in liability for a variety of alleged violations at the farm. *See* Pet. App. 183a, 187a-199a. Breaking down the allegations:

- DOL imposed \$198,450 in penalties and \$128,285 in back wages because the farm allegedly did not provide the type of kitchen access described in the job order, and the workers' field manager instead arranged for his wife to prepare the workers cooked meals for a weekly fee. Paid meal plans are permitted under DOL regulations, *see* 20

C.F.R. § 655.122(g), but DOL found the meal plan improper here because the job order promised kitchen access.

- DOL imposed over \$80,000 in back wages because the workers' field manager purchased beverages at Sam's Club and sold them to the workers, resulting in deductions from the workers' pay that were not disclosed in the job order.
- DOL imposed \$142,728.22 in back wages, plus another \$2,700 in penalties, because DOL concluded that certain workers were fired before the end of the term set out in the job order—and thus owed back wages—when Sun Valley instead maintained that the workers left voluntarily.
- DOL imposed \$7,500 in penalties related to the provision of transportation to the fields, primarily because the farm allowed workers to drive without U.S. driver's licenses.
- DOL imposed \$3,600 in penalties related to conditions in the dormitories, such as torn screens on windows.

These penalties and back wages were assessed for both foreign workers and domestic workers in corresponding employment; for instance, for the alleged kitchen access violation, DOL assessed per-worker penalties for 147 workers (96 foreign workers and 51 domestic workers) and included all those workers in its back wages calculations. *See* Pet. App. 150a-151a & n.150, 155a.

After a multi-day hearing, the ALJ affirmed the assessment of liability (with some minor adjustments in the amounts assessed). The ALJ upheld liability for failure to provide kitchen access, reasoning that this failure “breached a material term of the job order; the contract that cemented the working relationship[.]” Pet. App. 141a. While Sun Valley argued that the workers were not actually harmed by this alleged violation (given that the price the workers paid for cooked meals was not significantly more than they would have paid for groceries) the ALJ deemed that irrelevant, reasoning that “[a] material change to the terms of [the] contract necessarily provides ‘harm’ to both the workers’ reliance on the H-2A program to ensure that their rights are protected, as well as the overall integrity of the program itself.” *Id.* at 150a.

The ALJ also found Sun Valley responsible for the actions of the field manager—both with respect to the meal plan and the beverage sales—because the field manager acted as the farm’s agent. *See* Pet. App. 142a (citing Restatement (Third) of Agency (2006)). The ALJ reasoned that “[a] less severe consequence would deny the farmworkers their contractual right” to the wage promised in the job order. *Id.* at 148a.

With respect to the alleged early termination of a group of workers, the ALJ made factual findings and credibility determinations and concluded that the workers were fired—rather than leaving voluntarily. *See* Pet. App. 159a (finding that farm owner’s “testimony, compared to the employees[], lacks credibility”). As a result, the ALJ determined that the workers were owed back wages for “the hours promised in their contracts.” *Id.*

Finally, the ALJ upheld the smaller penalties for transportation and housing conditions. Pet. App. 172a, 176a.

The ARB affirmed. *See* Pet. App. 47a. The ARB upheld the imposition of penalties and back wages for the kitchen access violation, finding that “Respondent failed to honor the terms of each worker’s job contract, resulting in a violation for each worker Respondent employed.” *Id.* at 65a. The ARB affirmed Sun Valley’s responsibility for the actions of the field manager under “common law agency principles.” *Id.* at 59a; *see also id.* at 68a. The ARB also upheld the finding of liability for the alleged early termination of a group of workers, finding the workers entitled to payment as “specified in the work contract,” *id.* at 71a, and upheld liability for the fines related to transportation and housing conditions, *id.* at 74a.

### 3. The Federal Court Proceedings

Sun Valley sued in the United States District Court for the District of New Jersey, seeking review of DOL’s final agency action under the Administrative Procedure Act, 5 U.S.C. §§ 704, 706. Among other claims, Sun Valley alleged that adjudication in the agency’s in-house courts violated Article III, and that adjudication in DOL’s in-house agency courts was not sufficiently authorized by Congress.<sup>3</sup>

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<sup>3</sup> Sun Valley also raised a claim under the Constitution’s Excessive Fines Clause, Article I appointment and removal claims, and claims under the APA challenging various factual and legal decisions of the agency courts. *See* 5 U.S.C. § 706(2)(A), (E).

