No. _____

In the
Supreme Court of the United States

SIGNET BUILDERS, INC.,

Petitioner,

v.

JOSE AGEO LUNA VANEGAS,

Respondent.

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

PETITION FOR WRIT OF CERTIORARI

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March 6, 2023

QUESTIONS PRESENTED

Jose Ageo Luna Vanegas came to the U.S. legally on an H-2A visa specifically designed for seasonal workers in agriculture. The plan was never for Luna Vanegas to till the soil or otherwise engage in "primary" farming. Instead, consistent with the terms of the visa application submitted by petitioner Signet Builders, he built livestock confinement structures on farms, activities traditionally treated as secondary "agriculture" under the Fair Labor Standards Act ("FLSA") and the H-2A program. As a result, like many other guestworkers lawfully employed pursuant to an H-2A visa, Luna Vanegas was paid an agreed-upon wage for every hour he worked, but not overtime. Luna Vanegas nonetheless sued for overtime, and although his narrow view of what constitutes agriculture for the FLSA and H-2A visas could endanger his fellow workers' ability to qualify for H-2A visas, he sought certification of an FLSA collective action. The district court granted Signet's motion to dismiss on the ground that Luna Vanegas' on-farm employment constituted secondary agriculture. In a remarkable throwback, defying this Court's emphatic rejection of a narrow-construction rule for FLSA exemptions in *Encino Motorcars, LLC v. Navarro*, 138 S.Ct. 1134, 1142 (2018), the Seventh Circuit applied that narrow-construction rule to reverse and set the FLSA and the H-2A visa program on a collision course.

The questions presented are:

Whether there is any room for a rule interpreting the FLSA's exemptions narrowly, rather than fairly, after this Court's decision in *Encino Motorcars, LLC v. Navarro*, 138 S.Ct. 1134 (2018).

Whether a person admitted to the United States on an agricultural guestworker visa who is employed on farms but performs secondary functions, like building on-site livestock confinement structures, comes within the FLSA's broad agriculture exemption.

PARTIES TO THE PROCEEDING

Petitioner is Signet Builders, Inc. ("Signet").[1] Respondent is Jose Ageo Luna Vanegas.

[1] After Luna Vanegas commenced this lawsuit, Signet Builders, Inc., filed for voluntary termination under Texas law. That voluntary termination has no effect on this litigation, in which Signet has continued to defend itself, consistent with governing law. *See* Tex. Bus. Orgs. Code §11.356(c) (in relation to actions brought before the end of three-year period following termination, "the terminated filing entity continues to survive for purposes of … the action until all judgments, orders, and decrees have been fully executed[]"); *see also Cluck v. MetroCare Servs. – Austin, L.P.*, 785 F.App'x 244, 245-46 (5th Cir. 2019) (discussing entity's survival under §11.356(c) for purposes of an "action [that] has been ongoing since before [the] termination").

CORPORATE DISCLOSURE STATEMENT

Petitioner Signet Builders, Inc., has no parent corporation, and no shareholder owns 10% or more of its stock.

STATEMENT OF RELATED PROCEEDINGS

The following proceedings are directly related to this case within the meaning of Rule 14.1(b)(iii):

- *Luna Vanegas v. Signet Builders, Inc.*, No. 21-2644 (7th Cir.), judgment entered on August 19, 2022; petition for rehearing denied on October 12, 2022.
- *Luna Vanegas v. Signet Builders, Inc.*, No. 3:21-cv-00054-jdp (W.D. Wis.), judgment entered on August 12, 2021.

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PETITION FOR WRIT OF CERTIORARI

In the bad old days of statutory construction, statutes deemed remedial were interpreted broadly, and exemptions to the Fair Labor Standards Act ("FLSA") and its overtime requirements were "to be narrowly construed against the employers seeking to assert them." *Arnold v. Ben Kanowsky, Inc.*, 361 U.S. 388, 392 (1960). Those bad old days ended (at least outside the Seventh Circuit) with *Encino Motorcars, LLC v. Navarro*, 138 S.Ct. 1134 (2018). In *Encino*, this Court emphatically rejected that canon "as a useful guidepost for interpreting the FLSA," and made clear that courts "have no license to give [an] exemption anything but a fair reading." *Id.* at 1142. Most lower courts have gotten the message, foreswearing the narrow-construction rule and treating their pre-*Encino* cases as historical relics. But not the Seventh Circuit (or the Labor Department, at least based on the outdated guidance on which the Seventh Circuit relied in the decision below). More than four years after *Encino*—and after this Court repeatedly reaffirmed that narrow-construction rules have no proper role to play in construing exceptions—the Seventh Circuit issued an opinion that not only invokes the narrow-construction canon explicitly, but depends on it to upset settled practices and to put the FLSA's agriculture exemption and a specialized visa program for agricultural workers on a collision course. If vertical *stare decisis* means anything, the decision below cannot be allowed to stand.

Congress enacted the FLSA in 1938 to address the wages and hours of most workers. But from the very beginning, Congress understood that the distinctive

nature of certain occupations foreclosed a one-size-fits-all approach and required exemptions for some types of work. A prime example is agriculture, where the unique and often seasonal nature of the work makes the standard FLSA model inapposite. Thus, from the beginning, the FLSA has categorically exempted "any employee employed in agriculture." 29 U.S.C. §213(b)(12). Moreover, because the distinctive rhythms of agricultural work extend beyond those directly involved in farming to those who provide specialized on-farm services, the FLSA defines "agriculture" broadly, "in both a primary and a secondary sense." *Bayside Enters., Inc. v. NLRB*, 429 U.S. 298, 300 (1977). The primary sense "includes farming in all its branches … includ[ing] the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities ..., [and] the raising of livestock, bees, fur-bearing animals, or poultry." 29 U.S.C. §203(f). The secondary sense embraces "any practices … performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market." *Id.*

The secondary component of that definition has long been understood by industry participants (and by government officials running the H-2A visa program) to cover specialized agricultural construction activities that occur "on a farm." While in an earlier era, farmers with help from their neighbors might erect their own barns, cattle fences, and silos, today, outside specialists like Petitioner furnish those critical agricultural services. Those companies are open and

notorious about their classification of such on-farm construction workers as exempt under the agricultural exemption. That is particularly true of foreign guestworkers like respondent, Luna Vanegas, who are employed pursuant to an H-2A visa. In applying for such visas, which are limited to agricultural workers, Signet makes clear to the federal government that the foreign worker will be engaged in on-farm construction and paid no overtime.

Consistent with that longstanding practice, the district court dismissed Luna Vanegas' efforts to claim overtime for himself and "a collective of all Signet workers who worked under a guestworker visa" on the strength of the agriculture exemption. The Seventh Circuit reversed by construing the agriculture exemption narrowly in blatant disregard of *Encino*. The court of appeals was emphatic that "all FLSA exemptions," including its agriculture exemption, "must be 'narrowly construed against the employer seeking to assert [it].'" App.7. And the Seventh Circuit did not back down or modify its opinion in the least following Signet's petition for rehearing, when the clear conflict with *Encino* was laid bare.

