

No. 25-966

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IN THE  
**Supreme Court of the United States**

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DEPARTMENT OF LABOR, *et al.*,

*Petitioners,*

*v.*

SUN VALLEY ORCHARDS, LLC,

*Respondent.*

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

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**AMICUS CURIAE BRIEF OF  
TEXAS PUBLIC POLICY FOUNDATION  
IN SUPPORT OF RESPONDENT**

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**INTEREST OF *AMICUS CURIAE*<sup>1</sup>**

The Texas Public Policy Foundation (“TPPF”) is a nonprofit, nonpartisan research foundation dedicated to promoting and defending liberty, personal responsibility, and free enterprise throughout Texas and the nation. For decades, TPPF has worked to advance these goals through research, policy advocacy, and litigation. TPPF believes that structural limits on the government’s power are just as important as individual rights. Article III of the Constitution vests “[t]he judicial Power of the United States” in the judicial branch. This case provides an important opportunity for the Court to clarify which adjudications Congress may divest from the judicial branch and entrust solely to the executive.

**SUMMARY OF ARGUMENT**

James Madison warned that concentrating legislative, executive, and judicial powers in one governing body is “the very definition of tyranny.” In this case, the Department of Labor (“DOL”) wrote regulations, enforced them against Sun Valley Orchards, and adjudicated Sun Valley’s civil penalty liability. Sun Valley challenges the third link in this chain: DOL’s adjudication of its civil penalty liability.

The Third Circuit correctly held that DOL was required to adjudicate Sun Valley’s case in an Article III

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



court. By its text, Article III’s judicial power extends to all suits at law, in equity, and admiralty. Congress cannot remove the judiciary’s role in adjudicating these suits. Nor can the executive branch exercise judicial powers granted in Article III. Unlike the Seventh Amendment, Article III is not textually limited to suits at common law. Thus Article III applies to new causes of action that Congress creates by statute, such as civil penalties under the Immigration and Nationality Act. Civil penalties “presumptively” require adjudication in Article III courts.

A civil penalty brought for a punitive or deterrent purpose falls squarely within the umbrella of traditional suits at common law. This reinforces the presumption in favor of Article III courts. Common law courts have adjudicated civil penalties stretching back to Magna Carta. From the amercement to an action in debt, English law courts had exclusive jurisdiction over the predecessor actions to the modern civil penalty. This history provides strong evidence that “adjudication by an Article III court is mandatory” for civil penalties. The only way Congress may divert adjudication outside Article III courts is through the public rights exception.

DOL argues that any regulation of immigration falls within the public rights exception. But as the Third Circuit held, the public rights exception for immigration was historically limited to “cases closely related to the admission and exclusion of aliens.” By contrast, this case concerns working conditions and contractual rights for alien guest workers, not whether an alien may be admitted or excluded. DOL also argues, for the first time, that the H-2A program is a public benefit that falls within the public rights exception. DOL did not make this

argument before the district court or the Third Circuit and has therefore forfeited it here. To the extent it is not forfeited, DOL's position finds no support in this Court's previous decisions expounding the public rights exception for public benefits.

As this Court recognized in *Jarkesy*, “[t]he public rights exception is, after all, an *exception*.” The Court should state explicitly what was left to implication in *Jarkesy*—that the public rights exception's categories and scope are fixed by historic legal principles and are not subject to expansion. DOL's attempts to fit this case into the public rights exception do not fit any historical application of the exception. This Court should require DOL to adjudicate its case against Sun Valley in an Article III court.

## ARGUMENT

### **I. Civil Penalties Must Be Adjudicated in an Article III Court Unless the Public Rights Exception Applies.**

The genius of our constitution is that it separates powers among three co-equal branches of government: the legislative, the executive, and the judiciary. James Madison warned: “[t]he accumulation of all powers, legislative, executive, and judiciary, in the same hands . . . may justly be pronounced the very definition of tyranny.” The Federalist No. 47, at 298 (James Madison) (Charles R. Kesler ed., 1999). DOL exercised all three of these powers here. First, DOL wrote the very regulations that it alleged Sun Valley violated. Pet. Br. 14–15 (citing 20 C.F.R. § 655.122 and 29 C.F.R. § 501.5). Second, DOL

prosecuted Sun Valley for those alleged violations. *Id.* at 14. Third, a DOL administrative law judge adjudicated the case and imposed the civil penalty liability. *Id.* Sun Valley challenges the third link in this chain: DOL’s administrative adjudication of its civil penalty liability.

