No. 25-2001

---

IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

---

JOE MANIS,

*Appellant*,

v.

U.S. DEPARTMENT OF AGRICULTURE; BROOKE ROLLINS, in her official capacity as the Secretary of Agriculture; MICHAEL WATSON, in his official capacity as Administrator of the Animal and Plant Health Inspection Service,

*Appellees*.

---

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
CASE NO. 1:24-CV-00175-WO-JLW

---

# REPLY BRIEF OF APPELLANT

---

JOSHUA M. ROBBINS
ALLISON D. DANIEL
PACIFIC LEGAL FOUNDATION
3100 Clarendon Blvd.
Suite 1000
Arlington, VA 22201
(202) 945-9524
JRobbins@pacificlegal.org
ADaniel@pacificlegal.org

*Counsel for Appellant*

# TABLE OF CONTENTS

**Page**

# TABLE OF AUTHORITIES

**Page(s)**

## Cases

**Constitutional Provisions**

**Statutes**



**Regulations**

## ARGUMENT

Plaintiff Joe Manis continues to defend himself against an allegation that he violated the Horse Protection Act ("HPA") in the U.S. Department of Agriculture's ("USDA") unconstitutionally structured adjudication process (HPA Docket No. 23-J-0044) (the "USDA Adjudication"). During this nearly two-year long litigation, new Supreme Court precedent has further confirmed that (1) the USDA Adjudication must take place in an Article III court with a jury and (2) the Judicial Officer is functioning in violation of the Appointments Clause.

Manis's appeal remains pending before USDA's Judicial Officer—it is currently stayed pending the outcome of this case. Manis continues to suffer a "here-and-now injury" every day that he is subject to the unconstitutionally structured USDA Adjudication. The USDA Adjudication must be permanently enjoined to end this ongoing irreparable injury and allow Manis to obtain relief on his constitutional claims.

### I. Manis Is Entitled to a Jury Trial in an Article III Court

The Seventh Amendment applies to statutory claims that are (1) "legal in nature" and (2) do not fall into the narrow Article III exception for public rights. *SEC v. Jarkesy*, 603 U.S. 109, 122–23, 127 (2024). Here, the claim that Manis unlawfully allowed a sore horse to be entered into a horse show (HPA Claim) is a common law civil money penalty claim, which is "all but dispositive" that the Seventh

Amendment applies. *Id.* at 123. Additionally, the HPA Claim is analogous to common law fraud, breach of contract, and tortious interference, confirming its common law nature. Doc. 9 at 19–25. Thus, the HPA Claim must be adjudicated in an Article III court with a jury. *Jarkesy*, 603 U.S. at 127.

Defendants reject this conclusion, arguing the HPA Claim falls within the public rights exception and bypassing the first step of the Seventh Amendment analysis. Doc. 17 at 15–29. But this is the wrong approach, and it leads Defendants to the wrong conclusion.

**A. The Seventh Amendment Presumptively Applies to the HPA Claim**

When determining whether a claim is "legal in nature," "the remedy [is] the 'more important' consideration." *Jarkesy*, 603 U.S. at 122–23 (citation omitted). This is consistent with the Supreme Court's longstanding rule that the Seventh Amendment applies to civil money penalty claims because they are common law actions in debt, *Tull v. United States*, 481 U.S. 412, 418–20 (1987), which *Jarkesy* applied. 603 U.S. at 123–25.

Here, the HPA Claim includes a punitive civil-money penalty. Doc. 9 at 19–20. This penalty creates a presumption that a jury trial in an Article III court is required. *Jarkesy*, 603 U.S. at 125, 128. In fact, *even if* the HPA Claim "arguably fall[s] within the scope of the public rights doctrine, the presumption is in favor of Article III courts." *Id.* at 132 (cleaned up). Defendants missed this presumption

because they did not analyze first whether the HPA Claim was legal in nature—and their arguments fail to overcome it. Doc. 17 at 15–25.

### B. The Narrow Public Rights Exception, Which Must Be Based in History and Background Legal Principles, Does Not Apply Here

The public rights exception to Article III jurisdiction is limited—"[i]t has no textual basis in the Constitution." *Jarkesy*, 603 U.S. at 131. Therefore, the public rights exception "must [] derive [] from background legal principles" and history. *Id.* *Jarkesy* recognized six public rights exceptions: revenue collection, tariffs, immigration, public lands, Indian–tribal relations, and public benefits. 603 U.S. at 129–30. The HPA Claim fits within none of these six categories. Doc. 9 at 27. And nothing Defendants argue suggests that the HPA Claim should become the seventh.

Defendants—like the district court—flipped on its head *Jarkesy*'s presumption in favor of Article III jurisdiction. In their telling, if a statutory claim does not precisely align with a common law claim, it involves a public right that can be assigned to administrative adjudication. Doc. 17 at 16–23. But Defendants' broad category of "not resembling a common law claim" is inconsistent with the Court's limitation of the public rights exception to matters that "historically could have been determined *exclusively* by [the executive and legislative] branches." *Jarkesy*, 603 U.S. at 128 (emphasis added) (cleaned up). Indeed, given that Article III jurisdiction

extends to equity and admiralty claims, "not common law" cannot be the whole test. *Id.* at 132; U.S. Const. art. III, § 2, cl. 1.

