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 SOUTHEASTERN LEGAL FOUNDATION, NATIONAL COUNCIL OF AGRICULTURAL EMPLOYERS, AND NATIONAL AND STATE AGRICULTURAL ASSOCIATIONS IN SUPPORT OF RESPONDENT

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INTEREST OF AMICI CURIAE[1]

Southeastern Legal Foundation (SLF) is a national, nonprofit legal organization dedicated to rebuilding the American Republic by reclaiming civil liberties, protecting free speech, securing property rights, and restoring constitutional balance. Since 1976, SLF has advocated, both in and out of the courtroom, to protect individual liberty by restoring constitutional balance. This aspect of its advocacy is reflected in its regular representation and support of those challenging government overreach and other actions in violation of the constitutional framework. *See, e.g.*, *Nat'l Ass'n of Mfrs. v. Dep't of Def.*, 583 U.S. 109 (2018); *Util. Air Regul. Grp. v. EPA*, 573 U.S. 302 (2014). SLF also regularly files amicus curiae briefs with this Court about issues of agency overreach and deference. *See, e.g.*, *Loper Bright Enters. v. Raimondo*, 603 U.S. 369 (2024); *Kisor v. Wilkie*, 588 U.S. 558 (2019).

Founded in 1964, the National Council of Agricultural Employers (NCAE) is the only national association focusing exclusively on agricultural labor issues from the agricultural employer's viewpoint. NCAE represents labor-intensive agriculture before Congress, with federal agencies, and where necessary, in court. NCAE's membership, including farmers represented by its association members, represents an estimated 85% of all agricultural employers directly engaged in the production of food and nursery crops in the United States, and its

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[1]Rule 37 statement: No party's counsel authored any of this brief; Amici alone funded its preparation and submission. Sup. Ct. R. 37.6.

members employ roughly 90% of all H-2A workers in the United States. Farm labor costs are the primary expense for NCAE's members, and NCAE believes that a stable and affordable H-2A visa program is essential to sustaining American agriculture. To that end, NCAE believes it is essential for the Department of Labor to administer the H-2A program under statutory and constitutional limits.

The national and state agricultural association amici are:

AmericanHort;

California Farm Bureau Federation;

Florida Farm Bureau Federation;

Florida Fruit & Vegetable Association;

Georgia Fruit and Vegetable Growers Association;

Idaho Dairymen's Association;

International Fresh Produce Association;

National Association of Landscape Professionals;

National Onion Association;

National Potato Council;

New York State Horticultural Society;

New York State Vegetable Growers Association;

North Carolina Growers Association;

North Carolina Sweetpotato Commission;

Texas Citrus Mutual;

Texas International Produce Association;

Texas Vegetable Association;

Washington State Dairy Federation; *and*

Western Growers Association.

These associations are members of NCAE and themselves represent and advocate for producers, growers, farmers, landscapers, and ranchers across the United States. Like NCAE, these Amici believe it is essential for the Department of Labor to administer the H-2A program under statutory and constitutional limits.

SUMMARY OF ARGUMENT

The original public meaning of 8 U.S.C. § 1188(g)(2) does not confer on the Secretary of Labor (Secretary) the power to create the Department of Labor's (Department) own courts and to adjudicate proceedings to collect monetary penalties related to the H-2A agricultural visa program. But even if the Court were to hold that the statute meant that in 1986, the law would then be an unconstitutional unchecked delegation to the Secretary.

America's farms need farmhands. But unfortunately, there are not always enough American workers available to adequately staff our country's farms. Recognizing the national importance of a strong domestic agricultural industry and the critical need of domestic agricultural producers to have sufficient and predictable labor, Congress passed the Immigration Reform and Control Act (IRCA) in 1986. Through the IRCA, Congress created a special class of temporary foreign migrant agricultural workers, commonly referred to as "H-2A workers." 8 U.S.C. § 1101(a)(15)(H)(ii)(a). The IRCA allows domestic agricultural producers to supplement their domestic workforce with foreign workers when there is insufficient domestic labor.

Despite the labor implications, though, the IRCA is not a Department statute. It is chiefly an immigration statute administered by the U.S. Department of Homeland Security (specifically, U.S. Citizenship and Immigration Services). *See generally* Congressional Research Service, H-2A and H-2B Temporary Worker Visas: Policy and Related Issues (May 11, 2023), https://www.congress.gov/crs-product/R44849.

