No. 25-966

In the Supreme Court of the United States

DEPARTMENT OF LABOR, ET AL.,
Petitioners,

v.

SUN VALLEY ORCHARDS, LLC,
Respondent.

On A Writ Of Certiorari
To The United States Court Of Appeals
For The Third Circuit

BRIEF OF PACIFIC LEGAL FOUNDATION AS AMICUS CURIAE IN SUPPORT OF RESPONDENT

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QUESTIONS PRESENTED

1. 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.

2. Whether 8 U.S.C. § 1188(g)(2) authorizes the Department of Labor to adjudicate 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.

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IDENTITY AND INTEREST OF *AMICUS CURIAE*[1]

Founded in 1973, Pacific Legal Foundation (PLF) is a nonprofit, tax-exempt California corporation that litigates nationwide to vindicate individual liberty, private property, and separation-of-powers principles. PLF has extensive experience challenging administrative enforcement regimes that combine investigation, prosecution, adjudication, and punishment within the Executive Branch.

PLF files this brief to provide the Court with constitutional and practical context about why claims involving punitive monetary penalties that resemble traditional actions at common law must be adjudicated by Article III courts. PLF is currently litigating related issues in multiple matters challenging agency adjudication of private-rights disputes and monetary penalties, subject to only deferential judicial review. *See, e.g.*, *Serpe v. FTC*, No. 0:24-cv-61939 (S.D. Fla.); *Willmore Lumber Co. v. U.S. Dep't of Labor*, No. 1:26-cv-00012 (D. Idaho); *O'Meara v. SEC*, No. 25-1470 (10th Cir.). These cases reflect a recurring problem: when the government can impose binding liability and punishment administratively, constitutional guarantees become contingent and, for many ordinary Americans, practically out of reach.

[1] No party's counsel authored any part of this brief. And no person or entity, other than *Amicus Curiae* and its counsel, paid for the preparation or submission of the brief.

INTRODUCTION AND SUMMARY OF ARGUMENT

The first question presented requires the Court to consider the nature and extent of the so-called "public rights" exception to Article III. This exception finds no support in the Constitution, which "extend[s]" the judicial power of the United States "to all Cases, in Law and Equity, arising under this Constitution[and] the Laws of the United States . . . ." U.S. Const. art. III, § 2, cl. 1. It is, rather, based on judicial recognition of a narrow category of cases that—although susceptible to judicial resolution—historically have been handled exclusively by the executive and legislature.

By the Court's own admission, the scope of the public rights exception is ill-defined. And although the Court in *SEC v. Jarkesy*, 603 U.S. 109 (2024), did "much to return us to a more traditional understanding of public rights," *id.* at 158 (Gorsuch, J., concurring), it did "not claim to" "definitively explain the distinction between public and private rights," *id.* at 131 (majority op.) (cleaned up).

The government here uses the Court's lack of "precis[ion]," *id.* at 130, to call for expansive executive-branch adjudicatory power over virtually all claims tenuously related to two categories of public rights, immigration and public benefits. It thus argues that "executive officers" may (1) "collect monetary remedies to protect" the sovereign's "right to control immigration," and (2) "assess civil penalties to enforce the terms and conditions of receiving privileges, such as the benefits conferred under immigration programs." Pet. Br. 27. But the monetary remedies and penalties at issue here arose out of what executive officials themselves described as Sun Valley's "fail[ure] to honor the terms of each [alien and domestic] worker's job contract." Resp. Br. 12 (citation omitted). Sun Valley's alleged breaches of those contractual terms are far afield from any unilateral interest the sovereign may have in regulating the entry of foreigners. The Court should therefore reject the government's arguments.

Just as importantly, the Court should reinforce its admonitions to closely scrutinize requested applications of the public rights exception—which "is, after all, an *exception*"—and discourage requests like the government's here. *Jarkesy*, 603 U.S. at 131. Otherwise, the government will continue to argue for expansive applications of public rights exceptions that would "swallow the rule" that Article III courts have jurisdiction over *all* cases in law and equity. *Ibid.*

But if the Court nonetheless concludes that a public rights exception applies here, it should resolve this case on that basis alone. The Court need not, and should not, address any other Article III issues, *e.g.*, the definitive criteria for determining whether a statutory claim is legal or equitable. Cases presenting those issues directly will arrive at the Court in due course, and their resolution should not be cut short in this case regarding the scope of an exception to Article III jurisdiction.

