

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 OF AMICI CURIAE PUBLIC CITIZEN,
CENTRO DE LOS DERECHOS DEL
MIGRANTE, COMITÉ DE APOYO A LOS
TRABAJADORES AGRÍCOLAS, AND
FARMWORKER JUSTICE IN SUPPORT OF
PETITIONERS**

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TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

INTEREST OF AMICI CURIAE..... 1

SUMMARY OF ARGUMENT 3

ARGUMENT 5

I. Congress authorized the Department to impose civil monetary penalties on H-2A employers without initiating litigation. 5

II. Administrative enforcement of commitments that an employer makes upon enrolling in the H-2A program comports with Article III..... 8

 A. The government may condition a sophisticated party’s receipt of a legal privilege on consent to agency enforcement of commitments made to secure the privilege. 9

 B. An H-2A employer obtains a privilege in exchange for consent to submit to agency enforcement proceedings..... 16

III. The availability of agency enforcement processes furthers Congress’s aim of protecting American workers. 20

CONCLUSION..... 23

TABLE OF AUTHORITIES

Cases	Page(s)
<i>Atlas Roofing Co. v. Occupational Safety & Health Review Commission</i> , 430 U.S. 442 (1977)	10
<i>Burlington Northern & Santa Fe Railway Co. v. White</i> , 548 U.S. 53 (2006)	8
<i>Campos-Chaves v. Garland</i> , 602 U.S. 447 (2024)	8
<i>Coinbase, Inc. v. Suski</i> , 602 U.S. 143 (2024)	13
<i>Commodity Futures Trading Commission v. Schor</i> , 478 U.S. 833 (1986)	11, 12, 15, 16, 19
<i>Crowell v. Benson</i> , 285 U.S. 22 (1932)	10
<i>Dean v. United States</i> , 556 U.S. 568 (2009)	8
<i>Dolan v. City of Tigard</i> , 512 U.S. 374 (1994)	15
<i>Granfinanciera, S.A. v. Nordberg</i> , 492 U.S. 33 (1989)	10
<i>M/S Bremen v. Zapata Off-Shore Co.</i> , 407 U.S. 1 (1972)	13
<i>Murray’s Lessee v. Hoboken Land & Improvement Co.</i> , 59 U.S. (18 How.) 272 (1855)	22

<i>Roell v. Withrow</i> , 538 U.S. 580 (2003)	11
<i>Rust v. Sullivan</i> , 500 U.S. 173 (1991)	15, 18
<i>Securities & Exchange Commission v. Jarkesy</i> , 603 U.S. 109 (2024)	8, 9, 10
<i>Thomas v. Union Carbide Agricultural Products Co.</i> , 473 U.S. 568 (1985)	13, 14, 16, 19, 22
<i>United States v. Moorman</i> , 338 U.S. 457 (1950)	13
<i>Wellness International Network, Ltd. v. Sharif</i> , 575 U.S. 665 (2015)	11, 12, 15, 16
Statutes	
5 U.S.C. § 702.....	7
8 U.S.C. § 1184(c)(1)	16
8 U.S.C. § 1188(a)(1).....	16, 17, 20
8 U.S.C. § 1188(a)(1)(B)	6
8 U.S.C. § 1188(g)(2)	6, 7, 8
29 U.S.C. § 1802(8)(B)(ii).....	23
29 U.S.C. § 1802(10)(B)(iii).....	23
29 U.S.C. § 1854(a)	23
Immigration Reform and Control Act of 1986, Pub. L. No. 99-603, 100 Stat. 3359	5
Regulations	
20 C.F.R. § 655.121	17

20 C.F.R. § 655.122	17
29 C.F.R. § 501.16	17
29 C.F.R. § 501.31	7
29 C.F.R. § 501.32	7
29 C.F.R. § 501.37	7
29 C.F.R. § 501.38	7
29 C.F.R. § 501.41	7
29 C.F.R. § 501.42	7

Other Authorities

Mary Bauer, Southern Poverty Law Center, <i>Close to Slavery: Guestworker Programs in the United States</i> (2013)	21
Briana Beltran, <i>134,368 Unnamed Workers: Client-Centered Representation on Behalf of H-2A Agricultural Guestworkers</i> , 42 New York University Review of Law & Social Change 529 (2019)	21
Andorra Bruno, Congressional Research Service, <i>H-2A and H-2B Temporary Worker Visas: Policy and Related Issues</i> (updated May 11, 2023).....	5
Centro de los Derechos del Migrante, Inc., <i>Ripe for Reform: Abuses of Agricultural Workers in the H-2A Visa Program</i> (2020).....	22
Daniel Costa & Philip Martin, Economic Policy Institute, <i>Record-Low Number of Federal Wage and Hour Investigations of Farms in 2022</i> (Aug. 22, 2023).....	22

