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 FOR *AMICUS CURIAE* AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS IN SUPPORT OF PETITIONERS

MATTHEW J. GINSBURG
DARIN M. DALMAT
Counsel of Record
ANDREW LYUBARSKY
HANNAH COHEN SMITH*
AFL-CIO
815 16th St., N.W.
Washington, DC 20006
202-637-5021
ddalmat@aflcio.org

**Admitted in ME only. Practice supervised by D.C. Bar members.*

Counsel for Amicus Curiae

Mosaic - (301) 927-3800 - Cheverly, MD

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INTEREST OF *AMICUS CURIAE*[1]

The American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) is a federation of 65 national and international labor organizations that represent 15 million working people.

One such organization, the Farm Labor Organizing Committee, represents both domestic farm workers and foreign workers who migrate seasonally to the United States to work for American farms. Both agricultural guestworkers admitted under the H-2A program and others who work alongside them depend on the Department of Labor (DOL)'s enforcement of the H-2A program's labor protections to ensure that wages and working conditions remain up to prevailing standards.

Other AFL-CIO unions represent domestic workers who would also be harmed if American farmers were allowed to employ guestworkers at wages or working conditions that undercut domestic standards.

The AFL-CIO thus has an interest in the efficient, effective enforcement of H-2A labor regulations, both to protect foreign-national guestworkers whose brief stay here is tied to a single sponsoring employer—making those workers especially vulnerable to exploitation—and to protect the wages and working standards enjoyed by domestic workers who compete in the same labor market for agricultural jobs and related work.

SUMMARY OF ARGUMENT

1. The Court need not reach the question whether Executive enforcement of H-2A labor conditions violates Article III because, in this case, Sun Valley ex-

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

pressly consented to administrative enforcement, including through civil penalties, of those conditions. Under this Court's precedent, that express consent waived any right Sun Valley may have to defend itself in an Article III court. What's more, all employers seeking to recruit foreign guestworkers now expressly consent to administrative enforcement of the H-2A labor conditions when they complete and submit their H-2A application papers, making viable questions of Article III violations unlikely to arise in the future.

2. In the event that the Court does reach the Article III question, it should reverse the decision below. Article III confines the exercise of the judicial power of the United States to tenure- and salary-protected federal judges, but that requirement does not apply to resolution of public-rights contests. Two independent grounds situate the regulation of temporary, agricultural guestworkers at the heartland of this Court's public rights doctrine.

First, regulating migration to the United States is an express, exclusive constitutional function of the political branches. The political branches' power over immigration embraces every aspect of that subject, including regulation of temporary migrant contract labor. Because this subject stands at the heart of the public rights doctrine, Congress may prescribe civil penalties for violations of H-2A requirements and may direct the Executive branch to enforce those rules through administrative proceedings. This Court has upheld precisely such a result in the immigration context at least twice. *See Lloyd Sabaudo Societa Anonima Per Azioni v. Elting*, 287 U.S. 329 (1932); *Oceanic Steam Navigation Co. v. Stranahan*, 214 U.S. 320 (1909). The lower court provides no reason to depart from that governing precedent.

Second, domestic employers may recruit workers abroad to work their fields only as a matter of legislative grace, not personal right. So, Congress may condition that privilege on substantive and procedural terms of its choosing—including the imposition of civil penalties through Executive procedures. It has done so here, and this independent branch of public rights doctrine reinforces the Executive exercise of the political branches' constitutional powers.

3. Sun Valley's consent to administrative adjudication, buttressed by two independent lines of precedent situating immigration regulation at the center of this Court's public-rights doctrine, should have made this an easy case for the DOL. The lower court even conceded that immigration regulation is a public-right matter. It nonetheless resisted the logical consequence of that concession because, in its view, the H-2A labor conditions were merely employment-law matters that could be isolated from the immigration policy regulated by the remainder of the H-2A program. That mistaken view overlooks nearly 150 years of history, which teaches that, from the very beginning of Congress's efforts to regulate immigration, a central feature of immigration policy has been to prescribe the terms on which foreign workers may be admitted to this country to work and the conditions under which they may work while here.

To be sure, Congress has taken a variety of approaches to regulating migrant labor. Congress has completely prohibited Americans from contracting with workers abroad for domestic employment; prohibited such contracts subject to specified exceptions; permitted them subject to labor conditions set by international agreement; and permitted them subject to labor conditions enforced through Executive procedures. It is far too late in the day to suggest that the

terms under which migrant laborers work while admitted to this country can be isolated from Congress's powers to regulate immigration and impose conditions on the privilege of admission to this country. The lower court's attempt to divorce labor and immigration policy defies our history and must be rejected.

ARGUMENT

I. Sun Valley and other employers applying to recruit guestworkers consent to Executive enforcement of H-2A conditions.

The Court need not decide whether Executive enforcement of H-2A conditions violated Article III because Sun Valley expressly waived any right to defend itself in an Article III court by consenting to DOL enforcement.

Litigants may "validly consent to adjudication" by administrative proceedings. *Wellness Int'l Network, Ltd. v. Sharif*, 575 U.S. 665, 674 (2015) (involving state-law claims that, following *Stern v. Marshall*, 564 U.S. 462 (2011), cannot be adjudicated in bankruptcy court absent consent). After all, "[a]djudication by consent is nothing new": at the Founding, federal courts "regularly referred adjudication of entire disputes to non-Article III referees, masters, or arbitrators . . . ." *Id.* (cleaned up). A litigant may consent to non-Article III adjudication either expressly or impliedly through conduct. *Id.* at 683–85. As long as the consent is "knowing and voluntary," it suffices to waive the right to an Article III forum. *Id.* at 685.

