No. 25-966

IN THE

Supreme Court of the United States

DEPARTMENT OF LABOR, *et al.*,

Petitioners,

v.

SUN VALLEY ORCHARDS, LLC,

Respondent.

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

BRIEF OF ATLANTIC LEGAL FOUNDATION AS *AMICUS CURIAE* IN SUPPORT OF RESPONDENT

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INTEREST OF THE *AMICUS CURIAE* [1]

Established in 1977, the Atlantic Legal Foundation (ALF) is a national, nonprofit, nonpartisan, public interest law firm. ALF's mission for nearly five decades has been to advance the rule of law and civil justice by advocating for individual liberty, free enterprise, property rights, limited and responsible government, sound science in judicial and regulatory proceedings, and effective education, including parental rights and school choice. With the benefit of guidance from the distinguished legal scholars, former government officials, corporate legal officers, private practitioners, business executives, and prominent scientists who serve on its Board of Directors and Advisory Council, ALF pursues its mission by participating as *amicus curiae* in carefully selected appeals before the Supreme Court, federal courts of appeals, and state supreme courts. *See* atlanticlegal.org.

* * *

This case implicates three of ALF's core advocacy missions: limited and responsible government, free enterprise, and the rule of law. As a public interest law firm, ALF often appears as *amicus curiae* before the Supreme Court and other appellate courts to ensure that federal regulatory power is exercised

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[1] No counsel for a party authored this brief in whole or in part, and no person other than the amicus curiae, its members, or its counsel made a monetary contribution intended to fund preparation or submission of this brief.

consistent with the Constitution's structural design, including the separation of powers and the guarantee of adjudication by independent Article III courts.

ALF's particular interest here stems from its sustained advocacy concerning the constitutional limits on administrative adjudication. For example, ALF participated as *amicus curiae in SEC v. Jarkesy*, 603 U.S. 109 (2024) (holding that when the SEC seeks to exact monetary penalties from enforcement targets, they cannot be deprived of their Seventh Amendment right to a trial by jury in an Article III court). ALF argued that SEC in-house enforcement proceedings deprive defendants of the procedural fairness that the Constitution requires. ALF likewise participated as *amicus curiae* in *Axon Enterprise, Inc. v. FTC*, 598 U.S. 175 (2023), urging timely Article III review of structural constitutional challenges to agency enforcement proceedings; in *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024), urging that no deference doctrine may shield unconstitutional agency action; and in *Consumer Financial Protection Bureau v. Community Financial Services Ass'n of America, Ltd.*, 601 U.S. 416 (2024), addressing the separation-of-powers limits on agency self-aggrandizement.

This case presents the natural and unavoidable sequel to *Jarkesy*: whether an agency may recast the adjudicatory architecture at issue in *Jarkesy* as a bargained-for "condition" of participating in a federal program. If it can, then every enterprise that holds a federal license, approval, contract, or program benefit can be made to answer for binding monetary liability in its regulator's own tribunal rather than before an independent Article III court. That result would leave *Jarkesy* governing little beyond its facts.

ALF urges the Court to affirm the judgment below. Participation in a federal program is not, without more, consent to the administrative adjudication of binding monetary penalties, and the line this Court drew in *FCC v. AT&T, Inc.*, 146 S. Ct. 1418 (2026), between nonbinding agency assessments proved *de novo* to a jury and final agency orders reviewed only deferentially preserves—not erodes—the due process guarantees that *Jarkesy* reaffirmed.

SUMMARY OF ARGUMENT

The theory advocated by Petitioner Department of Labor (DOL) is easy to state: The H-2A temporary farmworker program is a privilege. Respondent Sun Valley Orchards accepted the privilege on DOL's terms. So Sun Valley consented to have DOL's own in-house tribunal decide, finally and bindingly, how much money Sun Valley owes.

Under DOL's theory, the Constitution's promise of an Article III court and a jury is not a guarantee. It is a default setting, waived at the program door.

DOL's theory fails three ways. *First*, enrollment is not consent. This Court's cases treat consent as relevant where it is knowing and voluntary—where the litigant was told of the right to refuse the non-Article III forum and chose it anyway, and where the arrangement leaves Article III's structural role intact. *Wellness Int'l Network, Ltd. v. Sharif*, 575 U.S. 665, 669 (2015); *Commodity Futures Trading Comm'n v. Schor*, 478 U.S. 833, 849–51 (1986).

A boilerplate program-required condition, tendered before any dispute exists and running to the prosecuting agency's own tribunal, is neither knowing nor voluntary. Consent "cannot be dispositive" where Article III's structural interests are at stake. *Schor*, 478 U.S. at 851.

DOL's theory has no limit. The statutory schemes DOL catalogs, from customs and tax to Medicare and public benefits, stand on their own historic public-rights footing, *see Jarkesy*, 603 U.S. at 128–31, or on architectures the Constitution permits. None of them needs a consent rationale. Only this one does, and district courts have already begun extending it.

