No. 21-1279

In the
Supreme Court of the United States

KLAVDIA THOMAS & TATIANA KUZNITSYNA,
Petitioners,
v.
VALENTIN BELEVICH,
Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

PETITION FOR WRIT OF CERTIORARI

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March 16, 2022

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QUESTIONS PRESENTED FOR REVIEW

Whether there is a serious misalignment of courts on statute intent, interpretation and jurisdiction.

Whether the fair justice was served.

PARTIES TO THE PROCEEDING

Petitioners: Klavdia Thomas and Tatiana Kuznitsyna

Respondent: Valentin Belevich

STATEMENT OF RELATED PROCEEDINGS

State of Alabama v. Belevich Valentin,
Case # CC-2018-001166.00

State of Alabama v. Belevich Valentin,
Case # CC-2019-000286.00

State of Alabama v. Belevich Valentin,
Case # CC-2019-000287.00

State of Alabama v. Belevich Valentin,
Case # CC-2019-000288.00

State of Alabama v. Belevich Valentin,
Case # CC-2019-000289.00

State of Alabama v. Belevich Valentin,
Case # CC-2019-000290.00

State of Alabama v. Belevich Valentin,
Case # CC-2019-000737.00

City of Pelham v. Belevich Valentin,
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PETITION FOR WRIT OF CERTIORARI

Petitioners Klavdia Thomas and Tatiana Kuznitsyna respectfully petition this Court to issue a writ of certiorari to review the unfair and wrongful judgment in the lawsuit against them filed by the respondent Valentin Belevich, by the United States Court of Appeals for the Eleventh Circuit and the United States District Court, Northern District of Alabama, Southern Division.

OPINIONS BELOW

The Eleventh Circuit Court of Appeals affirmed the Opinions of the District Court. The Order is reproduced in Petitioner's Appendix A.

JURISDICTION

The judgment of the United States Court of Appeals for the Eleventh Circuit was entered on November 1, 2021. Petitioner filed a petition for rehearing on November 15, 2021. The petition for rehearing was denied on December 20, 2021. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

Under the INA, "immigrants who are likely to become a public charge are ineligible for admission into the United States unless their applications for admission are accompanied by an Affidavit of Support Form I-864." *Younis v. Farooqi*, 597 F. Supp. 2d 552, 554 (D. Md. 2009) (citing 8 U.S.C. §§ 1182(a)(4), (a)(4)(B)(ii), 1183a(a)(1)). The Affidavit of Support, Form I-864 is a legally enforceable contract between

the sponsor and the United State Government "in which the sponsor agrees to provide support to maintain the sponsored alien at an annual income that is not less than 125 percent of the Federal poverty level during the period in which the affidavit is enforceable." 8 U.S.C. § 1183a(a)(1)(A); If the petitioning sponsor does not have sufficient annual income to meet the support requirement, another individual with sufficient income may accept joint and several liability for providing the required support. *See* 8 U.S.C. § 1183a(f)(5)(A).

The submission of this affidavit may make the sponsored immigrant ineligible for certain Federal, state, or local means tested public benefits, because an agency that provides means-tested public benefits will consider "sponsor's" resources and assets as available to the sponsored immigrant when determining his or her eligibility for the program.

If the immigrant sponsored in the affidavit does receive one of the designated Federal, state or local means-tested public benefits, the agency providing the benefit may request that "the sponsor" repays the cost of those benefits. That agency can sue the sponsor if the cost of the benefits provided is not repaid. *See* Instructions for Affidavit of Support under Section 213A of the INA, Department of Homeland Security U.S. Citizenship and Immigration Services, USCIS Form I-864, OMB No. 1615-0075.

Sponsor's obligations under the Affidavit may terminate as a matter of law upon the occurrence of any of six conditions stated in federal regulations and in the Form I-864. Specifically, the sponsor's

obligations terminate if the sponsored immigrant: (A) [b]ecomes a citizen of the United States; (B) [h]as worked, or can be credited with, 40 qualifying quarters of work under title II of the Social Security Act . . . ; (C) [c]eases to hold the status of an alien lawfully admitted for permanent residence and departs the United States . . .; (D) [o]btains in a removal proceeding a new grant of adjustment of status as relief from removal . . .; or (E) [d]ies.

