No. 22-869

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

REPLY BRIEF

ANN MARGARET POINTER
JOSHUA H. VIAU
EDWARD N. BOEHM, JR.
FISHER & PHILLIPS, LLP
1230 Peachtree St. NE
Suite 3300
Atlanta GA 30309
(404) 231-1400

PAUL D. CLEMENT
Counsel of Record
MATTHEW D. ROWEN*
CHADWICK J. HARPER*
CLEMENT & MURPHY, PLLC
706 Duke Street
Alexandria, VA 22314
(202) 742-8900
paul.clement@clementmurphy.com

*Supervised by principals of the firm who are members of the Virginia bar

Counsel for Petitioner

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REPLY BRIEF

Luna-Vanegas scarcely tries to defend the Seventh Circuit's declaration that, "[l]ike all FLSA exemptions, the agricultural exemption must be 'narrowly construed against the employer seeking to assert [it].'" App.7 (quoting 29 C.F.R. §780.2). For good reason—it is indefensible in a system that relies on vertical stare decisis. Luna-Vanegas nonetheless insists the Seventh Circuit did not mean what it said, and that despite invoking the narrow-construction rule "at the outset" of its analysis, App.7, the decision's starting point was unrelated to its end. In reality, the narrow-construction rule clearly tainted the balance of the opinion, including its dismissal of DOL's practice of approving H-2A visa applications from companies like Signet that make plain that foreign workers will work more than 40 hours a week in secondary agriculture without receiving overtime—approvals that are inexplicable unless on-farm construction of livestock facilities falls within the agriculture exemption. The panel's decision ignored that reality as clearly as it ignored this Court's precedent in *Encino Motorcars, LLC v. Navarro*, 138 S.Ct. 1134 (2018). As amici from across the country attest, that not only brazenly disregards this Court's precedent but threatens a program that has proven critical to American agriculture and provides a path to lawful U.S. employment for many guestworkers like Luna-Vanegas. Through summary reversal or plenary review, this Court should make clear that it meant what it said in *Encino* and that lower courts have no more license to disregard that decision than they do to construe FLSA exemptions narrowly.

I. The Decision Below Openly Defies *Encino* And Other Precedents Of This Court.

This Court has been clear: "[T]he principle that exemptions to the FLSA should be construed narrowly" is no longer "a useful guidepost for interpreting the FLSA." *Encino*, 138 S.Ct. at 1142. Leaving no room for doubt, this Court has reiterated that courts "normally have no license to give statutory exemptions anything but a fair reading," *Food Mktg. Inst. v. Argus Leader Media*, 139 S.Ct. 2356, 2366 (2019) (alterations omitted) (citing *Encino*), as "[e]xceptions and exemptions are no less part of Congress's work than its rules and standards—and all are worthy of a court's respect," *BP P.L.C. v. Mayor & City Council of Baltimore*, 141 S.Ct. 1532, 1539 (2021) (citing *Encino*).

But that clear teaching appears to have eluded the Seventh Circuit and DOL. Instead, the Seventh Circuit, invoking regulations DOL has not bothered to update, resolved this case on the premise that "the agricultural exemption must be 'narrowly construed against the employer seeking to assert it.'" App.7. From that errant beginning, the court (unsurprisingly) concluded that Signet had not shown that its former employee, Luna-Vanegas, came within the narrowly construed agriculture exemption. App.15. None of that is reconcilable with *Encino* and its progeny.

Luna-Vanegas does not really argue otherwise or try to defend the Seventh Circuit's defiance of *Encino*. Nor could he. There is no defense of a decision that is unashamedly premised on a substantive canon this Court has specifically interred and that conflicts with

this Court's precedents and the decisions of every circuit that has faithfully followed them. Pet.16-27. And the invocation of anachronistic DOL regulations only makes matters worse. If agencies want to claim that their regulations have the force of law, they are duty-bound to revisit them when this Court changes the landscape. If they decline to do so even in the wake of a momentous change like *Encino*, errors are bound to multiply.

Luna-Vanegas tries to avoid the natural consequence of a court-of-appeals decision openly defying this Court—summary reversal or plenary review—through a strategy of denial. According to Luna-Vanegas, the holding below somehow is uncontaminated by the court's application of the narrow-construction rule, despite the fact that a *fair* construction of the exemption would have compelled the opposite result. BIO.20. Rather, he says, the holding was simply about invoking an affirmative defense at the motion-to-dismiss stage. BIO.23.