Nor can the immigration setting rescue DOL's theory: Respondent's question presented concerns monetary remedies for violations of the "terms and conditions of employment of H-2A workers and domestic workers in corresponding employment," Br. in Opp. at i, and the award here ran in part to domestic workers, *id*. at 8 (citing Pet. App. 150a–51a & n.150, 155a). The judgment below admits no one and excludes no one. It collects a debt.

Second, *FCC v. AT&T, Inc.*, although a Seventh Amendment decision, identifies the feature that separates preliminary agency action from conclusive adjudication: whether the Government must still prove liability in court before payment can be compelled. The FCC's orders bound no one; collection required a suit tried *de novo*, where "the jury gets the last word." *AT&T*, 146 S. Ct. at 1429.

The Court marked the other side of the line with *Jarkesy*: penalties that are "immediately enforceable," where "the ultimate determination of the facts giving rise to the obligation to pay" rests with the agency alone. *Id.* at 1430.

DOL's scheme sits on that side by regulation: the Administrator's determination becomes "final and unappealable" absent a timely hearing request, 29 C.F.R. § 501.32(c); the ALJ's decision is "the final agency order" unless the Board takes review, *id.* § 501.41(d); and the penalty must be received within 30 days of the final order, *id.* § 501.22. No statute or regulation requires the Government to prove anything to any court before the debt comes due.

And once the order is final, it is a federal debt: interest runs, penalty surcharges accrue, and DOL's own debt-collection rules carry it to offset and Treasury referral with no court anywhere in the sequence. 31 U.S.C. §§ 3711, 3716–3717; 29 C.F.R. pt. 20. DOL has read itself out of *AT&T*'s safe harbor and argued its way into *Jarkesy*.

Third, at minimum, Section 1188(g)(2), the provision authorizing the Secretary to impose "appropriate penalties" to assure H-2A employer compliance, does not clearly authorize what DOL built. The subsection grants remedial power but says nothing about hearings, judges, finality, or review, while the same section elsewhere commands "a de novo administrative hearing" for certification denials. 8 U.S.C. § 1188(e)(1).

The statute asks "whether the housing furnished by an employer for an H-2A worker meets the requirements imposed by" it, *id.* § 1188(c), but "impose" cannot carry finality on its back: Congress used the same term for the FCC penalties, 47 U.S.C. § 504(a), that this Court held in *AT&T* bind no one. And Congress supplied the saving mechanism in 28 U.S.C. § 2461(a): penalties prescribed without a specified mode of recovery "may be recovered in a civil action."

Constitutional doubt resolves whatever ambiguity remains. *Edward J. DeBartolo Corp. v. Fla. Gulf Coast Bldg. & Constr. Trades Council*, 485 U.S. 568, 575 (1988) (requiring courts to construe statutes to avoid serious constitutional problems unless that construction is contrary to congressional intent).

Nothing disables DOL from enforcing the H-2A program's terms. No matter how serious the alleged violations are, DOL retains its district-court remedies, 29 C.F.R. § 501.16(b)–(c); 28 U.S.C. § 2461(a), and its debarment power, 29 C.F.R. § 501.20. The constitutional question is only whether DOL itself, rather than an Article III court, may conclusively turn allegations into a judgment.

The judgment should be affirmed.

ARGUMENT

I. DOL's expansive implied consent theory conflicts with *Jarkesy*

A. Under DOL's theory, every federal license, permit, contract, and program implies consent to in-house agency adjudication of penalty proceedings

DOL's position reduces to one proposition: "When Congress confers a privilege, it generally may require the recipient, as a condition of obtaining the benefit, to submit to non-Article III adjudication of matters related to the privilege." Pet. Br. at 30. Sun Valley "receives the privilege conferred by the program . . . only by agreeing to follow the program's terms and conditions." *Id.* at 36. The employer signed up. So the employer consented. That is the entire theory.

The questions presented confirm the reach. Both, as accepted, concern monetary remedies for violating the employment terms of "H-2A workers and domestic workers in corresponding employment," Order Granting Cert., No. 25-966 (U.S. Apr. 27, 2026), terms the employer "must incorporate . . . into its contracts." Pet. Br. at 36. The case the Court agreed to hear is about enforcing employment contracts, not administering a federal program.

DOL does not hide the theory's reach. In its telling, Congress "may require companies that seek the privilege of contracting with the government to submit to executive assessment of monetary penalties for violating their contracts." *Id.* at 31. And it catalogs the schemes said to "rest on the same rationales": customs penalties, tax penalties, export-control penalties, and monetary sanctions tied to Medicare reimbursements, higher-education funding, housing assistance, and use of the mails. *Id.* at 44–45 (citing 19 U.S.C. § 1584; 26 U.S.C. § 6751; 50 U.S.C. §§ 4812, 4819; 42 U.S.C. § 1320a-7a; 20 U.S.C. § 1094; 42 U.S.C. § 1437z-1; 39 U.S.C. § 3018).

This case requires no judgment on any of those statutory schemes. Revenue collection, customs, and public benefits sit inside categories this Court's public-rights cases have long preserved and *Jarkesy* expressly reaffirmed. *See* 603 U.S. at 128–31.