ARGUMENT

I. The Government Must Overcome The Presumption Of Article III Jurisdiction For Each And Every Claim

Article III of the Constitution "extend[s]" the judicial power "to *all* Cases, in Law and Equity, arising under . . . the Laws of the United States." U.S. Const. art. III, § 2, cl. 1 (emphasis added). No exceptions. Nonetheless, the Court has recognized a limited "class of cases" that "'historically could have been determined exclusively by [the executive and legislative] branches,' . . . even when they were 'presented in such form that the judicial power [wa]s capable of acting on them.'" *Jarkesy*, 603 U.S. at 128 (citations omitted). In other words, at the time Article III was adopted, certain matters were traditionally understood not to have been subject to judicial resolution. For these matters, "initial adjudication" may take place outside an Article III court. *Ibid.*

But when a suit "is in the nature of an action at common law, then the matter presumptively concerns private rights, and adjudication by an Article III court is mandatory." *Ibid.* (*citing Stern v. Marshall*, 564 U.S. 462, 484 (2011)). Indeed, this "presumption [] in favor of Article III courts" holds "even with respect to matters that *arguably* fall within the public rights [exception]." *Id.* at 132 (cleaned up) (emphasis added). Accordingly, "*each* asserted application" of the public rights exception must be given "close attention" and "evaluated . . . with care," lest "the exception . . . swallow the rule." *Id.* at 131 (emphasis added). Courts must "[take] pains to justify the application of [each] exception." *Ibid.*

A. Public rights cases require painstaking analysis before the exception is applied

Murray's Lessee v. Hoboken Land & Improvement Co., 59 U.S. (18 How.) 272 (1855)—the foundational case for the public rights exception—established the exacting, claim-specific analysis. At issue was a nonjudicial seizure of land belonging to a customs collector who "failed to deliver public funds." *Jarkesy*, 603 U.S. at 128. According to the Court, the Constitution granted Congress the "power to collect and disburse revenue" that "includes all known and appropriate means of effectually collecting and disbursing that revenue, unless some such means should be forbidden in some other part of the constitution." *Murray's Lessee*, 59 U.S. at 281. Congress's power over "public money" continues "until it is actually disbursed" and thus includes the nonjudicial seizure and sale of a collector's land to secure the public's money. *Ibid.* The Court also reviewed centuries-old pre-founding practice for the collection of missing public money and found an "unbroken tradition" "of using these kinds of proceedings to 'enforce payment of balances due from receivers of the revenue.'" *Jarkesy*, 603 U.S. at 128-29 (citation omitted). *Murray's Lessee* thus applied the public rights exception to the underlying claim—but only *after* carefully evaluating the character of the power Congress exercised, precisely defining its scope to determine whether the claim fell within it, and confirming a historical practice of nonjudicial adjudication of the claim.

The Court has applied this painstaking mode of analysis to the other recognized public rights exceptions. For example, tariffs could be imposed on goods imported by unfair methods of competition, outside Article III courts, "[b]ecause the political branches had traditionally held exclusive power over this field and had exercised it." *Id.* at 130. "[F]rom the beginning Congress has exercised a plenary power in respect to the exclusion of merchandise brought from foreign countries." *Oceanic Steam Nav. Co. v. Stranahan*, 214 U.S. 320, 334 (1909) (*quoting Buttfield v. Stranahan*, 192 U.S. 470, 492 (1904)). "'[I]t necessarily follows that no individual has a vested right to trade with foreign nations.'" *Id.* at 335 (citation omitted). *Ex parte Bakelite Corp.*, 279 U.S. 438, 446 (1929), applied these principles to a statute that allowed the President to exclude articles from the country to "protect domestic industry and trade against 'unfair methods of competition and unfair acts' in the importation of articles into the United States and in their sale after importation." Critically, such a claim goes directly to the importation question itself, over which no one has a vested right—not to an ancillary regulatory matter. *Oceanic Steam Nav.*, 214 U.S. at 335. Again, the Court closely analyzed the nature and scope of Congress's power, how the claim related to it, and the history of its implementation, before concluding the public rights exception applied.