Defendants failed to establish through history and background legal principles that the HPA Claim is a matter that was exclusively determined by the political branches. They simply assert that the HPA Claim "does not resemble any pre-existing actions at common law" and "seeks to eliminate an evil that the common law did not address" (which is wrong for reasons discussed below). Doc. 17 at 18. But as demonstrated by the six categories recognized in *Jarkesy*, the public rights exception requires more. The exception for revenue collection matters was justified with "centuries-old rules" that the court "took pains" to explain. *Jarkesy*, 603 U.S. at 131. The immigration exception was grounded in Congress's "plenary power over immigration." *Id.* at 129. The tariff exception exists because "the political branches had traditionally held exclusive power over this field." *Id.* at 130. Indian tribes are in a unique "trust relationship" with the United States that "informs the exercise of legislative power." *Haaland v. Brackeen*, 599 U.S. 255, 274 (2023) (cleaned up). Public lands and public benefits concern property and money that belong to the government. *See Jarkesy*, 603 U.S. at 130.

To enact the HPA Claim, Congress relied on its power to regulate interstate commerce, *see* 15 U.S.C. § 1822(3)–(4), the same power Congress used to adopt the securities laws. And given that a statutory securities-fraud claim is not a public rights

claim, an exercise of the interstate commerce power *cannot* justify the public rights exception. *Jarkesy*, 603 U.S. at 129 n.1.

Defendants also argue that, under Manis's approach, national security matters and export controls could not be adjudicated in the Executive Branch as Congress has authorized. Doc. 17 at 25–26. That is a non sequitur. Manis simply asks the court to apply *Jarkesy*, 603 U.S. at 131. Given the historically recognized public rights exceptions, it is plausible, even likely, that national security and export control matters fall within it. But that is not a question that the Court must resolve here.[1]

**C. The HPA Claim Is Not an Animal Cruelty Claim**

USDA's principal response is to recharacterize the HPA Claim as an "animal cruelty" claim and then argue that, because cruelty to animals was allegedly "foreign to the common law," the Seventh Amendment has no application. Doc. 17 at 18–20, 26 (cleaned up). That framing is legally incorrect and inconsistent with controlling Supreme Court precedent.

First, *Jarkesy* rejects Defendants' attempt to make legislative purpose dispositive. Doc. 17 at 18–20. The Seventh Amendment inquiry turns on "the cause of action and the remedy it provides," not on Congress's asserted moral or policy

[1] Defendants' description of national security and export control matters as "core public interests" (Doc. 17 at 25) is also not a basis for the public rights exception. *See Jarkesy*, 603 U.S. at 131–32; *AT&T, Inc. v. FCC*, 149 F.4th 491, 500–01 (5th Cir. 2025), *cert. granted* No. 25-406, 2026 WL 73092 (U.S. Jan. 9, 2026).

objectives. *Jarkesy*, 603 U.S. at 122–26. *Jarkesy* makes clear that courts must look to whether the government is pursuing a traditional, backward-looking determination of liability accompanied by punitive sanctions—i.e., "the stuff of the traditional actions at common law." 603 U.S. at 128 (cleaned up). Congress often legislates against morally objectionable conduct, but that fact does not authorize the Executive to impose civil penalties without a jury. *Tull*, 481 U.S. at 417–21; *Curtis v. Loether*, 415 U.S. 189, 195–97 (1974).

Second, USDA's reliance on "animal cruelty" misdescribes the claim being adjudicated. The HPA Claim does *not* prohibit soring a horse. 15 U.S.C. § 1824(2)(D). In fact, nowhere in the HPA is soring of a horse prohibited. The HPA Claim prohibits entering a horse into a show while the horse was deemed "sore" under the statute. *Id.* That distinction is critical. The government cannot evade the Seventh Amendment by insisting the Court analyze a different cause of action than the one before it. *Jarkesy*, 603 U.S. at 122–23.

USDA's historical argument fares no better. The government points to the asserted absence of a freestanding common-law offense of animal cruelty. Doc 17 at 26. But the Seventh Amendment question is not whether "abuse of horses" existed as an independent common-law claim, particularly because the HPA Claim does not ban animal cruelty. The question is whether the nature of the cause of action and the

remedy fall on the legal side of the historical divide. *Jarkesy*, 603 U.S. at 122–23. Here, they do. Doc. 9 at 19–25.

Defendants also misunderstand the level of relationship *Jarkesy* requires for the statutory claim to be considered common law in nature in rejecting Manis's analogies. Doc. 17 at 26–28. Defendants treat the relationship between securities fraud and common law fraud as the minimum for establishing a sufficiently close analogy for Seventh Amendment purposes. *Id.* at 28. And it happens to be the case that securities fraud and common law fraud were particularly closely related—although the Court took pains to explain that statutory securities fraud was both "narrower" and "broader" than its common law analogue. *Jarkesy*, 603 U.S. at 126.