The district court denied relief. With respect to Sun Valley’s claim under Article III, the district court reasoned that the “public-rights doctrine applies to the DOL’s case against Sun Valley for its H-2A violations because the H-2A [program] involves immigration, which is a matter that falls within the doctrine.” Pet. App. 32a. The district court also reasoned that agency adjudication was appropriate because “this matter is based on Sun Valley’s violations of DOL’s regulations, derives from a federal regulatory scheme under the federal government’s immigration related powers, and is integrally related to a particular Federal Government action[.]” *Id.* at 33a.

The district court also held that adjudication in the agency courts was “clear[ly]” authorized by Section 1188(g)(2). *See* Pet. App. 34a. The district court reasoned that, because the Secretary is “authorized” to “impos[e]” penalties, “the Secretary could have just decided to impose such penalties” without any procedure at all and was accordingly within its rights to “allow[ ] H-2A violators to challenge these assessments through an adjudicatory process.” *Id.*

The Third Circuit reversed. Tracking this Court’s opinion in *Jarkesy*, the Third Circuit began by addressing whether the underlying action implicated Sun Valley’s “private rights,” “asking if it ‘is made of the stuff of the traditional actions at common law tried by the courts at Westminster in 1789.’” Pet. App. 10a-11a (citing 603 U.S. at 128). The Third Circuit pointed to the essentially contractual nature of the underlying claims, explaining that DOL sought to enforce the terms of the job order, which “functions as a ‘work contract.’” *Id.* at 11a (quoting 20 C.F.R.

§ 655.122(q)). The Third Circuit also pointed out that the agency itself repeatedly “framed its enforcement action against Sun Valley in contractual terms” during the agency adjudication. *Id.* at 12a. Finally, the Third Circuit found it “significant that DOL sought common law remedies: civil penalties and back wages.” *Id.* at 13a.

The Third Circuit next addressed the government’s contention that this case fell within the public rights exception for cases related to immigration. *See* Pet. App. 13a-16a. The Third Circuit acknowledged that “history does sanction non-Article III adjudication for certain immigration-related matters,” but the court concluded that “this case falls well outside the heartland of that tradition.” *Id.* at 13a-14a. In particular, the court canvassed the relevant history and concluded that it justifies executive branch adjudication of matters “closely related to the admission and exclusion of aliens.” *Id.* at 15a. By contrast, “[r]ules about worker hours, housing, cooking, and transportation regard employment law, not Congress’ plenary authority to control immigration.” *Id.* at 16a (marks and citation omitted). As a result, “Sun Valley’s case falls outside the immigration exception and the tradition that shaped it.” *Id.*

In reaching this conclusion, the Third Circuit drew a line based in part on the remedy that the government was seeking. The Third Circuit acknowledged that an action “to bar Sun Valley from the program or to remove ineligible foreign workers from its employ” would likely fall within the public rights doctrine, as such an action would “vindicate the federal government’s critical interest in border control.” Pet. App.

17a. But that reasoning did not apply to the claims for penalties and back wages at issue here. To hold otherwise would “eviscerate *Jarkesy*’s instruction that we evaluate the legal basis for DOL’s assertion of the public rights doctrine with care.” *Id.* (cleaned up).

Having resolved the case on Article III grounds, the Third Circuit did not reach Sun Valley’s alternate claims, including Sun Valley’s claim that Section 1188(g)(2) does not sufficiently authorize adjudication in DOL’s agency courts. *See* Pet. App. 19a n.6.

## ARGUMENT

### I. This Case Does Not Warrant Review Under The Standard For Certiorari.

The government does not adequately explain why this case warrants review under the Rule 10 standard. The government is wrong to suggest that the court below invalidated a federal statute, and there is no conflict of authority in the lower courts. Ultimately, the Third Circuit’s decision is nothing more than a correct application of *Jarkesy*.<sup>4</sup>

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<sup>4</sup> If the Court nevertheless determines that review is warranted, Sun Valley agrees there are no vehicle problems that would otherwise bar this Court’s review. *See* Pet. 31. Sun Valley shut down farming operations during this litigation, but that does not moot the dispute as the LLC remains duly incorporated and is therefore still potentially subject to the agency’s award of penalties and back wages.

