No. 25-966

In the
**Supreme Court of the United States**

DEPARTMENT OF LABOR, ET AL.,

*Petitioners,*

*v.*

SUN VALLEY ORCHARDS, LLC

*Respondent.*

**On Writ of Certiorari**
**to the United States Court of Appeals**
**For the Third Circuit**

# BRIEF AMICUS CURIAE OF ADMINISTRATIVE AND CONSTITUTIONAL LAW PROFESSORS IN SUPPORT OF PETITIONERS

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June 24, 2026

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## INTEREST OF THE AMICI CURIAE[1]

Amici are law professors who teach and write in the areas of administrative and constitutional law. Their only interest in this case is to assist the Court in reaching the correct outcome on the constitutional question. Amici and their law school affiliations are identified in the note below.[2]

Amici agree with the brief filed by petitioners and are submitting this brief to emphasize one point: the basis for the claim of back wages is not an ordinary bilateral employment contract. Rather, it is based on a statutory arrangement under which the right of respondent to bring into this country and employ these non-citizen workers is dependent on approvals by two federal agencies that are required by law to protect not only these especially vulnerable workers, but also the citizen employees that work alongside them.

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[1] Pursuant to Rule 37.6, amici state that no party, counsel for any party, or any person other than amici and their counsel authored this brief or made any monetary contribution for its preparation or submission.

[2] Robert Glicksman, Richard Pierce, & Alan Morrison [George Washington University]; Jeffrey Lubbers [American University Washington College of Law]; & Peter Strauss [Columbia University].

## INTRODUCTION AND SUMMARY OF ARGUMENT

The ninety-six temporary agricultural workers employed by respondent were allowed to come to the United States solely because Congress established the program that governs their employment. As petitioners' brief demonstrates, in order for respondent to be eligible to bring in foreign workers, it had to submit an application to the Department of Homeland Security. As part of that process, respondent had to establish that it would not employ non-citizen workers to displace domestic workers. Included in the required showing is an agreement by respondent to pay both domestic and foreign workers the same pay, so that employers do not use the H–2A program to reduce their costs and deprive domestic workers of employment.

Petitioner Department of Labor (the "Department") is charged with the responsibility for enforcing the requirements of the program, including those for equal pay. In carrying out this responsibility, the Department recognized that, because H–2A workers do not reside in this country, but are here only during their employment, employers such as the respondent can reduce the effective pay of those workers through various means that are not available in the case of domestic workers.

Consider housing. Domestic employees generally reside in the area where they work or

have the ability to find a place to live. Not so for H–2A workers who are here for a short period of time and cannot easily find suitable living accommodations. Thus, the employer must provide a place to live, but it is also in a position to charge unreasonable rates. The same is true for transportation to work as well as meals. Without meaningful choices, and in the absence of contrary regulations, H–2A workers are in a take-it-or-leave-it situation vis-a-vis their employer.

Another significant vulnerability is the threat that employers will fire H–2A workers if they complain about work conditions or their employer's non-compliance with Department regulations designed to assure that they are properly paid. Although that problem exists for all workers who do not have statutory or union protection, H–2A workers are especially vulnerable because they cannot lawfully seek other work in this country and they are likely to be living in a place provided by their employer. That is why employers are required to guarantee that H-2A workers will be paid for at least 75% of the time that the employer has promised.

There is a further vulnerability that H–2A workers have if they are mistreated in violation of their employer's obligations under their contract and the Department's regulations: it would be virtually impossible for them to find an attorney to represent them given the modest amounts of their claims, the resources of their employer, and the likelihood that they will be removed from this

country when they are no longer employed before a case could be filed, let alone decided.

Another essential feature of the H–2A program is that it must not be used to undercut employment opportunities for domestic workers, in this case the fifty-one individuals employed by respondent who did not come to the United States under the H–2A program. To assure that employers do not prefer H–2A workers, the law requires that the employer pay the two groups equally. But if employers, like respondent in this case, can flout the law and the Department's regulations, that protection for domestic workers will evaporate as well.

These are the real world conditions that caused Congress to interpose the Department between H–2A workers and their employers and authorized the Department to issue regulations to protect these workers and to bring administrative actions to impose monetary penalties and recover back wages for H–2A workers. The result is truly a public program under the immigration laws, that limits the ability of employers like respondent to take advantage of H–2A workers and prevents employers from using non-citizen workers to deprive U.S. citizens of employment and equal wages.

The constitutional issue before this Court is whether the rights that the Department enforced in its administrative proceeding in this case are public rights or, as the Third Circuit held below,

garden variety contract rights for which vindication must be sought in an Article III court. The summary of the H–2A program above establishes that it is the kind of public program that this Court has frequently held may be enforced by administrative proceedings and is not the kind of case that must be brought in a judicial forum in the first instance.

## ARGUMENT

### PROCEEDINGS TO ENFORCE THE H–2A PROGRAM ARE PUBLIC RIGHTS DISPUTES THAT MAY CONSTITUTIONALLY BE ASSIGNED TO A FEDERAL AGENCY.

Once the statutory scheme is understood, this is a straightforward case under the category of public rights disputes that this Court recognized in *Securities & Exchange Comm. v. Jarkesy*, 603 U.S. 109, 128-132 (2024), can be constitutionally adjudicated by an agency and need not be heard in an Article III court. Although there are uncertainties about the scope of public rights, this case falls within the core of the exception.