But the Court has consistently been liberal with its conclusions that a statutory claim is common law in nature for Seventh Amendment purposes. *Curtis*, 415 U.S. at 195 & n.10. *Curtis* concluded that the Seventh Amendment applied to a housing discrimination claim for damages because the claim was analogous to common law claims of defamation, intentional infliction of emotional distress, and breach of an innkeeper's duty to provide temporary lodging. *Id.* Similarly, the Seventh Amendment applies to 42 U.S.C. § 1983 claims because they "sound[] in tort and s[eek] legal relief." *City of Monterey v. Del Monte Dunes at Monterey, Ltd.*, 526 U.S. 687, 711 (1999). In *Tull*, the Court declined to decide whether a Clean Water Act suit for civil money penalties was more like an action in debt or a nuisance action,

declaring that it was unnecessary to engage in an "'abstruse historical' search for the nearest 18th-century analog." 481 U.S. at 420–21. The legal remedy was more important "than finding a precisely analogous common-law cause of action." *Id.* at 421.

Here, there is no dispute that the HPA Claim's remedy is common law in nature and, under *Jarkesy* et al., identifying a precise common law analogue is unnecessary. *Id.*; *see also AT&T*, 149 F.4th at 498–99 (requirement to reasonably protect customer data analogous to negligence). The HPA Claim is analogous to common law fraud because both claims "target the same basic conduct: misrepresenting or concealing material facts." *Jarkesy*, 603 U.S. at 125. The existence of fraudulent conveyance claims establishes that there are iterations of common law fraud established by circumstances, not through proof of knowing misrepresentations. *BFP v. Resol. Tr. Corp.*, 511 U.S. 531, 540–41 (1994). And that is effectively what the HPA Claim does—it prohibits owners from entering "sore" horses into shows, punishable with a fine and disqualification, to prevent sore horses from "compet[ing] unfairly with horses which are not sore." 15 U.S.C. §§ 1822(2), 1824(2)(D), 1825(b)–(c). It is also immaterial that the HPA Claim has no harm requirement, contrary to Defendants' assertion (Doc. 17 at 27), because that was also true in *Jarkesy*, 603 U.S. at 126.

Under this standard, the HPA Claim is also analogous to common law breach of contract and tortious interference. Doc. 9 at 24–25. Defendants assert that the question at issue is whether "Manis violated the statute," rather than whether a contract was broken or the other competitors were affected. Doc. 17 at 28–29. But that misses the point of an analogy. *See Tull*, 481 U.S. at 421. Entry of a horse into a show involves agreeing (i.e., contracting) to follow the rules, which include the applicable laws. Doc. 9 at 24. And entering a sore horse interferes with the economic expectations of other competitors to participate in a fair competition, like a tortious interference claim. *Id.* at 24–25.

**D. The HPA Claim Is Not Comparable to *Atlas Roofing***

Because the HPA Claim is common law in nature, it cannot be assigned away from Article III jurisdiction as a public rights case, *id.* at 25–35, and Defendants' reliance on *Atlas Roofing Co., Inc. v. OSHRC*, 430 U.S. 442 (1977), is misplaced, Doc. 17 at 21–23. *Atlas Roofing* involved a highly technical, forward-looking workplace safety regime, unlike the HPA enforcement action here. 430 U.S. at 444–47. The HPA Claim involves a retrospective determination of liability for a discrete alleged violation followed by punitive sanctions—the quintessential form of a suit at common law. *Jarkesy*, 603 U.S. at 125–27.

The Third Circuit's decisions in *Axalta Coating Sys. LLC v. FAA*, 144 F.4th 467, 477 (3d Cir. 2025), and *Sun Valley Orchards, LLC v. U.S. Dep't of Lab.*, 148

F.4th 121, 128–29 (3d Cir. 2025), reflect this distinction. Doc. 9 at 30. *Sun Valley* held that a regulatory work-conditions claim based on an order that resembled a contract required an Article III court. 148 F.4th at 128–29. And *Sun Valley* distinguished itself from *Axalta*, which, like *Atlas Roofing*, "involved 'technical' hazardous material regulations with no common law origins." *Sun Valley*, 148 F.4th at 128 n.4. For this same reason, *Sun Valley*, and not *Axalta*, applies here. Doc. 9 at 29–35; *see also AT&T*, 149 F.4th at 500–02.

### E. USDA's Lack of Statutory Authority to Bring the HPA Claim in an Article III Court Is Irrelevant

Defendants argue that the lack of statutory authorization for USDA to bring the HPA Claim in federal court further cautions against finding for Manis. Doc. 17 at 29. But the availability (or not) of an alternate venue is immaterial to whether Congress assigned the HPA Claim to the constitutionally required forum—what matters is the nature of the claim. *Jarkesy*, 603 U.S. at 134. Arguments that it would be more practical or efficient to administratively adjudicate the HPA Claim do not factor into the analysis. *Id.* at 132, 140. For the same reason, Congress's failure to authorize adjudication of the HPA Claim in a constitutionally appropriate forum should not factor in either.

