IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

JOE MANIS, Plaintiff, v. U.S. DEPARTMENT OF AGRICULTURE; THOMAS JAMES VILSACK, in his official capacity as the Secretary of Agriculture; MICHAEL WATSON, in his official capacity as Administrator of the Animal and Plant Health Inspection Service, Defendants.	Case No. 1:24-cv-00175

BRIEF IN SUPPORT OF PLAINTIFF'S MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION WITH REQUEST FOR ORAL ARGUMENT

Plaintiff Joe Manis moves for a temporary restraining order and preliminary injunction against Defendants U.S. Department of Agriculture ("USDA"); Thomas James Vilsack, the Secretary of Agriculture (the "Secretary"); and Michael Watson, the Administrator of the Animal and Plant Health Inspection Service ("APHIS") (collectively, the "Defendants") to immediately stay USDA's ongoing administrative prosecution of Mr. Manis for an alleged violation of the Horse Protection Act ("HPA") in an unconstitutionally structured USDA adjudication (HPA Docket No. 23-J-0044) (the "USDA

Adjudication"). The USDA's Judicial Officer unconstitutionally makes final decisions for the agency without a proper appointment or holding an office. USDA administrative law judges ("ALJs") are not properly supervised and are unconstitutionally shielded from removal by two layers of tenure protection. And USDA's in-house tribunal deprives Mr. Manis of his right to a neutral Article III judge and a jury of his peers under the Seventh Amendment. The continued use of an unconstitutional process like this results in irreparable harm to parties like Mr. Manis.

The hearing in Mr. Manis's case is currently scheduled for the week of April 29, 2024, and the ALJ has refused to stay the case. Mr. Manis requests that the Court immediately issue a temporary restraining order staying the USDA Adjudication and subsequently issue a preliminary injunction of the same on an expedited basis. Mr. Manis has made efforts to provide notice to Defendants to ensure that they can promptly respond to this motion. A stay of the USDA Adjudication is necessary to ensure that Mr. Manis does not continue to suffer an injury each and every day by being subjected to an unconstitutional adjudication process. It

will also provide time for Mr. Manis's constitutional claims to be considered, and for him to seek any necessary appellate relief, prior to the late April 2024 hearing to ensure he does not forever lose his right to avoid this unconstitutional USDA Adjudication.

STATEMENT OF THE FACTS

I. Mr. Manis's Walking Horse Career

Joe Manis is a retired North Carolina businessman, who has spent decades involved in the Tennessee Walking Horse community. Compl. ¶ 1. The Tennessee Walking Horse and its desirable gait is the basis for a significant horse-showing industry. *See id.* ¶¶ 15-17. They perform three distinct gaits: the flat-foot walk, running walk, and canter. *Id.* ¶ 16. And they are shown in competitions for prize money across the Southeast. *Id.* ¶ 17.

Mr. Manis has been an active member of the North Carolina Walking Horse Association for 30 years. ("NCWHA"). *Id.* ¶ 1. He has many times served as president of the NCWHA, and has served in virtually every position with that association at some time. *Id.* ¶ 22. In January 2024, Mr. Manis for the second time received the North Carolina Walking Horse Association ("NCWHA") Senior Horse Person award, given to recognize

participants who best epitomize sportsmanship, success, and contributions to the good of the walking horse breed. *Id.* ¶ 25.

II. The Horse Protection Act

The Tennessee Walking Horse industry has sometimes involved the unfortunate practice of horse soring. Compl. ¶ 27. Abusive trainers intentionally inflict pain on the legs of a horse through devices or chemicals to exaggerate the horse's gait for advantage in competitions. *Id.*; 15 U.S.C. §§ 1821(3); 1822(2).

In 1970, Congress passed the HPA in an effort to prohibit horse soring in competitive events. 15 U.S.C. § 1821, et seq. The HPA does not ban soring itself, but prohibits, among other things, the showing or exhibition of sore horses. 15 U.S.C. § 1824(2). The Secretary can impose inflation-adjusted civil monetary penalties of up to $6,781 per violation and disqualify violators from the walking horse industry. 15 U.S.C. § 1825(b) and (c); 88 Fed. Reg. 30,029, 30,032 (May 10, 2023).

The HPA is enforced through inspections at horse shows conducted by licensed individuals appointed by the show's

management and by USDA employees. 15 U.S.C. § 1823(c) and (e); 9 C.F.R. §§ 11.4 and 11.7. Horses found to be sore must be disqualified from the competition. 9 C.F.R. § 11.20(a) and (b). And USDA can initiate civil enforcement proceedings to address disqualifications. *See* 9 C.F.R. § 11.25(f).

