No. 25-966

In the Supreme Court of the United States

DEPARTMENT OF LABOR, ET AL., PETITIONERS

v.

SUN VALLEY ORCHARDS, LLC

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

BRIEF FOR THE PETITIONERS

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QUESTIONS PRESENTED

1. Whether Article III of the Constitution precludes the Department of Labor from adjudicating proceedings to collect monetary remedies from employers who have allegedly violated the terms and conditions of employment of H–2A workers and domestic workers in corresponding employment.

2. Whether 8 U.S.C. 1188(g)(2) authorizes the Department of Labor to adjudicate proceedings to collect monetary remedies from employers who have allegedly violated the terms and conditions of employment of H–2A workers and domestic workers in corresponding employment.

PARTIES TO THE PROCEEDING

Petitioners (defendants-appellees below) are the Department of Labor and Keith E. Sonderling, Acting Secretary of Labor.* Respondent (plaintiff-appellant below) is Sun Valley Orchards, LLC.

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* Acting Secretary Sonderling is automatically substituted for Secretary Lori Chavez-DeRemer. See Sup. Ct. R. 35.3.

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OPINIONS BELOW

The court of appeals' opinion (Pet. App. 1a-19a) is reported at 148 F.4th 121. The district court's opinion (Pet. App. 20a-46a) is available at 2023 WL 4784204. The Administrative Review Board's decision and order (Pet. App. 47a-76a), the administrative law judge's decision and order (Pet. App. 77a-182a), and the Administrator's notice of determination (Pet. App. 183a-199a) are unreported.

JURISDICTION

The judgment of the court of appeals was entered on July 29, 2025. A petition for rehearing was denied on October 15, 2025 (Pet. App. 200a-201a). On December 23, 2025, Justice Alito extended the time within which to file a petition for a writ of certiorari to and including February 12, 2026, and the petition was filed on that

date. The petition was granted on April 27, 2026. The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

STATUTORY PROVISIONS INVOLVED

Pertinent statutory provisions are reprinted in the appendix. App., *infra*, 1a-12a.

INTRODUCTION

Since the Founding, courts and executive officers have each engaged in adjudication—*i.e.*, rendering decisions on matters within their respective jurisdictions after ascertaining the relevant facts and interpreting the relevant law. But the Constitution treats the two branches' adjudicatory powers differently. Article III of the Constitution reserves cases involving private rights—"the stuff of the traditional actions at common law tried by the courts at Westminster in 1789"—to courts alone. *SEC* v. *Jarkesy*, 603 U.S. 109, 128 (2024). By contrast, Articles I and II allow Congress to assign adjudications involving public rights—matters that "historically could have been determined exclusively by [the executive and legislative] branches"—to executive agencies, and this Court has approved such adjudications for more than 170 years. *Id.* at 130; see *Murray's Lessee* v. *Hoboken Land & Improvement Co.*, 18 How. 272, 284 (1856). In those "distinctive areas," such as "immigration," agency adjudications of money penalties are well-established. *Jarkesy*, 603 U.S. at 120, 129.

This case primarily involves whether Article III allows Executive Branch adjudications in the specific context of immigration-related benefits. For the past 40 years, the Department of Labor has initially adjudicated whether employers violated terms and conditions of the H–2A program for importing aliens to perform agricultural work—and has redressed such violations by imposing civil penalties and back wages, subject to

judicial review. This Court has already identified one method for determining the constitutionality of such adjudications: Look to the "historic categories of adjudications" that the Executive Branch has performed and ask whether this adjudication falls within them. *Jarkesy*, 603 U.S. at 130.

This Court need not go beyond that method here because H–2A adjudications fall within two overlapping historical categories at the heart of the public-rights doctrine. First, public rights include rights belonging to the sovereign, such as the right to determine whether to allow aliens into the country. As this Court has long held, "[t]he power of Congress to exclude aliens altogether from the United States, or to prescribe the terms and conditions upon which they may come to this country, and to have its declared policy in that regard enforced exclusively through executive officers, without judicial intervention, is settled by [the Court's] previous adjudications." *Lem Moon Sing* v. *United States*, 158 U.S. 538, 547 (1895).

Second, public rights include privileges conferred by the government, such as public benefits granted under government programs. If a person "avails himself of the privilege thus granted, he must do so subject to the conditions annexed by the government to the exercise of the privilege." *McElrath* v. *United States*, 102 U.S. 426, 440 (1880). That category encompasses government programs granting employers or other third parties the special privilege of obtaining authorization to bring aliens into the United States, subject to the terms and conditions the government prescribes. Congress may impose "condition[s] to the right to bring in aliens," prescribe "money penalties" for violating those conditions, and authorize "executive officers" to assess the

penalties "without the necessity of invoking the judicial power." *Oceanic Steam Navigation Co.* v. *Stranahan*, 214 U.S. 320, 339, 342 (1909).

Those principles make this a straightforward case. Under the H–2A visa program, employers may bring aliens to the United States for temporary agricultural work. To participate in the program, an employer must file a "petition to import an alien as an H–2A worker." 8 U.S.C. 1188(a)(1). The employer's request is inextricably linked to the alien's entry; the alien can obtain a visa only if the federal government approves the employer's petition, and the alien must leave once work for the employer ends, absent some independent basis under federal immigration law for staying. That program also confers a special privilege on the employer: The federal government exercises its sovereign immigration powers to allow the importation of foreign laborers to perform agricultural work for the employer. In return, the employer must abide by federal terms and conditions designed to ensure that importing foreign labor does not undermine the domestic labor market. In particular, the employer must ensure that workers' working and living conditions satisfy certain minimum standards.

Thus, the Department engaged in a classic adjudication of public rights when addressing whether respondent violated H–2A program requirements after successfully petitioning to import dozens of foreign laborers, then refusing to pay them appropriate wages, depriving them of adequate housing, and the like. After finding that respondent prolifically violated H–2A program requirements, the Department imposed money penalties and required respondent to pay those workers the backwages owed. Whether respondent's violation of H–2A program requirements is framed as a violation of the

United States' sovereign right to control the terms under which aliens can enter the country or as a violation of the terms and conditions of a public-benefits program —when, in fact, it is both—the ensuing adjudications are plainly constitutional. Either way, executive officers may conduct adjudications to enforce those restrictions on "immigration" and those conditions on receiving "public benefits." *Jarkesy*, 603 U.S. at 129-130.

The Third Circuit wrongly held otherwise. That court rightly recognized that "immigration is traditionally a matter of public rights." Pet. App. 13a. But the court then erroneously held that this case fell outside that rule because it involves monetary remedies, see *id.* at 10a-13a, and because the remedies are imposed on employers rather than on the aliens themselves, see *id.* at 16a. Those holdings contravene this Court's precedents recognizing that the public-rights doctrine allows executive officers to assess monetary remedies against American entities, such as transportation companies, that violate the conditions of bringing aliens into the United States. See, *e.g.*, *Lloyd Sabaudo Societa Anonima per Azioni* v. *Elting*, 287 U.S. 329, 334-335 (1932); *Oceanic Steam*, 214 U.S. at 338-340. The court of appeals' rationale could threaten statutes authorizing executive officers to assess monetary remedies for other types of immigration violations, such as hiring illegal aliens and violating the conditions of other immigration programs—not to mention countless other public-rights statutes outside the context of immigration law.

Finally, respondent defends the court of appeals' judgment on an alternative ground that the court did not invoke: that the Secretary of Labor lacks statutory authority to collect monetary remedies in administrative proceedings in the first place. That theory is mer-

itless. The applicable statute empowers the "Secretary of Labor" to "impos[e] appropriate penalties" and to "take such actions * * * as may be necessary to assure employer compliance with terms and conditions of employment." 8 U.S.C. 1188(g)(2). Since the statute's enactment 40 years ago, that language has been consistently understood to authorize the administrative collection of the monetary remedies at issue here (civil penalties and back wages). This Court should reverse.

STATEMENT

A. Statutory and Regulatory Background

1. Determining whether and under what conditions to admit aliens to the United States is the exclusive province of the federal government. See *Nishimura Ekiu* v. *United States*, 142 U.S. 651, 659 (1892). Since the early 20th century, the United States has operated programs under which U.S. employers may obtain the federal government's permission to bring foreigners into the country to work here. For instance, the Immigration Act of 1917, ch. 29, 39 Stat. 874, permitted U.S. employers to "impor[t]" "skilled labor" if they could establish, in adjudications conducted by the Secretary of Labor, that "labor of like kind" could not "be found in this country." § 3, 39 Stat. 877. Similarly, the Bracero Program, established in 1942, permitted U.S. farms to bring in laborers from Mexico for seasonal agricultural work. See Agreement Between the United States of America and Mexico Respecting the Temporary Migration of Mexican Agricultural Workers, Aug. 4, 1942, 56 Stat. 1759.

In 1952, Congress overhauled federal immigration law by enacting the Immigration and Nationality Act (INA), ch. 477, 66 Stat. 163 (8 U.S.C. 1101 *et seq.*). That statute establishes multiple programs under which U.S.

employers may obtain the federal government's permission to bring aliens into the country as nonimmigrants —*i.e.*, individuals admitted for specific, time-limited purposes. See 8 U.S.C. 1101(a)(15). Those visa programs include the H–2A program for temporary agricultural workers, the H–2B program for temporary non-agricultural workers, the H–1B program for specialty workers, the L–1A program for executives and managers, the O–1B program for artists, and the P–1A program for athletes. See 8 U.S.C. 1101(a)(15)(H), (L), (O), and (P). Aliens are admitted under those programs only for the purpose of working for their employers and only for the approved period of employment.

Under those programs, "[t]he question of importing any alien as a nonimmigrant" is decided "upon petition of the importing employer." 8 U.S.C. 1184(c)(1). The employer's petition "shall be made and approved before the visa is granted." *Ibid.* The details of the petitioning process vary by program.

