

# PUBLICATION

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## U.S. Supreme Court Declares SEC's Action for Civil Money Penalties Unconstitutional, Upending Administrative Enforcement Powers

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On June 27, 2024, the U.S. Supreme Court affirmed a Fifth Circuit decision that called into question the future of certain in-house administrative enforcement actions, which we reviewed [here](#). Specifically, in *Securities and Exchange Commission v. Jarkesy*, the Supreme Court held that:

1. The Securities and Exchange Commission (SEC) violated Mr. Jarkesy's Seventh Amendment right to a jury trial by bringing a securities fraud action for civil money penalties (CMPs) as an internal SEC administrative enforcement action before an SEC administrative law judge (ALJ); and
2. The "public rights" doctrine exception to Article III jurisdiction did not apply.

In what the majority opinion referred to as a "straightforward" analysis, the Court reasoned that, because: (a) the SEC's antifraud provisions closely replicate common law fraud; and (b) monetary penalties are the sort of damages that are traditionally obtained in a court of law, the accused has the right to a jury trial. Accordingly, when the SEC seeks to impose civil monetary penalties for fraudulent actions, it cannot bring an internal administrative action and must instead file a civil action in federal court.

As noted in the dissent, the *Jarkesy* opinion "upends longstanding precedent" allowing various agencies within the executive branch to seek CMPs through internal administrative actions for statutory violations, including fraud-based violations. The *Jarkesy* decision will undoubtedly have longstanding implications for federal agencies beyond the SEC and impact the statutes upon which these agencies have operated and adjudicated for decades.

### The Ruling

The specific issue presented was whether the SEC may subject a defendant to an in-house administrative enforcement proceeding when it seeks civil penalties for statutory fraud. Chief Justice Roberts (joined by Justices Thomas, Alito, Gorsuch, Kavanaugh, and Barrett) relied on reasoning from *Granfinanciera, S.A. v. Nordberg*, 492 U.S. 33 (1989) and *Tull v. United States*, 481 U.S. 412 (1987) to limit the "public rights" doctrine in determining that the SEC had violated Mr. Jarkesy's Seventh Amendment right to a jury trial.

Under the "public rights" doctrine, which dates back to the mid-1800's, Congress can statutorily delegate certain matters to a federal administrative agency for adjudication before an ALJ, without running afoul of the Seventh Amendment. The majority opinion in *Jarkesy* narrowly interpreted such precedent (as seen in *Atlas Roofing Co. v. Occupational Safety and Health Review Comm'n*, 430 U.S. 442 (1977)), concluding that the "public rights" doctrine only applies where Congress delegates actions that do not stem from common law and/or do not seek remedies traditionally available in court. The *Jarkesy* opinion emphasizes that the "more important" consideration is the type of remedy sought by the government, and the fact that the SEC sought CMPs as a penalty was "all but dispositive" because, traditionally, only courts of law have authority to punish the culpable. Accordingly, the "public rights" exception was inapplicable, and the SEC violated the Seventh

Amendment when it initiated an administrative enforcement action against Mr. Jarkesy rather than a civil action in federal court.

In a party-line dissent, Justice Sotomayor (joined by Justices Kagan and Jackson) contends that the applicability of the "public rights" doctrine should center on whether Congress properly assigned a right belonging to the Government as a sovereign to a federal agency to adjudicate. As a practical consideration, Congress has enacted hundreds of statutes reliant upon its ability to assign certain cases to ALJs that may now be inapplicable and/or unenforceable. Moreover, the dissent points out that many federal agencies (including the Occupational Safety and Health Review Commission, the Federal Energy Regulatory Commission, the Federal Mine Safety and Health Review Commission, the Department of Agriculture, and many others) may seek CMPs **solely** through congressionally sanctioned administrative proceedings. Thus, Congress may need to review countless statutory and regulatory schemes in light of the *Jarkesy* decision.

### The Implications

To start, the *Jarkesy* decision plainly prohibits the SEC from seeking CMPs through internal enforcement actions going forward. While the SEC can still seek monetary remedies through civil actions in federal court, there may be increased pressure to settle its enforcement actions going forward in order to preserve the steady revenue stream to which the SEC's enforcement division has become accustomed. For example, in fiscal year 2023 alone, the SEC collected **\$4.949 billion** in financial remedies from its enforcement actions.

The SEC is far from the only agency that has historically sought CMPs or other punitive remedies through its quasi-judicial internal enforcement actions pursuant to current statutory authority. The Department of Health and Human Services (HHS) – which includes the Food & Drug Administration (FDA), the Centers for Medicare & Medicaid Services (CMS), and other divisions, offices, and agencies – has sought CMPs or other punitive remedies through its statutory enforcement processes. Similarly, the Environmental Protection Agency (EPA), the Federal Trade Commission (FTC), the Office of the Comptroller of the Currency (OCC), and the Federal Deposit Insurance Corporation (FDIC) are federal agencies with current – though potentially unconstitutional – legislative authority to adjudicate "traditional legal claims" through an internal administrative law process.

The recent *Jarkesy* decision and its reasoning is persuasive authority against these departments' use of their internal enforcement actions to seek punitive remedies – especially where the action to be punished arises from common law, such as fraud. Current statutory authority to do so will likely face challenges to future internal administrative enforcement of "traditional legal claims."

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