

No.

In the Supreme Court of the United States

SLIGO CREEK CENTER,

Petitioner,

v.

UNITED STATES DEPARTMENT OF
HEALTH & HUMAN SERVICES, ET AL.,

Respondents.

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

PETITION FOR A WRIT OF CERTIORARI

ASHLEY LEVINE
SPENCER DAVENPORT
Pacific Legal Foundation
3100 Clarendon Blvd.,
Suite 1000
Arlington, VA 22201

OLIVER J. DUNFORD
Counsel of Record
Pacific Legal Foundation
4440 PGA Blvd., Suite 600
Palm Beach Gardens, FL
33410
(916) 503-9060
ODunford@pacificlegal.org

JOSEPH L. BIANCULLI
Health Care Lawyers, PLC
5990 Deale Beach Road
Deale, MD 20751

Counsel for Petitioner

QUESTIONS PRESENTED

Petitioner Sligo Creek Center operates a Medicare-participating nursing home. Following an investigation into positive tuberculosis tests, the Department of Health and Human Services concluded that Sligo Creek violated federal infection-control requirements and imposed almost \$1.5 million in civil penalties. After nearly a decade of administrative proceedings, the Fourth Circuit concluded that the money penalty implicated the Seventh Amendment. But it nevertheless held that Sligo Creek was not deprived of its right to a jury trial because the government here enforced novel statutory obligations unknown to the common law, placing the case within the public-rights presumption articulated in *Atlas Roofing Co. v. OSHA*, 430 U.S. 442 (1977).

The Fourth Circuit’s decision exposes the tension between *Atlas Roofing* and this Court’s decision in *SEC v. Jarkesy*, 603 U.S. 109, 128, 131 (2024), which reaffirmed that the narrow public-rights exception is, “after all, an *exception*” to the rule that a legal claim—even a statutory legal claim—“presumptively concerns private rights” that must be adjudicated in an Article III court, by a jury when the Seventh Amendment applies. By contrast, *Atlas Roofing* presumes that novel statutory actions are public rights that may be assigned to the political branches for adjudication.

The questions presented are:

1. Whether, under a proper application of *Jarkesy*, Sligo Creek was entitled to have its case decided by a jury in an Article III court.
2. Whether the Court should overrule *Atlas Roofing*.

PARTIES TO THE PROCEEDING

Petitioner, plaintiff-appellant below, is Sligo Creek Center.

Respondents, defendant-appellees below, are the United States Department of Health and Human Services and Robert F. Kennedy, Jr., Secretary of the United States Department of Health and Human Services.

CORPORATE DISCLOSURE STATEMENT

Sligo Creek Center is owned by GHX TX Operations, LLC, which is owned by Genesis Holdings, LLC, an indirect subsidiary of Genesis Healthcare, Inc., which is a publicly traded company. Its stock trades under the ticker symbol GENNQ on the Over-the-Counter market. An organization chart is available at Appl. Ex. 1.

STATEMENT OF RELATED CASES

This case arises from the following proceeding:

Sligo Creek Center v. Health and Human Services,
No. 25-1669 (4th Cir.) (opinion issued June 5, 2026).

There are no additional proceedings in any court that are directly related to this case within the meaning of this Court's Rule 14(b)(iii).

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INTRODUCTION

The Nation’s 15,000 nursing homes—which serve some of our most vulnerable citizens, run on tight margins, and depend heavily on Medicare and Medicaid participation—are subject to statutory and regulatory schemes that impose various standards of care. To enforce these standards, the Department of Health and Human Services is authorized to impose substantial civil monetary penalties through administrative proceedings. Here, the government did not dispute that its penalty claim against Petitioner Sligo Creek Center “implicates” the Seventh Amendment. *SEC v. Jarkesy*, 603 U.S. 109, 120 (2024). App. 7a. Thus, the government’s statutory claim is a “Suit[] at common law” under the Seventh Amendment. *See Jarkesy*, 603 U.S. at 122-26. And “[o]nce such a suit ‘is brought within the bounds of federal jurisdiction,’ an Article III court must decide it, with a jury if the Seventh Amendment applies.” *Id.* at 127 (quoting *Stern v. Marshall*, 564 U.S. 462, 484 (2011)); *see id.* at 128 (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.”).

The court below, however, applied the public-rights presumption from *Atlas Roofing* and held that Sligo Creek was not entitled to a jury trial. According to the court, the claim here was not a “repackage[d]” common-law cause of action. App. 9a. Rather, it was based on a “detailed series of new requirements” that “are enforced by an intricate and ‘novel’ enforcement scheme that would have been ‘unknown to the common law.’” App. 9a-10a (quoting *Jarkesy*, 603 U.S. at 138-39).

That analysis inverted the constitutional question. Under longstanding constitutional principles, when the government seeks a legal remedy from a private party, Article III and the Seventh Amendment supply the default rule—the party gets a jury trial in an independent court. The public-rights exception “is, after all, an *exception*” and, therefore, as *Jarkesy* clarified, the burden lies with the government to show that its claim falls within the narrow set of cases that “historically could have been determined exclusively by [the executive and legislative] branches.” 603 U.S. at 128, 131 (citation omitted). But the court below placed the onus on Sligo Creek to overcome *Atlas Roofing*’s public-rights presumption by identifying a precisely analogous common-law action. App. 10a-12a. The court thus began on the public-rights side of the ledger and required Sligo Creek to distinguish its case “from the enforcement action considered in *Atlas Roofing*.” App. 9a. Finding no distinction, the court treated the action as a public right.

The lower court’s analysis stands in stark contrast to the Fifth Circuit’s approach in a similar case. *Tex. Tobacco Barn, LLC v. HHS*, 180 F.4th 229 (5th Cir. 2026). There, following administrative proceedings, HHS imposed civil money penalties for violations of the Food, Drug, and Cosmetic Act. Like here, HHS did not dispute that its case implicated the Seventh Amendment and instead argued that the public-rights exception applied. *Id.* at 234-35. Unlike here, however, the Fifth Circuit noted that suits at common law “presumptively concern ‘private rights’ and must be adjudicated by Article III courts.” *Id.* at 235-36 (citing *Jarkesy*, 603 U.S. at 127). The Fifth Circuit thus applied the “narrow” public-rights “exception,” and re-

quired the government to demonstrate that “adjudicating violations of public-health regulations ‘historically could have been determined exclusively by [the executive and legislative] branches.’” *Id.* at 236 (quoting *Jarkesy*, 603 U.S. at 128). It rejected HHS’s argument that the exception applies merely because Congress created “a novel and comprehensive scheme for the regulation of tobacco products.” *Id.* at 237. Therefore, the Fifth Circuit held, Texas Tobacco Barn was entitled to a jury trial in an Article III court. *Id.*

As *Jarkesy* confirmed, and as the Fifth Circuit recognized, the Seventh Amendment does not condition the jury-trial guarantee on a respondent’s ability to identify an eighteenth-century cause of action matching the government’s modern statutory claim. Rather, Article III and the Seventh Amendment establish the default rule: Private rights must be adjudicated in Article III courts, before a jury when the Seventh Amendment is implicated. And only under certain narrow circumstances may the government depart from that rule.