1. Here, as part of its H-2A application materials,[2] Sun Valley expressly acknowledged that it was "fa-

[2] Sun Valley gave its consent to DOL penalty enforcement through an agreement with a consulting service, which Sun Val-

miliar with the regulations and requirements of the H-2A program and agree[d] to comply with all of the terms and conditions of employment" described in the agricultural clearance order form, ETA-790, and attachments, as well as in the application for temporary employment certification form, ETA 9142, and attachments. AR-1543, 1582. Sun Valley also "agree[d] to comply with all obligations imposed on [it] as an employer of domestic and/or H-2A workers found in applicable law and regulations, including . . . those at . . . 29 CFR part 501 (DOL Wage and Hour Enforcement Regulations) . . . ." *Id.* at 1543, 1582. Then, as now, those regulations authorized DOL to impose civil penalties through administrative proceedings. 29 C.F.R. §§ 501.16(a)(1) (2015) (authorizing DOL to assess civil money penalties in "appropriate administrative proceedings"), 501.19(a) (2015) (setting forth criteria to determine the amount of such penalties).[3]

2. While the 2015 application form did not generally call for express consent from all participating employers—although Sun Valley did indeed expressly consent through its consultant agreement—the current application form now does so. The general instructions make clear that any employment resulting from the H-2A recruitment process is highly regulated by DOL, and includes adjudication of alleged violations before the agency's administrative law

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ley had authorized to complete and file its H-2A application. AR-1531–34, 1541–43. Sun Valley was required to include the consulting agreement as part of its H-2A application. AR-1531. The consultant attested to the truth of the representations in the application under penalty of perjury. *Id.* (Citations to "AR" are to the certified administrative record filed in the district court.)

[3] The current versions of these provisions are materially identical.

judges. *See* General Instructions, H-2A Agricultural Clearance Order Form ETA-790/790A, U.S. Dept. of Labor, available at https://tinyurl.com/3mbj5674. The application form itself contains several references to 29 C.F.R. part 501 (governing enforcement of the H-2A requirements). *See* H-2A Agricultural Clearance Order Form ETA-790A, Department of Labor, available at https://tinyurl.com/mu65wh4e.[4] And these enforcement regulations spell out in detail DOL's administrative enforcement of the statutorily authorized civil penalties. 29 C.F.R. §§ 501.9, 501.15–501.19, 501.30–501.47.

By signing and submitting the clearance order form, all H-2A applicants now certify their "knowledge of and compliance with applicable Federal, State, and local employment-related laws and regulations," including several H-2A specific requirements, and declare under penalty of perjury that the information they provide on the clearance order is true. Form ETA-790A at 5.

For employers currently participating in the program, the acts of completing and submitting an agricultural clearance order thus charge them with knowledge of their obligations and the administrative system for enforcing those obligations, including civil penalties in the event of a violation. *See, e.g., Mallory v. Norfolk S. Ry. Co.*, 600 U.S. 122, 134–35

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[4] The form also contains numerous references to 20 C.F.R. 655, Subpart B (governing labor certification process), which itself repeatedly cross-references DOL's enforcement regulations. *See, e.g.*, 20 C.F.R. §§ 655.101(b)–(c), 655.103(b) (definitions of H-2A labor contractor, Wage and Hour Division, work contract), 655.104(a), (c), 655.122(q) (disclosure of work contract), 655.132(c)(1), 655.135 and .135(h) (assurances and obligations of H-2A employers), 655.181(a) (revocation), 655.182(a), (d), (e) (debarment), 655.185(a) (complaints involving work contracts).

(2023) (registration charged corporation with knowledge of state statutory requirement to answer lawsuits there). That conduct establishes participating employers' implied consent to administrative enforcement proceedings. *See Wellness Int'l Network*, 575 U.S. at 683–85. As a result, viable questions of Article III violations are unlikely to arise in future H-2A cases.

II. The regulation of guestworker admissions, including their labor conditions, involves heartland public rights enforceable through Executive procedures imposing civil penalties.

If the Court nonetheless reaches the Article III question, it should reverse the decision below. Article III generally confines the exercise of "[t]he judicial Power of the United States" to federal courts, whose judges enjoy tenure and salary protections provided by that Article. U.S. Const. art. III, § 1. *See Oil States Energy Servs., LLC v. Greene's Energy Grp.*, 584 U.S. 325, 334 (2018). But it doesn't require Article III courts to resolve public-rights contests. *Id.* at 344–45; *accord SEC v. Jarkesy*, 603 U.S. 109, 122, 127 (2024). As this Court has acknowledged, its public-rights precedents have not always spoken precisely or clearly, making the full extent of this doctrine hazy. *Jarkesy*, 603 U.S. at 130 (citing cases). This case, however, lies nowhere near the doctrine's outer bounds.

Two independent grounds situate Executive enforcement of labor conditions on the admission and stay of temporary, foreign guestworkers at the heartland of public-rights doctrine. The Court need traverse only well-trod paths to hold that DOL may enforce H-2A labor conditions, including through civil penalties, in Executive proceedings.

A. Regulating temporary admission to work is an express, exclusive constitutional function of the political branches.

When Congress regulates within one of its express, exclusively federal, constitutional powers, it may establish the rules governing that subject and, in its discretion, assign the Executive Department the responsibility to implement those rules through Executive procedures. *See Oil States*, 584 U.S. at 335–37 (patent cancellation); *United States v. Jicarilla Apache Nation*, 564 U.S. 162, 174–75 (2011) (relations with Indian tribes); *Katchen v. Landy*, 382 U.S. 323, 336–37 (1966) (bankruptcy claim adjustment); *Phillips v. Comm'r of Internal Revenue*, 283 U.S. 589, 595 (1931) (tax collection); *Keller v. Potomac Elec. Power Co.*, 261 U.S. 428, 442–44 (1923) (D.C. courts); *Buttfield v. Stranahan*, 192 U.S. 470, 492–96 (1904) (customs duties on imports); *Pub. Clearing House v. Coyne*, 194 U.S. 497, 506–10 (1904) (postal services); *Murray's Lessee v. Hoboken Land & Improvement Co.*, 59 U.S. (18 How.) 272, 281 (1856) (collection of debts owed federal government); *Bartlett v. Kane*, 57 U.S. (16 How.) 263, 264, 266, 272–74 (1853) (tariffs); *United States v. Ferreira*, 54 U.S. (13 How.) 40, 45–48 (1851) (adjustment of foreign nationals' treaty-based claims); *Am. Ins. Co. v. Canter*, 26 U.S. (1 Pet.) 511, 546 (1828) (territorial courts).

