No. 25-966

In the Supreme Court of the United States

DEPARTMENT OF LABOR, ET AL., PETITIONERS

v.

SUN VALLEY ORCHARDS, LLC

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

REPLY BRIEF FOR THE PETITIONERS

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Cases:

Cases—Continued: Page

Constitution and statutes: Page

Miscellaneous:

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An employer can "import an alien as an H–2A worker" only if it obtains federal certification and agrees to comply with federal criteria, including minimum requirements concerning wages and working conditions. 8 U.S.C. 1188(g)(2). The Department of Labor enforced those requirements here by conducting an adjudication, finding prolific violations by petitioner, and imposing civil penalties and back wages. That adjudication is not something that Article III reserves to courts. Rather, it falls squarely within two overlapping "historic categories of adjudications" of public rights that executive officers have long performed under Article II. *SEC* v. *Jarkesy*, 603 U.S. 109, 130 (2024). This adjudication implicates both the sovereign's right to control immigration and its enforcement of conditions of privileges it has conferred. The adjudication is thus constitutional.

Respondent's contrary position lacks merit. Sometimes, respondent adopts staggeringly broad theories that would invalidate wide swaths of administrative adjudications—*e.g.*, that agencies cannot adjudicate any "claims and remedies" that courts traditionally could, Resp. Br. 17, or that agencies can never award monetary remedies, *id.* at 21-25. Those swing-for-the-fences theories contravene countless precedents, from *Murray's Lessee* v. *Hoboken Land & Improvement Co.*, 18 How. 272 (1856), onward.

Elsewhere, respondent pivots to narrower theories that permit many administrative penalty adjudications —just not this one. For instance, respondent acknowledges (Br. 45) that historical public-rights categories include adjudications "closely related to immigration status." It concedes (Br. 2 & n.1) that "whether to grant (or revoke) a privilege is typically a matter of public right" and that this category covers "most executive-branch adjudication," including adjudication of whether to certify employers to import H–2A workers. Respondent further admits (Br. 45) that an agency likely could penalize employers for "hiring illegal aliens" or "hiring workers without verifying immigration status."

Respondent just challenges (Br. 33) *this* adjudication because it could be analogized to a breach-of-contract suit, does not occur at the border, partly concerns domestic workers, and culminates in debt-like penalties. That gerrymander lacks a sound basis in precedent or history.

As a fallback, respondent argues (Br. 45-52) that Congress did not authorize the Secretary of Labor to impose monetary remedies in agency proceedings. But respondent has no good answer to the fact that Congress expressly authorized the Secretary to "impos[e] appropriate penalties." 8 U.S.C. 1188(g)(2). Nor can it show that a back-wages order exceeds the Secretary's authority to "take such actions" "as may be necessary to assure employer compliance." *Ibid.* Respondent tries to overcome those textual problems by inventing a clear-statement rule, but its justifications for that rule merely rehash its erroneous constitutional arguments. In sum, Congress has authorized the Secretary to collect penalties and back wages for H–2A violations in agency proceedings, and that authorization complies with Article III.

A. Section 1188(g)(2) Authorizes This Adjudication

By authorizing the Secretary of Labor "to take such actions, including imposing appropriate penalties," "as may be necessary to assure employer compliance with terms and conditions of employment," Section 1188(g)(2) allows the Secretary to collect monetary remedies in agency proceedings. Respondent's contrary reading rests almost entirely on respondent's erroneous constitutional contentions, which respondent tries to parlay into novel interpretive canons. Hence, even respondent doubts (Br. 45-46) that the Court could resolve this case without considering the constitutional issue.

Clear-statement rule. Respondent argues (Br. 46-47) that Congress "must speak clearly" to authorize agencies to adjudicate monetary remedies. No case applies such a rule, and respondent's grab-bag of presumptions from other contexts offers no support. That courts decline to infer agency authority from congressional "silence," *United States* v. *Sherman & Sons Co.*, 237 U.S. 146, 157 (1915); read statutes to avoid "federalism questions," *SWANCC* v. *United States Army Corps of Engineers*, 531 U.S. 159, 174 (2001); and apply the major-questions doctrine, *Biden* v. *Nebraska*, 600 U.S. 477

(2023), does not mean Congress must use magic words to authorize agency adjudication. Similarly, that the Court has "not been quick to infer agency authority to adjudicate" "private disputes," *Bank One Chicago, N.A.* v. *Midwest Bank & Trust Co.*, 516 U.S. 264, 274 (1996), says nothing about public-rights adjudications involving the government. A court "cannot manufacture a new presumption now and retroactively impose it on a Congress that acted [40] years ago." *Tanzin* v. *Tanvir*, 592 U.S. 43, 52 (2020).

