MORE THAN A MINER INCONVENIENCE: THE POTENTIAL FUTURE FOR ADJUDICATION IN THE MINE SAFETY AND HEALTH ADMINISTRATION FOLLOWING *SEC V. JARKESY*

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"Today, for the very first time, this Court holds that Congress violated the Constitution by authorizing a federal agency to adjudicate a statutory right that inheres in the Government in its sovereign capacity."[1]

INTRODUCTION

This quote from Supreme Court Justice Sotomayor in *SEC v. Jarkesy*, has been one of many strong worded dissents to come from administrative law cases during the Summer 2024 term.[2] *Jarkesy* is just one in a line of cases that the increasingly conservative Supreme Court decided in 2024 which attacks the validity of the current administrative state.[3] The other two cases the Court decided in the 2024 term attacking the administrative state were *Loper Bright Enterprises v. Raimondo* and *Corner Post, Inc. v. Board of Governors of the Federal Reserve System.*[4] Simply put, *Loper Bright* and *Corner Post* respectively held that courts should no longer defer to agencies when there is ambiguous statutory language and that the six-year statute of limitations for actions under the Administrative Procedure Act (APA) begins when an injury is suffered, both of which would create continuous litigation for agencies.[5] Although the implications of *Loper*

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1. SEC v. Jarkesy, 603 U.S. 109, 168 (2024) (Sotomayor, J., dissenting).

2. *Id.* at 167; Loper Bright Enters. v. Raimondo, 603 U.S. 369, 450 (2024) (Kagan, J., dissenting); Corner Post, Inc. v. Bd. of Governors of the Fed. Rsrv. Sys., 603 U.S. 799, 843 (2024) (Jackson, J., dissenting).

3. *E.g., A Brave New World: The Supreme Court Torpedoes the 'Administrative State'*, KATTEN 1 (July 12, 2024), https://katten.com/files/1788495_2024_07_12_frm_fmf_a_brave_new_world_the_supreme_court_torpedoes_the_administrative_state.pdf; *see* Ron Elving, *How the Supreme Court's Conservative Majority Came to Be*, NAT'L PUB. RADIO (July 1, 2023, at 10:00 ET), https://www.npr.org/2023/07/13/1185496055/supreme-court-conservative-majority-thomas-trump-bush.

4. *A Brave New World: The Supreme Court Torpedoes the 'Administrative State'*, *supra* note 3, at 6.

5. *See Loper Bright*, 603 U.S. at 412-13 (majority opinion); *Corner Post*, 603 U.S. at 825 (majority opinion).

Bright and *Corner Post* are immense, the holding of *Jarkesy* has the potential to have a structural impact on administrative agencies.

What makes the holding in *Jarkesy* so substantial is that it was decided on constitutional grounds.[6] By making a constitutional argument against the Securities and Exchange Commission's (SEC) in-house adjudication method, the Supreme Court created the potential for a flurry of arguments that could be used to weaken administrative power. One of those agencies that could be affected by *Jarkesy* is the Mine Safety and Health Administration (MSHA).[7] MSHA protects those who labor in mines from work-related injury, illness, and death by implementing and enforcing rules in national mines.[8] If the effects of *Jarkesy* spread throughout the administrative state and impact MSHA, miners throughout the United States would be at risk due to the increase of difficulty that MSHA would have in enforcing regulations.

Primarily, the focus of this Note is to dissect the Supreme Court's decision in *Jarkesy* and to discuss the implications that it could have on other administrative agencies by applying it to MSHA. More specifically, this Note argues that if the logic used in *Jarkesy* extends from just the SEC and finds itself being applied to MSHA, enforcing citations of violations will become inefficient and exceedingly expensive. In turn, due to the heightened difficulty for MSHA to administer its issued citations, enforcement measures will become more selective to only pursue the most costly and scandalous violations. This newfound selectiveness from MSHA will almost certainly create an incentive for mine operators to commit smaller violations since MSHA would only be able to pursue certain citations to enforce. As a result, miners will be at an increased risk of work-related injury, illness, and perhaps death due to *Jarkesy*.

