

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 *AMICUS CURIAE* FEDERATION
FOR AMERICAN IMMIGRATION REFORM
IN SUPPORT OF PETITIONERS**

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INTEREST OF *AMICUS CURIAE*

Amicus curiae Federation for American Immigration Reform¹ (“FAIR”) is a nonprofit corporation and membership organization that was founded in 1979 and has its principal place of business in Washington, D.C. FAIR’s mission is to advocate for immigration policy that is in America’s best interest. In pursuit of this mission, FAIR regularly participates in litigation to protect the rights and benefits of United States citizens, including litigation to protect American workers from unlawful competition from foreign workers. In this case, FAIR has a strong interest in the government’s ability to protect the working conditions of foreign, nonimmigrant workers (and of the Americans who work alongside them), because doing so prevents the cost of employing foreign workers from being unlawfully reduced, to the competitive disadvantage of American workers.

SUMMARY OF ARGUMENT

Article III of the Constitution does not preclude the administrative proceedings at issue in this case. As the government argues, the employment of nonimmigrant workers is a public benefit conferred by the government on employers, and rights created by or obligations incurred under public benefit programs need not be adjudicated by Article III courts, but may be adjudicated by administrative agencies. Notably, the court below misconstrued contract language in the administrative

¹ Pursuant to Rule 37.6, counsel for *amicus* authored this brief in whole, no party’s counsel authored this brief in whole or in part, and no person or entity—other than *amicus*, its members, or its counsel—contributed monetarily to its preparation or submission.

findings as referring to a private contract, when it in fact referred to the terms and conditions that are set by the government and that employers must meet to employ nonimmigrant workers.

Further, Congress authorized the proceedings at issue here, because the regulations establishing these proceedings implement a statute. Under the delegation doctrine, a valid delegation exists where a regulation issued by an agency implements a statute, that is, conforms to an intelligible principle in the statute. A regulation can only conform to such a principle if the statute logically entails that the regulation is permissible, and not merely in the sense that the statute does not prohibit the regulation. Rather, the statute must affirmatively allow the regulation, that is, imply its permissibility without recourse to any negative proposition that the statute does not prohibit the regulation.

Here, the statute provides that the Department of Labor (DOL) may impose penalties for violations of the nonimmigrant visa's terms and conditions. This language affirmatively allows the proceedings here. If a statute permits an action, it stands to reason that it thereby makes permissible steps that are reasonably necessary to accomplish that action. In order to impose penalties (a term that includes monetary penalties), as the statute permits the DOL to do, the DOL must first be able to determine whether violations have occurred and what the penalties for such violations should be. The proceedings here, and the regulations establishing them, are reasonable methods the DOL adopted to make these determinations, and so are reasonably necessary steps to its imposing penalties. For these reasons, the proceedings and the regulations establishing them implement the statute.

ARGUMENT**I. Article III of the Constitution does not preclude the proceedings in this case.**

As the government demonstrates in its opening brief, while private rights must be adjudicated through Article III courts, Congress can assign adjudication of public rights to executive agencies. Petitioners' Brief at 24-36. Thus, in public rights cases, Congress can assign to the Executive Branch the authority to adjudicate proceedings to collect monetary remedies that otherwise could only be imposed by an Article III court. *Id.* at 32-36. Here, the H-2A visa program confers a public benefit on employers that enter the program by granting employers' petitions to issue visas to nonimmigrant foreign workers who, without governmental approval, would be unable to work for enrolled employers. Because the program confers a public benefit, the government controls the conditions under which that benefit is available, including requiring participating employers to comply with regulations regarding the "terms and conditions of employment under [the program]." 8 U.S.C. § 1188(g)(2).

The court below erred in holding that the penalties in this case had to be imposed by an Article III judge. The ruling incorrectly described the DOL's framing of enforcement actions against Sun Valley Orchards in contractual terms as evidence that the matter involved private rather than public rights, requiring its adjudication in an Article III court. Pet. App. 10a-13a. The court noted that "[f]or instance, DOL told the ALJ that Sun Valley's assurances formed part of the farm's contract with H-2A workers." *Id.* at 12a. Additionally, the Court stated that

the DOL alleged that Sun Valley “violat[ed] . . . contractual obligations,” and that the administrative law judge’s decision found that Sun Valley “breached a material term of the job order” when it failed to provide employees with kitchen access. *Id.*

These observations miss the mark, however, because the contractual language above relates to the proper implementation of the H-2A program conditions, not a private contract between employers and employees. As the government correctly points out, the contractual rights Sun Valley Orchards violated are between Sun Valley Orchards and the federal government, not between a private employer and employee. Petitioners’ Brief at 37. Unlike a contract between private parties, the working conditions of H-2A workers are regulated by Congress. As a condition of accessing the public benefit of the United States’s granting petitions to import foreign workers, federal law requires an employer to agree to comply with statutory and regulatory requirements governing workers’ living and working conditions. Thus, to access workers through the H-2A program, employers must comply with the terms and conditions required by Congress.

