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 FORMER DEPARTMENT OF LABOR OFFICIALS AS *AMICI CURIAE* IN SUPPORT OF RESPONDENT

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INTEREST OF AMICI CURIAE[1]

Amici are former senior officials of the U.S. Department of Labor (the "Department") who served in leadership roles directly responsible for the Department's enforcement mission. Patrick Pizzella served as Acting Secretary of Labor from July to September 2019, as Deputy Secretary of Labor immediately before and after that period, and as Assistant Secretary for Administration and Management from 2001 to 2009. Steven J. Law served as Deputy Secretary of Labor from 2003 to 2007. Paul DeCamp served as Administrator of the Wage and Hour Division from 2006 to 2007. Andrew G.I. Kilberg served as Counselor to the Secretary of Labor from 2019 to 2021. Collectively, they bring decades of experience overseeing the Department's policy, investigation, enforcement, and penalty-assessment functions under both Republican and Democratic administrations. In light of this extensive experience, Amici have an interest in ensuring the Department complies with the directives of Congress and the Constitution while simultaneously discharging its important enforcement responsibilities. Amici submit this brief to offer their practical perspective on the effects of moving adjudication of contested monetary liability from in-house Department administrative proceedings to Article III courts.

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[1] Pursuant to this Court's Rule 37.6, Amici state that this brief was not authored in whole or in part by counsel for any party, and no person or entity, aside from Amici and their counsel, made a monetary contribution intended to fund this brief's preparation or submission.

INTRODUCTION AND SUMMARY OF ARGUMENT

When employers agree to conditions of participation in the H-2A program, the Department should enforce those conditions. Employers must know that the Department will hold them accountable if they violate the rules. And recovering back wages and monetary penalties are among the Department's most effective tools for enforcing compliance in the H-2A program.

That said, the Department does not need *final adjudicatory power* to render these enforcement tools effective. Amici agree with Respondent that Congress has not clearly given the Department final adjudication authority; thus, this power rightly resides in Article III courts. But importantly, what Congress *has* given the Department—the ability to assess back pay and penalties and to go to court to recover them—is sufficient for the Department to achieve efficient and meaningful enforcement.

Amici therefore contend that the judgment of the Third Circuit should be affirmed and submit this brief to emphasize two points. *First*, while Section 1188(g)(2) gives the Secretary broad enforcement authority, it does not expressly give the Secretary adjudicatory authority. As a result, the Court need not reach the constitutional questions presented in this case. The Court can affirm the Third Circuit's decision on the statutory ground alone without wading into the intersection of immigration and labor policy *vis-à-vis* public and private rights. *Second*, requiring the Department to adjudicate and recover contested back pay and civil penalties through a *de novo* proceeding in court after completing administrative proceedings will not impair effective enforcement or compromise the conditions of employment required by the H-2A program.

ARGUMENT

I. Section 1188(g)(2) Does Not Clearly Assign Final Adjudication Power to the Department.

The statutory question presented provides the cleanest path to decision. The text and structure of § 1188(g)(2) resolve the case without reaching the constitutional limits of agency adjudication.

The Court should affirm on statutory grounds for at least two reasons. *First*, the statutory text authorizes only enforcement "actions"—not final adjudication of contested monetary liability. *Second*, Congress's drafting choices in surrounding provisions confirm the distinction: when Congress wants to clearly direct agency adjudication, it says so in terms that § 1188(g)(2) conspicuously omits, and the statutory default of 28 U.S.C. § 2461(a) independently directs contested penalties to district court.

A. The Statutory Text Authorizes Enforcement, Not Adjudication.

Section 1188(g)(2) authorizes the Secretary to "take such actions, including imposing appropriate penalties and seeking appropriate injunctive relief and specific performance of contractual obligations" that are "necessary" to "assure employer compliance" with the H-2A "terms and conditions of employment." 8 U.S.C. § 1188(g)(2). That is enforcement authority. It tells the

Secretary what tools are available. It does not address adjudication; that is, who finally decides contested liability.