This Note is broken into various subsections to display not only the necessary groundwork regarding this issue, but also the probable impact that will stem from it. Part I of this Note discusses the necessary background and history of MSHA and its modern-day function within the Department of Labor.[9] Part II introduces discussion regarding the APA, which every administrative agency that enforces law through non-Article III tribunals utilizes to enable their adjudications.[10] Part III focuses on the facts which led to *Jarkesy* reaching the Supreme Court and setting new precedent.[11] Part IV discusses the theories and arguments that the Fifth Circuit used in their holding in *Jarkesy*.[12] Part V examines the ruling form the

6. *Jarkesy*, 603 U.S. at 141-42 (2024) (Gorsuch, J., concurring) (affirming the Fifth Circuit's ruling on Seventh Amendment grounds).

7. *See id.* at 199-200 (Sotomayor, J., dissenting) (stating that the Mine Safety and Health Review Commission imposes civil penalties through administrative proceedings).

8. *About*, U.S. DEP'T OF LAB.: MINE SAFETY & HEALTH ADMIN., https://www.msha.gov/about (last visited Oct. 4, 2025).

9. *See infra* Part I; *History of Mine Safety and Health Legislation*, U.S. DEP'T OF LAB.: MINE SAFETY & HEALTH ADMIN., https://arlweb.msha.gov/MSHAINFO/MSHAINF2.htm (last visited Oct. 4, 2025).

10. *See infra* Part II; *Administrative Procedure Act*, CORN L. SCH.: LEGAL INFO. INS. (Feb. 2025), https://www.law.cornell.edu/wex/administrative_procedure_act.

11. *See infra* Part III.

12. *See infra* Part IV.

Supreme Court in *Jarkesy* and the theories which led to their conclusion.[13] Part VI assesses the implications and problems that MSHA and other agencies will likely confront due to the Fifth Circuit and Supreme Court's holding in *Jarkesy*.[14] Finally, Part VII concludes this Note by discussing what should be done to address the potential problems that *Jarkesy* could create.[15]

The results of the 2024 Supreme Court term will be felt for decades to come, and the goal of this Note is to display the negative consequences of one of the decisions of the term. The potential modern degradation of the administrative state could lead to exploitation of both work and the environment in the name of monetary efficiency and bureaucratic skepticism.[16] If the war being waged against the administrative state continues, the potential of returning to a dangerous, unregulated era becomes increasingly likely. This Note aims to display one of the likely repercussions of such regression in administrative function.

I. THE PARTIES: THE HISTORY AND BACKGROUND OF THE MINE SAFETY AND HEALTH ADMINISTRATION

Although first created in 1977 with the passing of the Federal Mine Safety and Health Act of 1977 (Mine Act), the history of MSHA dates as far back as the late 1800s.[17] The first piece of legislation for the purpose of the mine regulations was introduced by Congress in 1891 to combat workplace deaths.[18] This pre-20th century piece of legislation was relatively limited and primarily consisted of ventilation in underground mines and age requirements.[19] Following the first decade of the 20th century, when the fatality rate in coal mines was over 2,000 yearly, Congress established the Bureau of Mines in 1910, which was housed in the Department of the Interior.[20] Although the purpose of the Bureau of Mines was to "conduct research and to reduce accidents in the coal mining industry," it did not receive the power to inspect mines until 1941.[21]

Another major piece of congressional legislation took place in 1969 with the passage of the Federal Coal Mine Health and Safety Act (Coal Act).[22] Being the most assertive health and safety law in history to this point, the Coal Act mandated federal inspections of all coal mines, created fines and criminal penalties for deliberate violations, and created federal protections and benefits for victims of

13. *See infra* Part V.

14. *See infra* Part VI.

15. *See infra* Part VII.

16. *See, e.g.*, Jack M. Beermann, *The Never-Ending Assault on the Administrative State*, 93 NOTRE DAME L. REV. 1599, 1599-1601 (2018) (displaying the various arguments being waged against the administrative state from both policy and constitutional perspectives).