2. This case concerns the H–2A visa program for temporary agricultural workers. After creating the H–2 program for temporary workers in 1952, Congress in 1986 established distinct classifications for agricultural workers (H–2A) and non-agricultural workers (H–2B). See Immigration Reform and Control Act of 1986, Pub. L. No. 99-603, Tit. III, Pt. A, § 301, 100 Stat. 3411. In Fiscal Year 2024, the most recent year for which statistics are available, the United States issued more than 315,000 H–2A visas. See U.S. Dep't of State, *Report of the Visa Office 2024, Tbl. XV(B), Nonimmigrant Visas Issued by Classification (Including Border Crossing Cards) Fiscal Years 2020-2024*.[1]

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[1] https://travel.state.gov/content/travel/en/legal/visa-law0/visa-statistics/annual-reports/report-of-the-visa-office-2024.html

The ability to bring H–2A workers into the country is a privilege that the government confers upon employers through a multi-step process:

- The employer must obtain a certification from the Secretary of Labor that there are insufficient U.S. workers who are willing, able, qualified, and available to perform the work and that the alien's employment "will not adversely affect the wages and working conditions" of "similarly employed" workers in the United States. 8 U.S.C. 1188(a)(1).
- After certification, the employer must file a "petition to import an alien as an H–2A worker" with the Secretary of Homeland Security. 8 U.S.C. 1188(a)(1).[2]
- After the petition is approved, the alien generally must obtain a visa at a U.S. embassy or consulate and travel to the United States. See 8 U.S.C. 1184(c), 1201.

Like other nonimmigrant visas, an H–2A visa does not provide the alien with a path to U.S. citizenship or permanent residence. See *Hispanic Affairs Project* v. *Acosta*, 901 F.3d 378, 382 (D.C. Cir. 2018). An H–2A worker is admitted to the United States only for the purpose of agricultural work and only for the work period stated in the employer's petition. See 8 C.F.R. 214.2(h)(5)(viii)(B). Once the employment ends, the H–2A worker must leave the United States (absent an independent basis under the INA for staying in the country). See 8 C.F.R. 214.2(h)(5)(viii)(B) and (C).

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[2] The applicable provisions refer to the Attorney General, but Congress has transferred enforcement of those provisions to the Secretary of Homeland Security. See, *e.g.*, 6 U.S.C. 202(3), 271(b).

3. An employer may obtain the labor certification necessary to bring H–2A workers into the United States only if it complies with certain minimum requirements designed to ensure that competition from foreign workers does not undermine the domestic labor market. See 8 U.S.C. 1188(c)(3)(A). The INA and the Department of Labor's regulations prescribe those requirements, which employers must also incorporate into their contracts with workers. See 20 C.F.R. 655.122(q).

As relevant here, the employer must provide suitable housing, 20 C.F.R. 655.122(d); access to a kitchen or meal plan, 20 C.F.R. 655.122(g); safe transportation to and from the worksite, 20 C.F.R. 655.122(h)(4); and guaranteed employment for at least three-quarters of the workdays included in the labor-certification period, 20 C.F.R. 655.122(i)(1). An employer may make certain reasonable deductions from workers' pay, so long as the deductions do not include a profit to the employer. 20 C.F.R. 655.122(p)(2). If an employer provides meals to its workers, the "job offer must state the charge, if any, to the worker for such meals." 20 C.F.R. 655.122(g). Employers may not ask workers to waive those requirements, see 29 C.F.R. 501.5, and only the agency may decide whether to excuse non-compliance with certain requirements because of impossibility, see 20 C.F.R. 655.122(*o*).

An employer must also "offer to U.S. workers no less than the same benefits, wages, and working conditions that the employer is offering * * * to H–2A workers." 20 C.F.R. 655.122(a). An employer that wishes to participate in the H–2A program must comply with the minimum requirements discussed above both for H–2A workers and for U.S. workers who perform the same

work (described as "workers in corresponding employment"). 29 C.F.R. 501.3(a); see Pet. App. 3a & n.1.

4. Congress has authorized the Secretary of Labor to take various actions to assure employer compliance with the H–2A program's terms and conditions. See, *e.g.*, 8 U.S.C. 1188(b)(2) and (g)(2). Consistent with those provisions, the Department has established multiple administrative mechanisms for enforcing the program's rules.

When an employer applies for labor certification, the first step of the process of obtaining authorization to bring H–2A workers into the country, it must "agree" in its application to "abide by the [program's] requirements." 20 C.F.R. 655.135. The employer must also take specified steps designed to "assur[e]" compliance, such as posting "a poster * * * which sets out the rights and protections for workers employed pursuant to 8 U.S.C. 1188." 20 C.F.R. 655.135(*l*). And the employer must provide the agency with a "job order"—a document containing the terms of employment—so that the agency can determine whether those terms comply with the program's rules. 20 C.F.R. 655.103, 655.121.

If the agency determines in an administrative adjudication that an employer that has received a labor certification has "substantially violated a material term or condition," it may revoke the labor certification, 20 C.F.R. 655.181(a)(2), or debar the employer from the program, 8 U.S.C. 1188(b)(2). Revocation of a labor certification terminates the alien's H–2A status and requires the alien to leave the United States. See 8 C.F.R. 214.2(h)(11)(iv); U.S. Dep't of State, 9 *Foreign Affairs Manual* § 402.10-8(D)(a) and (b) (2026). Debarment precludes an employer from filing new H–2A applications for up to three years. See 8 U.S.C. 1188(b)(2)(B). Rev-

ocation and debarment decisions are subject to administrative and judicial review. See 20 C.F.R. 655.181(b), 655.182(f); 5 U.S.C. 702.

Most relevant here, the Department may also conduct administrative adjudications to collect monetary remedies—civil penalties and back wages—from employers that violate the H–2A program's terms. 29 C.F.R. 501.16. If the Department's Wage and Hour Division finds that an employer has violated those terms, it issues a written notice informing the employer of its findings and the remedies sought. 29 C.F.R. 501.31, 501.32. The employer may then demand a hearing before an administrative law judge (ALJ), who conducts a hearing and issues a decision. 29 C.F.R. 501.33-501.41. Any party may appeal the ALJ's decision to the Administrative Review Board, a multimember board of adjudicators appointed by the Secretary. 29 C.F.R. 501.42; 85 Fed. Reg. 13,186, 13,188 (Mar. 6, 2020). The Secretary, in his discretion, may review the Board's decision. 85 Fed. Reg. at 13,188. The employer may seek judicial review of the agency's final order in federal district court, which—under the Administrative Procedure Act (APA), 5 U.S.C. 551 *et seq.*, 5 U.S.C. 701 *et seq.*—reviews the agency's legal conclusions de novo and its factual findings under the deferential substantial-evidence standard. See 5 U.S.C. 706(2); *Loper Bright Enterprises* v. *Raimondo*, 603 U.S. 369, 392 n.4 (2024).

When the Department recovers back wages through that process, it makes every reasonable effort to locate the underpaid workers so that it can return the money to them. U.S. Dep't of Labor, *Workers Owed Wages*, https://www.dol.gov/agencies/whd/wow. If it cannot locate the workers within three years, it deposits the funds in the Treasury. *Ibid.* Agency officials report that,

from Fiscal Year 2018 to Fiscal Year 2023, the agency successfully returned roughly 80% of H–2A back-wages awards to workers. GAO, *H–2A Visa Program* 37 (2024), https://gao.gov/assets/gao-25-106389.pdf.

B. Facts

Respondent Sun Valley Orchards was a farm in New Jersey that grew fruits and vegetables. Pet. App. 4a. Respondent successfully petitioned the federal government for permission to import 96 foreign workers through the H–2A program, enabling them to obtain visas issued by the Department of State and travel to the United States. *Id.* at 4a, 49a. Respondent employed those workers, alongside 51 corresponding domestic workers, to pick asparagus and peppers from April to October 2015. *Ibid.*

Workers' shifts lasted for 12 hours each day, with only a single, one-hour break. Pet. App. 50a. Workers lacked consistent access to drinking water and clean bathrooms. *Id.* at 50a-51a. Respondent transported workers to and from the fields in buses that were driven by unlicensed drivers and that had unsafe tires and a broken taillight. *Id.* at 51a.

Respondent provided housing that consisted of six bedrooms with 20 bunkbeds in each room. Administrative Record (A.R.) 1933.[3] The bathrooms were dirty and lacked sufficient hot water, the sinks were broken, the windows and doors lacked screens, and the lidless garbage cans attracted pests. Pet. App. 51a.

Respondent's job posting promised workers "free cooking and kitchen facilities" so that they could "prepare their own meals," as well as "free transportation"

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[3] http://dol.gov/sites/dolgov/files/SOL/FOIA/Final-Administrative-Record-Sun-Valley-Orchards-v-DOL.pdf

to a nearby grocery store. Pet. App. 4a-5a. But when workers arrived at respondent's housing, they were told that they would need to pay $75 to $80 per week for a meal plan (deducted from their weekly pay of $451.60). *Id.* at 140a-141a; A.R. 2720. Workers who wanted transportation to buy groceries were charged $10 per trip. Pet. App. 105a & n.123.

Though respondent's housing did have a kitchen, workers lacked access to it. Pet. App. 62a. Instead, a supervisor used the kitchen to sell beer and soft drinks to workers. *Id.* at 51a. The supervisor, who lacked a license to sell alcohol and did not maintain sales records, "would take workers' checks to the bank to cash them and then return the money to the workers, minus any money owed for meals and beverages." *Id.* at 90a; see *id.* at 51a.

About a month after the work started, 19 workers met with respondent's owners and the supervisor to discuss their working and living conditions. Pet. App. 51a. Workers testified that one of the owners became angry and said that the workers would be fired. *Id.* at 51a-52a. Respondent then gave the workers pre-filled departure forms to sign—forms that falsely stated that the workers were voluntarily leaving because of personal issues "like a sick or dying loved one." *Id.* at 107a. Respondent submitted the signed forms to the Labor Department. *Id.* at 52a. One of respondent's owners later explained that he asked workers to sign those forms "to protect against this, this lawsuit." A.R. 3203.

In August 2015, respondent laid off 44 H–2A workers mid-season, obliging them to leave the country. Pet. App. 52a; see 20 C.F.R. 655.135(i). The supervisor testified that he chose "troublemakers" to lay off. A.R. 1942. Respondent instructed all 44 laid-off workers to

sign departure forms falsely stating, "Work has slowed down, and I would like to return home." A.R. 1610.