According to 8 U.S. Code § 1183a(c) Remedies available to enforce an affidavit of support under this section include any or all of the remedies described in section 3201, 3203, 3204, or 3205 of title 28, as well as an order for specific performance and payment of legal fees and other costs of collection, and include corresponding remedies available under State law. A Federal agency may seek to collect amounts owed under this section in accordance with the provisions of subchapter II of chapter 37 of title 31.

STATEMENT OF THE CASE

Petitioner Tatiana Kuznistnyna is the mother of petitioner Klavdia Thomas. Based upon his marriage to Ms. Kuznistnyna, respondent Belevich immigrated to the United States from Russia. To facilitate that process, the petitioners executed affidavits of support on Belevich's behalf, as required by 8 U.S.C. § 1183a to overcome presumptive inadmissibility as a public charge under § 1182(a)(4). Slip op., at 3.

Sometime after immigrating to the United States, Belevich sexually abused Kuznistnyna's 9-year-old granddaughter, Thomas' daughter. The family warned

him not to ever come close to any members of their family. A protection order was obtained against him. After receiving undisputable evidence of Belevich's sexual abuse, the charges were filed against him and he is currently facing prosecution for sexual abuse of a minor and possessing child pornography. Conviction will make him deportable as an aggravated felon. 8 U.S.C. §§ 1101(a)(43)(A), (I) & 1227(a)(2)(A)(iii). Due to the pandemic delays, he is still awaiting trial that was originally scheduled for April of 2020. Now the trial is set for September 19, 2022.

In addition to inflicting emotional and psychological distress to the family, Belevich sued the petitioners for breach of the affidavit of support contract, seeking to take money from the petitioner's family after having taken away the nine-year-old child's innocence.

Federal Judge Kallon, Abdul K., United States District Judge, Northern District of Alabama, issued a partial judgement in favor of Belevich on June 20, 2019, stating that what he had done to the family was not relevant to the way the statute is written and interpreted.

In the summary judgement process Thomas and Kuznistyna submitted proof that Belevich was actually working "under the table" and had not been reporting his earning properly to the IRS. It is questionable how much income he was actually making and whether or not it was above 125% of the poverty line. Judge Kallon himself in his memorandum of Opinion stated that "Belevich bluntly contradicts himself" about his actual income, yet he still granted Belevich a Summary Judgement award of $24,777.82 for years 2015 – 2017

support, depriving petitioners their constitutional right of a jury trial where they were prepared to tell their story and provide evidence of Belevich's lies.

Judge Kallon allowed the jury trial for the sole reason of determining the amount of support owed to Belevich for years 2018 and 2019. Prior to the trial, however, Judge Kallon issued a protection order prohibiting the petitioners from mentioning Belevich's criminal charges. The trial was solely focused around Belevich's income.

At the trial, petitioners Kuzintsyna and Thomas provided evidence of Belevich's lies about his work and income. He had been working all along ever since he arrived to the United States for the same company, hiding his actual income from the IRS and only declaring a small portion of his actual income.

As a result of the trial, Belevich was awarded additional $5,758.11 in support for years 2018 and 2019. Order on Jury Verdict (D.E.102).

Something even more remarkable and despicable is the fact that Belevich's attorneys were awarded a total of $76,845.20 in fees and costs. Order (D.E. 118).

On appeal, the petitioners argued that equitable state law defenses should be available to them. However, the Court held that § 1183a's "only mention of state law" is "best read to ensure only that an enforcing party, such as the United States, has access to state law remedies," but does not "incorporate state law in defining the scope of a sponsor's obligation to provide financial support."

Subsequently, the appellants filed a petition for rehearing and received a denial decision without any particular explanation.

REASONS FOR GRANTING THE PETITION

This case presents substantial questions of exceptional importance.

I. Is it the correct interpretation of the statute?

A foreign immigrant comes to the United States and commits crimes against the sponsor's family, a nine-year-old child in this case. He has the audacity to sue them for money for the sole purpose of enrichment and gets it granted by the American judicial system! At the same time, he is not really living in poverty, but working illegally and not paying the right amount of taxes to the country that granted him the legal status.