Department of Labor, <i>H-2A Approval: Temporary Agricultural Labor Certification</i>	17
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).....	6
Government Accountability Office, <i>H-2A Visa Program: Agencies Should Take Additional Steps to Improve Oversight and Enforcement</i> (Nov. 2024).....	20, 21, 22
H.R. Rep. No. 99-682(I) (1986)	5
Labor Certification Process for the Temporary Employment of Aliens in Agriculture and Logging in the United States, 52 Fed. Reg. 20496 (June 1, 1987).....	6
<i>Seek</i> , Merriam-Webster	8
Siobhan Standaert, Good Jobs First, <i>Worker Protections in Freefall: The Collapse of Federal Labor Enforcement Under the Second Trump Administration</i> (Dec. 2025).....	21

INTEREST OF AMICI CURIAE¹

Amicus curiae Public Citizen is a nonprofit consumer advocacy organization with members in all fifty states. Public Citizen regularly appears before Congress, administrative agencies, and courts to advocate for laws and policies that protect consumers, workers, and the general public. Public Citizen has a longstanding interest in constitutional separation-of-powers questions, and it regularly appears as amicus curiae in cases that present such questions. *See, e.g., FCC v. Consumers' Rsch.*, 606 U.S. 656 (2025); *SEC v. Jarkesy*, 603 U.S. 109 (2024); *Seila Law LLC v. CFPB*, 591 U.S. 197 (2020). Additionally, Public Citizen has advocated for legal rules that further the H-2A visa program's purpose of ensuring that agricultural employers can meet their labor needs by hiring temporary guest workers without compromising wages or working conditions for American workers.

Amicus curiae Centro de los Derechos del Migrante (CDM) is a transnational nonprofit organization that advocates for the rights of migrant workers under U.S. law. Since its founding in 2005, CDM has worked with thousands of farmworkers, including by advocating for their rights under the H-2A visa program.

Amicus curiae Comité de Apoyo a los Trabajadores Agrícolas (CATA) is a nonprofit organization that engages in organizing and empowering immigrant farmworker communities in New Jersey, Pennsylvania, and Maryland. Founded in 1979 by migrant farmworkers, CATA is a grassroots membership-based organization that focuses on issues of workers'

¹ This brief was not written in any part by counsel for a party. No one other than amici curiae or their counsel made a monetary contribution to the preparation or submission of the brief.

rights, health and safety in the workplace, immigrants' rights, and food justice. CATA's priorities include strengthening enforcement of statutes and regulations designed to protect farmworkers, a uniquely vulnerable and isolated population. CATA regularly submits complaints to the U.S. Department of Labor on behalf of H-2A workers who fear jeopardizing their employment and the employment of other workers if they complain on their own behalf.

Amicus curiae Farmworker Justice is a nonprofit organization that seeks to empower migrant and seasonal farmworkers to improve their living and working conditions, immigration status, health, occupational safety, and access to justice. Farmworker Justice accomplishes these aims through policy advocacy, litigation, training and technical assistance, coalition-building, and public education. Farmworker Justice represents and provides services to U.S. workers and H-2A workers whose wages and working conditions are subject to Department of Labor enforcement, and it advocates for policies to improve working conditions for workers employed by H-2A employers and promote equity for those employers competing with H-2A employers.

Amici file this brief because Sun Valley's arguments, if accepted, would prevent the Department of Labor from using an efficient and inexpensive administrative process to impose monetary penalties on H-2A employers that violate their promise to uphold certain minimum employment standards. Forcing the Department to initiate costly and time-consuming litigation to impose penalties would make this valuable enforcement tool less effective at vindicating the H-2A program's goal of protecting the wages and working conditions of agricultural workers in the United States.

SUMMARY OF ARGUMENT

I. An agricultural employer that chooses to enroll in the H-2A visa program receives a valuable privilege: authorization to bring guest workers from abroad to work in the United States. In exchange, and to ensure that American workers are not disadvantaged by the introduction of internationally recruited workers, the employer commits to upholding certain minimum standards for wages and working conditions. The employer also agrees that the Department of Labor can impose civil monetary penalties if the Department finds that the employer has not honored its commitments.

The Department's power to impose civil penalties on employers that violate their commitments is expressly stated in statutory text. Although Sun Valley argued below that the Department's power is limited to asking a court to impose penalties, that argument impermissibly rewrites Congress's statute.

II. The Department's authority to impose civil penalties without first filing suit is consistent with the Constitution. This Court has long held that a party may voluntarily consent to have its rights adjudicated by an authority other than an Article III court. And this Court has recognized that the government may constitutionally require such consent from a sophisticated party as a condition of the party's participation in a voluntary government program that confers legal privileges on those who choose to enroll.

Of course, the government's power in this respect is not unlimited. Both the unconstitutional conditions doctrine and the separation of powers place constraints on the conditions that the government may require a program participant to accept. But the

enforcement scheme here falls squarely on the permissible side of the line. The scope of an H-2A employer's consent is limited to the Department's enforcement of voluntary commitments that the employer makes to secure the legal privilege of hiring foreign guest workers. The employer does not surrender any constitutional protections—such as the guarantee of due process—that ensure the fairness of agency proceedings. And the arrangement does not encroach on the judiciary's power to adjudicate any rights or duties that exist independently of the government program in which the employer has voluntarily enrolled.