That decision is in open defiance of this Court's recent and emphatic guidance, and it creates a conflict with other circuits that have followed *Encino* faithfully and construed the agriculture exemption fairly, rather than narrowly. The decision also puts the FLSA on a collision course with the H-2A visa program, and endangers the ability of thousands of workers to benefit from that program. Whether by summary reversal or plenary review, the decision below cannot stand.

OPINIONS BELOW

The Seventh Circuit opinion, 46 F.4th 636, is reproduced at App.1-17. The district court opinion, 554 F.Supp.3d 987, is reproduced at App.19-30.

JURISDICTION

The Seventh Circuit issued its opinion on August 19, 2022, and denied rehearing on October 12, 2022. This Court has jurisdiction under 28 U.S.C. §1254(1).

STATUTORY PROVISIONS INVOLVED

Relevant statutory provisions are reproduced at App.31-45.

STATEMENT OF THE CASE

A. Legal Background

1. "[T]he FLSA requires employers to pay overtime to covered employees who work more than 40 hours in a week." *Encino*, 138 S.Ct. at 1138. For hours worked above that 40-hour limit, a covered employee must be paid "at a rate not less than one and one-half times the regular rate at which he is employed." 29 U.S.C. §207(a)(1). But not all employees are covered; "the FLSA exempts many categories of employees from this requirement." *Encino*, 138 S.Ct. at 1138.

This case involves the longstanding overtime exemption for "any employee employed in agriculture." 29 U.S.C. §213(b)(12). Having categorically exempted "any" agricultural employee, the FLSA goes on to define "agriculture" broadly in 29 U.S.C. §203(f). The definition is expansive and captures agriculture in both its primary (or direct) and secondary (or indirect) senses. The FLSA first defines "[a]griculture" to "includ[e] farming in all its

branches," "includ[ing]" "the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities …, [and] the raising of livestock, bees, fur-bearing animals, or poultry." 29 U.S.C. §203(f). Courts describe this part of §203(f) as addressing "[p]rimary farming." *See Holly Farms Corp. v. NLRB*, 517 U.S. 392, 398 (1996). The statute then goes on to define "agriculture" to "includ[e] … any practices … performed by a farmer or on a farm as an incident to or in conjunction with such farming operations." 29 U.S.C. §203(f); *see Holly Farms*, 517 U.S. at 398.

This secondary, "broader meaning" "include[s] things other than farming." *Farmers Reservoir & Irrigation Co. v. McComb*, 337 U.S. 755, 762-63 (1949); *accord Mitchell v. Budd*, 350 U.S. 473, 480 (1956); *see, e.g.*, *Bayside Enters., Inc. v. NLRB*, 429 U.S. 298, 300-01 (1977) ("hauling products to or from a farm" may constitute "[a]griculture" for purposes of the exemption, even if it "is not primary farming"). *Any* practices performed "on a farm" "incidently to or in conjunction with" the practices listed in the primary definition are covered. *Farmers Reservoir*, 337 U.S. at 763. The definition thus covers a wide array of employees beyond those who till the soil themselves, reaching all manner of on-farm work that might have been done by farmers themselves in an earlier era, but are now done on the farm by outside specialists, "whether by contract with the farmer or otherwise." 81 Cong. Rec. 7927-28 (1937) (statement of Sen. McGill); *see, e.g.*, 29 C.F.R. §780.136 (providing that "employees engaged in … erect[ing] silos and granaries" are "examples of the types of employees of

independent contractors who may be considered employed in practices performed on a farm").

This breadth was intentional. In enacting the FLSA, Congress wanted a clear "line of demarcation" between jobs that are fairly consistent day-to-day and month-to-month and "occupations which are of a peculiarly seasonal nature." 81 Cong. Rec. 7652 (1937) (statement of Sen. Black). The FLSA's default overtime requirements make good sense for employees in the former situation, like most office workers. But agricultural work falls squarely in the latter camp. Agricultural work is not a 9-to-5 proposition at any time of the year. And a typical workday may look very different in January as opposed to in June or at harvest time. In fact, agriculture is the textbook example of a "seasonal activity as to which it is necessary to have quick, speedy work." *Id.* (statement of Sen. Black). Moreover, the seasonal nature of agriculture dictates the working patterns of not just farmers themselves but those who provide critical on-farm services, many of which must be scheduled in conjunction with or around other on-farm activities.

The broad language of the FLSA's agriculture exemption reflects these realities. While it started out narrower, "before its final language developed, the agriculture exemption ran the gamut of extensive debates and amendments [in Congress], each of the latter invariably broadening its scope." *Maneja v. Waialua Agric. Co.*, 349 U.S. 254, 260 (1955). As originally reported out of committee, the bill exempted only farming operations and "practices ordinarily performed *by a farmer* as an incident to such farming operations." S. 2475, 75th Cong., 1st Sess. 51 (1937)

(emphasis added). But objections were soon raised that so limiting the exemption made little sense given the reality of agricultural operations, where much of the work is performed by separate companies organized for and devoted solely to a particular job. The final text of the exemption reflects this reality and confirms that Congress exempted from the FLSA's default overtime-pay requirements "the whole field of agriculture," not just growing crops or raising cattle. *Maneja*, 349 U.S. at 260.

2. "The United States has long provided temporary work authorization for foreign agricultural workers." *Overdevest Nurseries, L.P. v. Walsh*, 2 F.4th 977, 980 (D.C. Cir. 2021). Under the current statutory regime, employers can "temporarily hire foreign workers when there are not enough qualified and available American workers to fill open jobs through the H-2A program." *Id.* The H-2A program—so called based on its statutory home, 8 U.S.C. §1101(a)(15)(H)(ii)(a)—forms a subset of the larger H-2 temporary foreign worker program.

The H-2A program is limited to nonimmigrants seeking "agricultural labor or services" that is "of a temporary or seasonal nature." *Id.* §1101(a)(15)(H)(ii)(a). Congress mandated that the Secretary's definition include "agriculture" as defined by the FLSA, as well as "agricultural labor" as defined in 26 U.S.C. §3121(g) and "the pressing of apples for cider on a farm." 8 U.S.C. §1101(a)(15)(H)(ii)(a). Via regulations, the Secretary has added "logging employment" to that definition of agricultural labor. 29 C.F.R. §501.3(b).