The court of appeals in their opinion states that it does not matter what Belevich did to the family, "the express purpose of the statute is to prevent admission to the United States of any immigrant who is "likely at any time to become a public charge. In this case Belevich has had income and is not a public charge. As a matter of fact, on April 9, 2022, he will complete his 40 quarters of working in the United States.

II. Are there any overdue changes to the statute to provision for cases like this?

The statute was published in 1997. Since then, immigrants got craftier on how to scheme the system

and get enriched from the American public. Is it time to make some changes to the way it was written?

III. Question of Federal jurisdiction.

In addition, the petitioners' counsel raised a Federal jurisdiction question in the Petition for rehearing filed on November 15, 2021.

Three district courts in this Circuit[1] have held that federal question jurisdiction is lacking to entertain these types of case which are better suited for state courts which regularly adjudicate matters relating to family support obligations.

This weight of authority demonstrates that a substantial jurisdictional question exists here. In the earliest case, it was held that federal question jurisdiction was lacking because "the dispute does not involve the validity, construction or effect of the federal law, but only involves construction of the contract," and that "[a] breach of contract claim is a creature of state law, even if the contract itself was anticipated by a federal statute." *Winters v. Winters*, No. 6:12-cv-536-Orl-37DAB, 2012 WL 13137011, at *4 (M.D.Fla. Apr. 25, 2012), *report and recommendation adopted*, 2012 WL 1946074 (May 30, 2012) (citing *Local Div. 732, Amalgamated Transit Union v. Metro. Atlanta Rapid Transit Auth.*, 667 F.2d 1327, 1331 (CA11 1982)).

A second case held that, "[r]eading 8 U.S.C. § 1183(e)(1) and Form I-864 together, it is clear that

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[1] As well as an out-of-Circuit district court which followed their lead. *Ivanoff v. Schmidt*, No. 17-cv-01563-KMT (D. Colo.2018).

federal courts are not vested with exclusive jurisdiction over claims to enforce Form I-864," and "[t]hus, to establish that jurisdiction is properly vested in this Court, Plaintiff must allege [diversity jurisdiction]." *Vavilova v. Rimoczi*, No. 6:12-CV-1471-ORL-28, 2012 WL 6802076, at *3 (M.D. Fla. Dec. 10, 2012), *report and recommendation adopted*, 2013 WL 80145 (Jan. 7, 2013).

A third court held the same, relying upon the prior two cases. *Junior v. Junior*, No. 6:13-CV-1116-ORL-18DAB, 2013 WL 12207508 (M.D. Fla. July 26, 2013), *report and recommendation adopted sub nom. Dawn v. Anthony*, 2013 WL 12205814 (Aug. 14, 2013).

Substantial questions relating to the jurisdiction of the federal courts are of exceptional importance. Jurisdictional clarity is an important federal interest. *See, e. g.*, *Hertz Corp. v. Friend*, 559 U. S. 77, 96 (2010) (emphasizing "necessity of having a clearer rule" "to avoid overly complex jurisdictional administration").

Jurisdictional clarity encourages "administrative simplicity," "promote[s] greater predictability" and conserves "[j]udicial resources" by assuring courts of their power to hear a case. *Id.*, at 94 (citing *Arbaugh v. Y&H Corp.*, 546 U. S. 500, 514 (2006)).

Further, even though a challenge to the jurisdiction was not raised until now, the "[f]ederal courts 'are obligated to inquire into subject-matter jurisdiction sua sponte whenever it may be lacking,' " *Cadet v. Bulger*, 377 F.3d 1173, 1179 (CA11 2004) (citations omitted), regardless of the timing of such a challenge, *Fort Bend Cty., Texas v. Davis*, 139 S. Ct. 1843, 1849 (2019)

("Unlike most arguments, challenges to subject matter jurisdiction may be raised by the defendant at any point in the litigation, and courts must consider them sua sponte.")

In its ruling, the panel presumed that federal jurisdiction was proper, expressing that "[t]he statute . . . creates a federal cause of action" for both government entities and individual "sponsored immigrant[s]." Jurisdiction was alleged under 28 U.S.C. § 1331 and the immigration code itself. Complaint (D.E. 1).