As this Court has consistently recognized for over a century, regulating immigration, including by migrant laborers, is one of the clearest examples of exclusively federal constitutional power. *See Henderson v. Mayor of City of New York*, 92 U.S. (2 Otto) 259, 270–71, 274 (1875) (invalidating state statute requiring shippers of migrant workers to indemnify state against expenses of the workers becoming public charges because migrant "labor . . . to till our soil,

build our railroads, and develop [our] resources" is undoubtedly part of foreign commerce, subject to Congressional regulation). *Accord, e.g., Dep't of State v. Muñoz*, 602 U.S. 899, 907–08 (2024); *Jarkesy*, 603 U.S. at 160–61 (Gorsuch, J., concurring); *Shaughnessy v. U.S. ex rel. Mezei*, 345 U.S. 206, 210 (1953); *U.S. ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 542 (1950).

That power emanates from several constitutional sources, including Congress's power to regulate commerce with foreign nations, the President's power as Commander in Chief of the army and navy, the political branches' treaty-making power, and Congress's power to make laws necessary and proper for executing its enumerated powers. *See Fong Yue Ting v. United States*, 149 U.S. 698, 711 (1893); *Nishimura Ekiu v. United States*, 142 U.S. 651, 659 (1892); *Ping v. United States*, 130 U.S. 581, 604 (1889).

Congress's expansive authority includes, at its core, the powers to admit or exclude persons seeking to enter this country (and to set admission conditions)[5] and to prescribe the conditions for noncitizens to remain here.[6] The lower court's decision here purports to circumscribe Congress's power over immigration to these domains alone. Pet. App. 16a (restricting Congress's

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[5] *Lem Moon Sing v. United States*, 158 U.S. 538, 547 (1895) (power to set conditions for admission); *Nishimura Ekiu*, 142 U.S. at 659 (same); *Ping*, 130 U.S. at 606–10 (power to exclude).

[6] *Ng Fung Ho v. White*, 259 U.S. 276, 279–81 (1922) (denying relief to Chinese laborers ordered deported for lacking residency certificate required after their lawful admission); *Zakonaite v. Wolf*, 226 U.S. 272, 274–75 (1912) (denying relief to woman ordered deported for engaging in prostitution after lawful admission); *Fong Yue Ting*, 149 U.S. at 713–14, 724 (power to set deportation conditions, amendable at Congress's will).

immigration power to those subjects that "directly address the admission and exclusion of aliens").[7]

This Court's longstanding precedents have never spoken so narrowly. Instead, they have made clear that—in addition to its core authority over admission and exclusion—Congress also enjoys the power to determine the privileges and protections foreign nationals may enjoy while residing here,[8] and to penalize Americans who recruit foreign nationals or assist them in arriving in violation of its rules.[9] Indeed, "over no conceivable subject is the legislative power of Congress more complete" than it is over immigration, where it "embraces every conceivable aspect of that subject . . . ." *Oceanic Steam*, 214 U.S. at 339–40; *see*

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[7] Taken to its logical conclusion, the lower court's reasoning would render unconstitutional from its inception the entire employer sanctions regime barring the hiring of unauthorized workers. *See* 8 U.S.C. § 1324a. Relating neither to admission or exclusion, this statute allows for the administrative assessment of civil penalties, *id.* § 1324a(e)(4)–(5), stemming from domestic contracts made between employers and employees, *id.* § 1324a(a)(1). While the AFL-CIO does not support these provisions on policy grounds, we observe that the Court has repeatedly assumed their constitutionality. *See Kansas v. Garcia*, 589 U.S. 191, 195–96 (2020); *Arizona v. United States*, 567 U.S. 387, 396 (2012); *Hoffman Plastic Compounds, Inc. v. NLRB*, 535 U.S. 137, 148 (2002).

[8] *Mathews v. Diaz*, 426 U.S. 67, 81–84 (1976) (Congress may condition resident aliens' access to supplemental Medicare insurance on five years' continuous residence and submission of an application for permanent residency); *Edye v. Robertson (Head-Money Cases)*, 112 U.S. 580, 590–91 (1884) (Congress may impose duties on shippers, and liens on ships, transporting immigrants, to fund benefits for legal protection of "poor and helpless immigrant[s]").

[9] *Oceanic Steam*, 214 U.S. at 337–43 (power to prescribe monetary penalties on shippers who transport migrants in violation of immigration restrictions, and to do so administratively); *Lloyd Sabaudo*, 287 U.S. at 334–35 (same).

also Arizona, 567 U.S. at 394–95 (federal government has "broad, undoubted power over . . . the status of aliens," because "[i]mmigration policy can affect . . . diplomatic relations for the entire Nation, as well as the perceptions and expectations of aliens in this country who seek the full protection of its laws"); *Harisiades v. Shaughnessy*, 342 U.S. 580, 588–89 (1952).