The Department of Homeland Security ("DHS") and the Department of Labor ("DOL") jointly administer the H-2A program. *See Hisp. Affs. Project v. Acosta*, 901 F.3d 378, 382 (D.C. Cir. 2018). As part of that process, the employer submits an H-2A application and supporting documentation to DOL. *See* 20 C.F.R. §655.1300(a)-(b). The application must include a "clearance order" or "job order" which describes the material terms of employment. *See Garcia-Celestino v. Ruiz Harvesting, Inc.*, 898 F.3d 1110, 1116 (11th Cir. 2018). DOL then reviews the application to ensure it complies with all relevant program requirements. *See* 20 C.F.R. §655.140(a). Within a week of receiving the H-2A application, DOL issues either a Notice of Acceptance or a Notice of Deficiency. *Id.* §§655.141(a)-(b), 655.143(a). Once DOL has certified an application, the employer must petition DHS to designate foreign workers as H-2A workers. *See Overdevest Nurseries*, 2 F.4th at 980. To obtain DHS's final approval, the prospective employer's H-2A petition must prove to DHS that the proposed employment meets the H-2A program's requirements. 8 C.F.R. §214.2(h)(5)(i)(D).

Following DHS approval, and the worker's admission into the country, an employer must comply with additional regulations. Among other duties, H-2A employers must provide workers with housing, workers' compensation, meals, and transportation. 20 C.F.R. §655.122(d)-(h). And they must pay employees at least twice a month. *Id.* §655.122(m). As to wages, the employer can pay no less than the adverse effect wage rate, *id.* §655.120(a), a wage set by DOL to prevent H-2A workers' wages from negatively

impacting the wages of similarly situated domestic workers, *id.* §655.1300(c).

B. Factual and Procedural Background

1. In 2019, Signet hired Jose Ageo Luna Vanegas, a citizen of Mexico, to work for it pursuant to an H-2A guestworker visa. Signet has long provided specialized agricultural construction services and participated in the H-2A visa program. In applying for those visas, Signet has made no secret of the fact that it is engaged in specialized construction activities and that it does not provide its workers overtime. Instead, as the workers themselves fully understand, they are paid a wage for every hour that they work, but they are not paid overtime.

Luna Vanegas nonetheless sued Signet in 2021, and even though his narrow theory of agriculture could jeopardize the visa status of his fellow guestworkers, he sought to certify a class of "similarly situated workers," alleging that Signet violated their rights under the FLSA. Dist.Ct.Dkt.1 at 1, 2. The sole alleged violation was a failure to pay overtime. According to Luna Vanegas, he and others often worked more than 40 hours a week, but Signet did not pay them overtime. *Id.* at 2, 6. The complaint itself alleged that Signet's "failure to pay overtime wages to Plaintiff and the Prospective Class Members appears to be based on its belief that these workers' labor was exempt from the FLSA's overtime requirements because of the so-called agricultural exemption." *Id.* at 8. Parroting the FLSA's definition, Luna Vanegas alleged that his work was "neither performed in the employment of a farmer nor was it performed incidentally to—or in conjunction—with the farming

operations of any farmer." *Id.* at 6. He alleged that his "job duties" were those "described in Signet's … job orders" (which explicitly call for agricultural work), but nonetheless claimed that he was "employed exclusively in non-agricultural work" because he "never had any contact with the livestock being raised on the various farms where their construction work was performed." *Id.*

2. Signet moved to dismiss. Dist.Ct.Dkt.29. The district court sided with Signet. As the court explained, Luna Vanegas had pleaded himself "out of court by pleading facts that establish an impenetrable defense to [his] claims": His work was entirely in conjunction with agricultural operations. App.20.

The parties agreed that Luna Vanegas' work was performed "on a farm" but was not agricultural in the *primary* sense of the definition, *i.e.*, he was not himself involved in tilling the soil or other "primary farming." The case thus turned on whether his on-farm work "was incidental to or in conjunction with farming operations." App.23. And as the complaint made clear, Luna Vanegas' work primarily consisted of "building livestock confinement structures" on farms "in conjunction with 'the raising of livestock,'" which is "one of the core farming operations" the FLSA recognizes. App.23 (quoting 29 U.S.C. §203(f)).

Indeed, as the district court observed, Luna Vanegas' work was just like that of the "mechanics, electricians, welders, carpenters, plumbers and painters" who serviced "equipment used in performing agricultural functions" on a sugarcane plantation in *Maneja v. Waialua Agricultural Co.*, whom this Court held were covered by the exemption. 349 U.S. at 257,

264. As in *Maneja*, "Vanegas worked with materials used directly for an agricultural purpose"—there, raising sugarcane; here, raising livestock. App.24. Since that kind of work is sufficiently tied to primary agriculture, the work here was too. App.23-24.

3. The Seventh Circuit reversed. Despite this Court's unequivocal rejection of a narrow-construction approach to the FLSA's exemptions in *Encino*, the Seventh Circuit's opinion was expressly grounded in that since-discarded approach: "Like all FLSA exemptions, the agricultural exemption must be 'narrowly construed against the employer seeking to assert [it]' and 'limited to those who come plainly and unmistakably within [its] terms and spirit.'" App.7 (quoting 29 C.F.R. §780.2.).

In a case that is all about the scope of the FLSA's agriculture exemption, that narrow-construction rule infected the entire opinion. The court of appeals reversed the district court's dismissal of Luna Vanegas' complaint, because it deemed it not "unmistakably" clear that Luna Vanegas' "construction work was 'an incident to or in conjunction with' the farming operations of the livestock farmers on whose property he built the enclosures." App.7; *see* App.7-8. The court of appeals drew the clear-and-unmistakable standard from the same pre-*Encino* regulations that still reflect a narrow-construction rule and ask whether an employer "come[s] plainly and unmistakably within [the] terms and spirit" of the exemption. App.7.

Applying that standard and drawing support from a few decades-old (*i.e.*, pre-*Encino*) decisions, the Seventh Circuit reversed the district court while

criticizing it for focusing only on "the work that Luna Vanegas performed as an employee." App.14. It acknowledged 29 C.F.R. §780.136 and its seemingly clear direction that "employees engaged in erecting silos and granaries" are "examples of the types of employees of independent contractors who may be considered employed in practices performed on a farm," but it dismissed the regulation on the view that it was undisputed that Luna Vanegas worked on a farm. It considered the real issue whether Signet's work was in connection with farming, and remanded for the district court to consider "fact-intensive" "questions such as" whether "farmers typically hire independent contractors such as Signet" for a given task or job; "whether Signet's construction contracts are 'in competition with agricultural or with industrial operations'"; how Signet invests its capital; the "amount of revenue" Signet earns from "regular farming activity" versus other activities; and a "hodge-podge of other relevant" and factbound "factors." App.10-14.

Finally, the court of appeals gave short shrift to the tension it was creating with the H-2A visa program. As Signet pointed out, DOL's "Office of Foreign Labor Certification approved Luna Vanegas' H-2A visa," which requires Luna Vanegas to be employed in "agricultural labor or services." App.16; 8 U.S.C. §1101(a)(15)(H)(ii)(a); *see* 29 C.F.R. §501.3(b).[2] But having already construed the FLSA

[2] Although the decision below refers to "'agricultural labor' as defined in FLSA," App.16, the FLSA does not specifically define "agricultural labor," and the cited regulation itself points only to the FLSA's definition of "agriculture," *see* 29 C.F.R. §501.3(b).

exemption narrowly, the court asserted that "the criteria for receiving an H-2A visa are broader than the FLSA agricultural exemption." App.16. Thus, in the court's view, "the fact that Luna Vanegas was admitted to the country on this type of visa does not automatically mean that the FLSA's agricultural exemption applies." App.16.