III. USDA's In-House Adjudication Process

USDA enforces the HPA through its in-house adjudication process. 9 C.F.R. § 12.1. Civil monetary penalties and disqualification orders can only be imposed by the Secretary after notice and a hearing. 15 U.S.C. § 1825(b) and (c). But the Secretary delegated that power to USDA's Judicial Officer, creating a two-tier adjudication process that excludes the Secretary entirely. *See* 7 C.F.R. §§ 1.131, 1.144-45, 2.27, 2.35(a). Improperly supervised ALJs and an improperly appointed Judicial Officer now determine liability for alleged HPA violations. *See* 7 C.F.R. §§ 2.27, 2.35(a).

The current USDA adjudication process arose from the 1940 Schwellenbach Act, which allows the Secretary to delegate his final decision-making authority in adjudications to not more than two "officers or employees" of USDA. 7 U.S.C. § 2204-2. The Secretary's delegations of authority are "vested by law

in the individual to whom the delegation is made, instead of in the Secretary of Agriculture." 7 U.S.C. § 2204-3.

Pursuant to the Schwellenbach Act, the Secretary created a Judicial Officer and delegated to him the Secretary's final decision-making authority in many USDA adjudications. 7 C.F.R. § 2.35; 10 Fed. Reg. 13,769 (Nov. 9, 1945). The Judicial Officer hears appeals from the initial decisions of ALJs and issues a final decision for USDA. 7 C.F.R. § 1.145. Only decisions of the Judicial Officer are "final for purposes of judicial review." 7 C.F.R. §§ 1.139, 1.142(c)(4), 1.145(i). The Secretary cannot review the Judicial Officer's decisions because of the statutory bar on the retroactive revocation of a delegation. 7 U.S.C. § 2204-3. "'The purpose of [the Judicial Officer] is to relieve the Secretary, completely, of the responsibilities imposed by law on a final deciding officer in such proceedings.'" *In re: World Wide Citrus*, 50 Agric. Dec. 319, 331 (U.S.D.A. May 9, 1991).

ALJs make the initial decision in each adjudication, 7 C.F.R. § 2.27(a)(1), and are appointed pursuant to 5 U.S.C. § 3105. USDA ALJ appointments are made by the Secretary. *See, e.g.*, *In re: Philip Trimble*, 77 Agric. Dec. 15, 17 (U.S.D.A.

June 8, 2018). USDA ALJs can be removed "only for good cause established and determined by the Merit Systems Protection Board" ("MSPB"). 5 U.S.C. § 7521(a). USDA ALJs are empowered to manage hearings like a trial-court judge, 7 C.F.R. § 1.144(c), and are bound by "specific [Judicial Officer] precedent," *In re Kenny Compton*, 78 Agric. Dec. 151, at *4 (U.S.D.A. Feb. 25, 2019). ALJs' initial decisions are only reviewed if appealed. 7 C.F.R. § 2.27(a)(1).

IV. USDA Proceedings Against Mr. Manis

On May 19, 2023, APHIS filed a complaint against Mr. Manis alleging that he violated the HPA by allowing the entry into a Virginia horse show of a horse he owned while the horse was allegedly sore. Ex. A (Complaint). While APHIS alleges that the horse was sore, it does not allege that Mr. Manis sored the horse, caused the horse to become sore, or otherwise abused the horse. *Id.* In fact, APHIS does not allege who sored the horse. *Id.* Mr. Manis denied the allegation. Ex. B (Answer). On February 21, 2024, USDA ALJ Jill Clifton proposed scheduling the hearing for the week of April 22, 2024. Ex. C (Feb. 21, 2024, email from T. Kakassy to B. Rickets, et al.) On February 22, 2024, Mr. Manis moved to dismiss the USDA

Adjudication on the grounds that the USDA's internal adjudication process is unconstitutionally structured. Ex. D (Motion to Dismiss). On February 27, 2024, Mr. Manis requested that no hearing be scheduled given his constitutional challenges and the anticipated filing of this complaint. Ex. E at 5 (Feb. 29, 2024 email from T. Kakassy to J. Clifton, et al.). On February 28, 2024, Judge Clifton refused to stay the case. *Id.* at 3-4. In light of this refusal, Mr. Manis indicated his availability the week of April 29, 2024, for the hearing. *Id.* at 3. The hearing is currently scheduled for that week. *See id.* at 1–2. On March 1, 2024, Mr. Manis filed this case to enjoin the USDA Adjudication. Compl., ECF No. 1.

