

***SEC v. Jarkesy*, No. 22-859**

Introduction: In a decision with significant, wide-ranging consequences for federal agency enforcement authority, the Supreme Court today held that the Seventh Amendment bars the Securities and Exchange Commission (SEC) from using in-house administrative adjudications to impose civil penalties for securities-fraud violations. Those actions must be brought in federal court and the enforcement target has the right to a jury trial.

Background: Under the Dodd-Frank Act, the SEC can choose whether to bring an enforcement action under the federal securities laws in a civil action in federal district court or in an administrative proceeding before an in-house administrative law judge (ALJ). In this case, the SEC brought an administrative enforcement proceeding charging a hedge fund operator and an investment advisor with securities fraud. The ALJ found in favor of the agency and the SEC imposed a \$300,000 civil penalty.

The hedge fund operator and investment advisor appealed to the Fifth Circuit, arguing, among other things, that the administrative enforcement proceeding deprived them of their Seventh Amendment right to a jury trial. The Fifth Circuit agreed and vacated the SEC's decision.

Issue: Whether the Seventh Amendment entitles a defendant to a jury trial when the SEC seeks civil penalties for securities fraud.

Court's Holding: In an opinion authored by Chief Justice Roberts and joined by Justices Thomas, Alito, Gorsuch, Kavanaugh, and Barrett, the Supreme Court held that the SEC cannot obtain civil penalties for securities fraud in an in-house adjudication before an ALJ because the defendants in such an action have a Seventh Amendment right to a jury trial. The Court explained that securities fraud claims "replicate" common law fraud claims, which trigger the Seventh Amendment's jury-trial guarantee. And civil penalties are the type of monetary remedy that can be awarded only by a jury.

The Court rejected the SEC's argument that securities fraud claims fall within the "public rights" exception to the Seventh Amendment, which allows Congress to authorize an agency to decide matters involving such rights. The Court held that the exception did not apply because securities fraud claims target the same basic conduct as common law fraud, and those claims therefore implicate private, not public, rights.

The Court distinguished its decision in *Atlas Roofing Co. v. Occupational Safety and Health Review Commission*, 430 U. S. 442 (1977), which permitted administrative adjudication of an enforcement action seeking civil penalties for violations of regulations issued under the Occupational Safety and Health Act (OSHA). OSHA, the *Jarkesy* Court said, "did not borrow its cause of action from the common law." The OSHA standards "bring no common law soil with them. Rather than reiterate common law terms of art, they instead resembled a detailed building code." And OSHA's purpose "was not to enable the Federal Government to bring or adjudicate claims that traced their ancestry to the common law. . . . In both concept and execution, the Act was self-consciously novel."

Justice Gorsuch, joined by Justice Thomas, concurred, explaining that the jury-trial right in securities fraud actions for civil penalties finds support not only in the Seventh Amendment, but also in the Fifth Amendment's due process guarantee and in Article III.

Justice Sotomayor, joined by Justices Kagan and Jackson, dissented. In their view, the claims at issue fall within the "public rights" exception to the Seventh Amendment because the claims belong to the government in its sovereign capacity.

Although *Jarkesy* addresses SEC enforcement actions, many other agencies use in-house administrative adjudications to resolve enforcement actions based on similar statutory fraud prohibitions. The Seventh Amendment right seems likely to apply in those actions as well—and to require that they be litigated in federal court.

More broadly, Justice Sotomayor pointed out in her dissent that more than two dozen agencies are authorized to seek civil penalties in enforcement actions before administrative tribunals. Further litigation will be required to determine which categories of enforcement claims other than those grounded in fraud will trigger Seventh Amendment protection.

Even if the Seventh Amendment does not apply, Justice Gorsuch's concurring opinion indicates that Article III and the Fifth Amendment due process right could independently limit administrative agency adjudicative authority. Those principles, too, are likely to be addressed in future litigation.

In the coming weeks, Mayer Brown will host a client webinar addressing *Jarkesy* and its consequences.

Read the opinion [here](#).