C. Proceedings Below

1. After an investigation, the Wage and Hour Division issued a notice finding that respondent had violated the H–2A program's requirements, was subject to civil penalties, and owed back wages. Pet. App. 183a-199a. Respondent sought a hearing before an ALJ. *Id.* at 7a.

After a multi-day hearing, the ALJ affirmed the Division's findings in part and modified them in part. Pet. App. 77a-182a. The Department's Administrative Review Board affirmed the ALJ's decision. *Id.* at 47a-76a. The ALJ and Board found that respondent had committed the following violations:

- Respondent made false promises about kitchen access and failed to disclose its meal charges, see Pet. App. 75a, violating regulations requiring employers to furnish either free meals or free kitchen facilities, see 20 C.F.R. 655.122(g); and to disclose paycheck deductions and the actual terms of employment in the job offer, see 20 C.F.R. 655.122(p)(1) and (q).
- Respondent deducted charges for drinks from workers' paychecks, see Pet. App. 75a, violating a regulation barring deductions that include a profit to the employer, see 20 C.F.R. 655.122(p)(2).
- Respondent fired workers before they completed three-fourths of the workdays included in the labor-certification period, see Pet. App. 75a-76a, violating a regulation requiring employers to guarantee employment for that period, see 20 C.F.R. 655.122(i)(1).

- Respondent attempted to cause workers to waive the three-fourths guarantee, see Pet. App. 76a, violating a regulation forbidding employers from seeking to have a worker waive his rights under the H–2A program, see 29 C.F.R. 501.5.
- Respondent provided housing and transportation that violated minimum regulatory standards. See Pet. App. 76a; 20 C.F.R. 655.122(d) and (h)(4).

The ALJ and Board directed respondent to pay $211,800 in civil penalties and $344,945.80 in back wages. Pet. App. 7a.

2. Respondent sued the Labor Department and the Secretary in federal district court in New Jersey. Pet. App. 7a. Respondent raised statutory and constitutional claims, including that the Department lacked authority under 8 U.S.C. 1188(g)(2) to impose monetary remedies and that its adjudication violated Article III of the Constitution. Pet. App. 7a-8a.

The district court granted the government's motion to dismiss respondent's claims. Pet. App. 20a-46a. The court determined that, by authorizing the Secretary to "take such actions, including imposing appropriate penalties," "as may be necessary to assure employer compliance with terms and conditions of employment," the statute clearly authorizes the Secretary to impose monetary penalties and award back wages. *Id.* at 34a (quoting 8 U.S.C. 1188(g)(2)). Turning to respondent's Article III claim, the court observed that Congress has "significant latitude to assign adjudication of public rights to entities other than Article III courts." *Id.* at 31a. The court held that this case involves public rights because it concerns immigration. *Id.* at 33a.

3. The Third Circuit reversed and remanded with instructions to enter judgment for respondent. Pet. App.

1a-19a. The court sustained respondent's Article III claim and did not reach its claim that the Department lacked statutory authority to impose monetary remedies. *Id.* at 19a n.6.

The court of appeals first concluded that this case involves private rights because it "is made of the stuff of the traditional actions at common law tried by the courts at Westminster in 1789." Pet. App. 10a-11a. The court reasoned that the Department's claim is "like a suit for breach of contract, which would have traditionally been heard in common law courts." *Id.* at 12a. It added that the remedies sought by the agency, civil penalties and back wages, are "common law remedies." *Id.* at 13a.

The court of appeals rejected the government's contention that this suit involves public rights because it concerns immigration. Pet. App. 13a-14a. The court accepted that history permits "non-Article III adjudication for certain immigration-related matters" but viewed this case as falling outside that tradition because "[r]ules about worker hours, housing, cooking, and transportation" concern "employment law," not immigration. *Id.* at 14a, 16a.

The government filed a petition for rehearing, which the court of appeals denied. Pet. App. 200a-201a.

SUMMARY OF ARGUMENT

A. The Secretary is statutorily authorized to assess monetary penalties and back wages for H–2A violations.

1. Section 1188(g)(2) "authorize[s]" the Secretary "to take such actions, including imposing appropriate penalties and seeking appropriate injunctive relief and specific performance of contractual obligations, as may be necessary to assure employer compliance with terms and conditions of employment under this section." 8 U.S.C. 1188(g)(2). Authorizing "[t]he Secretary" to "im-

pos[e] appropriate penalties" means that he can levy civil penalties in administrative proceedings. The contrast between the Secretary's authority to "impos[e]" penalties and his authority to "see[k]" injunctive relief confirms as much. The Secretary must seek injunctive relief from a court but may impose penalties on his own. That is also how the Department has consistently interpreted the statute since its enactment in 1986.

2. Back-wages awards likewise fall within the Secretary's authority to "take such actions" "as may be necessary to assure employer compliance." 8 U.S.C. 1188(g)(2). Back wages ensure compliance both by addressing past violations and by deterring future ones. Thus, since the statute's enactment, the Department's regulations have authorized the collection of back wages in administrative proceedings.

B. The Secretary's collection of monetary remedies in administrative proceedings is constitutional.

1. In general, under Articles II and III, only courts may resolve disputes involving private rights, but Congress may assign the initial adjudication of public-rights matters either to courts or to executive officers. The public-rights doctrine encompasses "historic categories of adjudications" that traditionally could be conducted by the Executive Branch. *SEC* v. *Jarkesy*, 603 U.S. 109, 130 (2024).

2. This case lies at the intersection of two historic categories of public-rights adjudications. First, in "distinctive areas" delineated by history, the public-rights doctrine allows executive officers to assess civil penalties to vindicate rights that belong to the sovereign. *Jarkesy*, 603 U.S. at 120. "[I]mmigration" is one such area. *Id.* at 129. Second, when Congress confers a privilege, it may prescribe the conditions of that privilege

and may empower executive officers to assess monetary remedies for violations of those conditions. The ability to bring an alien into the United States is a privilege. "From the beginning, the admission of noncitizens into the country was characterized as 'of favor and not of right.'" *Department of State* v. *Muñoz*, 602 U.S. 899, 912 (2024) (brackets and emphasis omitted).

3. Practice and precedent confirm those principles. For more than a century, Congress has enacted statutes empowering executive officers to impose monetary remedies for violations of the terms and conditions of bringing aliens to the United States. This Court upheld those statutes in *Oceanic Steam Navigation Co.* v. *Stranahan*, 214 U.S. 320 (1909), and *Lloyd Sabaudo Societa Anonima per Azioni* v. *Elting*, 287 U.S. 329 (1932), explaining that "Congress has the power to exclude aliens from the United States; to prescribe the terms and conditions on which they may come in; * * * and to commit the enforcement of such conditions and regulations to executive officers." *Oceanic Steam*, 214 U.S. at 335. The Court reaffirmed those decisions in *Jarkesy*, explaining that Congress's "plenary power over immigration" includes the power to authorize "administrative penalties." 603 U.S. at 129.

4. Under those principles, Congress may authorize the Secretary of Labor to impose monetary remedies upon employers who violate the H–2A program's rules. The Secretary's administrative adjudications enforce the United States' right to control immigration, as well as the terms and conditions on which employers receive the privilege of importing foreign labor into the country. Those adjudications are consistent with longstanding congressional practice and fit squarely within the rule, set forth in this Court's precedents, that executive

officers may assess "money penalties" for violations of the "condition[s]" upon the ability "to bring in aliens." *Oceanic Steam*, 214 U.S. at 339, 342.

5. The Third Circuit erroneously concluded that H–2A adjudications involve private rights. The court inaptly analogized this case to a breach-of-contract suit, but this proceeding enforces the United States' public right to compliance with government-imposed terms of an immigration program, while a contract suit enforces the private right to compliance with the bargained-for terms of a contract. The court also emphasized that this case involves monetary remedies, but this Court has long held that agencies may impose civil penalties and other monetary remedies in public-rights adjudications. Finally, the court stated that the H–2A program's rules serve employment-related interests. But the public-rights doctrine turns on the nature of the rights at stake, not the program's policy objectives. Regardless, the rules primarily serve immigration-related goals.

6. Affirming the Third Circuit's decision would wreak significant disruption. At a minimum, the decision threatens the system of administrative adjudications that the Department has used for 40 years to efficiently enforce the H–2A program's rules. The decision also threatens similar agency-adjudication systems that Congress has set up for other immigration programs, including the H–1B program for specialty workers and the H–2B program for temporary non-agricultural workers. Finally, the court's rationale could imperil laws authorizing executive officers to assess civil penalties in other public-rights settings, such as taxation, customs, and government benefits.

ARGUMENT

A. Section 1188(g)(2) Authorizes The Secretary To Collect Monetary Remedies In Administrative Proceedings

Section 1188(g)(2) provides:

> The Secretary of Labor is authorized to take such actions, including imposing appropriate penalties and seeking appropriate injunctive relief and specific performance of contractual obligations, as may be necessary to assure employer compliance with terms and conditions of employment under this section.

8 U.S.C. 1188(g)(2). As the Department of Labor has understood since the statute's enactment in 1986, that provision authorizes the Secretary to collect monetary remedies—including the civil penalties and back wages awarded here—in administrative proceedings.

1. Section 1188(g)(2) authorizes agency-imposed civil penalties

Section 1188(g)(2) provides that "[t]he Secretary of Labor" may "impos[e] appropriate penalties." 8 U.S.C. 1188(g)(2). To "impose" is "[t]o lay on, as something to be borne," "to inflict," or "to levy or enforce authoritatively." 7 *The Oxford English Dictionary* 730-731 (2d ed. 1989) (def. 4). And Section 1188(g)(2) confers the power to impose penalties on "[t]he Secretary of Labor." 8 U.S.C. 1188(g)(2). The Secretary may therefore levy penalties on his own, without going to court.

Reinforcing that reading, the statute authorizes the Secretary to "*impos[e]* appropriate penalties," but only to "*see[k]* appropriate injunctive relief and specific performance of contractual obligations." 8 U.S.C. 1188(g)(2) (emphases added). "[D]ifferences in language like this convey differences in meaning"—especially where the different words are juxtaposed in the same sentence.

Henson v. *Santander Consumer USA Inc.*, 582 U.S. 79, 86 (2017); see Antonin Scalia & Bryan A. Garner, *Reading Law* 170 (2012). Here, the difference conveys that, while the Secretary may seek injunctive relief and specific performance from federal courts, he may impose civil penalties on his own.