The distinction between enforcement and final adjudication is fundamental to the separation of powers. An agency may investigate, issue findings, propose remedies, and press for compliance without itself exercising the judicial function of finally resolving contested monetary liability. Congress often assigns agencies the first set of functions. When Congress wants to move contested liability from court to agency adjudication, it ordinarily says so in terms that identify the decisionmaker, the hearing procedures, the final order, the review mechanism, and the legal consequences of the agency's decision. *See SEC v. Jarkesy*, 603 U.S. 109, 112 (2024) ("Even with respect to matters that arguably fall within the scope of the 'public rights' doctrine, the presumption is in favor of Article III courts.").

Section 1188(g)(2) contains none of these statutory markers. It does not use the word "adjudicate." It does not say "determine after hearing." It does not mention an administrative law judge, the Administrative Review Board, a final agency order, substantial-evidence review, or a *de novo* collection action. It does not say whether the Secretary's penalty assessment is preliminary or binding. It simply authorizes the Secretary to take actions necessary to assure compliance. That omission is not ambiguity. It is silence. And silence is not authorization.

The Government denies the absence of Congressional adjudicatory language. It relies on the use of the word "imposing" as evidence of adjudication power in the statute. But the word "imposing" in § 1188(g)(2) carries its ordinary enforcement meaning. A penalty may be "imposed" in the sense that an agency assesses it, issues a notice of liability, or makes an initial enforcement determination. That is what the FCC does when it issues a forfeiture order, what OSHA does when it proposes a penalty, and what scores of federal agencies do when they make a compliance finding.

The separate question—and the decisive one—is who finally adjudicates liability when the regulated party contests it. As this Court recently held in *Federal Communications Commission v. AT&T, Inc.*, 146 S. Ct. 1418 (2026), the word "impose" and others like it "tell us little about whether [an agency] order truly settles the carriers' rights and duties." *Slip op.* at 8. There, although the agency "imposed" the penalty by making its own determination, the statute required that any contested penalty be adjudicated *de novo* in an Article III court. *Id.* at 6–8; 47 U.S.C. § 504(a). Nothing in ordinary usage, statutory context, or administrative practice requires reading "impose" to mean finally adjudicating disputed liability inside the Department, subject only to deferential review. *See id.* at 7–8.

The statutory context reinforces that conclusion. Section 1188(g)(2) pairs "imposing appropriate penalties" with "seeking appropriate injunctive relief and specific performance of contractual obligations." The word "seeking" naturally contemplates resort to a tribunal, especially for equitable relief. The Government seizes on the different words and asserts the contrast between "impose" and "seek" is proof positive that "impose" grants adjudication authority. But the opposite is actually true in context. Congress did not silently make the Department the final judge of contested monetary liability while requiring it to go to court for everything else. The close proximity of these terms when describing the types of enforcement "actions" available suggests that "imposing" penalties and "seeking" injunctive or equitable relief are fundamentally the same thing—actions available to the Secretary that depend on a separate adjudicator to finally determine liability.

The Department's regulations cannot cure the legislative silence. Although these regulations provide for notices, hearings before Department administrative law judges, review by the Administrative Review Board, and final orders requiring payment within 30 days, *see* 29 C.F.R. §§ 501.22, 501.31, 501.41, agency practice is not statutory authorization. Regulations cannot supply a Congressional decision to vest final adjudicatory authority where Congress itself did not do so.

Nor is the Department's own construction of its authority owed controlling weight: this Court recently confirmed that a court reviewing an agency enforcement action must independently determine the statute's meaning, and that an agency's interpretation does not bind the court absent a clear Congressional statement precluding independent judicial review. *See McLaughlin Chiropractic Assocs., Inc. v. McKesson Corp.*, 606 U.S. 146 (2025) (holding that district courts in enforcement proceedings must independently determine the law's meaning under ordinary principles of statutory interpretation).