The application of the public rights exception in the immigration context proceeds in a similar fashion. This application is grounded in Congress's "plenary power over immigration." *Jarkesy*, 603 U.S. at 129.[2] *Jarkesy* explained that—like with tariffs—this exception is based in Congress's "total" "power over foreign commerce" and the absence of a "vested right to import any -thing into the country." *Ibid.* (cleaned up). As such, "Congress could also prohibit immigration by certain classes of persons and enforce those prohibitions with administrative penalties." *Ibid.* Similarly, as had been repeatedly affirmed, Congress may "'prescribe the terms and conditions on which [aliens] may come in'" to the United States. *Oceanic Steam Nav.*, 214 U.S. at 335 (citation omitted). In *Oceanic Steam Navigation*, therefore, the Court held that executive officials could impose a civil fine against a steamship company for bringing to the United States aliens with "'loathsome or dangerous contagious diseases.'" *Jarkesy*, 603 U.S. at 129 (citation

[2] But Congress's plenary authorities are "not unbounded." *Haaland v. Brackeen*, 599 U.S. 255, 276 (2023) (Congress "is plenary within its sphere, but even a sizeable sphere has borders.").

omitted). Again, the nature of the power, its scope relative to the claim, and its history are necessary components of the analysis.

Jarkesy confirmed this painstaking mode of analysis is required before each application of the public rights exception. *Id.* at 131. The Court summed it up as a requirement of a demonstration "with care" that the appropriateness of non-Article III adjudication "derive[d] … from background legal principles. *Ibid.*

Here, the government pays at least lip service to the limited scope of Congress's plenary immigration power: "Because the right to control immigration is a public right, Congress may entrust adjudications involving violations of terms and conditions *of aliens' entry* to executive officers." Pet. Br. 29 (emphasis added) (citations omitted). But the government fails to identify any limiting principle in its contention that contractual terms of working conditions—for both foreign and domestic laborers—fall within the terms and conditions of aliens' *entry*.

B. A close examination of the public rights exception is also required because of the court's expansive view of common law and equitable claims

The necessity of the particularized public rights analysis is reinforced by the expansive approach that this Court properly takes to define and distinguish between legal and equitable claims. Because Article III jurisdiction extends to "all" legal and equitable claims, U.S. Const. art. III, § 2, cl. 1, the broad definitions of both that are consistently applied by this Court confirm the necessity of a narrow, claim-specific approach to applying the public rights exception.

1. This Court broadly defines common law causes of action

This Court's standard for whether a claim brought in an Article III court is common law in nature is nearly a default conclusion that a claim with a legal remedy is indeed common law in nature. Common law causes of action are "not merely suits, which the *common* law recognized among its old and settled proceedings, but suits in which *legal* rights were to be ascertained and determined." *Parsons v. Bedford, Breedlove & Robeson*, 28 U.S. 433, 447 (1830). Even "novel statutory regimes" are legal in nature "so long as the claims are akin to common law claims." *Jarkesy*, 603 U.S. at 139. Indeed, common law claims include "all suits which are not of equity and admiralty jurisdiction, whatever may be the peculiar form which they may assume to settle legal rights." *Parsons*, 28 U.S. at 447.[3]

This broad conception of what constitutes a common law claim has consistently appeared in this Court's application of the standard. First, the "all but dispositive" determinant of whether a claim is common law in nature is its remedy. *Jarkesy*, 603 U.S. at 123. For example, the availability of civil money penalties definitively establishes the common law nature of a claim because actions in debt were tried at common law in late 18th century England. *Tull v. United States*, 481 U.S. 412, 418-25 (1987). Second, because the remedy is "more important," establishing the common law nature of the cause of action does not require

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[3] Seventh Amendment cases are directly relevant here because the cases at "common law" covered by the Seventh Amendment are coextensive with the cases at "Law" covered by Article III. *Parsons*, 28 U.S. at 447.

"an abstruse historical search" for a "precise[]" analog. *Id.* at 421 (cleaned up). For example, statutory housing-discrimination claims, which did not exist at common law, are legal in nature and require a jury because they are broadly analogous to various torts, including defamation, intentional infliction of emotional distress, and dignitary torts. *Curtis v. Loether*, 415 U.S. 189, 195 & n.10 (1974). In *Jarkesy*, a jury was required even though statutory securities fraud was "narrower" and "broader" than common law fraud—*e.g.*, statutory securities fraud does not always "require a showing of harm." 603 U.S. at 126. Likewise, 42 U.S.C. § 1983 claims are legal in nature—claims at law—simply because they "sound[] in tort." *City of Monterey v. Del Monte Dunes at Monterey, Ltd.*, 526 U.S. 687, 711 (1999).