III. The Department's ability to impose civil penalties in administrative proceedings furthers important statutory aims. By law, an employer wishing to enroll in the H-2A program must show that hiring guest workers will not have an adverse impact on the wages and working conditions of American workers. Accordingly, to participate in the program, an employer must commit to offering its guest workers specified wages and working conditions that American workers in comparable jobs would be willing to accept, and it must agree to provide its American workers in corresponding employment the same wages and conditions.

Even as participation in the H-2A program has grown, however, the Department has suffered from dwindling staff and resources, and it has struggled to ensure that employers are honoring the commitments that they have made as a condition of enrolling in the program. At the same time, investigations that the Department has pursued have uncovered staggering rates of violations. And because H-2A workers are often reluctant to speak out for fear of retaliation, the number of violations that have gone undetected by the Department is likely substantial. Requiring the

Department to initiate litigation to enforce the program's requirements would strain its scarce resources and further limit its ability to investigate and respond to an epidemic of violations. This result—which the Constitution does not require—would severely compromise Congress's aim of protecting both guest workers and the American agricultural labor force.

ARGUMENT

I. Congress authorized the Department to impose civil monetary penalties on H-2A employers without initiating litigation.

Congress first created the H-2 nonimmigrant visa category for temporary foreign workers as part of the 1952 Immigration and Nationality Act (INA). Andorra Bruno, Cong. Rsch. Serv., *H-2A and H-2B Temporary Worker Visas: Policy and Related Issues 2* (updated May 11, 2023).² In the years that followed, Congress found that, as to the agricultural sector, implementing regulations promulgated by the Department of Justice and Department of Labor “d[id] not fully meet the need for an efficient, workable and coherent program that protects the interests of agricultural employers and workers alike.” H.R. Rep. No. 99-682(I), at 80 (1986). Congress accordingly amended the INA to create the H-2A program, which establishes a specialized framework for hiring guest workers to provide temporary agricultural labor. Immigration Reform and Control Act of 1986, Pub. L. No. 99-603, § 301, 100 Stat. 3359, 3411–17.

Under the 1986 Act's amendments to the INA, an employer may receive authorization to hire a foreign

² https://www.congress.gov/crs_external_products/R/PDF/R44849/R44849.7.pdf.

guest worker to perform agricultural labor or services only if the Secretary of Labor certifies, among other things, that “the employment of the [guest worker] in such labor or services will not adversely affect the wages and working conditions of workers in the United States similarly employed.” 8 U.S.C. § 1188(a)(1)(B). In implementing regulations promulgated the following year, the Department of Labor “determined that in order to protect ... U.S. workers from adverse effect with respect to benefits, wages, and working conditions, every job offer which must accompany an H-2A application always shall include” certain “minimum benefit, wage, and working condition provisions.” Labor Certification Process for the Temporary Employment of Aliens in Agriculture and Logging in the United States, 52 Fed. Reg. 20496, 20513 (June 1, 1987).

The 1986 Act also expressly authorizes the Department to impose civil monetary penalties on H-2A employers that violate the commitments made in the job offer: “The Secretary of Labor is authorized to take such actions, including imposing appropriate penalties ..., as may be necessary to assure employer compliance with terms and conditions of employment” under the H-2A program. 8 U.S.C. § 1188(g)(2). Implementing that authority, the Department has promulgated regulations establishing an administrative process for enforcement of the job offer’s minimum guarantees. Enforcement of Contractual Obligations for Temporary Alien Agricultural Workers Admitted Under Section 216 of the Immigration and Nationality Act, 52 Fed. Reg. 20524, 20530–33 (June 1, 1987).

Under those regulations, upon deciding to impose a monetary penalty, the Department must give the

employer written notice that specifies the amount of the penalty, notifies the employer of its right to request a hearing, and informs the employer that, absent a timely request for a hearing, the penalty will become final. 29 C.F.R. §§ 501.31–32. If the employer requests a hearing, the dispute is referred to an Administrative Law Judge (ALJ), who then holds a hearing within sixty days. *Id.* §§ 501.37–38. Within sixty days after the hearing, the ALJ issues a decision affirming, denying, or modifying the penalty. *Id.* § 501.41. If the employer disagrees with the ALJ’s decision, it can seek review by the Administrative Review Board. *Id.* § 501.42. From there, if the Board denies review, or if it issues a decision affirming imposition of a penalty, the employer can then seek further review in federal district court pursuant to the Administrative Procedure Act (APA). *See* 5 U.S.C. § 702 (providing that “[a] person ... adversely affected or aggrieved by agency action ... is entitled to judicial review thereof”). These review procedures create an avenue for the Department to expeditiously determine an employer’s liability while affording the employer ample opportunity to assert its rights.

