No.:_____

In the
Supreme Court of the United States

NORCAVE PROPERTIES, L.L.C.,
Petitioner,

- v -

INTERNAL REVENUE SERVICE,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

The Seventh Amendment preserves the right of trial by jury in suits at common law. That right includes the right to defend against penalties asserted by administrative agencies like the IRS.

But the Fifth Circuit below held that taxpayers cannot vindicate that right because of the Tax Anti-Injunction Act in 26 U.S.C. § 7421(a). This case presents an ideal vehicle to address this issue and resolve two questions of exceptional importance:

1) Whether the Tax Anti-Injunction Act precludes taxpayers from bringing direct actions to vindicate their constitutional rights.

2) Whether taxpayers have a constitutional right to a jury trial when the IRS asserts penalties based on misstatements and negligence.

PARTIES TO THE PROCEEDING

The parties to the proceeding below are as follows:

Petitioner is Norcave Properties, LLC. It was the plaintiff in the district court and appellant in the court of appeals.

Respondent is the Internal Revenue Service. It was the defendant in the district court and appellee in the court of appeals.

CORPORATE DISCLOSURE STATEMENT

In accordance with Supreme Court Rule 29, Petitioner Norcave Properties, LLC states that it has no parent companies or publicly held companies with a 10% or greater ownership interest in it.

DIRECTLY RELATED PROCEEDINGS

This case arises from the following proceedings:

- U.S. Court of Appeals for the Fifth Circuit, No. 25-30542, *Norcave Properties, LLC v. IRS*, judgment entered August 21, 2026.

- U.S. District Court for the Western District of Louisiana, No. 2:25-CV-398, *Norcave Properties, LLC v. IRS*, judgment entered August 25, 2025.

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PETITION FOR A WRIT OF CERTIORARI

Norcave Properties, LLC respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit in this matter.

OPINIONS BELOW

The opinion of the U.S. Court of Appeals for the Fifth Circuit is reported at 188 F.4th 818 and is reproduced in the Appendix at 1a to 16a.

The district court's memorandum opinion dismissing Norcave's action is unreported but is reproduced in the Appendix at 17a to 23a.

JURISDICTION

The Fifth Circuit issued its opinion and judgment on August 21, 2026. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

STATUTES INVOLVED

The Seventh Amendment to the United States Constitution provides:

> In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

26 U.S.C. § 7421(a) provides:

> Except as provided in sections 6015(e), 6212(a) and (c), 6213(a), 6232(c), 6330(e)(1), 6331(i), 6672(c), 6694(c), 7426(a) and (b)(1), 7429(b), and 7436, no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person, whether or not such person is the person against whom such tax was assessed.

28 U.S.C. § 2201(a) provides:

> In a case of actual controversy within its jurisdiction, except

with respect to Federal taxes other than actions brought under section 7428 of the Internal Revenue Code of 1986, . . . any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.

INTRODUCTION

The Seventh Amendment dictates that "[i]n Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved." As it "has been often said," "the trial by jury is a fundamental guaranty of the rights and liberties of the people." *Hodges v. Easton*, 106 U.S. 408, 412 (1882). Thus, this Court held that the SEC violated the Seventh Amendment by imposing fraud penalties through an internal enforcement action without providing the right to a jury trial. *SEC v. Jarkesy*, 603 U.S. 109, 120-21 (2024). Norcave sought the same thing here—a jury trial to defend against penalties asserted by an administrative agency (the IRS).

But the Fifth Circuit held that Norcave could not even *try* to vindicate that right. By relying on the Tax Anti-Injunction Act ("AIA"), the Fifth Circuit held that neither it nor the district court had jurisdiction to consider Norcave's request for a jury trial.

That holding is incorrect, inconsistent with previous caselaw, and troubling in its implications. It ignores both the plain text of the statute and this Court's teachings about the statute in *CIC Services, LLC v. IRS*, 593 U.S. 209 (2021). Under the Fifth Circuit's interpretation, taxpayers are precluded from raising constitutional questions in federal court. Such a ruling not only contravenes congressional intent and this Court's precedent but also provides carte blanche for an administrative

agency to flout constitutional principles with impunity. In reality, the Constitution requires something more.

Thus, the Fifth Circuit's decision satisfies three of this Court's criteria for granting review.