Mr. Manis faces a here-and-now injury if he is forced to continue defending himself in this unconstitutional process; an injury that cannot be undone. Only this Court can provide Mr. Manis with relief. Mr. Manis requests that the USDA Adjudication, including the upcoming April 2024 hearing, be immediately enjoined unless and until the allegation can be brought in a proper forum.

QUESTION PRESENTED

Whether a temporary restraining order and preliminary injunction of the USDA Adjudication is warranted where the adjudication process is unconstitutionally structured: the final decision-maker is unconstitutionally exercising principal officer power, USDA's ALJs are improperly supervised and protected from removal by two layers of tenure protection, and Mr. Manis is denied his rights to a jury trial and to have his case heard in an Article III court.

LEGAL STANDARD

To obtain a preliminary injunction, a movant must establish four factors: "(1) that he's likely to succeed on the merits; (2) that he's likely to suffer irreparable harm if preliminary relief isn't granted; (3) that the balance of equities favors him; and (4) that an injunction is in the public interest." *Frazier v. Prince George's Cnty.*, 86 F.4th 537, 543 (4th Cir. 2023). The same standard applies to a motion for a temporary restraining order. *W.R. Vernon Produce, Co. v. Backyard Produce, LLC*, Case No. 1:15CV911, 2015 WL 12564215, at *1 (M.D.N.C. Nov. 2, 2015). Where there is a "likely constitutional violation, the irreparable harm factor is satisfied" and the remaining two factors "favor[]"

a preliminary injunction. *Leaders of a Beautiful Struggle v. Baltimore Police Dep't*, 2 F.4th 330, 346 (4th Cir. 2021) (en banc). An affidavit from Mr. Manis and an attorney certification accompanying this motion describe the "immediate and irreparable" nature of Mr. Manis's injury and the efforts made to give notice to Defendants pursuant to Federal Rule of Civil Procedure 65(b)(1). Declaration of J. Manis ¶ 6–8; Rule 65(b) Attorney Certification.

ARGUMENT

I. Mr. Manis Is Likely to Succeed on the Merits

USDA's internal adjudication process runs afoul of several constitutional guarantees: the Appointments Clause, the Seventh Amendment, Article II, and Article III. Under Supreme Court precedent, Mr. Manis is likely to succeed on these claims.

A. This Court Has Jurisdiction To Hear Structural Constitutional Challenges to Administrative Adjudications

In *Axon Enterprise, Inc. v. FTC*, 598 U.S. 175, 180, 195 (2023), the Supreme Court held that parties bringing "structural" or "fundamental" challenges to an in-house agency adjudication, as Mr. Manis is here, must receive a remedy before the hearing. *Axon* overruled *Bennett v. SEC*, 844

F.3d 174, 188 (4th Cir. 2016), which held that such collateral claims are unavailable. Mr. Manis's structural constitutional challenges meet *Axon*'s criteria and USDA has previously taken the position that similar claims should be decided in federal court. *See, e.g.*, Ex. F at 2-5.

B. The Judicial Officer Is Unconstitutionally Exercising Principal Officer Power

An officer of the United States has two features: (1) he "must occupy a 'continuing' position established by law" and (2) he "'exercis[es] significant authority pursuant to the laws of the United States.'" *Lucia v. SEC*, 585 U.S. 237, 245 (2018). Officers must be appointed to their offices as required by the Appointments Clause. *Id.* at 244. Any officer may be appointed by the President "with the Advice and Consent of the Senate." U.S. CONST. art. II, § 2, cl. 2. "[I]nferior Officers," if Congress so designates, may be appointed by "the Heads of Departments." *Id.* The test for distinguishing an inferior officer from a principal officer is supervision: "An inferior officer must be 'directed and supervised at some level by others who were appointed by Presidential nomination with the advice and consent of the Senate.'" *United States v. Arthrex*, 141 S. Ct. 1970, 1980 (2021).

USDA's Judicial Officer functions as an officer of the United States because he "'exercis[es] significant authority.'" *Lucia*, 585 U.S. at 245. He "[a]ct[s] as final deciding officer in [USDA] adjudicatory proceedings subject to" the APA. 7 C.F.R. § 2.35. In that capacity, he is responsible for adjudicating the imposition of substantial civil monetary penalties and potentially crippling disqualification orders in HPA cases. 15 U.S.C. § 1825(b) and (c). Such adjudicative authority is sufficiently significant that it must be exercised by an officer. *Arthrex*, 141 S. Ct. at 1980; *Lucia*, 585 U.S. at 247–49. But for the Judicial Officer to properly exercise that authority, "the nature of [his] responsibilities" must be "consistent with [his] method of appointment." *Arthrex*, 141 S. Ct. at 1980. It is not.

