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* THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA IN SUPPORT OF RESPONDENT

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INTEREST OF *AMICUS CURIAE*[1]

The Chamber of Commerce of the United States of America ("Chamber") is the world's largest business organization. As the nation's leading advocate for business, the Chamber represents companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. To that end, the Chamber regularly files *amicus curiae* briefs in cases, like this one, that raise issues of concern to the nation's business community.

Businesses, and corporate officers and directors, are frequent respondents in administrative enforcement actions brought by the Department of Labor ("DOL") and by other federal agencies. The Chamber thus has a significant interest in ensuring that those proceedings respect all the Constitution's guarantees. That includes the rights of enforcement targets to an Article III judge in an Article III court.

The Chamber submits this brief to make two points. First, the Government misconceives the "public rights" doctrine, which does not apply to the DOL's intervention in this employment dispute. Second, in resolving the Article III question presented here, the Court should preserve room for the settled principle that the constitutional protections of Article

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[1] No counsel for any party authored this brief in whole or in part and no entity or person, aside from *amicus curiae*, its members, or its counsel, made any monetary contribution intended to fund the preparation or submission of this brief.

III do not prohibit enforcement targets from consenting to alternative forums or dispute resolution mechanisms outside of Article III courts—no matter whether public or private rights are at stake.

INTRODUCTION AND SUMMARY OF ARGUMENT

The question in this case is whether an executive agency may exercise the "judicial Power of the United States" in a domestic employment dispute to deprive a citizen of private property. U.S. Const. art. III, § 1. To ask that question is to answer it. The answer is no.

"[I]f there is a principle in our constitution, indeed in any free constitution, more sacred than another, it is that which separates the legislative, executive, and judicial powers." 1 *Annals of Congress* 604 (Joseph Gales ed., 1834) (James Madison). The Framers had learned the dangers of concentrated power from experience. And they took pains in the summer of 1787 to prevent that history from repeating itself in the new Republic. They therefore vested the three great powers of government—legislative, executive, and judicial—in three distinct branches. That separation of powers serves, at one level, to "protect each branch of government from incursion by the others." *Bond v. United States*, 564 U.S. 211, 222 (2011). Even more importantly, though, it serves to "protect the individual" from the government. *Id.*

Article III, for its part, "protects liberty not only through its role in implementing the separation of powers, but also by specifying the defining characteristics of Article III judges." *Stern v. Marshall*, 564 U.S. 462, 483 (2011). It mandates that those who exercise the "judicial Power of the United

States" "shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office." U.S. Const. art. III, § 1.

Those protections were devised "to secure a steady, upright, and impartial administration of the laws." The Federalist No. 78, at 464 (Clinton Rossiter ed., 2003) (Alexander Hamilton). And they were similarly born from abuses endured in the colonies. The King had notoriously "made Judges dependent on his Will alone, for the tenure of their offices, and the amount and payment of their salaries." The Declaration of Independence ¶ 11 (U.S. 1776). As a result, the King could exert a "dangerous influence" over "the administration of justice," particularly in "cases where the claims or pretensions of the crown were brought to bear upon the rights of a private individual." 1 James Kent, *Commentaries on American Law* 293 (William M. Lacy ed., 1889). Following the Revolution, Article III gave those grave threats to judicial independence a "deserved eulogy." *Id.* It ensured that the judiciary—and the exercise of judicial power—would "remain[] truly distinct from both the legislature and the executive" in the United States. The Federalist No. 78, at 465 (Alexander Hamilton). For "there is no liberty if the power of judging be not separated from the legislative and executive powers." *Id.* (quoting 1 Montesquieu, *Spirit of Laws* 181).

The growth of the administrative state has eroded these safeguards—a fact that Respondent Sun Valley Orchards, LLC ("Sun Valley") knows all too well. Like other federal agencies, DOL "acts as a mini legislature, prosecutor, and court, responsible for creating substantive rules for a wide swath of industries, prosecuting violations, and levying knee-buckling penalties against private citizens." *Seila Law LLC v. CFPB*, 591 U.S. 197, 222 n.8 (2020). Even worse, it imposes those binding penalties through its own administrative proceedings, without oversight from an Article III judge.