Under the IRCA, the Secretary does not perform a core immigration-related function, like adjudicating immigration status. Instead, the Secretary performs a ministerial function to certify that (1) there are not sufficient American or lawful permanent resident workers to perform the necessary work and (2) foreign workers will not adversely affect the wages and working conditions of workers in the United States who are similarly employed. 8 U.S.C. § 1188(a)(1). In addition, the Secretary has some limited authority to ensure that employers keep their end of the bargain when employing H-2A workers. To that end, Congress authorized the Secretary to "impose" penalties and to "seek" equitable relief to address alleged violations of the "terms and conditions" of employment under the H-2A agricultural visa program. *Id.* § 1188(g)(2).

Without congressional authority, the Secretary turned this limited authorization into a full-fledged, in-house adversarial adjudication system that doles out binding penalties with the agency itself as judge, jury, and executioner. Within this adjudication system, the Secretary has created a hearing right, a finality rule, a review channel, a collection mechanism, a penalty cap, and assessment factors for adjudicating the amount of a civil money penalty. *See* 29 C.F.R. pt. 501.

The Secretary unilaterally created and built his final and binding in-house adjudications on statutory silence, not on anything Congress enacted. This silence speaks volumes because where Congress has wanted agency adjudication, it has said so. It did so twice elsewhere in this very section, three times in this same public law, and once in the Department's parallel farmworker statute three years earlier. *See* 8 U.S.C. §§ 1188(b)(2)(A), 1188(e)(1), 1324a(e)(3), 1324b(e)–(g), 1324c(d)(2); 29 U.S.C. § 1853; *see also* Pub. L. No. 97-470, title V, § 503, 96 Stat. 2596 (1983).

The Secretary's *ex nihilo* creation of this final adjudication process ignores that Congress elsewhere expressly provided the mode of recovery for the penalties the Secretary imposes: a civil action. *See* 28 U.S.C. § 2461(a). At most, Section 1188(g)(2) could perhaps be read to authorize the architecture this Court described recently in *FCC v. AT&T, Inc.*, 146 S. Ct. 1418 (2026): an agency assessment that binds no one until enforced by an Article III court. But it certainly does not authorize the Secretary to create his own entirely in-house court system and enter final binding legal decisions.

Further, even if the Department were right that the statutory text permits its current process, its reading would not save the statute. On that reading, three words ("imposing appropriate penalties") would hand the Secretary the legislative power to write the penalty schedule and define its factors, choose his own forum, author his own procedures, judge his own cases, and collect the proceeds, with no standard from Congress guiding or checking any of it. The Department's reading amounts to a broad, undefined, and unchecked delegation of legislative power—violating basic principles of constitutional interpretation. The Court would be obliged to confront that enormous grant of power, not construe around it. And it would be unconstitutional.

ARGUMENT

I. The original meaning of Section 1188(g)(2) does not authorize the Secretary of Labor to adjudicate monetary penalties in agency-created courts.

Section 1188(g)(2) provides in full:

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

From that grant of power, the Secretary has manufactured a complete adjudicatory system: agency prosecutions, an agency-written penalty schedule, hearings before agency judges, orders that become "final and unappealable" without any court's involvement, and administrative collection of both penalties and back wages, payable to the Department.

See 29 C.F.R. §§ 501.19, 501.30, 501.32, 501.33; Pet. App. 8a, 183a–186a. In this case alone, that system assessed $211,800 in civil penalties and $344,945.80 in back wages against Respondent Sun Valley. Pet. App. 7a. The text Congress enacted in 1986 does not empower the Secretary to create and run such a regime within the Department.

A. The text authorizes assessment, not final adjudication.

Both the ordinary meaning and context of the phrase "imposing appropriate penalties" in Section 1188(g)(2) indicate that Congress did not give the Secretary the authority to adjudicate and issue final binding decisions on whether a regulated party owes a monetary penalty for an alleged violation of the H-2A program's terms and conditions.

Start with the ordinary meaning of "imposing" on its own. To impose a penalty is to levy it. The Department's own dictionary citation defines "impose" as "to levy or enforce authoritatively." Pet. Br. 20 (citing 7 The Oxford English Dictionary 730–31 (2d ed. 1989) (def. 4)). The word, standing alone, describes the act of assessment, not a process of adjudication. Its ordinary meaning does not automatically connote that an "imposition" is final and binding. The Department itself uses the word to connote an initial levy and not a final and binding adjudication: its Wage and Hour Administrator "imposed" penalties in a determination letter issued *prior* to a hearing. Pet. App. 184a (notifying Respondent that "sanctions/remedies are being imposed"); *see also* Pet. App. 183a–199a.