Respondent defends its novel clear-statement rule by arguing (Br. 46) that agency adjudication of monetary remedies raises "constitutional concerns." But no such concerns arise where, as here, the adjudication involves public rights. Further, constitutional avoidance "comes into play only when, after the application of ordinary textual analysis, the statute is susceptible of more than one construction"; it cannot justify applying a clear-statement requirement at the outset. *Jennings* v. *Rodriguez*, 583 U.S. 281, 293 (2018) (citation omitted).

Civil penalties. Regardless, Section 1188(g)(2) clearly authorizes the Secretary to "impos[e] appropriate penalties" and "see[k] appropriate injunctive relief." 8 U.S.C. 1188(g)(2). That text unambiguously allows the Secretary to impose penalties on his own, but requires him to seek injunctions from courts. As respondent concedes (Br. 51), the Department has adjudicated civil penalties since the statute's enactment 40 years ago—a reading "unchallenged" until now.

Respondent cites (Br. 48) *FCC* v. *AT&T, Inc.*, 146 S. Ct. 1418 (2026), for the proposition that "impose" does not mean "adjudicate." But *AT&T* explained that "impose" has a context-dependent meaning. See *id.* at 1429. Because the statute there stated that penalties "imposed" by the agency could be recovered only in "de novo" civil suits, 47 U.S.C. 504(a), the Court viewed the agency's initial imposition of penalties as non-binding, see *AT&T*, 146 S. Ct. at 1428-1429. Section 1188(g)(2), by contrast, says nothing about de novo recovery suits; it just says the Secretary may impose penalties.

Respondent emphasizes (Br. 48-50) that Section 1188(g)(2) does not specify adjudicatory procedures. That just shows that Congress left it to the agency to formulate appropriate procedures, subject to the minimum requirements of the Due Process Clause and Administrative Procedure Act (APA), 5 U.S.C. 551 *et seq.* See *Vermont Yankee Nuclear Power Corp.* v. *NRDC, Inc.*, 435 U.S. 519, 524-525 (1978). Respondent correctly observes (Br. 49 n.20) that, because Section 1188(g)(2) does not require "on the record" hearings, it does not trigger the APA's heightened procedures for formal adjudications. See 5 U.S.C. 554(a). But Section 1188(g)(2) hearings are still subject to the APA's requirements for adjudications generally, see 5 U.S.C. 555, and for imposing sanctions, see 5 U.S.C. 558(b).

Relatedly, respondent cites (Br. 49-50) statutes that require agencies to use specific procedures—such as holding hearings "before an administrative law judge," 8 U.S.C. 1324a(e)(3)(B)—to impose penalties. Those statutes show only that, when Congress goes beyond the APA's default rules, it says so. Section 1188(g)(2)'s omission of comparable requirements shows that it leaves procedural details to the agency, not that it forbids agency adjudication entirely.

Respondent cites (Br. 50) 28 U.S.C. 2461(a), but that provision applies only when a statute authorizes a civil penalty "without specifying the mode of recovery." Section 1188(g)(2) specifies the mode of recovery: The Secretary may "impos[e]" the penalty. 8 U.S.C. 1188(g)(2).

Back wages. The Secretary may also collect back wages in administrative proceedings because Section 1188(g)(2) authorizes him to "take such actions" "as may be necessary to assure employer compliance." 8 U.S.C. 1188(g)(2). Respondent does not dispute (Br. 52) that back-wages orders are "necessary to assure employer compliance." Nor does it dispute that the Department has conducted back-wages adjudications since the statute's enactment. See Gov't Br. 24.

Respondent argues (Br. 51-52) that, insofar as back wages are equitable relief, they fall within the portion of Section 1188(g)(2) that allows the Secretary to "seek" certain equitable relief in courts. 8 U.S.C. 1188(g)(2). But that portion refers, not to equitable relief generally, but to "injunctive relief and specific performance," *ibid.*, a phrase that does not cover back wages. Respondent cites (Br. 9, 52 n.22) a case where the Department asked a court to award back wages alongside an injunction, but that just reflects the general rule that, once a party properly seeks an injunction, the court may avoid bifurcated proceedings by deciding "all relevant matters in dispute" and awarding "complete relief." *Porter* v. *Warner Holding Co.*, 328 U.S. 395, 399 (1946). It does not suggest that freestanding claims for back wages must be brought in court rather than the agency.