But the Fourth Circuit believed itself bound by *Atlas Roofing*, a decision *Jarkesy* describes as a “departure from our legal traditions.” *Jarkesy*, 603 U.S. at 138 n.4. That’s because *Atlas Roofing* applied a public-rights presumption to the Seventh Amendment analysis, stripping the jury-trial right from all sorts of claims. Lower courts remain caught between *Atlas Roofing*’s presumption and *Jarkesy*’s explication of the historical approach to the narrow public-rights exception.

Leaving that tension unresolved has consequences, as this case shows. The conflict between *Jarkesy* and *Atlas Roofing* allowed the government here to impose

a seven-figure penalty without a jury solely on the absence of a precise common-law analog. The Constitution should not make the right to a jury trial turn on that sort of burden-shifting or abstruse searching for precise, element-for-element common-law analogs. This Court should grant the petition and clarify that the jury-trial right is the rule, not the exception.

OPINIONS BELOW

The opinion of the Fourth Circuit (App. 1a-15a) is reported at 177 F.4th 556. The final decision of the Departmental Appeals Board of the Department of Health and Human Services (App. 18a-94a) is available at 2025 WL 2240827. The initial decision of the administrative law judge (App. 95a-200a) is available at 2020 WL 9720463.

JURISDICTION

The Fourth Circuit entered judgment on June 5, 2026. On August 13, 2026, Chief Justice Roberts granted an extension to file a petition until October 5, 2026. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The relevant constitutional and statutory provisions are included at App. 212a-259a.

* * *

STATEMENT OF THE CASE

A. Legal Background

1. The Seventh Amendment provides that “[i]n Suits at common law . . . the right of trial by jury shall be preserved.” U.S. Const. amend. VII. The right is “of such importance and occupies so firm a place in our history and jurisprudence that any seeming curtailment of [it] should be scrutinized with the utmost care,” as it always has been. *Dimick v. Schiedt*, 293 U.S. 474, 486 (1935). The right is deeply rooted in the Anglo-American legal tradition, and the Founders viewed the denial of jury trials as one of the grievances that justified independence from England. *Jarkesy*, 603 U.S. at 121-22. The Constitution’s ratification debates identified the absence of a civil-jury guarantee as a serious defect, see *The Federalist No. 83*, at 495 (Clinton Rossiter ed. 1961) (Alexander Hamilton), prompting the Framers to promise a post-ratification amendment so that the right would be “embedded” in the Constitution and secured “against the passing demands of expediency or convenience,” *Reid v. Covert*, 354 U.S. 1, 10 (1957) (plurality opinion). Consistent with that understanding, this Court has explained that “every encroachment upon [the right to a jury trial] has been watched with great jealousy.” *Parsons v. Bedford*, 28 U.S. (3 Pet.) 433, 446 (1830).

The Amendment’s reference to “common law” does not confine its protection to causes of action bearing the precise forms of action that existed in 1791. Instead, “common law” distinguishes proceedings at law from those in equity or admiralty. *Ibid.* The Amendment thus protects the jury-trial right in suits that are legal in nature, even when the cause of action arises under a modern statute. *Jarkesy*, 603 U.S. at 115-16,

122; *Tull v. United States*, 481 U.S. 412, 417-25 (1987).

To determine whether one is entitled to a jury trial, *Jarkesy* instructs courts to answer two questions: first, whether the action is legal in nature and thus implicates the Seventh Amendment; and second, whether the action falls within the narrow public-rights exception. 603 U.S. at 120. To determine whether a suit is legal in nature, the Court considers both the nature of the cause of action and the remedy sought. *Id.* at 122-23; *Tull*, 481 U.S. at 417. And because a cause of action may implicate both legal and equitable principles, the remedy is ordinarily the “more important” consideration. *Tull*, 481 U.S. at 421. The second inquiry asks whether the matter falls within the narrow class of disputes historically committed exclusively to the political branches and therefore exempt from the ordinary requirements of Article III and the Seventh Amendment. *Jarkesy*, 603 U.S. at 128.

2. Congress established Medicare to provide health insurance to individuals 65 and older, as well as those with specified disabilities. Medicaid does the same for those with low incomes. Both programs are administered by the Secretary of Health and Human Services, acting through the Centers for Medicare & Medicaid Services (CMS). Beneficiaries receive care from a range of providers, including hospitals, nursing homes, ambulatory surgical centers, and hospices. To participate in Medicare and Medicaid, facilities must enter a provider agreement with the Secretary and then comply with the conditions the Secretary has chosen to impose. 42 U.S.C. §§ 1395cc, 1396a(a)(27).

Congress charges the Secretary with ensuring that participating facilities protect the health and safety of their patients. To that end, Congress has granted him broad rulemaking authority to adopt regulations “necessary to the efficient administration of the functions with which [he] is charged.” 42 U.S.C. § 1302(a). Congress supplemented that general grant with provider-specific authorizations. Nursing homes, for example, “must meet” the “requirements relating to the health, safety, and well-being of residents or relating to the physical facilities thereof as the Secretary may find necessary.” *Id.* § 1395i-3(d)(4)(B). Acting under these authorities, the Secretary, through CMS, has promulgated detailed conditions of participation covering staff qualifications, facility conditions, and other matters he has deemed necessary to protect health and safety. *See, e.g.*, 42 C.F.R. pt. 482 (hospitals); *id.* pt. 483 (long-term care facilities); *id.* §§ 416.25-416.54 (ambulatory surgical centers). These conditions include a requirement that facilities maintain an “infection prevention and control program designed to provide a safe, sanitary, and comfortable environment and to help prevent the development and transmission of communicable diseases and infections.” 42 C.F.R. § 483.80.

In the Federal Nursing Home Reform Act, Pub. L. No. 100-203, 101 Stat. 1330 (1987), Congress responded to a “broad consensus” that then-existing standards allowed too many substandard nursing homes to continue operating, subjecting residents to care that was “likely to hasten the deterioration of their physical, mental, and emotional health.” H.R. Rep. No. 100-391, pt. 1, at 452 (1987). The Reform Act tightened the substantive standards imposed on nurs-

ing homes and “significantly broadened” the Secretary’s enforcement authority, *see Shalala v. Ill. Council on Long Term Care, Inc.*, 529 U.S. 1, 6 (2000), reflecting what this Court has since described as the nation’s “longstanding national commitment to provide safe and dignified care for the elderly,” *Health & Hosp. Corp. of Marion Cnty. v. Talevski*, 599 U.S. 166, 180–81 (2023). The Act requires nursing homes to provide care in a manner that promotes “maintenance or enhancement of the quality of life of each resident,” 42 U.S.C. § 1395i-3(b)(1)(A), and, as relevant here, obligates facilities to “establish and maintain an infection control program designed to provide a safe, sanitary, and comfortable environment in which residents reside and to help prevent the development and transmission of disease and infection,” *id.* § 1395i-3(d)(3)(A). CMS’s implementing regulations flesh out that mandate, directing facilities to “[i]nvestigate[], control[], and prevent[] infections in the facility” and to “[m]aintain[] a record of incidents and corrective actions related to infections.” 42 C.F.R. § 483.65(a)(1), (3) (2016).

