No. 25-1349

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

MOSenecaManufacturer, LLC, doing business as American Tripoli,

Petitioner,

v.

Federal Mine Safety and Health Review Commission; Secretary of Labor,

Respondents.

On Appeal from the Federal Mine Safety and Health Review Commission

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PETITIONER'S OPENING BRIEF

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Circuit Rule 28A(i)(1) Statement

The Court should set aside the administrative award of money damages against Petitioner based on the alleged discrimination and interference claims because the administrative adjudication that occurred here is unconstitutionally structured for the following reasons:

The Commissioners and its ALJs are unconstitutionally insulated from the President's removal power (Parts II–III, *infra*). Adjudication at the Commission denies Tripoli the right to judicial process and the right to trial by jury (Parts IV–V, *infra*). And the substantial-evidence standard for reviewing agency-found facts is unconstitutional, if it applies (Part VI, *infra*). Any one of these structural defects renders Commission adjudication unconstitutional, and for any one of those reasons the Court should set aside (i.e., vacate without remand) the administrative decision (Part VII, *infra*).

Oral argument of 20 minutes per side will aid the Court's resolution of the weighty constitutional questions presented here.

Corporate Disclosure Statement

Petitioner MOSenecaManufacturer, LLC, doing business as American Tripoli, is a Missouri limited liability company. It does not have any stock which can be owned by a publicly traded company, and no publicly traded company owns more than 10% of its stock.

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Jurisdictional Statement

The Secretary of Labor filed a complaint against MOSenecaManufacturer, LLC, doing business as American Tripoli (Tripoli), with the Federal Mine Safety and Health Review Commission (Commission) under 30 U.S.C. § 815(c). JA008–JA017; A.R.1–A.R.10. The Administrative Law Judge (ALJ) of the Commission ruled against Tripoli. JA020–JA071; A.R.3322–A.R.3373.

The Commission *sua sponte* directed review of the ALJ's decision under 30 U.S.C. § 823(d)(2)(B) and granted Tripoli's petition for discretionary review under 30 U.S.C. § 823(d)(2)(A)(i). JA072–JA077; A.R.3374–A.R.3376; A.R.3387–A.R.3389. The Commission later vacated the two directions for review on January 17, 2025. JA132–JA136; A.R.3589–A.R.3593. As a result of that vacatur, the ALJ's decision and order became "the final decision of the Commission" by operation of 30 U.S.C. § 823(d)(1).

Tripoli filed a timely petition for review on February 18, 2025. This Court's jurisdiction rests on 30 U.S.C. § 816(a)(1).

Questions Presented

Circuit Rule 28A(i)(2) annotations are footnoted.

(1) May enforcement targets present constitutional issues in court without having raised them in agency adjudication?[1]

(2) Do the Commissioners enjoy unconstitutional protection against Presidential removal?[2]

(3) Do the Commission's ALJs enjoy unconstitutional multi-layer tenure protection?[3]

(4) Does administrative adjudication at the Commission deny Tripoli the right to judicial process?[4]

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[1] 30 U.S.C. § 816(a)(1); *Carr v. Saul*, 593 U.S. 83 (2021); *Freytag v. Comm'r*, 501 U.S. 868 (1991); *PHH Corp. v. CFPB*, 881 F.3d 75 (D.C. Cir. 2018) (en banc); *Jones Bros., Inc. v. Sec'y of Labor*, 898 F.3d 669 (6th Cir. 2018).

[2] U.S. Const. art. II; 30 U.S.C. § 823(a); *Humphrey's Ex'r v. United States*, 295 U.S. 602 (1935); *Seila Law LLC v. CFPB*, 591 U.S. 197 (2020); *Collins v. Yellen*, 594 U.S. 220 (2021).

[3] U.S. Const. art. II; 30 U.S.C. § 823(b)(2); 5 U.S.C. § 7521; *Free Enter. Fund v. Pub. Co. Acct. Oversight Bd.*, 561 U.S. 477 (2010); *Lucia v. SEC*, 585 U.S. 237 (2018); *United States v. Arthrex, Inc.*, 594 U.S. 1 (2021).