**A. The Decision Below Did Not Invalidate Any Federal Statute.**

The Petition asserts that the Third Circuit’s “decision warrants review because it incorrectly invalidates an Act of Congress.” Pet. 2. The problem is, that is not true. No federal law expressly authorizes DOL to adjudicate H-2A penalties in house, and, instead, DOL arrogated that power to itself.

The Petition does not clearly say what statute it thinks has been invalidated, but in the lower courts the government argued that 8 U.S.C. § 1188(g)(2) gives DOL the power to adjudicate this type of case. That statute, however, says nothing about adjudication in in-house agency courts. It merely provides:

The Secretary of Labor is authorized to take such actions, including imposing appropriate penalties and seeking appropriate injunctive relief and specific performance of contractual obligations, as may be necessary to assure employer compliance with terms and conditions of employment under this section.

8 U.S.C. § 1188(g)(2). The statute says that the agency can “impose” penalties, but it says nothing about where those penalties should be adjudicated. Moreover, when it comes to remedies other than penalties, the statute says the agency can “seek” relief—which, if anything, suggests the agency should “seek” relief in district court.

In the lower courts, the parties disputed whether this language was sufficient to authorize DOL to adjudicate in its in-house agency courts, and the Third

Circuit ultimately did not reach the issue. Citing one of the Fifth Circuit’s alternate holdings in *Jarkesy*—which this Court ultimately did not reach—Sun Valley argued that the “decision ... to assign certain actions to agency adjudication ... is a power that Congress uniquely possesses.” D.E. 20 at 45 (quoting *Jarkesy v. SEC*, 34 F.4th 446, 462 (5th Cir. 2022)). As a result, Sun Valley argued that an agency can adjudicate penalties in agency courts only when clear and unambiguous statutory language authorizes such a procedure. *Id.* at 45-46. And Sun Valley argued that Section 1188(g)(2) did not provide the necessary clear and unambiguous congressional mandate. *Id.* at 41-43. The government, for its part, argued the contrary. D.E. 26 at 41-45. Ultimately, the Third Circuit sidestepped this question, stating that it would not address “Sun Valley’s alternative statutory ... arguments.” Pet. App. 19a n.6. The government now wrongly assumes the answer to that disputed statutory question.

Even granting the government’s assumption that Section 1188(g)(2) is sufficient to authorize agency adjudication, it still does not follow that Section 1188(g)(2) has been “invalidated.” After all, even on that assumption Section 1188(g)(2) would still *also* authorize DOL to seek penalties and back wages in federal district court. A separate statute makes that much clear: In 28 U.S.C. § 2461(a), a background provision of federal law, Congress expressly provided, “Whenever a civil ... penalty ... is prescribed for the violation of an Act of Congress without specifying the mode of recovery or enforcement thereof, it may be recovered in a civil action.” Under that statute, because Section 1188(g)(2) is silent about how penalties can be

recovered, DOL is authorized to sue to recover penalties in federal court. That route remains open to DOL notwithstanding the Third Circuit's decision.

To the extent that there is a barrier to DOL adjudicating penalty cases in the district courts—rather than in its own in-house agency courts—that barrier is created by the agency's own regulations. In particular, 29 C.F.R. § 501.30 provides that, “[e]xcept with respect to the imposition of civil money penalties ... the Secretary may, in the Secretary's discretion, seek enforcement action in a District Court of the United States without resort to any administrative proceedings.” Unlike the relevant statutes, that agency regulation does appear to preclude DOL from adjudicating penalty cases outside its in-house agency courts. That, however, is a problem of the agency's own creation and does not mean that any federal statute has been invalidated in this case.

### **B. No Federal Court Of Appeals Disagrees With The Third Circuit.**

Putting aside the government's suggestion that a federal statute has been invalidated, the government offers no reason why this issue warrants review.