It is well established that § 1331 jurisdiction is narrower than what Article III of the Constitution allows for. *Shoshone Mining Co. v. Rutter*, 177 U. S. 505, 506 (1900). Given that Belevich's complaint asserts that federal law authorizes suit (D.E. 1, at 1–2), he pleaded a "creation test" theory for arising under jurisdiction. 15A MOORE'S FEDERAL PRACTICE § 103.31[2 & 3] (3d ed. 2019); *see also Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U. S. 375, 377 (1994) ("It is to be presumed that a cause lies outside this limited jurisdiction, . . . and the burden of establishing the contrary rests upon the party asserting jurisdiction . . . .").

The questions of whether federal law impliedly creates a cause of action, and whether it also creates a basis for federal jurisdiction, are separate and distinct. *Local Div. 732*, 667 F.2d, at 1333 ("confusion concerning the relationship between federal subject matter jurisdiction and implied private rights of action . . . is understandable because . . . the two concepts are inextricably intertwined"); *id.* ("Analytic precision,

however, demands that our focus be on the implicit grant of jurisdiction rather than on the implicit creation of a right of action.").

Relatedly, the Supreme Court in *Mims v. Arrow Fin. Servs., LLC*, 565 U.S. 368 (2012), established a two-part test to determine whether jurisdiction exists in cases where a federal cause of action was expressly created by Congress. Importantly, the *Mims* decision represents a new articulation of the "creation test." Mulligan, J., *You Can't Go Holmes Again*, 107 NW. U. L. Rev. 237, 239 (2012) ("*Mims*, in a break with this cause-of-action-centric tradition, recasts the standard § 1331 test as one that looks to whether 'federal law creates [both] a private right of action and furnishes the substantive rules of decision.' ") (citation omitted) (alteration in original). (Available at: https://tinyurl.com/2k8r3s5y.).

The new test enunciated by the Supreme Court is that, "when federal law creates a private right of action and furnishes the substantive rules of decision, the claim arises under federal law, and district courts possess federal-question jurisdiction under § 1331," subject to an exception for Congressional divestments not at play here. *Mims*, 565 U.S., at 378–79 These two prongs represent independent requirements.

IV. The statute does not create an express cause of action.

The first prong under the *Mims* test is to inquire whether "federal law creates a private right of action." *Id.* In *Mims*, the Court had no occasion to address this prong because the parties "agree[d] that th[e] action

arises under federal law." *Mims*, 565 U.S., at 378 (citation omitted). However, given the language of the relevant provisions of "47 U.S.C. §227(b)(3), (c)(5)," *id.*, at 371, it becomes obvious why the point went uncontested:

> **(3) Private right of action**
>
> A person or entity may, if otherwise permitted by the laws or rules of court of a State, bring in an appropriate court of that State--
>
> (A) an **action based on a violation of this subsection or the regulations prescribed under** this subsection to enjoin such violation,
>
> (B) an action to recover for **actual monetary loss from such a violation**, or to receive $500 in damages for each such violation, whichever is greater, or
>
> (C) both such actions.
>
> **(5) Private right of action**
>
> A person who has received more than one telephone call within any 12-month period by or on behalf of the same entity in **violation of the regulations prescribed under this subsection may**, if otherwise permitted by the laws or rules of court of a State bring in an appropriate court of that State--
>
> (A) an **action based on a violation of the regulations prescribed under this subsection** to enjoin such violation,

> (B) an **action to recover for actual monetary loss from such a violation**, or to receive up to $500 in damages for each such violation, whichever is greater, or
>
> (C) both such actions.
>
> It shall be **an affirmative defense** in any action brought under this paragraph that the defendant has established and implemented, with due care, reasonable practices and procedures to effectively prevent telephone solicitations in violation of the regulations prescribed under this subsection. If the court finds that the defendant **willfully or knowingly violated the regulations** prescribed under this subsection, the court may, in its discretion, increase the amount of the award to an amount equal to not more than 3 times the amount available under subparagraph (B) of this paragraph.

