No. 25-966

In the Supreme Court of the United States

DEPARTMENT OF LABOR, ET AL.,
Petitioners,

v.

SUN VALLEY ORCHARDS, LLC,
Respondent.

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

BRIEF OF NATIONAL FEDERATION OF INDEPENDENT BUSINESS SMALL BUSINESS LEGAL CENTER, INC. AS *AMICUS CURIAE* IN SUPPORT OF RESPONDENT

Elizabeth Milito
Rob Smith
NFIB SMALL BUSINESS
LEGAL CENTER, INC.
555 12th Street NW, Suite
1001
Washington, DC 20004

Paul J. Ray
Counsel of Record
COVINGTON & BURLING LLP
One CityCenter
850 Tenth Street, NW
Washington, DC 20001
pjray@cov.com
(202) 662-6000

Counsel for Amicus Curiae

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INTEREST OF *AMICUS CURIAE*[1]

The National Federation of Independent Business Small Business Legal Center, Inc. (NFIB Legal Center) is a nonprofit, public interest law firm established to provide legal resources and be the voice for small businesses in the nation's courts through representation on issues of public interest affecting small businesses. It is an affiliate of the National Federation of Independent Business, Inc. (NFIB), which is the nation's leading small business association. NFIB's mission is to promote and protect the rights of its members to own, operate, and grow their businesses. NFIB represents the interests of its members in Washington, D.C., and all fifty state capitals.

The businesses that the NFIB Legal Center advocates for depend on the protections that Article III courts provide. The NFIB Legal Center files in this case to explain the importance of these protections to the small business community and to urge this Court to maintain them against administrative overreach.

[1] No party's counsel authored any part of this brief, and nobody other than *amicus* and its counsel made any monetary contribution intended to fund its preparation or submission.

INTRODUCTION AND SUMMARY OF ARGUMENT

The distinctions drawn in the public rights cases are sometimes obscure, but that should not blur the fundamental difference between adjudication by an administrative agency and adjudication by an Article III court. These two processes, though bearing some superficial resemblance, were designed to achieve two radically different goals. The Framers designed Article III courts to maintain justice under law, whereas the architects of the modern administrative state intended administrative adjudication to secure public policy objectives. Independence from control by the national executive is the keystone of the former, just as the affiliation of adjudicators with administrative agencies is the foundation of the latter.

The Government seeks to bring this case within the scope of administrative adjudication by invoking Congress's and the President's extensive authorities over immigration. But this case concerns activities at a farm in New Jersey, not at the border, and has to do with alleged breach of commitments made to farmworkers long after their arrival in the United States. Congress's and the President's vast powers over immigration do not confer *carte blanche* to vest adjudication in an administrative agency of any case that touches on immigration, however remotely.

The Nation's small businesses depend on the protections that independent Article III courts provide. Small businesses, unlike their larger competitors, generally lack the resources to forecast or manipulate the latest policy changes in

Washington; they must make business decisions in reliance on the text Congress enacts, and their cases should be decided by judges sworn to uphold such enactments rather than to follow the latest trend in agency policy. Furthermore, small businesses' limited experience interacting with regulators and their limited litigation resources both mean that adjudication before agency tribunals places small businesses at a real disadvantage versus their larger peers.

ARGUMENT

I. ARTICLE II ADJUDICATION DIFFERS PROFOUNDLY FROM ARTICLE III ADJUDICATION.

The Government begins its argument by claiming that "[s]ince the Founding, courts and executive officers have each engaged in adjudication." U.S. Br. 2. If that is true, it is only because the word "adjudicate" can cover radically different kinds of activities. Article II and Article III adjudications are separated by a wide gulf of difference—difference that receives scant attention in the Government's brief. This difference underscores the stakes at issue in this case.

Article III courts were intended to secure the "pure and independent administration of public justice." Joseph Story, 3 *Commentaries on the Constitution of the United States* § 1629 (1833). The Framers achieved this goal by making the judiciary a coordinate branch of government, co-equal to Congress and the President and hence subject to the control of neither. Judicial independence was intended to free federal courts to render justice according to the law rather than bow to political exigencies or partisan passions. *See The Federalist* No. 78 (Alexander Hamilton) (Clinton Rossiter ed., 1961).