There is no conflict of authority. On the contrary, as far as Respondent is aware, the Third Circuit is the first federal court of appeals to address the application of Article III (or the Seventh Amendment) to DOL's H-2A enforcement mechanism following this Court's decision in *Jarkesy*.

Meanwhile, DOL's intransigence provides some assurance that this issue will continue to percolate in

the lower courts. Respondent’s counsel is currently litigating other cases raising this same issue in the United States District Court for the District of Columbia, *see C.S. Lawn & Landscape, Inc. v. DOL*, No. 23-cv-1533 (D.D.C.), and in the United States District Court for the Eastern District of Kentucky, *see Triple R Farms, LLC v. DOL*, No. 26-cv-00087 (E.D. Ky.).<sup>5</sup> Additionally, in yet another case, Judge Beryl Howell of the United States District Court for the District of Columbia issued a decision declining to follow the Third Circuit’s decision here. *See Butler Amusements, Inc. v. DOL*, No. 24-cv-1042, 2025 WL 2457687 (D.D.C. Aug. 26, 2025).<sup>6</sup> Over time, other Circuits will eventually weigh in. This Court may well wish to wait to see if a circuit split develops.

The government also argues this case is important, and no doubt that is true. The question is important to Sun Valley, as Sun Valley was forced to endure years of unconstitutional proceedings in agency

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<sup>5</sup> *Triple R Farms* involves penalties related to H-2A workers, the same visa program at issue here. *C.S. Lawn & Landscape* involves workers in the country on H-2B visas, but the question is the same: Do penalties and back wages imposed by DOL ALJs for employment-related issues involving workers on employment visas fall within the “immigration” exception to Article III? With respect to the immigration exception more broadly, Respondent’s counsel is also litigating an additional case involving the assessment of I-9 related penalties by Department of Justice ALJs. *See ProCraft Masonry, LLC v. DOJ*, No. 23-cv-393 (N.D. Okla.).

<sup>6</sup> The employer in *Butler Amusements* appealed to the D.C. Circuit, but the appeal was dismissed for lack of prosecution. *See* No. 25-5388 (D.C. Cir.) (clerk’s order dismissing appeal entered 3/12/2026). *Butler Amusements*, like *C.S. Lawn*, involves the H-2B program, rather than the H-2A program, but, again, the question regarding the application of the immigration exception is the same. *See* note 5, *supra*.

courts. However, this Court does not grant review in every important case, and the Petition does not sufficiently explain why review is warranted now in the absence of a split.

### C. The Decision Below Is Correct.

Review is particularly unwarranted because the Third Circuit correctly applied this Court’s decision in *Jarkesy*. Below, we first set out the legal standard, next explain why the Third Circuit correctly found that this case involves “private rights,” and finally explain why the government is wrong to argue that this case falls within a “public rights” exception for cases involving immigration.

1. Article III vests the judicial branch with authority to adjudicate “*all* Cases in Law and Equity” arising under federal law. U.S. Const. art. III, § 2, cl. 1 (emphasis added). Congress and the Executive therefore cannot “withdraw from judicial cognizance any matter which, from its nature, is the subject of a suit at the common law, or in equity, or admiralty.” *Murray’s Lessee v. Hoboken Land & Improvement Co.*, 59 U.S. (18 How.) 272, 284 (1856).

To implement Article III’s guarantee of an independent judicial forum, this Court has said that cases involving “private” rights must be adjudicated in the Article III courts. *See, e.g., Oil States Energy Servs., LLC v. Greene’s Energy Grp., LLC*, 584 U.S. 325, 334 (2018). In *Jarkesy*, this Court explained that one “hallmark that we have looked to in determining if a suit concerns private rights is whether it is made of the stuff of the traditional actions at common law.”

603 U.S. at 127-28 (marks and citation omitted). “If a suit is in the nature of an action at common law, then the matter presumptively concerns private rights.” *Id.* at 128. In *Jarkesy* itself, the SEC sought to impose civil penalties, and that case involved private rights because “civil penalties are a type of remedy at common law that could only be enforced in courts of law.” *Id.* at 123 (quoting *Tull v. United States*, 481 U.S. 412, 422 (1987)); *see also id.* at 134. The Court explained the type of remedy sought by the government was “all but dispositive.” *Id.* at 123.