This case places that troubling dynamic on full display. DOL enacted an array of "[r]egulations [to] dictate what benefits H-2A [visa] workers—and therefore, corresponding U.S. workers—must receive." Pet.App.3a (citing 20 C.F.R. § 655.122). It incorporated those conditions into a "'job order,'" which "functions as a work contract" between an employer and its H-2A workers and corresponding U.S. workers. *Id.* (quoting 20 C.F.R. § 655.121(f)). Then DOL alleged that Sun Valley "breached [the] employment agreement" formed under the H-2A program. Pet.App.1a. And it chose not to bring that garden-variety legal claim in a federal court. Instead, the agency exercised judicial power to "impose[] hundreds of thousands of dollars in civil penalties and back wages through in-house administrative proceedings." Pet.App.1a–2a. "That is the very opposite of the separation of powers that the Constitution demands." *SEC v. Jarkesy*, 603 U.S. 109, 140 (2024).

DOL admits that it imposed a binding penalty on Sun Valley, without the safeguards of an Article III court. *See* DOL.Br.22–23. Yet the agency is mistaken in arguing that the "public-rights doctrine" authorizes such an executive exercise of core judicial power. DOL.Br.17. This case does not fall within any of the "historic categories of adjudications" that comprise that narrow doctrine. *Jarkesy*, 603 U.S. at 130. And the remedies sought by DOL are dispositive on that score. DOL's claims for both monetary penalties and back wages "implicate the core private right to property," the deprivation of which "must be adjudicated by Article III courts." *Axon Enter., Inc. v. FTC*, 598 U.S. 175, 204 (2023) (Thomas, J., concurring); *see also Jarkesy*, 603 U.S. at 127–28. The lower court thus correctly set aside the agency's order. DOL could not strip Sun Valley of its vested property rights through the agency's in-house proceeding.

Of course, none of this is to suggest that a litigant may not "waive the right to Article III adjudication." *Wellness Int'l Network, Ltd. v. Sharif*, 575 U.S. 665, 679 (2015). Enforcement targets can always choose to have an ALJ resolve the agency's claims if they "knowingly and voluntarily consent" to that procedure. *Id.* at 669. Such adjudication by consent poses no more of a threat to the judiciary than allowing parties to agree to resolve their disputes before an arbitrator. But the Third Circuit correctly held that Sun Valley "'did not truly consent to' adjudication before an ALJ" in this case. Pet.App.18a (quoting *Wellness Int'l Network*, 575 U.S. at 681). And the agency does not dispute that holding before this Court.

Accordingly, the judgment below should be affirmed.

ARGUMENT

I. DOL's In-House Enforcement Proceeding Violated Article III.

Executive agencies may not exercise the judicial power of the United States. But DOL arrogated that power to itself here. And its reliance on the "public rights" doctrine is sorely misplaced. The agency issued a binding order—through its own in-house enforcement action—to take hundreds of thousands of dollars in private property from Sun Valley. Only an Article III court could adjudicate the government's claims and deprive Sun Valley of those vested private rights.

A. Only Article III Courts May Exercise the Judicial Power of the United States.

This Court has long held that Congress cannot "withdraw from judicial cognizance any matter which, from its nature, is the subject of a suit at the common law, or in equity, or admiralty." *Murray's Lessee v. Hoboken Land & Improvement Co.*, 59 U.S. (18 How.) 272, 284 (1855). That is because the "judicial Power" extends "to *all* Cases, in Law and Equity, arising under [the] Constitution" or "laws of the United States," and to "*all* Cases of admiralty and maritime Jurisdiction." U.S. Const. art. III, § 2 (emphasis added). The Framers "vested" the "judicial Power" to resolve such cases in Article III courts alone. *Id.* art. III, § 1. And they required that the judges entrusted with that authority would "hold their offices during good behavior, without diminution of salary." *Stern*, 564 U.S. at 469. Those twin safeguards serve "to protect citizens subject to the judicial power" from adjudicators dependent on Congress or the Executive. *Id.* at 484.