Below, Sun Valley argued that these procedures are not a permissible means of implementing the Department’s statutory authority to “impos[e] appropriate penalties,” 8 U.S.C. § 1188(g)(2), and that the statute instead requires the Department to “impose” civil penalties by filing a lawsuit. That argument rewrites the Department’s authority to take “action[], including imposing appropriate penalties,” *id.*, as authority to take “action, including *asking a court* to impose appropriate penalties.” The statute does not contain those (or similar) words, however, nor does it otherwise modify its grant of authority to the Depart-

ment to impose civil penalties. *See Dean v. United States*, 556 U.S. 568, 572 (2009) (“[W]e ordinarily resist reading words or elements into a statute that do not appear on its face.” (citation omitted)).

Moreover, “statutory context points in the same direction.” *Campos-Chaves v. Garland*, 602 U.S. 447, 457 (2024). Section 1188(g)(2) authorizes the Department both to “impos[e]” civil penalties and to “seek[] appropriate injunctive relief.” Congress thus distinguished the Department’s power to “impose” monetary penalties from its power to “seek” an injunction from a court. *See Seek*, Merriam-Webster (defining “seek” as “to go in search of”).³ This Court “normally presume[s] that, where words differ as they differ here, ‘Congress acts intentionally and purposely,’” *Burlington N. & Santa Fe Ry. Co. v. White*, 548 U.S. 53, 63 (2006) (quoting *Russello v. United States*, 464 U.S. 16, 23 (1983)), and it should do so here.

II. Administrative enforcement of commitments that an employer makes upon enrolling in the H-2A program comports with Article III.

This Court has long recognized a distinction between “public” and “private” rights when assessing whether Congress may “remove[]” initial adjudication of a particular “matter[] ... from Article III courts” and assign it to an administrative body. *SEC v. Jarkesy*, 603 U.S. 109, 127 (2024). Invoking this distinction, the court of appeals held that the Department may not use agency proceedings to impose civil monetary sanctions on Sun Valley for violating the terms of the H-2A visa program because, in the court’s

³ <https://www.merriam-webster.com/dictionary/seek>.

view, the Department’s enforcement action “concerns private rights.” Pet. App. 10a; *see id.* at 10a–17a.

The Department raises compelling arguments that the court of appeals erred in characterizing the rights at issue as private. This case, however, does not require this Court to delve into the “frequently arcane distinctions and confusing precedents” that characterize the public-rights doctrine. *Jarkesy*, 603 U.S. at 130 (quoting *Thomas v. Union Carbide Agric. Prods. Co.*, 473 U.S. 568, 583 (1985)). Rather, irrespective of how the rights at issue are characterized under that doctrine, the Department’s use of administrative proceedings comports with the Constitution because employers that elect to enroll in the H-2A program explicitly consent to the program’s terms—including agency enforcement of commitments made in exchange for the program’s benefits. When a sophisticated party makes voluntary commitments to the government to receive a legal privilege, the government may condition the privilege on consent to the use of appropriate agency procedures to adjudicate whether the party has complied with its commitments.

A. The government may condition a sophisticated party’s receipt of a legal privilege on consent to agency enforcement of commitments made to secure the privilege.

1. A long line of this Court’s precedent has considered the circumstances under which initial adjudication of a “matter for decision” may lawfully be assigned “to an agency” rather than to an Article III court. *Jarkesy*, 603 U.S. at 127. As this Court recently explained, the proper forum for adjudication typically depends on whether the adjudication addresses

“public” or “private” rights. *See id.* at 134. Specifically, “[i]f a suit is in the nature of an action at common law, then the matter presumptively concerns private rights, and adjudication by an Article III court is mandatory.” *Id.* at 128; *see id.* at 127 (“The Constitution prohibits Congress from ‘withdraw[ing] from judicial cognizance any matter which, from its nature, is the subject of a suit at the common law.’” (alteration in original; quoting *Murray’s Lessee v. Hoboken Land & Improvement Co.*, 59 U.S. (18 How.) 272, 284 (1856))). Public rights, in contrast, concern matters that “historically could have been determined exclusively” by the executive and legislative branches. *Id.* at 128 (quoting *Stern v. Marshall*, 564 U.S. 462, 493 (2011)). They therefore do not require “involvement by an Article III court in the initial adjudication.” *Id.*

Jarkesy’s discussion of the public-rights doctrine was rooted in the specific context of the case at hand: Congress had granted a non–Article III body the adjudicatory power to impose penalties on parties that violate generally applicable rules governing the primary conduct of a particular sector of the public at large. *See id.* at 115–18 (addressing the Securities and Exchange Commission’s power to adjudicate securities fraud). This Court’s other public-rights cases address similar contexts. *See, e.g., Granfinanciera, S.A. v. Nordberg*, 492 U.S. 33, 55–64 (1989) (addressing bankruptcy courts’ authority to adjudicate a common-law fraudulent-conveyance claim without a jury); *Atlas Roofing Co. v. OSHRC*, 430 U.S. 442, 444–47 (1977) (addressing the Department of Labor’s authority to enforce workplace health and safety standards); *Crowell v. Benson*, 285 U.S. 22, 36–38 (1932) (addressing the U.S. Employees’ Compensation

Commission’s authority to adjudicate workers’ compensation claims against maritime employers).