**A. Article III’s Judicial Power Extends to All Suits at Law, in Equity, and Admiralty.**

Article III of the Constitution vests “[t]he judicial Power of the United States” in this Court and in the inferior courts that Congress creates. U.S. Const. art. III, § 1. These courts are composed of “life-tenured, salary-protected judges.” *SEC v. Jarkesy*, 603 U.S. 109, 148 (2024) (Gorsuch, J., concurring). Alexander Hamilton noted these salary and tenure protections were necessary to preserve an “independent spirit in the judges which must be essential to the faithful performance of” their judicial duties. The Federalist No. 78, at 468 (Alexander Hamilton) (Charles R. Kesler ed., 1999).

Although Congress creates the lower courts, it may not “withdraw from judicial cognizance any matter which, from its nature, is the subject of a suit at the common law, or in equity, or admiralty.” *Murray’s Lessee v. Hoboken Land & Improvement Co.*, 59 U.S. (18 How.) 272, 284 (1855). And the Executive Branch can “exercise no part of th[e] judicial power.” *Id.* at 275. Suits at common law, in equity, or admiralty represent “the traditional scope of the ‘judicial Power.’” *Jarkesy*, 603 U.S. at 148 (Gorsuch, J., concurring). This Court also explained that a suit at common law “presumptively concerns private rights, and adjudication by an Article III court is mandatory.” *Id.* at 127 (majority opinion).

Furthermore, this Court has described a suit at common law as one of “the traditional actions at common law tried by the courts at Westminster in 1789.” *Id.* at 128 (quoting *Northern Pipeline Constr. Co. v. Marathon Pipe Line Co.*, 458 U.S. 50, 90 (1982) (Rehnquist, J., concurring in judgment)). But Article III’s judicial power is not limited to the exact common law causes of action that existed in 1789. Article III’s text clearly applies to new causes of action created by statute. Section 2 describes the judicial power as extending “to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made.” U.S. Const. art. III, § 2. This Court has previously recognized that the Seventh Amendment, which is textually limited to “[s]uits at common law,” applies to causes of action created by statute. U.S. Const. amend. VII; see *Curtis v. Loether*, 415 U.S. 189, 193 (1974) (“we have often found the Seventh Amendment applicable to causes of action based on statutes”). The Court should take this opportunity to state that Article III applies to causes of action created by statute. That includes causes of action under the Immigration and Nationality Act. But even if the Court does not explicitly hold that Article III does apply to new statutory causes of action created after 1789, the history of civil penalty actions confirm that such actions fall within “the traditional actions at common law tried by the courts at Westminster in 1789.” See *Jarkesy*, 603 U.S. at 128.

#### **B. Civil Penalties for Punitive and Deterrent Purposes Fall Within Article III’s Judicial Power**

The next question is whether a civil penalty action is a suit at law within Article III’s judicial power. In the

Seventh Amendment context this Court answers that question by examining whether the action is “legal in nature.” *Jarkesy*, 603 U.S. at 122 (quoting *Granfinanciera v. Nordberg*, 492 U.S. 33, 53 (1989)). This Court has long held that the type of remedy is the “more important” consideration than the cause of action. *Tull v. United States*, 481 U.S. 412, 421 (1987). *Jarkesy* states that the remedy in a civil penalty action “is all but dispositive.” 603 U.S. at 123. Upon closer examination, the Court’s reasoning in *Jarkesy* shows that a civil penalty sought for punitive or deterrent purposes *is* dispositive for determining whether a case is legal in nature.

In this case, as in *Jarkesy*, the monetary civil penalty “is designed to punish or deter the wrongdoer.” *See id.* (quoting *Tull*, 481 U.S. at 422). The Third Circuit recognized that “DOL sought punitive remedies” against Sun Valley in the form of a civil penalty and back wages. Pet. App. 13a. In contrast to *Jarkesy*, the Third Circuit glossed over the cause of action and instead focused primarily on the remedy. *Compare Jarkesy*, 603 U.S. at 123–26 (examining the “close relationship between the causes of action in this case and common law fraud”), *with* Pet. App. 10a–13a. But there was no need for the Third Circuit to focus on the particular cause of action. The civil penalty remedy’s historical pedigree is enough to demonstrate that civil penalties must be adjudicated before an Article III court.