B. The Public-Rights Doctrine Permits The Secretary To Collect Monetary Remedies For H–2A Violations

Public rights include both rights of the sovereign and privileges conferred by the government. See Gov't Br. 27-32. H–2A adjudications vindicate the public's right to control the terms on which aliens may immigrate to the United States—a classic sovereign right. They also enforce conditions that employers accept in exchange for the ability to import H–2A workers—a classic privilege. That the adjudications may culminate in monetary remedies makes no difference. Executive officers have long imposed such remedies to enforce sovereign rights and conditions of privileges. Respondent's contrary theories are mutually inconsistent and unsound.

1. The nature of the remedy is not dispositive

Respondent's broadest theories wrongly posit that the nature of the remedy controls whether a case involves public rights.

a. Most ambitiously, respondent contends (Br. 17, 24-25) that agencies cannot decide *any* "claims and remedies that were traditionally adjudicated by courts" and cannot award *any* relief, "[w]hether equitable or legal," that courts could award. That theory would eliminate virtually all public-rights adjudications, contrary to precedent and historical practice. The premise of the public-rights doctrine is that public-rights cases "can be resolved in multiple ways"—by courts or by agencies—because they fit within both the judicial power under Article III and the executive power under Article II. *Oil States Energy Services, LLC* v. *Greene's Energy Group*, 584 U.S. 325, 342 (2018); see Gov't Br. 25-26. For instance, *Murray's Lessee* held that, when officials wrongly withhold public funds from the Treasury, the government may recover the funds either through a judicial debt-collection suit or through an executive adjudication. See 18 How. at 284-285. Similarly, courts and agencies alike may award penalties (legal relief) and returns of fares (equitable relief) against carriers that violate the conditions of bringing aliens into the United States. See *Lloyd Sabaudo Societa Anonima per Azioni* v. *Elting*, 214 U.S. 329, 334-335 (1932); Gov't Br. 33-34.

That courts may award remedies for H–2A violations thus does not prove that *only* courts may do so.

b. Respondent is likewise wrong (Br. 21-25) that only courts can award "monetary" relief (which respondent also calls "common law relief"). Respondent invokes (Br. 23) *Jarkesy*'s statement that the remedy is "all but dispositive," 603 U.S. at 123, but that statement concerned the threshold issue whether, under the Seventh Amendment, a securities-fraud civil-penalty proceeding is a suit at common law rather than in equity. *Id.* at 121-126. On that issue, the remedy was indeed "all but dispositive"; that civil penalties are a common-law remedy "effectively decide[d] that th[e] suit implicate[d] the Seventh Amendment." *Id.* at 123, 125.

But the pertinent part of *Jarkesy* came next, when the Court addressed whether the public-rights doctrine nonetheless allowed executive adjudication. See 603 U.S. at 127-140. Far from treating the remedy as dispositive on that score, the Court recognized that the government "may extract civil penalties in administrative tribunals in some contexts." *Id.* at 131 n.2. It noted that agencies have long awarded monetary remedies in areas such as immigration, customs, and taxation, *id.* at 129-130, but concluded that securities-fraud penalties lack the same historical pedigree, *id.* at 140. *Jarkesy* thus focused on the remedy to distinguish common-law from equitable suits, but relied primarily on history to distinguish public from private rights.

Bedrock separation-of-powers principles reinforce that reasoning. The executive power, at its core, is "the power to enforce the law." *Trump* v. *Slaughter*, 146 S. Ct. 2283, 2300 (2026). Because one way to enforce the law is to impose monetary sanctions, the mere imposition of that remedy does not by itself prove that the government has exercised judicial power. Distinguishing judicial from executive power instead requires analyzing the type of right involved. While protecting "the rights of individuals" is the "province of the court," *Marbury* v. *Madison*, 1 Cranch 137, 170 (1803), "[v]indicating the *public* interest" is part of the business of "the Chief Executive," *Lujan* v. *Defenders of Wildlife*, 504 U.S. 555, 576 (1992). Thus, in general, only courts may adjudicate "the liability of one individual to another," *Crowell* v. *Benson*, 285 U.S. 22, 51 (1932), but agencies may impose monetary remedies to vindicate the "rights of the public," *Granfinanciera, S.A.* v. *Nordberg*, 492 U.S. 33, 68 (1989) (Scalia, J., concurring in part and concurring in the judgment).