The Constitution's text contains "no exception[s]" to that allocation of judicial power. *Benner v. Porter*, 50 U.S. (9 How.) 235, 244 (1850). Therefore, "Congress cannot vest any portion of the judicial power of the United States" in entities that lack the fundamental protections of Article III judges. *Martin v. Hunter's Lessee*, 14 U.S. (1 Wheat.) 304, 330 (1816). These non-Article-III entities are categorically "incapable of receiving" the "judicial Power of the United States." *Am. Ins. Co. v. 356 Bales of Cotton*, 26 U.S. (1 Pet.) 511, 546 (1828); *see also, e.g.*, *Ex parte Milligan*, 71 U.S. (4 Wall.) 2, 121 (1866).

"Administrative agencies, however, now exercise the judicial power that the Constitution vested in the courts." Philip Hamburger, *Is Administrative Law Unlawful?* 148 (2014). And this case is a prime example. DOL insists that it may unilaterally issue binding penalties and order the payment of back wages. But both of those remedies deprive Sun Valley of its private property. Thus, both require the exercise of "judicial Power" by an Article III court. U.S. Const. art. III, § 1.

B. Issuing a Binding Order that Deprives a Citizen of Life, Liberty, or Property Is a Core Judicial Power.

As originally understood, the "judicial power" is the power to "examine the truth of the fact, to determine the law arising upon that fact, and, if any injury appears to have been done, to ascertain" and "apply the remedy." 3 William Blackstone, *Commentaries on the Laws of England* 25 (1768). It is, in other words, "the power to bind parties and to authorize the deprivation of private rights." William Baude, *Adjudication Outside Article III*, 133 Harv. L. Rev. 1511, 1513–14 (2020); *see Plaut v. Spendthrift Farm, Inc.*, 514 U.S. 211, 219 (1995).

This concept of "private rights" derives from the political theory of John Locke. As he explained, the law of nature requires that "no one ought to harm another in his life, health, liberty or possessions." John Locke, *Two Treatises on Civil Government* 193–94 (George Routledge & Sons ed., 1884). But those pre-existing private rights to life, liberty, and property are "constantly exposed" in a state of nature to "the invasion of others." *Id.* at 256. Thus, the "great and chief end" of men "putting themselves under government" is "the preservation of their property," lives, and liberties. *Id.* Indeed, society is "obliged to secure every one's property." *Id.* at 258. And it must do so through "indifferent and upright judges, who are to decide controversies by [established standing] laws." *Id.* at 258–59. Absent such an exercise of judicial power, the government "cannot take from any man any part of his property without his own consent." *Id.* at 264.

Blackstone's *Commentaries* reflect the same understanding. He, too, explained that the "principal aim of society is to protect individuals in the enjoyment of those absolute rights, which were vested in them by the immutable laws of nature." 1 William Blackstone, *Commentaries on the Laws of England* 120 (1765). Those include the "right of personal security" in one's life and limb, the right of "personal liberty," and the right of "property," which "consists in the free use, enjoyment, and disposal of all [one's] acquisitions." *Id.* at 125, 130, 134. The government cannot deprive a citizen of any of these three core private rights "unless he be duly brought to answer, and be forejudged by course of law." *Id.* at 135. And mandatory executive adjudication is no substitute for the courts when such rights are at stake. "Since the law [was] in England the supreme arbiter of every man's life, liberty, and property, courts of justice must at all times be open to the subject, and the law [would] be duly administered therein" for claims involving these rights. *Id.* at 137.