Schemes built like the FCC's survive on their architecture: a nonbinding assessment the Government must prove to a jury *de novo* before a dollar moves. *See AT&T*, 146 S. Ct. at 1428–29. Those justifications are their own limiting principles, and lower-court experience since *Jarkesy* confirms that they hold: as of November 2025, agencies had prevailed in 34 of 38 rulings on *Jarkesy* challenges to in-house enforcement.[2]

Those rulings rest where the schemes rest: on the preserved public-rights categories and on *AT&T*-style architecture, not on consent by enrollment. What has no limit is DOL's substitute rationale: that accepting a federal privilege is consent to the grantor's administrative tribunal.

Broadcasters hold licenses. Banks hold charters. Drug manufacturers hold approvals. Hospitals hold provider agreements. Contractors hold contracts.

If accepting a government "benefit" on the government's terms is consent to the government's tribunal, then the consent form is everywhere, the exception swallows the rule, and Article III is a default rule for the unregulated. There is no such business.

The theory also proves too much by its own mechanics. The "condition" here was not negotiated; it was tendered. An employer takes the program's terms as Congress and DOL write them or does not participate at all. Pet. Br. at 36. An agency that

[2] Robert Iafolla, *Agencies Avoid Disaster After High Court's In-House Judge Ruling*, Bloomberg Law (Nov. 19, 2025), https://bit.ly/3RK80ZO.

dislikes *Jarkesy* does not need to distinguish it. It needs an intake form.

Nor is the risk hypothetical, and its domain is not small. DOL certified 398,258 H-2A positions in fiscal year 2025, the most in the program's history.[3] The number of firms requesting H-2A workers nearly doubled from 2010 to 2019, from roughly 5,200 to 10,100.[4] On DOL's theory, they all consented.

And district courts have already begun treating enrollment as the answer: one recently reasoned, in the parallel H-2B program, that the employer "was made aware of the need to consent to agency adjudication by choosing to participate in the voluntary H-2B visa program[.]" *C.S. Lawn & Landscape, Inc. v. U.S. Dep't of Labor*, No. 23-cv-1533, 2026 U.S. Dist. LEXIS 63417, at *15 (D.D.C. Mar. 25, 2026), *appeal docketed* (D.C. Cir. Apr. 13, 2026).

This is why this theory would swallow *Jarkesy* rather than comport with it. *See Jarkesy*, 603 U.S. at 127–28, 134. Under DOL's theory, *Jarkesy's* holding governs only the shrinking category of defendants who hold no license, no charter, no approval, no contract, and no benefit. Everyone else consented. The rule would remain on the books and decide nothing.

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[3] U.S. Dep't of Labor, Off. of Foreign Labor Certification, *H-2A Temporary Agricultural Program—Selected Statistics, Fiscal Year 2025*, at 1, https://perma.cc/JC4Z-EU8N.

[4] Skyler Simnitt & Marcelo Castillo, *Use of H-2A Guest Farm Worker Program More Than Triples in Past Decade*, USDA Econ. Rsch. Serv., Amber Waves Magazine (Sept. 7, 2021), https://perma.cc/5ZRU-GDEG.

B. Program enrollment is not the type of consent this Court's cases describe, and the claimed "consent" runs to the employer's own adversary: the agency that investigates, prosecutes, adjudicates, and collects

DOL uses the vocabulary of public rights and conditions, not consent, but its theory is that participation is enough to "lift" the private-rights bar. That is constructive consent by another name. Pet. Br. at 30. Three steps show why:

1. Consent must be knowing and voluntary, with notice of the right to refuse.

This Court's cases do not treat consent as constitutionally irrelevant. In *Schor*, the Court gave weight to a litigant's decision to bring his own claim to the CFTC "with full knowledge that the CFTC would exercise jurisdiction over" the broker's counterclaim. 478 U.S. at 850.

In *Wellness Int'l Network, Ltd. v. Sharif*, 575 U.S. 665 (2015), the Court held that with party consent, bankruptcy judges may adjudicate so-called *Stern* claims, *see Stern v. Marshall*, 564 U.S. 462 (2011). But even there, a litigant's consent "must still be knowing and voluntary[,]" and "'notification of the right to refuse'" the non-Article III forum "'is a prerequisite to any inference of consent,'" *Wellness*, 575 U.S. at 685 (quoting *Roell v. Withrow*, 538 U.S. 580, 588 n.5 (2003)). This framework is not a blank check: even consent is not "dispositive because the limitations serve institutional interests that the parties cannot be expected to protect." *Schor*, 478 U.S. at 851.

2. Enrollment in the H-2A program is none of that.

Enrollment fails that framework. The litigants in *Schor* and *Wellness* made litigation choices: selecting forums after their disputes arose, for claims they had identified, with alternatives they understood.

The consent claimed here is boilerplate, exacted before any dispute exists, from every participant, as the price of admission to a program dominated by small operations; over "two-thirds of H-2A petitions request fewer than ten workers."[5]

These are not repeat institutional litigants negotiating forum clauses. And the court below found that DOL identified no evidence that Sun Valley was ever told it could refuse DOL's forum. Pet. App. 18a. Under *Wellness*, that alone forecloses "any inference of consent." 575 U.S. at 685 (quoting *Roell,* 538 U.S. at 588 n.5). Implying waiver from participation in a regulated activity is "simply unheard of in the context of other constitutionally protected privileges"; Congress could not manufacture the waiver even by providing "with unmistakable clarity" that participation carries it. *Coll. Sav. Bank v. Fla. Prepaid Postsecondary Educ. Expense Bd.*, 527 U.S. 666, 681–82 (1999).