Further refuting respondent's theory, this Court's cases and practice dating to the founding show that agencies may assess monetary remedies in public-rights cases, including against:

- Carriers that violate immigration restrictions. *Lloyd Sabaudo*, 287 U.S. at 334-335; *Oceanic Steam Navigation Co.* v. *Stranahan*, 214 U.S. 320, 340 (1909).
- Importers that undervalue merchandise. *Origet* v. *Hedden*, 155 U.S. 228, 236 (1894); *Passavant* v. *United States*, 148 U.S. 214, 221-222 (1893); *Bartlett* v. *Kane*, 16 How. 263, 272 (1854).
- Importers that engage in unfair competition. *Ex parte Bakelite Corp.*, 279 U.S. 438, 458 (1929).
- Taxpayers who underpay income taxes. *Helvering* v. *Mitchell*, 303 U.S. 391, 404-405 (1938).
- Government contractors that violate their contracts. *Allman* v. *United States*, 131 U.S. 31, 35 (1889).

- Militiamen who fail to show up for militia service. Act of May 2, 1792, ch. 28, §§ 5, 7, 1 Stat. 264-265.
- Plaintiffs who sue the United States and against whom the United States has counterclaims. *McElrarth* v. *United States*, 102 U.S. 426, 440 (1880).

See Gov't Br. 28-29, 38-39. Even respondent ultimately concedes (Br. 29, 31, 33-45) that executive officers may adjudicate, for example, "customs" penalties, penalties imposed during "health inspections" "at the border," and "penalties imposed on domestic employers for hiring illegal aliens or for hiring workers without verifying immigration status." Respondent cannot have it both ways. If (as respondent's broadest theories contend) only courts may award monetary remedies, none of respondent's ensuing concessions makes sense.

c. Respondent separately questions (Br. 31) the back-wages order. But this Court has upheld a statute that empowered executive officers to adjudicate whether carriers had unlawfully transported aliens to the United States, to collect the amounts of the aliens' fares, and to return those sums to the aliens. Gov't Br. 33-34 (citing *Lloyd Sabaudo*, 287 U.S. at 334-335). Congress has enacted many other laws providing such fare-return remedies. *Id.* at 35 & n.7. Respondent does not distinguish returning wages from returning fares. Like fare-return orders, back-wages orders vindicate the sovereign right to control immigration by ensuring that violators do not profit from their wrongs. Indeed, that is why the Department deposits back wages in the Treasury, rather than returning them to H–2A violators, in the 20% of cases where the underpaid workers cannot be found. Gov't Br. 11-12.

d. Finally, respondent challenges (Br. 21) the monetary remedies here because they are collectible as debts. But this case presents only the question whether the Secretary may impose H–2A penalties at all, not the lawfulness of specific methods of collecting penalties.

Regardless, while some collection methods—such as holding someone in contempt and imprisoning him until he pays—"requir[e] the exercise of judicial authority," the methods here do not. *Oceanic Steam*, 214 U.S. at 343. Respondent cites no authority for the proposition that treating an unpaid penalty as a debt—the standard method for collecting *any* unpaid penalties imposed by agencies, see 28 U.S.C. 3101—requires judicial power, contrary to *Murray's Lessee*.

2. The breach-of-contract analogy fails

Respondent correctly observes (Br. 1) that a suit "in the nature of an action at common law" "presumptively concerns private rights." *Jarkesy*, 603 U.S. at 128. But respondent then overgeneralizes, incorrectly proposing (Br. 17) that the public-rights doctrine has no purchase if an action can be analogized in some way to a common-law suit. Respondent thus errs (Br. 17-21) in analogizing the government's enforcement of *its* rights under the H–2A program with contract suits vindicating private parties' rights.

a. Superficial common-law analogies do not transform public rights into private ones. While the "liability of one individual to another" at common law is a matter of private right, *Crowell*, 285 U.S. at 51, cases that "arise between the Government and persons subject to its authority" in connection with the historic "functions of the executive" are matters of public right, *id.* at 50.

This Court has thus upheld executive adjudications that fit within "historic" public-rights categories despite overlap with common-law actions. *Jarkesy*, 603 U.S. at 130. For example, agencies may assess penalties in public-rights cases, even though penalty adjudications have historically been viewed as a "type of action in debt." *Id.* at 122 (citation omitted); see *id.* at 129. Agencies may assess tax-fraud penalties, despite the overlap with common-law fraud. See *Mitchell*, 303 U.S. at 401-404. Agencies may penalize carriers that do not screen aliens for contagious diseases, despite the overlap with common-law negligence. See *Oceanic Steam*, 214 U.S. at 331-332. Agencies may compel public officials to surrender funds wrongfully withheld from the Treasury, even though the government could also pursue such relief through common-law actions. See *Murray's Lessee*, 18 How. at 284-285. As those examples show, overlap with a common-law action is beside the point when a dispute between the government and a private party fits within a historic public-rights category.