Mathews v. Diaz, 426 U.S. 67 (1976), exemplifies the full scope of Congress's power over immigration. Addressing neither admission nor exclusion, *Diaz* affirmed that Congress could condition Medicare supplemental insurance benefits on durational residency and status requirements. Upholding these restrictions, the Court observed that "the responsibility for regulating the relationship between the United States and our alien visitors has been committed to the political branches of the Federal Government." *Id.* at 81. As the Court emphasized, this broad category of decisions extends far beyond admission and exclusion and includes "a wide variety" of governmental action implicating "our relations with foreign powers" and foreign nationals, and must therefore be handled by the political branches, which are better situated than courts to assess "changing political and economic circumstances . . . ." *Id.*

The federal power to regulate immigration is more than complete; it is generally exclusive. In enforcing this principle, the Court has struck down state laws that sought to directly govern the admission of noncitizens into their territories.[10] And it has also invali-

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[10] *Henderson*, 92 U.S. at 270–75 (invalidating state law taxing transportation of immigrants to state from abroad); *Chy Lung v. Freeman*, 92 U.S. (2 Otto) 275, 276–81 (1875) (similar); *New York v. Compagnie Generale Transatlantique*, 107 U.S. (17 Otto) 59, 59–63 (1883) (similar).

dated a host of state regulations restricting other privileges enjoyed by non-citizens within our borders. *See, e.g.*, *Examining Bd. v. Flores de Otero*, 426 U.S. 572, 575, 605 (1976) (civil engineering licenses); *Graham v. Richardson*, 403 U.S. 365, 380 (1971) (state welfare benefits); *Takahashi v. Fish & Game Comm'n*, 334 U.S. 410, 414, 418–19 (1948) (commercial fishing licenses). Further still, it has overturned state attempts to implement additional requirements not imposed by federal law. *Arizona*, 567 U.S. at 405–07 (state-law criminal penalties for unauthorized employment); *Hines v. Davidowitz*, 312 U.S. 52, 59, 73–74 (1941) (requirement to carry state-issued identity cards).

These cases exemplify that Congress's express, comprehensive, exclusive power to regulate immigration indeed "embraces every conceivable aspect of that subject . . . ." *Oceanic Steam*, 214 U.S. at 340. And where that is so, Congress may task the Executive Department with the responsibility to enforce its immigration rules, including through Executive proceedings. *Muñoz*, 602 U.S. at 907–08 (citing *Harisiades*, *Knauff*, *Nishimura Ekiu*, and other cases).

Congress, moreover, may prescribe civil penalties to sanction violations of its immigration rules. *See Lloyd Sabaudo*, 287 U.S. at 330–31, 334–38, 341 (sustaining fines assessed by customs collector and affirmed by Secretary of Labor against company that transported persons with contagious diseases that started abroad).

And where Congress acts within its express, exclusive constitutional powers and has authorized the Executive Department to assess and impose civil monetary penalties, this Court has long held that such Executive imposition of monetary penalties or seizure of other property does not offend Article III. *See Oil States*, 584 U.S. at 335–39 (sustaining administrative cancellation of patent, a form of private property); *Phil-*

lips, 283 U.S. at 595 (sustaining administrative procedures to collect delinquent taxes from corporate transferee, as well as direct taxpayers); *Buttfield*, 192 U.S. at 497–98 (sustaining customs officer's seizure and destruction of imported tea that failed quality regulations); *Pub. Clearing House*, 194 U.S. at 508–10 (finding postmaster's administrative fraud order sufficient for executive seizure of letters, subject to post-deprivation judicial review); *Bartlett*, 57 U.S. at 264, 269, 272 (sustaining undervaluation statutory penalty imposed by Treasury official, without jury, on importer).[11]

The Court has squarely applied that principle in the immigration context. *Oceanic Steam*, 214 U.S. at 337 (sustaining administrative order imposing monetary penalty on shipper who transported immigrants in violation of immigration law); *Lloyd Sabaudo*, 287 U.S. at 334–35 (same: "[C]ontrol of the admission of aliens is committed exclusively to Congress, and, in the exercise of that control, it may lawfully impose appropriate obligations, sanction their enforcement by reasonable money penalties, and invest in administrative officials the power to impose and enforce them.").

Congress's express grant of authority to the Secretary of Labor to "impos[e] appropriate penalties," 8 U.S.C. § 1188(g)(2), on employers who violate the H-2A labor conditions set forth in § 1188(a)–(c), and the program's implementing regulations, thus resoundingly passes constitutional muster under this long line of unwavering precedent. The Court could easily reverse the lower court's contrary conclusion on this ground alone.

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[11] This principle also applies to administrative enforcement of public rights created by statute with no common-law analogue. *Atlas Roofing Co. v. Occupational Safety and Health Rev. Comm'n*, 430 U.S. 442, 449–56 (1977).

B. Recruiting workers from abroad to work domestically is a privilege subject to legislative grace and executive enforcement.

A second, independent line of public-rights precedent reinforces the constitutionality of DOL's enforcement of H-2A labor conditions. When Congress grants "public benefits"—such as "payments to veterans," "pensions," and "patent rights"—it may impose conditions on those benefits, enforceable through Executive proceedings. *Jarkesy*, 603 U.S. at 130 (citing *Crowell v. Benson*, 285 U.S. 51 (1932); *United States v. Duell*, 172 U.S. 576, 582–83 (1899)). *Accord id. at* 153 (Gorsuch, J., concurring); *Stern*, 564 U.S. at 493.

An employer's ability to recruit a worker from abroad to work domestically and to employ the guestworker throughout a harvest season are precisely such public benefits because admission to (and the right to remain in) the United States, from the beginning, have been matters of legislative grace, not personal right. *See, e.g., Muñoz*, 602 U.S. at 912; *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 107, 139 (2020); *Landon v. Plasencia*, 459 U.S. 21, 32 (1982); *Zakonaite*, 226 U.S. at 275; *Nishimura Ekiu*, 142 U.S. at 660. The Constitution permits Congress to impose conditions on the prerogatives of coming to, or staying in, America, so long as the conditions are not "wholly irrational" and do not transgress other constitutional rights. *Diaz*, 426 U.S. at 83.

The H-2A program conditions American employers' privilege to recruit foreign guestworkers, bring them to the United States, and employ them for a season on the employers' compliance with specified labor conditions.