[4] U.S. Const. art. III; *id.* amend. V; *Stern v. Marshall*, 564 U.S. 462 (2011); *SEC v. Jarkesy*, 603 U.S. 109 (2024); *CFTC v. Schor*, 478 U.S. 833 (1986).

(5) Does administrative adjudication at the Commission deny Tripoli the right to jury trial?[5]

(6) If the substantial-evidence standard applies here, is the substantial-evidence standard for reviewing agency-found facts unconstitutional?[6]

(7) Is any judgment other than set aside (i.e., vacatur without remand) of the Commission's order appropriate if the Commission's administrative adjudication is unconstitutionally structured?[7]

Statement of the Case

A. The Statutory Scheme

Congress enacted the Federal Mine Safety and Health Amendments Act of 1977, Pub. L. No. 95-164, 91 Stat. 1290 (Mine Act), to protect the "health and safety" of "miner[s]." 30 U.S.C. § 801(a). Beyond establishing standards to "prevent death," "serious physical harm," and

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[5] U.S. Const. amend. VII; *SEC v. Jarkesy*, 603 U.S. 109 (2024).

[6] U.S. Const. art. III, § 2, cl. 2; U.S. Const. amends. V, VII; 30 U.S.C. § 816(a)(1); *Mortensen v. United States*, 322 U.S. 369 (1944); *Abrams v. United States*, 250 U.S. 616 (1919); *St. Joseph Stock Yards Co. v. United States*, 298 U.S. 38 (1936).

[7] 30 U.S.C. §§ 816(a)(1), 956; *AT&T, Inc. v. FCC*, 135 F.4th 230 (5th Cir. 2025).

"occupational diseases," *id.* § 801(c), the Mine Act regulates labor relations involving miners. Relevant here, the Mine Act prohibits discriminating against or otherwise interfering with a miner's exercise of the miner's "statutory rights." *Id.* § 815(c)(1).

To prosecute violations of the Mine Act, the Secretary of Labor (Secretary) has the power to commence administrative adjudication. *Id.* § 815. That adjudication proceeds in front of a separate agency, the Federal Mine Safety and Health Review Commission, first in front of the Commission's ALJ, and then at the Commission. *Id.* § 823.

If the Commission finds discrimination or interference, it can order (1) abatement of the violation and (2) rehiring or reinstatement of miners to their former position with back pay and interest. *Id.* § 815(c)(2). For other violations, the Commission can assess civil penalties. *Id.* § 815(a).

The aggrieved party can then appeal the Commission's decision to the appropriate circuit, whereupon the statute directs the circuit court to give "conclusive" weight to the "findings of the Commission with respect to questions of fact." *Id.* § 816(a)(1).

B. Tripoli

Tripoli, a Missouri LLC, operates an open-pit silicon-dioxide mine in Seneca, Missouri. JA028; JA049; A.R.3330; A.R.3351. Silicon dioxide, or "tripoli," is a natural rock that the company pulverizes into powder. It is used in producing glass, as an anti-caking agent in powdered foods like spices, and in toothpaste. JA028; A.R.3330.

C. Administrative Proceedings

One of Tripoli's ex-employees, Robert Baumann, filed a complaint with the Secretary, alleging that Tripoli illegally fired him for speaking with a mine inspector. JA021; A.R.3323. By the company's telling, Baumann was fired because (1) his output fell below standards, and (2) he abandoned his post to walk around with the mine inspector, which put other miners' health and safety at risk. JA018–JA019; JA036; JA056; A.R.13–A.R.14; A.R.3338; A.R.3358.

Based on Baumann's complaint, the Secretary brought discrimination and interference charges against Tripoli under 30 U.S.C. § 815(c). JA009–JA011; A.R.2–A.R.4. Russell Tidaback, the company's owner and managing member, represented the company *pro se* in the administrative proceedings, which is permitted under 29 C.F.R.

§ 2700.3(b)(3). Tripoli's filings—including failure to comply with certain Commission orders—occurred in that context. Tripoli has since retained *pro bono* counsel for this appeal.