2. Equity fills in the gaps the common law does not cover

If a federal claim is not common law in nature (and does not fall within admiralty jurisdiction), it is almost certainly equitable. Equitable claims, too, are subject to the jurisdiction of Article III courts. U.S. Const. art. III, § 2, cl. 1. Congress cannot "withdraw from judicial cognizance any matter which, from its nature, is the subject of a suit at the common law, *or in equity*." *Jarkesy*, 603 U.S. at 132 (citation omitted) (emphasis added).

Similar to assessing the legal claims, the equitable nature of a claim is settled by looking at the remedies. In fact, remedies are the driver of both analyses "because generally equity's jurisdiction was never freestanding" but "was supplementary to law courts' jurisdiction." *In re Express Scripts, Inc.*, 176 F.4th 301, 309 n.6 (4th Cir. 2026); Samuel L. Bray & Paul B. Miller, *Getting into Equity*, 97 Notre Dame L. Rev. 1763, 1782 (2022). Since "some causes of action sound in both law and equity," the nature of the remedy is the distinguishing feature. *Jarkesy*, 603 U.S. at 123. And equity offers a broad array of remedies. Injunctions, for example, are "inherently [] equitable remed[ies]." *Great-West Life & Annuity Ins. Co. v. Knudson*, 534 U.S. 204, 211 n.1 (2002). Thus, given that Article III jurisdiction extends even to Congress's novel statutory schemes, *see Jarkesy*, 603 U.S. at 132, equity is more like a catch-all for those (statutory) claims for which legal remedies were not available in the English common law courts. *See* Bray & Miller, *supra* at 1795-96, *id.* at 1774 ("Equity was in the background, and it was always there.").

II. The Department Of Labor's Claims For The Violation Of Labor Regulations Is Not The Sort Exclusively Resolved By The Political Branches

Now, once again, this Court is required to "[take] pains" to determine if a particular claim—here, a Department of Labor (DOL) claim for violations of a labor regulation applicable to immigrant *and* domestic workers—is the sort of claim that was exclusively decided by the political branches. *Jarkesy*, 603 U.S. at 131. But here, just as in *Jarkesy*, the public rights exception cannot be stretched to cover this claim without "swallowi[ng] the rule." *Ibid.* The immigration public rights exception extends only to conduct directly involved in the admission or exclusion of aliens, *not* to purely domestic labor regulations and contractual disputes involving alien and citizen workers. Nor is there a blanket public rights exception for privileges, as the government asserts.

A. The public rights exception for immigration claims is limited to the admission or exclusion of aliens

This case involves the administrative enforcement of regulations governing the H–2A nonimmigrant visa program. To receive approval to bring into the United States H–2A workers, an employer must obtain certification from the Secretary of Labor confirming that "the employment of the alien in such labor or services will not adversely affect the wages and working conditions of workers in the United States similarly employed." 8 U.S.C. § 1188(a)(1)(B). Pursuant to this certification requirement, DOL regulates the benefits and working conditions that must be provided to both H–2A immigrant and domestic workers. 20 C.F.R. § 655.122.

Here, the Department imposed civil monetary penalties on Sun Valley for violations of the DOL-mandated working conditions related to housing, the provision of meals, transportation, and the duration of employment. *Sun Valley Orchards, LLC v. Dep't of Lab.*, 148 F.4th 121, 125-26 (3d Cir. 2025). The regulation of labor conditions *in the United States* falls outside of Congress's power "'to prescribe the terms and condition on which [H–2A workers] may come in[to]'" the United States. *Oceanic Steam Nav.*, 214 U.S. at 335 (citation omitted). These are entirely domestic labor regulations applied here to a farm in New Jersey. This same administrative enforcement process applies even if the injured workers are U.S. citizens. *Sun Valley*, 148 F.4th at 125 n.1.