3. To ensure compliance with these requirements, Congress gave the Secretary enforcement authority to seek a range of remedies, including “terminat[ing] the facility’s participation” in Medicare, “deny[ing] any further payments” until the facility brings itself into compliance, and “appoint[ing] temporary management to oversee” the facility. 42 U.S.C. § 1395i-3(h)(2)(A)(i), (B)(i), (B)(iii). The Secretary may also impose civil monetary penalties reaching thousands of dollars for each day of noncompliance. *Id.* § 1395i-3(h)(2)(B)(ii).

The Secretary has implemented this authority through a multi-level administrative enforcement regime that precedes any judicial review. The process starts with a survey conducted by state agencies acting on CMS's behalf. 42 U.S.C. § 1395i-3(g), (h). If surveyors identify a deficiency, CMS may determine the duration and severity of the alleged noncompliance; determine whether the noncompliance constitutes "immediate jeopardy" as defined in 42 C.F.R. § 488.301, 42 U.S.C. § 1395i-3(h)(4); and unilaterally impose a civil monetary penalty, *id.* § 1395i-3(h)(2)(B)(ii). CMS "is not obligated to return any money to victims" (if any). *Jarkesy*, 603 U.S. at 124 (citations omitted). Before the penalty is collected, facilities may request an independent informal dispute-resolution proceeding. 42 C.F.R. § 488.431(a). An entity independent of the survey agency must conduct that process, issue a written determination, and complete its review within 60 days of the facility's request. *Ibid.*

Facilities face a difficult choice once that review finishes. CMS regulations offer a 35 percent reduction in the assessed penalty if the facility waives its right to further administrative review. 42 C.F.R. § 488.436. A facility that elects to pursue its challenge forfeits that reduction and must pay the full penalty amount into escrow while the administrative litigation proceeds. *See* 42 U.S.C. § 1395i-3(h)(2)(B)(ii)(IV)(cc); 42 C.F.R. § 488.431(b). If the facility ultimately prevails, the escrowed funds are returned with interest. *Id.* § 488.431(d)(2). According to CMS, these mechanisms "creat[e] financial incentives for facilities to maintain compliance and promptly correct any noncompliance" and to address "[c]oncerns about the delays in payment." 76 Fed. Reg. 15,106, 15,107 (Mar. 18, 2011).

The in-house review of CMS's determination consists of two levels. An HHS administrative law judge (ALJ) conducts the first level of review. 42 C.F.R. § 498.40. The ALJ receives documentary evidence, hears witness testimony, resolves factual disputes, and determines whether CMS lawfully imposed the penalty. *Id.* § 498.60. A dissatisfied party may then seek review before HHS's Departmental Appeals Board, which issues the Secretary's final administrative decision. *Id.* § 498.74(b). The Appeals Board's decision represents final action by the Secretary and is appealable directly to the court of appeals. *Id.* § 498.90. This process does not include juries.

B. Factual and Procedural Background

1. Petitioner Sligo Creek Center operates a Maryland-based nursing home that participates in Medicare. App. 3a. In the spring of 2015, two Sligo Creek employees and a former resident tested positive for active tuberculosis. App. 3a, 31a-32a. Active TB causes symptoms and is contagious. Latent TB, by contrast, is neither symptomatic nor contagious, but it can progress into an active infection. App. 3a. Federal guidance generally recommends evaluation and prophylactic treatment of residents diagnosed with latent TB unless treatment is contraindicated. App. 25a-26a. At the time, Maryland law and guidance contemplated a cooperative effort between nursing facilities and local public-health authorities in responding to TB cases. App. 26a-27a.

Consistent with those recommendations and requirements, Sligo Creek immediately consulted with local health officials and began a facility-wide response. App. 33a-34a. An initial round of testing

showed that no residents had active TB, and 19 residents tested positive for latent TB. App. 34a. Sligo Creek and county officials planned a second round of testing several weeks later, consistent with standard TB protocols. They agreed that treatment decisions would await completion of that process. App. 34a.

During the summer and fall of 2015, Sligo Creek completed additional testing, transmitted results to county officials, obtained chest x-rays for residents who had tested positive for latent TB, and repeatedly sought guidance regarding next steps. App. 34a-37a. All chest x-rays were negative for active TB. Sligo Creek also surveilled and monitored the residents identified as having latent infection. During this period, Sligo Creek anticipated that county officials would complete the remaining testing and provide resident-specific treatment recommendations. App. 133a-140a. Sligo Creek communicated with state officials for several months about next steps. App. 133a-140a. One resident received prophylactic treatment for a latent TB infection. App. 35a.

Sligo Creek continued monitoring residents who had tested positive for latent TB. In June 2016, a year after the initial diagnoses, one resident who had tested positive for latent TB complained of coughing and chest pain. App. 37a. Chest x-rays did not identify active TB, and her treating physician diagnosed her with acute bronchitis. App. 37a. In August, however, the resident began coughing up blood—a symptom associated with active TB. App. 37a. Sligo Creek immediately transferred her to a hospital, where she was ultimately diagnosed with active tuberculosis. App. 37a. Following that diagnosis, Sligo Creek again worked with county officials to initiate widespread

testing and investigation. Although there were no additional residents with active TB, 23 residents tested positive for latent infection, including 17 who previously had latent TB. App. 37a. State officials prescribed prophylactic treatment for these residents. App. 37a.

2. Following the identification of tuberculosis at the facility, state officials investigated whether Sligo Creek had violated the Nursing Home Reform Act. They determined that Sligo Creek “failed to ensure timely follow-up of the treatment and management of multiple residents who were identified at risk for exposure to a serious infectious disease” (that is, active TB) “and failed to record in [those] residents’ clinical records the rationale for treatment/non-treatment for” latent TB. App. 38a-39a (alterations and quotation marks removed). The investigation also found that Sligo Creek’s violations had placed residents in “immediate jeopardy.” App. 39a.

Sligo Creek contested the investigation’s findings, including the findings of non-compliance and immediate jeopardy. App. 39a. The State upheld the citation in a written determination. App. 39a-40a.