### F. Defendants Cannot Evade the Seventh Amendment by Seeking Only a $10 Penalty

The civil-penalty remedy triggers the Seventh Amendment regardless of USDA's post-hoc reduction of its penalty request to $10 and the ALJ's decision to go along with it—because the Judicial Officer can still impose a fine of up to $7,183. Doc. 9 at 7; 7 C.F.R. § 1.145. Defendants are wrong to reject this argument (Doc. 17 at 24 n.3) for two reasons.

First, as a matter of course, challenges to jury demands are worked out *before* the trial takes place. *See, e.g.*, *Tull*, 481 U.S. at 415. While in regular litigation, the plaintiff's selection of remedies is relevant to that question, *Curtis*, 415 U.S. at 196, the USDA Adjudication does not work that way. Congress authorized the decisionmaker, not USDA's enforcement lawyers, to select the remedy. 15 U.S.C. § 1825. And USDA's final decisionmaker, the Judicial Officer, has not determined the remedy yet. Therefore, a potential $7,183 civil penalty remains at issue.

Second, this is a collateral Seventh Amendment challenge pursuant to *Axon Enter., Inc. v. FTC*, 598 U.S. 175, 192–94 (2023). Given that the Seventh Amendment analysis focuses on the nature of the HPA Claim and requires determining whether Article III jurisdiction is mandatory, that analysis can and should be resolved upfront. *Jarkesy*, 603 U.S. at 134.

Third, regardless, the voluntary cessation exception to mootness applies here because, in light of *Jarkesy*, USDA reduced its requested fine to $10 after this case was under way while "retain[ing] the authority and capacity" to impose the full amount, and the ALJ agreed. *Porter v. Clarke*, 852 F.3d 358, 364–65 (4th Cir. 2017) (cleaned up); JA202.

## II. The HPA Claim Must Be Heard in an Article III Court

Even if USDA could somehow avoid the Seventh Amendment's jury requirement, the Article III violation independently requires reversal. Article III prohibits Congress from assigning adjudication to non-Article III tribunals unless the public rights exception applies, and it applies independently of the jury-trial requirement. *Jarkesy*, 603 U.S. at 127–32; *Sun Valley*, 148 F.4th at 127–28. When a claim is legal in nature and does not fall within the public rights exception, Article III and the Seventh Amendment point to the same result. *Granfinanciera, S.A.*, *v. Nordberg*, 492 U.S. 33, 53–56 (1989). Because the HPA Claim is not a public rights claim, it must be adjudicated in Article III court regardless of the amount of the penalty. *See supra* I.B–D.

Here, Article III is violated for a reason USDA does not confront: the HPA authorizes disqualification from an entire industry, a classic equitable remedy that lies at the core of Article III judicial power. *Great-W. Life & Annuity Ins. Co. v. Knudson*, 534 U.S. 204, 211 n.1 (2002). The Supreme Court has made clear that

Congress may not withdraw equitable matters from Article III courts and commit them to executive tribunals. *Jarkesy*, 603 U.S. at 132. USDA's silence on this point underscores the constitutional defect.

## III. The Judicial Officer Unconstitutionally Functions as a Principal Officer

USDA's administrative adjudication process is also unconstitutionally organized. Its final decision-maker unconstitutionally exercises that adjudicative authority without a principal officer appointment. Doc. 9 at 36–48. In fact, he does not even hold a congressionally established office as required by the Appointments Clause. *Id.* at 48–52.

### A. The Judicial Officer Functions as a Principal Officer Without a Proper Appointment

#### 1. Principal Officer Review Must Be Available for Inferior Adjudicative Officers

Final decisions in Executive Branch adjudications must be reviewable by a principal officer. *United States v. Arthrex*, 594 U.S. 1, 14–15, 23 (2021). The Court should apply this rule to the Judicial Officer.

There is no dispute between Manis and Defendants that inferior officers must be "directed and supervised at some level by others who were appointed by Presidential nomination with the advice and consent of the Senate." *Kennedy v. Braidwood Mgmt., Inc.*, 606 U.S. 748, 761 (2025) (cleaned up). The parties disagree on how this test applies. Defendants' position is that an officer—whether or not he

is exercising an adjudicative function—qualifies as an inferior officer "when (a) the officer can be removed by the Department Head at will; or (b) an adjudicative officer lacks free-standing authority to make a final decision; or (c) a combination of the two." Doc. 17 at 31. But for inferior *adjudicative* officers, *Arthrex* established that an adjudicative officer is inferior only if his decisions are subject to the possibility of principal officer review. 594 U.S. at 14–15, 23.

*Arthrex* repeatedly states that whether an Executive Branch adjudicator is an inferior officer depends on whether the officer has the "power to render a final decision on behalf of the United States without any review by their nominal superior or any other principal officer." 594 U.S. at 14 (cleaned up).[2] And the dissenters, too, understood that the "statutory scheme [was] defective only because the APJ's decisions [were] not reviewable by" a principal officer. *Id.* at 44 (Breyer, J., dissenting in part). After *Arthrex*, the Court affirmed in *Braidwood* the "particular importance" of principal officer review for "adjudicative officers." *Braidwood*, 606 U.S. at 765.