Most relevant here, public-rights adjudications can involve enforcing contracts. For instance, executive officers may adjudicate contract counterclaims against those who sue the government, see *McElrath* v. *United States*, 102 U.S. 426, 440 (1880), or assess penalties for breaching contracts with the government, see *Allman*, 131 U.S. at 35. Respondent also appears to accept that the Department could adjudicate contract compliance in deciding whether to revoke a labor certification or debar an employer from the H–2A program. See Gov't Br. 10. Respondent cannot square those examples with its theory (Br. 19) that only courts may enforce "contractual obligations."

By contrast, where an executive adjudication lacks a historical pedigree, common-law overlap can suggest that the government is seeking to vindicate the rights of private parties rather than the traditional rights of the public. The securities-fraud civil-penalty proceeding in *Jarkesy*, for example, did not vindicate any historically recognized public right and instead "target[ed] the same basic conduct as common law fraud" and "operate[d] pursuant to similar legal principles." *Jarkesy*, 603 U.S. at 134. High-level analogies to common-law actions thus do not suffice; the primary question is whether an adjudication fits within a historic public-rights category. This one does, twice over. See pp. 15-23, *infra*.

b. Regardless, the adjudication here is not in the nature of a common-law contract action. Unlike a suit to vindicate a private right to compliance with a contract, the adjudication here vindicates the public's right to compliance with the terms of the H–2A visa program. Consistent with that understanding, the proceeding can be brought only against employers that have chosen to participate in the H–2A program—not employers generally. It covers only violations of H–2A conditions—not contractual breaches more broadly. Further, the adjudication enforces terms that the government has imposed and that the parties cannot waive—not terms to which parties have agreed. See Gov't Br. 37.

Respondent emphasizes (Br. 5) that the H–2A program "piggybacks upon a preexisting system of employment offices," but ignores how the program transformed that system and gave rise to duties owed by the employer to the government. When Congress created the H–2A program in 1986, it required employers seeking the privilege of importing foreign labor to satisfy certain minimum standards. Thus, while employment disputes under the prior system may have implicated only workers' private rights to compliance with their contracts, employment disputes under the H–2A program also implicate the public's right to compliance with the program's terms. The Department may conduct adjudications to enforce that public right.

It is likewise immaterial that "H–2A workers may pursue state breach of contract claims." Resp. Br. 10 (citation omitted). Where the same conduct violates both the public's rights and the rights of private parties, it can give rise to both an executive adjudication and a private suit. For example, a company that engages in unlawful importation practices may face both a penalty proceeding brought by an agency and an unfair-competition suit brought by its competitors. See *Bakelite*, 279 U.S. at 458. So too here, the government may impose monetary remedies to enforce the public's right to compliance with the H–2A program's terms, and workers may bring parallel suits to enforce their own contract rights.

Finally, *Hepner* v. *United States*, 213 U.S. 103 (1909), does not prove that only courts may adjudicate this case. Contra Resp. Br. 26. The statute in *Hepner* authorized courts to impose civil penalties upon persons who solicited the immigration of alien laborers. See *id.* at 104. The only question before the Court, as respondent acknowledges (Br. 27), was whether the trial court was entitled to direct a verdict given the absence of a factual dispute. The Court did not address whether the public-rights doctrine would have allowed Congress to assign the adjudication to an agency instead. Because public-rights matters "can be resolved in multiple ways," "[t]hat Congress chose the courts in [the statute in *Hepner*] does not foreclose its choice of [an agency] today." *Oil States*, 584 U.S. at 342 (citation omitted).

3. This adjudication involves the public right to control immigration

Jarkesy reaffirmed that "immigration" is among the "distinctive areas involving governmental prerogatives" covered by the public-rights doctrine. 603 U.S. at 120, 129. That principle allows Congress to "exclude aliens," to "prescribe the terms and conditions" on which they may enter or be brought in, and to empower "executive officers" to enforce those terms. *Oceanic Steam*, 214 U.S. at 335 (citation omitted). Under that settled test, which this Court has repeated in at least eight cases since 1895, see Gov't Br. 34, the adjudication here involves public rights. An alien may obtain an H–2A visa, and an employer may obtain the labor certification needed for such a visa, only if the employer satisfies statutory and regulatory conditions. Executive officers may enforce those conditions, including by awarding monetary remedies.