First, the panel's decision is contrary to this Court's reading of the statute in *CIC Services*. As in that case, Norcave is not seeking to prohibit the IRS from collecting taxes. It is seeking a determination about something else entirely. As in *CIC Services*, this case lacks the direct connection to "assessment or collection" of taxes that the AIA contemplates.

Second, the decision below deepens a split among the courts of appeal as to the interaction between the Constitution and the AIA. While the Fifth Circuit held that the AIA bars Norcave's suit to vindicate a constitutional right, other circuits have given a narrower interpretation to the statute in the constitutional context.

Third, this case presents an exceptionally important question about the relationship between the Constitution and statutory law: Does the AIA prevent taxpayers from bringing direct actions to vindicate their constitutional rights?

Underlying all of these criteria is the particular constitutional right at issue. A citizen's right to a jury trial is no less important because the citizen is also a taxpayer. When the IRS asserts penalties based on things like misstatements and

negligence, a taxpayer has a constitutional right to defend against those penalties before a jury. The Fifth Circuit improperly disregarded that right.

STATEMENT OF THE CASE

a. Background

Norcave owns property in Louisiana. In 2018, Norcave donated both cash and a conservation servitude on its property to a charitable organization. Because Congress provided a tax deduction for such donations, Norcave reported a deduction for the donations on its tax return.

But the IRS does not like these types of donations. *See, e.g.*, *Rajagopalan v. Comm'r*, 120 T.C.M. (CCH) 355, at *1 (2020). So in January 2025, the IRS issued a notice to Norcave disallowing its reported charitable deductions and seeking to impose tax that the IRS believed was not paid.

Separate and apart from the tax, the IRS also asserted penalties against Norcave. Specifically, the IRS sought to impose millions of dollars in civil fraud penalties,[1] gross valuation penalties, negligence penalties, and substantial understatement of income tax penalties.

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[1] The day before oral argument in the Fifth Circuit, the IRS stated that it was no longer pursuing penalties based on fraud. However, the IRS continues to assert penalties based on negligence and misstatements.

The parties agree that the penalties that the IRS seeks to impose (under 26 U.S.C. §§ 6662 and 6663) are civil and legal in nature; they are not based in equity or admiralty. The penalties are intended, at least in part, to punish Norcave.

It is also undisputed that regardless of whether Norcave challenged the IRS's attempted imposition of penalties in the Tax Court, the Court of Federal Claims, or a United States District Court, it would not have the opportunity for a jury trial.

b. Proceedings Below

Norcave filed the complaint in this matter on March 27, 2025, requesting declaratory and injunctive relief related to its right to a jury trial. The district court granted judgment on the pleadings for the IRS and entered a final judgment dismissing the complaint. Norcave timely appealed.

Exercising jurisdiction pursuant to 28 U.S.C. § 1291, the Fifth Circuit affirmed. 188 F.4th 818 (5th Cir. 2026). The court characterized Norcave's suit as "a pre-payment challenge to an assessment of tax liability." *Ibid.* at 820. Based on that characterization, the court reasoned that "under the IRC's enforcement provisions related to accuracy and reporting requirements, the assessment of an accuracy-related tax penalty under § 6662 counts as part of tax liability, thereby falling within the jurisdiction stripping" of the AIA and the corollary provision in the Declaratory Judgment Act. *Ibid.*

REASONS FOR GRANTING THE PETITION

By ratifying the Seventh Amendment, the people of the United States confirmed the importance of the right to a jury trial in civil cases. The AIA cannot—and was never meant to—flout that or any other constitutional guarantee. That is why this Court and several circuit courts have held that the statute is limited in its scope. The AIA bars an action to stop the collection or assessment of tax. That is all.

The Fifth Circuit below rejected this limitation and instead impermissibly expanded the scope of the statute. The court held that the AIA prevents federal courts from addressing a constitutional challenge brought by a taxpayer, even when that challenge is not directly about the assessment or collection of tax. Under that rationale, the IRS can do whatever it wants without any constitutional limitation. By ruling this way, the Fifth Circuit joined at least two other circuits in improperly broadening the scope of the AIA. Its holding permits an administrative agency—an agency with immense power and influence over taxpayers nationwide—to avoid constitutional challenges. Under the Fifth Circuit's ruling, the IRS can flout constitutional guarantees with impunity. And as relevant here, the holding essentially nullifies the Seventh Amendment when it comes to tax disputes.