Those views heavily influenced the Framers. And they carried over into the new constitutional order. As in England, "when the government wanted to act authoritatively upon core private rights that had vested in a particular individual, courts and commentators alike agreed that an exercise of 'judicial' power was usually indispensable." Caleb Nelson, *Adjudication in the Political Branches*, 107 Colum. L. Rev. 559, 569–70 & nn.40–43 (2007) (collecting authorities). These deprivations of "life, liberty, or property" were the "peculiar province of the judiciary," acting impartially according to the dictates of the law. 1 St. George Tucker, *Blackstone's Commentaries*, Editor's App. 358 (1803). And "if the government sought to interfere with those rights, nothing less than 'the process and proceedings of the common law' had to be observed before any such deprivation could take place." *Jarkesy*, 603 U.S. at 150 (Gorsuch, J., concurring) (quoting 3 Joseph Story, *Commentaries on the Constitution of the United States* § 1783, p. 661 (1833)); *see also* Nelson, *supra*, at 569–70 (The political branches "cannot directly reach the property or vested rights of the citizen, by providing for their forfeiture or transfer to another, without trial and judgment in the courts." (*quoting Newland v. Marsh*, 19 Ill. 376, 382 (1857)).

In short, the judicial power "extends to every supposable case which can affect the life, liberty, or property of the citizens of America." Tucker, *supra*, at 354. That power "can no more be shared with the Executive Branch than the Chief Executive, for example, can share with the Judiciary the veto power." *United States v. Nixon*, 418 U.S. 683, 704 (1974). It is the province of Article III judges alone.

C. DOL Exercised the Judicial Power of the United States Here.

Those principles make this a straightforward case. DOL issued a binding order that (1) imposes civil penalties, and (2) forces Sun Valley to pay back wages to its workers. Both of those remedies deprive Sun Valley of its private property—to the tune of hundreds of thousands of dollars. They are therefore "matters concerning private rights" that require the exercise of judicial power. *Jarkesy*, 603 U.S. at 127. It follows that these matters "may not be removed from Article III courts." *Id.*

History confirms as much. "Actions by the Government to recover civil penalties" have historically "been viewed as one type of action in debt." *Tull v. United States*, 481 U.S. 412, 418–19 (1987); *see, e.g.*, *Atcheson v. Everitt*, 1 Cowper 382, 98 Eng. Rep. 1142 (K.B. 1776); *Calcraft v. Gibbs*, 5 T.R. 19, 101 Eng. Rep. 11 (K.B. 1792). And, at the Founding, this punitive remedy "could only be enforced in courts of law," not by executive decree. *Tull*, 481 U.S. at 422.

That is because civil monetary penalties act to deprive enforcement targets of their private property. *See* Michael Showalter, *Defining the Public-Rights Exception After* Jarkesy, 23 Geo. J.L. & Pub. Pol'y 361, 364 (2025). Such deprivations require an exercise of judicial power. *See supra* Section I.B. So claims for monetary penalties "must be adjudicated in Article III courts." *Jarkesy*, 603 U.S. at 136.

The same goes for awards of back wages. Like other forms of compensatory damages, ordering back wages is a "traditional form of relief offered in the courts of law." *Chauffeurs, Teamsters & Helpers, Local No. 391 v. Terry*, 494 U.S. 558, 570 (1990) (citation omitted). And that remedy, too, requires an exercise of judicial power, because the award takes away a vested private property interest from the defendant and gives it to another. *See* DOL.Br.11–12. Indeed, resolving "the liability of one individual to another" is a paradigmatic example of adjudicating "private right[s]." *Stern*, 564 U.S. at 489 (citation omitted). It is not a subject for executive resolution.

Accordingly, Sun Valley had the right to an Article III adjudication here. DOL "exercised the judicial power of the United States" by issuing a binding order that deprived Sun Valley of its vested property rights—even though DOL's ALJ and Administrative Review Board "enjoy neither tenure during good behavior nor salary protection." *Id.* at 469. The Third Circuit correctly held that this arrangement violated Article III.