The Administrative Procedure Act cannot fill the Congressional silence in § 1188 either. The APA defines "adjudication" and supplies procedures for certain agency hearings. *See* 5 U.S.C. §§ 551, 554, 556. But those provisions presuppose an underlying statutory assignment of adjudicatory authority. They do not authorize every agency to finally adjudicate every contested sanction whenever a statute uses the word "impose." Section 554's trigger is telling: formal adjudication applies when another statute requires a matter to be determined on the record after an opportunity for agency hearing. *See* 5 U.S.C. § 554(a). Section 1188(g)(2) contains no such command.

B. Congress Knows How to Authorize Agency Adjudication and Did Not Do So Here.

Congress's drafting choices elsewhere confirm the point. Within the same statutory neighborhood, Congress has expressly provided for administrative complaints, administrative law judges, final agency orders, judicial review, and district-court enforcement when it wanted immigration-related employment disputes to proceed through agency adjudication. The employer-sanctions provisions of the Immigration Reform and Control Act of 1986, 8 U.S.C. § 1324a, are particularly instructive because they appear in the same title of the U.S. Code and address immigration-related employment obligations.

Those provisions expressly authorize an administrative law judge, at the behest of the Attorney General and after a hearing, to issue an order "requir[ing] the person … to cease and desist from" violations and "to pay a civil penalty." 8 U.S.C. § 1324a(e)(4). The statute further provides for judicial review of final orders, *id.* § 1324a(e)(8), and for district-court enforcement of those orders, *id.* § 1324a(e)(9), with Congress expressly exempting "the validity and appropriateness of the final order" from further judicial review in an enforcement proceeding. The anti-discrimination provisions at

§ 1324b follow a similar model, expressly providing for complaints "before an administrative law judge." *Id.* § 1324b(e)(3). Even § 1188 itself expressly provides for "an expedited procedure for the review of a denial of certification" and, at the applicant's request, "a *de novo* administrative hearing respecting the denial or revocation." 8 U.S.C. § 1188(e)(1). Section 1188(g)(2) contains none of this legislatively directed in-house-adjudication architecture.

By contrast, the Communications Act recently construed by the Court illustrates a different model: the FCC may issue a forfeiture order, but the statute expressly states that the FCC must bring a collection action in federal court, where the merits are adjudicated *de novo* before collection. *See* 47 U.S.C. §§ 503–504; *AT&T, Inc.*, 146 S. Ct. 1418.

When read in conjunction with the statutory default rule requiring a civil action to recover civil penalties, Section 1188(g)(2) tracks with the Communications Act model rather than the in-house adjudication model. Specifically, under 28 U.S.C. § 2461(a), "[w]henever a civil … penalty … is prescribed for the violation of an Act of Congress without specifying the mode of recovery or enforcement thereof, it may be recovered in a civil action." Congress legislated against that background when it enacted § 1188(g)(2) in 1986. Because § 1188(g)(2) does not specify a contrary mode of recovery, contested monetary liability belongs in district court.

Interpreting Section 1188(g)(2) to require Article III adjudication is also consistent with the canon of constitutional avoidance. To interpret § 1188(g)(2) as the Government contends would allow the Department to adjudicate judgment-like liability without express Congressional direction. Current Department regulations provide that an award must be paid within 30 days after it becomes final, 29 C.F.R. § 501.22, and the Department takes the position that an unpaid award is subject to interest and collectible as a debt. *See* Pet. App. 185a. *Compare AT&T, Inc.*, 146 S. Ct. 1418 (slip op. at 7) (no Seventh Amendment violation where agency decision "did not create an obligation to pay"). If the award is not appealed through the agency's in-house system, Department regulations provide that it cannot later be challenged. 29 C.F.R. § 501.33. And after agency adjudication is complete, the award is subject only to deferential appellate-type review. 5 U.S.C. § 706(2)(E).