17. *History*, U.S. DEP'T OF LAB.: MINE SAFETY & HEALTH ADMIN., https://www.msha.gov/about/about/history (last visited Oct. 4, 2025).

18. *Id.*

19. *History of Mine Safety and Health Legislation*, *supra* note 9.

20. *Id.*

21. *Id.*

22. *Federal Coal Mine and Safety Act of 1969*, U.S. DEP'T OF LAB.: MINE SAFETY & HEALTH ADMIN., https://www.msha.gov/federal-coal-mine-and-safety-act-1969 (last visited Oct. 4, 2025).

black lung disease.[23] Although the Coal Act of 1969 was the most ambitious mining regulatory law of its time,[24] it was just a prerequisite of what was to come in the next decade.

In 1977, Congress passed the Federal Mine Safety and Health Act, or what is better known as the "Mine Act."[25] The Mine Act served as a major amendment to the Coal Act and to mine regulation at large.[26] For example, as compared to the Coal Act, which only regulated activity that took place at coal mines, the Mine Act expanded to every type of mine.[27] Additionally, when the Mine Act was enacted, Congress also created what is known as the Mine Safety and Health Administration.[28] Unlike the Bureau of Mines, which was created in the earlier mine regulation acts and housed in the Department of the Interior, MSHA was instead placed in the Department of Labor.[29] As stated in the statute that created MSHA, "[t]here is established in the Department of Labor a Mine Safety and Health Administration to be headed by an Assistant Secretary of Labor for Mine Safety and Health appointed by the President, by and with the advice and consent of the Senate."[30] The purpose of moving mine regulation out of the Department of the Interior was to alleviate the conflict of interest that existed within the department to enforce regulations while simultaneously increasing the production of coal.[31]

In addition to expanding the coverage of the mines, the Mine Act also set particular standards that were to be met by mines and mine operators. One example of these standards is:

> [A] competent person designated by a mine's operator examine each working place at least once each shift for conditions that may adversely affect safety or health; the mine operator promptly initiate appropriate action to correct such conditions; and the operator keep records of such examinations for one year and make them available for review by the Secretary or his authorized representative.[32]

In stating the purpose of the higher standards in the Mine Act, Congress cited to reasons such as preventing death and disease and improving overall working conditions.[33] To keep compliance with certain regulations and to enforce citations, MSHA initiates citations before Administrative Law Judges (ALJs) who adjudicate the matter in a trial-like setting.[34] If either MSHA or the mine operator

23. *Id.*
24. *Id.*
25. Federal Mine Safety and Health Act of 1977, Pub. L. No. 95-164, 91 Stat. 1290.
26. *Federal Coal Mine and Safety Act of 1969*, *supra* note 22; 30 U.S.C. § 803 (2024).
27. *Federal Coal Mine and Safety Act of 1969*, *supra* note 22; 30 U.S.C. § 803 (2024).
28. 29 U.S.C. § 557a (1977).
29. *Id.*
30. *Id.*
31. Navistar, Inc. v. Forester, 767 F.3d 638, 646 (6th Cir. 2014).
32. Nat'l Mining Ass'n v. United Steel Workers, 985 F.3d 1309, 1314 (11th Cir. 2021).
33. *See* 30 U.S.C. § 811(b)-(c) (1969).
34. *About FMSHRC*, FED. MINE SAFETY AND HEALTH COMM'N, https://fmshrc.gov/about (last visited Oct. 4, 2025).

in front of the ALJ appeal the decision, the Federal Mine Safety and Health Review Commission serves as appellate review.[35]

The first step in MSHA proceedings is for the case to be heard by an ALJ within the Commission.[36] Section 823(d)(1) of the Mine Act states that an ALJ shall make decisions for any proceedings in front of the Commission, and those decisions will be final if the Commission denies review.[37] If the Commission reviews, or denies reviewing, the decision by the ALJ, "[a]ny person adversely affected or aggrieved" may appeal to either the circuit court "in which the violation is alleged to have occurred" or the D.C. Circuit within thirty days.[38] For instance, if a mine operator received a citation for noncompliance with a regulation in West Virginia, they could appeal their case to either the D.C. Circuit or the Fourth Circuit Court of Appeals.