The relationship between the domestic labor regulations Sun Valley purportedly violated and the *admission* of the H–2A workers is too attenuated for the immigration public rights exception to apply. The scope of the revenue collection public rights exception in *Murray's Lessee* provides a helpful comparator. As discussed, this Court extended Congress's plenary authority to collect taxes to the point of disbursement of the revenue, including any process required to obtain the public money from the government's tax collectors. *Murray's Lessee*, 59 U.S. at 281. In other words, Congress's plenary authority extended to direct participants in Congress's implementation of that authority. The same principle can be applied to Congress's plenary immigration authority. As this court held in *Oceanic Steam Navigation*, Congress's plenary authority over the admission of aliens encompasses the regulation of and imposition of fines against those transporting aliens into the United States. 214 U.S. at 339-40. The steamship company that illegally transported infected aliens in *Oceanic Steam Navigation* stands in an analogous position to the revenue collector in *Murray's Lessee*—unlike Sun Valley.

Sun Valley is not charged with bringing aliens into the United States illegally. Instead, Sun Valley purportedly failed to adhere to domestic labor regulations *after* the H–2A workers had been admitted. *Sun Valley*, 148 F.4th at 125-26. These DOL claims are, at best, indirectly related to Congress's power to control the admission of aliens. Their relationship to Congress's immigration power is more similar to the loose connection with the criminal charge of harboring an alien woman or girl for the purpose of prostitution within three years of her entry to the United States, which this Court struck down as beyond Congress's immigration power. *Keller v. United States*, 213 U.S. 138, 139, 147-48 (1909).

Congress's plenary power over immigration cannot be extended into the realm of domestic regulation without leaving the "door [] open to the assumption by the national government of an almost unlimited body of legislation"—or at least to an unlimited power of Congress to deny Americans their right to an Article III court. *Id.* at 148. As such, the relationship between the claim here and Congress's plenary immigration power is too remote to apply the public rights exception and overcome the presumption in favor of Article III jurisdiction. *Jarkesy*, 603 U.S. at 132.

B. There is no blanket public rights exception for privileges

DOL also argues that its claims against Sun Valley fall within the public rights exception because Congress may require Americans to submit to non-Article III adjudication in exchange for the receipt of a privilege. Pet. Br. at 30-32. But this argument massively overreads the public rights case law relating to patents, public lands, and public benefits, and runs counter to the painstaking analysis required to apply the public rights exception to a claim. *See supra* Part I.A. Historically, government "privileges" have not been treated the same; each must be independently analyzed rather than collectively considered under the public rights exception. *See* Caleb Nelson, *Vested Rights, "Franchises," and the Separation of Powers*, 169 U. Pa. L. Rev. 1429, 1438 (2021).

The government's approach also entirely ignores the unconstitutional conditions doctrine, which the Court has already held extends to the right of access to Article III courts. *Terral v. Burke Const. Co.*, 257 U.S. 529, 532 (1922).

1. The public rights exception does not automatically cover privileges

This Court last applied the public rights exception in *Jarkesy*, 603 U.S. at 127-40. But nowhere does *Jarkesy* suggest that by simply granting a privilege Congress may assign any related claims to non-Article III adjudication. While *Jarkesy* did not purport to establish a definitive explanation of the public rights exception, it did identify its prior applications of the exceptions with specificity. *Id.* at 128-31. As relevant here, it specifically enumerated "the administration of public lands," and "the granting of public benefits such as payments to veterans, pensions, and patent rights." *Id.* at 130.

The specificity of this analysis is critical when analyzing privileges—as it is for all other potential applications of the public rights exception—because not all congressionally granted privileges have been subject to administrative revocation. Nelson, *supra* at 1438. For example, according to Justice Story, "corporate franchises" granted by the government are "legal estates, vested in the corporation itself," and any legislative act that changes its powers must be "reserved in the grant" from the legislature. *Trs. of Dartmouth Coll. v. Woodward*, 17 U.S. (4 Wheat.) 518, 700, 712 (1819) (Story, J., concurring). Thus, the only relevant public rights analysis here is the specific immigration analysis, which, as discussed, does not support the extension of the public rights exception to the DOL claims.