The ALJ found against Tripoli and imposed (1) a civil penalty of $15,000 for the discrimination violation, (2) a civil penalty of $17,500 for the interference violation, and (3) compensatory damages of $10,552 plus interest payable to Baumann. JA070–071; A.R.3372–A.R.3373.

The Commission *sua sponte* directed review of the ALJ's decision under 30 U.S.C. § 823(d)(2)(B) "on the grounds that the decision may be contrary to law" and "the Secretary's interpretation" may not be "deserving of deference." JA072; A.R.3374. The Commission also granted Tripoli's petition for discretionary review under 30 U.S.C. § 823(d)(2)(A)(i). JA075; A.R.3387.

The Commission later vacated both orders for review. JA132–JA133; A.R.3589–A.R.3590. That makes the ALJ's decision and order "the final decision of the Commission," 30 U.S.C. § 823(d)(1), that Tripoli, now represented by counsel, petitions this Court to review. *Id.* § 816(a)(1).

Summary of the Argument

Tripoli challenges the structure of agency adjudication that Congress set up at the Commission. This Court can reach the questions presented because they raise structural constitutional objections that can be presented for the first time on appeal (Part I, *infra*).

Adjudication at the Commission is unconstitutionally structured for the following reasons: The Commissioners and its ALJs are unconstitutionally insulated from the President's removal power (Parts II–III, *infra*). Adjudication at the Commission denies Tripoli the right to judicial process and the right to trial by jury (Parts IV–V, *infra*). And the substantial-evidence standard for reviewing agency-found facts is unconstitutional, if it applies (Part VI, *infra*).

Any one of these structural defects renders Commission adjudication unconstitutional, and for any one of those reasons the Court should set aside (i.e., vacate without remand) the administrative decision (Part VII, *infra*).

Standard of Review

"[P]ure question[s] of law," such as the "constitutionality of a statute," are decided "de novo." *Duncan v. County of Dakota,* 687 F.3d 955, 957 (8th Cir. 2012); *United States v. Folen*, 84 F.3d 1103, 1104 (8th Cir. 1996).

Argument

I. Enforcement targets may present constitutional issues in court without having raised them in agency adjudication.

The Secretary/Commission is expected to argue, based on 30 U.S.C. § 816(a)(1)'s fourth sentence, that Tripoli is precluded from raising constitutional issues for the first time in this Court because no "extraordinary circumstances" excuse Tripoli's failure to urge such objection before the Commission. The Court should reject this argument because the Commission has no power to resolve structural constitutional claims, and it would have been futile for Tripoli to have raised these issues there.

The Supreme Court has "consistently recognized a futility exception to exhaustion requirements." *Carr*, 593 U.S. at 93. "It makes little sense to require litigants to present claims to adjudicators who are powerless to grant the relief requested." *Id.*; *see also McCarthy v. Madigan*, 503 U.S.

140, 147–48 (1992) (exception for inadequate or unavailable administrative remedies). The Commission, like most administrative tribunals, lacks authority to declare its own structure unconstitutional.

As in *Carr*, Tripoli "assert[s] purely constitutional claims about which [the Commission or its ALJs] have no special expertise and for which they can provide no relief." 593 U.S. at 93. The claims presented here "are … outside the [Secretary and the Commission's] competence and expertise." *Free Enter. Fund*, 561 U.S. at 491. And judges—not agencies—are experts in the "field" of legal interpretation, a field which is "'emphatically,' 'the province and duty of the judicial department.'" *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 412 (2024) (quoting *Marbury v. Madison*, 5 U.S. 137, 177 (1803)).

"[S]tructural constitutional objections" of the type raised here can be "considered on appeal whether or not they were ruled upon below." *Freytag*, 501 U.S. at 878–79. Courts "cannot avoid [such] constitutional question[s]" merely because they were presented for the first time to the first-available Article III court. *PHH Corp.*, 881 F.3d at 83 (*en banc*; unanimous).