SEC v. *Jarkesy*, 603 U.S. 109 (2024), confirms that interpretation. At issue there were provisions authorizing the Securities and Exchange Commission (SEC) to "impose a civil penalty" for certain violations of the securities laws. 15 U.S.C. 77h–1(g)(1), 78u–2(a)(1), 80b–3(i)(1)(A). This Court read those provisions to allow the SEC to impose civil penalties "through its own in-house proceedings," but then held that the Seventh Amendment guarantees the right to a jury trial before the imposition of civil penalties for securities fraud. *Jarkesy*, 603 U.S. at 118. *Jarkesy* contrasted those provisions with others that authorized the SEC to "seek" civil penalties in federal court. *Ibid.*; see 15 U.S.C. 77t(d)(1), 78u(d)(3)(A), 80b–9(e)(1). By empowering the Secretary to "impose" civil penalties but to "seek" injunctions, Section 1188(g)(2) similarly makes clear that the Secretary may levy civil penalties in the agency's own proceedings.

That tracks the Department of Labor's 40-year understanding of Section 1188(g)(2). Regulations issued "roughly contemporaneously with enactment of the statute" that have "remained consistent over time" are "especially useful in determining the statute's meaning." *Loper Bright Enterprises* v. *Raimondo*, 603 U.S. 369, 386, 394 (2024). Here, implementing regulations issued months after the statute's 1986 enactment provide that the Department can enforce the statute through "administrative proceedings * * * to assess civil money

penalties." 52 Fed. Reg. 20,524, 20,526 (June 1, 1987). The Department has adhered to that view ever since. See 29 C.F.R. 501.16.

Respondent argues (Br. in Opp. 14) that Section 1188(g)(2) does not expressly authorize the Secretary to conduct administrative adjudications. But the Secretary's authority to "impos[e] appropriate penalties," 8 U.S.C. 1188(g)(2), carries with it the power to choose the procedures through which he will impose them. That follows from a "basic tenet of administrative law": "[T]he formulation of procedures" is generally "left within the discretion of the agencies to which Congress ha[s] confided the responsibility for substantive judgments." *Vermont Yankee Nuclear Power Corp.* v. *Natural Resources Defense Council*, 435 U.S. 519, 524, 544 (1978). Congress also had no need to expressly provide for administrative adjudication because the APA already does so. The APA defines an "adjudication" as an "agency process for the formulation of an order," 5 U.S.C. 551(7), then prescribes default minimum procedures for adjudications, see, *e.g.*, 5 U.S.C. 555. Section 1188(g)(2)'s omission of specific procedures for the Secretary's imposition of civil penalties shows that Congress was satisfied with the APA's default procedures.

Respondent contends (C.A. Br. 42-43 & n.27) that agency-imposed penalties are non-binding and may be recovered only if the agency files civil suits where district courts adjudicate liability de novo. But statutes that create that type of penalty scheme use very different language than Section 1188(g)(2). For instance, Congress has provided that the Federal Communications Commission may make initial civil-penalty determinations in administrative proceedings, 47 U.S.C. 503(b)(4), but that any penalties "imposed" through that

procedure may be "recover[ed]" only in "de novo" civil suits, 47 U.S.C. 504(a). See *FCC* v. *AT&T, Inc.*, No. 25-406 (June 4, 2026), slip op. 8. Section 1188(g)(2), by contrast, straightforwardly authorizes the Secretary to impose penalties.

Respondent finally invokes (Br. in Opp. 15-16) 28 U.S.C. 2461, which provides: "Whenever a civil fine, penalty or pecuniary forfeiture is prescribed for the violation of an Act of Congress without specifying the mode of recovery or enforcement thereof, it may be recovered in a civil action." 28 U.S.C. 2461(a). That provision comes into play only where (unlike here) a civil-penalty statute fails to "specif[y] the mode" of enforcement or recovery. *Ibid.* Section 1188(g)(2) unambiguously specifies the mode of enforcing the penalty: "The Secretary" "impos[es]" it. 8 U.S.C. 1188(g)(2).[4]

2. Section 1188(g)(2) authorizes the Secretary to collect back wages

The Secretary may collect back wages because the statute authorizes him "to take such actions * * * as may be necessary to assure employer compliance with terms and conditions of employment under this section." 8 U.S.C. 1188(g)(2). Back-wages awards "assure employer compliance" by ending ongoing violations and deterring future ones. An employer that has unlawfully withheld wages is out of compliance with the law; a back-wages award brings it back into compliance by "restor[ing]" "the status quo that would have obtained

[4] Because the administrative imposition of civil penalties under Section 1188(g)(2) complies with Article III, see pp. 24-45, *infra*, this Court need not consider here whether Section 2461 would apply if a statute authorizes administrative imposition of penalties but that authorization is held unconstitutional.

but for the wrongful act." *NLRB* v. *J.H. Rutter-Rex Manufacturing Co.*, 396 U.S. 258, 265 (1969). The "'spur or catalyst'" of back-wages liability can also deter employers from engaging in "practices of dubious legality." *Albemarle Paper Co.* v. *Moody*, 422 U.S. 405, 417 (1975).

Agency practice again confirms that interpretation. Under regulations that were issued soon after Section 1188(g)(2)'s enactment and that have remained substantively intact ever since, the Department may conduct "administrative proceedings to recover unpaid wages." 52 Fed. Reg. at 20,526; see 29 C.F.R. 501.16(a)(1).

Respondent argues (C.A. Br. 43) that Section 1188(g)(2)'s "including" clause—which specifies that the authorized actions "includ[e] imposing appropriate penalties and seeking appropriate injunctive relief and specific performance of contractual obligations," 8 U.S.C. 1188(g)(2)—does not mention back wages. But the word "including" usually "introduces examples, not an exhaustive list." Scalia & Garner 132; see *West* v. *Gibson*, 527 U.S. 212, 217-218 (1999). Regardless of whether back-wages awards fall within the statute's "including" clause, they fall within the Secretary's authority to "take such actions * * * as may be necessary to assure employer compliance." 8 U.S.C. 1188(g)(2).

B. The Public-Rights Doctrine Permits the Secretary to Collect Monetary Remedies For H–2A Violations

Adjudications to enforce the H–2A program's requirements involve public rights. Article III thus allows Congress to assign initial H–2A adjudications to an executive agency rather than a court, and the Third Circuit erred in holding otherwise.

1. Executive officers may adjudicate public-rights cases

Under Articles II and III of the Constitution, "[t]he executive Power shall be vested in a President of the United States of America," U.S. Const. Art. II, § 1, Cl. 1, while "[t]he judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish," Art. III, § 1. Executive officers overseen by the President, such as the Secretary of Labor, exercise "the executive Power" on the President's behalf by enforcing federal law. See *Seila Law LLC* v. *CFPB*, 591 U.S. 197, 213, 218-219 (2020). But only federal courts, consisting of life-tenured judges, may exercise "the judicial Power." See *Stern* v. *Marshall*, 564 U.S. 462, 484 (2011).

The executive power and the judicial power both include the authority to adjudicate. In other words, executive officers and courts, when acting within their respective jurisdictions, may both "determine facts, apply a rule of law to those facts, and thus arrive at a decision." *Freytag* v. *Commissioner*, 501 U.S. 868, 909 (1991) (Scalia, J., concurring in the judgment); see *Murray's Lessee* v. *Hoboken Land & Improvement Co.*, 18 How. 272, 280 (1856). Executive officers have adjudicated disputes in the course of enforcing the laws "since the beginning of the Republic." *City of Arlington* v. *FCC*, 569 U.S. 290, 305 n.4 (2013); see Harold J. Krent, *Presidential Control of Adjudication Within the Executive Branch*, 65 Case W. Res. L. Rev. 1083, 1089-1091 (2015). For example, the First Congress established the Patent Board—consisting of Secretary of State Thomas Jefferson, Secretary of War Henry Knox, and Attorney General Edmund Randolph—to adjudicate the patentability of inventions. See *United States* v. *Arthrex, Inc.*, 594

U.S. 1, 6-7 (2021). Today, executive officers adjudicate a wide range of matters, such as the assessment of taxes, the removal of aliens, and the granting of Social Security benefits. Though such executive adjudications take "'judicial' forms," they remain exercises of "the 'executive Power.'" *Seila Law*, 591 U.S. at 216 n.2.

Which branch may conduct an adjudication depends on the type of right at issue. In general, only courts may conduct adjudications involving "private rights," such as common-law tort suits between private parties. See *Jarkesy*, 603 U.S. at 127; *Stern*, 564 U.S. at 488-495. But the initial adjudication of a "public rights" matter may be assigned either to courts or to executive officers, as Congress chooses. See *Oil States Energy Services, LLC* v. *Greene's Energy Group, LLC*, 584 U.S. 325, 334 (2018); *Murray's Lessee*, 18 How. at 284.

Though this Court "has not 'definitively explained' the distinction between public and private rights," it has made clear that history provides a meaningful guide. *Jarkesy*, 603 U.S. at 131. One way to tell whether a case involves public rights is to look at "historic categories of adjudications" that traditionally could be conducted by executive officers. *Id.* at 130. Historical examples of public-rights adjudications include cases involving "immigration," "the collection of revenue," "the assessment of tariffs," "relations with Indian tribes," "the administration of public lands," and "the granting of public benefits such as payments to veterans, pensions, and patent rights." *Id.* at 129-130 (citations omitted).

At the same time, this Court has cautioned against unduly broad application of the public-rights doctrine. It has rejected the theory that the doctrine allows the government to "extract civil penalties in administrative tribunals" "in all contexts." *Jarkesy*, 603 U.S. at 131

n.2. And it has concluded that the SEC's securities-fraud penalty adjudications trigger Article III and the Seventh Amendment because they do not fit within any category of adjudications that have traditionally been conducted by executive officers and are instead closely analogous to common-law fraud suits, which have traditionally been resolved by courts. See *id.* at 127-140.

