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Media Inquiries: [Joe Martyak](#), 703-403-1111

NCLA Asks *en Banc* Fifth Cir. to Rehear Jurisdiction and Jury Trial Rights Issues in FDIC/NCUA Cases

Cornelius Campbell Burgess v. Federal Deposit Insurance Corp., et al.;
Jeffrey Moats v. National Credit Union Administration Board, Board Member Todd Harper, et al.

Washington, DC (October 20, 2025) – The New Civil Liberties Alliance has filed two [amicus curiae briefs](#) urging the *en banc* U.S. Court of Appeals for the Fifth Circuit to rehear [Cornelius Campbell Burgess v. Federal Deposit Insurance Corporation](#) (FDIC) and [Jeffrey Moats v. National Credit Union Administration Board](#) (NCUAB). NCLA asks the *en banc* Fifth Circuit to reverse orders depriving former Texas bankers of federal district court hearings about violations of their constitutional rights, including the right to a jury trial.

In *Burgess*, the district court had enjoined the FDIC from proceeding against him following the Fifth Circuit’s [decision](#) in [Jarkesy v. Securities and Exchange Commission](#). After FDIC appealed, the Fifth Circuit stayed proceedings until the Supreme Court issued its seminal [decision](#) in *Jarkesy*, which recognized that federal agencies could only prosecute civil fraud action in federal district courts before an impartial adjudicator. Despite that holding, a Fifth Circuit panel then wrongly lifted that injunction in *Burgess*. In *Moats*, both the district court and the Fifth Circuit panel mistakenly upheld an order consigning him to NCUA’s in-house tribunal overseen by an Administrative Law Judge (ALJ) it appointed, even though *Jarkesy* requires an Article III court.

An ALJ recommended in 2022 that Mr. Burgess be assessed \$200,000 in fines and be permanently banned from his chosen profession. After *Jarkesy*, the Fifth Circuit sought further briefing on the impact of the Supreme Court’s decision on his proceedings. In August 2024, a Fifth Circuit panel dismissed Burgess’s challenge on the theory that 12 U.S.C. § 1818 stripped federal district courts of jurisdiction to judge the agency’s case against him.

In 2023, NCUA sought \$4 million in restitution from Mr. Moats, at least \$1 million in “civil penalties,” and an order permanently barring him from serving as a director, officer, or otherwise participating in the conduct of the affairs of any insured depository institution. The Fifth Circuit panel repeated the district court’s error by dismissing Moats’s appeal of the NCUA’s actions targeting him, ruling that Section 1786(k)(1) of U.S. Code Title 12 expressly strips federal courts of jurisdiction to evaluate his constitutional claims.

Jarkesy insists that the Seventh Amendment not only upholds the jury-trial right, but also directly limits Congress’s power to set up administrative tribunals. Specifically, *Jarkesy* held that “the judicial Power of the United States cannot be shared with the other branches ... A defendant facing a fraud suit has the right to be tried by a jury of his peers *before a neutral adjudicator*.” Congress lacks Article III judicial power in the first place, so it cannot delegate what it does not have, nor can it transfer Article III judicial power to Article II ALJ-led tribunals.

Congress also cannot get around the Seventh Amendment by purporting to strip district courts’ jurisdiction over cases brought against Mr. Burgess, Mr. Moats and countless other Americans. If that were possible, Article III and the Seventh Amendment would be drained of their substance, and Constitutional rights they guarantee would be at Congress’s mercy—eviscerating the whole idea of a constitutional right and the Constitution’s vesting of distinct powers in each branch.

NCLA released the following statements:

“The panel decisions in both these cases failed to heed the Supreme Court’s jurisdictional holding in *Jarkesy* that respondents charged with fraud who are facing reputational, financial and property loss must be tried in a district court before a neutral adjudicator (which no ALJ can be) and a jury. Failure to adhere to controlling Supreme Court law is well-recognized as a basis for the Court to rehear these cases *en banc* and correct the error.”

— **Peggy Little, Senior Litigation Counsel, NCLA**

“The Court should grant rehearing *en banc* to clarify that jurisdiction-stripping statutes cannot deprive defendants of their jury-trial rights, nor their rights to an Article III tribunal.”

— **Mark Chenoweth, President, NCLA**

For more information visit the *amicus* pages [here](#) and [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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