“A civil penalty was a type of remedy at common law that could only be enforced in courts of law.” *Tull*, 481 U.S. at 422; *see also* Pet. App. 13a (Third Circuit opinion quoting *Tull*). Common law courts’ involvement in these kinds of civil penalties stretches back to Magna

Carta. See Eric Heigis, *Extending Jarkesy*, 23 Geo. J.L. & Pub. Pol’y 385, 404 (2025). Magna Carta clause 20 states that the King may not impose an amercement<sup>2</sup> “except by the oath of honest men of the neighbourhood.” Magna Carta ch. 20, *reprinted in* William S. McKechnie, *Magna Carta: A Commentary on The Great Charter of King John* 284 (2d ed. 1914). This clause was meant to eliminate the King’s ability to arbitrarily assess penalties, instead entrusting this function to “impartial assessors.” McKechnie, *supra*, at 287. It led to a practice where the King’s justices provisionally set the penalty amount, and a county court with twelve jurors confirmed or reduced the amount. *Id.* at 288. This evolved into the English practice where “[r]emedies intended to punish culpable individuals, as opposed to those intended simply to extract compensation or restore the status quo, were issued by courts of law, not courts of equity.” *Tull*, 481 U.S. at 422. The amercement was gradually replaced with a civil penalty suit brought as an action in debt. See *id.* at 418. This action in debt to collect a civil penalty also fell exclusively within the English courts of law’s jurisdiction. *Id.* (citing *Atcheson v. Everitt*, 1 Cowper 382, 98 Eng. Rep. 1142 (K.B. 1776)).

True, there may be some kinds of civil penalties that—in addition to punishing and deterring—can compensate a victim or otherwise remedy the violation that occurred.

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2. Amercements were the medieval predecessors of fines. See generally *United States v. Bajakajian*, 524 U.S. 321, 335 (1998). But amercements were also used in the purely civil context “to sanction those guilty of offenses not criminal but worthy of punishment.” Calvin R. Massey, *The Excessive Fines Clause and Punitive Damages: Some Lessons from History*, 40 Vand. L. Rev. 1233, 1267 (1987).

The Third Circuit recognized that potentiality here, where back wages are paid to employees but were assessed “at least in part ‘[t]o deter such harm from occurring in the future.’” Pet. App. 13a. Those kinds of remedies may blur the line separating legal and equitable remedies. But the line between legal and equitable remedies is more relevant to the Seventh Amendment—not to Article III. That’s because the Seventh Amendment only covers “[s]uits at common law.” U.S. Const. amend. VII. Equitable remedies fall outside the Seventh Amendment’s scope and therefore do not require a jury. Article III is much broader, covering “a suit at the common law, or in equity, or admiralty.” *Murray’s Lessee*, 59 U.S. (18 How.) at 284. Therefore, a civil penalty that serves both punitive and remedial purposes still falls within Article III’s judicial power—even if the Seventh Amendment may not require a jury trial.

The Third Circuit correctly held that a civil penalty brought at least in part for punitive or deterrent purposes presumptively must be brought in an Article III court. This Court should affirm the Third Circuit’s holding.

## **II. The Public Rights Exception Does Not Apply to Working Conditions or Contractual Rights for Guest Workers.**

This Court has described Article III adjudication as “presumptively” required for suits at law, in equity, or admiralty. *Jarkesy*, 603 U.S. at 128; *see also* Pet. App. 9a, 11a. “Even with respect to matters that arguably fall within the scope of the ‘public rights’ doctrine, the presumption is in favor of Article III courts.” *Jarkesy*, 603 U.S. at 132 (quoting *Northern Pipeline Constr. Co. v. Marathon Pipe*

*Line Co.*, 458 U.S. 50, 69 n.23 (1982) (plurality opinion)) (alteration removed). This presumption places the burden on the government to show the action does not involve public rights before it seeks to prosecute in-house. Eric Heigis, *Extending Jarkesy*, 23 Geo. J.L. & Pub. Pol’y 385, 421 (2025).

**A. The Public Rights Exception is Fixed by Historic Legal Principles and Not Subject to Expansion.**

*Jarkesy* recognized six categories of public rights: revenue collection, immigration and foreign commerce, tariffs, relations with Indian tribes, adjudicating public land grants, and granting public benefits. *See id.* at 421–22; *Jarkesy*, 603 U.S. at 128–30. Writing for the majority, Chief Justice Roberts relied on a long history of non-judicial adjudication in these subject areas. Public rights need not be adjudicated in an Article III court because such matters “historically could have been determined exclusively by the executive and legislative branches.” *Jarkesy*, 603 U.S. at 128 (alterations removed). Applying the public rights exception requires “close attention” to each exception’s historic application to ensure the exception does not “swallow the rule.” *Id.* at 131. “The public rights exception is, after all, an *exception*.” *Id.* (emphasis in original).