D. DOL Miscasts the Public Rights Doctrine.

DOL responds that "[t]he public-rights doctrine permits the Secretary [of Labor] to collect monetary remedies for H-2A violations." DOL.Br.24 (capitalization altered). But that doctrine does not allow executive agencies to issue binding orders—as in this case—that strip citizens of their private property. That is a matter of private rights.

1. This Court first "uttered the words giving birth to the public rights doctrine" in *Murray's Lessee*. *Granfinanciera, S.A. v. Nordberg*, 492 U.S. 33, 67 (1989) (Scalia, J., concurring). "In that case, a federal customs collector failed to deliver public funds to the Treasury, so the Government issued a 'warrant of distress'" for the withheld sum. *Jarkesy*, 603 U.S. at 128 (quoting *Murray's Lessee*, 59 U.S. (18 How.) at 274–75). Importantly, this "warrant of distress" was not an authoritative adjudication of the customs collector's rights to any funds. Rather, a warrant of distress "was merely an ancient self-help right of some creditors, including the government." Hamburger, *supra*, at 217. "Landlords could use distress to obtain back rent from their tenants, and similarly the government could rely on it to collect past-due taxes." *Id.* The seizure then "shift[ed] the burden of litigation onto the debtor, whether a renter of taxpayer." *Id.* Thus, while *Murray's Lessee* "alluded to distress as one of the government's 'public rights,' this was not so much a distinctively governmental power as a right available for favored private and governmental claims." *Id.*

That is the key to understanding *Murray's Lessee*. Unlike here, the executive exercised "no part of th[e] judicial power"—that power of compelled binding adjudication that can deprive private parties of their vested rights. *Murray's Lessee*, 59 U.S. (18 How.) at

275. The executive instead resorted to the "summary extra-judicial remed[y]" of a distress warrant, similar to a "recapture of goods" by one who purports to be "their lawful owner." *Id.* at 283. The customs collector could then "bring before a district court the question" whether "he [was] indebted as recited in the warrant," and "every fact upon which the legality of the extra-judicial remedy depend[ed] [could] be drawn in question by [the] suit." *Id.* at 284. That was entirely consistent with Article III.

2. DOL suggests the public rights doctrine has since expanded to include all sorts of "categories of adjudications," such as "cases involving 'immigration.'" DOL.Br.26 (citation omitted). But, in making this argument, DOL neglects the "care" and "close attention" that this Court has paid "to the basis for each asserted application of the doctrine." *Jarkesy*, 603 U.S. at 131.

Not every case that touches on immigration implicates public rights. Many, like this one, implicate core private property interests. This Court has thus consistently recognized that in immigration cases—as in any other—"the crucial question" for Article III purposes is "whether the interests at stake" are "vested private rights." Adam B. Cox, *The Invention of Immigration Exceptionalism*, 134 Yale L.J. 329, 357 (2024); *see, e.g.*, *Chae Chan Ping v. United States*, 130 U.S. 581, 600–03, 609–10 (1889). If so, then the Executive cannot act authoritatively on those rights. An exercise of judicial power by an Article III court is necessary.

The Court's decision in *Wong Wing v. United States*, 163 U.S. 228 (1896), illustrates the dichotomy.

There, the Court observed that the "right to exclude or to expel aliens" is a "right of every sovereign," which "may be exercised entirely through executive officers." *Id.* at 231. Because of this public right, the Court explained, aliens generally lack vested private rights to enter or remain in the United States. *See id.* at 231–33. But that does not mean the executive may unilaterally act on the vested rights that aliens *do* possess and order "deprivation[s] of [their] liberty and property." *Id.* at 237. That is still a judicial power. Accordingly, *Wong Wing* held that subjecting unlawfully present aliens "to infamous punishment at hard labor" and "confiscating their property"—remedies that would deprive them of their vested rights—required a "judicial trial." *Id.* The executive could not impose these remedies itself, even in the immigration context.