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[5] Am. Farm Bureau Fed'n, *Debunking H-2A Myths*, Market Intel, https://perma.cc/QM7J-LUB3.

DOL's merits brief shows how far the theory must stretch. By regulation, an applicant "must agree," as part of its application and job offer, "that it will abide by the requirements" of the H-2A rules, "and must make" enumerated "assurances." 20 C.F.R. § 655.135.[6] From that agreement DOL derives submission to its own tribunal: acceptance of the privilege, it says, "ha[s] the effect of lifting [any] 'private rights' bar." Pet. Br. at 30 (quoting *Wellness*, 575 U.S. at 718 (Thomas, J., dissenting)).

Note what § 655.135 does not say: nothing about adjudication—no forum, no judge, no jury, no waiver. And note the authority: a dissent and two law-review articles. This Court's majorities require what that dissent would excuse—a knowing and voluntary choice, made with notice of "the right to refuse." *Wellness*, 575 U.S. at 685.

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[6] DOL amended 29 C.F.R. part 501 and 20 C.F.R. part 655, subpart B, in Improving Protections for Workers in Temporary Agricultural Employment in the United States, 89 Fed. Reg. 33898 (Apr. 29, 2024). Several district courts enjoined that rule, and the Wage and Hour Division has suspended its enforcement nationwide, directing staff to apply the versions of both parts in effect on June 27, 2024. WHD Field Assistance Bulletin No. 2025-2 (June 20, 2025), http://bit.ly/4wwShwo. DOL has proposed rescinding much of the rule. Rescission of Final Rule: Improving Protections for Workers in Temporary Agricultural Employment in the United States, RIN 1205-AC25 (proposed July 2, 2025), https://bit.ly/4yVIkdA. The determination against Sun Valley issued on June 22, 2016, following an investigation covering the 2015 season, so the earlier versions governed the proceedings below. Pet. App. 183a. Amicus cites the currently codified text; each provision on which this brief relies is materially identical in both versions.

3. The structural stake is highest here: the "consent" runs to the litigant's adversary.

And the forums differ as much as the choices. Bankruptcy and magistrate judges are "appointed and subject to removal by Article III judges." *Wellness*, 575 U.S. at 679 (quoting *Peretz v. United States*, 501 U.S. 923, 937 (1991)). Separation-of-powers concerns are "diminished" where "'the decision to invoke [a non-Article III] forum is left entirely to the parties and the power of the federal judiciary to take jurisdiction' remains in place." *Id.* (quoting *Schor*, 478 U.S. at 855).

The tribunal here belongs to the opposing party, and the Judiciary's power to take jurisdiction of the merits never arrives; only deferential review does. Consent in *Wellness* ran toward the courts. The consent claimed here runs away from them, to the adversary. That is not an election between lawful forums. It is a toll charged at the door.

Consider what Sun Valley's supposed consent actually purchases. The DOL Wage and Hour Division investigates the employer and prosecutes the case. 29 C.F.R. §§ 501.6, 501.15–501.16. A DOL administrative law judge (ALJ) presides, under DOL's procedural and evidentiary rules—rules under which "[t]he Federal Rules of Evidence . . . will not apply," 29 C.F.R. § 501.34(b)—in a proceeding where "the WHD Administrator shall be identified as plaintiff." *Id.* §§ 501.36(b), 501.37–501.38. Review runs to DOL's own Administrative Review Board; what emerges is "the final agency order." *Id.* §§ 501.41(d), 501.42(a).

The employer meets its first Article III judge only at the end, under deferential APA review. The regulations condition any review, "including judicial review," on first requesting the agency's own hearing. *Id.* §§ 501.33(a), 501.42(a). In plainer words: The employer's adversary staffs every seat but the last.

Forum architecture affects outcome. Justice Gorsuch noted in *Jarkesy* that when the SEC litigated at home, it "won about 90% of its contested in-house proceedings compared to 69% of its cases in court." 603 U.S. at 143 (Gorsuch, J., concurring) (citing D. Thornley & J. Blount, *SEC In-House Tribunals: A Call for Reform*, 62 Vill. L. Rev. 261, 286 (2017)).[7]

Consent to the forum is consent to the odds. That is why the choice must be real.

The structural principle does the rest. Article III's guarantee "not only preserves to litigants their interest in an impartial and independent federal adjudication," it "serves as 'an inseparable element of the constitutional system of checks and balances.'" *Schor*, 478 U.S. at 850 (quoting *N. Pipeline Constr. Co. v. Marathon Pipe Line Co.*, 458 U.S. 50, 58 (1982)). Where that structural principle is implicated, "the parties cannot by consent cure the constitutional difficulty." *Id.* at 850–51.