The *Jarkesy* majority ultimately held that securities fraud did not fall within any of the six historically recognized exceptions and declined to create a new public rights exception category. *Id.* at 134. But it declined to proscribe a precise definition for the public rights exception in future cases. This leaves open the



possibility to create new public rights based on a historic (but unlisted) category of adjudication outside the judicial branch.

Justice Gorsuch’s concurrence picks up on this analysis and fashions a public rights exception definition rooted in history: “public rights are a narrow class defined and limited by history.” *Id.* at 152 (Gorsuch, J., concurring). All public rights, Justice Gorsuch notes, have “a serious and unbroken historical pedigree” with a “deeply rooted tradition of nonjudicial adjudication.” *Id.* at 153. Most notably, the existing public rights this Court has recognized are not subject to expansion: “[O]utside of those limited areas, we have no license to deprive the American people of their constitutional right to an independent judge, to a jury of their peers, or to the procedural protections at trial that due process normally demands.” *Id.* at 158. This formulation makes clear that the public rights exception is fixed by historic legal principles and is not subject to expansion.

The *Jarkesy* majority’s approach to public rights is consistent with Justice Gorsuch’s concurrence that the existing list of public rights is not subject to expansion—but does not say so explicitly. Heigis, *supra*, at 421. This Court should say explicitly what the *Jarkesy* majority left to implication: the public rights exception is fixed by historic legal principles and not subject to expansion. Accordingly, the public rights exception is limited to the six categories identified in *Jarkesy*.

**B. The Immigration Public Rights Exception Only Applies to the Admission and Exclusion of Aliens.**

Just as the list of public rights is not subject to expansion, the adjudications that fall within the public rights exception must also be based in historic practice. Otherwise, a generalized application of the exception without “close attention” to history “would swallow the rule.” *Jarkesy*, 603 U.S. at 131.

*Jarkesy* recognized a public rights exception for immigration: “Congress could also prohibit immigration by certain classes of persons and enforce those prohibitions with administrative penalties assessed without a jury.” *Id.* at 129 (citing *Oceanic Steam Navigation Co. v. Stranahan*, 214 U.S. 320, 339–40 (1909)). But at the same time the Court recognized this category’s limits. The majority rejected the dissent’s proposition that *Oceanic Steam Navigation* recognized a public right whenever Congress exercises an enumerated power. *Id.* at n.1. Instead, “*Oceanic Steam Navigation* expressly confines its analysis to the exercise of Congress’s power over *foreign* commerce.” *Id.* (emphasis in original). Like the dissent’s argument in *Jarkesy*, DOL’s attempt to expand the immigration public rights exception to “protect rights that belong to the sovereign” is “wholly inapposite.” *See id.*; Pet. Br. 27.

The Third Circuit recognized the appropriate limits for the immigration public rights exception. It held that “non-Article III adjudication was traditionally appropriate in cases closely related to the admission and exclusion of aliens.” Pet. App. 15a. H-2A program violations related to working conditions “do not directly address the admission

and exclusion of aliens.” *Id.* at 16a. Instead, they promote domestic policy goals by protecting wages and working conditions of domestic employees. *Id.* The Third Circuit found it particularly relevant that the same H-2A job order conditions “apply to foreign and domestic workers alike.” *Id.* While the H-2A program clearly involves immigration, the present case does not concern the admission and exclusion of aliens.

DOL cites a string of cases to establish the executive branch’s power to enforce immigration laws without Article III adjudication. Pet. Br. 33–34. But none of those cases involve the H-2A program or punitive or deterrent civil penalties.<sup>3</sup> The closest case DOL offers is *United States v. New York & Cuba Mail Steamship Co.*, 269 U.S. 304 (1925). There the federal government sought money from an American company for violating entry protocols with one of its foreign workers. *Id.* at 309. But that case concerned reimbursing the government for a diseased alien sailor’s hospital bill. *Id.* It was not a civil penalty sought for punitive or deterrent purposes. More to the point, the federal government sought to collect that bill *in federal district court*. *Id.* (“the United States brought suit against [the Steamship Company] in the Federal District Court for the amount of such expenses”). Thus *New York & Cuba Mail Steamship Co.* sheds no light on whether domestic companies can be assessed a civil penalty in a non-Article III adjudication. Another of DOL’s cited cases