Respondent does not dispute much of that analysis. It concedes, for example, that the public-rights doctrine covers "immigration-related" matters (Br. 25); that the "admission" of H–2A workers is a matter of public right (Br. 28); that the public-rights doctrine extends to at least some cases involving "employers" (Br. 45); and even that agencies may assess "monetary remedies" in immigration adjudications (Br. 29). Respondent nonetheless contends that this case falls outside the public-rights doctrine, but its tests lack merit.

First, respondent states (Br. 32) that agencies may adjudicate only matters with a "close nexus" to "events at the border" or "movement" "across the border." This Court's cases, however, ask whether the adjudication seeks to enforce the terms of bringing aliens to the United States, not whether it has a "close nexus" to events at the border. See, *e.g.*, *Oceanic Steam*, 214 U.S. at 335. Nothing suggests that the public right disappears, and executive officers' Article II powers dissipate, if (for instance) the carriers' transportation of aliens with contagious diseases in *Oceanic Steam* were caught later, not during border inspections. Indeed, immigration adjudications often address conduct that occurs away from the border. Aliens are often excluded because of conduct in their home countries, or deported for conduct occurring far within the interior of the United States.

Sherman (cited at Resp. Br. 38) in no way supports a use-it-or-lose-it limit for public-rights adjudications at the border. *Sherman* held that customs officials lacked power to recalculate customs duties more than a year after the importation, even if they later discovered fraud by the importer. That decision hardly helps respondent, since the fact that customs officials could recalculate duties up to a year after importation refutes respondent's theory that executive adjudications must take place at the border. Regardless, *Sherman* rested on a statute making customs valuations final after one year, not on the Constitution or constitutional avoidance. See 237 U.S. at 151-152; contra Resp. Br. 38.

Regardless, an adjudication to enforce the H–2A program's terms *does* have a close relationship to cross-border movement. Those terms are prerequisites to the employer's filing of a "petition to import an alien as an H–2A worker" and to issuance of an H–2A visa. 8 U.S.C. 1188(a)(1). Violations can result in the employer's ejection from the program and, in some circumstances, the workers' removal from the country. Gov't Br. 10-11.

Second, respondent argues (Br. 29) that agencies may not deprive individuals of property in immigration cases. That theory conflicts with *Oceanic Steam* and *Lloyd Sabaudo*, which establish that executive officers may deprive carriers of property by penalizing them for transporting aliens with contagious diseases. See Gov't Br. 33-34. That theory also disregards the more-than-century-old practice of executive adjudication of immigration penalties, *id.* at 35-36, as well as the analogy to the even older tradition of executive adjudication of customs penalties, *id.* at 28. Lastly, that theory illogically treats immigration cases differently from other public-rights cases, where monetary remedies are permissible. See pp. 9-10, *supra*.

Respondent invokes (Br. 29) the Alien Friends Act of 1798, ch. 58, 1 Stat. 570, and *Wong Wing* v. *United States*, 163 U.S. 228 (1896), but neither is relevant. The cited statutory provision stated only that a deported alien could take his property with him. § 5, 1 Stat. 572. And *Wong Wing* determined only that executive officers may not adjudicate "criminal" cases, even if those cases involve aliens. 163 U.S. at 234; see *id.* at 233-238.

Third, respondent suggests (Br. 27, 29) that executive officers may impose immigration penalties only for "health" violations, not "labor" violations. That distinction is unprincipled. Congress's authority "over the right to bring aliens into the United States" "embraces every conceivable aspect of that subject"—including the effect of immigration on the U.S. labor market. *Oceanic Steam*, 214 U.S. at 340. Indeed, a "primary purpose in restricting immigration is to preserve jobs for American workers," *Sure-Tan, Inc.* v. *NLRB*, 467 U.S. 883, 893 (1984), and to avoid the diplomatic problems that can arise when U.S. employers mistreat foreign laborers.