The Fifth Circuit "decided an important federal question in a way that conflicts with [a] relevant decision[] of this Court." Sup. Ct. Rule 10(c). By holding that the AIA bars Norcave's suit,

the decision below directly contravenes this Court's decision in *CIC Services*.

The Fifth Circuit's decision also "conflict[s] with the decision[s] of []other United States court[s] of appeals on the same important matter." Sup. Ct. Rule 10(a). Specifically, the decision gives a broad interpretation of the AIA that conflicts with other circuits' interpretation in suits involving constitutional rights.

In all events, the decision below involves "an important question of federal law that has not been, but should be, settled by this Court." Sup. Ct. Rule 10(c). Whether a citizen of the United States can bring a direct action to vindicate a constitutional right—even if that right has some indirect effect on taxation—is a question of exceptional importance.

For all of these reasons, the Court should grant review and reverse the decision below to bring clarity to this critical area of the law.

A. The Fifth Circuit's view of the Anti-Injunction Act conflicts with this Court's precedent.

"[S]tart with the text." *King v. St. Vincent's Hosp.*, 502 U.S. 215, 218 (1991). The AIA provides that with certain exceptions not relevant here, "no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person, whether or not such person is the person against whom such tax was assessed."

26 U.S.C. § 7421(a). Likewise, the Declaratory Judgment Act states that it does not apply "with respect to Federal taxes." 28 U.S.C. § 2201(a).

This Court previously endorsed a plain-text interpretation of the AIA. *CIC Servs., LLC v. IRS*, 593 U.S. 209 (2021). There, the Court addressed the issue of whether the statute precludes suits unrelated to the assessment or collection of taxes. *Ibid.* at 214. Rejecting the government's argument, the Court permitted a suit to go forward that challenged IRS Notice 2016-66. *Ibid.* at 214. Like the attempted imposition of penalties here, IRS Notice 2016-66 also subjected taxpayers "to stiff penalties." *Ibid.* But the Court explained that if a suit is not brought for the specific purposes listed in the AIA—restraining the assessment or collection of any tax—then the suit "can go forward." *Ibid.* at 216. In other words, the Court reiterated in *CIC Services* that the AIA is "keyed to the acts of assessment [and] collection themselves." *Ibid.* at 217. These are terms of art in federal tax law. And the Court distinguished a suit that "targets the upstream" imposition of penalties from one that directly challenges "the downstream tax." *Ibid.* at 223.

Circuit courts have recognized that the decision in *CIC Services* was a change to "the legal landscape" and confirmed that the AIA does not apply when a suit "is not to oppose the collection of a tax." *Green Rock LLC v. IRS*, 104 F.4th 220, 224 (11th Cir. 2024).

Nor was *CIC Services* an outlier. This Court had previously held that the word "restrain" in this context has a narrow meaning, and "a suit cannot be understood to 'restrain'" the assessment or collection of a tax "if it merely inhibits those activities." *Direct Mktg. Ass'n v. Brohl*, 575 U.S. 1, 13, 14 (2015); *see also Hibbs v. Winn*, 542 U.S. 88, 106-07 (2004) (holding that the state-law analogue to the AIA applies when a taxpayer is seeking to "reduce the flow of . . . tax revenue," not to keep matters of taxes free from judicial "interference").

But in the decision below, the Fifth Circuit chose not to follow *CIC Services*. Rather than take a narrow view of the word restrain, it took the broadest view possible. The court did not address whether Norcave's suit is "keyed" to the acts of assessment and collection themselves. Nor did it address whether Norcave's request for a jury trial targets the upstream or the downstream.

Simply put, Norcave's suit is not a dispute over taxes. The Fifth Circuit's application of the AIA to this kind of suit cannot be reconciled with the text of the statute or with this Court's decision in *CIC Services*. The petition should be granted on this basis alone.

B. The Fifth Circuit decision broadened a circuit split on the interaction between the Anti-Injunction Act and constitutional rights.

This Court has held that the AIA "was not intended to bar an action" where a plaintiff has no "alternative legal way" to bring the challenge. *South Carolina v. Regan*, 465 U.S. 367, 373 (1984); *see also ibid.* at 378 (reiterating that the statute's "purpose and the circumstances of its enactment indicate that Congress did not intend the Act to apply to actions brought by aggrieved parties for whom it has not provided an alternative remedy"). Based on this logic, some circuit courts have said that the statute does not apply when a plaintiff is otherwise "without any forum" to assert its claims. *New Jersey v. Bessent*, 149 F.4th 127, 143 (2d Cir. 2025).