Oceanic Steam Navigation Co. v. Stranahan, 214 U.S. 320 (1909), is not to the contrary. In that case, a "steamship company sought the recovery of money paid to [a] collector of customs" in exchange for clearance papers, after it "br[ought] into the United States alien immigrants afflicted with loathsome or dangerous contagious diseases." *Id.* at 329, 332 (quotation marks omitted). DOL claims that *Oceanic Steam* broadly "allows executive officers to impose penalties for immigration violations." DOL.Br.32–34. "The Court's holding, however, rested on the premise that ship owners had *no vested private right* to the issuance of clearance papers." Nelson, *supra*, at 604 n.189 (emphasis added). The authority to "sail on public waters was a quasi-public privilege." *Id.* And so Congress could "endow administrative officers with discretion to refuse to perform the administrative act of granting a clearance." *Oceanic Steam*, 214 U.S. at 343.[2] Indeed, the "private party involved knew the outcome of the executive dispute-resolution process" in advance of its bid for that privilege. John Harrison, *Public Rights, Private Privileges, and Article III*, 54 U. Ga. L. Rev. 143, 183 (2019). It simply chose to pay a penalty to secure "access to a privilege administered by the executive." *Id.* at 186; *see Oceanic Steam*, 214 U.S. at 329.

This case is different. Sun Valley may not have a vested right *to participate in the H-2A program*. And, if that is the case, then DOL could act through administrative adjudication to exclude Sun Valley from that program going forward. But that is not the remedy that the agency sought and secured. It instead issued a binding order that retroactively imposed hundreds of thousands of dollars in penalties and back wages on a private citizen. Imposing those remedies entails an exercise of judicial power. *See supra* Section I.B. Accordingly, the political branches could not "siphon [the] action away from an Article III court." *Jarkesy*, 603 U.S. at 135.

DOL argues otherwise only by focusing on the wrong question. "[T]he government interest being pursued, the adjudication's subject matter, and the existence of analogous suits at common-law are all beside the point." Showalter, *supra*, at 377. Rather, the remedy sought by the government decides the Article III question. *See id.* And the remedy here—

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[2] The Court again upheld this statutory scheme in *Lloyd Sabaudo Societa Anonima Per Azioni v. Elting*, 287 U.S. 329, 333–35 & n.1 (1932), where the law remained "substantially the same," except for the levels of fines that Congress authorized.

issuing a binding order to deprive Sun Valley of its private property—confirms that DOL has exercised the "judicial Power of the United States." U.S. Const. art. III, § 1. That was beyond its constitutional authority.

3. DOL's attempt to blur this into a case of "government-granted privileges" fails for the same reasons. DOL.Br.30. Privileges are "matter[s] that can be pursued only by grace of the other branches." *Stern*, 564 U.S. at 493. "As such, they were not understood to vest in private individuals in the same way as core private rights." Nelson, *supra*, at 568. And their adjudication required no exercise of judicial power.

But no privilege is at issue here. Even if Sun Valley does not have a "vested right to import foreign labor," DOL.Br.32, Sun Valley unquestionably *does* have a "vested right" to the funds it holds in cash or its bank accounts, *see, e.g.*, *Phillips v. Wash. Legal Found.*, 524 U.S. 156, 164 (1998); *FDIC v. Pioneer State Bank*, 382 A.2d 958, 962 (N.J. Super. Ct. Law Div. 1977). DOL has only come after those funds. *See* Pet.App.180a. It has not restricted Sun Valley's ability to import foreign labor; it has deprived Sun Valley of its private property through an in-house proceeding.

That distinguishes this case from those involving the government's issuance of "patents, pensions, payments to veterans, and grants of public lands." DOL.Br.30 (citing *Jarkesy*, 603 U.S. at 130). None of the rights at stake in those cases were vested in any private party at the time of the executive adjudication. That is what made them "public rights." The government's decisions to *dispense property to* certain

Americans "did not deprive any people of their private rights to life, liberty, or property." Baude, *supra*, at 1542 (citing Nelson, *supra*, at 568–69).