The stake is at its maximum where the branch of government yielding the judicial power is the litigant's

[7] *See also* Jean Eaglesham, *SEC Wins With In-House Judges*, Wall St. J. (May 6, 2015), https://on.wsj.com/4bok75w (reporting the same disparity).

opponent. Yet DOL does not ask this Court to weigh the enrollment "consent" against it. It asks the Court to let enrollment end the inquiry. That is the one move *Schor* forbids: treating consent as dispositive.

Relabeling the theory does not help. Perhaps DOL will call this a condition rather than consent: Congress may withhold the H-2A program entirely, so it may attach DOL's tribunal as the price of entry. Semantics change nothing. Under either label, the political branches are extracting, as the price of a federal benefit, a protection the Constitution lodges in a different branch. But what the parties cannot protect, they cannot trade. Put differently, an employer's signature can waive the employer's own rights, but it cannot convey the Judiciary's power to the Executive.

This Court has a name for that move. The unconstitutional conditions doctrine "vindicates the Constitution's enumerated rights by preventing the government from coercing people into giving them up," *Koontz v. St. Johns River Water Mgmt. Dist.*, 570 U.S. 595, 604 (2013) (quoted in *AT&T*, 146 S. Ct. at 1431), and it binds the government precisely when it dispenses privileges it may withhold: The state "may not impose conditions which require the relinquishment of constitutional rights," lest it "compel a surrender of all." *Frost & Frost Trucking Co. v. R.R. Comm'n of Cal.*, 271 U.S. 583, 594 (1926). *Frost* is this case in period dress. The carrier was free to stay off California's highways, and the State was free to close them; what the State could not do was price the privilege at the surrender of a constitutional protection, leaving the carrier "no choice, except a choice between the rock and the whirlpool." *Id.* at 593.

A farm that depends on the H-2A program faces the same choice at the program door.

The rule holds even though no one is entitled to the benefit: The government "may not deny a benefit to a person on a basis that infringes his constitutionally protected interests," *Perry v. Sindermann*, 408 U.S. 593, 597 (1972), because conditions of that kind let it "produce a result which [it] could not command directly," *id.* (quoting *Speiser v. Randall*, 357 U.S. 513, 526 (1958)). *Jarkesy* forbids Congress from sending these claims to DOL's tribunal directly; the program condition produces that result indirectly. And the structural component of Article III is not the enrollee's to sell at any price. *Schor*, 478 U.S. at 851. A doctrine that stops the government from conditioning a tax exemption on the surrender of protected speech does not permit conditioning a farm-labor program on the surrender of an Article III court.

Consent doctrine and conditions doctrine thus answer different questions, and they work together here. *Schor* and *Wellness* ask whether a litigant's own knowing and voluntary choice waived the personal right to an Article III forum. The unconstitutional conditions doctrine asks the antecedent question: whether the government may demand that waiver as the price of a public benefit at all.

Sun Valley's supposed "consent" matters only to the first inquiry. It is irrelevant to the second, because a condition that extracts the surrender of a constitutional protection is invalid however freely the applicant signs. *AT&T* is not to the contrary. The conditions doctrine was "a poor fit" there because the FCC's order took nothing: the jury right attached in full in any Section 504 enforcement suit, and if the Government never sued, the carrier never owed. 146 S. Ct. at 1431–32. DOL's order binds of its own force, so the surrender is complete at enrollment, and no later suit restores what the condition extracted.

None of this asks the Court to hold that consent never matters; *Wellness* forecloses that. The holding this case requires is narrower and administrable: Program enrollment, without more, is not consent within the meaning of *Schor* and *Wellness*. That answer is categorical where DOL's theory is categorical, and it disturbs nothing.

Jarkesy closed on the ground that controls here: to let Congress "concentrate the roles of prosecutor, judge, and jury in the hands of the Executive Branch" is "the very opposite of the separation of powers that the Constitution demands." 603 U.S. at 140. Under DOL's theory, that concentration is cured by a signature on a program application. It is not. What the Constitution withholds from Congress directly, the Executive may not collect at the program door.

C. Immigration's public-rights pedigree covers admission, exclusion, and the policing of entry, not monetary penalties against domestic employers for their alleged mistreatment of foreign workers lawfully admitted to the United States

DOL's last line of defense is the setting: immigration. Begin with a fact that no immigration framing can explain: The penalties and back wages here were assessed for violations affecting both H-2A workers and domestic workers in corresponding employment; on the 20 C.F.R. § 655.122 violations alone, DOL assessed a single $1,350 per-worker penalty across 147 affected workers—96 H-2A and 51 domestic—for a $198,450 civil money penalty. Br. in Opp. at 8 (citing Pet. App. 150a–51a & n.150, 155a).

The immigration power does not set the terms of employment for domestic workers on a New Jersey farm. Adjudicating money remedies for breaches of duties owed for the treatment of workers who are lawfully here is not in its nature a decision about any noncitizen's admission, exclusion, or removal. A money judgment for domestic workers' kitchen access is not an exercise of the power to exclude aliens.