This Court’s cases also recognize a category of “public rights” issues that may be adjudicated in the executive branch. *See, e.g., Oil States*, 584 U.S. at 334. In *Jarkesy*, however, the Court explained that—when it comes to cases seeking traditional common law remedies, like penalties—the public rights exception must be narrowly drawn. 603 U.S. at 131-32. In the Court’s words, the “public rights exception is, after all, an **exception**.” *Id.* at 131 (emphasis in original). Courts must give “close attention to the basis for each asserted application of the doctrine,” and the “presumption is in favor of Article III courts.” *Id.* at 131-32 (citation omitted). History matters, and the Court instructed that the exception generally requires evidence showing “an unbroken tradition—long predating the founding—of using these kinds of proceedings.” *Id.* at 128-29. Moreover, “[e]ven with respect to matters that arguably fall within the scope of the ‘public rights’ doctrine, the presumption is in favor of Article III courts.” *Id.* at 132 (citation omitted).

2. The Third Circuit, below, correctly applied this framework to hold that the underlying claims in this case implicate private rights. *See* Pet. App. 10a-13a.

As in *Jarkesy*, the government seeks to impose penalties, and “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, 134 (cleaned up) (emphasis added) (quoting *Tull*). Moreover, the government also seeks back wages, and this Court has elsewhere held that back wages are a “traditional form of relief offered in the courts of law.” *Chauffeurs*, 494 U.S. at 570-71. As in *Jarkesy*, the remedy should be “all but dispositive.” 603 U.S. at 123.

In *Jarkesy*, this Court also emphasized that the substantive nature of the underlying claim resembled a claim for common law fraud. 603 U.S. at 125. Here, similarly, the agency’s underlying claims are fundamentally breach-of-contract claims—a fact the agency itself has made amply clear. *See, e.g.*, Pet. App. 65a, 66a, 141a, 148a, 150a, 156a (referencing the fundamentally contract-like nature of the agency’s claims). As the Third Circuit put it, the agency itself has “framed its enforcement action against Sun Valley in contractual terms.” *Id.* at 12a. Moreover, even setting aside the agency’s statements in the underlying agency adjudication, the agency’s own regulations provide that the requirements of the job order—which are the requirements at issue here—form a “contract” between H-2A workers and employers. 20 C.F.R. § 655.122(q). And DOL regulations contemplate administrative enforcement of those “contractual obligations.” 29 C.F.R. § 501.0; *see also* Pet. App. 11a (citing these regulations).

The Petition attempts to run away from the essentially contractual nature of these claims, asserting that “this case is not ‘like a suit for breach of contract.’” Pet. 27 (quoting Pet. App. 12a). The government points to various differences between the adjudication here and a common law breach-of-contract action, including the presence of the government as a litigant and the availability of penalties. *Id.* at 27-28. But the same kinds of arguments could have been made in *Jarkesy*.<sup>7</sup> The Court explained, however, that a federal statute and an underlying common law cause of action need not be “identical,” and, instead, a “close relationship” is enough to “confirm[ ] that [an] action is ‘legal in nature.’” 603 U.S. at 125-26 (citation omitted). The Third Circuit did not err by finding such a “close relationship” here.

3. The Petition’s primary argument is that this case falls within a public rights exception for cases involving immigration. *See* Pet. 24-27. However, as *Jarkesy* warns, the public rights doctrine is “an **exception**” and, as such, should be closely confined. 603 U.S. at 131. The Third Circuit did not remotely err when it declined to extend that immigration-related exception to adjudication involving employment issues on a farm. *See* Pet. App. 13a-17a.