47 U.S.C. §§ 227(b)(3), (c)(5) (emphasis added).

Not only are the titles of these provisions expressly captioned "Private right of action," but the language of the statute also expresses that "the action is for violation of a federal statute," *Local Div. 732*, 667 F.2d, at 1331, *accord Mims*, 565 U.S., at 375 ("Mims charged that Arrow 'willfully or knowingly violated the TCPA.'"), and of that statute's implementing regulations. *See Alexander v. Sandoval*, 532 U.S. 275, 291 (2001) ("Language in a regulation may invoke a private right of action that Congress through statutory text created, but it may not create a right that Congress has not.")

Also, given that that statute's language incorporates regulations, sets up affirmative defenses, and a mens rea to permit treble damages, among other things, it can be easily deduced why the Supreme Court stated that the statute "specifies the substantive rules of decision," *Mims*, 565 U.S., at 387, without elaboration.

In contrast, the immigration code does no such thing. That conclusion becomes apparent when one compares the language of 8 U.S.C. § 1183a(b)(2) with §§ (e)(1) & (2).

Section 1183a(b)(2) demonstrates how Congress creates an express cause of action in a statute—in this case, express cause of action "for reimbursement under paragraph (1)(A)," id., which can only be maintained by entities that have provided a sponsored immigrant with a "means-tested public benefit," § 1183a(b)(1)(A).

Similar to the statute in *Mims*, § 1183a(b)(2) is captioned "Action to Compel Reimbursement," and it "enact[s] detailed, uniform, federal substantive prescriptions and provide[s] for a regulatory regime administered by a federal agency." 565 U.S., at 383. Section 1183a(b)(1)(B) allows the agency to implement regulations to provide rules of decision for the action to compel reimbursement. Sections 1183a(b)(1)(A) & (2)(A) set up a notice procedure that applies prior to the commencement of suit. Section 1183a(b)(2)(B) creates a limitations period. And § 1183a(b)(3) allows for delegation to collection agencies. This is what an express cause of action looks like.

In his complaint, Belevich alleges that § 1183a(e) authorizes suit. Under *Mims*, that means that

§ 1183a(e) must "creat[e] a private right of action and furnis[h] the substantive rules of decision." 565 U.S., at 378. But this argument fails under the first prong of the *Mims* test for two reasons.

First, § 1183a(e) is captioned "Jurisdiction," and it only serves to set up a forum selection rule. It says nothing about what the elements of a purported cause of action would be. It makes no mention of intent standards, defenses, or of any delegation of regulatory authority to an agency for the purposes of supplying rules of decision.

Second, if Belevich is correct that §1183a(e)(1)—which refers to actions brought by sponsored immigrants—creates a cause of action, then the same must be said about (e)(2) with respect to benefits-providing entities. Given that § 1183a(e) enumerates a list of potential plaintiffs to whom its general rule applies, that general rule must apply equally to each class of plaintiffs listed. *Clark v. Martinez*, 543 U.S. 371, 378 (2005) (The "operative language of" a statute "applies without differentiation to all . . . categories . . . that are its subject.").

But that cannot be the case. Reading § 1183a(e) to create causes of action would violate the rule against surplusage given that § 1183a(b)(2) already creates a cause of action for benefits-providing entities. *United States v. Aldrich*, 566 F.3d 976, 978 (CA11 2009) ("[S]tatutes should be construed so that 'no clause, sentence, or word shall be superfluous, void, or insignificant.' ") (citation omitted); *see also Alexander*, 532 U. S., at 290 ("The express provision of one method

of enforcing a substantive rule suggests that Congress intended to preclude others.") (citation omitted).

And the fact that § 1183a(e) allows an action to be "brought against the sponsor in any appropriate court" does not change the outcome. In *Mims* itself, the Supreme Court interpreted 47 U.S.C. §§ 227(b)(3), (c)(5)'s language of "appropriate court of that State" as not creating jurisdiction. Rather, it read that language as allowing "States leeway they would otherwise lack to decide for themselves whether to entertain claims under the TCPA." 565 U.S., at 382 (cleaned up). In other words, the "any appropriate court" language in 8 U.S.C. §1183a(e) does not compel jurisdiction; it allows legislatures (including Congress) leeway to define the jurisdiction of their own tribunals as they see fit, and allows individual plaintiffs to take advantage of any jurisdiction that already happens to independently exist, i.e., diversity jurisdiction.