Even assuming the Commission has power to decide structural constitutional objections—the Commission has no such power, as the Secretary/Commission is expected to admit—the fact that the company appeared *pro se* during the Commission's proceedings is an "extraordinary circumstanc[e]" that should "excuse" exhaustion, forfeiture, or waiver. 30 U.S.C. § 816(a)(1). *See Jones Bros.*, 898 F.3d at 673–74 (The Commission "has no authority to entertain a facial constitutional challenge to the validity of a law. … [T]he legislature showed its cards in declining to require petitioners to exhaust facial constitutional challenges."); *id.* at 677–78 (even assuming forfeiture or waiver, such lapses are "excused" as "extraordinary circumstances" based on (1) the "nature" of the structural constitutional claim, (2) reasons for failing to raise those issues in administrative proceedings, and (3) the Commission's lack of power to entertain constitutional issues).

This Court should reach Tripoli's constitutional claims.

II. The Commissioners enjoy unconstitutional protection against Presidential removal.

Adjudication at the Commission is unconstitutionally structured because the Commissioners, principal officers of the United States, appointed by the President with the Senate's advice and consent, 30

U.S.C. § 823(a), may not be removed except "for inefficiency, neglect of duty, or malfeasance in office." *Id.* § 823(b).

Under the Constitution, the "'executive Power'—all of it—is 'vested in a President,' who must 'take Care that the Laws be faithfully executed.'" *Seila*, 591 U.S. at 203 (quoting U.S. Const. art II, § 1, cl. 1 & § 3). This means the President has "unrestricted removal power" to remove principal officers from office. *Id.* at 204. Because the President may not remove the Commissioners here except for cause, the Commission is unconstitutionally structured.

The Supreme Court has provided one exception to the President's "unrestricted" power to remove principal officers, but that exception does not apply here. In *Humphrey's*, the Court upheld the statute directing that the principal-officer heads of the partisan-balanced multi-member Federal Trade Commission, circa 1935, were removable by the President only for cause because they did not exercise executive power. *See Seila Law*, 591 U.S. at 204 (discussing *Humphrey's*). And the Supreme Court has cautioned courts from applying *Humphrey's* to other agencies that lack the attributes FTC had in 1935. *Id.* at 220. Per *Seila*, *Humphrey's*

does not apply to the Commission here because the Commissioners exercise executive power.

Collins, decided one year after *Seila*, confirmed that "Congress could not limit the President's [removal] power … to instances of 'inefficiency, neglect, or malfeasance.'" 594 U.S. at 250. The Supreme Court held there are "compelling reasons not to extend" *Humphrey's* and other "prior decisions allowing certain limitations on the President's removal power" beyond the particular facts of those cases. *Id.* at 251. That "straightforward application of [the Supreme Court's] reasoning in *Seila Law* dictates the result here." *Id.*[8]

The Court should so hold and vacate the decision of the Commission because the Commission is unconstitutionally structured.

III. The Commission's ALJs enjoy unconstitutional multi-layer tenure protection.

The Constitution allows no more than one layer of for-cause removal restrictions for inferior officers, and mandates that the President's removal power remain unrestricted for principal officers.

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[8] If the Court nonetheless determines that *Humphrey's* controls, Tripoli reserves for the Supreme Court the argument that *Humphrey's* should be overruled.

Seila, 591 U.S. at 204; *Collins*, 594 U.S. at 250. Because the Commission's ALJs are twice insulated from the President's power of removal, such insulation from removal violates the Constitution's separation of powers. *Free Enter. Fund*, 561 U.S. at 492. Adjudication at the Commission is therefore unconstitutionally structured.