To begin, in keeping with this Court’s observation in *Jarkesy* that the remedy sought by the government is “all but dispositive,” 603 U.S. at 123, most immigration-related cases seek very different remedies than the ones at issue here. In particular, the Court has

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<sup>7</sup> Indeed, similar arguments *were* made in *Jarkesy*. *See* Br. for Petitioner, *SEC v. Jarkesy*, No. 22-859, at 24-25 (Aug. 28, 2023).

long held that executive officials can decide whether to admit, exclude, or expel aliens, and nothing about the Third Circuit's decision calls that into question. See *Nishimura Ekiu v. United States*, 142 U.S. 651, 660 (1892); see also *Wong Wing v. United States*, 163 U.S. 228, 237 (1896) (stating that, while executive can decide question of admission, the law “must provide for a judicial trial” if the government seeks other remedies, including “confiscating their property”). Sun Valley has never disputed that the government could adjudicate these issues in agency courts if the remedy the government was seeking was to exclude Sun Valley from bringing workers into the country through the H-2A program. The government, however, never sought to exclude Sun Valley from the H-2A program, and is, instead, seeking the classic common law remedies of penalties and back wages.

This Court, in *Jarkesy*, recognized a narrow public rights exception for immigration-related penalties, but, in doing so, the Court described the scope of the immigration-related exception in terms that exclude its application here. The Court stated that Congress may “prohibit immigration by certain classes of persons and enforce those prohibitions with administrative penalties.” 603 U.S. at 129. Here, liability is not being imposed to “enforce” a prohibition on “immigration by certain classes of persons.” Instead, liability is being imposed based on employment conditions at a farm in New Jersey: kitchen availability, beverage sales, transportation, living conditions, and the alleged early termination of a group of workers. As the Third Circuit put it, “[r]ules about worker hours, housing, cooking, and transportation regard employment law, not Congress’ plenary authority to control

immigration.” Pet. App. 16a (marks and citation omitted). That, moreover, is particularly true given that the alleged violations here involved both immigrant and domestic workers. *See id.*; *see also* Pet. App. 150a-51a & n.150, 155a.

For largely the same reasons, this Court’s decisions in *Oceanic Steam* and *Lloyd Sabaudo* are not to the contrary. *See Oceanic Steam Navigation Co. v. Stranahan*, 214 U.S. 320 (1909); *Lloyd Sabaudo v. Elting*, 287 U.S. 329 (1932). In both cases, federal law made it unlawful for ships to bring aliens into the country if those aliens were afflicted with certain diseases. *See* 214 U.S. at 332; 287 U.S. at 331. Also in both cases, federal law authorized customs inspectors to impose a fine for violations of the law and to collect the fine as a condition of granting permission for the ship to disembark. *See* 214 U.S. at 332; 287 U.S. at 331, 333 & n.1. In other words, the cases both involve fines for bringing certain classes of persons across the border whom Congress had sought to exclude, and the fines were imposed and collected at the border as a condition of a ship departing across the border. Those decisions do not support administrative adjudication of a fine imposed based on the terms and conditions of employment at a farm.<sup>8</sup>

Other cases cited by the government, meanwhile, do not involve adjudication of penalties and are therefore beside the point. *See, e.g., Lem Moon Sing v. United States*, 158 U.S. 538, 547 (1895) (executive can

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<sup>8</sup> Moreover, neither case involves back wages, and the government has never pointed to any precedent for collecting back wages from employers in agency courts simply because the wages are allegedly owed to immigrant workers.

“determine whether a particular alien seeking admission into this country” is entitled to admission); *Yamataya v. Fisher*, 189 U.S. 86, 99 (1903) (executive can order immigrant “taken into custody and returned to the country whence he came”); *United States ex rel. Turner v. Williams*, 194 U.S. 279, 292 (1904) (“Appellant’s contention really comes to this: that the act is unconstitutional so far as it provides for the exclusion of an alien because he is an anarchist.”). Nobody disputes that the executive branch has power to regulate immigration. The relevant question is whether there is any history or precedent that would support executive branch adjudication of penalties for working conditions on a farm (particularly a farm employing both domestic and foreign workers). The government offers nothing to suggest the Third Circuit erred when answering that actually relevant question.