That half-hearted defense does not withstand scrutiny and ignores the procedural posture and basic premise of *Encino*. The panel kicked off its analysis by pairing the burden Signet had to carry with the purported narrowness of the agriculture exemption:

> In approaching that question, we must recall at the outset that Signet bears the burden of proving that the agricultural exemption applies. *See* 29 C.F.R. §780.2. 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." *Id.*

App.7.

Given that narrow-construction rule (and plain-and-unmistakable eligibility for an exception to boot), it is little wonder that the Seventh Circuit reversed the district court, which was unburdened with any misguided narrow-construction rule and, not coincidentally, granted Signet's motion to dismiss. The connection between the narrow-construction rule and the fate of Signet's dismissal motion is unmistakable and inevitable. Qualified immunity is an affirmative defense, and if it were subject to a narrow-construction rule rather than a clearly-established-law requirement, it would rarely be granted. Having posited the narrow-construction principle rejected by *Encino* as "a guidepost for interpreting the FLSA," the rejection of Signet's motion to dismiss followed as a matter of course.

More generally, any effort to separate the methodological narrow-construction error from the underlying substantive error is unfaithful to *Encino* itself. *Encino* corrected the Ninth Circuit's reliance on the narrow-construction principle as part and parcel of its rejection of the Ninth Circuit's refusal to give the FLSA exemption its full scope. *See* 138 S.Ct. at 1142.

Equally unavailing is Luna-Vanegas' attempt to fault Signet for moving to dismiss rather than waiting to defend itself on summary judgment. BIO.2, 11, 15; *see also* App.4 (doing same). Luna-Vanegas *put the agriculture exemption at issue in his complaint*. *See* Pet.9-10, 34. There is nothing improper about relying on a defense the complaint itself put in play, as

evidenced by the district court's grant of the motion. Indeed, *Encino* itself was decided in the exact same posture: an appeal from the employer's successful motion to dismiss raising an FLSA exemption as an affirmative defense. As for the Seventh Circuit's paean to Rule 8, *see* BIO.20, that only makes its failure to follow *Encino* all the more glaring, as Signet's motion to dismiss emphasized precisely what the court missed: "*Encino* … rejected the notion that exemptions to the Fair Labor Standards Act … should be narrowly construed." Dist.Ct.Dkt.29 at 9.

The Seventh Circuit ignored *Encino* and its place in the federal judicial system. Its invocation of outdated DOL regulations provides no excuse, and in fact underscores the need for this Court's intervention. The decision below cannot be allowed to stand.

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

Unsurprisingly in a system premised on vertical stare decisis, the Seventh Circuit's defiance of this Court puts it squarely at odds with the decisions of multiple other circuits. Courts across the country have recognized what the panel below (and DOL) missed: *Encino* laid the narrow-construction rule to rest. *See, e.g.*, *Ramirez v. Statewide Harvesting & Hauling, LLC*, 997 F.3d 1356, 1359 (11th Cir. 2021).

Luna-Vanegas insists that the decision below created no circuit split. But his argument is not that other circuits have demonstrated equivalent recalcitrance; he claims that other circuits' post-*Encino* opinions are distinguishable because they reviewed decisions at different procedural stages.

BIO.24. But that is a distinction without a difference. *Encino* was a decision about statutory construction, not motions practice or pleading standards. Indeed, *Encino* itself was decided at the motion-to-dismiss stage. The rule that FLSA exceptions must be given a fair construction, not a narrow one, is fundamental; it does not kick in only at the summary-judgment stage. Thus, the cases faithfully applying that principle at later stages of the case are in square conflict with the decision below.

After striving to explain away all contrary cases, Luna-Vanegas next tries to embrace the cases on the other side of the split. For instance, he notes that *Bills v. Cactus Fam. Farms, LLC*, 5 F.4th 844 (8th Cir. 2021), cited regulatory language about the holistic nature of the agriculture-exemption inquiry. BIO.25-26; *see* 5 F.4th at 848-49 (discussing 29 C.F.R. §780.145). But he ignores what the Eighth Circuit went on to clarify: "Regardless" of the regulations, the nature of Bills' work was such that "*the statutory* language unambiguously applies here," and so "the regulations' interpretation of the statute is not controlling." *Id.* at 849 (emphasis added). Had the Seventh Circuit given the statute a fair reading here, it would have reached the same conclusion. Pet.24-25. That Luna-Vanegas had no contact with animals, or that the buildings he constructed would only later house animals, BIO.25, is immaterial. "Regardless," as *Bills* explained, 5 F.4th at 848, and the district court rightly observed too, App.24-25, such factors make exactly zero difference under the statutory text.