Without any refuge in the ordinary meaning of "imposing" alone, the Department leans on the contextual contrast between "imposing" penalties and "seeking" injunctive relief. Pet. Br. 20–22. But here this is a distinction that does not lead to the difference the Department claims. The operative question is whether the phrase "imposing appropriate penalties," in context, allows the Department to "settle[] the [defendant's] rights and duties" through final and binding adjudication. *FCC v. AT&T, Inc.*, 146 S. Ct. at 1429 (citing *New York v. United States*, 505 U.S. 144, 169–70 (1992)). As just demonstrated, the ordinary meaning of the word "impose" does not require that. *Id.* Likewise, the contextual use of "impose" in the "overall statutory scheme" does not allow that. *Cf. id.*

The securities laws at issue in *SEC v. Jarkesy*, 603 U.S. 109 (2024), on which the Department relies, prove this point by contrast. There, Congress used the same two verbs—"impose" and "seek." However, in that statute, Congress specified that the Commission could "impose" penalties in a final, binding way in its own proceedings under provisions that expressly created those proceedings, 15 U.S.C. §§ 77h-1(g)(1), 78u-2(a)(1), or "seek" penalties in district court, *id.* §§ 77t(d)(1), 78u(d)(3)(A). *See Jarkesy*, 603 U.S. at 118. In that case, Congress explicitly made the Commission's power to "impose" a penalty in-agency "coextensive with its authority to seek penalties in federal court." *Id.* (citing H. R. Rep. No. 111-687, p. 78 (2010)). The same statute also expressly equated "imposing" with the power to adjudicate monetary penalties; it said that when the SEC brings an action in district court, "the court shall have jurisdiction to impose" penalties. 15 U.S.C. § 78u(d)(3)(A). Context makes this use of "impose" a final determination of legal rights, not the word standing alone.

This Court's decision in *FCC v. AT&T, Inc.* further proves this point. 146 S. Ct. at 1429–30. The statute at issue in *FCC v. AT&T* authorizes the FCC to "impose[]" a "forfeiture penalty" after determining the regulated party has violated the communications laws. *Id.* (citing 47 U.S.C. §§ 503(b)(1), (b)(2)(E), (b)(4)). But the Court expressly held that the word "impose" in that statute does not provide for final, binding adjudication. *Id.* Instead, "impose" in context refers to a possible end result of "preliminary procedures" with a separate, explicitly stated show-cause process that describes how the adjudication takes place. *Id.* (internal quotation marks and citation omitted); 47 U.S.C. § 503(b)(4).

The company which Section 1188(g)(2) keeps points the same way. Every other paragraph of subsection (g) is an authorization of appropriations. 8 U.S.C. §§ 1188(g)(1), (3), (4). Congress placed this sentence, the subsection's only non-funding provision, under the caption "Authorization of appropriations," surrounded by money for recruiting workers and processing certifications. That is a sensible place for a general grant of enforcement authority. It is no place at all for the creation of a system of binding agency courts, complete with jurisdiction over an unlimited number of cases with potentially huge employer liability. And statutory texts where Congress did create agency adjudications agree—they all use section headings referring to hearings or agency adjudications. *See, e.g.*, 8 U.S.C. §§ 1188(b)(2)(A), 1188(e)(1), 1324a(e)(3), 1324b(e)–(g), 1324c(d)(2); 29 U.S.C. § 1853.

B. Congress knows how to write agency adjudications.

When Congress intends administrative adjudication, it says so. It said so twice in this very section. An employer may be denied certification under the H-2A program only after the Secretary "has determined, after notice and opportunity for a hearing," that the employer substantially violated a material term or condition of a labor certification. 8 U.S.C. § 1188(b)(2)(A). And Congress directed an "expedited procedure for the review of a denial of certification . . . or, at the applicant's request, . . . a de novo administrative hearing." *Id.* § 1188(e)(1). Subsection (g)(2)'s procedural silence is a deliberate contrast, not an oversight.

Similarly, the IRCA's employer-sanctions provision pairs the power to impose civil monetary penalties with notice and a hearing before an administrative law judge "in accordance with the requirements of section 554 of title 5," penalty ranges fixed by Congress for each tier of violation, final orders, judicial review, and enforcement suits by the Attorney General. *See* 8 U.S.C. § 1324a(e)(3)(B), (e)(4), (e)(8), (e)(9). The IRCA's prohibition on unfair immigration-related employment practices created a second full scheme, with a special counsel, ALJ hearings, and court-of-appeals review. *Id.* § 1324b(e)–(g), (i). And the IRCA's document-fraud provision created a third. *Id.* § 1324c; *see also* Pet. Br. 44. The 99th Congress knew how to write binding administrative penalty adjudications, and it built three in this very statute. In Section 1188(g)(2), it declined to do so.