Article II adjudication serves a different purpose. As a leading early advocate of administration put it, an administrative tribunal's "duty is not to prevent injustice to individuals … but to discover and define better methods of social behavior and to secure cooperation in the use of such methods by individuals and classes." Herbert Croly, *Progressive Democracy* 368 (Transaction Publishers 1998) (1914). The standard to be applied by administrative tribunals was not justice as set forth in law but rather pragmatic policy judgments. *See, e.g.*, James Landis, *The Administrative Process* 99 (1938). The custodian of these judgments would of course be the agency itself. Rather than hold the scale of justice straight and true between individuals and the government, administrative adjudicators were intended to have "a passion for taking sides" in favor of agency policy. Croly, *supra* at 369.

The subordination of administrative law judges to the heads of executive departments is no organizational fluke; it is essential to ensuring that administrative tribunals prioritize agency policy. The architects of the modern administrative state thought the loss of adjudicative independence a fair trade for increased efficiency in achieving agency policy. But that is not the balance the Framers struck in Article III. Where the Constitution's guarantee of adjudication by an Article III court applies, there can be no question that the "pure and independent administration of public justice" takes precedence over the efficient achievement of the policies of the day. That is not because the Framers underrated the importance of effective government action—the ineffectiveness of the national government under the Articles of Confederation was of course a principal reason for calling the Constitutional Convention, *see, e.g.*, James Madison, *Vices of the Political System of the United States* (1787), in 2 Writings of James Madison 361–69 (Gallard Hunt ed., 1901)—but because they prioritized the independent administration of justice, even at the expense of government effectiveness.

II. THE MERE FACT THAT THIS CASE TOUCHES ON IMMIGRATION DOES NOT MAKE IT ABOUT PUBLIC RIGHTS.

Over the years, Congress has often seen fit to advance its aims by repurposing common law causes of action to achieve new statutory goals. When it does so, this Court has held that the Constitution's guarantee of an independent tribunal applies. That is for good reason. Many statutory causes of action present no less a need for independent adjudication than causes of action that existed at common law in 1789. The mere fact that a cause of action originated in statute rather than common law does not alter the balance struck in Article III between independent adjudication and government efficiency.

When assessing whether Article III's guarantee applies, this Court has focused on the particular cause of action at issue rather than the statutory scheme as a whole. *S.E.C. v. Jarkesy* is a case in point. In the statutes at issue there, Congress repurposed the common law's cause of action for fraud as part of its comprehensive system of securities regulation. This Court held that the antifraud provisions of the securities laws were subject to Article III's guarantee. That these provisions were found in an extensive public-right regime with no common-law analogue did not change the Court's conclusion, since the causes of action themselves closely resembled their common-law ancestors. *See* 603 U.S. 109, 132–36 (2024).

In this case, as the Third Circuit found, the causes of action proffered by the Department of Labor strongly resemble traditional contract claims. Further, the Department sought traditional common law remedies, namely, civil penalties and back wages. The nature of the claims at issue and the penalties sought thus both bring this case within the scope of Article III's guarantee.

The Government disputes this conclusion by relying on Congress's and the President's broad powers to regulate the movement of persons and goods across our Nation's borders.[2] These powers are indeed far-reaching, providing ample authority for Congress and the President to adopt an extensive scheme of immigration controls and to vest adjudication of disputes under these controls in administrative bodies. But under *Jarkesy*, the question here is whether the particular causes of action at issue fall within the public rights exemption.

This question is not answered by the mere fact that the provision at issue appears in the Immigration and Nationality Act. *See id.* at 134 ("what matters is the

[2] The Government also points to the federal authority to set conditions on the receipt of federal benefits, an authority *amicus* does not address.

substance of the action, not where Congress has assigned it"). Otherwise, Congress could vitiate the right to an independent judge even in core common-law cases by codifying them in Title 8 of the United States Code.

Nor is this case resolved by the fact that 8 U.S.C. § 1188(g)(2) bears on Congress's immigration-related goals. Under this Court's decision in *Jarkesy*, what matters is the nature of the cause of action and the remedies sought, rather than the policy goals Congress had in mind when it enacted the provision at issue. Congress enacted the antifraud provisions of the securities laws to achieve a public policy goal unknown to the common law: the regulation of a national market in securities. But that did not stop this Court from concluding that the nature of the causes of action under the antifraud provisions and the remedies provided therein nevertheless brought that case within the compass of Article III's guarantee.