1. The Judicial Officer Functions as a Principal Officer Without a Proper Appointment

The Judicial Officer functions as a principal officer, issuing unreviewable final decisions for USDA in its adjudications, without the requisite presidential appointment and Senate confirmation. 7 U.S.C. § 2204-3; 7 C.F.R. § 2.35; *Arthrex*, 141 S. Ct. at 1985. That arrangement violates the Appointments Clause. *See Arthrex*, 141 S. Ct. at 1985. "Only

an officer properly appointed to a principal office may issue a final decision binding the Executive Branch" in an agency adjudication. *Id.*

For an adjudicative officer to function as an inferior officer, his direction and supervision by a principal officer must include review of the inferior officer's decisions. *See id.* at 1981. Principal officer review has been the "traditional rule" for final executive decisions "[s]ince the founding." *Id.* at 1983–84. And *Arthrex* confirmed that for adjudicative officers the "significant" factor in determining officer status is principal officer review. *Id.* at 1981 (quoting *Edmond v. United States*, 520 U.S. 651, 665 (1997)).

The Judicial Officer functions as a principal officer because his decisions cannot be reviewed by the Secretary. *See Arthrex*, 141 S. Ct. at 1981. The Judicial Officer issues the final decision in HPA adjudications, and the respondent must seek judicial review of that decision rather than appeal to the Secretary. 7 C.F.R. §§ 1.145(i), 2.35(a)(1). The statute through which the Secretary delegated his final decision-making authority to the Judicial Officer considers the delegated authority to be "vested by law in the" delegee

and cannot be retroactively revoked. 7 U.S.C. § 2204-3. The statutory prohibition on retroactive revocation prevents the Secretary from reviewing a decision of the Judicial Officer once it is made. *Id.* Moreover, intervention by the Secretary after the Judicial Officer's decision denies the due process right to a fair trial. *Utica Packing Co. v. Block*, 781 F.2d 71, 78 (6th Cir. 1986). The Secretary "is obliged to follow" his established rules of practice. *Ballard v. Comm'r*, 544 U.S. 40, 59 (2005). "There is no guarantee of fairness when the one who appoints a judge has the power to remove the judge before the end of proceedings for rendering a decision which displeases the appointer." *Utica Packing*, 781 F.2d at 78.

The Judicial Officer's principal officer authority is incompatible with his method of appointment. *See Arthrex*, 141 S. Ct. at 1985. Principal officers must be appointed by the President "with the Advice and Consent of the Senate." U.S. CONST. art. II, § 2, cl. 2. But the Judicial Officer is only appointed by the Secretary. 7 C.F.R. § 2.35; 10 Fed. Reg. 13,769 (Nov. 9, 1945); About the Judicial Officer, U.S. Dept. of Agric., https://www.usda.gov/oha/ojo/judicial-officer (last visited Mar. 5, 2024). Thus, the Judicial Officer is

exercising his final decision-making authority in violation of the Appointments Clause. *See Arthrex*, 141 S. Ct. at 1985.

2. The Judicial Officer Does Not Hold an Office Created by Statute

Even if the Judicial Officer functions as an inferior officer, he still cannot exercise that authority because Congress did not create an office for the Judicial Officer. *See Lucia*, 585 U.S. at 248. An office must be "established by Law," U.S. CONST. art. II, § 2, cl. 2, such that its "'duties, salary, and means of appointment'" are "created by statute," *Lucia*, 585 U.S. at 248; *Burnap v. United States*, 252 U.S. 512, 516–18 (1920) (landscape architect not an officer where no statute created such an office).

The Judicial Officer is entirely a creation of the Secretary through a delegation of authority: the Judicial Officer holds no office established by Congress and was neither appointed by the President nor confirmed by the Senate. *See* 7 U.S.C. § 2204-2; 7 C.F.R. § 2.35. The Secretary delegated his authority to the Judicial Officer pursuant to statutes that never mention such an office. Schwellenbach Act, ch. 75, 54 Stat. 81 (1940); Reorganization Plan No. 2 of 1953, 18 Fed. Reg. 3219, 3219–21 (June 5, 1953), *reprinted as*

amended in 5 U.S.C. app. at 145–46. In fact, Congress affirmatively decided *not* to create a new office held by a principal officer with authority to make final adjudicative decisions for USDA when it authorized the Secretary to delegate his decision-making authority. *In re World Wide Citrus*, 50 Agric. Dec. at 335–44.