Thus, several early-20th-century laws authorized executive officers to penalize carriers for immigration violations that had nothing to do with health, such as bringing in aliens who lacked valid visas or would be unable to earn a living here, unlawfully soliciting aliens to travel to here, refusing to bear the cost of returning aliens who had been excluded from the country, failing to provide manifests identifying those on board, and allowing crew members to leave vessels before immigration officials could inspect them. Gov't Br. 35. Respondent discounts (Br. 31-32) those statutes because they do not date to the founding era, but significant federal regulation of immigration began only in the late 19th century. See *Department of State* v. *Muñoz*, 602 U.S. 899, 912 (2024). Given the absence of relevant founding-era evidence, courts may properly rely on post-ratification practice in immigration cases. See *id.* at 912-914. Nor can respondent overcome history by citing (Br. 33) minute distinctions between the statute here and its precursors. An adjudication can fall within a "historic categor[y]" of public-rights matters, *Jarkesy*, 603 U.S. at 130, even if it lacks a historical twin that replicates the same combination of features.

4. The public-rights doctrine permits adjudications to enforce the terms of receiving privileges

This case also fits within a second historic category of public-rights adjudications: adjudications to enforce the conditions of receiving privileges. Gov't Br. 30-31. Respondent does not dispute that public rights include privileges. It does not dispute that the benefit granted by the H–2A program—the admission of aliens into the United States for the specific purpose of working at the employer's farm—is a privilege. And it does not dispute that an employer seeking that privilege must abide by the program's terms, including providing the wages and working conditions required by agency regulations. Yet it erroneously argues (Resp. Br. 34-44) that the public-rights doctrine does not allow the Department to penalize employers that violate those terms.

a. A person who "avails himself of [a] privilege" "must do so subject to the conditions annexed by the government," *McElrath*, 102 U.S. at 440, which can include "compliance with agency procedures," *Thomas* v. *Union Carbide Agricultural Products Co.*, 473 U.S. 568, 589 (1985). That theory explains this Court's holdings that executive officers may assess monetary remedies in adjudications involving those who seek the privilege of bringing aliens into the United States, see *Oceanic Steam*, 214 U.S. at 334-335; the privilege of bringing goods into the United States, see *Bartlett* v. *Kane*, 16 How. 263, 272 (1854); the privilege of government employment, see *Murray's Lessee*, 18 How. at 280-281; the privilege of contracting with the government, see *Allman*, 131 U.S. at 35; and the privilege of suing the United States despite sovereign immunity, see *McElrath*, 102 U.S. at 440.

Respondent would limit those cases to their facts, arguing (Br. 37-40) that agencies may "adjudicate 'conditions' on continued presence in the country" "when the remedy at issue [i]s deportation"; impose "punitive duties" during "customs" valuations; "decide whether to pay out funds" to government contractors; and resolve "counterclaims"—nothing more. That approach would reduce the public-rights doctrine to a random list of executive adjudications that respondent is willing to accept merely because this Court has already upheld them, without regard to *why* this Court did so. It also would jeopardize a host of statutes authorizing agencies to assess civil penalties for violating the terms of receiving public benefits, such as export licenses, see 22 U.S.C.

2278; grocery-store participation in the food stamps program, see 7 U.S.C. 2021; and federally provided bank insurance, see 12 U.S.C. 1818. See also Gov't Br. 44-45 (collecting additional examples).

b. Respondent argues (Br. 34) that the government's theory would have "sweeping" consequences, such as enabling agencies to adjudicate "penalties related to a broad variety of permits, licenses, registrations, and more." That ignores important constraints.

First, the government's argument is limited to the types of benefits that would have been considered privileges at the founding. For instance, "immigration," access to "public lands," "pensions," and "payments to veterans" are privileges, but ordinary interstate commerce is not. *Jarkesy*, 603 U.S. at 129-130; see p. 21, *infra*.

Second, the argument is limited to adjudications related to the privilege. Under the unconstitutional conditions doctrine, the government could not require individuals to accept non-germane conditions—like requiring recipients of veterans' benefits to accept agency adjudication of securities-fraud penalties. See, *e.g.*, *South Dakota* v. *Dole*, 483 U.S. 203, 207-208 (1987).

Third, the government's argument here is limited to matters "arising between the government and others"; consistent with the historical scope of the public-rights doctrine, it does not extend to adjudications of damages suits between private parties. *Oil States*, 584 U.S. at 334; see *Granfinanciera*, 492 U.S. at 65-66 (1989) (Scalia, J., concurring in part and concurring in the judgment). For instance, though the Department may adjudicate penalty proceedings brought by the government against H–2A employers, it may not decide breach-of-contract suits filed by workers.