Namely, there must be insufficient domestic workers to perform the work, 8 U.S.C. § 1188(a)(1)(A); employment of a foreign guestworker must not adversely affect domestic wages and working conditions, *Id.* § 1188(a)(1)(B); and the employer must provide, among other things, housing, workers' compensation insurance, tools and equipment, meals (or adequate cooking facilities), transportation, a guaranteed amount of work (at least three-fourths of the term of the contract), a minimum wage, and regular pay, *Id.* § 1188(c)(4); *see also* 20 C.F.R. § 655.122(c)–(m).

The "obvious point" of this "statutory and regulatory framework is to provide two assurances to United States workers . . . ." *Alfred L. Snapp & Son, Inc. v. Puerto Rico, ex rel., Barez*, 458 U.S. 592, 596 (1982). First, the framework gives them "a preference over foreign workers for jobs that become available within this country." *Id.* Second, "to the extent that foreign workers are brought in, the working conditions of domestic employees are not to be adversely affected, nor are United States workers to be discriminated against in favor of foreign workers." *Id.* Equally, it protects the guestworkers themselves against exploitation that they would otherwise be especially vulnerable to, because their right to work within the United States is usually tied to a single employer (or other qualifying employers who apply to continue the guestworkers' employment)—thus making it extremely challenging for guestworkers to find other, better jobs in the event of broken promises or substandard working conditions. *See, e.g.*, Andorra Bruno, Cong. Rsch. Serv., R44849, *H-2A and H-2B Temporary Worker Visas: Policy and Related Issues* 22–23 (2023), available at https://tinyurl.com/4x3vh3m9.

These conditions are more than merely rational; they are eminently sensible. They pass constitutional muster and require no Article III proceedings.

III. Regulating the terms and conditions of work that guestworkers are admitted to perform cannot be divorced from immigration policy.

In the face of Sun Valley's consent to Executive adjudication; the political branches' express, exclusive, comprehensive power to regulate immigration; and this Court's repeated recognition that recruiting and employing foreign guestworkers to work domestically is a privilege, subject to legislative grace, the lower court should easily have rejected Sun Valley's Article III claim.

It even acknowledged "immigration is traditionally a matter of public rights." Pet. App. 13a. Yet, it found the public-rights doctrine inapplicable because, in its view, the H-2A labor protections merely concerned "domestic wages" and other aspects of "employment law"—such as "[r]ules about worker hours, housing, cooking, and transportation"—which could be segregated and isolated from Congress's "authority to control immigration"). Pet. App. 16a–17a. The history of federal immigration regulation teaches a contrary lesson. Regulating the admission of foreign workers to work within our borders and the terms on which they may work while here has always been a central feature of Congress's authority over immigration.

A. Regulating migrant labor has been central to immigration policy from the start.

Congress enacted the first statute comprehensively regulating immigration in 1882. Immigration Act of 1882, ch. 376, 22 Stat. 214.[12] Just three years later, it

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[12] From the Founding until after the Civil War, federal immigration legislation was scant and entry into the Nation's border was "relatively unrestricted." *Thuraissigiam*, 591 U.S. at 178

began regulating migrant work. The Alien Contract Labor Act (Foran Act) of 1885 prohibited contracting with foreign workers for domestic employment and voided contracts for migrant labor reached "previous to the migration or importation of the person . . . whose labor or service is contracted for into the United States." Ch. 164, §§ 1–2, 23 Stat. 332. Thus, for nearly 150 years, regulating foreign workers' ability to come to this country for work has occupied the center of federal immigration policy.

That policy reflected Congress's view that "it had become the practice for large capitalists" to contract with foreign migrant laborers and pay for their transportation to come work domestically "for a certain time at a low rate of wages." *Holy Trinity Church v. United States*, 143 U.S. 457, 463 (1892) (cleaned up). That practice broke "down the [domestic] labor market," and reduced the working standards of domestic workers "engaged in like occupations to the level of the assisted immigrant." *Id.* at 463–64. It also created sufficient domestic outcry to "raise the standard of foreign immigrants" and to discourage migration of foreign workers

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(Sotomayor, J., dissenting). The Alien Friends Act, which was in effect for only two years from its enactment, granted the President power to detain and expel any noncitizen he deemed "dangerous to the peace and safety of the United States." Act of June 25, 1798, ch. 58, 1 Stat. 571. And the Alien Enemies Act, which purports to authorize the President, by proclamation, to detain and expel resident "alien enemies" during wartime, is still in effect today. Act of July 6, 1798, ch. 66, 1 Stat. 577. Apart from those two short-lived or narrowly drawn statutes, Congress imposed "[n]o meaningful federal restrictions on immigration" and, in line with its "express policy . . . to encourage settlement in the new nation," instead enacted a variety of laws "to ensure the health and safety of passengers and to grant duty-free admission to their personal and professional possessions." Sarah H. Cleveland, *Powers Inherent in Sovereignty*, 81 Tex. L. Rev. 1, 98–99 (2002).

under fixed-term labor contracts—all for the ultimate purpose of maintaining American labor standards. *Id.* at 464. *Accord* Prescott F. Hall, *The Federal Contract Labor Law*, 11 Harv. L. Rev. 525 (1898).

Congress refined its migrant-labor policy in a series of subsequent enactments, which gave the Treasury Secretary enhanced responsibilities, expanded the proscribed conduct to prohibit advertising for job opportunities abroad, and imposed the costs of returning inadmissible migrant laborers on the owners of the shipping vessels who transported them. *See* Act Amending Alien Contract Labor Act, ch. 220, §§ 6, 8, 24 Stat. 414 (1887); ch. 551, 26 Stat. 1084 (1891).

This Court long ago sustained Congressional authority to enact such policies, holding that Congress's "absolute power to exclude aliens" included "the power to punish any who assist in their introduction." *Lees v. United States*, 150 U.S. 476, 480 (1893).