The lack of a statutorily created office is doubly problematic for an inferior officer appointed by a head of department. The Appointments Clause only permits inferior officers to be appointed by a head of department if Congress "vest[ed]" that authority in him "by Law." U.S. CONST. art. II, § 2, cl. 2. Otherwise, even an inferior officer must be appointed by the President and confirmed by the Senate. *Arthrex*, 141 S. Ct. at 1979.

Because the Judicial Officer does not hold an office specifically created by a statute that "vest[s]" appointment authority in the Secretary, he is an employee who cannot exercise officer-level authority. U.S. CONST. art. II, § 2, cl. 2; *Lucia*, 585 U.S. at 245–48.

3. USDA ALJs Are Improperly Supervised Inferior Officers

Additionally, if the Judicial Officer is only an inferior officer, that necessarily creates another constitutional problem. The ALJs, whom the Judicial Officer supervises, lack oversight from a properly appointed officer. *See Arthrex*, 141 S. Ct. at 1980–81.

The USDA ALJs' office and method of appointment are consistent with a role as inferior officers. *See Lucia*, 585 U.S. at 244–49. USDA ALJs are appointed to an office created by statute. 5 U.S.C. §§ 556–57, 5372, 3105; *Lucia*, 585 U.S. at 248. And the Secretary appoints USDA's ALJs in conformance with the Appointments Clause. *See, e.g., In re: Trimble*, 77 Agric. Dec. at 17; U.S. CONST. art. II, § 2, cl. 2; 5 U.S.C. § 3105 (authorizing agencies to appoint ALJs). USDA ALJs also exercise significant authority consistent with an officer, like the SEC ALJs. *Lucia*, 138 S. Ct. at 244–49; 7 C.F.R. §§ 1.144(c), 2.27(a)(1).

USDA ALJs are supervised through two different individuals: the Judicial Officer and the Secretary. *See* 7 C.F.R. §§ 1.131, 1.145, 2.35. The Judicial Officer is the exclusive avenue for review of USDA ALJs' initial decisions.

7 C.F.R. § 1.145. And the Judicial Officer's decisions are precedential for USDA ALJs. *In re Kenny Compton*, 78 Agric. Dec. at *4. The Secretary sets the regulations that USDA ALJs must follow. 7 C.F.R. § 1.131.

This supervision structure creates a distinct constitutional problem. The Secretary alone does not provide adequate principal officer supervision of USDA ALJs if the Judicial Officer is not a principal officer. *See Arthrex*, 141 S. Ct. at 1980–81. The inferior officer ALJs must have their decisions reviewed by a principal officer. *See id.* at 1980. But the Secretary cannot review USDA ALJs' initial decisions because it would violate the due process guarantees of the Fifth Amendment. *See Utica Packing*, 781 F.2d at 78. The Secretary is "obliged to follow" his established rules of practice when USDA is functioning as a "decisionmaking tribunal[]." *Ballard*, 544 U.S. at 59. The Due Process Clause of the Fifth Amendment does not permit the Secretary to intervene at will to review an ALJs decision himself. *See Utica Packing*, 781 F.2d at 78. If the Secretary as a "disappointed litigant" can replace a judge with *himself* during a proceeding, "[a]ll notions of judicial impartiality

would be abandoned" and the "risk of unfairness [would] be 'intolerably high.'" *Id.*

Because the Judicial Officer never received a proper appointment as a principal officer, and the Secretary does not provide such adequate supervision, the USDA ALJs lack required accountability to the President. *See Arthrex*, 141 S. Ct. at 1980.

C. USDA's ALJs' Dual-Tenure Protection Contravenes Article II

The Constitution requires that the President "take Care that the Laws be faithfully executed." U.S. CONST. art. II, § 3. "'[A]s a general matter,' the Constitution gives the President 'the authority to remove those who assist him in carrying out his duties.'" *Seila L. LLC v. CFPB*, 140 S. Ct. 2183, 2191 (2020). For inferior officers, such as USDA ALJs, "the President may not be 'restricted in his ability to remove a principal officer, who is in turn restricted in his ability to remove an inferior officer, even though that inferior officer determines the policy and enforces the laws of the United States.'" *K & R Contractors, LLC v. Keene*, 86 F.4th 135, 146–47 (4th Cir. 2023).

USDA ALJs enjoy two layers of tenure protection through the MSPB. 5 U.S.C. § 7521(a); 5 U.S.C. § 1202(d). But they "exercise significant executive power" such that the President's removal authority cannot be restricted by two layers of tenure protection. *See Free Enter. Fund v. Pub. Co. Acct. Oversight Bd.*, 561 U.S. 477, 514 (2010); *see also supra* Part I.B.3. USDA ALJs, as inferior officers who manage administrative hearings, "are sufficiently important to executing the laws that the Constitution requires that the President be able to exercise authority over their functions." *Jarkesy v. SEC*, 34 F.4th 446, 464 (5th Cir. 2022), *cert. granted*, 143 S. Ct. 2688 (2023); *see also supra* Part I.B.3. And while their function is adjudicatory, it is an "exercise[] of ... the executive Power, for which the President is ultimately responsible." *Arthrex*, 141 S. Ct. at 1982 (quotation marks omitted).