2. Public rights include rights belonging to the sovereign and privileges conferred by the government

H–2A adjudications fit within two categories of adjudications that historically could be assigned to executive officers. First, executive officers may collect monetary remedies to protect rights that belong to the sovereign, such as the right to control immigration. Second, executive officers may assess civil penalties to enforce the terms and conditions of receiving privileges, such as benefits conferred under immigration programs. Because history yields a clear answer here, this Court need not "'definitively explai[n]' the distinction between public and private rights" or "add to the 'various formulations' of the public-rights doctrine" to reverse the judgment below. *Oil States*, 584 U.S. at 334.

Sovereign right to control immigration. Public rights include rights that belong to "the people at large," as distinguished from rights that belong to "particular individuals." *Appleby* v. *City of New York*, 271 U.S. 364, 382 (1926). In other words, public rights belong "to the whole community, considered as a community, in [its] social aggregate capacity," while private rights belong "to individuals, considered merely as individuals." 4 William Blackstone, *Commentaries on the Laws of England* 5 (10th ed. 1787); see *Spokeo, Inc.* v. *Robins*, 578 U.S. 330, 344-345 (2016) (Thomas, J., concurring).

Congress has long enacted, and this Court has long upheld, laws authorizing executive officers to impose monetary remedies for violations of such sovereign rights. Customs adjudications, which vindicate the sovereign right to control the importation of merchandise, provide a paradigmatic example. In 1818, Congress authorized customs appraisers in the Executive Branch to assess penalties against importers that undervalued their goods. See Act of Apr. 20, 1818, ch. 79, § 11, 3 Stat. 436. Congress included similar provisions in several more customs statutes over the 19th century.[5] Justice Story, riding circuit, rejected a constitutional challenge to that procedure. See *Tappan* v. *United States*, 23 F. Cas. 690, 691 (C.C.D. Mass. 1822) (No. 13,749). This Court, too, repeatedly upheld the procedure against constitutional challenges, explaining that the adjudication of penalties for customs violations is part of "the ordinary duties of the executive departments." *Bartlett* v. *Kane*, 16 How. 263, 272 (1854); see *Ex parte Bakelite Corp.*, 279 U.S. 438, 446-447, 458 (1929); *Origet* v. *Hedden*, 155 U.S. 228, 236 (1894); *Passavant* v. *United States*, 148 U.S. 214, 221-222 (1893).

In other contexts, too, executive officers may impose monetary remedies to vindicate rights belonging to the United States. Executive officers may enforce the United States' right to control public funds by adjudicating whether a public official has wrongly withheld public money from the Treasury. See *Murray's Lessee*, 18 How. at 280-281. They may likewise enforce the "right of the United States to collect its internal reve-

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[5] See, *e.g.*, Act of Mar. 1, 1823, ch. 21, § 13, 3 Stat. 734-735; Tariff Act of 1828, ch. 55, § 9, 4 Stat. 274; Walker Tariff Act, ch. 74, § 8, 9 Stat. 43; Customs Administration Act of 1890, ch. 407, § 7, 26 Stat. 134-135.

nue" by adjudicating taxpayers' liability for taxes and related penalties. *Phillips* v. *Commissioner*, 283 U.S. 589, 595 (1931); see *Helvering* v. *Mitchell*, 303 U.S. 391, 404-405 (1938). And at the founding, militia officers could enforce the United States' right to militia service by fining militiamen who failed to muster as required. See Act of May 2, 1792, ch. 28, §§ 5, 7, 1 Stat. 264-265; James E. Pfander & Andrew G. Borrasso, *Public Rights and Article III*, 82 Ohio St. L J. 493, 513-514 (2021).

The right to control immigration is a public right that belongs to the United States, not a private right that belongs to particular individuals. The United States possesses the right, "as inherent in sovereignty, and essential to self-preservation, to forbid the entrance of foreigners within its dominions, or to admit them only in such cases and upon such conditions as it may see fit to prescribe." *Nishimura Ekiu* v. *United States*, 142 U.S. 651, 659 (1892). This Court has therefore listed "immigration" alongside "collection of revenue" and "assessment of tariffs" as quintessential examples of public-rights matters. *Jarkesy*, 603 U.S. at 129-130.

Because the right to control immigration is a public right, Congress may entrust adjudications involving violations of terms and conditions of aliens' entry to executive officers. See *Fong Yue Ting* v. *United States*, 149 U.S. 698, 713-714 (1893); *Nishimura Ekiu*, 142 U.S. at 660. In particular, longstanding practice shows that executive officers may adjudicate:

- Whether aliens meet the statutory criteria for admission to the United States. See, *e.g.*, Page Act of 1875, ch. 141, § 5, 18 Stat. 477-488.

- Whether aliens meet the statutory criteria for deportation from the United States. See, *e.g.*, Act of Oct. 19, 1888, ch. 1210, 25 Stat. 565.

- Whether transportation companies have complied with the statutory requirements for transporting aliens to the United States. See, *e.g.*, Immigration Act of 1903, ch. 1012, § 9, 32 Stat. 1215-1216.
- Whether employers have complied with the statutory requirements for importing foreign labor to the United States. See, *e.g.*, Immigration Act of 1917, § 3, 39 Stat. 877.

Executive officers may impose monetary remedies in the course of such adjudications, just as they may impose such remedies in other public-rights adjudications. See pp. 28-29, *supra*. And they have long done so, with this Court's approval. See pp. 32-36, *infra*.

Conditions of privileges. The category of public rights also includes government-granted privileges. See *Oil States*, 584 U.S. at 335. Privileges are benefits conferred by the government, such as patents, pensions, payments to veterans, and grants of public lands. See *Jarkesy*, 603 U.S. at 130. Privileges stand in contrast to the private rights of life, liberty, and property. See *Axon Enterprise, Inc.* v. *FTC*, 598 U.S. 175, 197 (2023) (Thomas, J., concurring).

When Congress confers a privilege, it generally may require the recipient, as a condition of obtaining the benefit, to submit to non-Article III adjudication of matters related to the privilege. See William Baude, *Adjudication Outside Article III*, 133 Harv. L. Rev. 1511, 1579 (2020); John Harrison, *Public Rights, Private Privileges, and Article III*, 54 Ga. L. Rev. 143, 183 (2019). The recipient's voluntary acceptance of that condition "ha[s] the effect of lifting [any] 'private rights' bar" that might otherwise apply. *Wellness International Network, Ltd.* v. *Sharif*, 575 U.S. 665, 718 (2015) (Thomas, J., dissenting).

Customs cases again provide a classic illustration. The founders regarded importing foreign merchandise as a privilege. See *Learning Resources, Inc.* v. *Trump,* 146 S. Ct. 628, 685 (2026) (Thomas, J., dissenting). No one has a private "right to carry on foreign commerce." *The Abby Dodge*, 223 U.S. 166, 177 (1912). Instead, "any attempt to introduce foreign goods" requires the United States' "expressed allowances." *Cross* v. *Harrison*, 16 How. 164, 196 (1854). Congress therefore possesses broad power to set "conditions upon which the importation shall be permitted." *Tappan*, 23 F. Cas. at 691. As the precedents discussed above establish, those conditions may include accepting executive assessment of civil penalties for customs violations. See p. 28, *supra*.

The same principle applies to other privileges. For example, Congress may require plaintiffs who seek "the privilege of suing the government" despite its sovereign immunity to accept non-Article III adjudication of both their own claims and the United States' counterclaims. *McElrath* v. *United States*, 102 U.S. 426, 440 (1880). Congress may require companies that seek the privilege of contracting with the government to submit to executive assessment of monetary penalties for violating their contracts. See *Allman* v. *United States*, 131 U.S. 31, 35 (1889). Patents, registrations, and licenses are likewise privileges subject to similar rules. Thus, Congress may require recipients of patents to accept "post-issuance administrative review" of the patent's validity. *Oil States*, 584 U.S. at 339. And Congress may "condition issuance of registrations or licenses" for pesticides "on compliance with agency procedures" for resolving disputes among registrants. *Thomas* v. *Union Carbide Agricultural Products Co.*, 473 U.S. 568, 589 (1985).

Those principles are relevant here because the federal government's permission for an employer to bring foreign laborers into the country is a quintessential privilege. An address drafted by John Marshall, for instance, explained that an alien "enters and remains by the courtesy of the sovereign power." *The Address of the Minority in the Virginia Legislature to the People of that State* 9-10 (1799). James Madison agreed that "the admission of [aliens] into the country [is] of favor not of right." 17 *The Papers of James Madison* 319 (David B. Mattern et al. eds., 1991). An employer accordingly has no vested right to import foreign labor; instead, it may bring aliens into the country only with the government's permission. And when Congress grants a U.S. entity the privilege of bringing an alien into the United States, it may require the entity to accept executive adjudication of its compliance with the privilege's terms and conditions.

3. The public-rights doctrine allows executive officers to impose monetary remedies for violating the terms and conditions of bringing aliens into the country

For over a century, Congress has enacted and this Court has upheld statutes authorizing executive officers to impose monetary remedies on U.S. entities that violate the terms and conditions of bringing aliens into the United States. Those laws generally fit into both public-rights categories discussed above. They reflect the principle that executive officers may conduct adjudications to enforce rights belonging to the sovereign, including the right to control immigration. See pp. 27-30, *supra*. They also reflect the understanding that a U.S. entity receives a privilege when it obtains permission to bring aliens into the country, and that Congress may require recipients of the privilege to accept executive

imposition of monetary remedies for violations of the privilege's terms. See pp. 30-32, *supra*.

For instance, in 1903, Congress empowered the Secretary of Commerce and Labor to impose civil penalties on transportation companies that brought in aliens with "dangerous contagious disease[s]" if the carriers could have detected the disease with "competent medical examination[s]." Immigration Act of 1903, § 9, 32 Stat. 1215-1216. This Court upheld the statute in *Oceanic Steam Navigation Co.* v. *Stranahan*, 214 U.S. 320 (1909), rejecting the contention that the imposition of such a penalty requires "the exertion of judicial power." *Id.* at 338. The Court recognized that the United States possesses the "right to control the coming of aliens" into the country, *id.* at 334, and that "no individual has a vested right" to engage in "foreign commerce," *id.* at 335. The Court then concluded that Congress may prescribe "condition[s] to the right to bring in aliens," impose "reasonable money penalties" for violating those conditions, and authorize "executive officers" to collect the penalties without "invoking the judicial power." *Id.* at 339, 342.