After the turn of the century, Congress enacted the Immigration Act of 1903. Ch. 1012, 32 Stat. 1213. Continuing Congress's focus on migrant labor as part of immigration policy, the Act prohibited Americans from contracting with, recruiting, or assisting foreign labor for domestic employment. *Id.* § 4. It prescribed civil penalties for violations of the migrant-contract-labor ban, both on employers contracting with migrant laborers and on companies that transport such migrant workers to America. *Id.* §§ 5–6. Like previous statutes, the 1903 Act also built labor policy into its admissibility determinations, allowing "skilled labor" to "be imported, if labor of like kind unemployed can not be found in this country," and exempting from the contract-labor provisions several enumerated professions. *Id.* § 2.

Congress's next substantive enactment was the Immigration Act of 1917, ch. 29, 39 Stat. 874, which con-

tinued to bar admission of contract laborers, and prohibited Americans from contracting with, recruiting, or assisting the immigration of migrant laborers (with a proviso excluding skilled labor). *Id.* §§ 3, 4. The 1917 Act also gave the Commissioner General of Immigration, with the Secretary of Labor's approval, authority to "issue rules and prescribe conditions . . . to control and regulate the admission and return of otherwise inadmissible aliens applying for temporary admission." *Id.* § 3 (ninth proviso). Relying on this authority to address labor shortages caused by World War I, in May 1917, the Secretary of Labor authorized suspension of the bar on admission of contract laborers to allow migrant workers, largely from Mexico, to enter temporarily for agricultural employment. Cong. Rsch. Serv., S. Judiciary Comm. R., 96th Cong, 2nd Sess., *Temporary Worker Programs: Background and Issues* 7–8 (Comm. Print Feb. 1980).

Additional DOL orders prescribed the procedures employers could use to recruit agricultural guestworkers. *Id.* at 9. Under those orders, a prospective employer would apply for permission to "import" laborers by setting forth the number of workers it desired, the class of work, wages offered, and place of employment, along with the employer's agreement to comply with applicable regulations and proof that the local labor supply was inadequate to meet the employer's needs. *Id.* at 9–10. A DOL order also required the employer to "'pay the current rates of wages for similar labor in the community in which the admitted aliens are to be employed,'" provide satisfactory housing, and to bear the costs of any deportation charge for the aliens or any alien family. *Id.* at 10.

The first DOL guestworker program ended in 1921. But during World War II, labor shortages returned, prompting the federal government to revive a similar

initiative once again. This time, as a result of Mexico's dissatisfaction with the United States enacting the original program unilaterally,[13] Congress established its successor through an international agreement with Mexico. *See* Agreement Respecting the Temporary Migration of Mexican Agricultural Workers, Mex.-U.S., Aug. 4, 1942, 56 Stat. 1759. This bilateral program is often referred to as the *bracero* (i.e., manual laborer) program.

The 1942 Agreement provided that Mexicans entering the United States would enjoy guaranteed transportation, covered living expenses, and repatriation, and would not displace U.S. domestic workers or otherwise reduce "rates of pay previously established." *Id.* at 1766. Under the 1942 Agreement, employers and workers would enter contracts "under the supervision of the Mexican Government." *Id.* Mexican guestworkers would be paid the same wages as paid "for similar work to other agricultural laborers in the respective regions of destination." *Id.* at 1767. The Agreement entitled guestworkers to prevailing housing, sanitary, medical, health, and safety standards. *Id.* It also guaranteed them work (or guaranteed daily pay) for 75% of the contracting period. *Id.*

A decade later, Congress enacted an Act to Amend the Agricultural Act of 1949, commonly known as Public Law 78. Ch. 223, 65 Stat. 119 (1951). This law enshrined in statute the principles DOL had previously applied administratively. It allowed admission of agricultural guestworkers only upon the Secretary of Labor's determination and certification that (1) insufficient domestic workers are able, willing and qualified for the position sought by the employer, (2) the

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[13] Cong. Rsch. Serv., *Temporary Worker Programs: Background and Issues* at 13–14.

employment of migrant workers "will not adversely affect the wages and working conditions of domestic agricultural workers similarly employed," and (3) "reasonable efforts have been made to attract domestic workers for such employment at wages and standard hours of work comparable to those offered to foreign workers." *Id.* § 503. And it authorized the Secretary of Labor to guarantee an employer's wage payments and provision of transportation, while requiring the employer to indemnify the government for any loss "by reason of its guaranty of such employer's contracts." *Id.* §§ 501(6), 502(1).

Following the enactment of Public Law 78, the United States and Mexico negotiated a successor agreement imposing detailed labor conditions on the *bracero* migrant labor program. *See* Migrant Labor Agreement of 1951, Mex.-U.S., Aug. 11, 1951, 2 U.S.T. 1940. Among others conditions, the Agreement established a preference for domestic employment, prohibiting the employment of Mexican workers in the United States in jobs "for which domestic workers can reasonably be obtained or where the employment of Mexican Workers would adversely affect the wages and working conditions of domestic agricultural workers in the United States." *Id.* Art. 9. The Agreement itself governed migrant labor contracts (Art. 11)[14] and limited guestworkers to working domestically only for employers authorized under the program (Art. 12). It entitled guestworkers to, among other things, prevail-

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[14] Specifically, the Agreement required all employers of Mexican guestworkers to enter into a standard "Work Contract which is . . . made a part" of the Agreement and was reproduced immediately below its text. Migrant Labor Agreement of 1951, Art. 11. That contract, in turn, specifically "incorporated . . . by reference . . . the provisions of the Migrant Labor Agreement of 1951." We refer to this document as the "Work Contract."

ing wages (Art. 15), guaranteed work (or pay) for three-fourths of the work days of the contracting period (Art. 16), transportation (Art. 17), medical care and compensation for work-related injury and disease (Art. 19), lodging (Work Contract, ¶ 2), tools and equipment (Work Contract, ¶ 5), cooking facilities or the value of three daily meals beyond a $1.75 daily deduction (Work Contract, ¶¶ 6(d), 12), and potable water (Work Contract, ¶ 8). Any contract modification had to be approved by both governments. *Id.* Art. 26. It also prohibited Mexican guestworkers from replacing domestic workers on strike. *Id.* Art. 22.