Additionally, Belevich's jurisdictional allegations fail the second prong of the *Mims* test which requires that "federal law furnishes the substantive rules of decision." *Mims*, 565 U.S., at 378. Belevich pleaded a breach of contract claim. (D.E. 1, at 7.) (He also pleaded an intentional infliction of emotional distress claim grounded in state law.)

First, no part of § 1183a—besides § 1183a(b) which applies only to reimbursement actions by welfare agencies—creates rules of decision. At most, one might argue that § 1183a(c) is instructive because it provides for remedies, but remedies are not elements of a cause of action. Remedies are simply the award of relief after a case has been made establishing all the elements of

a cause of action. Although the immigration code defines the terms of the contract at issue here, nothing in § 1183a defines what a breach of that contract would look like, or even whether the breach needs to be material or simply *de minimis*.

Second, the immigration regulations cannot supply rules of decisions when a sponsored alien brings a breach of contract claim. That would contravene the express intent of Congress holding otherwise.

"It is axiomatic that an administrative agency's power to promulgate legislative regulations is limited to the authority delegated by Congress." *Bowen v. Georgetown Univ. Hosp.*, 488 U.S. 204, 208 (1988). Here, the Secretary of Homeland Security's general power to establish regulations is limited to the purpose of "carrying out **his authority** under the provisions of" the immigration code. 8 U.S.C. § 1103(a)(3) (emphasis added). The Secretary in no way exercised his authority under the immigration code when the plaintiff filed this action.

The same is true when a welfare agency brings an action to compel reimbursement. That is why Congress had to create special rulemaking powers to give the Secretary power to issue rules on that subject. § 1183(b)(1)(B). But no such rulemaking power has ever been delegated to the Secretary with respect to contract claims brought by sponsored immigrants.

In sum, by Congressional design, the regulations cannot provide rules of decision in suits between private individuals. And the Court cannot graft the regulations onto suits between private individuals in

order to provide rules of decision for those cases. *Alexander*, 532 U.S., at 287 ("Raising up causes of action where a statute has not created them may be a proper function for common-law courts, but not for federal tribunals.")

V. The statute does not imply a cause of action, and even if does, it does not imply an independent basis for federal jurisdiction.

"[F]ederal jurisdiction 'may not be invoked . . . merely because the plaintiff's right to sue is derived from federal law.' " *Nat'l Mut. Ins. Co. of Dist. of Col. v. Tidewater Transfer Co.*, 337 U.S. 582, 597–98 (1949) " '[T]he mere fact that a suit is an adverse suit authorized by the statutes of Congress is not in and of itself sufficient to vest jurisdiction in the Federal courts.' " *Id.*, at 598 n. 23 (citation omitted). "[I]t is considered 'well settled that a suit to enforce a right which takes its origin in the laws of the United States is not necessarily one arising under the Constitution or laws of the United States.' " *Id.* (citation omitted).

This Court has previously rejected a claim that a contract between private parties arising from entry into a federal benefits program gives rise to implied jurisdiction. In *Local Div. 732*, a "Union argue[d] that by conditioning financial assistance on the execution of fair and equitable arrangements as determined by the Secretary of Labor, and by commanding that the grant contract specify the terms and conditions of such arrangements, Congress implicitly required that grant recipients comply with the labor protective arrangements." 667 F.2d, at 1331. This led to the

argument "that there is an implied grant of federal jurisdiction within the [federal statute] or, at the least, 'arising under' jurisdiction under 28 U.S.C. § 1331 (1976) over actions to enforce § 13(c)." *Id.*

The Court explained that the "confusion concerning the relationship between federal subject matter jurisdiction and implied private rights of action" "is understandable because," often, "the two concepts are inextricably intertwined." *Id.*, at 1333. "Analytic precision, however, demands that our focus be on the implicit grant of jurisdiction rather than on the implicit creation of a right of action." *Id.* That is because, even when "there is no question [] that there is a private cause of action for breach of [contract]," "[t]hat action is the common law action on a contract, and it exists independent of congressional intent." *Id.*

To decide the issue, the Court held that, "[i]n order for us to infer a private right of action, or federal jurisdiction, we must have before us clear evidence that Congress intended to provide such a remedy, . . . , and if the legislative history provides no clear indication one way or the other, so that clear evidence of affirmative congressional intent is lacking, we cannot infer that Congress has legislated silently." *Id.*, at 1335 (citations omitted). In other words, circuit law applies a presumption **against** jurisdiction in this realm subject to a clear statement rule.