[2] *Id.* at 17 ("insulat[ing]" decisions of inferior-officer administrative patent judges ("APJs") "from any executive review" "conflicts with the design of the Appointments Clause"); *id.* at 23 ("[T]he unreviewable authority wielded by APJs . . . is incompatible with their appointment by the Secretary to an inferior office."); *id.* at 27 (plurality op.) ("[T]he source of the constitutional violation is the restraint on the review authority of the Director."); *id.* ("The Constitution [] forbids the enforcement of statutory restrictions on the Director that insulate the decisions of APJs from his direction and supervision.").

There are then three insurmountable problems with Defendants' approach. First, it ignores the unique features of Executive Branch adjudications that have led the Court to require the availability of principal officer review. *Arthrex*, 594 U.S. at 17. Second, it allows for removal alone as a sufficient supervision mechanism for inferior adjudicative officers when *Arthrex* found removal was insufficient. *Id.* at 25–26. Third, it considers the absence of free-standing decision-making authority enough for inferior adjudicative officer status, and not, as *Arthrex* required, the absence of a "statutory restriction[]" on principal officer review. *Id.* at 27.

**1.** *Arthrex* established the rubric for applying the direction-and-supervision test to inferior adjudicative officers. *Id.* at 23. The Court made this clear when it stated that it was not setting an "exclusive criterion for distinguishing between principal and inferior officers" who do not make binding decisions and who are "outside the context of adjudication." *Id.* (cleaned up). Defendants' theory washes out this distinction by relying on both adjudication (i.e., *Edmond v. United States*, 520 U.S. 651 (1997)) and non-adjudication cases (i.e., *Braidwood*). Doc. 17 at 30–36.

The Court singled out adjudicative officers for this particular application of the direction-and-supervision test because they are uniquely situated to make independent, final, and binding decisions for the Executive Branch affecting the legal rights of private parties. *Arthrex*, 594 U.S. at 23. If these determinations are

going to be made by the Executive Branch, they must at least be made by a principal officer as the Appointments Clause requires "to preserve political accountability." *Arthrex*, 594 U.S. at 17 (cleaned up).

Indeed, the "traditional rule" for adjudicative decision-making in the Executive Branch is that a principal officer "makes the final decision on how to exercise executive power." *Id.* at 21. This decision-making structure has been recognized "[s]ince the founding," *id.* at 18, and has been codified in the Administrative Procedure Act (APA). *Braidwood*, 606 U.S. at 775. And even outside the APA, principal officer review "is the standard way to maintain political accountability and effective oversight." *Id.* (cleaned up).

**2.** Removal alone is an insufficient supervision tool for inferior adjudicative officers because it "gives the [Secretary] no means of countermanding [a] final decision already on the books." *Arthrex*, 594 U.S. at 16. An inferior adjudicative officer whose decisions can be supervised only through after-the-fact removal still has the "power to render a final decision on behalf of the United States" without principal officer review. *Id.* at 14 (cleaned up).

Defendants tellingly cite no Supreme Court case in which at-will removal alone was sufficient supervision for an inferior adjudicative officer. Doc. 17 at 33–36. They frame *Edmond* as "discuss[ing] the various ways in which an adjudicator may be 'directed and supervised at some level' by superior officers." *Id.* at 33

(citation omitted). But while the officers in *Edmond* were removable at will, the "significant" factor was the availability of principal officer review. 520 U.S. at 664–65. And Defendants acknowledge that the decisions of inferior officers in *Free Enterprise Fund, v. PCAOB*, 561 U.S. 477 (2010), and *Braidwood* were reviewable by principal officers.[3] Doc. 17 at 34–35. Thus, the common, significant supervisory element in all of these cases was principal officer review.

Defendants also attempt to reframe *Arthrex* as a case solely about the combination of statutory restrictions on principal officer review and at-will removal that "casts no doubt on the effectiveness of" at-will removal alone. *Id.* at 35–36. But this is belied by *Arthrex*'s decision to leave the removal restriction on APJs in place. 594 U.S. at 26–27. The Court rejected the Federal Circuit's remedy of eliminating the APJs' removal protection. *Id.* at 25–27 (plurality op.). And it concluded that allowing for principal officer review "better reflects the structure of supervision within the [Patent and Trademark Office (PTO)] and the nature of APJs' duties" even if the APJs could not be removed at will. *Arthrex*, 594 U.S. at 26.

**3.** Defendants incorrectly frame the necessary structure for principal officer review as merely requiring a "lack[]" of "free standing authority to make a final

[3] Defendants also ignore that the officers in *Braidwood* were not adjudicators, further demonstrating their disregard for the Court's distinct approach to inferior adjudicative officers. Doc. 17 at 35; *Braidwood*, 606 U.S. at 753–54.

decision." Doc. 17 at 31. But this leaves out the circumstance Manis faces in which the statutory structure allows the Secretary to cut off her ability to review decisions by inferior adjudicative officers. 7 U.S.C. § 2204-3. And the "Constitution [] forbids the enforcement of statutory restrictions" on principal officer review. *Arthrex*, 594 U.S. at 27. Thus, the possibility of a hypothetical scheme with principal officer review is insufficient when, in the scheme selected, a statute prevents the principal officer from "countermanding [a] final decision already on the books." *Id.* at 16.