These cases, however, do not address circumstances where a sophisticated party *consents* to agency enforcement of commitments that the party makes in exchange for a legal privilege. In that context, the distinction between public and private rights does not control, because the party’s consent to administrative adjudication waives any right the party might otherwise have to initial adjudication in an Article III court. *See Wellness Int’l Network, Ltd. v. Sharif*, 575 U.S. 665, 683 (2015) (explaining that this “Court has never ... h[e]ld that a litigant who has the right to an Article III court may not waive that right through his consent”); *CFTC v. Schor*, 478 U.S. 833, 848–49 (1986) (“[A]s a personal right, Article III’s guarantee of an impartial and independent federal adjudication is subject to waiver, just as are other personal constitutional rights that dictate the procedures by which civil and criminal matters must be tried.”); *cf. Roell v. Withrow*, 538 U.S. 580, 585–89 (2003) (noting that parties may consent to a dispute’s resolution by a magistrate judge without district court review).

This Court’s decision in *Schor* is illustrative. There, the Court considered whether the Commodity Futures Trading Commission (CFTC) could constitutionally adjudicate a commodity broker’s counterclaim against a customer who had initiated a CFTC enforcement action against the broker. *See* 478 U.S. at 835–37. Emphasizing the customer’s decision to avail himself of adjudicatory proceedings within the CFTC, the Court upheld the agency’s authority to adjudicate the counterclaim. *Id.* at 849–50. By voluntarily invoking the CFTC’s authority, the Court explained, the customer “waived any right he may have possessed to the

full trial of [the broker’s] counterclaim before an Article III court,” *id.* at 849, even though the counterclaim involved “a ‘private’ right” of the sort that is “assumed to be at the ‘core’ of matters normally reserved to Article III courts,” *id.* at 853.

Similarly, in *Sharif*, after a debtor had filed for bankruptcy, a creditor filed a claim against the debtor in bankruptcy court, alleging that a trust administered by the debtor was the debtor’s alter ego. 575 U.S. at 671–72. The debtor proceeded to litigate the claim in bankruptcy court but, after receiving an adverse judgment there, argued for the first time that Article III barred the bankruptcy court from entering final judgment on the claim. *Id.* at 672–73. Noting that “consent [is] highly relevant when determining[] ... whether a particular adjudication ... raises constitutional concerns,” *id.* at 680 n.10, the Court held that the bankruptcy court’s adjudication of the creditor’s claim was permissible as long as the debtor had “evinced ... knowing and voluntary consent” to the court’s adjudicatory authority, *id.* at 686. *See id.* at 674–75 (citing two centuries’ worth of cases for the point that “[a]djudication by consent is nothing new”). The Court reached this holding without addressing whether the creditor’s claim involved public or private rights. *See id.* at 674 n.7 (expressing “no view” on whether the claim was of the sort that would have required Article III adjudication absent consent).

Just as this Court has recognized that a party may generally consent to resolve a preexisting dispute outside an Article III court, the Court regularly enforces private parties’ forward-looking agreements to resolve *future* disputes outside of an Article III court—especially where the parties involved are sophisticated ones. *See, e.g., Coinbase, Inc. v. Suski,*

602 U.S. 143, 148 (2024) (recognizing that, “[a]t a basic level, parties can agree to send the merits of a dispute to an arbitrator”); *M/S Bremen v. Zapata Off-Shore Co.*, 407 U.S. 1, 12–13 (1972) (enforcing a forum-selection clause whereby “experienced and sophisticated” parties “agree[d] in advance” to resolve disputes in the London Court of Justice and rejecting the “argument that such clauses are improper because they tend to ‘oust’ a court of jurisdiction”).

These principles apply equally to contracts as to which the government is a party. Thus, for example, in *United States v. Moorman*, 338 U.S. 457 (1950), this Court enforced a provision of a government contract that certain disputes arising out of the contract would be decided by administrative officers. *Id.* at 458–62. This Court surveyed the long tradition of conditioning receipt of a government contract on the recipient’s consent to submit to administrative adjudication of contractual disputes and affirmed “the principle that parties competent to make contracts are also competent to make such agreements.” *Id.* at 461. As the Court explained, “[i]f parties competent to decide for themselves are to be deprived of the privilege of making such anticipatory provisions for settlement of disputes, this deprivation should come from the legislative branch of government.” *Id.* at 462.