The United States guaranteed employers' performance of each *bracero* work contract, which meant that, when participating employers violated their obligations, the government paid any "amounts found to be due from a defaulting Employer" to the Mexican worker. *Id.* Art. 32. Because participating employers were required by statute to indemnify the United States government for any such payments, the Agreement had to provide for a mechanism to calculate an employer's liability for any violations of its labor provisions.

This mechanism operated entirely outside the confines of Article III. The Agreement assigned responsibility to enforce its obligations to the Secretary of Labor who, upon finding a violation following a joint investigation with a Mexican consul, would revoke the employer's certification and require the offending employer "to pay all of his obligations under the Contract," including the "three-fourths guarantee" for the "full duration of the Contract . . . ." *Id.* Art. 30(c). It directed the Mexican consul and DOL regional representative to complete their investigation and render an initial determination on a complaint within ten days of its receipt, with disputes referable to the Secretary of Labor and Representative of the Mexican

Government in Washington, who would review the facts and render a "final joint determination" without a judicial trial. *Id.* Art. 30(h)(1)–(2). The employer was required to "agree that the Secretary of Labor's determinations as to [its] indebtedness for wages and transportation costs shall be final and binding upon [it]." *Id.* Art. 32.

Several of the rights under the 1951 Agreement closely mirror those at issue in this case under current H-2A regulations. *See* Pet. App. 53a, 62a–74a (detailing violations of requirements for cooking facilities, meal provisions, potable water, adequate housing, wages, and guaranteed work). The substance of these rights originated in reticulated international obligations, negotiated and refined over many years, after Mexico was dissatisfied with the United States's initial effort during World War I to admit agricultural guestworkers unilaterally.

This history belies the lower court's misperception of these rights as a simple "employment matter" unrelated to Congress's authority over immigration. Pet. App. 16a. Instead, the H-2A labor conditions originate in international diplomacy, enforced on the United States' side entirely through Executive procedures. Moreover, pursuant to the political branches' power over foreign affairs, such enforcement was conducted in concert with another sovereign nation. These non-Article III proceedings resulted, where appropriate, in monetary relief, which was enforced by courts without *de novo* review of Executive factfinding. *See, e.g.*, *United States v. Ward*, 309 F.2d 640, 642–43 (5th Cir. 1962) (awarding United States indemnity for employer's violations of wage guarantees based on Executive fact finding that, under the Agreement, is "binding on the employer"); *United States v. Morris*, 252 F.2d 643, 649 (5th Cir. 1958) (awarding government indemnifi-

cation for employer's wage guarantee violations because "all matters involved in or related to" the joint Executive proceedings were "final").

B. The H-2A labor conditions remain integral to Congress's exercise of its authority over immigration.

In 1961, President Kennedy approved the reauthorization of the *bracero* program. Act to Amend Title V of the Agricultural Act of 1949, Pub. L. No. 87-345, 75 Stat. 761 (1961). The program then expired at the end of 1963. *Id.* § 6. Following its expiration, the H-2 provisions of the Immigration and Nationality Act of 1952, ch. 477, 66 Stat. 163 (INA) governed guestworker admissions and labor conditions. *See id.* § 101(a)(15)(H)(ii), 66 Stat. at 168 (codified at 8 U.S.C. § 1101(a)(15)(H)(ii)) (defining nonimmigrant to include foreign nationals living abroad with "no intention of abandoning" their home who come temporarily to the United States to perform temporary labor "if unemployed persons capable of performing such service or labor cannot be found in this country").

The INA authorized the Attorney General, through the Immigration and Nationalization Service (INS) and in consultation with other federal agencies, to admit H-2 guestworkers upon petition, containing information required by regulations, of the "importing employer." 8 U.S.C. § 1184(c). After the *bracero* program expired, the implementing regulations required "a certification from the Secretary of Labor" that domestic workers were unavailable for the job and the employment would "not adversely affect the wages and working conditions of workers in the United States similarly employed." 8 C.F.R. § 214.2(h)(3)(i) (1964). Related regulations also initially required employers to comply with the labor obligations under the 1951

Migrant Labor Agreement, despite the expiration of the *bracero* program that it governed. 20 C.F.R. § 610.10(c)(1) (1964). DOL then updated the regulations to incorporate rights to adequate housing, wages, meals, transportation, and guaranteed work for three-fourths of the contract period directly into law, rather than by reference to the now-defunct international agreement. Foreign Agricultural Labor, 32 Fed. Reg. 4569 (Mar. 28, 1967) (codified at 20 C.F.R. § 602.10a (1967)).

In 1978, DOL clarified the requirements to underscore the longstanding policy that the purpose of the guestworker program is to employ U.S. workers "wherever possible." 20 C.F.R. § 655.0(e) (1978). To that end, guestworkers could be admitted only on terms and conditions of employment that would not lower "the terms and conditions of domestic workers similarly employed . . . ." *Id.* Courts consistently upheld these regulatory requirements. *See, e.g.*, *Fla. Sugar Cane League, Inc. v. Usery*, 531 F.2d 299, 300–01 (5th Cir. 1976); *Elton Orchards, Inc. v. Brennan*, 508 F.2d 493, 500 (1st Cir. 1974).

In 1986, Congress enacted the Immigration Reform and Control Act (IRCA) and enshrined in statute the longstanding regulatory requirement that guestworkers be admitted only upon certification by DOL that their employment will not "adversely affect the wages and working conditions of workers in the United States similarly employed." Pub. L. No. 99-603, § 301(c), 100 Stat. 3359, 3411 (amending INA to add § 216, codified at 8 U.S.C. § 1188(a)(1)(B)). IRCA also precludes admission of guestworkers who would replace strikers, *id.* § 1188(b)(1), and requires H-2A employers to provide guestworkers workers' compensation, *id.* § 1188(b)(3), and adequate housing, *id.* § 1188(c)(4). It also authorizes the Secretary of Labor

to "impos[e] appropriate penalties and seek[] 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." *Id.* § 1188(g)(2). Finally, IRCA expressly directed the Attorney General, in consultation with the Secretary of Labor and of Agriculture, to approve regulations implementing the H-2A program and new statutory requirements. IRCA, Pub. L. No. 99-603, § 301(e), 100 Stat. 3359, 3416 (1986) (codified at 8 U.S.C. § 1188 note).