CMS then adopted those findings and imposed civil monetary penalties. App. 40a. CMS determined that Sligo Creek had been in immediate-jeopardy noncompliance from June 14 through October 5, 2016, and imposed a penalty of \$12,541 per day for that period. App. 40a. CMS further imposed a penalty of \$303 per day for the period from October 6 through December 11, 2016. App. 40a.

On January 31, 2017, CMS issued a final penalty determination totaling \$1,449,975. App. 97a-98a. To pursue administrative and judicial review, Sligo

Creek was required to place the entire penalty amount in escrow, *see* 42 U.S.C. § 1395i-3(h)(2)(B)(ii)(IV)(cc); 42 C.F.R. § 488.431(b), where the funds remain.

Sligo Creek timely requested administrative review before an HHS ALJ, challenging both the finding of noncompliance and the civil monetary penalty. App. 40a. The ALJ conducted an evidentiary hearing in July 2018. App. 98a. More than two years later, on October 23, 2020, the ALJ issued a decision sustaining CMS's enforcement action. App. 95a-200a. He concluded that Sligo Creek "was not in substantial compliance with program participation requirements" because it failed to maintain an infection-control policy as required by 42 C.F.R. § 483.65 (2016). App. 162a-163a, 199a. He further upheld CMS's immediate-jeopardy determination and found that the penalties were reasonable "based on the facts." App. 198a.

Sligo Creek then sought review of the ALJ's decision before HHS's Departmental Appeals Board. Sligo Creek renewed many of its challenges and also argued that the agency violated the Seventh Amendment by adjudicating the case and imposing substantial monetary penalties without a jury. App. 47a-50a.

The Board affirmed in a final decision on May 23, 2025, more than eight years after Sligo Creek initiated administrative review and nearly nine years after the alleged period of noncompliance ended. App. 18a. The Board concluded that Sligo Creek had failed to comply with its tuberculosis infection-control policy and rejected Sligo Creek's contention that responsibility for the challenged conduct rested with local public-health authorities. App. 51a-79a. The Board upheld CMS's immediate-jeopardy finding, sustained the

monetary penalty, and rejected Sligo Creek’s constitutional objections. App. 79a-93a.

Sligo Creek filed a petition for review at the Fourth Circuit.

3. The Fourth Circuit affirmed. Applying *Jarkesy*, the court concluded that the civil monetary penalty challenged here implicates the Seventh Amendment—a point the government did not contest. App. 7a-8a. The first *Jarkesy* requirement was thus satisfied. Turning to the second factor—whether the narrow public-rights exception to Article III applies—the court asked whether the government’s claim here resembled the action in *Granfinanciera, S.A. v. Nordberg*, 492 U.S. 33 (1989), or the action in *Atlas Roofing*. App. 8a. With this binary test in mind, the court concluded that Sligo Creek “had no Seventh Amendment right to a jury trial here because this action ‘cannot be distinguished from the enforcement action considered in *Atlas Roofing*.’” App. 9a (quoting *Axalta Coating Sys., LLC v. FAA*, 144 F.4th 467, 475-76 (3d Cir. 2025)). According to the court, the action here involved public rights because Congress hadn’t codified a common-law cause of action; it instead created a detailed series of new statutory and regulatory obligations which apply only to nursing facilities that voluntarily participate in Medicare. App. 9a-10a. Given the voluntary nature of the program and the scheme’s allegedly “novel” enforcement structure, the court concluded that it was bound by *Atlas Roofing*. “And under [*Atlas Roofing*’s] rule this case involves public rights.” App. 10a (quoting *Axalta*, 144 F.4th at 482 (Bibas, J., concurring)).

The Fourth Circuit also rejected Sligo Creek’s argument that the enforcement action was analogous to

a common-law tort or contract action. App. 10a-12a. Although the court acknowledged that the enforcement action involved the failure to fulfill a duty, it reasoned that the duty arose, not from “any common law duty of care,” but from Sligo Creek’s voluntary participation in a government program through which public funds are spent to achieve public benefits. App. 10a-11a. The court also noted that, unlike at common law, HHS could impose penalties without proving actual injury or damages. App. 11a. The court likewise found no common-law analog to the enforcement of statutory and regulatory requirements under the Medicare scheme. App. 12a. The court rejected Sligo Creek’s remaining challenges to the agency’s decision, App. 13a-15a, and denied the petition for review.

REASONS FOR GRANTING THE PETITION

The court below took on an exceptionally important issue and got it wrong. Applying this Court’s decision in *Jarkesy*, the Fourth Circuit agreed that CMS’s civil monetary penalties “implicate[] the Seventh Amendment,” App. 7a, a point the government did not dispute. That concession should have decided the case. Under *Jarkesy*, when a claim implicates the Seventh Amendment—that is, when a suit is legal in nature—the jury-trial right attaches unless the government identifies a narrow public-rights exception that strips away that right. Instead of asking whether this enforcement action affirmatively resembles the kind of narrow, sovereign-specific claim that “historically could have been determined exclusively by [the executive and legislative] branches,” *Jarkesy*, 603 U.S. at 128, the panel treated the existence of new statutory obligations enforced through civil penalties as alone sufficient to trigger the public-rights exception. That

approach flips the private-rights presumption on its head: Rather than requiring the government to justify displacing the jury-trial right, the lower court effectively presumed displacement and forced the regulated party to prove otherwise. Under the Fourth Circuit's logic, the Seventh Amendment offers no protection to the thousands of small nursing facilities that keep their doors open by accepting Medicare and Medicaid patients.

That is not and cannot be the law. *Jarkesy* held that the “public rights” label does not turn on whether a claim arises under a modern regulatory statute, but on whether the claim itself is the kind that was historically resolved exclusively without a jury. This case is Exhibit A for why that inquiry matters. HHS is not vindicating some uniquely governmental prerogative like the power to exclude aliens or administer public lands; it is exacting punitive, seven-figure monetary penalties from a private facility for an alleged regulatory violation—the paradigmatic legal remedy the Seventh Amendment was designed to protect. *See, e.g., Tull*, 481 U.S. at 418-19.

The Fourth Circuit's reliance on *Atlas Roofing* only heightens the stakes—and the need for this Court's review. This Court has shied away from applying the public-rights doctrine as announced under *Atlas Roofing* in recent years. And for good reason: It flips first principles on their head and presumes non-Article III adjudicatory forums without juries. But while this Court may walk away from *Atlas Roofing*, lower courts are obligated to apply it and, as this case shows, their applications expand “public rights” far beyond their historical limits.

The decision below is an ideal vehicle for this Court's review. The question was preserved, briefed, argued, and decided below on a fully developed record, and the panel's reliance on *Atlas Roofing* was explicit and outcome-determinative. If *Atlas Roofing* means that Congress may create statutory obligations, attach civil monetary penalties, and—without more—thereby place enforcement actions outside the jury-trial right, then *Atlas Roofing* cannot be reconciled with *Jarkesy*'s historical understanding of the public-rights exception. In that event, the Court should overrule *Atlas Roofing* rather than continue forcing lower courts to choose between *Jarkesy*'s first principles and *Atlas Roofing*'s departure.