One such situation is when the plaintiff asserts that the IRS is acting in violation of a constitutional right. For example, in *Harper v. Rettig* the plaintiff sued the IRS "for injunctive relief and monetary damages, alleging that the third-party summons process violated his constitutional rights." 46 F.4th 1, 2-3 (1st Cir. 2022). The district court dismissed the action under the AIA, but the First Circuit disagreed. It explained that activities within the category of information gathering are different "from acts of assessment and collection." *Ibid.* at 8. And the statute only applies "in suits involving assessment and collection." *Ibid.*; *see also Miller v. Standard Nut Margarine Co. of Fla.*, 284 U.S. 498, 509 (1932) (reaffirming "the rule that, in cases where

complainant shows that in addition to the illegality of an exaction in the guise of a tax there exist special and extraordinary circumstances sufficient to bring the case within some acknowledged head of equity jurisprudence, a suit may be maintained to enjoin the collector").

Similarly, in *Z Street v. Koskinen* a nonprofit organization alleged that an IRS policy violated the First Amendment. 791 F.3d 24 (D.C. Cir. 2015). There, the IRS argued that the claim was barred by the AIA. But the appellate court rejected that argument and instead affirmed the district court's determination that the action sought "only to have a constitutionally valid process used," "nothing more and nothing less." *Ibid.* at 28 (internal quotation omitted). The D.C. Circuit reiterated that the statute "does not apply at all where the plaintiff has no other remedy for its alleged injury." *Ibid.* at 31. That includes when the taxpayer has no alternative judicial path to meaningfully challenge an IRS action. *Ibid.* at 31-32 (holding that the taxpayer's ability to wait 270 days and then file suit was an insufficient remedy because the IRS would be free for at least 270 days to continue the unconstitutional action that the taxpayer sought to challenge).

In its decision below, the Fifth Circuit disagreed and said that the constitutional nature of the claim does not matter. In the Fifth Circuit's view, if a suit can somehow be construed as impeding the ultimate collection of taxes, it is barred by the AIA. 188 F.4th at 823-24; *see also Linn v. Chivatero*, 714 F.2d 1278, 1282 (5th Cir. 1983)

(stating that casting a suit "in constitutional terms" does not change the analysis). This analysis tracks that of other circuit courts that have narrowed *Regan*'s reach. *RYO Mach., LLC v. U.S. Dep't of Treasury*, 696 F.3d 467, 472 (6th Cir. 2012); *Judicial Watch v. Rossotti*, 317 F.3d 401, 408 n.3 (4th Cir. 2003).

The Fifth Circuit's interpretation of the statute also creates a conflict on the meaning of the word "assessment." According to the Fifth Circuit, "'assessment' refers to the multi-step statutory framework of identifying a payor's tax liability." 188 F.4th at 822. By contrast, other courts have said that assessment "refers to the ministerial function of recording a taxpayer's liability on the tax rolls." *Kroner v. Comm'r*, 48 F.4th 1272, 1278 (11th Cir. 2022); *see also Direct Mktg.*, 575 U.S. at 9, 10 (stating that assessment "refers to the official recording of a taxpayer's liability," and "'collection' is the act of obtaining payment of taxes due" after a formal assessment). And according to the Fifth Circuit, when some kind of assessment is "already in motion," constitutional protections no longer apply. 188 F.4th at 824.

The decision below thus deepens the existing circuit split. Certiorari is warranted to resolve this ongoing division among the lower courts.

C. The right to a jury trial is vitally important and cannot be constrained by the Anti-Injunction Act.

The Fifth Circuit's analysis is particularly egregious because of the important nature of the constitutional right at issue here. The Seventh Amendment dictates that "[i]n Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved." "Trial by jury is a vital and cherished right, integral in our judicial system." *City of Morgantown v. Royal Ins. Co.*, 337 U.S. 254, 258 (1949). It is "'of such importance and occupies so firm a place in our history and jurisprudence that any seeming curtailment of the right' has always been and 'should be scrutinized with the utmost care.'" *Jarkesy*, 603 U.S. at 121 (quoting *Dimick v. Schiedt*, 293 U.S. 474, 486 (1935)). The denial of that right was a primary reason the Framers justified breaking from England. *See ibid.*; *see also Thomas v. Humboldt Cnty.*, 146 S. Ct. 27, 27-28 (2025) (Gorsuch, J., respecting the denial of certiorari) ("Surely, those who founded our Nation considered the right to trial by jury a fundamental part of their birthright. So much so that they cited its deprivation at the hands of colonial authorities as one of the reasons for breaking ties with England.") (internal citation omitted). And since the ratification, "every encroachment upon it has been watched with great jealousy." *Jarkesy*, 603 U.S. at 122.