4. Signet sought rehearing en banc, highlighting that the panel's "'narrow construction' principle was unambiguously rejected in *Encino*" and thus conflicted with both *Encino* and an earlier Seventh Circuit decision acknowledging *Encino* in passing, *Bigger v. Facebook, Inc.*, 947 F.3d 1043, 1052 (7th Cir. 2020). CA7.Dkt.65 at 4, 9. The petition was denied. App.18.

REASONS FOR GRANTING THE PETITION

The decision below reads as if it were pulled from a time capsule buried before this Court explicitly and emphatically rejected a narrow-construction rule for FLSA exemptions in *Encino*. The conflict between the decision below and this Court's precedents is unmistakable. This Court did not mince words in *Encino*, "reject[ing]" outright "the principle that exemptions to the FLSA should be construed narrowly" instead of interpreted fairly, like all other text. *Encino*, 138 S.Ct. at 1142. The Seventh Circuit likewise did not mince words or identify some narrow agriculture exception to the general rule laid down in *Encino*. Instead, it broadly proclaimed that "all FLSA exemptions" must be narrowly construed. App.7. And when the square conflict with *Encino* was pointed out in a request for rehearing, the Seventh Circuit did not back down an inch. It is hard to think of a plainer example of "a United States court of appeals … [that]

has decided an important federal question in a way that conflicts with relevant decisions of this Court." S. Ct. Rule 10(c).

That is reason enough for this Court's review, but it does not stand alone. Perhaps unsurprisingly given its clear departure from this Court's recent and emphatic precedent, the decision below creates multiple circuit conflicts. Numerous other circuits (and commentators) have recognized *Encino* as a landmark decision that changes the interpretive landscape and supersedes earlier circuit decisions applying the narrow-construction rule to FLSA exemptions. Similarly, other circuits have read the agriculture exemption fairly, not narrowly, to encompass secondary agriculture activity like that at issue in this case. Simply put, in circuits that faithfully follow this Court's precedent and faithfully interpret the text of the FLSA, the decision below would have come out the other way.

The decision below also puts the FLSA on a collision course with the H-2A visa program. That specialized visa program provides an avenue for foreign workers to obtain lawful employment in the agricultural sector. The program employs the definition of agriculture from the FLSA, and a substantively similar definition of agriculture from the Internal Revenue Code. The H-2A visa program has never been limited to workers engaged in primary farming, but has provided a legal route for Luna Vanegas and countless others to obtain lawful employment in on-farm construction and other forms of secondary agriculture. In applying for those specialized, agriculture-specific visas, companies like

Signet make no secret of the facts that they are engaged in on-farm construction activities—not primary farming—and that the visa recipients will not receive overtime. The Labor Department has routinely granted those applications and allowed foreign guestworkers to obtain lawful employment at attractive wages that, just like comparable American workers engaged in secondary agriculture, do not include overtime. The decision below threatens all of that. If Luna Vanegas and his fellow workers are not engaged in secondary agriculture, they may be entitled to some backpay, but they may also be disqualified from the H-2A visa program altogether. At a bare minimum, by creating the certainty that employers who take advantage of the H-2A program will face costly discovery and the prospect of paying unanticipated overtime, the decision below needlessly puts the two programs in conflict and endangers a route for lawful employment that benefited numerous foreign guestworkers and their families.

Finally, several additional factors magnify the importance of this case. First, the fact that the Seventh Circuit justified its narrow-construction rule by invoking DOL guidance that even today reflects the narrow-construction rule of the *ancien regime* underscores the need for intervention. It is bad enough that the unmistakable message of *Encino* has not made it to Chicago, but it is inexcusable that the message has apparently not even reached 200 Constitution Avenue or made it into DOL's operative guidance documents. Second, the prospect of nationwide collective actions means that the Seventh Circuit's disregard for *Encino* when it comes to secondary agriculture will not be limited to the

Seventh Circuit. As long as an employer engages in activities that do not come within the Seventh Circuit's narrow construction of the agriculture exemption within the agriculturally rich States of the Seventh Circuit, it will open itself up to claims by workers nationwide. Finally, the Seventh Circuit did not confine its narrow-construction rule to the agriculture exemption, but broadly proclaimed that rule applicable to all FLSA exemptions. That broad holding, combined with the prospect of nationwide collective actions, threatens to undermine the rule of *Encino* across exemptions and across the nation. That is not a state of affairs this Court should tolerate. This Court's intervention is imperative, whether through plenary review or summary reversal.

I. The Decision Below Openly Defies *Encino* And Other Clear, On-Point, Recent Precedents Of This Court.

The fundamental starting premise of the decision below is fundamentally wrong—and in inarguable defiance of this Court's precedents. The court of appeals analyzed this statutory-interpretation case that is fundamentally about the scope of an FLSA exemption through the lens of the old maxim that "all FLSA exemptions … must be 'narrowly construed against the employer'" and 'limited to those who come plainly and unmistakably within [its] terms and spirit.'" App.7 (brackets in original) (quoting 29 C.F.R. §780.2). While that maxim was once in vogue—including when the Labor Department first promulgated 29 C.F.R. §780.2 over 50 years ago—today, that maxim is not just unfashionable but entirely untenable.

As this Court explained in *Encino*, the "narrow-construction principle" that led the Seventh Circuit to reverse the district court's dismissal here "relies on the flawed premise that the FLSA 'pursues' its remedial purpose 'at all costs.'" 138 S.Ct. at 1142 (quoting *Am. Express Co. v. Italian Colors Rest.*, 570 U.S. 228, 234 (2013)). But the FLSA is decidedly not single-minded. In fact, "the FLSA has over two dozen exemptions in §213(b) alone, including the one at issue here." *Id.* The FLSA's "exemptions are" thus "as much a part of the FLSA's purpose as the overtime-pay requirement." *Id.* Nor does the statute itself provide any "'textual indication' that its exemptions should be construed narrowly" as opposed to interpreted fairly like all other text. *Id.* (quoting Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 363 (2012)). For all those reasons, *Encino* unequivocally "reject[ed]" the narrow-construction "principle as a useful guidepost for interpreting the FLSA," and held that courts "have no license to give [an FLSA] exemption anything but a fair reading." *Id.*

