No. 26-473

In the Supreme Court of the United States

SLIGO CREEK CENTER, PETITIONER

v.

DEPARTMENT OF HEALTH AND HUMAN SERVICES, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE RESPONDENTS

D. JOHN SAUER
Solicitor General
Counsel of Record
BRETT A. SHUMATE
Assistant Attorney General
DANIEL AGUILAR
DAVID L. PETERS
Attorneys

Department of Justice
Washington, D.C. 20530-0001
SupremeCtBriefs@usdoj.gov
(202) 514-2217

QUESTION PRESENTED

Whether Congress violated the Seventh Amendment by authorizing the Department of Health and Human Services to assess civil penalties against nursing homes that fail to comply with the conditions of participating in the Medicare program.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-15a) is reported at 177 F.4th 556. The final decision of the Departmental Appeals Board (Pet. App. 18a-94a) is available at 2025 WL 2240827. The initial decision of the administrative law judge (Pet. App. 95a-200a) is available at 2020 WL 9720463.

JURISDICTION

The judgment of the court of appeals was entered on June 5, 2026. On August 13, 2026, the Chief Justice extended the time within which to file a petition for a writ of certiorari to and including October 5, 2026, and the petition was filed on that date. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. Medicare is a federal program that provides health insurance to elderly or disabled Americans. See *Advocate Christ Medical Center* v. *Kennedy*, 605 U.S. 1, 5 (2025). Medicare is administered by the Secretary of Health and Human Services, acting through the Centers for Medicare and Medicaid Services (CMS). See *id.* at 9. Medicare beneficiaries receive care from a range of providers, such as hospitals and nursing homes. To participate in the program and receive payment for services, a provider must enter into an agreement with the Secretary and must comply with conditions imposed by Congress and the Secretary. See 42 U.S.C. 1395cc.

In 1987, Congress enacted the Federal Nursing Home Reform Act (Reform Act), Pub. L. No. 100-203, Tit. IV, Subtit. C, 101 Stat. 1330–160, to address concerns about the "poor condition" of many nursing homes and to ensure "safe and dignified care for the elderly." *Health & Hospital Corp.* v. *Talevski*, 599 U.S. 166, 181 (2023). As relevant here, the statute requires a nursing home that seeks to participate in Medicare 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." 42 U.S.C. 1395i–3(d)(3)(A). A nursing home that seeks to participate in Medicare must also comply with "such other requirements relating to the health, safety, and well-being of residents * * * as the Secretary may find necessary." 42 U.S.C. 1395i–3(d)(4)(B).

Under the Reform Act's cooperative-federalism scheme, the Secretary and the States work together to enforce the statute's requirements. See *Talevski*, 599 U.S. at 182. State agencies may inspect nursing homes,

investigate complaints, and monitor compliance. See 42 U.S.C. 1395i–3(g). If a State finds that a nursing home has violated applicable requirements, it may ask the Secretary to take remedial action. See 42 U.S.C. 1395i–3(h)(1). The remedies available to the Secretary include civil money penalties, denial of payment for services, and termination of the nursing home's participation in Medicare. See 42 U.S.C. 1395i–3(h)(2) and (4).

Agency rules establish a multi-level administrative process for imposing these remedies, including civil money penalties. The process includes the issuance of notice of the penalty, a hearing before an administrative law judge (ALJ), and review by the Departmental Appeals Board. See 42 C.F.R. 488.402-488.408, 488.434, 498.40, 498.82. Once that process concludes, an adversely affected person may file a petition for review in a court of appeals. See 42 U.S.C. 1320a–7a(e), 1395i–3(h)(2)(B)(ii)(I).

2. Petitioner Sligo Creek Center runs a Medicare-participating nursing home in Montgomery County, Maryland. Pet. App. 3a. In 2015, state health officials informed petitioner that two nursing-home employees and a former resident had been diagnosed with active tuberculosis. *Ibid.* The officials told petitioner's staff that the facility was at "high risk" for tuberculosis transmission and that, though the officials would provide guidance, petitioner's staff would be responsible for testing residents and obtaining follow-up treatment. *Ibid.* (citation omitted).

Under both standard recommended practices and petitioner's internal policies, the appropriate response to the outbreak of active tuberculosis was to administer skin tests to all residents, to administer chest x-rays to residents whose skin tests were positive, and to assess

for treatment residents whose chest x-rays indicated that they had latent tuberculosis. Pet. App. 3a-4a. Though latent tuberculosis is asymptomatic and noncontagious, it can, if left untreated, progress to active tuberculosis, which can be deadly. *Id.* at 3a.