Defendants claim that two circuit court cases applying *Arthrex* demonstrate that the regulatory structure of an adjudication does not change the Appointments Clause analysis. Doc. 17 at 36–38. But neither case addresses a situation like the Judicial Officer's, where the Secretary invoked a statutory restriction on her review through her chosen regulatory scheme. *In re Palo Alto Networks, Inc.*, 44 F.4th 1369, 1375 (Fed. Cir. 2022), considered the PTO Director's authority to institute inter partes review, which was explicit and without limitation in the statute. Additionally, the decision to institute an adjudication process is distinct from the authority to issue a final, binding, and nonreviewable decision at the end of the adjudication process. *See Arthrex*, 594 U.S. at 23. *Rodriguez v. Social Security Administration*, 118 F.4th 1302, 1313 (11th Cir. 2024), similarly involved an exclusively regulatory restriction on review with no statutory restriction like 7 U.S.C. § 2204-3 here.

### 2. The Judicial Officer Is Appointed as an Inferior Officer but His Decisions Cannot Be Reviewed by the Secretary

The Secretary is statutorily prohibited from reviewing the Judicial Officer's decisions because 7 U.S.C. § 2204-3 provides that "[a] revocation of delegation shall not be retroactive." Defendants assert that this is not an obstacle to the Secretary reviewing the Judicial Officer's decision in this case. Doc. 17 at 40–43. But none of Defendants' arguments support this conclusion.

First, Defendants argue that there is currently no statutory or regulatory obstacle to the Secretary's intervening in Manis's case because the Judicial Officer has yet to issue a decision. Doc. 17 at 40–41. But the prohibition on the retroactive revocations in 7 U.S.C. § 2204-3 has already attached since Manis's adjudication is underway. USDA is, of course, "obliged to follow its own Rules." *Ballard v. Comm'r*, 544 U.S. 40, 59 (2005). And the current USDA rules of proceeding do not include review by the Secretary. 7 C.F.R. § 1.145(i).

Changing the rules for Manis through the ad hoc intervention of the Secretary would be impermissibly retroactive because it would unjustly change USDA's decision-making process in the middle of his adjudication. *See Landgraf v. USI Film Prods.*, 511 U.S. 244, 275 n.29, 280 (1994). Allowing the Secretary to *appoint herself* to hear Manis's appeal after she has seen the ALJ's decision would impair Manis's right to a fair hearing by allowing a litigant, upon seeing the outcome, to

intervene as the judge. *See Utica Packing Co. v. Block*, 781 F.2d 71, 77–78 (6th Cir. 1986).

USDA also cannot rely on the Secretary's authority to "revoke the whole or any part of a delegation" "at any time." 7 U.S.C. § 2204-2. This authority is necessarily limited by the prohibition on retroactive revocations in the next section of the statute. 7 U.S.C. § 2204-3. If the retroactive revocation prohibition did not operate as a limit on the Secretary's revocation authority, it would be superfluous, which is an impermissible reading of the statute. *See Corley v. United States*, 556 U.S. 303, 314 (2009).

Second, Defendants are mistaken that 7 U.S.C. § 2204-3 allows the Secretary to retain delegated adjudicative authority and intervene at any time. When the Secretary delegated final decision-making authority in the Judicial Officer, it "vested by law" in the Judicial Officer "*instead of* in the Secretary." 7 U.S.C. § 2204-3 (emphasis added). Defendants argue, using the section title, that § 2204-3 merely "clarifies" the "[a]uthority of designated employees." Doc. 17 at 42 (cleaned up). But "the heading of a section cannot limit the plain meaning of the text." *United States v. Clawson*, 650 F.3d 530, 536 (4th Cir. 2011) (cleaned up).

Additionally, Defendants cannot rely on USDA regulations to limit 7 U.S.C. § 2204-3. Purported regulatory retentions of delegated authority (7 C.F.R. § 2.12 and 7 C.F.R. § 1.132) are nullities under 7 U.S.C. § 2204-3. USDA, like any agency,

"possess[es] only the authority that Congress has provided." *NFIB v. OSHA*, 595 U.S. 109, 117 (2022). It cannot override the limitations of 7 U.S.C. § 2204-3 through its own regulations. Additionally, 7 C.F.R. § 2.12 is not part of the rules of practice for the USDA Adjudication. 7 C.F.R. §§ 1.130–1.151. And 7 C.F.R. § 1.132 is a definitional provision, not an authorization for the Secretary to retain authority she has delegated.