D. USDA's In-House Adjudication Process Denies Mr. Manis His Seventh Amendment Right to a Jury Trial

The HPA violation Mr. Manis is alleged to have committed is essentially a common-law claim involving private rights for which Mr. Manis is entitled to a jury trial. *See Jarkesy*, 34 F.4th at 452–59. The Seventh Amendment provides that "[i]n

Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved." U.S. CONST. amend. VII. There are two parts to analyzing whether a statutory claim constitutes a suit at common law. *First*, the statutory claim must be sufficiently analogous to "18th-century actions brought in the courts of England prior to the merger of the courts of law and equity" and provide a legal remedy. *Tull v. United States*, 481 U.S. 412, 417-18 (1987). *Second*, the claim must regard private rights such that it cannot be assigned to a tribunal other than an Article III court. [1] *Granfinanciera, S.A. v. Nordberg*, 492 U.S. 33, 42, 51 (1989). The allegation against Mr. Manis satisfies both parts of the analysis and must be tried before a jury.

[1] The second factor should be abandoned, and the Seventh Amendment applied to all "Suits at common law" irrespective of the forum to which they are assigned. *See Parsons v. Bedford, Breedlove & Robeson*, 28 U.S. (3 Pet.) 433, 447 (1830). It was ratified to prohibit Congress from doing exactly what the second factor permits. *See U S v. Wonson*, 28 F. Cas. 745, 750 (C.C.D. Mass. 1812) (Story, J.). Mr. Manis acknowledges this argument is foreclosed by Fourth Circuit and Supreme Court precedent. *Atlas Roofing Co., Inc. v. OSHRC*, 430 U.S. 442 (1977); *Sasser v. Adm'r, E.P.A.*, 990 F.2d 127, 130 (4th Cir. 1993). He raises it to preserve it for later appeals.

1. The Allegations Against Mr. Manis Are Common Law Actions in Debt That Require a Jury Trial

Government enforcement actions that seek civil monetary penalties are common law actions that require a jury trial. *Tull*, 481 U.S. at 418–20. The Supreme Court has already settled that civil monetary penalty suits are "a particular species of an action in debt" that were handled in English courts of law. *Id.* at 418. At issue in *Tull* was the imposition of civil monetary penalties just as it is here. *Id.* at 420; 15 U.S.C. § 1825(b)(1). So, if the allegation against Mr. Manis cannot be adjudicated outside an Article III court, he is entitled to a jury trial. *Tull*, 481 U.S. at 420.

2. The HPA Allegation Cannot Be Assigned to a USDA Adjudication

Private rights suits must be litigated in Article III courts with a jury as guaranteed by the Seventh Amendment. *Granfinanciera*, 492 U.S. at 51–52. Private rights matters involve "the liability of one individual to another under the law as defined." *N. Pipeline Const. Co. v. Marathon Pipe Line Co.*, 458 U.S. 50, 69–70 (1982) (plurality opinion). Article III courts must also adjudicate cases involving the core private rights at the heart of the judicial power: life, liberty, and property. *See* Caleb Nelson, *Adjudication in the*

Political Branches, 107 COLUM. L. REV. 559, 567, 610–11, 626–27 (2007). Congress is not permitted to "conjure away the Seventh Amendment by mandating that traditional legal claims be ... taken to an administrative tribunal." *Granfinanciera*, 492 U.S. at 52.

On the other hand, actions litigating public rights may be assigned to administrative agencies for adjudication. *Atlas Roofing*, 430 U.S. at 455. Public rights cases are those "in which the Government sues in its sovereign capacity to enforce public rights created by statutes within the power of Congress to enact." *Id.* at 450. That broad and self-referential definition is limited by the circumstances of the case that generated it. *Atlas Roofing* permitted an administrative agency to pursue "a new cause of action, and remedies therefore, unknown to the common law," in a "speedy and expert" agency tribunal. *Id.* at 461. It did not permit Congress to remove any type of enforcement action seeking civil monetary penalties from an Article III court simply by creating a cause of action irrespective of the private rights that are implicated. *See id.*; Nelson, *supra*, at 611.