Persons who are appointed by the head(s) of executive-branch agencies, and who are vested with power to issue a binding decision on behalf of the agency are officers of the United States. U.S. Const. art. II, § 2, cl. 2; *Lucia*, 585 U.S. at 241. Here, the Commission's ALJs are officers of the United States. They are "appointed by the Commission." 30 U.S.C. § 823(d)(1). ALJs are empowered to issue "final decision[s]" on behalf of the Commission, and the statute directs the Commission that an ALJ "shall not be assigned to prepare a recommended decision under this chapter." *Id.* Indeed, the Administrative Procedure Act's provision about issuance of recommended decisions for agency-head review does not apply to the Mine Act. 30 U.S.C. § 823(d) (last sentence) (quoting 5 U.S.C. § 557(b)). And Commission review of ALJ decisions is discretionary.[9] In

[9] Here, the ALJ's decision became the final, appealable decision after the Commission vacated its order for *sua sponte* review and its order granting Tripoli's petition for discretionary review of the ALJ's decision.

practice, this means the ALJ's decisions become final without Commission intervention, which underscores the scope of ALJs' independent authority and the need for constitutional presidential accountability.

The ALJs are protected by two layers of for-cause removal. The Commission's ALJs are subject to "removal … in accordance with sections 3105, 3344, 5362, and 7521 of Title 5." 30 U.S.C. § 823(b)(2). That is, the Merit Systems Protection Board (MSPB) must sign off on the Commission's decision to remove a Commission ALJ only if MSPB finds "good cause." 5 U.S.C. § 7521(a). But the MSPB board members, like the Commissioners themselves, are insulated from the President's removal power because they can be removed only for cause. 5 U.S.C. § 1202(d) (removal "only for inefficiency, neglect of duty, or malfeasance in office"). The Commission's ALJs, thus, enjoy at least two levels of removal protection, which the Supreme Court held in *Free Enterprise Fund*, "contravene[s] the Constitution's separation of powers." 561 U.S. at 492.

JA132–JA133; A.R.3589–A.R.3590. *See* 30 U.S.C. §§ 816(a)(1) (final, appealable decisions), 823(d)(2)(B) (Commission's *sua sponte* review), 823(d)(2)(A)(i) (aggrieved party's petition for the Commission's discretionary review of the ALJ's decision).

If the Commission's ALJs are inferior officers, they cannot be insulated from presidential removal by more than one level of for-cause removal restrictions. *Lucia*, 585 U.S. at 241, 247; *Free Enter. Fund*, 561 U.S. at 514. If the Commission's ALJs are principal officers, as their power to issue final decisions appealable to circuit courts suggests, then the President's power to remove them must remain "unrestricted." *Seila*, 591 U.S. at 204; *Collins*, 594 U.S. at 250. The Court should so hold.

The Secretary/Commission is expected to argue that because the ALJs (and, arguably, the Commissioners) exercise judicial-like powers, the ALJs are entitled to be protected from the President's removal power. But *Arthrex* forecloses that argument.

Arthrex explained that even if the "duties" of executive-agency hearing officers "partake of a Judiciary quality," these officers "exercis[e] executive power" because they operate within the executive branch. 594 U.S. at 17. Even when ALJs (and the Commissioners) perform what looks like "judicial" functions, they are "activities of executive officers." *Id.* "[I]ndeed, under our constitutional structure they *must be* exercises of … the executive power for which the President is ultimately responsible." *Id.* (quoting *City of Arlington v. FCC*, 569 U.S. 290, 305 n.4 (2013))

(simplified). Taken together, *Seila*, *Collins*, and *Arthrex* confirm that agency officials with judicial-like functions must remain accountable to the President.

Because the Commissioners and the ALJs are executive officers, they cannot be insulated from the President's removal power. The Court should hold that adjudication at the Commission is unconstitutionally structured because its ALJs and Commissioners are unlawfully shielded from the President's removal power.

IV. Adjudication at the Commission denies Tripoli the right to judicial process.

Article III of the Constitution and the Fifth Amendment's Due Process of Law Clause require "*judicial* process … before" a person can be deprived of life, liberty, or property. *Jarkesy*, 603 U.S. at 150 (Gorsuch, J., concurring). That right is a structural right. *Id.* at 128, 132 (Suing enforcement targets in Article III court is "mandatory" when the suit "concerns private rights," and "presump[tive]" in all other cases.). "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.'" *Stern*, 564 U.S. at 484 (simplified). The "parties cannot by consent cure" or "waiv[e]" an Article III structural separation of powers

violation because those structural "limitations serve institutional interests" of the three Departments. *Schor*, 478 U.S. at 850–51.

