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NCLA Asks Third Circuit to Eliminate Unlawful DOT Penalty After Landmark *Jarkesy* Ruling

Axalta Coating Systems LLC v. U.S. Department of Transportation, Federal Aviation Administration

Washington, DC (September 5, 2024) – Today, the New Civil Liberties Alliance filed an *amicus curiae* [brief](#) in *Axalta Coating Systems v. Department of Transportation* asking the U.S. Court of Appeals for the Third Circuit to vacate an illegal civil penalty order issued by an agency official in a juryless proceeding. The Supreme Court’s June decision in [Securities and Exchange Commission v. George Jarkesy](#), a nearly identical case supported by NCLA *amicus* briefs, requires the Third Circuit to undo DOT’s illegitimate penalty against Axalta Coating Systems. Just like SEC in its onslaught against Mr. Jarkesy, DOT lacked constitutional authority to take this punishing action.

DOT accused Axalta of violating federally prescribed standards by negligently failing to package a can of paint in a manner that prevents leakage during air transport, levying a monetary penalty against the company without a jury trial. The Supreme Court made clear in *Jarkesy* that Americans have a Seventh Amendment right to a jury trial when federal agencies seek civil penalties against them for alleged statutory violations. DOT deprived Axalta of that right.

By using a DOT Administrative Law Judge and the Federal Aviation Administration’s Acting Administrator to adjudicate its case against Axalta, the Department also violated Article III of the Constitution, which vests all judicial power in federal courts. The Supreme Court made clear over two hundred years ago that “Congress couldn’t imbue executive officers with judicial authority.” DOT mistakenly relied on the “public rights” exception to justify its juryless civil-penalty adjudication outside of Article III courts. As the Supreme Court’s recent *Jarkesy* decision explained, that narrow exception “has no textual basis in the Constitution” and does not apply to “traditional legal claims” like DOT’s civil penalty against Axalta.

NCLA released the following statement:

“The Third Circuit presciently stayed the *Axalta* case while the Supreme Court decided *Jarkesy*. Now that *Jarkesy* is out, there is little left for the Third Circuit to do except to apply its reasoning to this case. Justice Sotomayor’s dissent even listed the Department of Transportation as an agency that, under the majority’s reasoning, could not seek civil penalties in a juryless administrative enforcement proceeding.”

— **Sheng Li, Litigation Counsel, 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.