ALF does not quarrel with the pedigree itself. The political branches' control over noncitizens is old and real. "The ability to bring an alien into the United States is a privilege." Pet. Br. at 18. Admission has always been "'of favor [and] not of right.'" *Dep't of State v. Muñoz*, 602 U.S. 899, 912 (2024) (quoting James Madison, The Report of 1800 (Jan. 7, 1800) (alteration in original)). Congress may prescribe "condition[s] to the right to bring in aliens," may attach "reasonable money penalties," and may authorize "executive officers" to enforce them without "invoking the judicial power." Pet. Br. at 33 (quoting *Oceanic Steam Navigation Co. v. Stranahan*, 214 U.S. 320, 339, 342 (1909)). If this case involved a penalty on a carrier for landing an inadmissible alien, the Government would win. This case is nothing like that.

DOL's authorities sustain less than DOL needs. *Oceanic Steam* and *Lloyd Sabaudo Societa Anonima per Azioni v. Elting*, 287 U.S. 329 (1932), upheld money exactions on "those who bring aliens to the country" for the act of bringing them in contrary to the statute's terms. Pet. Br. at 33–34. The penalty enforced the admission decision itself, at the border, against the instrument of entry. No entry rule, no penalty. DOL answers that the H-2A employment terms are themselves conditions of admission, so enforcing them is enforcing entry. The purpose is real, and it is an immigration purpose.

But purpose does not change what the adjudication is. The obligations here govern employment performance after lawful admission; they run to citizens and aliens alike; and the resulting penalties must be paid within 30 days of the final order whether or not the employer ever imports another worker. 29 C.F.R. § 501.22. A "condition of entry" that outlives the privilege, binds as to citizens, and is collected as an ordinary debt is not the border in another form. It is employment liability wearing the border's name.

The public-rights framework confirms the point, and *Atlas Roofing Co. v. Occupational Safety & Health Review Comm'n*, 430 U.S. 442 (1977), does not fill the gap. *Jarkesy* confined *Atlas Roofing* to novel statutory obligations, claims involving "'a new cause of action, and remedies therefor, unknown to the common law.'" 603 U.S. at 137 (quoting *Atlas Roofing*, 430 U.S. at 461); *see id.* at 136–39. Claims for unpaid wages and breach of employment terms are the opposite of novel; they are the oldest business of the common-law courts. Indeed, the court below explained that the action "was therefore litigated like a suit for breach of contract, which would have traditionally been heard in common law courts." Pet. App. 12a.

DOL's answer will be that the H-2A obligations are the novel creatures *Atlas Roofing* described: federally prescribed terms, attached to a program the common law never knew. But the employer "must incorporate those federal terms and conditions into its contracts" with its workers, Pet. Br. at 36, and the violations found here were failures to deliver what those contracts promised: wages, meals, housing, transportation. A statute that requires an employer to keep its contract does not create a new cause of action unknown to the common law—it federalizes one of the oldest kinds known to man. *Atlas Roofing* sustained penalties enforcing a new public workplace safety code. This order collects on broken promises.

The remedies match the substance: civil penalties are "a type of remedy at common law," *Jarkesy*, 603 U.S. at 123 (quoting *Tull v. United States*, 481 U.S. 412, 422 (1987)); back wages are money damages, "the traditional form of relief offered in the courts of law," *Chauffeurs, Teamsters & Helpers Local 391 v. Terry*, 494 U.S. 558, 570 (1990) (quoting *Curtis v. Loether*, 415 U.S. 189, 196 (1974)); *see* Resp. Br. at 23.

Immigration might be where DOL's consent theory sounds strongest—but the Court need not trim a single immigration precedent to affirm, and affirmance disarms DOL of nothing it legitimately holds. DOL warns that debarment and revocation of labor certifications are threatened. Pet. Br. at 43.

They are not, and the difference is the point: debarment and revocation regulate continued participation in the program the government administers, 29 C.F.R. § 501.20; they do not themselves impose a judicially enforceable money judgment for an accrued debt. The greater power to withhold a privilege does not include the different power to adjudicate debts. DOL also keeps every courtroom remedy Congress gave it: injunctions and specific performance in district court, 29 C.F.R. § 501.16(b)–(c), and penalty collection by civil action, 28 U.S.C. § 2461(a). What affirmance ends is narrower and newer: a homemade court for entering money judgments against domestic employers. Admission is the privilege. This lawsuit is about money.

II. *FCC v. AT&T* confirms the constitutional line: a preliminary assessment the Government must prove in court is permissible, but a final order that creates the duty to pay is controlled by *Jarkesy*

A. *AT&T* upheld the FCC's scheme for one reason: the orders bind no one, and collection requires a *de novo* jury trial

In *FCC v. AT&T, Inc.*, 146 S. Ct. 1418 (2026), this Court held, 8-to-1, that the Commission may issue forfeiture orders under 47 U.S.C. § 503(b)(4) without a jury. What the decision supplies is the feature that separates preliminary agency action from conclusive adjudication of monetary liability. *Jarkesy* makes that same feature decisive under Article III.

DOL treats the holding as shelter. It is not. The decision rests on what an FCC forfeiture order is not: "The orders at issue did not settle the carriers' legal obligations because, stated simply, they did not create an obligation to pay." 146 S. Ct. at 1428.