Here, because the Secretary seeks to deprive Tripoli of property—$32,500 in monetary penalties and $10,552 plus interest in compensatory damages, JA070–JA071; A.R.3372–A.R.3373—the Secretary must prove its case to an Article III judge (and jury where appropriate). *Jarkesy*, 603 U.S. at 128. These are nontrivial financial penalties imposed by executive officials through internal adjudication, without the benefit of Article III verdict and judgment. That alone raises serious due-process and separation-of-powers concerns.

The public-rights exception to Article III does not apply, as the Secretary/Commission is expected to argue. That is so for three reasons.

First, *Jarkesy* cabined the public-rights exception to *six* categories of cases, and the Secretary's case against Tripoli is not one of them: (1) revenue collection by a sovereign, (2) immigration, (3) tariffs on imports, (4) relations with Indian tribes, (5) administration of public lands, (6) granting of public benefits such as payments to veterans, pensions, and patent rights. 603 U.S. at 127–31. Claims for monetary

penalties and compensatory damages are not included within these public-rights exceptions.

Second, if the Secretary/Commission argues that *Atlas Roofing Co. v. Occupational Safety & Health Review Commission*, 430 U.S. 442 (1977), applies, then the Court should reject that argument because of *Atlas Roofing*'s standardless definition of public rights: "cases in which the Government sues in its sovereign capacity to enforce public rights created by statutes." *Id.* at 450. *Jarkesy* criticized *Atlas Roofing*'s definition of public rights to be "circular" because it does not define what a public right is and thereby makes it indeterminate. 603 U.S. at 139. Further, the Supreme Court has held that *Atlas Roofing* does not apply to private-rights cases, like this one, involving the potential "liability of one individual [Tripoli] to another [Mr. Baumann]." *Crowell v. Benson*, 285 U.S. 22, 51 (1932). *Stern*, not *Atlas Roofing*, controls because *Atlas Roofing* does not supply an exception to Article III adjudication. Instead, *Stern* holds that Congress cannot take away from Article III courts suits at common law, equity, or admiralty.

Third, *Atlas Roofing* cannot be read as an exception to the Seventh Amendment right to trial by jury because the claims at issue there (about

"the sides of trenches [being insufficiently] supported") were "unknown to the common law." 430 U.S. at 447, 461. Because the Seventh Amendment applies only to "Suits at common law," U.S. Const. amend. VII, a case involving claims "unknown to the common law," *Atlas Roofing*, 430 U.S. at 461, cannot be read to create an *exception* thereto. It only states what's already obvious: there is no right to jury trial in equity or admiralty cases; rather, the Article III court has discretion to empanel an advisory jury under Fed. R. Civ. P. 38–39.

Accordingly, the Court should hold that adjudication at the Commission is unconstitutionally structured because it denies Tripoli the right to an Article III forum. As a result, the Court should set aside the Commission's decision.

V. Adjudication at the Commission denies Tripoli the right to jury trial.

Jarkesy held that administrative enforcement targets like Tripoli have the right to a jury trial under the Seventh Amendment when the suit against them is "legal in nature." 603 U.S. at 122. A suit is legal in nature when it involves (1) a legal remedy (i.e., monetary penalties) and (2) legal claims. *Id.* at 123. The "remedy" factor is the "more important" and "all but dispositive." *Jarkesy*, 603 U.S. at 111. Here, the Secretary

seeks a monetary penalty for the legal claims of discrimination and interference. Therefore, the Secretary's claim is legal in nature, and Tripoli was entitled to a jury trial.