The next year, DOL promulgated 29 C.F.R. part 501, which provides for Executive enforcement of IRCA's statutory civil penalties. Enforcement of Contractual Obligations for Temporary Alien Agricultural Workers Admitted Under Section 216 of the Immigration and Nationality Act, 52 Fed. Reg. 20524 (June 1, 1987).

The regulations prohibited H-2A employers from seeking to have H-2A workers waive their statutory or regulatory rights (§ 501.4), defined "work contract" to include all regulatory requirements set forth in 20 C.F.R. Part 655 (§ 501.10(d)), directed the Labor Secretary to institute "appropriate administrative proceedings" for unpaid wages and civil monetary penalty assessments (§ 501.16(a)), hold administrative hearings after proper notice (§§ 501.31–501.40), hear administrative appeals (§§ 501.42–501.45), assess civil monetary penalties for violations of the work contract or regulations (§ 501.19), investigate violations (§ 501.20), and collect civil penalties assessed in final administrative orders (§ 501.22). Since at least 2008, these regulations have made clear that aggrieved employers may seek judicial review from adverse agency decisions. *See* Temporary Agricultural Employment of H-2A Aliens in the United States, 73 Fed. Reg. 77110, 77237–38 (Dec. 18, 2008) (modifying §§ 501.33, 501.42

to clarify and confirm that aggrieved parties may seek judicial review of adverse agency decisions).

Over 150 years of federal regulation of migrant contract labor generally, and several decades of federal regulation of the H-2A statutory and regulatory provisions specifically, teach an overriding lesson: the federal concern with labor conditions of foreign guestworkers admitted to perform temporary agricultural labor is not mere "employment law" (Pet. App. 16a) unrelated to immigration policy. The federal government thoroughly regulates those "contracts" to further broad interests in protecting domestic labor standards against dilution by workers abroad willing to work for less than the prevailing standards in the United States.

Furthermore, executive enforcement of H-2A labor conditions promotes international interests in friendly relations with those countries sending migrant workers our way. The United States is currently party to agreements with several sovereign nations that emphasize the Executive's commitment to enforcing labor conditions for these countries' citizens participating in the H-2A program. These agreements make express reference to the scheme that Sun Valley challenges here. For instance, a 2023 Memorandum of Understanding binding DOL, the Department of State, and their Mexican counterparts emphasizes "the importance of safe and lawful recruitment, employment, working conditions, housing facilities, and transportation services, the timely and correct payment of wages, and *access to complaint mechanisms and lawful remedies, including the return of back wages owed to temporary foreign workers*." Mem. of Understanding Concerning Labor Mobility and the Protection of Participants in Temporary Foreign Worker Programs, Mex.-U.S., § 3, Jan. 2023, available at https://tinyurl.com/yruk7p6a (emphasis added); *see also id.* §§ 3(4),

3(6) (committing parties to binational efforts to "[e]ducate intending H-2 workers about available worker protections under applicable laws, rules, and regulations" and "[w]ork to return back wages found due by the [DOL] Wage and Hour Division in a timely fashion to Mexican workers").[15] Thus, far from a matter of local employment conditions unrelated to the political branches' authority over foreign affairs, the enforcement of H-2A labor conditions remains a matter of acute interest for our international partners.

Taking these interests into account, Congress has followed a variety of approaches over the years to regulating migrant labor contracts. It has barred them completely; set statutory terms unilaterally, enforced through unreviewable Executive procedures; set terms through bilateral international agreements, implemented through statutes and federal regulations and administered through Executive procedures; and set some substantive terms by statute (mirroring lapsed agreements while continuing to be tinged by international concerns), while directing others to be set by regulation—and all to be enforced by Executive procedures, subject to judicial review.

Across these approaches, one lesson emerges clearly: Congress's authority to admit foreign nationals to work domestically, and to regulate the terms on which they may work while here, is part and parcel of immigration policy and foreign affairs. The lower court's attempt to divorce enforcement of the terms on which

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[15] The United States is also party to similar agreements with Guatemala and Honduras. Agreement Concerning Temporary Agricultural and Non-Agricultural Worker Programs, Guatemala-U.S., Sept. 2020, available at https://tinyurl.com/mrxdfara; Agreement Concerning the Temporary Agricultural and Non-Agricultural Worker Programs, Honduras-U.S., Sept. 2019, available at https://tinyurl.com/fs54232b.

migrant laborers may work while here from Congress's authority to regulate immigration defies that history. Doing so unduly constrains the political branches' expansive constitutional authority to regulate and enforce the terms on which migrant laborers may work, threatening to disrupt the many sensitive foreign relations interests implicated by those regulations. This Court should heed the lessons of history and reverse, holding that it is not the judiciary's role to sever Congress's regulation of migrant labor from its authority to regulate immigration more generally.

CONCLUSION

For these reasons, the Court should reverse and remand with instructions to enter judgment for the Department of Labor, which may constitutionally enforce the H-2A labor regulations imposing civil monetary penalties through Executive proceedings, without offending Article III.

Respectfully submitted,

/s/ Darin M. Dalmat
MATTHEW J. GINSBURG
DARIN M. DALMAT
Counsel of Record
ANDREW LYUBARSKY
HANNAH COHEN SMITH*
AFL-CIO
815 16th St., N.W.
Washington, DC 20006
202-637-5021
ddalmat@aflcio.org

**Admitted in ME only. Practice supervised by D.C. Bar members.*

Counsel for AFL-CIO

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