Finally, this Court is poised to consider related questions in *Department of Labor v. Sun Valley Orchards, LLC*, No. 25-966, and it should at a minimum hold this petition for that case. But strong reasons favor granting review here too, as this case offers the Court a clean vehicle to address *Atlas Roofing*. Moreover, whatever this Court says about the public-rights exception's reach over immigration, the application of that exception to federal healthcare funding is a different and easier question. Either way, the Court should not leave the decision below standing.

I. The Fourth Circuit's Decision Applying *Atlas Roofing* Is Indefensible and Deepens a Circuit Split

The Fourth Circuit's *Jarkesy* analysis cannot be reconciled with this Court's decision in *Jarkesy*. In ruling for HHS, the Fourth Circuit turned *Jarkesy* on its head and deepened a circuit split.

Rather than treating public rights as a narrow, historically grounded exception, the Fourth Circuit followed *Atlas Roofing*—a “departure from our legal traditions,” *Jarkesy*, 603 U.S. at 138 n.4—which presumes that every novel statutory cause of action involves a public right unless the challenger can show a precise common-law analog. That approach makes public rights the rule and private rights the exception, expanding the public-rights doctrine far beyond its historical bounds. Constitutional first principles—as reaffirmed in *Jarkesy*—point the other way: The Constitution presumes Article III courts, with juries when the Seventh Amendment applies. Given this conflicting precedent, this Court should grant certiorari and confirm first principles control.

A. The Fourth Circuit Inverts *Jarkesy*’s Analysis

This Court’s decision in *Jarkesy* and the government’s concession that this case “implicates the Seventh Amendment” should have made this case straightforward. App. 7a. Once the government acknowledges that the penalty implicates the Seventh Amendment, the action is presumptively one for an Article III court and jury. *Jarkesy*, 603 U.S. at 122-23, 127-28. The court below didn’t follow that conclusion where it led. Instead, it treated the public-rights exception not as a narrow exception to the Article III default, but as an invitation to ask whether the proceeding more closely resembled *Granfinanciera* or *Atlas Roofing*. That approach both displaced *Jarkesy*’s prescribed historical inquiry and improperly placed on petitioner the burden of identifying a precise common-law analog.

Here, the government did not contest that the penalty “implicates the Seventh Amendment.” App. 7a. Rightly so. When an agency seeks a civil monetary penalty, “the remedy is all but dispositive” because such a remedy is “designed to punish or deter” and is therefore “a type of remedy at common law that could only be enforced in courts of law.” *Jarkesy*, 603 U.S. at 123, 125 (quoting *Tull*, 481 U.S. at 422). Once that conclusion is established, *Jarkesy* directs that the action presumptively belongs in an Article III court before a jury. *Id.* at 127-28.

The government must then overcome that presumption by showing that the action falls within those matters that have been resolved outside Article III courts: revenue collection, customs, immigration, tariffs, tribal relations, public lands, public benefits, and patents. *Id.* at 128-30. That burden is a demanding one: The exception may not “swallow the rule,” and “[e]ven with respect to matters that arguably fall within [its] scope . . . , the presumption is in favor of Article III courts.” *Id.* at 131-32. The government therefore must show that the action belongs to a narrow category of matters that “historically could have been determined exclusively by [the executive and legislative] branches.” *Id.* at 128.

The court below asked a different question. Having acknowledged that the Seventh Amendment right was triggered, it engaged in a binary sorting exercise, asking whether the proceeding “more closely resembles the essentially common law action in *Granfinanciera*” or “the action in *Atlas Roofing*.” App. 8a (quoting *Axalta*, 144 F.4th at 475). That inquiry displaced the question *Jarkesy* requires—whether the action is one historically reserved exclusively to nonjudicial resolution. Rather than determine whether the government

had shown that its penalty action fit within one of the historically recognized public-rights categories, the panel asked whether the statute was novel and, therefore, within *Atlas Roofing*'s public-rights presumption.

The panel compounded that error by requiring Sligo Creek to overcome this presumption by conducting an “abstruse historical” search for a precise common-law analog. *Tull*, 481 U.S. at 421 (citation omitted). See App. 10a. That inverts the inquiry. The constitutional presumption favors Article III courts and juries, when the Seventh Amendment applies, and it is thus the government’s burden to justify a departure from Article III’s vesting of “all Cases” in the judiciary—not the regulated party’s obligation to earn its way back in. The panel’s approach turned the government’s Seventh Amendment concession—which this Court calls “all but dispositive”—into one with no practical consequence. *Jarkesy*, 603 U.S. at 123.

The panel’s analysis thus collapses *Jarkesy*’s narrow exception into the default rule for the modern regulatory state.

B. The Courts of Appeals Have Adopted Conflicting Understandings of the Public-Rights Exception After *Jarkesy*

This case squarely implicates an acknowledged conflict over the scope of the public-rights exception after *Jarkesy*. Within a year of each other, the Fifth and Fourth Circuits each considered civil money penalties imposed through HHS’s jury-less administrative process. In each case, the government conceded that the penalty implicated the Seventh Amendment. The Fifth Circuit held that the proceeding could not

be adjudicated outside an Article III court. *Tex. Tobacco Barn*, 180 F.4th at 237. The court below held otherwise, relying heavily on the Third Circuit’s analysis in *Axalta*. The conflict turns on what remains of *Atlas Roofing* after *Jarkesy*.

1. The Fifth Circuit in *Texas Tobacco Barn* reviewed an HHS proceeding for violations of the Food, Drug, and Cosmetic Act (FDCA). After the government conceded that the action for civil money penalties implicated the Seventh Amendment, the court assessed whether the public-rights exception nonetheless permitted agency adjudication. 180 F.4th at 234-37. The Fifth Circuit applied the historical inquiry this Court prescribed, placing the burden on the government to “demonstrate that adjudicating violations of public-health regulations ‘historically could have been determined exclusively by [the executive and legislative] branches.’” *Id.* at 236 (quoting *Jarkesy*, 603 U.S. at 128). Because the government could not establish that historical pedigree, the Fifth Circuit held that this failure “alone [was] fatal because courts may not expand the public-rights exception beyond its historical limits.” *Id.*

The court then rejected each of the government’s remaining arguments. HHS claimed that Congress could assign it authority to adjudicate FDCA violations because the statute is a valid exercise of the “congressional power to regulate public health.” *Id.* at 236-37. “But *Jarkesy* rejected that very claim.” *Id.* at 237. Accepting the government’s argument would create an “automatic[]” Article III/Seventh Amendment exception “whenever Congress assigns a matter to an agency for adjudication,” which “is not the law.” *Ibid.* (quoting *Jarkesy*, 603 U.S. at 139-40). HHS also argued that the scheme was “novel and comprehensive”

and therefore “unknown to the common law.” *Ibid.* Again, the court rejected that argument as inconsistent with *Jarkesy*, which “confirmed that ‘the Seventh Amendment *does apply* to novel statutory regimes.’” *Ibid.* (quoting *Jarkesy*, 603 U.S. at 139).