Moreover, the United States Code is filled with provisions that advance Congress's immigration-related priorities but to which the right to an independent judge manifestly attaches. Indeed, the anti-fraud provisions in *Jarkesy* itself advance Congress's immigration goals by making the United States a hospitable home for investors while discouraging the entry into the United States of would-be fraudsters. The protection afforded to property and settled expectations by property and contract law is surely a powerful magnet for the entry of investor immigrants, but that does not give Congress the authority to vest adjudication of gardenvariety property and contract claims in administrative tribunals.

Congress does indeed have broad power under its immigration authority to vest adjudication in administrative tribunals—but only adjudication of cases involving the actual immigration of persons or goods across our borders. Only in such cases has this Court allowed invocation of the immigration exception to Article III's guarantee. *See Lloyd Sabaudo Societa Anonima per Azioni v. Elting*, 287 U.S. 329 (1932) (involving administrative adjudication of liability in connection with transporting aliens into the United States); *United States v. New York & Cuba Mail S.S. Co.* 269 U.S. 304 (1925) (same); *Oceanic Steam Navigation Co. v. Stranahan*, 214 U.S. 320 (1909) (same).

Such movement is not at issue here. This case is about alleged working conditions on a farm in New Jersey, not at the border, and involves allegations of failure to honor obligations to farmworkers long after their arrival in the United States. Such a case cannot be swept within the public rights exception simply because it touches on immigration in some way.

III. SMALL BUSINESSES DEPEND ON THE PROTECTIONS THAT ARTICLE III COURTS PROVIDE.

All Americans benefit tremendously from the rule of law which independent federal courts maintain. For small businesses, adjudication by independent federal courts is especially vital. That is because small businesses lack the ability of their larger competitors to engage with federal agencies.

For one thing, unlike large enterprises, small businesses generally lack the resources to maintain sophisticated regulatory counsel to advise them of changing federal policy priorities. This truth has been recognized since the Founding, with Publius in *Federalist* No. 62 bemoaning the "unreasonable advantage" that frequent regulatory change "gives to the sagacious, the enterprising, and the moneyed few over the industrious and uninformed mass of the people. Every new regulation concerning commerce or revenue … presents a new harvest to those who watch the change, and can trace its consequences." *The Federalist* No. 62, at 381 (James Madison). Small businesses also lack personal connections to those who directly shape agency policy, which many of their larger counterparts enjoy. Unable to manipulate or track policy developments directly,[3] small businesses must rely on the statutory text enacted by Congress to guide their business decisions. Their compliance with governing law should not be determined by agency adjudicators who themselves are imbued with agency policy priorities.

Furthermore, small businesses are less likely than their larger competitors to be repeat players before federal agencies. This means small businesses are less

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[3] NFIB's quadrennial survey on the most important problems facing small businesses proves the point: In 2024, small businesses ranked both "Unreasonable Government Regulations" and "Uncertainty over Government Actions" as Top 10 problems facing their businesses, higher than finding and maintaining a skilled workforce, profits, cash flow, and employee management. "Finding Out about Regulatory Requirements" also appeared on the list. NFIB Rsch. Center, Small Business Problems & Priorities 9 (11th ed. 2024), https://www.nfib.com/small-business-problems-and-priorities/.

likely than large ones to develop the institutional experience and relationships with agency staff that can make such an important difference in the adjudicative process.

And small businesses are much less likely than large enterprises to command the large litigation war chests that allow for successful navigation of two phases of litigation: one before an administrative tribunal and a second in federal court. Small businesses must husband their resources rather than spread them across motions practice, trials, and appeals before both Article II and Article III adjudicators.

For all these reasons, among others, administrative adjudication places small businesses at a distinct disadvantage.

CONCLUSION

For the foregoing reasons, we respectfully urge the Court to affirm the decision below.

Respectfully submitted,

Paul J. Ray
Counsel of Record
COVINGTON & BURLING LLP
One CityCenter
850 Tenth Street, NW
Washington, DC 20001
pjray@cov.com
(202) 662-6000

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Counsel for Amicus Curiae