Unable to deny the split or that the decision below defies *Encino*, Luna-Vanegas makes the remarkable

suggestion that *Encino* is irrelevant here. BIO.21. Asserting that "the circumstances in which *Encino* rejected the narrow construction rule are substantially different than the circumstances here," Luna-Vanegas contends that "*Encino* says nothing casting doubt on the agricultural exemption regulations at issue here." BIO.21-22. That is double nonsense. First, nothing in *Encino* is limited to service advisors, that particular FLSA exemption, or even the FLSA. Second, as *Bills* explained, the atextual regulatory factors on which Luna-Vanegas would focus in lieu of *Encino* only have purchase if one construes the *statutory* exemption narrowly, rather than fairly according to its plain text.

Turning to yet another example of how the interred narrow-construction principle fundamentally distorted the Seventh Circuit's analysis, the decision below not only split with other circuits, but ignored DOL's own longstanding practice of approving clearance orders that expressly promise more than 40 hours of on-farm construction work and no overtime pay. *See* App.16-17. That practice would be inexplicable unless the FLSA agriculture exemption applies to on-farm construction work. *See* Pet.28. But to the Seventh Circuit, DOL's practice was meaningless, because "[t]he current regulations define agricultural labor for purposes of the H-2A program to include" not just "'agricultural labor' as defined in FLSA," but also "'agricultural labor' as defined *(more broadly)* in the Tax Code." App.16 (emphasis added). Given that the two provisions are materially similar, *see* Pet.27-28, that distinction makes sense only on the misguided assumption that the FLSA exemption gets read narrowly, and the tax code definition gets read

fairly. Otherwise, there is no basis for reading comparable statutory text to have substantially different coverage.

Luna-Vanegas asserts a broader sweep for the tax code by invoking a footnote from *Holly Farms Corp. v. NLRB*, 517 U.S. 392, 399 n.6 (1996), that itself relied on snippets of legislative history in comparing the FLSA's definition of agriculture to the definition of "agricultural labor" found in the Social Security Act Amendments of 1939—which is akin to the tax code's definition. *See* BIO.31-32. That is doubly anachronistic. Not only is this Court far less impressed by legislative history, but *Holly Farms* itself is a product of the pre-*Encino* regime. Thus, even on the unlikely assumption that DOL viewed the tax code definition as broader than the FLSA definition based on a footnote in *Holly Farms*, that would be a reason in favor of this Court granting review to clear up the confusion. A DOL official giving FLSA exemptions unduly narrow constructions based on penumbras from pre-*Encino* footnotes is scarcely better than an appellate court continuing to give narrow constructions based on a never-updated DOL regulation. Either way, the effort to have one last taste of the fruits of the *ancien régime* demands correction. *Cf. Alexander v. Sandoval*, 532 U.S. 275 (2001).

Furthermore, and like the Seventh Circuit before him, Luna-Vanegas turns a blind eye to what it means for DOL to have consistently signed off on job orders that promise more than 40 hours a week of work and no overtime pay. Signet's openly declared practice is hardly unique. *See* Ag.Installers.Amicus.6, 21-22.

Luna-Vanegas suggests that DOL is stretched too thin to enforce the law. BIO.29-30, 33-34. That is an unlikely explanation for years of nonenforcement related to an open and notorious practice. Pet.28-29. Rather, "the more plausible hypothesis is that the Department did not think the industry's practice was unlawful." *Christopher v. SmithKline Beecham Corp.*, 567 U.S. 142, 158 (2012) (quotation marks omitted). And, tellingly, Luna-Vanegas *still* has not pointed to a single enforcement action against agricultural construction firms like Signet for failing to pay overtime. If a watchdog never barks, that is powerful evidence that there has been no trespass.

Luna-Venegas asserts that Signet's job description did not give DOL enough information to do its job. BIO.29-20. But DOL has a specific remedy when it lacks necessary information: It must provide a Notice of Deficiency if it thinks a job order "is incomplete, [or] contains errors or inaccuracies." 20 C.F.R. §655.141(a). It could hardly be otherwise. If DOL simply rubberstamped applications without considering their legality, it would be blessing rampant lawlessness and an employer who relied on the Executive's approval could then find itself subject to expensive litigation and potentially crushing liability. No one should lightly assume that DOL negligently lays a trap for employers going to great lengths to facilitate the *lawful* employment of foreign workers. *Cf. Raley v. State of Ohio*, 360 U.S. 423, 438 (1959) ("convicting a citizen for exercising a privilege which the State clearly had told him was available to him" is "the most indefensible sort of entrapment").

In sum, the Seventh Circuit's decision pits it against every circuit in the country that has faithfully followed *Encino* and conflicts with DOL's long-running and widespread practice of approving job orders for this sort of on-farm construction work as overtime exempt. That precedent-defying, circuit-splitting error cries out for reversal.