First, the remedy is legal. The Secretary asks for monetary penalties payable to the public treasury and compensatory damages and interest payable to the allegedly wronged miner, Mr. Baumann. "[M]oney damages are the prototypical common law remedy." *Id.* at 123; *Granfinanciera S.A. v. Nordberg*, 492 U.S. 33 (1989); *Tull v. United States*, 481 U.S. 412 (1987). Actions to recover penalties or damages under statutory provisions are "a type of action in debt requiring trial by jury." *Jarkesy*, 603 U.S. at 122 (simplified). That is so because their purpose is to punish the wrongdoer. *Id.* at 123. Nor does this case involve the "return [of] unjustly obtained funds." *Id.*

Second, the legal nature of the "cause[s] of action" against Tripoli only "confirms that" it is "entitled to a jury on [the Secretary's] claims." *Id.* at 125. A claim is of a legal nature when it borrows from the common law even where a statute codifies it. *Id.* at 122–23. Here, unlawful retaliatory firing of an employee (what the Secretary calls interference and discrimination) bear a "close relationship" to the "common law" of

contract, principal and agent, master and servant, respondeat superior, and vicarious liability. *Id.* at 125. Indeed, this Court has long recognized such retaliatory-discharge claims as common-law claims. *See Humphrey v. Sequentia, Inc.*, 58 F.3d 1238, 1242 (8th Cir. 1995); *Napreljac v. John Q. Hammons Hotels, Inc.*, 505 F.3d 800, 802 (8th Cir. 2007) ("[C]ommon law provides a cause of action for an at-will employee who is discharged contrary to public policy, which includes being discharged" for exercising statutory rights.) (simplified). It is irrelevant that the statutory or regulatory law at issue proscribes conduct that is "narrower" or "broader" than the common law, or that it "only targets certain subject matter." *Jarkesy*, 603 U.S. at 126. Where there is a "common law analogue," the claim is "legal in nature" that requires trial by jury. *Id.*

Because the Secretary's allegation against Tripoli involves legal remedies and legal claims, Tripoli was entitled to trial by jury. Because Commission proceedings deprived Tripoli of that Seventh Amendment right, the Court should set aside the administrative decision.

VI. The substantial-evidence standard for reviewing agency-found facts is unconstitutional, if it applies.

In an appeal to the circuit court, the Mine Act directs courts to afford "conclusive" weight to the Commission's findings of fact if those

facts are "supported by substantial evidence." 30 U.S.C. § 816(a)(1). But the substantial-evidence standard does not apply here; if it does, it would violate the Constitution's separation of powers.

It violates the Fifth Amendment's Due Process Clause for an Article III court to simply accept as "conclusive," 30 U.S.C. § 816(a)(1), facts submitted to it by one of the litigating parties (here, the government). Article III courts, even those sitting in an "appellate" capacity, have jurisdiction "both as to Law and Fact." U.S. Const. art. III, § 2, cl. 2. And facts not found by a jury can be "otherwise re-examined in any Court." U.S. Const. amend. VII. That is, "agency determinations of *fact* [can] bin[d] … courts" only if "there was 'evidence to support the findings,'" *Loper*, 603 U.S. at 387 (2024) (quoting *St. Joseph Stock Yards Co. v. United States*, 298 U.S. 38, 51 (1936))—but what constitutes evidence is for *courts*, not agencies, to decide under established rules of evidence. Therefore, it would be unconstitutional, both to let the agency determine what constitutes "evidence" as well as to give "conclusive" weight to agency-found facts.

The substantial-evidence standard arose in the context of jury trials and applies only to jury-found facts. *See, e.g.*, *Mortensen*, 322 U.S. at 374;

Abrams, 250 U.S. at 619 ("A question of law is thus presented, which calls for an examination of the record, not for the purpose of weighing conflicting testimony, but only to determine whether there was some evidence, competent and substantial, before the jury, fairly tending to sustain the verdict."). According to the Constitution, "no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law." U.S. Const. amend. VII. But the Commission and its ALJs are neither a court nor a jury. That means, the underlying facts here should have been found by a jury for this Court to afford substantial-evidence deference to such jury-found facts. Because they weren't, this Court has no occasion to apply the substantial-evidence standard.