Similarly, in 1924, Congress authorized the Secretary of Labor to impose civil penalties on carriers that brought in aliens with certain diseases. See Immigration Act of 1924, ch. 190, § 26, 43 Stat. 166-167. Congress also empowered the Secretary to collect the amounts of the fares paid by the aliens (and other aliens accompanying them) and to return those sums to those aliens. See *ibid.* This Court upheld the statute in *Lloyd Sabaudo Societa Anonima per Azioni* v. *Elting*, 287 U.S. 329 (1932). Citing *Oceanic Steam*, it determined that Congress may "impose appropriate obligations" upon those who bring aliens to the country, may enforce

those obligations through "money penalties," and may "choose the administrative rather than the judicial method of imposing" such remedies. *Id.* at 334-335.

This Court's opinion in *United States* v. *New York & Cuba Mail Steamship Co.*, 269 U.S. 304 (1925), confirms that executive officers may impose remedies not only on the aliens themselves, but also on U.S. entities that bring aliens into the United States. There, the Court explained that Congress may exercise its immigration power "by legislation aimed at the vessels bringing in excluded aliens." *Id.* at 313. Citing *Oceanic Steam*, the Court gave the example of "penalizing a vessel" for unlawfully "bringing in alien immigrants." *Ibid.* The Court added that "[t]here is no suggestion in any of [its] cases that this power is limited to foreign vessels" and that the power extends to "American" vessels. *Ibid.*

Many other decisions of this Court reiterate that Congress may "prescribe the terms and conditions" upon which aliens may enter (or be brought into) the United States and may empower "executive officers" to enforce those terms. *Lem Moon Sing* v. *United States*, 158 U.S. 538, 547 (1895); see, *e.g.*, *Kleindienst* v. *Mandel*, 408 U.S. 753, 766 (1972); *Zakonaite* v. *Wolf*, 226 U.S. 272, 275 (1912); *Keller* v. *United States*, 213 U.S. 138, 143 (1909); *United States* v. *Ju Toy*, 198 U.S. 253, 261 (1905); *United States ex rel. Turner* v. *Williams*, 194 U.S. 279, 289-290 (1904); *The Japanese Immigrant Case*, 189 U.S. 86, 97 (1903); *Wong Wing* v. *United States*, 163 U.S. 228, 233 (1896). Cases going back more than a century describe that proposition as "entirely settled." *Zakonaite*, 226 U.S. at 275. And all nine Members of the Court agreed in *Jarkesy* that the public-rights doctrine allows executive officers to impose penalties for immigration violations. See 603 U.S. at 129;

id. at 152-153 (Gorsuch, J., concurring); *id.* at 178 (Sotomayor, J., dissenting).

Congress, for its part, has enacted many more laws (apart from those upheld in *Oceanic Steam* and *Lloyd Sabaudo*) based on that understanding of Article III. Several early-20th-century laws authorized executive officers to levy civil penalties on carriers that brought in certain types of aliens, such as aliens with mental disabilities, aliens with physical disabilities that would affect their ability to earn a living, chronic alcoholics, and aliens without valid visas.[6] Some laws empowered executive officers to collect the amount of the aliens' fares from the carriers and to return those fares to the aliens.[7] Congress also authorized executive officers to impose civil penalties on carriers that failed to provide manifests identifying the aliens and crew members on board, unlawfully solicited aliens to travel to the United States, refused to bear the cost of returning aliens who had been excluded from the United States, employed crew members with contagious diseases, or allowed crew members to leave vessels before U.S. officials had inspected them.[8] As the provisions concerning crew members illustrate, executive agencies may enforce the conditions of bringing aliens into the United States even

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[6] See Immigration Act of 1907, ch. 1134, § 9, 34 Stat. 901; Immigration Act of 1917, § 9, 39 Stat. 880-881; Act of May 11, 1922, ch. 187, § 3, 42 Stat. 540.

[7] See Immigration Act of 1917, § 9, 39 Stat. 880-881; Act of May 11, 1922, § 3, 42 Stat. 540.

[8] See Immigration Act of 1903, § 15, 32 Stat. 1217; Immigration Act of 1907, § 15, 34 Stat. 903; Immigration Act of 1917, §§ 7, 14, 18, 35-36, 39 Stat. 879-880, 884, 887-888, 896-897; Immigration Act of 1924, § 20, 43 Stat. 164.

when those conditions concern people other than the aliens themselves.

4. This case lies at the core of the public-rights doctrine

Under the constitutional principles, precedents, and history discussed above, this case falls squarely within the public-rights doctrine. The H–2A program's rules represent an exercise of the United States' public right "to admit [aliens] only in such cases and upon such conditions as it may see fit to prescribe." *Nishimura Ekiu*, 142 U.S. at 659. Here, the alien obtains a visa to come to the country only if the employer files a successful "petition to import an alien as an H–2A worker," 8 U.S.C. 1188(a)(1), and shows that importing that alien is consistent with the statute and regulations. Further, the employer receives the privilege conferred by the program—the admission of the sponsored alien for the specific purpose of working at the employer's farm—only by agreeing to follow the program's terms and conditions. In return for the immigration benefits granted by the government, the employer must agree to provide minimum working conditions to the aliens and to corresponding U.S. workers, must incorporate those federal terms and conditions into its contracts, and must abide by those terms or face ejection from the program.

The public-rights doctrine allows executive officers to adjudicate in the first instance whether employers have violated those rules and, if so, to impose civil penalties and back wages. This Court has specifically recognized that Congress may empower executive officers to assess "penalties" for violations of "immigration" restrictions, *Jarkesy*, 603 U.S. at 129, and violations of "condition[s] to the right to bring in aliens," *Oceanic Steam*, 214 U.S. at 342. Congress has done just that for H–2A violations. The Court has also recognized that

Congress may empower executive officers to award other types of monetary remedies in public-rights adjudications, such as orders directing carriers to return fares improperly collected from aliens. See pp. 33-34, *supra*. The back-wages awards here are closely analogous to such awards.

5. The Third Circuit's analysis is flawed

The Third Circuit gave four main reasons for holding that this case falls outside the public-rights doctrine. None is sound.

Common-law claim. The court of appeals first analogized this case to "a suit for breach of contract, which would have traditionally been heard in common law courts." Pet. App. 12a. That is incorrect.

On every metric for distinguishing public rights from private rights, this case differs fundamentally from a suit to enforce a contract. A contract claim vindicates a contracting party's private right to compliance with a contract; by contrast, the agency proceeding here seeks to vindicate the sovereign's public right to compliance with the conditions of permission to bring aliens into the country. Parties to a private contract do not receive a privilege from the government and do not accept agency adjudication as a condition of obtaining that privilege; employers that participate in the H–2A program do. And contract claims enforce terms to which the parties have agreed, see *Sturges* v. *Crowninshield*, 4 Wheat. 122, 197 (1819), while the agency proceeding here enforces requirements that the government has imposed and that the parties cannot waive, see 29 C.F.R. 501.5.

Where, as here, a case falls within a historic public-rights category, executive officers may adjudicate it even if the case overlaps with a common-law claim at a high level of generality. For example, executive officers

may assess penalties against government contractors that fail to fulfill their contracts, even though such adjudications directly concern breaches of contract. See *Allman*, 131 U.S. at 35. Executive officers may also assess penalties against carriers that transport aliens with contagious diseases that could have been detected through competent medical examinations, even though such claims resemble claims for negligence. See *Oceanic Steam*, 214 U.S. at 331-332, 338-340. And executive officers may assess penalties in public-rights cases, see pp. 29-31, *supra*, even though "[a]ctions by the Government to recover civil penalties" "historically have been viewed" as analogous to "action[s] in debt," *Tull* v. *United States*, 481 U.S. 412, 418-419 (1987).

Jarkesy does not suggest otherwise. To the contrary, it reaffirmed that executive officers may assess "penalties" to enforce "immigration" restrictions, 603 U.S. at 129, even though civil-penalty proceedings are analogous to "action[s] in debt," *id.* at 122. While the Court stated that a suit "in the nature of an action at common law" "presumptively concerns private rights," *id.* at 128, it never suggested that suits to enforce the conditions of immigration privileges are "in the nature of an action at common law." Regardless, any presumption in favor of Article III adjudication is overcome when the case falls within one of the "historic categories of adjudications" that could be conducted by executive officers. *Id.* at 130. This case fits that description.

Monetary remedies. The court of appeals found it "significant" that the Department of Labor sought monetary remedies: "civil penalties and back wages." Pet. App. 13a. But that alone is not dispositive.

This Court's cases establish that executive officers may assess civil penalties in public-rights cases. For in-

stance, the Court has held that executive officers may assess civil penalties against:

- Carriers that violate "restrictions on the coming in of aliens." *Oceanic Steam*, 214 U.S. at 340; see *Lloyd Sabaudo*, 287 U.S. at 334-335.
- Importers that undervalue their merchandise. See *Origet*, 155 U.S. at 236; *Passavant*, 148 U.S. at 221-222; *Bartlett*, 16 How. at 272.
- Importers that engage in unfair competition. See *Bakelite*, 279 U.S. at 446-447, 458.
- Taxpayers that underpay their income taxes. See *Mitchell*, 303 U.S. at 404-405.
- Government contractors that fail to fulfill their contracts. See *Allman*, 131 U.S. at 35.

This Court's cases likewise establish that executive officers may issue other types of monetary remedies in public-rights adjudications. Applying the public-rights doctrine, the Court has determined that non-Article III entities may:

- Adjudicate the United States' counterclaims for money damages against persons who sue the United States. See *McElrath*, 102 U.S. at 440.
- Adjudicate liability for taxes. See *Phillips*, 283 U.S. at 595.
- Compel public officials to surrender public funds wrongfully withheld from the Treasury. See *Murray's Lessee*, 18 How. at 280-281.
- Compel carriers that have unlawfully transported aliens to surrender the amounts of the aliens' fares. See *Lloyd Sabaudo*, 287 U.S. at 332-333.