The clear message of *Encino* has not been lost on other circuits or commentators who have recognized it as a game-changing event in the construction of FLSA exemptions and statuary exceptions more generally. *See infra.* Nor was the significance of the majority's rejection of the narrow-construction rule lost on the dissenting Justices in *Encino*. *See* 138 S.Ct. at 1148 n.7 (Ginsburg, J., dissenting) (complaining that the majority's rejection of the narrow-construction rule "unsettles more than half a century of our precedent"). But the decision below appears oblivious to *Encino* and its import. The court of appeals did not even cite or otherwise acknowledge *Encino*. Nor did it mention

any of this Court's other recent precedents that have "made clear that statutory exceptions are to be read fairly, not narrowly, for they 'are no less part of Congress's work than its rules and standards—and all are worthy of a court's respect.'" *HollyFrontier Cheyenne Ref., LLC v. Renewable Fuels Ass'n*, 141 S.Ct. 2172, 2181 (2021) (quoting *BP p.l.c. v. Mayor & City Council of Balt.*, 141 S.Ct. 1532, 1539 (2021)); *see also BP p.l.c.*, 141 S.Ct. at 1539 ("This Court has 'no license to give statutory exemptions anything but a fair reading.'" (quoting *Food Marketing Inst. v. Argus Leader Media*, 139 S.Ct. 2356, 2366 (2019))). Instead, the Seventh Circuit avowedly and unapologetically applied the now-repudiated narrow-construction canon both "at the outset" and throughout its analysis, *see* App.7, as if *Encino* (and *HollyFrontier* and *BP* and *Food Marketing*) had never been decided at all.

That blatant disregard for this Court's precedent requires this Court's intervention—either via summary reversal or plenary review. Indeed, the failure to follow precedent here is more egregious than in cases this Court summarily reversed in recent years. For instance, *Martinez v. Illinois*, 572 U.S. 833 (2014) (per curiam), summarily reversed a judgment that rested on "understandable" confusion regarding double jeopardy that nonetheless "r[an] directly counter to our precedents." And *Maryland v. Kulbicki*, 577 U.S. 1 (2015) (per curiam), summarily reversed a decision that applied *Strickland v. Washington*, 466 U.S. 668 (1984), "in name only," *i.e.*, it misapplied it beyond all recognition. Here, by contrast, the Seventh Circuit did not even give a nod to *Encino* by invoking it "in name only," and there is nothing "understandable" about that failure given the recent

vintage and emphatic nature of that decision. Indeed, when the panel decision's blatant disregard of *Encino* was pointed out in a rehearing petition, the Seventh Circuit did not back down an inch or modify its opinion in the least.[3]

Worse still, the only possible (albeit wholly inadequate) explanation for the Seventh Circuit's error only magnifies the importance of this Court's intervention. In lieu of a citation to *Encino* (presumably prefaced by *contra* or *but see, e.g.*,), the decision below quoted the Labor Department's interpretive regulation as support for its narrow-construction rule. That regulation, 29 C.F.R. §780.2, untouched by the agency since *Encino*, continues to provide: "Exemptions provided in the Act 'are to be narrowly construed against the employer seeking to assert them' and their application limited to those who come 'plainly and unmistakably within their terms and spirit.'" The internal quotations in that regulation

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[3] Signet did not invoke *Encino* in its brief as Appellee, but with good reason. Luna Vanegas did not invoke any narrow-construction rule in his opening appellate brief, and in fact had expressly disclaimed any reliance on a narrow-construction rule in the district court after Signet's motion to dismiss quoted from *Encino* at length and (correctly) argued that "*Encino Motorcars* … rejected the notion that exemptions to the Fair Labor Standards Act … should be narrowly construed." Dist.Ct.Dkt.29 at 9; *see* Dist.Ct.Dkt.39 at 5 n.7 ("Plaintiff's position is not inconsistent with [*Encino*]. Plaintiff is not requesting a narrow reading of the exemption."). Once the Seventh Circuit invoked the moribund narrow-construction rule *sua sponte*, Signet made that rule's inconsistency with *Encino* the centerpiece of its rehearing petition, yet the Seventh Circuit did nothing to modify its opinion or its square reliance on the narrow-construction rule and outmoded DOL regulation.

quote from decisions from the *ancien regime*. *See* 29 C.F.R. §780.2 (citing *A.H. Phillips, Inc. v. Walling*, 324 U.S. 490 (1945), *Mitchell v. Ky. Fin. Co.*, 359 U.S. 290 (1959), and *Arnold v. Ben Kanowsky, Inc.*, 361 U.S. 388 (1960)). But those decisions exemplify the approach this Court rejected in *Encino* (and *HollyFrontier* and *BP* and *Food Marketing*). That the agency has not bothered to update its regulations in light of *Encino*, and that the regulations still on the books continue to mislead the governed and the occasional court of appeals powerfully reinforces the need for this Court's intervention.

The error here infected the Seventh Circuit's entire analysis. That is not surprising since the whole question in this case is the scope of the agriculture exemption. Congress purposefully designed the exemption to broadly cover on-farm activity that goes well beyond primary farming. Only by applying a narrow-construction rule that required Signet to show it was "plainly and unmistakably" within the ambit of a "narrow" exemption, App.7, could the Seventh Circuit construe that purposefully broad exemption as inapplicable.

The error here was particularly problematic, moreover, because the Seventh Circuit applied its misguided narrow-construction rule not just to the agriculture exemption in 29 U.S.C. §213(b)(12), but to the definition of agriculture in 29 U.S.C. §203(f). That was an error even before *Encino*. *See Christopher v. SmithKline Beecham Corp.*, 567 U.S. 142 (2012). In *Christopher*, the Court addressed the scope of the FLSA's exemption for "workers 'employed … in the capacity of outside salesman.'" *Id.* at 147 (quoting 29

U.S.C. §213(a)(1)). Determining the metes and bounds of that exemption required this Court to explore the definition of "Sale" or "sell" in §203(k). *See id.* at 148. In so doing, the Court rejected the notion that the narrow-construction canon for exemptions (then still on life support) should affect the scope of an FLSA definition. *Id.* at 164 n.21. Thus, *Christopher* can be added to the list of recent precedents the Seventh Circuit ignored in elevating outdated DOL regulations over clear guidance from this Court.

This case perfectly illustrates the peculiar danger of applying the narrow-construction rule to a definition, rather than text unique to an exemption. As this Court noted in *Christopher*, Congress generally puts defined terms in a definitional section, rather than in an operative provision, because the definitions inform multiple operative provisions. The definition of "sale," for example, "applies throughout the FLSA." *Id.* Here, the FLSA definition of "agriculture" informs the scope of operative provisions even outside the FLSA, namely the definition of "agricultural labor" for purposes of the H-2A visa program. And whatever one thinks about construing FLSA exemptions narrowly against employers, there is no basis whatsoever for giving "agriculture" anything but a "fair reading" for purposes of a visa program that benefits foreign guestworkers and employers alike. But rather than applying *Encino*, *Christopher*, and the statutory text fairly, the decision below relied on a misplaced narrow-construction rule to reverse the district court decision and create havoc and confusion with the visa program. Whether by plenary review or summary reversal, that blatant

disregard of this Court's precedents requires correction.

