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 WASHINGTON LEGAL FOUNDATION AS AMICUS CURIAE SUPPORTING RESPONDENT

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QUESTION PRESENTED

Whether 8 U.S.C. § 1188(g)(2) authorizes the Department of Labor to adjudicate proceedings to collect monetary remedies from employers who have allegedly violated the terms and conditions of employment of H–2A workers and domestic workers in corresponding employment.

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INTEREST OF AMICUS CURIAE*

Washington Legal Foundation is a nonprofit, public-interest law firm and policy center with supporters nationwide. WLF promotes free enterprise, government accountability, and the rule of law. To that end, it often appears in cases involving the separation of powers and limits to agency authority. *See, e.g.*, *Trump v. Slaughter*, 609 U.S. ___ (2026); *FCC v. AT&T Inc.,* 146 S. Ct. 1418 (2026)*; SEC v. Jarkesy,* 603 U.S. 109 (2024).

When an Executive Branch agency purports to wield power that Congress never authorized, it implicates both concerns. The Department of Labor claims the power to adjudicate monetary penalties under a statute that neither expressly nor implicitly gives it that power. WLF has an interest in ensuring that agencies exercise only those powers that Congress has clearly conferred through statute.

INTRODUCTION AND SUMMARY OF ARGUMENT

This case can, and should be, decided on statutory grounds alone. Before this Court asks whether the Department's exercise of adjudicatory power is constitutional, it should first answer a more basic question: Did Congress authorize the Department's in-house adjudication in the first place?

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* No party's counsel authored any part of this brief. No person or entity, other than Washington Legal Foundation and its counsel, paid for the brief's preparation or submission.

The answer is—no, it didn't. The provision that the Department relies on, 8 U.S.C. § 1188(g)(2), does not provide that power. And without statutory authorization, the Department's appeal fails at the threshold. The constitutional issues, serious as they are, don't need to be addressed.

This case arises from the H–2A visa program, which allows U.S. employers to hire foreign workers for seasonal agricultural work. *See* 8 U.S.C. § 1188; 20 C.F.R. § 655.100 *et seq*. To participate, an employer must submit a "job order" to the Department and obtain a "certification." 20 C.F.R. § 655.121. The job order establishes contract terms for employment, including wages, hours, meals, and housing. 20 C.F.R. § 655.122(q) ("[T]he work contract at a minimum will be the terms of the job order."). The Department alleges that Sun Valley violated several job-order terms and seeks more than $550,000 in civil penalties and back wages.

But the Department claims more than just the authority to investigate and prosecute those monetary remedies. It also claims authority to adjudicate Sun Valley's liability through a multi-tiered administrative process that ends in a final order requiring Sun Valley to pay. 29 C.F.R. §§ 501.31 *et seq*. That final order is reviewable only under the Administrative Procedure Act's highly deferential standards. *See* 5 U.S.C. § 706. The Department seeks to act as both prosecutor and judge. Its in-house process provides neither a jury nor any other independent factfinder outside the agency.

The question is not whether the Department may enforce compliance with the H–2A program. (No one disputes that it can.) The question is whether Congress authorized the Department to adjudicate contested monetary liability under that program or whether enforcement happens in the federal courts.

Congress has already answered this question at 28 U.S.C. § 2461(a). That provision states that "a civil fine, penalty, or pecuniary forfeiture . . . may be recovered in a *civil action*"—in other words, *in federal court*. (emphasis added). Section 2461(a) establishes a default rule consistent with the Constitution's separation of executive and judicial functions: when a statute is silent about who may adjudicate and issue a binding order requiring payment of a civil penalty, that power rests in an Article III court. The Department's reliance on 8 U.S.C. § 1188(g)(2) to displace this default rule is wrong for three reasons.

First, the text. The words of Section 1188(g)(2) provide only a general grant of enforcement authority. They authorize the Department to "take such actions," including "imposing appropriate penalties" and "seeking appropriate injunctive relief," but say nothing about administrative adjudication, much less confer power to issue binding judgments. The provision contains none of the usual markers of adjudicatory authority: no mentions of agency hearings, administrative law judges, liability findings, or final orders.