In that case, "the legislative history [at issue] shows that Congress intended that affected employees be protected by privately enforceable protective arrangements," and that "it would be absurd to suggest that Congress did not contemplate that such

arrangements would be honored." *Id.*, at 1337. "But it simply does not follow that such arrangements are enforceable in federal court." *Id.*, at 1338. Even where one has "conceded that Congress contemplated compliance with [the statutory] agreements, and that private enforcement actions indisputably lie in state court," that is not enough. *Id.*,at 1339. Applying these rules, the Court ultimately held that "the district court lacked jurisdiction over the subject matter of this case" based on a lack of clear Congressional intent to the contrary. *Id.*, at 1346.

Later circuit law follows suit. In affirming a lack of § 1331 jurisdiction, this Court described its "task [a]s [being] to search the Act and regulations for signs of congressional intent to create a private cause of action." *Taylor v. Citizens Fed. Sav. & Loan Ass'n*, 846 F.2d 1320, 1321 (CA11 1988) (citations omitted). "[M]erely because a statute protects certain individuals, it does not necessarily mean that it also gives rise to an implied cause of action." *Id.* (citation omitted). "The dispositive question remains whether Congress intended to create any such remedy." *Transamerica Mortgage Advisors, Inc. v. Lewis*, 444 U.S. 11, 24 (1979).

The intent inquiry concludes the matter when it is not satisfied. *Calhoun v. Fed. Nat. Mortg. Ass'n*, 823 F.2d 451, 455 (CA11 1987) ("Since a review of the Charter Act and its legislative history reveals nothing to show Congress intended a private right of action under this section, the conclusion must be that Congress did not intend to create the cause of action asserted here."). And it was upon *Local Div. 732* that

the district courts have found a lack of jurisdiction over claims like Belevich's. E.g., *Winters*, 2012 WL 13137011, at *4 (citing *Local Div. 732*, 667 F.2d, at 1331).

The immigration code is very clear when it creates causes of action, and it is also very clear when it creates an independent basis for district court jurisdiction. It specifically does both twice for judicial review of naturalization decisions. 8 U.S.C. §§ 1421(c) & 1447(b). In another instance, it clearly establishes district court jurisdiction over other nationality issues through the use preexisting remedies from other law. § 1503(a). It clearly establishes jurisdiction in the courts of appeals to review deportation orders using the preexisting remedies provided by the Hobbs Act. §§ 1252(a) & (b)(2). And it clearly establishes district court jurisdiction over nationality claims that arise during review of a removal order. § 1252(b)(5).

Notably, these hallmarks of clarity are glaringly lacking in § 1183a with regard to suits brought by sponsored immigrants. Rather, it simply states that those types of actions "may be brought against the sponsor in any appropriate court." § 1183a(e). As the *Winters* court noted, "[t]his is not an explicit grant of jurisdiction in the federal courts, as the Form itself makes clear by providing, in pertinent part: . . . I agree to submit to the personal jurisdiction of any court of the United States or of any State, territory, or possession of the United States **if the court has subject matter jurisdiction of a civil lawsuit to enforce this affidavit of support**." 2012 WL, at *3 (emphasis added).

This language simply presupposes that jurisdiction already exists in the court the sponsored immigrant agrees to submit himself to; it is simply a choice of forum clause.

At most, Belevich's right to bring an action for specific performance is nothing more than a supplemental enforcement mechanism beyond what the statute was intended to create. The remedies provision under § 1183a(c) supports the conclusion that § 1183a does not create an independent private federal cause of action, or an independent basis for jurisdiction. *Local Div. 732*, 667 F.2d, at 1339 ("the presence of explicit alternative statutory remedies would contraindicate any implied grant")

CONCLUSION

For the foregoing reasons, Petitioners respectfully requests that this Petition for Writ of Certiorari be granted.

Respectfully submitted,

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