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NCLA Amicus Brief Asks Fifth Circuit to Overturn Currency Comptroller's Violation of Jury Trial Rights

Saul Ortega & David Rogers v. Office of the Comptroller of the Currency

Washington, DC (November 12, 2024) – Today, the New Civil Liberties Alliance filed an *amicus curiae* [brief](#) urging the U.S. Court of Appeals for the Fifth Circuit to hear *Ortega & Rogers v. Office of the Comptroller of the Currency* (OCC). NCLA asks the Fifth Circuit to overturn an OCC decision punishing former Texas bank officers Saul Ortega and David Rogers, Jr. without a jury trial, which violates the Seventh Amendment.

OCC closed the bank where Ortega and Rogers worked in 2013, and four years later the Office's Enforcement Counsel charged them with misconduct that allegedly led to the bank's failure. Their case was subsequently cycled through three different OCC Administrative Law Judges (ALJs), with the last ALJ recommending monetary and other sanctions against Ortega and Rogers. The Comptroller of the Currency adopted the ALJ's recommendation in relevant part and imposed a fine of \$250,000 on each defendant. Ortega and Rogers never had the chance to defend themselves against OCC's allegations before a jury.

Denying Ortega and Rogers a jury trial deprived them of their rights under the Seventh Amendment. OCC's in-house adjudication of its allegations against them also violates the Article III constitutional guarantee of an independent judiciary.

As the Supreme Court held just a few months ago in [Jarkesy v. SEC](#), the Seventh Amendment bars Congress from assigning traditional common law causes of action to adjudication in administrative tribunals instead of properly constituted Article III courts. Simply put, Congress cannot escape the constitutional jury trial guarantee where private rights are at stake and a federal agency seeks to exact a civil penalty.

NCLA released the following statements:

"The Supreme Court's *Jarkesy* decision is clear—cases where the federal government seeks monetary penalties must be tried to a jury. There is no legally meaningful difference between the Comptroller of the Currency and the SEC when it comes to this issue, and it's frankly stunning that the OCC is continuing to argue that *Jarkesy* somehow does not apply to its administrative tribunals."

— **Greg Dolin, Senior Litigation Counsel, NCLA**

"The *Jarkesy* case restored the right to trial by jury in administrative agency enforcement cases after a nearly 50-year hiatus. The Supreme Court's welcome retreat from that half-century-long mistake left only a narrow exception in place that does not apply here."

— **Mark Chenoweth, President, NCLA**

For more information visit the *amicus* page [here](#).

ABOUT NCLA

[NCLA](#) is a nonpartisan, nonprofit civil rights group founded by prominent legal scholar [Philip Hamburger](#) to protect constitutional freedoms from violations by the Administrative State. NCLA's public-interest litigation and other pro bono advocacy strive to tame the unlawful power of state and federal agencies and to foster a new civil liberties movement that will help restore Americans' fundamental rights.

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