2. The Fourth Circuit took the opposite approach. As explained above, it asked whether the “enforcement proceeding here more closely resembles the essentially common law action in *Granfinanciera* or the action in *Atlas Roofing*.” App. 8a (cleaned up). That approach treats the novelty of the statutory scheme as the touchstone of the public-rights inquiry and leaves the regulated party to prove otherwise.

The Fourth Circuit’s “[r]easoning by analogy”—sorting between *Granfinanciera* and *Atlas Roofing*—was adopted from the Third Circuit’s decision in *Axalta Coating Systems*, 144 F.4th at 477. There, as here, the government sought civil monetary penalties in an agency proceeding and conceded that the penalty implicated the Seventh Amendment. *Id.* at 475. The Third Circuit nevertheless concluded that because the regulations brought “no common law soil with them” and “resembled a detailed building code,” this Court’s decision in *Atlas Roofing* “controll[ed]” and permitted agency adjudication. *Id.* at 475, 477 (citation omitted).

Judge Bibas joined the opinion in full because he believes that “*Atlas Roofing* binds us,” but wrote separately to explain that the public-rights caselaw “is also at war with itself.” *Id.* at 482-84 (Bibas, J., concurring). In his view, *Atlas Roofing* effectively presumes a public right whenever Congress creates a government-enforced “cause of action,” and “*Jarkesy* never flipped the presumption back.” *Id.* at 484. This

“flip,” he explained, “expands public rights far beyond their historical limits” and “confines *private* rights” to a “finite list of traditional common-law actions” eligible for Article III adjudication. *Ibid.*

The conflict is therefore not a disagreement over the application of a settled test to different facts. Rather, the circuits have adopted competing accounts of the governing test itself. The Fifth Circuit recognizes *Jarkesy*’s return to first principles and requires the government to establish a historical basis for removing a Seventh Amendment claim from an Article III court. The Third and Fourth Circuits instead treat *Atlas Roofing* as controlling whenever Congress enacts new statutes. Both cannot be correct—and only the Fifth Circuit’s approach is consistent with *Jarkesy*’s instruction that the public-rights exception remains a narrow, historically grounded exception to the Article III default.

C. The Incoherence of the Inverted Analysis Is Especially Apparent Here, Where the Cause of Action Is Analogous to Common Law Claims

As Judge Bibas recognized, bringing this case within the public-rights exception is possible only by extending the exception beyond its historically recognized scope. This Court has repeatedly cautioned against doing so. The closest relevant historical category here concerns public benefits, but the government’s action against Sligo Creek has nothing to do with the conferral, denial, or revocation of any public benefit. The government instead seeks to exact a statutory penalty—a claim that was never determined exclusively by the executive and legislative branches.

See *Tull*, 481 U.S. at 418-19 (“Actions by the Government to recover civil penalties under statutory provisions therefore historically have been viewed as one type of action in debt requiring trial by jury.”); see also *Stockwell v. United States*, 80 U.S. (13 Wall.) 531, 543 (1871) (“[I]t has frequently been ruled that debt will lie, at the suit of the United States, to recover the penalties and forfeitures imposed by statutes.”).

Indeed, *Tull* forecloses the features that the panel treated as distinguishing this action from the common law. See App. 9a-10a. The Clean Water Act was a novel federal scheme with no precise common-law ancestor; the duty at issue was defined by a permit rather than by any general common-law obligation; and the United States proved neither harm to any person nor loss to itself. *Tull*, 481 U.S. at 414-15. Yet this Court held that the civil-penalty action was subject to the Seventh Amendment. *Id.* at 427. The Third Circuit dismissed *Tull* as “not relevant to [the] assessment of the public rights doctrine” because it arose in district court rather than before an agency. *Axalta*, 144 F.4th at 475-76 n.2. But that distinction misses the point: As this Court has explained, the relevant question is the nature of the action, not the forum to which Congress assigns it. Indeed, Congress cannot transform a traditionally legal claim into a public right simply by assigning it to an administrative tribunal. *Jarkesy*, 603 U.S. at 127-28.

What’s more, the action resembles other common-law claims. A claim arising from the breach of a duty undertaken in performing an office, employment, or trust is akin to a tort. See, e.g., 3 W. Blackstone, *Commentaries on the Laws of England* *122-23, *163-64 (1768) (Blackstone) (describing damages actions for

injuries resulting from the failure to perform such duties with “integrity, diligence, and skill”); *Slater v. Baker*, 95 Eng. Rep. 860 (C.P. 1767) (jury trial involving unskillful care by physician); *Cross v. Guthery*, 2 Root 90, 91 (Conn. Super. Ct. 1794) (jury award for unskillful performance by physician). And statutory penalties likewise have long been recoverable through actions sounding in contract: A penalty imposed by statute was deemed an implied undertaking to pay, recoverable through the same action of debt as a sum due on a penal bond. 3 Blackstone *153-54, *158-60; see, e.g., *Farrar v. United States*, 30 U.S. (5 Pet.) 373 (1831) (debt on a penal bond tried before jury). These analogs reinforce *Tull*’s holding that the government’s effort to recover a monetary penalty is not a matter historically committed exclusively to executive or legislative resolution.

Nor does Sligo Creek’s participation in a voluntary public program alter the analysis. App. 10a-11a. If participating in a government program could convert an otherwise judicial claim into a public right, constitutional protections may be denied whenever the government conditions participation in a regulated or benefit-conferring program on compliance with administrative requirements. That cannot be the rule. *Jarkesy* itself rejected the notion that Congress may “siphon [an] action away from an Article III court” simply by “originat[ing] [it] in a newly fashioned regulatory scheme.” 603 U.S. at 135. And the principle would apply equally to regulated parties who voluntarily enter federal regulatory programs, including George Jarkesy himself, a registered investment adviser who voluntarily operated in a federally regulated market. See *ibid.*

The government therefore cannot identify a historical basis for treating this statutory-penalty action as a public right. Because the action implicates the Seventh Amendment and falls outside the narrow public-rights exception, Sligo Creek is entitled to a jury trial.

II. If *Atlas Roofing* Dictates the Result Below, the Court Should Overrule It

As explained above, a proper application of *Jarkesy* confirms that the Seventh Amendment entitles a person to a jury trial when HHS seeks civil penalties for statutory violations. But if the decision below is correct that *Atlas Roofing* nonetheless controls, then the Court should grant certiorari to reconsider *Atlas Roofing*.