The Court itemized why. "The statute nowhere gives the Commission the authority to execute on a forfeiture order"; "[a] recipient of a forfeiture order incurs no penalties for nonpayment"; and "interest does not accrue on the sum." *Id.*

And "the Commission's factual findings have no effect in a subsequent enforcement suit": forfeitures "shall be recoverable," exclusively, in a "trial de novo." *Id.* In that suit, "it is as if the Commission never found any facts at all." *Id.* at 1429. "Before a regulated party can be made to pay, the jury gets the last word." *Id.*

And the Court said where the line sits. "But *Jarkesy* only proves our point." 146 S. Ct. at 1430. The SEC's penalties "were immediately enforceable," so "the ultimate determination of the facts giving rise to the obligation to pay rested not with a jury, but with the SEC alone." *Id.* Two categories, then. A preliminary assessment the Government must still prove before a dollar moves is permissible. A final order that itself fixes the duty to pay is *Jarkesy*.

AT&T did not decide any freestanding Article III challenge. But the jury question and the judicial-power question are not strangers. For a claim that is legal in nature, *Granfinanciera, S.A. v. Nordberg*, 492 U.S. 33 (1989), held that the Seventh Amendment question "requires the same answer" as "the question whether Article III allows Congress to assign adjudication of that cause of action to a non-Article III tribunal." *Id. at 53.* The two guarantees stand or fall together. *Jarkesy* applied that equivalence. It resolved the jury claim and the public-rights question in a single analysis, because "*Granfinanciera* effectively decides this case." 603 U.S. at 134. A final money order on a common-law-style claim offends both guarantees for one reason: it takes the ultimate determination from the court and the jury alike.

B. By regulation, DOL's orders are the opposite of the FCC's on every feature the Court found decisive

Run *AT&T*'s checklist against DOL's own rules. The Administrator's determination becomes "final and unappealable" unless the employer requests the agency's hearing within 30 days. 29 C.F.R. §§ 501.32(c), 501.33(a), (d). If the employer does contest, a DOL ALJ decides, and that decision "shall constitute the final agency order" unless DOL's Board takes review; if the Board declines or is not asked, the ALJ's decision "will be deemed the final agency action." *Id.* §§ 501.41(d), 501.42(a). And the final order is itself the debt: the penalty "must be received by the WHD Administrator within 30 days of the date of the final order," *id.* § 501.22. According to DOL, no statute or regulation requires a district court action in which the Government must prove liability before payment is due. *See* Pet. Br. at 21–23. No jury hears the facts.

Everything that made the FCC's order harmless is missing here. What follows nonpayment shows how much is missing. In *AT&T*, "interest does not accrue on the sum," the recipient "incurs no penalties for nonpayment," and the Commission cannot hold the unpaid order against the party. 146 S. Ct. at 1428. Here, DOL's own debt-collection regulations treat the final order as a "debt." 29 C.F.R. § 20.2(d); *accord* 31 U.S.C. § 3701(b)(1). From that determination the machinery runs by itself: interest from notice; a penalty surcharge at 90 days; disclosure to credit bureaus; offset against federal payments owed the employer; interception of its tax refund; and, at 180 days delinquent, mandatory transfer to the Treasury. 31 U.S.C. § 3711(g)(1); *see id.* §§ 3711(e), 3716, 3717(a)(1), (e)(2), 3720A; 29 C.F.R. §§ 20.8, 20.57. No court appears anywhere in that sequence.

The administrative route is also exclusive—by DOL's own design. Except for "civil money penalties, debarment, or an increase in the amount of a surety bond," the Secretary "may, in the Secretary's discretion, seek enforcement action" in court "without resort to any administrative proceedings." 29 C.F.R. § 501.30. The exception is the tell: the remedy *Jarkesy* most directly protects—money penalties—is the one remedy DOL's own rule keeps out of district court and reserves to DOL's own tribunal. The employer who ignores an FCC forfeiture order waits for the Government to prove its case to a jury. The employer who ignores a DOL order is a delinquent federal debtor whose tax refund is already spoken for.

The parties trade places too. In the FCC's scheme, the Government must file suit and persuade a jury before it collects anything. In DOL's scheme, the employer must exhaust the agency's own process, 29 C.F.R. §§ 501.33(a), 501.42(a), and then it loses unless it shows the agency's decision cannot survive the APA's deferential standards. 5 U.S.C. § 706(2). There, the Government proves its case to a jury. Here, the citizen must disprove the agency's case to a judge the agency employs. An Article III court appears only after that, and only under the APA's deferential review. *See* 5 U.S.C. § 706(2). The facts receiving that deference were found in-house: the Wage and Hour

Division builds the case and appears as "plaintiff," and DOL's own judges find the facts. 29 C.F.R. § 501.36(b).

That is the precise defect *AT&T* identified in the scheme *Jarkesy* condemned: "the ultimate determination of the facts giving rise to the obligation to pay rested not with a jury, but with the SEC alone." *AT&T*, 146 S. Ct. at 1430. Substituting DOL for the SEC does not change the sentence or the conclusion.