In *Jarkesy*, this Court explained that application of the public rights doctrine should be limited to “historic categories of adjudications” in areas where there was “an unbroken tradition—long predating the founding—of using these kinds of proceedings.” 603 U.S. at 128-29. Ultimately, the government does not cite any historical precedent to show that executive officials ever adjudicated anything involving a business’s working conditions, employment, or contracts simply because the business employed immigrant workers. As a result, the Third Circuit correctly concluded that this “case falls outside the immigration

exception and the tradition that shaped it.” Pet. App. 16a.<sup>9</sup>

4. In the end, this case is little more than a straightforward application of *Jarkesy*. To the extent that there is any doubt about the application of the public rights exception, however, this Court instructed in *Jarkesy* that close cases should be decided in favor of Article III: “[E]ven with respect to matters that arguably fall within the scope of the ‘public rights’ doctrine, the presumption is in favor of Article III courts.” 603 U.S. at 132 (citation omitted). This is not a close case, but, if it were, the balance correctly tips in favor of Sun Valley’s right to a real court.

## II. If The Court Grants Review, The Court Should Revise The Question Presented.

If the Court does decide that this issue should be reviewed now, the Court should revise the Question Presented. As drafted by the government, the Question Presented misstates the issues.

First, as currently drafted, the Question Presented wrongly states that adjudication in this case is authorized by “Congress,” when (as explained above, *supra* pp. 14-15) the parties disagree about whether that is so. Sun Valley argued below that the language of

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<sup>9</sup> As a last-ditch resort, the government argues that its underlying claims pertain to a different public rights exception for cases involving “matters arising out of ‘the granting of public benefits.’” Pet. 26 (quoting *Jarkesy*, 603 U.S. at 130). However, the question in this case is not whether or not to “grant” the benefit of permission to participate in the H-2A program, but, instead, whether to impose penalties and back wages.

Section 1188(g)(2) is not sufficient to authorize administrative adjudication, *see* D.E. 20 at 41-47, and the Third Circuit expressly declined to reach that issue, *see* Pet. App. 19a n.6. If the Court grants certiorari, the Court need not necessarily address the interpretation of Section 1188(g)(2) and may choose (like the Third Circuit) to decide only the constitutional question. If it does so, however, the Court should make clear that the separate statutory question would remain open for the Third Circuit to address on remand if the government were to otherwise prevail on the Article III issue.

Second, as currently drafted, the Question Presented misstates the nature of the issues that are adjudicated by DOL's in-house agency courts. The government's Question Presented asks if agency courts can constitutionally adjudicate claims involving "the terms and conditions of participating in the H-2A visa program." Pet. I. But the statute that the government points to as authorizing adjudication states that the Secretary of Labor can "impos[e]" penalties to "assure employer compliance with terms and conditions of employment." 8 U.S.C. § 1188(g)(2). The distinction matters because the government's phrasing shifts the statutory language in a way that aligns the language with the government's theory that adjudication pertains to immigration, rather than employment. A more neutral phrasing would track the language in the underlying statute.

Given the above, Respondent suggests the following alternative formulation of the Question Presented: "Whether Article III of the Constitution precludes the Department of Labor from adjudicating

proceedings to collect monetary remedies from employers who have allegedly violated the terms and conditions of employment of H-2A workers and domestic workers in corresponding employment.”

### **III. Respondent Agrees There Is No Reason To Hold This Case For *FCC v. AT&T*.**

A final note. The Court may wonder if it would be appropriate to hold this case for *FCC v. AT&T, Inc.*, No. 25-406, or its consolidated companion case, *Verizon Communications Inc. v. FCC*, No. 25-567, which likewise involve the right to a judge and jury in penalty proceedings.

Sun Valley agrees with the government that there is no reason for such a hold. *See* Pet. 31-32. The issue in those cases is whether a later opportunity for “de novo” review cures a violation of Article III and the Seventh Amendment. However that question is resolved, it is irrelevant here because there is no such provision for “de novo” review of DOL adjudications. Instead, completed DOL adjudications are subject to judicial review only under the deferential standard set out in the Administrative Procedure Act. *See, e.g., Frank’s Nursery, LLC v. Walsh*, No. 21-cv-3485, 2022 WL 2757373, at \*5 (S.D. Tex. July 14, 2022). There is no reason to think this Court’s decision in those cases will in any way implicate this case.

### **CONCLUSION**

The petition should be denied.

28

Respectfully submitted,

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