The enforceability of forward-looking consent is not limited to the contractual context. As this Court held in *Union Carbide*, the government “has the power to condition issuance of registrations or licenses on compliance with agency procedures,” including dispute-resolution procedures that “determine liabilities of individuals.” 473 U.S. at 589. Under the statutory scheme at issue in that case, a manufacturer that sought to register a pesticide with the Environ-

mental Protection Agency (EPA) for sale or distribution in the United States was required to let future registrants use its health, safety, and environmental data and to consent to “binding arbitration with only limited judicial review” to resolve disputes over the compensation it was owed for the use of that data. *Id.* at 571–75. The Court held that the requirement of proceeding in arbitration was a permissible condition for the government to impose on manufacturers that sought the legal privilege of EPA registration. *Id.* at 590–91. The Court explained that the manufacturers, which were “voluntary participants” in an EPA program, *id.* at 589, had “explicitly consent[ed]” as part of the registration process “to have [their] rights determined by arbitration.” *Id.* at 592. Although the manufacturers argued that the right to compensation is a “private right” that requires the substantial involvement of an Article III court, the Court rejected the suggestion that “the public rights/private rights dichotomy ... provides a bright-line test for determining the requirements of Article III.” *Id.* at 585–86; *see id.* at 589 (stating that the right to compensation is not a “*purely* ‘private’ right” and that it bears “*characteristics* of a ‘public’ right” without definitively classifying the right (emphases added)).

Thus, the government may condition enrollment in a government program that extends a legal privilege to a sophisticated party on the party’s consent to administrative adjudication of disputes arising out of the program—regardless of whether the disputes involve public or private rights.

2. To be sure, there are limits on what conditions the government may impose in exchange for participation in a program that confers a legal privilege on participants. For example, conditions that require the

relinquishment of a party's rights outside the scope of the program—in contrast to conditions that define the scope of the party's rights within the program—may create constitutional problems. *See, e.g., Rust v. Sullivan*, 500 U.S. 173, 197 (1991) (distinguishing conditions related to “a particular program or service” from conditions that regulate a participant even “outside the scope of the ... program”). Relatedly, the conditions typically must bear a reasonable connection to the program's aims. *Cf. Dolan v. City of Tigard*, 512 U.S. 374, 391 (1994) (observing that conditions placed on permits authorizing property development must generally be “related both in nature and extent” to the proposed development). Conditioning a legal privilege on the recipient's consent to agency adjudication of matters *unrelated* to the commitments that the recipient has made to secure the privilege, then, may overstep constitutional limits.

Moreover, because Article III reflects “structural principle[s],” *Schor*, 478 U.S. at 850, that are essential to “the constitutional system of checks and balances,” *id.* (quoting *N. Pipeline Constr. Co. v. Marathon Pipe Line Co.*, 458 U.S. 50, 58 (1982) (plurality opinion)), a condition requiring consent to adjudication by a body other than an Article III court must “safeguard[] the role of the Judicial Branch in our tripartite system,” *id.* For example, “wholesale importation of concepts of pendent or ancillary jurisdiction into the agency context” in a way that would permit an agency to exercise boundless jurisdiction over all manner of disputes “may create ... constitutional difficulties.” *Id.* at 852; *see Sharif*, 575 U.S. at 679 (suggesting that the Constitution would not permit a grant of “free-floating authority” to non–Article III bodies “to decide claims traditionally heard by Article III courts”).

In contrast, where an agency adjudicator “deals only with a ‘particularized area of law,’” *Schor*, 478 U.S. at 852 (quoting *N. Pipeline*, 458 U.S. at 85 (plurality opinion)), and does not “exercise[] the range of jurisdiction and powers normally vested only in Article III courts,” *id.* at 851, a party’s consent to agency adjudication poses little risk to the separation of powers. *See Sharif*, 575 U.S. at 679 (explaining that “the magnitude of any intrusion on the Judicial Branch can only be termed *de minimis*” where “a narrow class of ... claims” may be heard outside an Article III court (quoting *Schor*, 478 U.S. at 854, 856)). This risk is further reduced, moreover, where the agency’s adjudicatory authority is limited to claims arising out of a party’s voluntary participation in “a complex regulatory scheme,” *Union Carbide*, 473 U.S. at 589, and does not extend to common-law claims that would exist independently of the party’s participation. *But see Schor*, 478 U.S. at 856 (explaining that consent to agency adjudication of common-law claims does not necessarily impinge on the separation of powers where the claims are sufficiently related to a regulatory scheme administered by the agency).

B. An H-2A employer obtains a privilege in exchange for consent to submit to agency enforcement proceedings.

Absent authorization by the Attorney General, employers have no right to bring immigrants into the United States for work. *See* 8 U.S.C. § 1184(c)(1). The H-2A visa program provides a voluntary pathway for securing such authorization, allowing participating employers the legal privilege of recruiting workers from abroad if the employers agree to comply with specific requirements. *See id.* § 1188(a)(1). The Department’s administrative enforcement of the

voluntary commitments that an employer makes to secure that privilege poses no constitutional problem.