Second, context. Context—both within Section 1188 and beyond it—confirms that these omissions were intentional. In another part of Section 1188, Congress expressly provided for administrative hearings when addressing program *certification denials* (which aren't at issue here). But Congress included no comparable language for *monetary penalties*. Related immigration and labor statutes confirm the point: when Congress intends to authorize administrative adjudication, it does so in unmistakable terms.

Third, clear-statement and constitutional-avoidance rules. The Department's interpretation seeks to reallocate adjudicatory authority from the courts to an executive agency. Yet under this Court's clear-statement rules, such a transfer can't be smuggled to an agency through undifferentiated enforcement language. Whatever power the phrases "take such actions" and "impos[e] appropriate penalties" convey, they don't clearly authorize the Department to adjudicate monetary claims or issue "final and unappealable" orders in-house. Pet. App. A at 7a (quoting sanctions letter from the Department).

The Department's interpretation triggers serious constitutional concerns—not only under Article III and the Seventh Amendment (which are the subjects of others' briefs), but also under the nondelegation doctrine. Constitutional-avoidance principles prevent stretching Section 1188(g)(2) to create difficulties under the Constitution when a narrower, textually grounded reading is available. And one is available here.

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The H–2A program serves important federal interests in orderly immigration administration and in protecting American workers' wages and working conditions. But even the most compelling policy goals can't justify an agency's exercise of authority that

Congress hasn't conferred. As detailed below, Section 1188(g)(2) does not empower the Department to adjudicate monetary penalties for alleged violations of job orders under the H–2A program. The Court should affirm.

ARGUMENT

Two principles defeat the Department's appeal on the threshold statutory question. First, an agency possesses only those powers Congress has conferred by statute. *West Virginia v. EPA*, 597 U.S. 697, 723 (2022) (explaining that an agency has "only those powers given to [it] by Congress"); *Gundy v. United States*, 588 U.S. 128, 135–36 (2019) (explaining that questions about agency powers "always begin[] . . . with statutory interpretation"). And second, those powers are defined by a statute's single, "best reading" as understood through traditional tools of interpretation. *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 400 (2024).

The best reading of Section 1188(g)(2) does not empower the Department to adjudicate monetary penalties in-house. In fact, Congress has a default rule for situations like this case. The United States Code contains "[n]umerous sections" prescribing civil fines and penalties without specifying the "mode of recovery or enforcement." 28 U.S.C. § 2461, Historical and Revision Notes. To fill these gaps, Congress enacted 28 U.S.C. § 2461(a):

> Whenever a civil fine, penalty, or pecuniary forfeiture 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.

28 U.S.C. § 2461(a); *see also United States v. Thompson*, No. 02-CR-116, 2002 WL 31667859, at *3 (N.D.N.Y. Nov. 26, 2002) (explaining that Section 2461(a) "was drafted to provide a mode of enforcement" for civil penalties where a statute is otherwise silent). "Civil action[s]" mean cases brought to the well of an Article III court—full stop. *See* 28 U.S.C. § 1355(a) ("The district court shall have original jurisdiction . . . of any action or proceeding for the recovery or enforcement of any fine, penalty, or forfeiture . . . incurred under any Act of Congress.").

The Department does not challenge that Section 2461(a) supplies the default rule. *See* Pet. Br. 23 (noting that Section 2461(a) "comes into play only where . . . a civil penalty statute fails to 'specif[y] the mode' of enforcement or recovery"). Instead, it argues that Section 1188(g)(2) displaces that rule by giving it adjudication powers over the monetary remedies at issue here. But there's just one problem with that argument: the text of Section 1188(g)(2) says no such thing. And statutory context, clear-statement principles, and constitutional-avoidance all reinforce the text's plain meaning.

I. SECTION 1188(g)(2) GRANTS ENFORCEMENT AUTHORITY, NOT ADJUDICATORY POWER.

When interpreting a statute, the text is "paramount." Antonin Scalia and Bryan Garner, *Reading Law: The Interpretation of Legal Text* 56 (2012); *United States v. Alvarez-Sanchez*, 511 U.S. 350, 356 (1994) ("When interpreting a statute, we look first and foremost to its text.”). Section 1188(g)(2) authorizes the Department 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 the terms and conditions of employment under this section.