2. A blanket public rights exception for privileges would conflict with the unconstitutional conditions doctrine

DOL's capacious "privileges" public rights category conflicts with the existence of the unconstitutional conditions doctrine. This doctrine restricts Congress from conditioning the provision of a privilege on the "relinquishment of constitutional rights." *Frost v. R.R. Comm'n of State of Cal.*, 271 U.S. 583, 594 (1926). It does so to "'vindicate[] the Constitution's enumerated rights by preventing the government from coercing people into giving them up.'" *FCC v. AT&T, Inc.*, 146 S. Ct. 1418, 1431 (2026) (citation omitted). Indeed, it would allow Congress to completely evade the protections provided by enumerated rights if it could strip them from citizens "under the guise of a surrender of a right in exchange for a valuable privilege which the state threatens otherwise to withhold." *Frost*, 271 U.S. at 593.

This Court has already applied the unconstitutional conditions doctrine to government efforts to condition a privilege on the abandonment of the right to an Article III court. *Terral*, 257 U.S. at 532. In *Terral*, this Court held that states could not condition the "privilege" of doing business on a corporation's waiver of its "right to resort to the federal courts." *Ibid.*; *see also S. Pac. Co. v. Denton*, 146 U.S. 202, 207 (1892) ("But that statute requiring the corporation, as a condition precedent to obtaining a permit to do business within the state, to surrender a right and privilege secured to it by the constitution and laws of the United States, was unconstitutional and void."). Additionally, *AT&T*, 146 S. Ct. at 1431, applied the unconstitutional conditions doctrine to a Seventh Amendment claim (rejecting the claim under the circumstances)—a claim which necessarily incorporates the Article III public rights exception analysis. *Jarkesy*, 603 U.S. at 127. Thus, it would be inconsistent with this Court's longstanding precedent to hold that Congress can condition the granting of any privilege on the abandonment of the right to an Article III court.

III. Any Resolution In Favor Of The Government Should Be Narrow

If the Court concludes that the DOL claims can be adjudicated in a non-Article III forum, it should reverse the Third Circuit on the narrowest possible basis—the immigration public rights exception. Right now, there are numerous cases throughout the lower courts in which the scope of the public rights exception and the Seventh Amendment after *Jarkesy* are being litigated.[4] These cases raise several unanswered questions, including: (1) How related do statutory and common law causes of action have to be to establish a close relationship for Seventh Amendment purposes? (2) How much more weight does a statutory claim's legal remedy hold relative to the cause of action when determining the claim's common law nature? (3) After *Jarkesy*, what is left of *Atlas Roofing Co. v. Occupational Safety & Health Review Commission*, 430 U.S.

[4] PLF alone is litigating eight cases with a Seventh Amendment and/or Article III claim, including: *Serpe*, No. 24-61939 (S.D. Fla.); *O'Meara*, No. 25-1470 (10th Cir.); *Willmore Lumber*, No. 26-00012 (D. Idaho); *Rosewood Care LLC v. NLRB*, No. 26-1555 (2d Cir.); *Atlantic Veal and Lamb, LLC v. NLRB*, No. 24-1053 (D.C. Cir.); *M.J. Melo Painting, Ltd. v. NLRB*, No. 26-1201 (D.C. Cir.); *Black v. SEC*, No. 25-1718 (4th Cir.); *Moats v. NCUA*, 153 F.4th 449 (5th Cir. 2025), *as revised* (Sept. 23, 2025), *petition for cert. filed* (U.S. July 10, 2026) (No. 26-45).

442 (1977)? (4) Should *Atlas Roofing* be overruled in light of the holding of *Tull*, 481 U.S. 412, that civil money penalty claims were common law actions in debt? (5) What constitutes an equitable claim within Article III's jurisdiction? (6) What qualifies as a public right outside the specific cases already decided by the Court?

And the cases raise these questions with respect to a variety of claims created by a variety of statutes. The appropriate Seventh Amendment and Article III analysis for a DOL claim for violating labor condition regulations for H–2A and domestic workers may not be the same for an anti-doping claim against a thoroughbred trainer under the Horseracing Integrity and Safety Act (*Serpe*, No. 24-61939 (S.D. Fla.)) or a Securities & Exchange Commission proceeding to ban a municipal securities advisor from the securities industry *after* an Article III enforcement case has already occurred (*O'Meara*, No. 25-1470 (10th Cir.)). The Court should avoid prematurely resolving these questions while they are being worked out in the lower courts and will become available for the Court to resolve with the benefit of that work in the near future.

CONCLUSION

For the foregoing reasons, and those advanced by the Respondent, this Court should affirm the decision of the Third Circuit.

Respectfully submitted,

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