The Third Circuit stated that the monetary remedies awarded here, civil penalties and back wages, are "common law remedies." Pet. App. 16a. As an initial matter, the court misclassified back wages, which this Court has generally treated as equitable rather than legal. See, *e.g.*, *Moody*, 422 U.S. at 415-417. More importantly, executive officers conducting public-rights adjudications may award monetary remedies of the sort at issue here regardless of how those remedies are classified. For example, "administrative tribunals" may collect "civil penalties" in public-rights adjudications, *Jarkesy*, 603 U.S. at 131 n.2, even though "civil penalties are a type of remedy at common law," *id.* at 123 (brackets omitted).

Scope of the "immigration exception." The court of appeals correctly identified immigration as a historical area of public rights, but it limited the public-rights doctrine in that context to adjudications that "directly address the admission and exclusion of aliens." Pet. App. 16a. The court viewed this case as "fall[ing] outside the immigration exception" because the H–2A program's regulations serve "the federal government's local interest in domestic wages." *Id.* at 16a-17a.

That is incorrect. The executive power is not limited to the power to adjudicate whether aliens should be admitted to or removed from the United States. Under this Court's public-rights cases, Congress may also set "'terms and conditions'" for bringing aliens into the United States, establish "money penalties" for violations of those terms, and "giv[e] to executive officers the power to enforce such penalties without the necessity of invoking the judicial power." *Oceanic Steam*, 214 U.S. at 335, 339. Section 1188(g)(2) fits within that tradition.

Contrary to the court of appeals' suggestion, the H–2A program's requirements are "directly" and "closely"

tied to the admission of aliens. Pet. App. 15a, 16a. An employer that files a successful H–2A petition obtains authorization to "import an alien" from another country to the United States. 8 U.S.C. 1188(a)(1). The H–2A program's requirements are thus "condition[s] to the right to bring in aliens," and executive officers' enforcement of those conditions fit comfortably within this Court's public-rights precedents. *Oceanic Steam*, 214 U.S. at 342.

The court of appeals also erred in concluding that this case "falls outside the immigration exception" because the H–2A program's conditions serve a "domestic national policy goal." Pet. App. 16a. The public-rights doctrine turns on the nature of the rights involved in the adjudication, not on the statute's purpose. The court's purpose-based test is highly manipulable and could be misapplied to exclude many cases that plainly involve public rights. For instance, executive officers may assess civil penalties against carriers that transport aliens with contagious diseases, even though that restriction serves the domestic goal of protecting the public health. See *Oceanic Steam*, 214 U.S. at 339. Executive officers may likewise assess civil penalties for customs violations, even though customs laws serve domestic objectives such as raising revenue and protecting American industry. See *Passavant*, 148 U.S. at 221-222.

The court of appeals' rationale also fails on its own terms because the H–2A program's goals are not purely "domestic." Pet. App. 13a. Contrary to the court's rigid dichotomy between immigration goals and labor goals, one traditional purpose of "restricting immigration" is "to protect American labor against the influx of foreign labor." *Karnuth* v. *United States ex rel. Albro*, 279 U.S. 231, 243 (1929). Further, the H–2A program's rules help

avoid the diplomatic problems that can arise when U.S. employers mistreat foreign laborers.

Breadth of the public-rights doctrine. The court of appeals worried that a broader view of the public-rights doctrine would "swallow the [general] rule" that only courts may impose monetary remedies. Pet. App. 16a. That concern is misplaced—and overlooks that the court's approach would itself overrule swaths of settled public-rights doctrine. See pp. 32-36, *supra*.

To begin, *Jarkesy* made clear that "historic categories" provide a meaningful guide to the public-rights doctrine. 603 U.S. at 130. And it rejected the notion that the doctrine applies whenever Congress creates statutory duties and authorizes agencies to impose civil penalties for their violation. See *id.* at 135. The government, for its part, has declined to defend adjudications that conflict with those principles. See Gov't Br. at 10-21, *Comcast Corp.* v. *United States Department of Labor*, No. 25-2226 (4th Cir. Feb. 27, 2026); Letter from D. John Sauer, Solicitor Gen., to Mike Johnson, Speaker, U.S. House of Representatives (June 9, 2026).[9] Far from expanding the public-rights doctrine, the government's position here is limited to public-rights categories already recognized in *Jarkesy*: "immigration" and "public benefits." 603 U.S. at 129-130.

Further, while the public-rights doctrine permits Congress to assign the initial adjudication of this case to the Department of Labor, courts retain an important role under the statutory scheme. Under the APA, the Secretary's decision is reviewable in district court, which determines all legal issues de novo. See *Loper Bright*, 603 U.S. at 392 n.4. "[B]ecause the [APA] pro-

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[9] https://justice.gov/oip/media/1445401/dl?inline

vides for judicial review," this Court "need not consider whether [the agency adjudications at issue] would be constitutional 'without any sort of intervention by a court at any stage of the proceedings.'" *Oil States*, 584 U.S. at 344.

6. Adopting the court of appeals' theory would have disruptive practical consequences

Congress has legislated for more than a century in reliance on the understanding that it may "prescribe the terms and conditions on which [aliens] may come in" and "commit the enforcement of such conditions and regulations to executive officers." *Oceanic Steam*, 214 U.S. at 335. The court of appeals' decision repudiates that settled principle and substitutes a novel test under which the applicability of the public-rights doctrine turns on how a court characterizes the nature of the claim, the remedy, and the purpose of the restriction at issue. See pp. 37-38, *supra*. That transformation of the public-rights doctrine would unmoor it from historical understandings and risk unpredictable, far-reaching consequences.

To begin, the court of appeals' decision upends the system of adjudications that the Department of Labor has used for the last four decades to enforce the H–2A program's rules. Most obviously, the decision prevents the Department from collecting civil penalties and back wages in those adjudications. The court's theory could also threaten the Department's ability to impose other sanctions, such as debarment and revocation of labor certifications. Though the court purported to distinguish those sanctions, see Pet. App. 17a, an employer could argue that an action seeking those sanctions, no less than an action seeking civil penalties, is "like a suit

for breach of contract" and vindicates the "local interest in domestic wages," *id.* at 12a, 17a.

The court of appeals' decision could threaten other immigration statutes too. For example, Congress has authorized executive officers to impose civil penalties on employers who violate the terms and conditions of other immigration programs, such as the H–2B program for temporary non-agricultural workers, see 8 U.S.C. 1184(c)(14); the H–1B program for workers in specialty occupations, see 8 U.S.C. 1182(n)(2)(C); the H–1B1 and E–3 programs for specialty workers from certain countries, see 8 U.S.C. 1182(t)(3)(C); and the D–1 program for crewmembers, see 8 U.S.C. 1288(c)(4)(E)(i). It has likewise authorized executive officers to impose civil penalties on employers for hiring illegal aliens, see 8 U.S.C. 1324a(a)(1), and hiring workers without properly verifying their immigration status, see 8 U.S.C. 1324a(e)(4). Congress has also authorized executive officers to impose penalties on carriers that violate the terms of bringing aliens to the United States, see 8 U.S.C. 1321-1323, and on persons who forge immigration documents, see 8 U.S.C. 1324c. The court of appeals' theory, which sometimes excludes immigration cases from the public-rights doctrine if they concern "employment" or involve "punitive remedies," could imperil all those laws. Pet. App. 13a, 16a.

The spillover effects of the court of appeals' theory could extend far beyond immigration law. Congress has often authorized executive agencies to assess monetary penalties to vindicate sovereign rights—for instance, penalties for customs violations, see 19 U.S.C. 1584; tax violations, see 26 U.S.C. 6751; and export-control violations, see 50 U.S.C. 4812, 4819. Similarly, Congress has often authorized executive agencies to assess monetary

penalties for violations of the conditions of receiving public benefits, such as Medicare reimbursements, see 42 U.S.C. 1320a–7a; higher-education funding, see 20 U.S.C. 1094; housing assistance, see 42 U.S.C. 1437z–1; and use of the mails, see 39 U.S.C. 3018. Those statutes rest on the same rationales as the statute challenged here: Public rights include both rights belonging to the sovereign and government-conferred privileges.

* * * * *

Undue expansion of the public-rights doctrine risks impairing the Judiciary's authority under Article III. But undue constriction of the doctrine risks impairing the authority of Congress and the Executive Branch under Articles I and II. Precedent and history define the contours of the doctrine and establish that it allows Congress to set the conditions of the privilege of bringing aliens into the United States, to prescribe monetary remedies for the violation of those conditions, and to authorize the Executive Branch to enforce those laws by collecting those remedies in agency proceedings. This case easily fits within that well-settled tradition.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted.

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APPENDIX

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APPENDIX

8 U.S.C. 1188 provides:

Admission of temporary H–2A workers

(a) Conditions for approval of H–2A petitions

(1) A petition to import an alien as an H–2A worker (as defined in subsection (i)(2)) may not be approved by the Attorney General unless the petitioner has applied to the Secretary of Labor for a certification that—

(A) there are not sufficient workers who are able, willing, and qualified, and who will be available at the time and place needed, to perform the labor or services involved in the petition, and

(B) the employment of the alien in such labor or services will not adversely affect the wages and working conditions of workers in the United States similarly employed.

(2) The Secretary of Labor may require by regulation, as a condition of issuing the certification, the payment of a fee to recover the reasonable costs of processing applications for certification.

(b) Conditions for denial of labor certification

The Secretary of Labor may not issue a certification under subsection (a) with respect to an employer if the conditions described in that subsection are not met or if any of the following conditions are met:

(1) There is a strike or lockout in the course of a labor dispute which, under the regulations, precludes such certification.

(2)(A) The employer during the previous two-year period employed H–2A workers and the Secretary of Labor has determined, after notice and opportunity for a hearing, that the employer at any time during that period substantially violated a material term or condition of the labor certification with respect to the employment of domestic or nonimmigrant workers.

(B) No employer may be denied certification under subparagraph (A) for more than three years for any violation described in such subparagraph.

(3) The employer has not provided the Secretary with satisfactory assurances that if the employment for which the certification is sought is not covered by State workers' compensation law, the employer will provide, at no cost to the worker, insurance covering injury and disease arising out of and in the course of the worker's employment which will provide benefits at least equal to those provided under the State workers' compensation law for comparable employment.