Thus, recognizing that privileges are public rights would not allow the Securities and Exchange Commission to require participants "in the securities market" to accept administrative adjudication of penalties for securities fraud. Contra Resp. Br. 36. "To carry on interstate commerce is not a franchise or a privilege." *Crutcher* v. *Kentucky*, 141 U.S. 47, 57 (1891). Selling products "in interstate commerce" is "not a special governmental benefit that the Government may hold hostage, to be ransomed by the waiver of constitutional protection." *Horne* v. *Department of Agriculture*, 576 U.S. 351, 366 (2015). By contrast, the ability to bring aliens into the country is a matter "of favor and not of right," *Muñoz*, 602 U.S. at 912 (brackets, citation, and emphasis omitted), and Congress may require those who receive that benefit to accept executive adjudication of their compliance with the benefit's conditions. See *Jarkesy*, 603 U.S. at 129 n.1; *Oceanic Steam*, 214 U.S. at 334-335.

Respondent also errs in arguing (Br. 36) that the government's theory would allow it to dispense with Article III adjudication under the statute in *AT&T*. That statute penalized regulatory violations generally; it was not limited to violations of conditions of a license or other privilege. See 47 U.S.C. 503(b)(1)(B).

Respondent is likewise wrong (Br. 35-36) that the government's theory conflicts with *Stern* v. *Marshall*, 564 U.S. 462 (2011). There, this Court held that a creditor may not be required, as a condition of filing a claim, to accept a bankruptcy court's non-Article III adjudication of a debtor's state tort counterclaim. Unlike here, the dispute in *Stern* arose "between two private parties." *Id.* at 493. Also unlike here, the creditor's ability to file a claim in bankruptcy court was not a privilege;

the creditor "had nowhere else to go if he wished to recover." *Ibid.*

Respondent is similarly incorrect (Br. 34-35) that the government's theory would allow agencies to decide patent-infringement cases. Such cases arise between private parties and do not involve the government. Further, an alleged patent *infringer* has not received a privilege from the government and so cannot be required to accept agency adjudication.

Nor is there any merit to the contention that, when an agency assesses a penalty for violating the conditions of a privilege, the private party must be given a choice between paying the penalty and giving up the privilege. Contra Wurman Amicus Br. 3-19. The private party has the opportunity to make that choice at the outset, when accepting the privilege in the first place. For example, a farm that does not want to submit to agency adjudications can simply decline to participate in the H–2A program and thus forgo the privilege of importing foreign labor. But a farm that has availed itself of that privilege must abide by the associated conditions. It is not entitled to a last clear chance to leave the program after the agency has found a violation—at which point the harms to public rights have already occurred.

b. Respondent notes (Br. 40-42) that some amici, but not the government, have framed the argument in terms of whether respondent has "consented" to agency adjudication, or "waived" its right to a court, by participating in the H–2A program. The government agrees that framing is inapt. The critical question is whether the adjudication seeks to enforce the conditions of a privilege, and the answer here is yes.

c. Finally, the government's theory in no way resembles the public-rights theory in *Atlas Roofing Co.* v.

OSHRC, 430 U.S. 442 (1977). Contra Resp. Br. 43-44. *Atlas Roofing* stated that, whenever Congress "create[s] new statutory obligations" and "provide[s] for civil penalties for their violation," it may commit the enforcement of those penalties "to an administrative agency." *Id.* at 450. Respondent asks this Court to overrule *Atlas Roofing*, but this Court has already repudiated its analysis as "a departure from our legal traditions." *Jarkesy*, 603 U.S. at 138 n.4. Thus, the government is not relying on *Atlas Roofing* or arguing that executive agencies may assess civil penalties "in all contexts." *Id.* at 131 n.2. The government is simply arguing, consistent with *Jarkesy*, that *this* adjudication falls within narrow, historical public-rights categories. After *Jarkesy*, the government has declined to defend other adjudications that transgress *Jarkesy*'s limits.*

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The judgment of the court of appeals should be reversed.

Respectfully submitted.

D. JOHN SAUER
Solicitor General

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* See Gov't C.A. Br. at 10-21, *Comcast Corp.* v. *United States Department of Labor*, No. 25-2226 (4th Cir. Feb. 27, 2026); Letter from D. John Sauer, Solicitor Gen., to Mike Johnson, Speaker, U.S. House of Representatives (June 9, 2026), https://justice.gov/oip/media/1445401/dl?inline; Letter from D. John Sauer, Solicitor Gen., to Mike Johnson, Speaker, U.S. House of Representatives (Aug. 25, 2026), https://www.justice.gov/oip/media/1459066/dl?inline.