Petitioner followed only the first steps of that protocol. Pet. App. 4a. It administered skin tests and chest x-rays, but it failed to evaluate for treatment the more than two dozen residents whose chest x-rays indicated latent tuberculosis. *Ibid.*

A state health agency conducted an investigation and found that petitioner had violated its duty to establish and maintain an adequate "infection control program." 42 C.F.R. 483.65 (2016); see Pet. App. 4a-5a. CMS concurred in the state agency's findings and assessed civil penalties totaling $1,449,975. Pet. App. 201a-211a. The penalties were sustained by the ALJ, *id.* at 95a-200a, and then by the Appeals Board, *id.* at 18a-94a.

3. The Fourth Circuit denied petitioner's petition for review. Pet. App. 1a-15a.

The court of appeals rejected petitioner's claim that the agency's imposition of civil penalties violated the Seventh Amendment. Pet. App. 6a-12a. The court held that, because this case involves public rights, an agency may adjudicate it in the first instance without a jury. *Id.* at 7a-8a. The government had argued that this case fits within the public-rights doctrine because it concerns petitioner's compliance with the conditions of receiving a government-conferred privilege—namely, the ability to participate in the Medicare program. See Gov't C.A. Br. 28-38. The court agreed that this case "arose from petitioner's choice to participate in a voluntary government program (Medicare) where public funds are spent to achieve public benefits." Pet. App.

10a. But instead of relying on that theory alone, the court invoked *Atlas Roofing Co.* v. *OSHRC*, 430 U.S. 442 (1977), a case that the government had not even cited. Pet. App. 8a. This Court had held in *Atlas Roofing* that the public-rights doctrine allows an executive agency to assess civil penalties against employers that violate workplace health and safety standards. See 430 U.S. at 449-461. The court of appeals concluded that this case, which involves health standards for nursing homes, "closely resembles" "the action in *Atlas Roofing*." Pet. App. 8a (citation omitted); see *id.* at 8a-12a. The court found it significant that, like *Atlas Roofing*, this case involves "statutory and regulatory obligations" rather than "common law" duties. *Id.* at 12a.

DISCUSSION

Petitioner contends (Pet. 15-34) that the Reform Act violates the Seventh Amendment by empowering an executive agency to assess civil penalties against nursing homes that violate the conditions of participating in Medicare. The court of appeals' judgment rejecting that contention was correct. But much of its reasoning —which relied on an expansive theory of public rights set out in *Atlas Roofing Co.* v. *OSHRC*, 430 U.S. 442 (1977), but later repudiated in *SEC* v. *Jarkesy*, 603 U.S. 109 (2024)—is unsound. Because this Court reviews judgments rather than opinions, and because the judgment in this case does not conflict with any decision of this Court or of any other court of appeals, the decision below does not warrant further review. But the Court should hold the petition for a writ of certiorari pending the resolution of *Department of Labor* v. *Sun Valley Orchards, LLC*, cert. granted, No. 25-966 (oral argument scheduled for Nov. 10, 2026), a pending case concerning the scope of the public-rights doctrine.

A. The Court Of Appeals' Judgment Is Correct

In general, Article III and the Seventh Amendment reserve to federal courts, sitting with juries, the power to resolve suits involving private rights and seeking common-law remedies, such as civil money penalties. See *Jarkesy*, 603 U.S. at 122-126. Under Article II, however, Congress may empower executive agencies, acting without juries, to adjudicate disputes involving public rights. See *id.* at 127-132. Though this Court "has not 'definitively explained' the distinction between public and private rights," it has made clear that history provides a meaningful guide. *Id.* at 131 (citation omitted). One way to tell whether a case involves public rights is to look at "historic categories of adjudications" that traditionally could be conducted by executive officers. *Id.* at 130.

As the government has argued in *Sun Valley*, one well-established category of public-rights cases consists of adjudications to enforce the terms and conditions of receiving privileges. See Gov't Br. at 30-32, *Sun Valley*, *supra* (No. 25-966). Privileges are benefits conferred by the government, such as patents, pensions, and grants of public lands. See *Jarkesy*, 603 U.S. at 130. Privileges stand in contrast to the private rights of life, liberty, and property. See *Axon Enterprise, Inc.* v. *FTC*, 598 U.S. 175, 197 (2023) (Thomas, J., concurring).

When Congress confers a privilege, it generally may empower an executive agency, rather than an Article III court, to adjudicate matters related to the privilege. See William Baude, *Adjudication Outside Article III*, 133 Harv. L. Rev. 1511, 1579 (2020); John Harrison, *Public Rights, Private Privileges, and Article III*, 54 Ga. L. Rev. 143, 183 (2019). The recipient's voluntary acceptance of the privilege "ha[s] the effect of lifting

any 'private rights' bar" that might otherwise apply. *Wellness International Network, Ltd.* v. *Sharif*, 575 U.S. 665, 718 (2015) (Thomas, J., dissenting).