(4) The Secretary determines that the employer has not made positive recruitment efforts within a multi-state region of traditional or expected labor supply where the Secretary finds that there are a significant number of qualified United States workers who, if recruited, would be willing to make themselves available for work at the time and place needed. Positive recruitment under this paragraph is in addition to, and shall be conducted within the same time period as, the circulation through the interstate employment service system of the employer's job offer. The obligation to engage in positive recruitment un-

der this paragraph shall terminate on the date the H–2A workers depart for the employer's place of employment.

(c) Special rules for consideration of applications

The following rules shall apply in the case of the filing and consideration of an application for a labor certification under this section:

(1) Deadline for filing applications

The Secretary of Labor may not require that the application be filed more than 45 days before the first date the employer requires the labor or services of the H–2A worker.

(2) Notice within seven days of deficiencies

(A) The employer shall be notified in writing within seven days of the date of filing if the application does not meet the standards (other than that described in subsection (a)(1)(A)) for approval.

(B) If the application does not meet such standards, the notice shall include the reasons therefor and the Secretary shall provide an opportunity for the prompt resubmission of a modified application.

(3) Issuance of certification

(A) The Secretary of Labor shall make, not later than 30 days before the date such labor or services are first required to be performed, the certification described in subsection (a)(1) if—

(i) the employer has complied with the criteria for certification (including criteria for the recruitment of eligible individuals as prescribed by the Secretary), and

(ii) the employer does not actually have, or has not been provided with referrals of, qualified eligible individuals who have indicated their availability to perform such labor or services on the terms and conditions of a job offer which meets the requirements of the Secretary.

In considering the question of whether a specific qualification is appropriate in a job offer, the Secretary shall apply the normal and accepted qualifications required by non-H–2A-employers in the same or comparable occupations and crops.

(B)(i) For a period of 3 years subsequent to the effective date of this section, labor certifications shall remain effective only if, from the time the foreign worker departs for the employer's place of employment, the employer will provide employment to any qualified United States worker who applies to the employer until 50 percent of the period of the work contract, under which the foreign worker who is in the job was hired, has elapsed. In addition, the employer will offer to provide benefits, wages and working conditions required pursuant to this section and regulations.

(ii) The requirement of clause (i) shall not apply to any employer who—

(I) did not, during any calendar quarter during the preceding calendar year, use more than 500 man-days of agricultural labor, as defined in section 203(u) of title 29,

(II) is not a member of an association which has petitioned for certification under this section for its members, and

(III) has not otherwise associated with other employers who are petitioning for temporary foreign workers under this section.

(iii) Six months before the end of the 3-year period described in clause (i), the Secretary of Labor shall consider the findings of the report mandated by section 403(a)(4)(D) of the Immigration Reform and Control Act of 1986 as well as other relevant materials, including evidence of benefits to United States workers and costs to employers, addressing the advisability of continuing a policy which requires an employer, as a condition for certification under this section, to continue to accept qualified, eligible United States workers for employment after the date the H–2A workers depart for work with the employer. The Secretary's review of such findings and materials shall lead to the issuance of findings in furtherance of the Congressional policy that aliens not be admitted under this section unless there are not sufficient workers in the United States who are able, willing, and qualified to perform the labor or service needed and that the employment of the aliens in such labor or services will not adversely affect the wages and working conditions of workers in the United States similarly employed. In the absence of the enactment of Federal legislation prior to three months before the end of the 3-year period described in clause (i) which addresses the subject matter of this subparagraph, the Secretary shall immediately publish the findings required by this clause, and shall promulgate, on an interim or final basis, regulations based on his findings which shall be effective no later than three years from the effective date of this section.

(iv) In complying with clause (i) of this subparagraph, an association shall be allowed to refer or transfer workers among its members: *Provided*, That for purposes of this section an association acting as an agent for its members shall not be considered a joint employer merely because of such referral or transfer.

(v) United States workers referred or transferred pursuant to clause (iv) of this subparagraph shall not be treated disparately.

(vi) An employer shall not be liable for payments under section 655.202(b)(6) of title 20, Code of Federal Regulations (or any successor regulation) with respect to an H–2A worker who is displaced due to compliance with the requirement of this subparagraph, if the Secretary of Labor certifies that the H–2A worker was displaced because of the employer's compliance with clause (i) of this subparagraph.

(vii)(I) No person or entity shall willfully and knowingly withhold domestic workers prior to the arrival of H–2A workers in order to force the hiring of domestic workers under clause (i).

(II) Upon the receipt of a complaint by an employer that a violation of subclause (I) has occurred the Secretary shall immediately investigate. He shall within 36 hours of the receipt of the complaint issue findings concerning the alleged violation. Where the Secretary finds that a violation has occurred, he shall immediately suspend the application of clause (i) of this subparagraph with respect to that certification for that date of need.

(4) Housing

Employers shall furnish housing in accordance with regulations. The employer shall be permitted at the employer's option to provide housing meeting applicable Federal standards for temporary labor camps or to secure housing which meets the local standards for rental and/or public accommodations or other substantially similar class of habitation: *Provided*, That in the absence of applicable local standards, State standards for rental and/or public accommodations or other substantially similar class of habitation shall be met: *Provided further*, That in the absence of applicable local or State standards, Federal temporary labor camp standards shall apply: *Provided further*, That the Secretary of Labor shall issue regulations which address the specific requirements of housing for employees principally engaged in the range production of livestock: *Provided further*, That when it is the prevailing practice in the area and occupation of intended employment to provide family housing, family housing shall be provided to workers with families who request it: *And provided further*, That nothing in this paragraph shall require an employer to provide or secure housing for workers who are not entitled to it under the temporary labor certification regulations in effect on June 1, 1986. The determination as to whether the housing furnished by an employer for an H–2A worker meets the requirements imposed by this paragraph must be made prior to the date specified in paragraph (3)(A) by which the Secretary of Labor is required to make a certification described in subsection (a)(1) with respect to a petition for the importation of such worker.

(d) Roles of agricultural associations

(1) Permitting filing by agricultural associations

A petition to import an alien as a temporary agricultural worker, and an application for a labor certification with respect to such a worker, may be filed by an association of agricultural producers which use agricultural services.

(2) Treatment of associations acting as employers

If an association is a joint or sole employer of temporary agricultural workers, the certifications granted under this section to the association may be used for the certified job opportunities of any of its producer members and such workers may be transferred among its producer members to perform agricultural services of a temporary or seasonal nature for which the certifications were granted.

(3) Treatment of violations

(A) Member's violation does not necessarily disqualify association or other members

If an individual producer member of a joint employer association is determined to have committed an act that under subsection (b)(2) results in the denial of certification with respect to the member, the denial shall apply only to that member of the association unless the Secretary determines that the association or other member participated in, had knowledge of, or reason to know of, the violation.

(B) Association's violation does not necessarily disqualify members

(i) If an association representing agricultural producers as a joint employer is determined to have committed an act that under subsection (b)(2) results in the denial of certification with respect to the association, the denial shall apply only to the association and does not apply to any individual producer member of the association unless the Secretary determines that the member participated in, had knowledge of, or reason to know of, the violation.

(ii) If an association of agricultural producers certified as a sole employer is determined to have committed an act that under subsection (b)(2) results in the denial of certification with respect to the association, no individual producer member of such association may be the beneficiary of the services of temporary alien agricultural workers admitted under this section in the commodity and occupation in which such aliens were employed by the association which was denied certification during the period such denial is in force, unless such producer member employs such aliens in the commodity and occupation in question directly or through an association which is a joint employer of such workers with the producer member.

(e) Expedited administrative appeals of certain determinations

(1) Regulations shall provide for an expedited procedure for the review of a denial of certification under subsection (a)(1) or a revocation of such a certification

or, at the applicant's request, for a de novo administrative hearing respecting the denial or revocation.

(2) The Secretary of Labor shall expeditiously, but in no case later than 72 hours after the time a new determination is requested, make a new determination on the request for certification in the case of an H–2A worker if able, willing, and qualified eligible individuals are not actually available at the time such labor or services are required and a certification was denied in whole or in part because of the availability of qualified workers. If the employer asserts that any eligible individual who has been referred is not able, willing, or qualified, the burden of proof is on the employer to establish that the individual referred is not able, willing, or qualified because of employment-related reasons.

(f) Violators disqualified for 5 years

An alien may not be admitted to the United States as a temporary agricultural worker if the alien was admitted to the United States as such a worker within the previous five-year period and the alien during that period violated a term or condition of such previous admission.

(g) Authorization of appropriations

(1) There are authorized to be appropriated for each fiscal year, beginning with fiscal year 1987, $10,000,000 for the purposes—

(A) of recruiting domestic workers for temporary labor and services which might otherwise be performed by nonimmigrants described in section 1101(a)(15)(H)(ii)(a) of this title, and

(B) of monitoring terms and conditions under which such nonimmigrants (and domestic workers

employed by the same employers) are employed in the United States.

(2) The Secretary of Labor is authorized to take such actions, including imposing appropriate penalties and seeking appropriate injunctive relief and specific performance of contractual obligations, as may be necessary to assure employer compliance with terms and conditions of employment under this section.

(3) There are authorized to be appropriated for each fiscal year, beginning with fiscal year 1987, such sums as may be necessary for the purpose of enabling the Secretary of Labor to make determinations and certifications under this section and under section 1182(a)(5)(A)(i) of this title.

(4) There are authorized to be appropriated for each fiscal year, beginning with fiscal year 1987, such sums as may be necessary for the purposes of enabling the Secretary of Agriculture to carry out the Secretary's duties and responsibilities under this section.

(h) Miscellaneous provisions

(1) The Attorney General shall provide for such endorsement of entry and exit documents of nonimmigrants described in section 1101(a)(15)(H)(ii) of this title as may be necessary to carry out this section and to provide notice for purposes of section 1324a of this title.

(2) The provisions of subsections (a) and (c) of section 1184 of this title and the provisions of this section preempt any State or local law regulating admissibility of nonimmigrant workers.

(i) Definitions

For purposes of this section:

(1) The term “eligible individual” means, with respect to employment, an individual who is not an unauthorized alien (as defined in section 1324a(h)(3) of this title) with respect to that employment.

(2) The term “H–2A worker” means a nonimmigrant described in section 1101(a)(15)(H)(ii)(a) of this title.