The Government's broad reading of the Department's statutory authority puts the constitutional concerns asserted by Respondent in this case front-and-center. At the very least, the Government's reading is close enough to the private-rights category recognized in *Jarkesy* to trigger serious constitutional doubt. Where a statute's silence is equally consistent with a narrower reading that avoids these constitutional difficulties, the narrower reading should prevail. *See N.L.R.B. v. Catholic Bishop of Chicago*, 440 U.S. 490, 500 (1979).

II. A Ruling for Sun Valley Preserves Effective Enforcement.

Judicial adjudication of contested monetary liability will strengthen, rather than weaken, effective enforcement. Amici submit this point not as abstract doctrine but as a matter of institutional experience. A ruling that § 1188(g)(2) does not authorize final in-house adjudication of contested penalties would change only one thing: the forum for genuinely disputed liability.

The Department would retain its core enforcement tools: investigation, assessment, settlement, equitable relief, debarment, certification consequences, and judicial referral of contested penalties. What it would not retain is the power to render a binding monetary judgment through the same process it uses to prosecute. That is the ordinary separation of enforcement from adjudication. And in Amici's experience, the Department uses back pay and penalties as remedies when the facts support them and justice warrants them. The Department should have no reason to fear judicial adjudication.

That is not a hollow assurance. Federal enforcement agencies routinely operate in systems where agency investigation and assessment precede judicial adjudication. The FCC forfeiture scheme is the most recent example. *See AT&T, Inc.*, 146 S. Ct. 1418. In those systems, agencies still investigate, settle, and enforce effectively. The difference is that when liability is genuinely contested, the Government must prove its case in court, with administrative findings serving as evidence of liability rather than being (virtually) conclusive. A judicial-adjudication requirement disciplines enforcement and makes the resulting judgment more legitimate because it carries the imprimatur of Article III.

Public enforcement data confirms what Amici have seen firsthand: the machinery of H-2A enforcement runs on investigation and assessment, not on final in-house adjudication of contested liability. The Wage and Hour Division finds H-2A violations in hundreds of compliance actions each year, recovering millions in back wages and assessing millions in civil money penalties. *See* U.S. Dep't of Labor, Wage & Hour Div., Agriculture Enforcement Data, https://www.dol.gov/agencies/whd/data/charts/agriculture (last visited July 31, 2026) (reporting H-2A compliance actions with violations consistently in the hundreds each year from FY 2014 through FY 2025, with annual back-wage recoveries ranging from $1.38 million to $5.88 million and annual civil money penalties ranging from $1.77 million to $6.37 million). That enforcement output does not depend on in-house adjudication authority. Three points demonstrate why judicial adjudication of the disputed cases would leave the Department's H-2A enforcement output virtually unaffected.

First, many H-2A determinations resolve at the assessment stage because employers negotiate them or pay them. These accepted or negotiated resolutions would look no different in a judicial-adjudication regime.

Second, in the smaller universe of cases that do proceed through the administrative process, only a fraction get appealed. The Department's dedicated study of H-2A farm-labor-contractor enforcement found that only 22% of farm-labor-contractor violation cases were appealed between fiscal years 2017 and 2021, and the appeal rate for fixed-site employer determinations was 50%. *See* U.S. Dep't of Labor, Wage & Hour Div., Report to Congress: Enforcement of H-2A Farm Labor Contractors (2022), at 13 tbl. (showing 507 H-2ALC violation cases and 111 appeals (22%) between FY 2017 and FY 2021; fixed-site employer appeal rate of 50%). In both categories, a meaningful share of determinations becomes final without any hearing regardless of forum. Together, those figures indicate that the caseload that would move to Article III courts under Respondent's reading is a modest fraction of the Department's overall H-2A enforcement activity.

Third, case volume aside, in-house adjudication of contested penalties is not what has made H-2A enforcement effective. That is the consistent experience of Amici's collective decades of service across administrations of both parties. The Department's ability to secure compliance with the H-2A program's terms has always come from a familiar toolkit: rigorous investigation, considered assessment, debarment from future H-2A certifications, seeking injunctive relief and specific performance of contractual obligations in court, and the settlement dynamics those tools generate. Career enforcement staff will deploy those tools the same way whether the small proportion of contested-liability cases are ultimately decided by an in-house administrative law judge or by an Article III court. Effective H-2A enforcement does not depend on the identity of the final adjudicator, but the quality of the investigation behind each determination and the credibility of the remedies the Department is prepared to pursue if that determination is not accepted. Respondent's reading of § 1188(g)(2) leaves every part of that intact.