Third, Defendants are wrong to dismiss the due process violation that would occur if the Secretary intervened ad hoc in Manis's adjudication. Doc. 17 at 43–44. The problem is that the Secretary's involvement falls outside USDA's established rules for the USDA Adjudication. *See Utica Packing*, 781 F.2d at 78. And due process is violated where "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"—a structural defect. *Id.* (emphasis added). In contrast, if the USDA Adjudication was operating directly under the statute, the Secretary's authority to adjudicate HPA claims and remit civil penalties would be an established part of the process. 15 U.S.C. § 1825(b). This would mitigate the due process concern with the Secretary's claimed authority to upend and alter the outcome of an adjudicative process she is not otherwise a participant in.

*Utica Packing* is also not limited to its facts, as Defendants argue. Doc. 17 at 44. The due process inquiry turns on the structural question of the power of the

appointer, not on case-specific misconduct. *Utica Packing*, 781 F.2d at 78. Here, Defendants' litigation position is that the Secretary "has the power" to take over for the Judicial Officer in Manis's case by hearing a reconsideration petition. *Id.*; Doc. 17 at 39. There is no question this power creates an "intolerably high" "risk of unfairness" in the USDA Adjudication. *Utica Packing*, 781 F.2d at 78.

Fourth, because Manis's Appointments Clause claim is structural, it is not dependent on the present circumstances of the USDA Adjudication. The USDA Adjudication is just as unconstitutionally structured today with Manis's case pending before the Judicial Officer as if this appeal were before the Court on judicial review. In fact, to require Manis to wait until the Judicial Officer issued a final decision would defeat the entire purpose of a collateral *Axon* suit to challenge an unconstitutionally structured adjudication process. 598 U.S. at 191.

Defendants' argument that the current vacancy of the Judicial Officer position defeats Manis's Appointments Clause claim is similarly meritless. Doc. 17 at 40–42. The Secretary delegated final decision-making authority through 7 U.S.C. § 2204-2 "to the Judicial Officer." 7 C.F.R. § 2.35(a). USDA regulations recognize the "Judicial Officer" as a "general officer[]" of the Department, 7 C.F.R. § 2.4, notwithstanding the lack of statutory authorization for such an office, *see infra* Part III.B. Thus, the Secretary's delegation does not terminate with a vacancy in the Judicial Officer position.

### 3. Other Supervision Methods Are Insufficient

Defendants argue that other forms of supervision, such as removal, are sufficient for the Judicial Officer to function as an inferior adjudicative officer. Doc. 17 at 38–40. But none can be substitutes for principal officer review because they do not provide a "means of countermanding [a] final decision already on the books." *Arthrex*, 594 U.S. at 16.

As discussed, the Secretary's ability to remove the Judicial Officer at-will cannot replace principal officer review because after-the-fact removal gives the Secretary no control over a final, binding decision made by the Judicial Officer. *Id.*; Doc. 9 at 45–47. Defendants (Doc. 17 at 38–39) point to *Intercollegiate Broadcasting System, Inc. v. Copyright Royalty Board*, 684 F.3d 1332, 1340–41 (D.C. Cir. 2012), but that was decided before *Arthrex*, 594 U.S. at 25–26.

Next, the Secretary does not exercise "general supervisory authority" over the Judicial Officer in Manis's adjudication because (again) the Secretary handed final decision-making authority to the Judicial Officer and cannot revoke it here. 7 U.S.C. § 2204-3; 7 C.F.R. § 2.35. It is irrelevant to the question of sufficient supervision whether the Secretary *could* have organized the USDA Adjudication differently so that she could make the final decision here—the statute does not allow the Secretary to review and change a decision of the Judicial Officer before it becomes binding. *Arthrex*, 594 U.S. at 16. And *Fleming v. USDA*, 987 F.3d 1093, 1103 (D.C. Cir.

2021), on which Defendants rely, was decided before *Arthrex* and explicitly "d[id] not decide whether the Judicial Officer is a principal officer."[4]

Finally, the Secretary's general administrative oversight and rulemaking authority are similarly ineffective because they control the Judicial Officer only on the front end and do not allow review of his decisions. *Arthrex*, 594 U.S. at 16. Like in *Arthrex*, the Secretary may be "the boss," but she is not "when it comes to . . . [the Judicial Officer's] power to issue decisions" that are final and binding in USDA adjudications. *Id.* at 14.

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

The Appointments Clause requires that "Officers of the United States" hold offices that are created by statute. U.S. Const. art. II, § 2, cl. 2. Defendants' position that Congress is required to specify the appointment process for inferior officers (and then only generally), but not create those offices, is nonsensical. Doc. 17 at 46. The Appointments Clause first grants the President the power "with the Advice and Consent of the Senate" to appoint "all other Officers of the United States . . . which shall be established by Law." U.S. Const. art. II, § 2, cl. 2. Then, it creates an

[4] Defendants' citation to a single instance in 1988 when the Secretary assumed control of an adjudication from the Judicial Officer (*In Re: Apex Meat Co.*, 47 Agric. Dec. 557, 557 (U.S.D.A. Mar. 4, 1988)), does not negate the structural limitations on the Secretary's ability to intervene in Manis's adjudication today. Doc. 17 at 39 n.4.

exception for "inferior Officers," allowing Congress to "vest" their appointment in, among others, "Heads of Departments." *Id.* Thus, the requirement that Congress vest the authority to appoint the Judicial Officer in the Secretary is a requirement *in addition to* the requirement that Congress establish the office, like all offices, by statute.[5] It would be peculiar if Congress were responsible only for an insufficient, if necessary, condition for creating an office.