This Court has applied that principle across a wide range of contexts. For instance, the Court has held that executive agencies may assess monetary penalties to enforce the terms of the privilege of bringing aliens into the United States, see *Oceanic Steam Navigation Co.* v. *Stranahan*, 214 U.S. 320, 334-343 (1909); the privilege of importing foreign merchandise into the United States, see *Bartlett* v. *Kane*, 16 How. 263, 272 (1854); or the privilege of contracting with the government, see *Allman* v. *United States*, 131 U.S. 31, 35 (1889). By the same logic, Congress may require plaintiffs who seek "the privilege of suing the government" despite its sovereign immunity to accept non-Article III adjudication of their claims and the United States' counterclaims. *McElrath* v. *United States*, 102 U.S. 426, 440 (1880). Similarly, because patents are privileges, Congress may authorize "post-issuance administrative review" of patents' validity. *Oil States Energy Services, LLC* v. *Greene's Energy Group, LLC*, 584 U.S. 325, 339 (2018).

Those principles are relevant here because a nursing home's ability to participate in Medicare is a privilege. A nursing home has no private right to receive payment from the United States for services provided to elderly individuals. Federal reimbursement for nursing-home services is instead a public benefit, provided by Congress pursuant to the Spending Clause, U.S. Const. Art. I, § 8, Cl. 1. Such "public benefits" lie at the core of the public-rights doctrine. *Jarkesy*, 603 U.S. at 130.

The Reform Act requires nursing homes seeking that privilege to comply with various conditions. Among other things, such a nursing home must operate

an adequate "infection control program" and must meet "other requirements relating to the health, safety, and well-being of residents." 42 U.S.C. 1395i–3(d)(3)(A) and (4)(B). Those rules "apply only to [nursing homes] that voluntarily participate in Medicare," Pet. App. 9a; a nursing home that does not want to comply with those rules can simply decline to join the program.

Article III does not entitle nursing homes to judicial adjudication of their compliance with those conditions. Instead, under Article II and the public-rights doctrine, Congress may empower an executive agency to enforce the conditions of the privilege of Medicare participation. Congress has done so here, providing that, if the Secretary determines that a nursing home has violated program rules, he may impose civil penalties, withhold payment for services, or eject the nursing home from the program. See 42 U.S.C. 1395i–3(h).

Contrary to petitioner's contention (Pet. 25), that analysis is consistent with *Jarkesy*'s holding that the public-rights doctrine does not allow the Securities and Exchange Commission to assess civil penalties against an investment adviser for securities fraud. As *Jarkesy* emphasized, "the object of th[e] SEC action [was] to regulate" "the securities markets"—a form of "interstate commerce" involving "transactions between private individuals interacting in a pre-existing market." 603 U.S. at 130 n.1, 136. Generally, "[t]o carry on interstate commerce is not a franchise or a privilege." *Crutcher* v. *Kentucky*, 141 U.S. 47, 57 (1891). In other words, the ability to engage in such 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, a nursing home's

ability to receive federal reimbursement through Medicare *is* a special privilege conferred by the federal government, and Congress may authorize an executive agency to adjudicate compliance with the terms of the privilege.

B. The Court Of Appeals' Reasoning Was Wrong

Consistent with its arguments here, the government argued below that this case fits within the public-rights doctrine because it concerns the "condition[s]" of a "public-benefits progra[m]." Gov't C.A. Br. 33; see *id.* at 28-38. The court of appeals recognized that "the duty here arose from petitioner's choice to participate in a voluntary government program (Medicare) where public funds are spent to achieve public benefits." Pet. App. 10a. But the court's reasoning relied primarily on *Atlas Roofing*, see *id.* at 8a-9a—a decision that government did not cite below, see Gov't C.A. Br. 28-38, and has disavowed elsewhere, see Gov't Reply Br. at 22-23, *Sun Valley*, *supra* (No. 25-966).

In *Atlas Roofing*, this Court held that the public-rights doctrine allows an executive agency to impose civil penalties on employers that violate workplace health and safety standards. See 430 U.S. at 449-461. The Court concluded that, whenever Congress creates "new statutory obligations" that are "unknown to the common law," it may empower an executive agency to "decid[e] whether a violation has in fact occurred" and, if so, to impose "civil penalties." *Id.* at 450, 461. The court of appeals reasoned that this case, which involves health and safety standards for nursing homes, "closely resembles" "the action in *Atlas Roofing*." Pet. App. 8a (citation omitted). It added that, like *Atlas Roofing*, this case involves "novel" statutory duties that are "unknown to the common law." *Id.* at 10a (citation omitted).