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3. Indeed, to amicus’s knowledge, this Court has only approved imposing a civil penalty in a non-Article III adjudication against an American entity for violating *entry* requirements. See *Oceanic Steam Navigation Co. v. Stranahan*, 214 U.S. 320, 337–40 (1909). It has not approved such penalties against Americans for violations that arise after (and are unrelated to) entry.

held that Congress did not have the power to punish an American for employing an alien as a prostitute because it infringed on the states' police power. *Keller v. United States*, 213 U.S. 138, 148 (1909) ("But can it be within the power of Congress to control all the dealings of our citizens with resident aliens? If that be possible, the door is open to the assumption by the National Government of an almost unlimited body of legislation."). Whatever the validity of *Keller's* enumerated powers holding in the present day, it certainly does not support the power to punish employers of alien workers. And when the government tried to impose on an immigrant a punitive punishment that was not deportation, this Court required a "judicial trial" before a "justice, judge or commissioner of the United States." See *Wong Wing v. United States*, 163 U.S. 228, 235, 237 (1896). DOL may be able to cherry-pick quotes from these cases about Congress and the Executive's power over immigration, but the actual holdings do not support DOL's sweeping position.

The Third Circuit recognized that other parts of the H-2A program do involve admission and exclusion of aliens. "For example, DOL could use agency proceedings to bar Sun Valley from the program or to remove ineligible foreign workers from its employ. Those actions, to the extent they vindicate the federal government's critical interest in border control, likely fall within the immigration exception." Pet. App. 17a. Those types of proceedings are not at issue here. At issue here is a civil penalty for violating working conditions. That kind of civil penalty has been historically adjudicated in Article III courts. DOL cannot stretch the public rights exception to divest the courts of their judicial powers.

TPPF agrees that the federal government has a strong interest in the sovereign control of our borders. The federal government may adjudicate immigration cases related to the admission and exclusion of aliens in non-Article III tribunals. It may debar H-2A program violators and remove ineligible foreign workers using non-Article III tribunals. It may also assess a civil penalty against a H-2A program violator. The key difference is that the latter of these actions must take place in an Article III court. Accordingly, the Court should affirm the Third Circuit’s holding that the public rights exception for immigration does not apply here.

**C. DOL’s New Public Benefits Argument Has No Basis in History, and is Forfeited.**

DOL also argues that it can adjudicate civil penalties related to “government-granted privileges.” Pet. Br. 30. It argues the public rights exception for “public benefits such as payments to veterans, pensions, and patent rights,” *Jarkesy*, 603 U.S. at 130 (citations omitted), is broad enough to encompass any “government-granted privileges.” But it never raised this argument in the lower courts.

In the Third Circuit DOL exclusively argued that the H-2A program was an “exercise of Congress’s power to regulate the entry of foreign workers” and “to conduct international relations with other sovereigns.” Fed. Defs.’ Answering Br. at 30, 32, *Sun Valley Orchards, LLC v. U.S. Dep’t of Labor*, 148 F.4th 121 (3d Cir. 2025), Dkt. No. 26. In the district court DOL framed its case as arising from “a federal regulatory regime under the federal government’s foreign-commerce and immigration-related

powers.” Defs.’ Reply in Supp. of Mot. to Dismiss at 3, *Sun Valley Orchards, LLC v. U.S. Dep’t of Labor*, No. 1:21-cv-16625, 2023 WL 4784204 (D.N.J. July 27, 2023), Dkt. No. 27; *see also* Defs.’ Mot. to Dismiss at 11–17, *id.* at Dkt. No. 22 (making the same immigration and foreign commerce argument). Unsurprisingly, neither the Third Circuit nor the district court addressed the public rights exception for public benefits.

This Court is careful not to pass on arguments that a party fails to raise in the lower courts. “Where issues are neither raised before nor considered by the Court of Appeals, this Court will not ordinarily consider them.” *Pa. Dep’t of Corrs. v. Yeskey*, 524 U.S. 206, 212–13 (1998); *see also Miree v. De Kalb Cty.*, 433 U.S. 25, 34 (1977) (“since it was neither pleaded, argued, nor briefed either in the District Court or in the Court of Appeals, we will not consider it.”); *Lawn v. United States*, 355 U.S. 339, 362 n.16 (1958) (“Only in exceptional cases will this Court review a question not raised in the court below.”).