II. The Decision Below Creates Conflicts With Other Circuits And Between The FLSA And The H-2A Visa Program.

A. The Decision Below Opens Circuit Splits on the Proper Construction of FLSA Exemptions and the Scope of the Agriculture Exemption.

That the decision below creates a circuit split should come as no surprise, given how far out of step it is with this Court's precedents and the truism that "vertical *stare decisis* is absolute, as it must be in a hierarchical system with 'one supreme Court.'" *Ramos v. Louisiana*, 140 S.Ct. 1390, 1416 (2020) (Kavanaugh, J., concurring in part) (quoting U.S. Const. art. III, §1).

In contrast to the Seventh Circuit, which took the view that "*all FLSA exemptions* … must be narrowly construed," App.7 (emphasis added), other circuits have gotten the message from *Encino* loud and clear that the narrow-construction principle no longer applies to the FLSA's exemptions. *See, e.g.*, *Carley v. Crest Pumping Techs., L.L.C.*, 890 F.3d 575, 579 (5th Cir. 2018) ("The Supreme Court recently clarified that courts are to give FLSA exemptions 'a fair reading,' as opposed to the narrow interpretation previously espoused by this and other circuits."); *Munoz-Gonzalez v. D.L.C. Limousine Serv., Inc.*, 904 F.3d 208, 216 (2d Cir. 2018) (same); *Sec'y of Lab. v. Bristol Excavating, Inc.*, 935 F.3d 122, 135 (3d Cir. 2019) (same); *Sec'y of Lab. v. Timberline S., LLC*, 925 F.3d 838, 850 (6th Cir. 2019) (same); *Coates v. Dassault Falcon Jet Corp.*, 961 F.3d 1039, 1047 n.7 (8th Cir. 2020) (same); *Clarke v.*

AMN Servs., LLC, 987 F.3d 848, 853 (9th Cir. 2021) (same); *Jordan v. Maxim Healthcare Servs., Inc.*, 950 F.3d 724, 733 (10th Cir. 2020) (same); *McKay v. Miami-Dade Cnty.*, 36 F.4th 1128, 1133 (11th Cir. 2022) (same); *see also Barks v. Silver Bait, LLC*, 802 F.3d 856, 860 (6th Cir. 2015) (noting that *Christopher* required a fair, not narrow, reading of the FLSA definition of agriculture). Some circuits have gone beyond recognizing *Encino*'s prospective importance to decline to follow earlier circuit precedents that relied on the narrow-construction rule. *Isett v. Aetna Life Ins. Co.*, 947 F.3d 122, 138 n.77 (2d Cir. 2020). Numerous commentators have likewise noted that *Encino* was a landmark decision that changed the way courts must construe FLSA exemptions. *See, e.g.*, Keith E. Sonderling & Bradford J. Kelley, *The Sword and the Shield: The Benefits of Opinion Letters by Employment and Labor Agencies*, 86 Mo. L. Rev. 1171, 1216 (2021) ("The dramatic change in the legal landscape as a result of *Encino* was described by many wage and hour practitioners as 'a true bombshell with respect to FLSA jurisprudence.'"). Only the Seventh Circuit and those responsible for the DOL regulations have failed to get the message.

The split among the circuits is not limited to the broader methodological questions or whether *Encino* is binding on lower courts. The decision below also squarely conflicts with post-*Encino* decisions from other circuits addressing the agriculture exemption in particular. *See, e.g.*, *Ramirez v. Statewide Harvesting & Hauling, LLC*, 997 F.3d 1356, 1359 (11th Cir. 2021) (explaining that this Court "recently corrected course and held that the exemptions from the Act should be

interpreted fairly, not narrowly," and so "we too must give the agriculture exemption its fair meaning").

For example, the decision below cannot be reconciled with the Eighth Circuit's recent decision in *Bills v. Cactus Family Farms, LLC*, 5 F.4th 844 (8th Cir. 2021). Cactus Farms raises piglets into market-ready pigs "through a multi-site production model." *Id.* at 846. It hired Bills to carry out "load assessments," *i.e.*, to ensure that drivers and crews followed certain protocols and did not harm the pigs while loading them onto trucks from "nursery farms" to "wean-to-finish farms" and then "to a processing plant." *Id.* Although "the majority of his load assessments were conducted at independent contract growers' finishing farms"—farms not "owned and operated by … Cactus Farms"—it was "undisputed" that all of Bills' "load assessments were conducted on a farm." *Id.* at 846-47. "Thus, the only question" was "whether Bills's load assessments were 'an incident to or in conjunction with such farming operations'" (as relevant there, "such farming" being the raising of livestock). *Id.* at 847 (quoting 29 U.S.C. §203(f)).

Like Luna Vanegas, Bills argued that a variety of circumstances about the details of the industry and his employer's operations made his on-farm work fall outside the agriculture exemption. *See id.* at 848. Unlike the Seventh Circuit, which remanded for a consideration of all those factbound considerations, the Eighth Circuit focused on the nature of the work that Bills performed. And while the Eighth Circuit acknowledged that the facts of Bills' work mattered, it refused to rely on regulations that made extraneous factors concerning the employer's practices the focal

point the analysis. *Id.* at 848-49. "Bills's tasks were performed while the independent contract growers were still raising the pigs for Cactus Farms," *id.* at 849, and raising pigs is one of the "farming operations" listed in the primary component of the FLSA definition, *see* 29 U.S.C. §203(f) ("raising [] livestock"). Thus, "the statutory language unambiguously applie[d]," and Bills' on-farm activities were exempt. *Bills*, 5 F.4th at 849.

The decision below conflicts with *Bills* in both reasoning and result. First, whereas the Eighth Circuit focused on the work the employee performed, the Seventh Circuit chastised the district court for so limiting its inquiry. The Seventh Circuit read DOL regulations and pre-*Encino* decisions to make crucial questions about the employer and its organization, "such as whether [the] employer was engaged in a productive activity separately organized from farming," critical to the analysis. App.14. Second, whereas the Seventh Circuit focused on "whether Signet's construction business 'amount[s] to an independent business' apart from agriculture," App.8 (quoting 29 C.F.R. §780.145), the Eighth Circuit took the opposite view. Instead of focusing on the nature of the *employer's* business, the Eighth Circuit—consistent with the statutory text—focused on whether an employee's "work was simultaneous to and concomitant with" primary agriculture, by whomever performed. *Bills*, 5 F.4th at 848-49; *see also Sariol v. Fla. Crystals Corp.*, 490 F.3d 1277, 1279 (11th Cir. 2007) ("Flying a crop-dusting airplane, cooking for field workers, or even clerical work can be considered agriculture for purposes of the exemption if done by a

farmer or on a farm and incidentally or in conjunction with such farming operations.").

Both Luna Vanegas and Bills did activities on a farm that supported and were in conjunction with primary agriculture. The secondary component of the FLSA's broad definition of agriculture comfortably and sensibly captures such activities, no matter how the employer's business is structured. If this case arose in the Eighth Circuit, Luna Vanegas would be exempt just like Bills.