That’s all. Nothing in that text grants the power to adjudicate monetary claims or issue binding orders. William Baude, *The Judgment Power*, 96 Geo. L.J. 1807, 1811 (2008) (describing “judicial power” as “the power to issue binding judgments . . ..”). At most, the provision confers general enforcement authority—the type of power traditionally exercised by the Executive Branch. The Court’s longstanding distinction between executive enforcement and judicial-like adjudication confirms as much.

The power to enforce federal law—or, as Section 1188(g)(2) itself says, to “assure . . . compliance” with it—is a core executive function rooted in Article II’s Take Care Clause. *See, e.g., United States v. Texas*, 599 U.S. 670, 678–79 (2023). That authority includes the powers to investigate violations, decide whether to prosecute, initiate proceedings, and pursue “monetary penalties.” *See Seila Law LLC v. CFPB*, 591 U.S. 197, 219 (2020) (seeking monetary penalties is “quintessentially an executive function”); *United States v. Armstrong*, 517 U.S. 456, 467 (1996) (describing the “power to prosecute” as a “core” executive power); *Butz v. Economou*, 438 U.S. 478, 515 (1978).

Adjudication is different. *See Seila Law*, 591 U.S. at 219–20 (differentiating between executive "enforcement authority" and "administrative adjudication"); *Butz*, 438 U.S. at 513 (describing ALJs as "functionally comparable" to judges). Administrative adjudication shares characteristics of the "judicial process." *Butz*, 438 U.S. at 513. Adjudicatory power entails the authority to conclusively determine disputed facts and legal obligations and to "make binding determinations which directly affect the legal rights of individuals." *Hannah v. Larche*, 363 U.S. 420, 442 (1960). It includes the power "to render dispositive judgments." *See Plaut v. Spendthrift Farm, Inc.*, 514 U.S. 211, 219 (1995) (explaining that "judicial [P]ower" includes the power "to render dispositive judgments").

Section 1188(g)(2) speaks exclusively in terms of enforcement, not adjudication. The phrases "take such actions" and "assure compliance" denote law-enforcement functions contemplated by Article II's Take Care Clause, while "imposing appropriate penalties" and "seek[ing] appropriate injunctive relief" describe traditional prosecutorial tools. *See, e.g.*, *Seila Law*, 591 U.S. at 219; *Butz*, 438 U.S. at 515. The provision says nothing about hearings, administrative law judges, agency findings, final orders, or any other hallmark of adjudicatory power.

The Department's own reading underscores the point. It concedes that the authority to "seek[] appropriate injunctive relief and specific performance" means only the authority to pursue those remedies in court. Pet. Br. 21. But it insists that the neighboring phrase "imposing appropriate penalties" somehow carries both enforcement and adjudicatory powers. These three words, the Department says, delegate not only the power to determine what penalties to impose, including their amounts and where they should be enforced, but also the power to adjudicate liability and enter final penalty orders. Pet. Br. 20-21. That's a huge load for a three-word phrase to bear—and it falls well short of supporting the Department's claim to adjudicatory power.

The authority to "impose" a penalty does not imply the power to adjudicate one. Black's Law Dictionary defines "impose" as "[t]o levy or exact." Black's Law Dictionary 367 (4th Pocket ed. 2011). The definition includes nothing about definitively resolving a dispute through a formal judgment. This Court has recognized that the "assess[ment]" of penalties, without more, is an enforcement function "akin to that of a prosecutor or civil plaintiff"—not a judicial one. *Marshall v. Jerrico, Inc.*, 446 U.S. 238, 247 (1980).

To be sure, it's hardly unusual for an agency to possess authority to determine that penalties are warranted, and to seek their recovery, without also holding the power to conclusively adjudicate disputes over them. Indeed, Congress has long contemplated such arrangements. *See* 28 U.S.C. § 2461, Historical and Revision Notes (acknowledging "numerous" such scenarios). And so have this and other courts. *See SEC v. Jarkesy*, 603 U.S. 109, 140 (2024) (holding that SEC's pursuit of certain monetary penalties must be done in "a jury trial in an Article III court"); *Athlone Indus., Inc. v. Consumer Prod. Safety Comm'n*, 707 F.2d 1485, 1492 (D.C. Cir. 1983) (stating that

"Congress's decision to limit" an agency "to a prosecutorial role in civil penalty actions is not unique"); *see also Lees v. United States*, 150 U.S. 476, 478-79 (1893) (explaining that "jurisdiction over actions to recover penalties" lies with the district courts, "unless it is in express terms placed elsewhere").