That mode of analysis was flawed. In *Jarkesy*, this Court criticized *Atlas Roofing* as a "departure from our legal traditions," 603 U.S. at 138 n.4, and repudiated its theory that the public-rights doctrine applies whenever Congress creates "new statutory obligations," *id.* at 135 (citation omitted). The court of appeals erred by relying on *Atlas Roofing*'s unduly expansive reasoning and by extending that reasoning to a new context.

Far from resembling *Atlas Roofing*, this case differs from that one in a crucial respect. This case involves compliance with the conditions of receiving a privilege. *Atlas Roofing* did not; the workplace health and safety standards at issue there applied to employers generally and were not related to any public benefits conferred by the government. The court of appeals should therefore have upheld the adjudication here by applying the well-established principle that Congress may empower an agency to adjudicate compliance with the terms of a privilege, not by drawing an analogy to *Atlas Roofing*.

C. The Court Of Appeals' Judgment Does Not Warrant This Court's Plenary Review

This Court "reviews judgments, not statements in opinions." *Black* v. *Cutter Laboratories*, 351 U.S. 292, 297 (1956). "The fact that the [lower court] reached its decision through analysis different than this Court might have used does not make it appropriate for this Court to rewrite the [lower] court's decision." *California* v. *Rooney*, 483 U.S. 307, 311 (1987) (per curiam). Because the court of appeals' judgment is correct and does not conflict with any decisions of this Court or of any other court of appeals, this Court's plenary review is not warranted.

Petitioner errs in contending (Pet. 21-23) that the Fourth Circuit's judgment here conflicts with the Fifth

Circuit's decision in *Texas Tobacco Barn, LLC* v. *HHS*, 180 F.4th 229 (2026). In *Texas Tobacco Barn*, the Fifth Circuit held that an entirely different statute—one that authorizes the Food and Drug Administration to assess civil penalties for the unauthorized sale of e-cigarette products—violates the Seventh Amendment and falls outside the scope of the public-rights doctrine. See *id.* at 234-237. Unlike this case, *Texas Tobacco Barn* did not involve an agency's enforcement of the terms and conditions of the privilege of participating in a public-benefit scheme. The Fifth Circuit explicitly acknowledged, moreover, that adjudications involving "public benefits" fall within the public-rights doctrine. *Id.* at 236. The Fifth Circuit's decision thus does not suggest that it would hold that the agency adjudication here violates the Seventh Amendment.

Petitioner likewise errs in arguing (Pet. 17) that this Court should grant certiorari because "this case offers the Court a clean vehicle to address *Atlas Roofing*." The government did not rely on *Atlas Roofing* below and does not rely on it here. This case also meaningfully differs from *Atlas Roofing* because it involves an agency's enforcement of the conditions of a privilege. See pp. 7-8, *supra*.

D. This Court Should Hold The Petition For *Sun Valley*

In *Sun Valley*, this Court is considering whether the public-rights doctrine allows the Department of Labor to adjudicate proceedings to collect monetary remedies from farms that violate the conditions of the H–2A visa program, through which farms can bring aliens into the United States for seasonal agricultural work. See Gov't Br. at 6-16, *Sun Valley*, *supra* (No. 25-966). The government has argued that such H–2A adjudications fit within two overlapping categories of adjudications that

historically could be assigned to executive officers. See *id.* at 27. First, executive officers may collect monetary remedies to protect rights that belong to the sovereign, including the right to control immigration. See *ibid.* Second, executive officers may assess civil penalties to enforce the terms and conditions of receiving privileges, including the privilege of bringing aliens into the United States under the H–2A program. See *ibid.*

The second of those theories—that the public-rights doctrine allows agencies to enforce the conditions of privileges—is the basis of the government's defense of the agency adjudication in this case. The Court should therefore hold the petition for a writ of certiorari in this case pending the resolution of *Sun Valley*. Accord Pet. 33-34. If the Court in *Sun Valley* accepts that theory, or resolves the case without reaching that theory, it should deny the petition here. But if the Court rejects the theory, it would be appropriate to grant the petition here, vacate the judgment, and remand the case to the court of appeals for further consideration.

CONCLUSION

This Court should hold the petition for a writ of certiorari pending the resolution of *Department of Labor* v. *Sun Valley Orchards, LLC*, cert. granted, No. 25-966 (oral argument scheduled for Nov. 10, 2026), and then dispose of the petition as appropriate.

Respectfully submitted.

D. JOHN SAUER
Solicitor General
BRETT A. SHUMATE
Assistant Attorney General
DANIEL AGUILAR
DAVID L. PETERS
Attorneys

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