Three years earlier, for the same agency and the same workforce, Congress did do so. The Migrant and Seasonal Agricultural Worker Protection Act authorizes the Secretary to assess civil monetary penalties against agricultural employers, and there Congress enacted every element missing here: a statutory ceiling of $1,000 per violation, statutory assessment factors, an opportunity for a hearing on the record "in accordance with section 554 of title 5," judicial review, and collection actions by the Attorney General in which "the validity and appropriateness of the final order imposing the civil penalty shall not be subject to review." 29 U.S.C. § 1853.[2] And when Congress wants the Secretary to recover unpaid wages for workers, it authorizes him to sue. 29 U.S.C. §§ 216(c), 217.

Congress's later visa-program amendments confirm this pattern. Each time Congress extended monetary enforcement to another guest-worker program, it wrote the hearing into the statute: the H-1B program, 8 U.S.C. § 1182(n)(2)(C); the H-1B1 and E-3 programs, *id.* § 1182(t)(3)(C); the H-2B program, *id.* § 1184(c)(14); and the D-1 crewmember program, *id.* § 1288(c)(4)(E). Only here—in the case of

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[2] The judicial review standard under 29 U.S.C. § 1853—reversal only where a finding is "unsupported by substantial evidence"—is similar to the standard that the *Jarkesy* Court found problematic in 15 U.S.C. § 78y(a)(4). 603 U.S. at 117. But whether that Act is constitutional is beside the question whether it—as a matter of statutory interpretation—provides for binding agency adjudication.

Section 1188(g)(2)—does the Department claim the power from silence.

"[D]ifferences in language like this convey differences in meaning." *Henson v. Santander Consumer USA Inc.*, 582 U.S. 79, 86 (2017). Congress detailed the power and procedure of agency hearings and adjudications when it wanted them—before, during, and after Section 1188(g)(2) was enacted. That evidence confirms the obvious impact of the statutory silence: the original intent of the section was not an agency adjudication process. And, despite this adjudicatory process having been around for a long time, allowing it to continue would be "a novel principle of administrative law—a sort of 30-year adverse possession that insulates disregard of statutory text from judicial review." *Rapanos v. United States*, 547 U.S. 715, 752 (2006) (plurality opinion); *see also NLRB v. Noel Canning,* 573 U.S. 513, 613–14 (2014) (Scalia, J., concurring) (explaining an agency cannot "accumulate power through adverse possession by engaging in a consistent and unchallenged practice over a long period of time" (emphasis omitted)). The original meaning of Section 1188(g)(2) did not include an agency adjudication.

C. The drafting conventions of the time confirm this interpretation of the statute.

By 1986, the convention governing administrative civil money penalties and how they are imposed was uniform. In 1972, the Administrative Conference of the United States recommended that when Congress authorizes agencies to impose civil money penalties, it provides explicitly for their imposition after a hearing conducted under the Administrative Procedure Act. Admin. Conf. of the U.S., Recommendation 72-6, Civil Money Penalties as a Sanction, 38 Fed. Reg. 19,972 (1972). Congress listened: it "followed that recommendation in hundreds of contexts" over the following two decades. Admin. Conf. of the U.S., Recommendation 93-1, Use of APA Formal Procedures In Civil Money Penalty Proceedings, 58 Fed. Reg. 45,409 (1993).

The Congress that enacted Section 1188(g)(2) followed the convention in the very weeks it acted here when enacting laws like the Superfund Amendments and Reauthorization Act (SARA), which amended the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). In SARA, on October 17, 1986, Congress created administrative penalty authority under CERCLA and wrote it out in full: classes of penalties, hearings on the record, and judicial review. 42 U.S.C. § 9609; Pub. L. No. 99-499, § 109, 100 Stat. 1613 (1986).

Congress did likewise on October 21, 1986, when it enacted the Program Fraud Civil Remedies Act, an entire administrative penalty code with presiding officers, hearing procedures, judicial review, and collection by the Attorney General. 31 U.S.C. §§ 3801–3812; Pub. L. No. 99-509, 100 Stat. 1874 (1986). Again, Congress was explicit about creating agency adjudication.

Under the conventions of 1986, the absence of an explicit grant of agency adjudication power meant the absence of the power.

II. If Section 1188(g)(2) means what the Department of Labor says, it delegates broad, undefined, and unchecked legislative power to the Secretary of Labor.