The Court's recent decision in *FCC v. AT&T, Inc.*, 146 S. Ct. 1418 (2026) reinforces the point that "impos[e]" can't carry the weight that the Department places on it. In *FCC*, telecommunications carriers argued that Section 503 of the Communications Act violated the Seventh Amendment because the statute empowered the agency to "determine," "assess," and "impose" penalties. *FCC*, 146 S. Ct. at 1429. But the Court rejected the premise that such verbs read in "isolation" confer the power to "determine [the] legal rights" of the carriers. *Id.* at 1429-30. The same reasoning applies here. Authority to "impose," "assess," or "determine" penalties does not, standing alone, establish authority to hold judicial-like proceedings and enter binding judgments. *Id.* And the Department offers nothing else to transform the word "impos[e]" into that authority.

The better reading of Section 1188(g)(2) is the one the text actually supports. The provision authorizes the Department to perform traditional enforcement actions—investigate, charge penalties, demand payments, and prosecute violations in court—to "assure . . . compliance" with the program. But under 28 U.S.C. § 2461(a), adjudication and recovery of penalties must occur through a civil action in federal court unless Congress provides otherwise. And Section 1188(g)(2) does not provide otherwise.

II. CONGRESS KNOWS HOW TO AUTHORIZE AGENCY ADJUDICATION, AND IT DID NOT DO SO HERE.

"[W]ords of a statute must be read in their context." *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 133 (2000). Context shows that Congress knows how to confer the adjudicatory power that the Department seeks; it just hasn't done so here.

Look no further than Section 1188 itself. Elsewhere in that statute, Congress expressly authorized agency adjudication when it deemed such power appropriate. Section 1188(b)(2)(A), which governs denials and revocations of labor certifications (not at issue here), requires "notice and opportunity for a hearing." *See* 8 U.S.C. § 1188(b)(2)(A); *see also* 8 U.S.C. § 1188(e). But when Congress later authorized the Department to pursue monetary penalties under Section 1188(g)(2), it omitted any comparable "hearing" language. That omission is significant.

Had Congress intended the Department to adjudicate civil penalties in-house, it would have used language like that found in the same statute. But it didn't. *See Russello v. United States*, 464 U.S. 16, 23 (1983) ("[W]here Congress includes particular language in one section of a statute but omits it in another section . . . it is generally presumed that Congress acts intentionally . . . in the disparate inclusion or exclusion."). By expressly providing agency hearings when labor certifications are denied or revoked—but remaining silent as to monetary penalties—Congress showed that it knew how to "depart from the default" of judicial adjudication when it wants to. *Kennedy v. Braidwood Mgmt., Inc.*, 606 U.S. 748, 771 (2025). Its decision not to do so here should be respected and is not out of the ordinary. Agency adjudication has historically been used on decisions to deny benefits under a government program, but not to impose monetary penalties. *Jarkesy*, 603 U.S. at 130 (describing the granting of program benefits as a "historic categor[y]" of non-Article III adjudication).

The broader statutory landscape points in the same direction. When Congress allows some agencies to adjudicate civil penalties, it ordinarily says so expressly. For example, Section 274A of the Immigration Reform and Control Act provides for "hearing[s] . . . before an administrative law judge." 8 U.S.C. § 1324a(e)(3). The Migrant and Seasonal Agricultural Worker Protection Act likewise provides for "agency hearing[s]" before "an administrative law judge." 29 U.S.C. § 1853(b). And the Fair Labor Standards Act authorizes "an administrative proceeding" for certain penalty determinations. 29 U.S.C. § 216(e)(4).

These statutes show that "when Congress wants to mandate particular dispute resolution procedures it knows exactly how to do so." *Epic Sys. Corp. v. Lewis*, 584 U.S. 497, 514 (2018). It routinely uses unmistakable procedural markers—"notice," "hearings," "administrative law judges"—when conferring adjudicatory authority. Section 1188(g)(2) has none of those trappings.