Pursuant to regulations, employers must either furnish free meals or provide free access to kitchen facilities to H-2A workers. 20 C.F.R. § 655.122(g). Thus, in stark contrast to private contracts, which are established voluntarily by non-governmental parties, the contracts between employers and H-2A workers are controlled by the Executive Branch’s implementation of congressional statutes. The government correctly points out that Sun Valley Orchards “made false promises about kitchen access

and failed to disclose its meal charges,” making Sun Valley Orchards noncompliant with the terms and conditions of the H-2A visa program. Petitioners’ Brief at 14. Because the federal government, through executive agencies, is tasked with upholding the conditions under which employer petitions for the granting of visas to nonimmigrants for the purpose of temporary or seasonal agricultural labor are approved, the DOL and its administrative law judges understandably frame employer violations in contractual terms where noncompliant employers have failed to uphold the “terms and conditions” required to access the public benefit of foreign, nonimmigrant labor.

II. Congress authorized the proceedings at issue here.

As this Court has repeatedly held, a delegation of authority to an agency is valid so long as the delegating statute contains a “intelligible principle” to which the agency “is directed to conform.” *Mistretta v. United States*, 488 U.S. 361, 372 (1989); *J. W. Hampton, Jr., & Co. v. United States*, 276 U.S. 394, 409 (1928). It follows that, if an agency regulation implements a statute—that is, conforms to an intelligible principle in a statute—the regulation is authorized by the statute.

The delegation doctrine is often derided as too permissive. Cass, Ronald A., *Delegation Reconsidered: A Delegation Doctrine for the Modern Administrative State* (March 2, 2016), George Mason Legal Studies Research Paper No. LS 16-07, at 3, available at <https://ssrn.com/abstract=2741208>. *Hampton* did, however, greatly clarify the concept of regulatory power, and the distinction between it and legislative power. Namely, *Hampton*’s elucidation of the delegation doctrine allowed

an end to be made to a vague distinction between “important” matters—the subjects of legislative power, exercised by Congress—and “details”—the subjects of regulatory power, exercised by agencies—and its replacement with a rigid, formal definition of regulatory power. Both legislative and regulatory power concern the determination of rights and obligations. *See, e.g., Nat’l Mining Ass’n v. McCarthy*, 758 F.3d 243, 251 (D.C. Cir. 2014) (Kavanaugh, J.) (defining a substantive rule or regulation as “[a]n agency action that purports to impose legally binding obligations or prohibitions on regulated parties”). Implicitly, then, under *Hampton* and the delegation doctrine, regulatory power is a species of executive power, being exercised when and only when an agency carries out or “executes” a statute by determining rights and obligations under the statute’s instructions. This “carrying out” power is quintessentially executive and is exercised under the delegation doctrine only when a regulation conforms to an intelligible principle in a statute. *Hampton*, 276 U.S. at 409. *See, e.g., FCC v. Consumers’ Rsch.*, 606 U.S. 656, 700 (2025) (Kavanaugh, J., concurring) (“[T]he President ordinarily exercises ‘executive Power’ under Article II when implementing legislation—even if he employs discretion or policymaking authority when doing so and even if the Executive Branch issues legally binding regulations.”) (citing, *inter alia*, *Mistretta*, 488 U.S. at 386, n. 14). On this view, when an agency issues a substantive rule without following statutory instructions (that is, without implementing a statute by conforming to a principle therein), it does not really “regulate” at all. Rather, it legislates—that is, determines rights and obligations without statutory instructions—as if it were a second Congress.

The proceedings in this case were established by regulation. 29 C.F.R. §§ 501.16, 501.30 *et seq.* These proceedings were thus authorized by Congress if the regulations establishing them implement a statute. For a regulation to implement a statute, or conform to a principle in it, it is not enough that the regulation be logically consistent with the statute. For example, the U.S. Court of Appeals for the D.C. Circuit has rightly rejected the argument that a statute allowed the Federal Trade Commission to regulate attorneys merely because the statute did not prohibit it from doing so. *ABA v. FTC*, 430 F.3d 457, 468-69 (D.C. Cir. 2005). And, generally, if the standard were that agencies could make any regulation that was not forbidden by a statute, they could wildly exceed their lawful power. Clearly, a stronger logical relation than mere consistency is needed to capture the idea of a regulation’s “conforming to” an intelligible principle and thereby implementing a statute.

Specifically, a regulation can be said to implement a statute and conform to a principle in it only if the statute logically entails that the regulation is permissible—provided that the statute entails this permissibility without recourse to any inference that, just because the regulation is not prohibited by the statute, it is permitted by it. In other words, if a regulation is to implement a statute, the statute must not merely fail to prohibit the regulation, but must affirmatively allow the regulation.

Here, the statute provides that the Department of Labor (DOL) is authorized to “impos[e] ... appropriate penalties” for violations of the nonimmigrant visa’s terms and conditions. 8 U.S.C. § 1188(g)(2). This language affirmatively allows the regulations establishing the

proceedings here. If it is permissible to take an action under a statute, it seems that it must also be permissible under that statute to take steps reasonably necessary to accomplish that action. *See, e.g., United States v. Southwestern Cable Co.*, 392 U.S. 157, 178 (2005) (“[T]he authority which we recognize today under [statute] is restricted to that reasonably ancillary to the effective performance of the [petitioner agency’s] various responsibilities for the regulation of television broadcasting.”). In order to impose penalties, the DOL must first be able to determine whether violations have occurred, and what penalties for such violations are appropriate. Quite apart from any now-obsolete *Chevron* deference, the proceedings here are reasonable methods the DOL adopted to make these determinations, and so are reasonably necessary steps to its imposing penalties. The regulations establishing these proceedings therefore implement the statute, and thus are authorized by the statute.

CONCLUSION

For the foregoing reasons, the judgment below should be reversed.

Dated: June 25, 2026

Respectfully submitted,

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