1. For an employer to hire foreign guest workers under the H-2A program, the Department of Labor must first certify that “there are not sufficient workers” already in the United States “who are able, willing, and qualified” to satisfy the employer’s needs and that “the employment of” guest workers “will not adversely affect the wages and working conditions of workers in the United States similarly employed.” 8 U.S.C. § 1188(a)(1). To secure this certification, the employer must provide the Department with a “job order” stating the minimum workplace standards, including wages, housing, meals, transportation, and other benefits, that the employer promises to provide to H-2A workers and domestic workers in corresponding employment. *See* 20 C.F.R. §§ 655.121–.122.

The employer also must consent to administrative adjudication of disputes over its compliance with these promised standards. When the Department issues a certification, the certification states that the employer “must abide by the terms, assurances, and obligations set forth in ... 29 CFR part 501, as a condition” of the privilege of hiring H-2A workers. Dep’t of Labor, *H-2A Approval: Temporary Agricultural Labor Certification*.⁴ Part 501 includes 29 C.F.R. § 501.16, which provides that the Department may “[i]nstitute appropriate administrative proceedings”—including proceedings for monetary relief—when the employer has not upheld the commitments that it has made to secure the labor certification.

⁴ https://www.dol.gov/sites/dolgov/files/ETA/oflc/pdfs/FR_07_Form%20ETA-9142A%20FD_FINAL-clean.pdf.

This case well illustrates the voluntary choices that an employer must make to secure the legal benefits of participation in the H-2A program. In 2015, Sun Valley “decided ... to participate in the H-2A program” and completed the certification process. Appellant’s Br. 4–5 (3d Cir. Sept. 6, 2024). Upon doing so, Sun Valley received the privilege of recruiting and hiring international workers, and it availed itself of that privilege by hiring “96 workers through the H-2A program for the 2015 growing season.” *Id.* at 6. At the same time, Sun Valley was aware that its right to hire foreign workers was conditioned on its agreement that the Department could impose civil penalties in an administrative enforcement action if it found that Sun Valley had violated the commitments made in the job order that Sun Valley submitted to secure that right. *See id.* at 4–5 (stating that Sun Valley’s owners “had heard” about prior administrative enforcement actions but “[n]onetheless” opted to enroll in the H-2A visa program).

2. Requiring consent to agency enforcement of the terms of the H-2A program in exchange for the right to hire foreign guest workers poses no constitutional concern. The Department does not require an H-2A employer to consent to agency adjudication of claims that would exist independently of the employer’s voluntary enrollment in the program. *Cf. Rust*, 500 U.S. at 197 (distinguishing a constitutionally suspect condition “on the *recipient*” of a government benefit from a permissible condition related to participation in the “particular program” that confers the benefit). And an employer is not asked to waive the constitutional safeguards, including the guarantee of due process and the prohibition against excessive fines, that limit the adjudicatory powers of the agency.

Moreover, enforcing an employer's consent to agency adjudication poses no separation-of-powers concerns, because the Department's adjudicatory authority is limited to enforcing the terms of the voluntary program that the Department administers, and does not extend to "the range of jurisdiction and powers normally vested only in Article III courts." *Schor*, 478 U.S. at 851; see *Union Carbide*, 473 U.S. at 590 (recognizing that agency adjudication may provide "a prompt, continuous, expert and inexpensive method for dealing with a class of questions" arising out of participation in a government program (quoting *Crowell*, 285 U.S. at 46)). And given that the commitments that are subject to agency enforcement would not exist but for an employer's decision to enroll in the H-2A program, "the origins and importance of the right to be adjudicated" suggest that agency adjudication does not "impermissibly intrude on the province of the judiciary." *Schor*, 478 U.S. at 851–52.

Indeed, "the magnitude of any intrusion on the Judicial Branch" in this case is even less than the "*de minimis*" intrusion that *Schor* held to be constitutionally unproblematic. *Id.* at 856. In *Schor*, this Court found no separation-of-powers problem with a party's consent to have a "private, common law" claim adjudicated by the CFTC. *Id.* at 854; see *id.* at 854–55. Although the claim preexisted the parties' initiation of agency proceedings and could have been filed (indeed, *had* previously been filed, see *id.* at 837–38) in an Article III court, this Court held that agency adjudication was a constitutional means of "making effective a specific and limited federal regulatory scheme." *Id.* at 855. Here, once again, the commitments that are subject to administrative enforcement are a creature of a federal regulatory

scheme and, absent an employer's decision to enroll, they would not exist to be adjudicated anywhere—whether in Article III court or otherwise.

III. The availability of agency enforcement processes furthers Congress's aim of protecting American workers.

Congress had good reason to grant the Department flexibility to adopt an efficient administrative process for enforcing the commitments that an employer has made in exchange for the benefits of participation in the H-2A program. To ensure that international recruitment of guest workers does not diminish opportunities for the American labor force, Congress required that employers seeking authorization to hire H-2A workers make guarantees sufficient to establish that foreign workers will not displace available American workers and will not exert downward pressure on American workers' wages or working conditions. *See* 8 U.S.C. § 1188(a)(1). By authorizing the Department to enforce the employers' guarantees without initiating litigation, Congress promoted efficacious vindication of the statutory goal of protecting American workers.