By contrast, when the government seeks to *take property from* Americans, as in this case, the judicial power is implicated. As a result, DOL's claims "cannot be deemed a matter of 'public right' that can be decided outside the Judicial Branch" without Sun Valley's consent. *Stern*, 564 U.S. at 488.

II. Enforcement Targets May Choose to Resolve Their Private Rights Disputes Outside of an Article III Court.

Although Sun Valley has a constitutional right to an Article III adjudication here, that does not mean that agencies may never adjudicate claims involving private rights. An enforcement target may consent to resolve such disputes through an alternative kind of proceeding. This Court should make that clear once again.

A. Adjudication By Consent Does Not Require an Exercise of Judicial Power.

Some litigants may prefer an administrative adjudication to an Article III adjudication, just as some litigants may forgo government actors entirely and seek private arbitration. The Constitution poses no barrier to litigants choosing either of these options.

Indeed, such adjudication by consent in non-Article III tribunals has been around since the Founding. "[D]uring the early years of the Republic, federal courts, with the consent of the litigants, regularly referred adjudication of entire disputes to non-Article III referees, masters, or arbitrators, for entry of final judgment in accordance with the referee's report." *Wellness Int'l Network*, 575 U.S. at 674 (citation omitted). This "[p]ractice of referring pending actions under a rule of court, by consent of parties, was well known at common law." *Heckers v. Fowler*, 69 U.S. (2 Wall.) 123, 131 (1864). And it has never been held "contrary to law" in the United States, *Newcomb v. Wood*, 97 U.S. (7 Otto) 581, 583 (1878), particularly not where "Article III courts retain supervisory authority over the process," *Wellness Int'l Network*, 575 U.S. at 678.

That is because consent dispenses the need for an exercise of "judicial power." Disputes that might otherwise qualify for Article III jurisdiction may always be settled consensually by the parties themselves. A pre-suit resolution of such a dispute obviously requires no exercise of judicial power, and a post-suit settlement rarely does so. *See* Fed. R. Civ. P. 41(a)(2). Likewise, disputes may "be 'settled' by parties through their submission to an alternative mode of resolution, whether that be a private arbitrator or an administrative tribunal." John M. Golden & Thomas M. Lee, *Federalism, Private Rights, and Article III Adjudication*, 108 Va. L. Rev. 1547, 1606 (2022). That does not require an exercise of the judicial power either. *See Wellness Int'l Network*, 575 U.S. at 686 (Alito, J., concurring) ("No one believes that an arbitrator exercises '[t]he judicial Power of the United States.'" (quoting U.S. Const. art. III, § 1)).

In such a case, the decisionmaker's "ability to adjudicate" comes from a "nongovernmental source"—the "consent of the parties." Baude, *supra*, at 1521. And the decisionmaker can thereby resolve the dispute under "the ordinary powers of contract that can be bestowed upon anybody." *Id.* at 1557. In that way, the parties' consent does not "confer judicial power" on the decisionmaker; rather, it "make[s] judicial power unnecessary." *Id.*; *accord* Christopher J. Walker & David Zaring, *The Right to Remove in Agency Adjudication*, 85 Ohio St. L.J. 1, 17 (2024).

Adjudication by consent thus does not trammel on the authority of Article III courts. What Congress or the Executive may not do is *require* dispute resolution of private rights outside of Article III courts. But, like an arbitrator, an agency adjudicating matters under the authority of the parties' consent does not exercise the "judicial Power of the United States." U.S. Const. art. III, § 1. The proceeding thus poses "no structural concern[s]" or "infringement on the prerogative of the federal courts." *Wellness Int'l Network*, 575 U.S. at 676; *see* Baude, *supra*, at 1557.