Defendants argue that *Burnap v. United States*, 252 U.S. 512 (1920), "did not address the constitutional requirements for creating an office." Doc. 17 at 47. But *Burnap* had to determine whether the landscape architect was an officer or employee to establish whether the Chief of Engineers, rather than the Secretary of War, had the authority to remove him. 252 U.S. at 518–19. And this analysis was rooted in the Appointments Clause. *Id.* at 514–15. The Court concluded that the landscape architect was not an officer because "[t]here [was] no statute which create[d] an office of landscape architect . . . nor any which define[d] the duties of the position." *Id.* at 517.

The Supreme Court later relied on *Burnap* to establish that certain tax judges are officers because their "duties, salary, and means of appointment . . . are specified

[5] *United States v. Mitchell*, 39 F.3d 465, 468 (4th Cir. 1994), is distinguishable because it addressed the meaning of the word "law" in the statutory rather than constitutional context.

by statute." *Freytag v. Comm'r*, 501 U.S. 868, 881 (1991). *Lucia v. SEC*, in turn, relied on *Freytag* when concluding that ALJs were officers because their "appointment [was] to a position created by statute down to its 'duties, salary, and means of appointment.'" 585 U.S. 237, 248 (2018) (citation omitted).

Next, Defendants assert that *Braidwood* already settled that the word "designate," as used in 7 U.S.C. § 2204-2, grants the Secretary the power to appoint inferior officers, and that this conclusion is supported by context. Doc. 17 at 47–48. But Defendants rely on the wrong kind of context. The relevant statutory context for interpreting a statutory term is the "overall statutory scheme," which should be interpreted to "fit, if possible, all parts into an harmonious whole." *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 133 (2000) (cleaned up). Here, "designate" authorizes the Secretary to select the officers or employees "of the Department" (i.e., already within USDA) to whom she will delegate her final decision-making authority. 7 U.S.C. § 2204-2; *see also* Doc. 9 at 50–51. Defendants' reliance on the lack of congressional action with respect to the Secretary's appointment practices is not the relevant context. Doc. 17 at 48. Nor is their reliance on 7 U.S.C. § 6912(a)(1), because that is not the basis for the delegation to the Judicial Officer. 7 C.F.R. § 2.35.

Finally, the other offices cited by Defendants are distinguishable from the Judicial Officer. Opp. 19–20. The Board of Immigration Appeals ("BIA") was

established pursuant to a statute that established the Executive Office of Immigration Review. 6 U.S.C. § 521; *Duenas v. Garland*, 78 F.4th 1069, 1073 & n.2 (9th Cir. 2023). The Social Security Appeals Council is distinct because it is part of an "inquisitorial rather than adversarial" system. *Sims v. Apfel*, 530 U.S. 103, 111 (2000). *Varnadore v. Secretary of Labor*, 141 F.3d 625, 631 (6th Cir. 1998), did not specifically decide whether offices had to be created by statute. Finally, *Willy v. Administrative Review Board*, 423 F.3d 483, 492 (5th Cir. 2005), is an out of circuit case that is inconsistent with *Burnap*.

## CONCLUSION

For the forgoing reasons, and the reasons addressed in Manis's opening brief, the district court's judgment of dismissal should be reversed, judgment entered for Manis, and the district court ordered to permanently enjoin the USDA Adjudication.

DATED: January 30, 2026.

Respectfully submitted,

/s/ *Joshua M. Robbins*

JOSHUA M. ROBBINS
ALLISON D. DANIEL
PACIFIC LEGAL FOUNDATION
3100 Clarendon Blvd.
Suite 1000
Arlington, VA 22201
(202) 945-9524
JRobbins@pacificlegal.org
ADaniel@pacificlegal.org

*Counsel for Appellant*

## CERTIFICATE OF COMPLIANCE

This motion complies with the type-volume limitation of Federal Rule of Appellate Procedure 32(a)(7)(B)(ii) because it contains 6,448 words excluding the parts exempt by Federal Rule of Appellate Procedure 32(f).

This motion complies with the typeface and type-style requirements of Federal Rule of Appellate Procedure 32(a)(5) and (6) because it has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Times New Roman font.

DATED: January 30, 2026.

/s/ *Joshua M. Robbins*
JOSHUA M. ROBBINS
*Counsel for Appellant*

**CERTIFICATE OF SERVICE**

I hereby certify that on January 30, 2026, I electronically transmitted the foregoing document to the Clerk of Court for the United States Court of Appeals for the Fourth Circuit by using the appellate CM/ECF system and transmittal of a Notice of Docket Activity was sent to counsel of record.

s/ *Joshua M. Robbins*
JOSHUA M. ROBBINS