Two factors determine whether a case involves public rights. *Jarkesy*, 34 F.4th at 453. *First*, public rights cases involve a "'new cause of action, and remedies'" created by Congress that were previously "'unknown to the common law,' because traditional rights and remedies were inadequate to cope with a manifest public problem." *Granfinanciera*, 492 U.S. at 60. *Second*, the Court must consider whether moving the claim to an Article III court would "go far to dismantle the statutory scheme," "impede swift resolution" of the claim, or whether the claim is "incompatible" with a jury trial. *Id.* at 61–63 (quotations omitted).

Mr. Manis is accused of violating a single provision of the HPA: "allowing" as an owner a "horse which is sore" to be "enter[ed] for the purpose of showing or exhibiting in any horse show or horse exhibition." 15 U.S.C. § 1824(2)(D). A statutory proceeding to enforce this prohibition is "'of the sort traditionally enforced in an action at common law.'" *United States v. McHan*, 345 F.3d 262, 273 (4th Cir. 2003). Not only is it an action for civil monetary penalties, but it is also effectively a common law fraud claim. Mr. Manis is entitled to have USDA's claim that involves private rights

adjudicated in an Article III court. *See Jarkesy*, 34 F.4th at 458–59.

A cause of action for fraud is certainly not unknown to the common law. *See Jarkesy*, 34 F.4th at 453–55. It is a quintessential common-law action and has been civilly prosecuted dating back to English common law courts. *Id.* at 453 (citing 3 William Blackstone, Commentaries on the Laws of England *42). The HPA essentially creates a statutory prohibition against common-law fraud in walking horse competitions with a legal remedy and empowers USDA to administratively prosecute those claims. *Compare* 15 U.S.C. §§ 1824–1825 *with Evaluation Research Corp. v. Alequin*, 439 S.E.2d 387, 390 (Va. 1994) (elements of common law fraud); *see also Jarkesy*, 34 F.4th at 453–54. Owners of horses are prohibited from allowing one of their horses to be entered into a horse show while sore to prevent owners from gaining an unfair advantage in the competition and harming fellow competitors. 15 U.S.C. §§ 1822(2), 1824(2)(D). Similar civil fraud suits have been brought by video game companies against players attempting to circumvent anti-cheating measures despite agreeing to a license agreement. *Bungie, Inc. v. L.L.*,

Case No. 2:22-cv-0981-RAJ, 2023 WL 3318588, at *2 (W.D. Wash. May 9, 2023).

Additionally, the claim against Mr. Manis is not "'incompatible'" with a jury trial nor would a jury trial "'go far to dismantle the statutory scheme.'" *Granfinanciera*, 492 U.S. at 61. The HPA does not create an "'expert and inexpensive method for dealing with a class of questions of fact which are particularly suited to examination and determination by [USDA].'" *Stern v. Marshall*, 564 U.S. 462, 494 (2011). USDA does not have a unique adjudication method for HPA violations. *See, e.g.*, 7 C.F.R. § 1.131. The Secretary designated ALJs to hear any APA administrative adjudication for multiple statutes. 7 C.F.R. § 2.27. Additionally, all appeals from initial decisions in USDA adjudicatory proceedings covered by the APA are decided by the Judicial Officer, who also issues the final decision in multiple other circumstances. 7 C.F.R. § 2.35(a). And HPA adjudications are conducted under the same rules as the adjudication of claims under no fewer than 38 other statutes. 7 C.F.R. § 1.131. USDA is effectively operating its own general court system. So, the claim against Mr. Manis could just as easily be heard in

an Article III court before a jury. *See Jarkesy*, 34 F.4th at 455–46.

E. USDA's In-House Adjudication Process Violates Article III

Because APHIS's claim against Mr. Manis involves the adjudication of private rights, the entire case must be brought in an Article III court. *Granfinanciera*, 492 U.S. at 53; *see supra* Part I.D. Article III vests the judicial power of the United States in "one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish." U.S. CONST. art. III, § 1. The same private rights analysis for the availability of a jury trial under the Seventh Amendment is applicable to whether Congress can "assign adjudication of that cause of action to a non-Article III tribunal." *Granfinanciera*, 492 U.S. at 53. The adjudication of a violation of the HPA involves private rights, not public rights. *See supra*, Part I.D.2. So, "Congress may not assign its adjudication to a specialized

non-Article III court lacking 'the essential attributes of the judicial power.'"[2] *Granfinanciera*, 492 U.S. at 53.