Here, the IRS admitted that the penalties asserted against Norcave are civil and legal in nature. The IRS's concession makes sense, because "actions by the Government to recover civil penalties under statutory provisions historically had been viewed as a type of action in debt requiring trial by jury." *Jarkesy*, 603 U.S. at 122 (cleaned up). Money damages, even if they are imposed by statute, "are the prototypical common law remedy." *Ibid.* at 123. Under *Jarkesy*, the result is that the right to a jury trial attaches. And yet the Fifth Circuit denied Norcave this right because it claimed Norcave is seeking to stop the assessment of tax.

That decision gives little import to the Seventh Amendment. As in *Jarkesy*, Norcave seeks to vindicate its constitutional right in this action. The Fifth Circuit erred in holding that the constitutional right is subservient to the AIA. *See Thomas*, 146 S. Ct. at 28 (Gorsuch, J., respecting the denial of certiorari) ("When a federal agency accuses someone of fraud and seeks civil penalties, the Seventh Amendment guarantees that individual the right to have the case heard by a jury of his peers—not by other agency officials who work side by side with those bringing the charges.").

By holding that Article III courts lack jurisdiction over Norcave's suit, the Fifth Circuit effectively held that Norcave has no way to seek redress for infringement of its constitutional right to a jury trial. Indeed, the court did not identify any alternative way for Norcave to vindicate its right. The court suggested the Tax Court as a potential

"alternative forum," 188 F.4th at 825, but the Tax Court cannot grant injunctive or declaratory relief under the United States Constitution. And Congress has barred partnerships from having a jury trial in Tax Court and similar fora. 26 U.S.C. § 6234; 28 U.S.C. § 1346. The Fifth Circuit also hypothesized that partners of the partnership may have "individual access to a forum." 188 F.4th at 825-26. Not only is this potential forum unidentified, but more importantly it ignores the fact that Norcave itself has constitutional rights. *See, e.g.*, *Citizens United v. FEC*, 558 U.S. 310, 354-55 (2010). It also ignores the fact that an individual partner could raise personal penalty defenses but could not contest the existence or validity of Norcave's penalties. 26 C.F.R. § 301.6226-3(d)(1).

In essence, the Fifth Circuit (and the IRS) wants to return to a pre-*Jarkesy* world. The Court should take this opportunity to reinforce what *Jarkesy* said: penalties imposed by an administrative agency are subject to the Seventh Amendment. After all, "as Alexander Hamilton wrote in The Federalist Papers, 'there is no liberty if the power of judging be not separated from the legislative and executive powers.'" *Jarkesy*, 603 U.S. at 127 (quoting The Federalist No. 78, at 466).

A constitutional right (like the right to a jury trial) means little if it cannot be asserted. Certiorari is appropriate to clarify that statutes like the AIA are subservient to the Constitution, not the other way around.

D. Certiorari is warranted because of the practical consequences of the decision below.

The questions presented are not without practical effect. Quite to the contrary, the Fifth Circuit's holding has troubling implications for anyone seeking to enjoin unconstitutional behavior. For example, if the IRS wanted to direct its resources to taxpayers with a certain ideology, the court's holding would prevent injunctive relief. *See, e.g.*, *IRS 'Targeting' Angers Conservative Groups*, Christian Century (June 12, 2013). Or if IRS agents wanted to target faith-based organizations, the court's holding would preclude anyone from stopping them. *See, e.g.*, Joshua D. Holedenried, *The IRS's Persecution of a Christian Nonprofit Should Terrify All of Us*, N.Y. Post (July 21, 2021). Under the Fifth Circuit's view, the AIA would even enjoin a suit to challenge an IRS policy decision to *audit* returns of a specific group since challenging an audit would also be stopping the eventual assessment or collection of tax.

By endorsing this open-ended approach to infringement of constitutional rights, the Fifth Circuit's holding creates an improper imbalance between the IRS and taxpayers. This Court should grant review to protect the constitutional right that is supposed to be afforded all taxpayers in the United States.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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