DOL's remaining refuge is judicial review itself: deferential APA review, it will say, supplies the Article III court at the end. But *Crowell v. Benson*, 285 U.S. 22 (1932), does not stretch that far. Agency fact-finding was tolerable there only so long as "the essential attributes of the judicial power" remained with the court. *See id.* at 51; *Schor*, 478 U.S. at 851.

That model assumes the judgment belongs to the court. Here the judgment is finished before any court appears: the order is final, the debt is due in 30 days, and the collection machinery runs on its own. 29 C.F.R. §§ 501.22, 501.42(a); 31 U.S.C. § 3711(g)(1). A court confined to asking whether the agency's completed judgment was arbitrary is not exercising the judicial power. It is auditing someone else's.

Nor can DOL reframe the employer's position as mere practical pressure. *AT&T* discounted the burdens of a nonbinding order because the order bound no one. Here the burden is not pressure at all. It is the final order itself, which DOL's regulation converts into a debt due in 30 days. Under *AT&T*'s own terms, this case is *Jarkesy*. Nothing about DOL's scheme is preliminary. Everything about it is final.

C. DOL's own reading of "impose" places it on the impermissible side of *AT&T*

DOL's own statutory case accepts every premise that makes this contrast decisive. To secure the DOL Secretary's authority, it insists that § 1188(g)(2) means binding adjudication in DOL's own proceedings: "By empowering the Secretary to 'impose' civil penalties but to 'seek' injunctions, Section 1188(g)(2) similarly makes clear that the Secretary may levy civil penalties in the agency's own proceedings." Pet. Br. at 21.

And DOL distinguishes the FCC's architecture: statutes creating nonbinding penalties recoverable only in *de novo* suits "use very different language than Section 1188(g)(2)," which "straightforwardly authorizes the Secretary to impose penalties." Pet. Br. at 22–23. Every feature that saved the Commission, DOL disclaims for itself. No nonbinding order. No *de novo* suit. No jury with the last word.

The statute does not compel DOL's reading. If "impose" means what DOL says, DOL's scheme stands where the SEC's stood and falls where the SEC's fell. If instead the statute means only what the Constitution permits, an assessment the Government must still prove in court, then DOL has outrun its statute. Either reading ends in affirmance.

III. At minimum, Section 1188(g)(2) does not clearly authorize final in-house adjudication, and constitutional doubt resolves the ambiguity

Section 1188(g)(2) provides in full that the Secretary "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). It says nothing about hearings, procedures, judges, finality, or judicial review. The same section shows Congress speaking when it wants administrative process: subsection (e) commands "a de novo administrative hearing" for review of certification denials. 8 U.S.C. § 1188(e).

DOL will answer that the contrast proves Congress deliberately left penalties to ordinary agency adjudication. Perhaps. Or perhaps the contrast proves Congress prescribed adjudicatory procedure when it meant to create adjudication and prescribed none here. A text that supports both inferences equally is not a clear grant of the power to enter money judgments that become "final and unappealable" without any court's involvement. 29 C.F.R. § 501.32(c). The APA supplies procedures where Congress has authorized adjudication; it does not supply the authorization. DOL's entire apparatus is built from its own regulations: the ALJs, the Board, the finality rules, the 30-day payment command. *See* 29 C.F.R. §§ 501.33, 501.41–501.42, 501.22. Congress builds courts with words. There are no words here.

DOL's textual case rests on the contrast between "imposing" penalties and "seeking" injunctions. Pet. Br. at 21. The point deserves to be taken seriously; paired verbs are evidence. But "impose" cannot carry finality on its back. Congress used the same word for the FCC's forfeitures: Section 504(a) governs suits to recover forfeitures "imposed" under the Act, and this Court just held those forfeitures bind no one until the Government proves its case to a jury. 47 U.S.C. § 504(a); *AT&T*, 146 S. Ct. at 1428–29.

"Impose" identifies who assesses. It does not say whose determination binds. Congress knows how to make an administrative determination conclusive and how to prescribe its review and collection. Section 1188(g)(2) does neither.

Nor must the Court invent the enforcement mechanism DOL says is missing, as Congress supplied it as a background rule. 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." 28 U.S.C. § 2461(a); *see* Resp. Br. at 50.

Section 2461(a) does not by itself prescribe the trial's shape. But with a conventional civil-action route available, the bare word "impose" cannot unmistakably authorize final in-house money judgments. Read together, the provisions describe a familiar and constitutional architecture: the Secretary assesses; if the employer refuses to pay, the United States sues; a court adjudicates. That is the structure this Court upheld two weeks before DOL filed its brief.

Where one available reading raises grave Article III doubt and the other does not, the choice is not close: "where an otherwise acceptable construction of a statute would raise serious constitutional problems, the Court will construe the statute to avoid such problems unless such construction is plainly contrary to the intent of Congress." *DeBartolo*, 485 U.S. at 575.

And after *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369, 394 (2024), the meaning of § 1188(g)(2) is for this Court to determine independently. DOL's four decades of self-serving practices cannot supply the clear statement Congress omitted.

Points I and II above answer the constitutional question. But if the Court prefers the shorter path, the statute supplies it. If Congress wants a court inside DOL, it can build one in the statute. It has not.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted,

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