II. Mr. Manis Is Irreparably Injured by the USDA Adjudication

"[A] deprivation of a constitutional right, 'for even minimal periods of time, unquestionably constitutes irreparable injury.'" *Miranda v. Garland*, 34 F.4th 338, 365 (4th Cir. 2022). Here, Mr. Manis raises constitutional challenges to the structure of USDA's internal adjudication process. *See supra*, Part I; *Axon*, 598 U.S. at 181–83. Depriving Mr. Manis of the protections of a properly structured adjudication denies constitutional rights. *See Stern*, 564 U.S. at 483. Moreover, Mr. Manis's injury, being subjected "to an unconstitutionally structured decisionmaking process," is ongoing, certain, and will be "impossible to remedy once the proceeding is over." *Axon*, 598 U.S. at 191–92; Declaration of J. Manis at ¶¶ 7–9. Once USDA's

[2] Mr. Manis expressly preserves the argument that the Supreme Court should revisit its Article III precedents, including *Atlas Roofing*, 430 U.S. 442, and require that administrative actions for civil money penalties and disqualification orders be brought in Article III courts because they concern the core private rights of property and liberty and are cases "in Law and Equity." U.S. CONST. art. III, § 2, cl. 1; *Axon*, 598 U.S. at 198 (Thomas, J., concurring).

adjudication process is complete, "[it] cannot be undone," and judicial review of USDA's final decision can provide no relief. *Axon*, 598 S. Ct. at 191. So, the USDA Adjudication must be stayed *now* to stop the injury Mr. Manis is suffering each and every day, Manis Decl. ¶ 7, and to preserve his ability to obtain relief on his constitutional claims before any hearing. Since Mr. Manis is likely to succeed on the merits of his constitutional claims, "the irreparable harm factor is satisfied." *Leaders of a Beautiful Struggle*, 2 F.4th at 346; *see also supra* Part I.

III. Enjoining Mr. Manis's Adjudication Is in the Public Interest

The final two factors, the balance of the equities and the public interest, "'merge when the Government is the opposing party.'" *Miranda*, 34 F.4th at 365. When there is a likely constitutional violation, as there is here, these merged factors are satisfied because USDA "is in no way harmed by issuance of a preliminary injunction which prevents [it] from" using an adjudication process "likely to be found unconstitutional" and "the public interest favors protecting constitutional rights." *Leaders of a Beautiful Struggle*, 2 F.4th at 346. An injunction will not cause substantial harm

to others here because, "[i]f anything, the system is improved by such an injunction." *Centro Tepeyac v. Montgomery Cnty.*, 722 F.3d 184, 191 (4th Cir. 2013). Because Mr. Manis is likely to succeed on the merits of his constitutional challenges, *see supra* Part I, a preliminary injunction is in the public interest, *see Leaders of a Beautiful Struggle*, 2 F.4th at 346.

IV. This Court Should Waive the Bond Requirement

Federal Rule of Civil Procedure 65(c) requires that issuance of preliminary relief be accompanied by a "security" paid by the movant "in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined." Fed. R. Civ. P. 65(c). However, this Court has the discretion to waive the security requirement. *Pashby v. Delia*, 709 F.3d 307, 332 (4th Cir. 2013); *Hoechst Diafoil Co. v. Nan Ya Plastics Corp.*, 174 F.3d 411, 421 (4th Cir. 1999). A bond is not necessary where the movant is seeking to vindicate his constitutional rights because there is "little to no harm [to USDA] by being prohibited from enforcing" an adjudication scheme "that is likely to be found unconstitutional." *Planned Parenthood S.*

Atl. v. Stein, Case No. 1:23-CV-480, 2023 WL 4306306, at *3 (M.D.N.C. June 30, 2023). Accordingly, because Defendants will suffer no damage from the injunction of an unconstitutional adjudication process, Mr. Manis requests the Court waive the requirement of bond.

CONCLUSION

For the foregoing reasons, Mr. Manis respectfully requests a temporary restraining order and preliminary injunction be entered enjoining the USDA Adjudication (HPA Docket No. 23-J-0044).

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Respectfully submitted,

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CERTIFICATE OF COMPLIANCE WITH LOCAL CIVIL RULE 7.3(d)

The undersigned attorney hereby certifies that this brief complies with Rule 7.3(d) of the Rules of Practice and Procedure of the United States District Court for the Middle District of North Carolina. This brief was created using Microsoft Word. Based upon the word count of Microsoft Word, this brief contains 5,798 words, exclusive of the caption, signature lines, the certificate of compliance, and the certificate of service.

/s/ Thomas B Kakassy
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CERTIFICATE OF SERVICE

I hereby certify that on March 6, 2024, I submitted the foregoing to the Clerk of the Court via the District Court's CM/ECF system. I also certify that courtesy copies of the foregoing have been served via next-day mail to the following:

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