The availability of consensual adjudication outside of Article III also does not imperil any individual right that Article III may protect. After all, litigants "may knowingly and voluntarily waive many of the most fundamental protections afforded by the Constitution." *United States v. Mezzanatto*, 513 U.S. 196, 201 (1995). And the protections afforded by Article III are no different. As this Court has held, "litigants may waive their personal right to have an Article III judge preside over a civil trial." *Peretz v. United States*, 501 U.S. 923, 936 (1991) (citing *CFTC v. Schor*, 478 U.S. 833, 848 (1986)). That "personal right" is "subject to waiver" just like any "other personal constitutional rights that dictate the procedures by which civil and criminal matters must be tried." *Schor*, 478 U.S. at 848–49. Therefore, Congress may constitutionally establish non-Article III tribunals "which willing parties may, at their option, elect to resolve their differences." *Id.* at 855.

B. The Standard for Consenting to Non-Article III Adjudication Is Demanding.

Still, it "bears emphasizing" that a litigant's consent must be truly "knowing and voluntary." *Wellness Int'l Network*, 575 U.S. at 685. And that standard is—and must be—a rigorous one.

As with other constitutional rights, courts must "indulge every reasonable presumption against waiver" of the right to an Article III court. *Aetna Ins. Co. v. Kennedy ex rel. Bogash*, 301 U.S. 389, 393 (1937). They cannot imply "[c]onstructive consent" from the fact that a litigant participated in a government program that authorizes administrative adjudication. *See Coll. Sav. Bank v. Fla. Prepaid Postsecondary Educ. Expense Bd.*, 527 U.S. 666, 681–82 (1999) (citation omitted). And that is particularly true for small businesses. They and other less-resourced parties are not well positioned to assess whether participating in a government program will result in submitting to a non-Article III adjudication—and what they may lose from that in-house process.

At the same time, the government cannot force litigants to "give up" their rights to Article III courts "as a condition precedent" to their participation. *Koontz v. St. Johns River Water Mgmt. Dist.*, 570 U.S. 595, 607 (2013) (quotation marks omitted). That would run afoul of "the unconstitutional conditions doctrine," which vindicates individual constitutional rights "by preventing the government from coercing people into giving them up." *Id.* at 604; *see also* Walker & Zaring, *supra*, at 17 n.94 ("[C]onsent must be, well, consensual. For instance, one could imagine a regulatory scheme raising questions of unconstitutional conditions if the regulated entity had to consent or waive an Article III adjudication at the outset in order to receive a permit, obtain a government benefit, or otherwise gain access to a regulated market.").

Instead, the "key inquiry is whether 'the litigant or counsel was made aware of the need for consent and the right to refuse it, and still voluntarily appeared to try the case' before the non-Article III adjudicator." *Wellness Int'l Network*, 575 U.S. at 685 (quoting *Roell v. Withrow*, 538 U.S. 580, 590 (2003)). This demanding standard ensures that consent will be found only where the litigant has "intentional[ly] relinquish[ed] or abandon[ed]" a "known right" to the protections of an Article III court—the same waiver standard that applies for other constitutional rights. *Johnson v. Zerbst*, 304 U.S. 458, 464 (1938).

Measured by that standard, this case plainly was not resolved by a constitutional form of consent. The lower court held that "Sun Valley lacked any real choice about where it could challenge DOL's action, meaning that it 'did not truly consent to' adjudication before an ALJ." Pet.App.18a (quoting *Wellness Int'l Network*, 575 U.S. at 681). And DOL does not challenge that conclusion on appeal. Accordingly, there is no question that the executive agency exercised judicial power.

* * *

The resolution of this case "ultimately turns on very basic principles." *Stern*, 564 U.S. at 469. Article III vests the courts with "[t]he judicial Power of the United States," and it entrusts the courts to decide "all cases, in Law and Equity," arising under federal law. U.S. Const. art. III, §§ 1–2. Nevertheless, DOL took matters into its own hands. Serving as both prosecutor and judge, it unilaterally issued a binding order that requires Sun Valley to pay hundreds of thousands of dollars in penalties and back wages. That deprivation of Sun Valley's private rights was a straightforward exercise of judicial power—by an entity that lacks the essential attributes of an Article III court. The Constitution does not tolerate such forced agency adjudication.

CONCLUSION

The Court should affirm the judgment below.

Respectfully submitted,

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