The upshot is straightforward and consistent with Amici's own practical experience. Moving genuinely contested cases to an Article III court to finally adjudicate monetary liability would not disrupt enforcement given the relatively small number of contested cases in the current system. And contested cases are the precise situation in which Article III protections matter most. It is also the precise situation in which a judicial forum imposes the least burden on the enforcement apparatus, because the Department has already completed its investigation, assembled its evidence, and prevailed at the administrative stage.

The post-*Jarkesy* experience at the Securities and Exchange Commission underscores the point. Following this Court's 2018 decision in *Lucia v. SEC*, 585 U.S. 237 (2018), and in response to mounting constitutional challenges to in-house adjudication, the SEC largely stopped routing contested enforcement actions seeking civil penalties to its administrative law judges and shifted those actions to federal court. The transition did not impair enforcement—under either Republican or Democratic Commission leadership. In the six fiscal years after *Lucia*, the SEC filed between 405 and 526 standalone enforcement actions per year and obtained between approximately \$3.85 billion and \$8.19 billion in financial remedies annually. *See* SEC, Addendum to Division of Enforcement Press Release Fiscal Year 2024 (Nov. 22, 2024) (reporting standalone enforcement actions of 526 (FY 2019), 405 (FY 2020), 434 (FY 2021), 463 (FY 2022), 501 (FY 2023), and 431 (FY 2024), with total money ordered of \$4.35 billion (FY 2019), \$4.68 billion (FY 2020), \$3.85 billion (FY 2021), \$6.44 billion (FY 2022), \$4.95 billion (FY 2023), and \$8.19 billion (FY 2024)).

The Congressional Research Service made the same observation: because "the SEC has avoided bringing in-house actions while awaiting the resolution of these legal questions . . . ," *Jarkesy* "does not appear to have a significant impact on recent SEC practice related to securities fraud, and the post-Jarkesy enforcement scheme at the SEC will likely resemble the agency's practices prior to 2010." Cong. Rsch. Serv., LSB11229, SEC v. Jarkesy: Constitutionality of Administrative

Enforcement Actions 4 (2024). The Department is, if anything, better positioned for such a transition than the SEC was: its H-2A cases are typically smaller and less complex than the securities-fraud matters the SEC now litigates in federal court. If the SEC has sustained vigorous enforcement of the Nation's securities laws through judicial adjudication, the Department can sustain enforcement of agricultural-worker protections through the same mechanism.

Nor does worker protection depend on deferential review of agency-imposed penalties. Serious violations produce strong records, and strong records withstand judicial scrutiny. Requiring judicial adjudication of contested penalties does not invite employers to violate the law. It tells employers, workers, and the public that serious monetary sanctions will be imposed through a process that is both effective and legitimate—one in which the agency brings the case, and an independent court decides it.

CONCLUSION

Section 1188(g)(2) does not clearly authorize the Department to finally adjudicate contested civil-money-penalty liability through internal proceedings subject only to deferential judicial review. The statutory default of 28 U.S.C. § 2461(a) directs the result: absent a specified mode of recovery, penalties are recovered in a civil action.

And practically speaking, requiring judicial adjudication will not undermine enforcement. If the Court holds that Congress did not clearly authorize final in-house adjudication here, Congress remains free to legislate with greater specificity. The Department remains free to enforce. Workers remain protected by the full enforcement toolkit and any available private remedies. What changes is only the forum for genuinely contested monetary liability. That is the narrow statutory holding this case requires, leaving the Department to continue the important work Amici performed and observed during their time in public service.

For these reasons, the judgment of the court below should be affirmed.

Respectfully submitted,

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