This is not an exceptional case. *Jarkesy* addressed the public rights exception, relying in part on this Court’s 1932 decision in *Crowell v. Benson*, 285 U.S. 22, 51 (1932). *See Jarkesy*, 603 U.S. at 130. DOL could have tried to argue in its district court briefs that the H-2A program fits within the public rights exception for public benefits under *Crowell*. But it did not do so. By the same token, DOL could have tried to argue in its Third Circuit brief that *Jarkesy* supported placing the H-2A program within the public rights exception for public benefits. Again, it did not do so. DOL offers no persuasive reason that this case should be treated as an “exceptional” one that merits consideration of arguments not raised below. Accordingly,

DOL has forfeited the argument that the H-2A program falls within the public rights exception for public benefits.

To the extent this argument is not forfeited, it fails on the merits. DOL’s “government-granted privileges” framing vastly expands the public rights exception for public benefits beyond its historic anchoring. DOL cites no case where the public benefits exception has been applied outside the context of patents, pensions, pesticide permitting, payments to veterans, government contracts, and grants of public lands. Pet. Br. 30–31. Instead, DOL analogizes to customs cases—which another public rights exception already covers. *See Jarkesy*, 603 U.S. at 128. DOL also analogizes to sovereign immunity waivers that channel claims to non-Article III courts. But sovereign immunity is inapposite here, where the government initiated the suit and a private party is defending itself. If it were otherwise the public benefits exception could apply any time the government is a party to a case involving a regulatory program. This Court explicitly rejected this position in *Jarkesy*. *Id.* at 135 (“we have never held that ‘the presence of the United States as a proper party to the proceeding is . . . sufficient’ by itself to trigger the [public rights] exception.”).

DOL’s government contract and pesticide permitting cases do not support non-Article III adjudication of civil penalties. Just as with the initial Article III determination, the remedy is an important consideration to whether the public rights exception applies. *See id.* at 123. DOL cites *Allman v. United States*, 131 U.S. 31 (1889), for the proposition that the executive can unilaterally assess monetary penalties for violating government contracts. *Allman* concerned a contract to carry mail. *Id.* at 33.

The Postmaster General imposed “forfeitures” on the contractor for failing to meet the contract’s terms. *Id.* at 35. These “forfeitures” were not civil penalties imposed for a punitive purpose—they recovered money paid for services not rendered. *Id.* At the time *Allman* was decided, just as today, the federal government must use the False Claims Act of 1863 to recover a civil penalty against a contractor. *See* 31 U.S.C. §§ 3721–33. False Claims Act suits must be brought in an Article III court. 31 U.S.C. § 3732(a); *see Stinson, Lyons & Bustamante, P.A. v. United States*, 79 F.3d 136, 138 (Fed. Cir. 1996). *Allman* does not support civil penalty adjudication in a non-Article III tribunal.

Nor does *Thomas v. Union Carbide Agricultural Products Co.*, 473 U.S. 568 (1985), support imposing a civil penalty remedy outside Article III courts. *Thomas* concerned compensation owed when a company registers a pesticide using data supplied by a previous registrant. *Id.* at 571–72. The entitlement to, and method for determining, compensation for using this data was set by statute—not by a contract between the parties or with the government. *Id.* at 572. This intellectual property compensation scheme lacks the 800-year long history of courts adjudicating civil penalties. *See* Eric Heigis, *Extending Jarkesy*, 23 Geo. J.L. & Pub. Pol’y 385, 404 (2025). Thus *Thomas* provides little support for non-Article III adjudication for a civil penalty arising from a public benefit program.

As this Court recognized in *Jarkesy*, “[t]he public rights exception is, after all, an *exception*.” 603 U.S. at 131 (emphasis in original). Courts must pay “close attention” to any new application of the public rights exception to ensure it does not “swallow the rule.” *Id.* DOL has not



cited any case where this Court has applied the public rights exception for public benefits to a foreign guest worker program. Nor does DOL cite any case authorizing non-Article III adjudication for a civil penalty arising from a public benefit program. The Court should reject DOL's attempt to expand the public rights exception to cover the H-2A program, either because DOL forfeited the argument or on the merits.

**CONCLUSION**

For the foregoing reasons, the Court should affirm the Third Circuit's decision.

Respectfully submitted,

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