Despite the important role that an employer's guarantees play in furthering Congress's aims, the Department faces an uphill battle in investigating and addressing violations. Because H-2A workers are often reluctant to report violations and thereby risk their employment, housing, or immigration status, the vast majority of investigations are initiated by Department staff rather than in response to worker complaints. *See* Gov't Accountability Off., *H-2A Visa Program: Agencies Should Take Additional Steps to Improve Oversight and Enforcement* 30 (Nov. 2024)

(hereinafter, GAO, *H-2A Visa Program*).⁵ Nonetheless, in Fiscal Year 2023, even in the face of the H-2A program’s continued growth, the Department of Labor division that is responsible for enforcement reported one of the lowest investigator levels in the past half-century. *Id.*; see also, e.g., Siobhan Standaert, Good Jobs First, *Worker Protections in Freefall: The Collapse of Federal Labor Enforcement Under the Second Trump Administration* 7 (Dec. 2025) (reporting that, at the end of 2025, the Department’s enforcement staff was “at its lowest level since records have been kept”);⁶ Briana Beltran, *134,368 Unnamed Workers: Client-Centered Representation on Behalf of H-2A Agricultural Guestworkers*, 42 N.Y.U. Rev. L. & Soc. Change 529, 555 (2019) (observing that, “[a]s a general matter, the availability of government resources for enforcing the labor and employment rights of workers in the United States has declined over several decades”); Mary Bauer, S. Poverty L. Ctr., *Close to Slavery: Guestworker Programs in the United States* 38 (2013) (noting that, in 2011, the Department of Labor certified 7,000 employer applications for H-2A workers but conducted only 157 H-2A investigations).⁷

Meanwhile, violations are widespread. During the six-year period between Fiscal Years 2018 and 2023, 84 percent of the Department’s H-2A investigations discovered violations. GAO, *H-2A Visa Program*, at

⁵ <https://www.gao.gov/assets/gao-25-106389.pdf>.

⁶ <https://goodjobsfirst.org/wp-content/uploads/2025/12/Worker-Protections-in-Freefall-The-Collapse-of-Federal-Labor-Enforcement-under-the-Second-Trump-Administration.pdf>.

⁷ https://www.splcenter.org/wp-content/uploads/files/d6_legacy_files/downloads/publication/SPLC-Close-to-Slavery-2013.pdf.

33. And independent studies have suggested even higher violation rates. *See, e.g.,* Centro de los Derechos del Migrante, Inc., *Ripe for Reform: Abuses of Agricultural Workers in the H-2A Visa Program* 4 (2020) (reporting that 100 percent of the H-2A workers interviewed in a 2019–2020 study had experienced at least one serious legal violation and that 94 percent had experienced three or more).⁸ Given the low percentage of agricultural employers that face investigation, combined with concerns about retaliation that often keep workers from reporting violations, the number of undetected violations is likely substantial. *See* Daniel Costa & Philip Martin, Econ. Pol’y Inst., *Record-Low Number of Federal Wage and Hour Investigations of Farms in 2022* (Aug. 22, 2023) (reporting that fewer than 1 percent of farm employers are investigated per year).⁹

Foreclosing the Department from using the full range of enforcement tools that Congress authorized—and that participating employers accept as a condition of receiving the H-2A program’s benefits—would exacerbate underenforcement and require the Department to pour scarce resources into litigation. Such a result would defy Congress’s “purpose of ... furnish[ing] a prompt, continuous, expert and inexpensive method” for enforcing an employer’s compliance with the commitments it has made as part of the H-2A program. *Union Carbide*, 473 U.S. at 590 (quoting *Crowell*, 285 U.S. at 46); *cf. Murray’s Lessee*, 59 U.S. (18 How.) at 282 (noting the “[i]mperative

⁸ <https://cdmigrante.org/wp-content/uploads/2020/04/Ripe-for-Reform.pdf>.

⁹ <https://www.epi.org/publication/record-low-farm-investigations/#epi-toc-4>.

necessity” of “summary methods of proceeding” in certain matters of government administration). And enabling effective enforcement by the Department is particularly vital because individuals authorized to work under the H-2A program are exempt from the protections of the Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. §§ 1801 et seq., which can be enforced through a private right of action. *See id.* §§ 1802(8)(B)(ii), 1802(10)(B)(iii), 1854(a). Absent enforcement by the Department, then, such workers are generally limited to state-law contract claims—if they are willing to risk the threat of retaliation and assert their rights in the first place.

More fundamentally, requiring the Department to file a lawsuit every time it wishes to enforce an employer’s voluntary H-2A commitments would frustrate vindication of Congress’s goal, embodied in the 1986 Act, of ensuring that agricultural employers do not use the guest worker program to impose wages and working conditions that lower the standards for American workers. Because the Constitution does not require that result, this Court should not invite it.

CONCLUSION

This Court should reverse the judgment of the court of appeals.

Respectfully submitted,

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