Consider the range of cases in which this Court has sustained the application of the public rights exception. For instance, in *Murray's Lessee v. Hoboken Land and Improvement Co.*, 59 U.S. 272 (1856), the Court held that the Treasury Department could adjudicate a claim involving an

alleged debt of a customs collector to the government. In *Thomas v. Union Carbide Agricultural Products Co.*, 473 U.S. 568 (1985), the Court upheld a law authorizing the EPA to refer to binding arbitration disputes concerning the amount of just compensation owed to the owner of studies that a third party relied on in applying to register a pesticide, replacing the prior system in which EPA made that determination. In *Commodity Futures Trading Commission v. Schor*, 478 U.S. 833 (1986), the Court upheld the CFTC's practice of adjudicating common law counterclaims to claims that a broker violated an agency rule when the factual disputes raised by the common law counterclaim overlapped significantly with the factual disputes raised by the claim that the broker violated agency rules. Most recently, in *Oil States Energy Services v. Green's Energy Group*, 584 U.S. 325 (2018), the Court held that an agency could adjudicate claims with respect to the validity of patents, claims that have traditionally been decided in Article III courts.

In *Stern v. Marshall*, 564 U.S. 462 (2011), this Court provided a helpful synthesis of its precedents that have upheld agency power to adjudicate public rights disputes. The Court said that agencies can adjudicate "cases in which the claim at issue derives from a federal regulatory scheme or in which resolution of the claim by an expert government agency is deemed essential to a limited regulatory objective within the agency's authority." *Id.* at 490.

The claim for back wages at issue in this case, filed back in 2015, fits squarely within that description. In this case, the Department claimed that respondent violated the regulations governing the H–2A visa program by importing ninety-six non-citizens to work on its farms and then providing them with housing, food, and transportation that fell well short of the H–2A health and safety rules designed to assure that imported workers are fairly treated. The H–2A visa program enables firms to apply for the privilege of importing non-citizens as temporary farm workers subject to many conditions, including provision of safe and healthy housing, food, and transportation. 8 U.S.C. § 1188 (a)(1). By applying for that conditional privilege, the applicant voluntarily subjects itself to the jurisdiction of the Department. The statute instructs the Department to use its expertise to promulgate and enforce rules applicable to the health, safety, and economic well-being of the non-citizens while they are working temporarily in the United States. 8 U.S.C. § 1188. The conditional nature of the privilege is clear to the employer when it applies, as are the Department's rules, 20 C.F.R. § 655.122, and its procedures for enforcing those rules in which it brings suit in its capacity as sovereign. 29 C.F. R. § 501.1.

The rules governing H–2A employees have two important purposes. First, they protect the health, safety, and fair treatment of the imported workers. Second, and equally important, they

protect the jobs, wages, and working conditions of U.S. farm workers who are also employed by the employer. The non-citizens who come to this country seeking temporary farm employment are usually impoverished and are desperate for any source of income. If companies were allowed to import them under contracts that included their housing, food, and transportation with no governmental regulation, unscrupulous companies would have every incentive to provide those services at the lowest cost to the employer and with the lowest quality to the workers. Congress prohibited that practice both to protect the health and safety of the non-citizens and to ensure that, by importing impoverished workers, employers do not adversely affect the jobs, wages and working conditions of U.S. citizens who work on farms with the H-2A workers. *See* 8 U.S.C. § 1188(a)(1)(B).

Like most employers of H–2A farm workers, respondent's work force consists of a mix of non-citizens (96) and U.S. citizens (51). If it was allowed to use its own contracts to determine the quantity, quality, health, and safety of the housing, food, and transportation of the impoverished aliens that it imports, it would have a powerful economic incentive to provide inadequate, unsafe, and unhealthy housing, food, and transportation and to maximize the number of non-citizens and minimize the number of U.S. citizens that it employs. The statute and the Department's rules that it enforced in this proceeding are intended to avoid both of those results.

Respondent and the court of appeals contend that that this case and the many others like it can only be adjudicated by an Article III court because it is analogous to a common law breach of contract case. This Court should reject that argument for a number of reasons. First, Congress clearly rejected the idea that employer-generated contracts are adequate to assure that the conditions that the statute and regulations impose on H–2A employers are followed. Instead, Congress directed the Department, which has the relevant expertise, to issue rules that provide the necessary protections against overreaching employers. Second, the Department is far better equipped than the private bar to enforce rules that protect H–2A farm workers. Third, there were 315,000 H–2A visas issued workers in 2024, and if every case of employer failure to abide by the governing statute and rules had to go to an Article III court, the district courts would be overwhelmed. Fourth, respondent was fully aware of this enforcement system when it knowingly and voluntarily subjected itself to the jurisdiction of the Department by applying for the privilege of importing H-2A workers.

For these reasons, requiring employers of H-2A workers to have claims against them heard by an administrative tribunal fits within the core of the public rights exception as that exception was described by the Chief Justice in *Stern v. Marshall*. This is surely a case "in which the claim at issue derives from a federal regulatory scheme, [and] in which resolution of the claim by an expert government agency is deemed essential to a limited regulatory objective within the agency's authority."

564 U.S. at 490. Moreover, it is clearly a dispute involving "immigration," a category of cases that this Court recognized as within the public rights exception to Article III in *SEC v. Jarkesy*, 603 U.S. 109, 129 (2024).

## CONCLUSION

For the foregoing reasons and those set forth in petitioners' brief, the judgment below should be reversed.

Respectfully Submitted

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June 24, 2026