This Court has already signaled that *Atlas Roofing*'s days are numbered. In *Jarkesy*, the Court described *Atlas Roofing* as “a departure from our legal traditions.” 603 U.S. at 138 n.4. The Court went further still, noting that Justice White—the author of *Atlas Roofing*—suggested in a later dissent that the decision may already have been effectively overruled: “Perhaps . . . *Atlas Roofing* is no longer good law after today’s decision.” *Granfinanciera*, 492 U.S. at 79 (White, J., dissenting). And *Jarkesy* candidly acknowledges that some of the Court’s public-rights “precedents” are themselves “confusing.” 603 U.S. at 130. It’s little wonder, then, that this Court’s decisions have not relied on *Atlas Roofing*.

But lower courts do not have the luxury of ignoring *Atlas Roofing*. To the contrary, courts are bound to apply it, producing a doctrinal whipsaw between *Jarkesy*’s principles and *Atlas Roofing*’s departure. See, e.g., *Axalta*, 144 F.4th at 475-76 (applying *Atlas Roofing* and noting that *Jarkesy* did not “overrule” it);

Meta Platforms, Inc. v. FTC, 723 F. Supp. 3d 64, 92 (D.D.C. 2024) (concluding *Atlas Roofing* “forecloses . . . [Meta’s Article III] claim”); *Manis v. USDA*, 796 F. Supp. 3d 178, 205 (M.D.N.C. 2025) (“*Atlas Roofing* controls.”), *appeal dismissed as moot*, No. 25-2001 (4th Cir. June 17, 2026); *cf. Tex. Tobacco Barn*, 180 F.4th at 240 (Douglas, J., dissenting) (applying *Atlas Roofing* because *Jarkesy* “expressly declined to overrule” the decision).

Judge Bibas put his finger on the precise problem: *Atlas Roofing* holds that “whenever Congress creates new statutory obligations, imposes civil penalties for their violation, and tasks the sovereign with enforcing them, the public-rights exception applies.” *Axalta*, 144 F.4th at 483 (Bibas, J., concurring) (internal quotations removed). Under that rule, “any time Congress creates a cause of action enforced by the government, *Atlas Roofing* presumes that it involves a public right.” *Ibid.* That “flips” and “contradicts” the “first principles that *Jarkesy* purported to embrace upside down”: Rather than requiring the government to justify displacing the jury-trial right, *Atlas Roofing* “presumes that a cause of action involves public rights,” leaving the challenger to show that his claim “affirmatively resembles a historical action at common law” or else be swept into “the public-rights bucket.” *Id.* at 484. Thus, “public rights [become] the rule and private rights the exception”—an inversion of what Article III and the Seventh Amendment demand. *Ibid.*

That inversion was applied here. The Fourth Circuit reasoned that even though the “government ‘does not contest that the money penalty challenged here implicates the Seventh Amendment,’” App. 7a, *Atlas Roofing* controlled because Sligo Creek’s “choice to

participate in a voluntary government program (Medicare) where public funds are spent to achieve public benefits” was dispositive. App. 10a. So, despite acknowledging that *Jarkesy* described “public rights ‘precedents’ as ‘confusing,’” the court concluded that “*Atlas Roofing* [bound]” it. App. 8a, 10a. A doctrine that lower courts must apply but cannot coherently define, and that this Court itself has all but disavowed, is not a doctrine that can bear the weight *Atlas Roofing* places on it.

Decades of practice under *Atlas Roofing* have exposed the decision’s flaws. Commentators have long recognized that the decision is “indefensible as a matter of Seventh Amendment construction,” because of its reliance on a bare “social balancing process,” rather than the Amendment’s text, structure, or history. Martin Redish & Daniel La Fave, *Seventh Amendment Right to Jury Trial in Non-Article III Proceedings: A Study in Dysfunctional Constitutional Theory*, 4 Wm. & Mary Bill Rts. J. 407, 408, 411 (1995); see also Vikram David Amar, *Implementing an Historical Version of the Jury in an Age of Administrative Fact-finding and Sentencing Guidelines*, 47 S. Tex. L. Rev. 291, 298 (2005) (criticizing *Atlas Roofing*). But because *Atlas Roofing* remains on the books, lower courts follow it and—as shown here—extend its reach. As a result, courts deprive litigants of the constitutional protections that Article III and the Seventh Amendment demand—protections that distinguish an Article III tribunal from an executive tribunal. The regulated parties subject to these proceedings are the ones who pay the price, forced to defend themselves before one-sided and protracted agency adjudication instead of the neutral juries the Constitution guarantees them. “That is why the Constitution built ‘high

walls and clear distinctions’ to safeguard individual liberty.” *Jarkesy*, 603 U.S. at 167 (Gorsuch, J., concurring) (quoting *Plaut v. Spendthrift Farm, Inc.*, 514 U.S. 211, 239 (1995)).

In sum, the decision below shows that *Atlas Roofing* is overdue for overruling. Simply ignoring it “leads not only to an implausibly broad construction of public rights, but [also] to an implausibly narrow understanding of the jury-trial guarantee.” *Id.* at 166 (Gorsuch, J., concurring). As Judge Bibas recently explained, a historically grounded approach would begin with the presumption that the case involves private rights and require the government to show that it falls within a “public-rights exception known at the Founding.” *Axalta*, 144 F.4th at 484 (Bibas, J., concurring). Yet “*Atlas Roofing* binds [his] hands.” *Id.* This case gives the Court the chance to bring the public-rights doctrine back into line with *Jarkesy* and the Constitution’s original meaning.

III. The Questions Presented Are Important, and This Case Is an Excellent Vehicle to Resolve Them

This case is undeniably important on multiple levels. Medicare is the single largest health insurer in the United States, covering roughly 68 million Americans, most of them elderly or disabled, many of whom will spend some part of their final years in a Medicare-certified skilled nursing facility. Almost all facilities accept Medicare and Medicaid. Statista Research Department, *Distribution of Nursing Homes in the United States from 2015 to 2024, by Certification Type*, Statista (last updated Dec. 11, 2024), <https://tinyurl.com/552s7d8b> (94 percent of nursing homes cer-

tified by both Medicare and Medicaid in 2024). Congress and CMS enforce that system chiefly through civil monetary penalties, and those penalties are adjudicated not by a jury but by the very agency whose money is on the line. The Seventh Amendment issue here thus affects a substantial federal enforcement regime governing thousands of skilled nursing facilities nationwide.

The parties preserved, fully briefed, and argued the issue, and the court squarely decided it below. The parties agree that “the money penalty challenged here ‘implicates the Seventh Amendment.’” App. 7a (quoting government’s brief). The only disputes are over the nature (presumptive or not) and the scope (broad or not) of the public-rights exception to that guarantee. The court of appeals resolved them by relying expressly on *Atlas Roofing*, holding that the “petitioner had no Seventh Amendment right to a jury trial here because this action ‘cannot be distinguished from the enforcement action considered in *Atlas Roofing*.’” App. 9a (quoting *Axalta*, 144 F.4th at 475-76). But *Atlas Roofing* is at war with *Jarkesy*, and every day that conflict persists, nursing facilities—and the residents who depend on them—absorb the cost.