The one case that accords with the decision below merely underscores how much of a throwback it was. In *NLRB v. Monterey County Building & Construction Trades Council*, 335 F.2d 927 (9th Cir. 1964), decided nearly 60 years ago under the National Labor Relations Act (which incorporates the FLSA definition), the Ninth Circuit acknowledged that while "a farmer might build a barn or silo or brooder house … or … might hire individuals to assist in the erection of the particular structure," the status of the entity that employed the worker was critical. *Id.* at 931. Since the employees there worked for an independent contractor, the court concluded that the work was "done by organizations separately organized as an independent productive activity." *Id.* That decision was decidedly a product of the pre-*Encino* regime, invoking a decision emphasizing the FLSA's remedial nature and that its exceptions were subject to strict construction. *See id.* at 930 n.4 (citing *Bowie v. Gonzalez*, 117 F.2d 11, 18 (1st Cir. 1941)); *see also Bowie*, 117 F.2d at 16. To the extent the decision below is aligned with a 1964 Ninth Circuit decision, it just underscores that the Seventh Circuit's reversion

to another era of statutory interpretation pits it against almost every other circuit.

B. The Decision Below Jeopardizes the H-2A Visa Program's Viability.

The need for this Court's intervention is especially acute given that the decision sets the FLSA on a collision course with the H-2A visa program. The Seventh Circuit minimized the significance of the fact that Luna Vanegas was only able to lawfully work due to a visa premised on his engagement in agriculture or the conflict its decision created between the FLSA and the H-2A visa program. In reality, because the H-2A visa program borrows the FLSA definition of agriculture, the decision below creates significant tension between the two programs and jeopardizes the ability of workers like Luna Vanegas to continue to benefit from that program. That reality highlights the baleful consequences of ignoring both *Encino* and *Christopher* by applying an obsolete narrow-construction rule to a definition that has application beyond the FLSA context.

As noted above, the H-2A program is limited to "agricultural labor" that is "of a temporary or seasonal nature." 8 U.S.C. §1101(a)(15)(H)(ii)(a). That provision expressly incorporates the FLSA definition of agriculture as well as a materially similar definition of agriculture in the Internal Revenue Code. It also expressly includes "the pressing of apples on a farm" and gives DOL the authority to refine the definition further. The Seventh Circuit seized on those features of the H-2A definition to conclude that it could be broader than the FLSA definition and thus "the fact that" the Executive approves an H-2A visa "does not

automatically mean that the FLSA's agricultural exemption applies." App.16. But that both ignores reality and minimizes the Seventh Circuit's error in applying the obsolete narrow-construction rule.

In the first place, no one seriously suggests that Luna Vanegas came to the U.S. to press apples. The visa applications Signet submitted for its workers make clear that a construction company seeks visas for workers to provide agricultural construction services. Thus, in approving the visas, DOL and DHS are endorsing the view that such work comes within the FLSA or IRC definitions of "agriculture." The definitions are materially similar, and "[t]he FLSA's definition appears on its face to be broader than the IRC's definition." *Tijerina-Salazar v. Venegas*, 2022 WL 1927007, at *10 (W.D. Tex. June 3, 2022). *Compare* 26 U.S.C. §3121(g), *with* 29 U.S.C. §203(f). Even more telling, Signet's applications and clearance orders for H-2A visas make clear that no overtime pay would be given—something Luna Vanegas emphasized before the district court, *see* Dist.Ct.Dkt.16 at 3—which would be lawful *only* if the job described meets the FLSA's definition of "agriculture." Thus, approving Signet's applications—including clearance orders sought by a construction company for workers who would not be paid overtime—indicates that the relevant executive officials understood that on-farm construction work of the type Luna Vanegas performed would fall within the FLSA's agriculture exemption.

DOL's long track record of non-enforcement against companies like Signet bolsters that conclusion. Though Signet and others have openly

and notoriously relied on the H-2A program over the years, Signet is unaware of—and Luna Vanegas has not pointed to—a single enforcement action against agricultural construction firms like Signet for failing to pay overtime. Moreover, at the same time DOL's wage-and-hour division has refrained from any enforcement action, the DOL and DHS officials responsible for the H-2A visas have granted such applications to Signet and other construction firms year after year. Even in the absence of implicit approval of other executive branch officials, this Court has emphasized that long periods of non-enforcement of an open and notorious industry practice suggest that the practice was not in violation of the FLSA all along. *Cf. Christopher*, 567 U.S. at 158 (observing that "while it may be 'possible for an entire industry to be in violation of the [FLSA] for a long time without the Labor Department noticing,' the 'more plausible hypothesis' is that the Department did not think the industry's practice was unlawful"). That principle applies *a fortiori* when the Executive not only fails to take an enforcement action, but facilitates the employment practice by granting agriculture-specific visas with full knowledge that the guestworkers would not be paid overtime.

The Seventh Circuit was also oblivious to how its unforced and blatant error directly contributed to putting the FLSA and the H-2A program on a collision course. Even before *Encino*, this Court had repeatedly warned courts off of applying the narrow-construction rule for FLSA exemptions to definitional provisions with applications beyond the FLSA exemption itself. *Christopher*, 567 U.S. at 164 n.21; *Sandifer v. U.S. Steel Corp.*, 571 U.S. 220, 232 n.7 (2014). Yet here,

even with full awareness that the FLSA's definition of "agriculture" was employed in the H-2A visa program, the Seventh Circuit applied a narrow-construction rule to the definition. The predictable result was not an "anti-employer" canon limited to the FLSA context (which itself would plainly conflict with *Encino*), but a deviation from a "fair" reading of a definition that wreaks havoc with a separate program incorporating the same definition that has given thousands of guestworkers the ability to work lawfully in the United States. Thus, the ultimate impact of the Seventh Circuit's failure to heed this Court's precedents is not limited to employers, but extends to foreign guestworkers, their families, and the farms that have long relied on companies like Signet and guestworkers like Luna Vanegas.

III. The Question Presented Is Important, And This Is A Clean Vehicle.

There is no denying the importance of vertical *stare decisis*. Any case involving a lower court's blatant failure to abide by this Court's clear holdings would thus warrant intervention. But the importance of this case and the question it presents go far deeper.

At the outset, the fundamental errors of the decision in this case cannot be confined to the upper Midwest or to the agricultural sector. The FLSA provides for nationwide collective actions. *See* 29 U.S.C. §216(b). Particularly when compared with the law in the rest of the circuits that follow this Court's lead and read FLSA exemptions fairly, the Seventh Circuit's resurrection of the anti-employer canon will be a powerful incentive to any lawyer filing an FLSA action on behalf of an employee to file a complaint

within the Seventh Circuit. And with a toehold established within the Seventh Circuit, those lawyers can try to pursue a nationwide collective action that could deprive employers of the benefit of *Encino* and *Christopher* even for employees who work in circuits that faithfully follow this Court's precedents.[4] Thus, the normal imperative to intervene to vindicate vertical *stare decisis* is magnified by the prospect of nationwide collective actions facilitating the nationwide disregard of this Court's recent and emphatic precedents.