The Department's reliance on *SEC v. Jarkesy*, 603 U.S. 109 (2024) gives the game away. According to the Department, *Jarkesy* shows that statutory authority to "impose" monetary penalties includes authority to adjudicate them administratively. Pet. Br. 21. But the statutes at issue in *Jarkesy* expressly authorized the SEC to impose penalties after "notice and opportunity for a *hearing*." 15 U.S.C. §§ 77h-1, 78u-2, 78u-3, 80b-3 (emphasis added). The question in *Jarkesy* was whether Congress's express grant of adjudicatory power to the SEC comported with the Seventh Amendment, not whether the word "impose" silently conferred that power. The Department identifies no decision holding that a bare authority to "impose" penalties carries with it authority to adjudicate them in-house.

Nor can the Department fill that gap by looking to the Administrative Procedure Act. Pet. Br. 22. The APA doesn't confer adjudicatory authority; it regulates the exercise of adjudicatory authority granted elsewhere. Section 554 applies only to adjudications "required by statute to be determined on the record after opportunity for an agency hearing." 5 U.S.C. § 554; *Conley Elecs. Corp. v. FCC*, 394 F.2d 620, 625–26 (10th Cir. 1968) (explaining that the APA "only specifies the procedure to be followed when a hearing is required by some other statute"). And Section 555 establishes procedural rules but nowhere grants agencies power to adjudicate. Because Congress never granted adjudicatory authority in Section 1188(g)(2), the APA has no work to do.

III. Congress Must Speak Clearly Before Displacing Article III Adjudication.

Finally, even if Section 1188(g)(2) was ambiguous (and isn't), clear-statement rules and constitutional avoidance still doom the Department's interpretation.

a. Nothing in Section 1188(g)(2) clearly transfers adjudicatory authority.

"Administrative agencies are creatures of statute. They accordingly possess only the authority that Congress has provided." *Nat'l Fed'n of Indep. Bus. v. OSHA*, 595 U.S. 109, 117 (2022). And when Congress wants to give *judicial* or other unusual functions to the Executive, courts must presume that Congress would only do so expressly. *See id.*; *Biden v. Nebraska*, 600 U.S. 477, 503–04 (2023); *West Virginia*, 597 U.S. at 721–22.

The Department's claim to adjudicatory power, at the very least, creates tension with that "sacred maxim of free government," the separation of powers. *The Federalist* No. 47, at 310 (James Madison) (Robert Scigliano ed., 2001). Madison cautioned that combining this power with executive authority invites "oppress[ion]." *Id.* Hamilton echoed the same principle in Federalist 78. *The Federalist* No. 78, at 497 (Alexander Hamilton) (Robert Scigliano ed., 2001). The Seventh Amendment's right to a jury trial demands "the utmost care" before any "curtailment." *Jarkesy*, 603 U.S. at 121. *Jarkesy* highlights how these bedrock constitutional safeguards are undermined by agency adjudication of monetary penalties. It emphasizes that claims for penalties are ordinarily the "subject of suit at common law," belong in Article III courts, and traditionally carry a right to a jury. *See Jarkesy*, 603 U.S. at 123, 127.

Against this backdrop, now consider this Court's clear-statement rules. *West Virginia* and *Biden* instruct that "[e]xtraordinary grants of regulatory authority are rarely accomplished through 'modest words,' 'vague terms,' or 'subtle device[s].'" *See, e.g.*, *West Virginia*, 597 U.S. at 722–23; *Biden*, 600 U.S. at 505–06 . And "absent a clear statement otherwise," courts should not assume that "Congress means for its laws to . . . test [the Constitution's] bounds." *West Virginia*, 597 U.S. at 736 (Gorsuch, J. concurring). These precedents follow the Court's broader clear-statement cases. When Congress waives sovereign immunity, it must do so in language that is "unmistakably clear" *Dep't of Agric. v. Kirtz*, 601 U.S. 42, 49 (2024). When it creates a private right of action, this Court expects "explicit rights-creating" language. *Gonzaga Univ. v. Doe*, 536 U.S. 273, 284 (2002). And when it intends a statute to apply extraterritorially, courts require a clear indication of that intent. *Morrison v. Nat'l Austl. Bank Ltd.*, 561 U.S. 247, 255 (2010).