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

Whether *Encino* remains the law of the land even in Chicago and at DOL and how the agriculture exemption applies to on-farm construction work are both crucial questions, as numerous amici attest. That an appellate court in America's agricultural heartland has gotten both questions wrong only heightens the stakes.

At minimum, the Court should summarily reverse and remand for further proceedings consistent with *Encino*. But it should go further, as the decision below has significant implications for American agriculture and foreign guestworkers. As amici point out, DOL has long treated on-farm agricultural construction work as exempt from the overtime requirements of the FLSA. *See* Ag.Installers.Amicus.7. That makes sense: The nature and timing of agricultural construction must move with the seasons and sync up with farmers' needs, and as a result, it calls for long days of hard work that do not fit the 40-hour workweek FLSA envisions. Ag.Installers.Amicus.15-18. And the H-2A program provides nonimmigrant workers a way to attain gainful and lawful employment in the United States. That, in turn, helps

American farmers feed the nation and the world. NPPC.Amicus.17.

And the need for agricultural construction firms with specialized skills has never been greater. Consumer demand (and California law) has shifted, prioritizing animal welfare in ways that require more sophisticated confinement facilities. *Cf. Nat'l Pork Producers Council v. Ross*, 143 S.Ct. 1142 (2023). While earlier farmers could have rallied the community to help them build a standard barn, these sophisticated modern structures practically require specialist ag-construction firms like Signet. Pet.32-33. The Seventh Circuit's narrowly construed vision of agriculture—which makes it nearly impossible for independent contractors like Signet to fit the bill, *see, e.g.*, Texas.Cattle.Feeders.Amicus.20 ("It would be difficult to identify work more completely meeting the definition of 'as an incident to or in conjunction with the raising of livestock.'")—thus flouts economic reality along with *Encino* and the FLSA's plain text.

Against all of that, Luna-Vanegas invokes purported vehicle problems. None has merit. For instance, Luna-Vanegas claims that Signet forfeited reliance on the clear statutory text because it argued that the regulations supported its position below. BIO.18. The premise is false: Signet argued that the statute should control and that Luna-Vanegas' arguments (which the Seventh Circuit embraced) misunderstood the regulations. CA7.Resp.Br.8-9. Nor can Signet be faulted for not invoking *Encino* by name in its panel-stage briefing. Luna-Vanegas did not invoke the narrow-construction rule, and Signet cannot be blamed for failing to anticipate the Seventh

Circuit's *sua sponte* resurrection of the narrow-construction principle. Indeed, when Signet made *Encino* the centerpiece of its rehearing motion, it received only a prompt denial.

Luna-Vanegas also insists that goings-on in the district court will soon render this petition moot. BIO.35. But unless and until it is vacated, the decision below will arguably be law of the case. *See Nat'l Cas. Co. v. White Mountains Reinsurance Co. of Am.*, 735 F.3d 549, 554 (7th Cir. 2013). Summarily reversing—at least as to its anti-*Encino* declaration about how the agricultural exemption should be construed—would grant Signet "effectual relief" on a going-forward basis. *MOAC Mall Holdings LLC v. Transform Holdco LLC*, 143 S.Ct. 927, 934 (2023).

Finally, the plainness of the Seventh Circuit's error is, in this way (and this way alone), a virtue rather than a vice: It makes correcting it all the simpler. To whatever extent there might be some dispute about the facts or relevant allegations, there can be no real dispute that the Seventh Circuit was wrong to resurrect the narrow-construction rule that this Court has repeatedly interred. In this context, the strong medicine of summary reversal is more than warranted. *See, e.g.*, *City of Tahlequah v. Bond*, 142 S.Ct. 9, 11 (2021) (per curiam) (summarily reversing a court of appeals decision that failed to heed this Court's "repeated[]" admonitions "not to define clearly established law at too high a level of generality"). But given the importance of the agricultural exemption—and the importance of vindicating exemptions at the motion-to-dismiss stage, as in *Encino* itself—the

better course is to grant plenary review, give the agriculture exemption a fair reading, and reverse.

CONCLUSION

This Court should grant the petition.

Respectfully submitted,

ANN MARGARET POINTER
JOSHUA H. VIAU
EDWARD N. BOEHM, JR.
FISHER & PHILLIPS, LLP
1230 Peachtree St. NE
Suite 3300
Atlanta, GA 30309
(404) 231-1400

PAUL D. CLEMENT
Counsel of Record
MATTHEW D. ROWEN*
CHADWICK J. HARPER*
CLEMENT & MURPHY, PLLC
706 Duke Street
Alexandria, VA 22314
(202) 742-8900
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