More importantly, the substantial-evidence standard for judicial review of agency-found facts applies only if a "*legislative* agency" finds facts. *St. Joseph*, 298 U.S. at 50–51 (emphasis added) (holding that the "fixing of rates is a legislative act"). We know from *Arthrex* that the Commission is an executive-branch agency, and its officers perform executive functions no matter how judicial-like they may appear. 594 U.S. at 17. Case-by-case fact-finding is different than *legislative* fact-

finding, *Turner Broadcasting System Inc. v. FCC*, 520 U.S. 180, 195 (1997); the latter involves Congress-found facts such as those mentioned in the preamble to the Mine Act, 30 U.S.C. § 801 ("Congressional findings and declaration of purpose"). Congress, thus, violates the Constitution's separation of powers when it takes case-by-case fact-finding, which is "exclusively a judicial function," *Loper*, 603 U.S. at 387, and gives it to the Commission while also commanding Article III courts to take the Commission's fact-finding as "conclusive," 30 U.S.C. § 816(a)(1). Congress cannot take away the federal government's judicial power that "it does not possess" and give it to the executive department. *Bowsher v. Synar*, 478 U.S. 714, 726 (1986). The substantial-evidence standard, therefore, cannot apply here because such application would be unconstitutional.

The Mine Act, 30 U.S.C. § 816(a)(1) (fifth sentence), also does not require this Court to apply the substantial-evidence standard here. That is because only "[t]he findings of *the Commission* with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive." *Id.* (emphasis added). The Commission, declining to review the ALJ's decision, JA132–JA133; A.R.3589–A.R.3590, conducted no evidentiary hearing, and found no

facts here; the facts in the record were found by the ALJ. Even if the Commission had reviewed the ALJ's decision, its review of the ALJ's facts would have been under the same "substantial evidence" standard. 30 U.S.C. § 823(d)(2)(A)(ii). That is, there simply aren't any "findings of the Commission" in cases where the Commission does not itself conduct the evidentiary hearing to which this Court owes substantial-evidence deference under the fifth sentence of § 816(a)(1). By the statute's plain terms, the substantial-evidence standard does not apply here.

Commission adjudication is unconstitutionally structured because it requires Article III courts to apply an evidentiary standard that cannot be applied outside of the jury or the legislative-agency contexts without violating the Constitution's separation of powers. The Court should so hold and set aside the administrative decision.

VII. Vacatur without remand is the only appropriate remedy for structural constitutional violations.

This is a structural constitutional challenge to the Commission's adjudicatory framework. Therefore, no remand is warranted regardless of whether the Commission or the Secretary could revisit the underlying merits.

If the Court concludes that adjudication at the Commission is structurally unconstitutional, it should set aside, that is, vacate without remand. *See* 30 U.S.C. § 816(a)(1) ("set aside"), § 956 (other remedies available under the Administrative Procedure Act, 5 U.S.C. § 706, do not apply). As the Supreme Court said, there is nothing an agency can do on remand if a court holds that the structure, or very "existence," of an agency violates the Constitution. *Free Enter. Fund*, 561 U.S. at 490. In *AT&T, Inc.*, the Fifth Circuit vacated FCC's decision because its levy of civil penalties was unconstitutional. 135 F.4th at 232 (Article III and Seventh Amendment violations). This Court should do the same.

In any event, a remand would not be available here because the Mine Act countenances a limited-purpose remand only on a party's motion and only if such a motion can "show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Commission." 30 U.S.C. § 816(a)(1). Tripoli specifically does not ask for a remand. No factual development is necessary on any of the questions presented here because all of them are structural constitutional claims. The Secretary/Commission is not expected to ask for a remand to adduce

additional evidence that would be material to deciding whether the statutory scheme at issue here is structurally unconstitutional. And a remand for additional fact-finding by the ALJ or the Commission on the underlying interference and discrimination claims would be foreclosed if the Court holds that such administrative adjudication is structurally unsound based on any of the questions Tripoli presents here.

Conclusion

The Court should set aside the administrative decision.

DATED: May 29, 2025

Respectfully submitted,

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I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Eighth Circuit by using the appellate CM/ECF system on May 29, 2025. I certify further that the foregoing document was served on counsel for all parties through the appellate CM/ECF system.

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