This case is also unlikely to arise in a cleaner posture. The regulatory scheme itself strongly discourages nursing facilities from seeking judicial review of the penalties CMS imposes. Under 42 C.F.R. § 488.436, a facility that waives its right to a hearing receives a 35 percent reduction in its civil monetary penalty; a facility that contests the penalty forfeits that reduction. On top of that, the Secretary may collect and hold the penalty in escrow pending any further appeals. 42 U.S.C. § 1395i-3(h)(2)(B)(ii)(IV)(dd);

42 C.F.R. § 488.431(a), (b). Thus, a facility that believes CMS has violated its constitutional rights must first make an economic choice—accept the agency’s determination and receive a substantial discount, or challenge it and forfeit that discount while undertaking years of administrative and judicial proceedings that could outlast the facility itself.

Because Medicare and Medicaid reimbursements are the financial lifeblood of most nursing facilities—the majority of which are mom-and-pop operations with little margin for prolonged litigation against the federal government—that choice is rarely a close one. CMS itself reported that in 2016, 81 percent of facilities facing civil monetary penalties filed an express waiver, another 15 percent did not contest the penalty but failed to submit a waiver, and only 4 percent appealed and went through the hearing process. 84 Fed. Reg. 34,737, 34,751 (July 18, 2019). Recent data tell the same story. 88 Fed. Reg. 53,200, 53,326 (Aug. 7, 2023). In other words, the government’s enforcement system effectively prices constitutional review—and prices it so high that almost no one seeks it.

For the rare facility that continues, the road is long. What began as an agency enforcement proceeding has now consumed roughly a decade, during which Sligo Creek’s parent company underwent substantial financial restructuring while the parties navigated extensive administrative and judicial proceedings. *In re Genesis Healthcare*, No. 25-80185 (Bankr. N.D. Tex. filed July 9, 2025). A provider hoping to establish that the Constitution entitles it to a jury therefore cannot simply obtain judicial review of that question at the outset. It must first survive a lengthy administrative process that includes escrowing the funds, forfeiting a

discount, and absorbing the mounting legal costs before obtaining a definitive ruling. CMS has admitted that this scheme is by design. The process “creat[es] financial incentives for facilities to maintain compliance and promptly correct any noncompliance” and addresses “[c]oncerns about the delays in payment.” 76 Fed. Reg. at 15,107. In short, the agency has built a system that discourages the very challenges that would test its constitutionality—which is exactly why a case like this one, where a petitioner beat the odds and stayed the course, is so rare.

The stakes go well beyond this Petitioner or the nursing-home industry, although either would be reason enough for review. Nursing facilities operate within one of the most heavily regulated corners of American life, and their existence rises and falls with Medicare and Medicaid reimbursement policy. But the constitutional question extends to every agency that enforces statutory violations through administrative penalties. And even though this Court in *Jarkesy* described *Atlas Roofing*’s logic as “circular,” “a departure from our legal traditions,” and suggested it may already be effectively overruled, *Jarkesy*, 603 U.S. at 136 n.3, 138 n.4, 139, until this Court intervenes and drives a stake through *Atlas Roofing*, lower courts will continue to treat *Atlas Roofing* as binding. As Judge Bibas observed, courts are left hoping that “the Supreme Court will soon take this accreted jumble and order it into a rule that is coherent, consistent, and true to the Constitution’s original safeguards.” *Axalta*, 144 F.4th at 485 (Bibas, J., concurring). This case provides the Court with an ideal opportunity to do exactly that.

IV. At a Minimum, This Court Should Hold the Petition Pending Its Resolution of *Department of Labor v. Sun Valley Orchards, LLC*

For those reasons, this case warrants certiorari. But at a minimum, the Court should hold this petition pending its decision in *Department of Labor v. Sun Valley Orchards, LLC*, No. 25-966 (argument set for Nov. 10, 2026). *Sun Valley* addresses the scope of the public-rights doctrine in the context of immigration. Any decision there will thus help determine how rigorously to police the boundaries of a public-rights category post-*Jarkesy*—bearing directly on the analysis here.

Yet the cases diverge in meaningful ways. The government’s theory in *Sun Valley* rests on rights belonging to the sovereign—control over immigration—and on the privilege of bringing foreign laborers into the country. Br. for Pet’rs at 36-37, *Dep’t of Lab. v. Sun Valley Orchards, LLC*, No. 25-966 (U.S. June 18, 2026). This case presents neither category. Instead, it concerns whether Congress may condition the receipt of federal funds to provide medical care on executive adjudication without a jury. That distinction matters because “privilege” is not a single, fungible category for public-rights purposes. Government-conferred privileges must be independently analyzed rather than swept collectively into the exception. See Caleb Nelson, *Vested Rights, “Franchises,” and the Separation of Powers*, 169 U. Pa. L. Rev. 1429, 1438 (2021); see also *Trs. of Dartmouth Coll. v. Woodward*, 17 U.S. (4 Wheat.) 518, 700, 712 (1819) (Story, J., con-

curing) (noting that privileges granted by government may vest as legal estates not subject to unilateral revision absent a reservation in the grant).

Nor does *Sun Valley* pose a real threat to *Atlas Roofing*. The government there does not rely on that decision, and *Sun Valley* itself indicated that overruling *Atlas Roofing* is unnecessary to resolve the Article III question before the Court. Br. for Resp't at 43, *Dep't of Lab. v. Sun Valley Orchards, LLC*, No. 25-966 (U.S. July 27, 2026) ("*Atlas Roofing* does not apply and should be overruled."). But whatever *Sun Valley* holds about the scope of the public-rights doctrine will necessarily bear on the continued vitality and reach of *Atlas Roofing*. And if *Sun Valley* confirms that the doctrine does not extend as broadly as *Atlas Roofing* assumed, this case provides the Court the opportunity to address the distinct question that *Sun Valley* does not present: whether *Atlas Roofing* should be overruled.

The two cases therefore have both important overlap and meaningful daylight. This Court would thus benefit from granting review and hearing this case in the same Term as *Sun Valley*. But one way or another, the decision below should not be the last word on whether Congress may strip Seventh Amendment rights by devising a regulatory scheme.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

ASHLEY LEVINE
SPENCER DAVENPORT
Pacific Legal Foundation
3100 Clarendon Blvd.,
Suite 1000
Arlington, VA 22201

OLIVER J. DUNFORD
Counsel of Record
Pacific Legal Foundation
4440 PGA Blvd., Suite 600
Palm Beach Gardens, FL
33410
(916) 503-9060
ODunford@pacificlegal.org

JOSEPH L. BIANCULLI
Health Care Lawyers, PLC
5990 Deale Beach Road
Deale, MD 20751

Counsel for Petitioner

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