Nor can the damage be limited to the agricultural sector. It would be bad enough if the Seventh Circuit had fashioned some narrow agriculture exception to *Encino*. But by ignoring *Encino* in favor of an outdated DOL regulation that by its terms applies to all FLSA exemptions, there is little realistic prospect that the Seventh Circuit's disregard of *Encino* can be cabined. While it is possible that a subsequent Seventh Circuit panel could try to limit the damage, the entire Seventh Circuit was given a chance to act on a rehearing petition that put the blatant conflict with *Encino* front and center. No judge on the panel moved an inch, and no judge off the panel voted for

[4] While principles of personal jurisdiction could put some limits on this abuse, the circuits are currently split on that question. *Compare Waters v. Day & Zimmermann NPS, Inc.*, 23 F.4th 84, 86-87 (1st Cir. 2022) (holding *Bristol-Myers Squibb Co. v. Super. Ct. of Cal.*, 582 U.S. 256 (2017), inapplicable to nationwide FLSA collective actions), *with, e.g.*, *Canaday v. Anthem Cos., Inc.*, 9 F.4th 392, 397 (6th Cir. 2021) (applying *Bristol-Myers Squibb* to FLSA collective actions).

rehearing. There is little prospect for self-correction and substantial damage in the interim.

Worse still, the problems created by the decision below extend well beyond the FLSA context. As noted, the Seventh Circuit not only failed to heed *Encino* but also ignored *Christopher*, which warned about the especial dangers of applying the anti-employer canon to definitional provisions that apply beyond the FLSA exemptions. Here, the FLSA's purposefully broad definition of agriculture has been adopted in a number of different, non-FLSA contexts. The most obvious is the impact on the H-2A visa program which has already been discussed. That impact alone is enormous. The program has grown rapidly in recent years, from a 2010 total of 79,000 H-2A workers to 258,000 by 2019. *See* Marcelo Castillio et al., U.S. Dep't of Agric., Economic Research Service, *Examining the Growth in Seasonal Agricultural H-2A Labor* 2 (Aug. 2021), https://tinyurl.com/3ud7df9f. The H-2A program now accounts for about 10% of farm labor nationwide. David J. Bier, *H-2A Visas for Agriculture: The Complex Process for Farmers to Hire Agricultural Guest Workers*, Cato Inst. (Mar. 10, 2020), https://tinyurl.com/z624ka4h.

What is more, independent contractors like Signet increasingly play a crucial role within the H-2A ecosystem. For many farmers, particularly those with smaller operations, the complexity of navigating the H-2A visa application process—plus the costs of housing workers and covering visa fees and travel—are strong deterrents to directly employing workers through that system. *See id.* Farm Labor Contractors ("FLCs") who specialize in this area can provide labor

to multiple farms, providing a cost-effective way for farmers to access authorized farm labor. *See* Castillio, *supra*, at 2. As a result, FLCs have employed over 40% of H-2A workers in some recent years. *Id.* And, as discussed by a host of amici below, the H-2A program is crucial to the agricultural construction firms that depend on it for labor when domestic workers are in short supply. CA7.Dkt.43 at 11. Yet a narrow-construction, anti-employer approach that focuses on extratextual considerations about the employer rather than whether the employee's work is supportive of agricultural operations will make it far more difficult for independent contractors to continue sponsoring guestworkers. Giving the agriculture exemption a narrow reading will make it harder, in other words, for American companies to continue to connect farmers with much-needed labor.

The H-2A definition is far from the only context where Congress has incorporated the FLSA's broad definition of agriculture. For example, the Migrant and Seasonal Agricultural Workers Protection Act defines "agricultural employment" in part through reference the FLSA's definition of agriculture. *See* 29 U.S.C. §1802(3). Similarly, the NLRA exempts "agricultural laborer" from its definition of "employee," 29 U.S.C. §152(3), and thus from coverage under that Act's employee-focused provisions. And "Congress has long provided that this term derives its meaning from the definition of 'agriculture' supplied by §3(f) of the Fair Labor Standards Act." *Sanderson Farms, Inc. v. NLRB*, 335 F.3d 445, 449 (5th Cir. 2003). Thus, just as *Christopher* warned, narrowing the FLSA definition of agriculture not only warps the scope of the agriculture exemption and other

provisions of the FLSA that deploy the term, *see, e.g.*, 29 U.S.C. §206(a)(4) (relating to minimum wage); *id.* §214(c)(1) (relating to employment under special certificates), it threatens to wreak havoc in other contexts, further underscoring that there is no substitute for giving definitions, exemptions, and all statutory text a "fair reading." *Encino*, 138 S.Ct. at 1142.

Finally, this case presents an ideal vehicle to resolve the important issues created by the Seventh Circuit's decision. As to the failure to follow *Encino*, it is hard to imagine a better vehicle or a clearer case for summary reversal. But this case also presents an ideal candidate for plenary review to ensure that the agriculture exemption is given a fair reading and the broad scope Congress intended. While the Seventh Circuit made much of this case being decided at the motion-to-dismiss stage, this is precisely the kind of case that should be resolved without the need for costly discovery, as the District Court properly recognized. Luna Vanegas' complaint brought the agriculture exemption into play, and its allegations and documents referenced therein put him in the heartland of the agriculture exemption. Likewise, because Luna Vanegas sought to file a collective action, and because Signet opposed that motion, the record and briefing below are more extensive than in a typical Rule 12(b)(6) case and more than adequate to resolve this case. More to the point, this is the kind of case that should be decided on a motion to dismiss. Luna Vanegas is only able to lawfully work in the United States by virtue of a visa limited to agricultural workers. If the cost for companies like Signet of securing those visas is to endure costly

discovery in service of an inquiry where the thumb is expressly on the side of the foreign worker, then the incentives for using that congressionally authorized program will be immediately reduced. *Encino* already makes clear that Signet should not have to endure costly discovery based on anything other than a fair reading of the FLSA, and a fair reading of the agriculture exemption would entitle Signet to have this case dismissed at the threshold.

The decision below is at odds with this Court's decisions and those of other courts of appeals that have not ignored on-point precedent and have instead followed the FLSA's text and this Court's lead. The Seventh Circuit's cramped construction also threatens to undermine a program critical to this nation's agricultural industry. What is more, because other statutes incorporate the FLSA's definition, the Seventh Circuit's needlessly narrow approach could have spillover effects far beyond the wage-and-hour context. In sum, the decision below is out of line with this Court's precedents and out of step with other circuits, and that disconnect threatens to wreak havoc both on the ground and in the law.

CONCLUSION

For the foregoing reasons, this Court should grant the petition for certiorari.

Respectfully submitted,

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