The same principle that governs across these contexts governs here: when fundamental legal arrangements are at stake, courts shouldn't assume that Congress empowered an agency to disrupt those arrangements "without a clear statement to that effect." *Biden*, 600 U.S. at 506. Applied here, that means courts should not infer a transfer of adjudicatory authority from Article III courts to administrative agencies based on indirect or equivocal text—especially in light of 28 U.S.C. § 2461(a), which codifies the default rule that cases proceed in federal court when statutes are silent.

Such a power shift isn't a minor administrative detail. It concerns the forum in which legal rights are determined, the availability of a jury trial, and the allocation of government power. If Congress wishes to test the Constitution's allocation of that power, it must do so in "unmistakabl[e]" terms. *See Will v. Mich. Dep't of State Police*, 491 U.S. 58, 65 (1989) (explaining, in a federalism context, that when Congress intends to "alter the usual constitutional balance" it must say so in "unmistakabl[e]" terms).

Returning to Section 1188(g)(2). Whatever enforcement authority the phrases "take such actions" and "impos[e] appropriate penalties" confer, they fall well short of clearly conferring administrative adjudication. And the Department's attempt to manufacture that power for itself by invoking its longstanding practice gets the question wrong. Pet. Br. 21-22. The pertinent question is, what does Section 1188(g)(2) mean, not what has the Department done. "[A]gencies have no special competence in resolving statutory ambiguities," *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 400–01 (2024), and this Court owes no deference to the Department's longstanding misunderstanding of the law.

b. Constitutional avoidance rejects the Department's reading.

The Department's interpretation of Section 1188(g)(2) also fails under constitutional avoidance.

See United States v. Hansen, 599 U.S. 762, 781 (2023). When a statute is reasonably susceptible to two interpretations, courts should adopt the one that avoids serious constitutional questions. *See id.* ("When legislation and the Constitution brush up against each other, our task is to seek harmony, not manufacture conflict.")

As Sun Valley and other amici explain, the Department's interpretation triggers major constitutional concerns under Article III and the Seventh Amendment. But its interpretation also raises non-delegation concerns. *Gundy v. United States*, 588 U.S. 128, 132 (2019). That's because the Department claims not just the power to adjudicate in-house but also the discretion to pick and choose when to assign monetary remedies to its own tribunals or when to pursue them in federal court. *See* Pet. Br. 20 ("The Secretary *may* . . . levy penalties on his own, without going to court.") (emphasis added); *see also* 29 C.F.R. § 501.30 (noting the Secretary's discretion to pursue certain remedies in "District Court").

This position creates the same type of non-delegation concerns that the Fifth Circuit identified in *Jarkesy*. Even if one assumes the Department is empowered to adjudicate penalties in-house (and, of course, for all the reasons discussed—it isn't), the policy choice of then deciding which cases are assigned to its administrative tribunals versus pursued in court is one for Congress to make and can't be delegated absent congressional direction governing that choice. *See Jarkesy v. SEC*, 34 F.4th 446, 461 (5th Cir. 2022) ("'[T]he mode of determining'" which cases are assigned to administrative tribunals "'is completely within congressional control.'" (quoting *Crowell v. Benson*, 285 U.S. 22, 50 (1932)). The Department's interpretation is difficult to reconcile with this constitutional boundary.

Fortunately, the Court need not resolve this concern or the Article III and Seventh Amendment questions addressed elsewhere. A better reading of Section 1188(g)(2) exists that avoids them all: Congress has authorized traditional enforcement functions through Section 1188(g)(2) but has not authorized agency adjudication of the monetary penalties at issue.

CONCLUSION

Article III courts, not the Department, are empowered by statute and the Constitution to adjudicate monetary penalties under the H–2A program. Nothing in Section 1188(g)(2)'s text, structure, or context indicates that Congress silently transferred that significant power to the Department. The Court should affirm the judgment of the Third Circuit.

Respectfully submitted,

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