The Constitution vests "[a]ll legislative Powers herein granted" in Congress. U.S. Const. art. I, § 1. Congress may enlist the Executive's help, but it "may not transfer to another branch powers which are strictly and exclusively legislative." *Gundy v. United States*, 588 U.S. 128, 135 (2019) (plurality opinion) (internal quotation marks omitted) (quoting *Wayman v. Southard*, 23 U.S. (10 Wheat.) 1, 42–43 (1825)). If the Department's reading of Section 1188(g)(2) were correct, Congress enacted the delegation and did nothing to constrain it.

A. On the Department's reading, Congress legislated nothing but the delegation itself.

Section 1188(g)(2), on the Department's reading, tells it nothing but to impose penalties as it sees fit. It contains no maximum, no minimum, no factors, no procedures, no review, and no limits of any kind. The entire "intelligible principle," *J.W. Hampton, Jr., & Co. v. United States*, 276 U.S. 394, 409 (1928), is the word "appropriate," which this Court has called "the classic broad and all-encompassing term." *Michigan v. EPA*, 576 U.S. 743, 752 (2015) (citation omitted). A word that includes consideration of everything decides nothing. Nor can the Department's regulations supply the missing principle: an agency cannot cure a standardless delegation by adopting limits of its own devising, *Whitman v. Am. Trucking Ass'ns*, 531 U.S. 457, 472–73 (2001), so the selfwritten schedule and factors of 29 C.F.R. § 501.19 are constitutionally irrelevant. The Department identifies no decision of this Court sustaining a penal delegation consisting of a single adjective, and Amici are aware of none.

B. The delegation is unchecked.

Consider what the Secretary does under the Department's reading:

- He defines program violations by writing the program's terms into regulation and then into every employer's work contract. 20 C.F.R. § 655.122; 29 C.F.R. pt. 501.
- He prices them by writing the penalty schedule. 29 C.F.R. § 501.19.
- He prosecutes.
- He selects the forum—his own—and makes it exclusive for penalties. *Id.* § 501.30.
- He writes the rules of that forum, down to the inapplicability of the Federal Rules of Evidence. *Id.* § 501.34.
- He adjudicates, through administrative law judges and a review board housed in his own Department.
- He collects, with the money payable to the Department itself without ever bearing the burden of persuading anyone outside the agency unless the defendant brings the case to a district court. *Id.* § 501.22.

The Secretary does all this despite our Founding Fathers' astute warning that "the accumulation of all powers, legislative, executive, and judiciary, in the same hands" is the very evil the separation of powers exists to prevent. The Federalist No. 47, at 301 (James Madison) (C. Rossiter ed. 1961).

Leaving the forum choice to the Secretary, by itself, demonstrates constitutional infirmity. The "decision . . . to assign certain actions to agency adjudication . . . is a power that Congress uniquely possesses." *Jarkesy v. SEC*, 34 F.4th 446, 462 (5th Cir. 2022), *aff'd on other grounds*, 603 U.S. 109 (2024). The Fifth Circuit held that Congress may not hand even that single legislative choice to the enforcing agency without an intelligible principle. Here, on the Department's reading, Congress handed over the choice of forum and every other legislative choice besides, and it handed them to the prosecutor. This is deeply concerning. And because the delegation carries punitive consequences, the concern is at its apex. This Court has explicitly reserved whether "something more than an 'intelligible principle' is required" for delegations that contemplate penal sanctions. *Touby v. United States*, 500 U.S. 160, 165–66 (1991). The Court need not decide how much more is required to recognize that there is nothing here at all.

C. The Court confronting the delegation costs the government little.

If the Court holds that Section 1188(g)(2) does in fact delegate such broad and unchecked power, it should engage the statute head-on and declare it unconstitutional. Holding the Department to the statute Congress enacted disturbs no legitimate enforcement interest. "An unconstitutional law is void, and is as no law." *Ex parte Siebold*, 100 U.S. 371, 376 (1879).

But also, the Secretary has other means to gain compliance with the requirements of the H-2A program. The Secretary may sue for civil penalties, 28 U.S.C. § 2461(a), a route even the government does not foreclose, *see* Pet. Br. 23 n.4. He may seek injunctions and specific performance of every H-2A contractual obligation, including unpaid wages. 8 U.S.C. § 1188(g)(2). He may deny certifications and exclude violators from the program through the administrative procedures Congress actually wrote. *Id.* § 1188(b)(2), (e). The government's warnings about other immigration statutes, Pet. Br. 43–45, cut against its position. Every statute it lists rests on express adjudication provisions that a decision here would not touch.

Congress, for its part, remains free to enact an explicit agency adjudication system, as it has done many times before. What Congress may not do, and what it did not do in 1986, is hand the Secretary of Labor a blank penal code to enforce as and where he pleases.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted,

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