Although the actions that come under the Mine Act give the United States Circuit Courts appellate jurisdiction, the Commission receives *exclusive original jurisdiction.*[39] Therefore, a cause of action that stems from the Mine Act must be adjudicated within the Commission and have a trial in front of an ALJ. By having the proceedings take place within an administrative agency, the parties are bound by the ALJ serving as the finder of fact and the finder of law.[40] Therefore, if a claim is brought against a mine operator under the Mine Act, they will not be subject to a jury at the trial level. If a party is dissatisfied with the decision rendered by the ALJ in the first proceeding, they may petition the Commission, which may discretionarily accept or decline to review.[41] If the Commission renders a decision or declines to hear a prior decision, either party in a MSHA proceeding, including MSHA itself, has the power to appeal to either the D.C. Circuit or the circuit court where the incident occurred; at this point, the circuit court must hear the case.[42]

MSHA derives its authority to adjudicate issues within its own agency from the Administrative Procedure Act (APA).[43] Specifically, § 823(b)(2) of the Mine Act grants the Commission the power to appoint, remove, and compensate ALJs in accordance with the APA.[44] In 5 U.S.C. § 3105, the statute from which the Mine Act derives its authority allowing MSHA to appoint ALJs, Congress directly

35. *Id.*; *see* Cumberland Coal Res., LP v. Fed. Mine Safety and Health Rev. Comm'n, 717 F.3d 1020, 1022 (D.C. Cir. 2013).

36. *See* Jones Bros. v. Mine Safety and Health Admin., 68 F.4th 289, 294 (6th Cir. 2023) (assigning a proceeding before an administrative law judge before being appealed to the Mine Safety and Health Commission).

37. 30 U.S.C. § 823(d)(1) (1977).

38. *Id.* § 816(a)(1).

39. *See* Thunder Basin Coal Co. v. Reich, 510 U.S. 200, 218 (1994).

40. *See* § 815(d) (1969) ("The Commission shall afford an opportunity for a hearing (in accordance with section 554 of title 5, but without regard to subsection (a)(3) of such section)."); 5 U.S.C. § 554(c)(1) (1966).

41. 30 U.S.C. § 823(d)(2)(A)(i) (1977).

42. *Id.* § 816(a) (1969).

43. *Id.* § 823(b)(2) (1977) ("Assignment, removal, and compensation of administrative law judges shall be in accordance with sections 3105, 3344, 5362 and 7521 of title 5.").

44. *Id.*

delegates agencies to appoint as many ALJs as desired.[45] Therefore, MSHA can hypothetically expand its administrative adjudication capacity based on the number of controversies filed through the Mine Act. That being said, the Supreme Court's ruling in *Jarkesy* could potentially dismantle MSHA's standard adjudication process. Before discussing the implications of *Jarkesy* on MSHA, it is necessary to discuss the background and function of the APA because that is where MSHA draws its power to appoint administrative law judges.[46]

II. THE BACKDROP: THE ADMINISTRATIVE PROCEDURE ACT AND ADMINISTRATIVE AGENCIES

The APA was first passed into law in 1946 following World War II.[47] The APA has its origins in the 1930s as a supplement to the New Deal to ensure that agencies would operate honestly when creating new regulations.[48] As one commentator stated, "[t]he APA was the end result of a highly political movement for administrative reform over the course of the New Deal."[49] There were two main policy issues that led to the enactment of the APA in the 1940s. First, the Republicans in the 1940s feared, especially with the enactment of the New Deal, that individual rights and market efficiency would be at risk.[50] Second, the Democrats viewed the administrative state as a tool through which policies could be enacted.[51] Before the enactment of the APA in the 1930s, when the Democrats had a strong lock on the legislature and presidency, the Republicans turned to the courts to limit agencies.[52] "During the first two years of President [Franklin D.] Roosevelt's first term, courts issued more than 1,600 injunctions against the enforcement of New Deal legislation."[53]

Prior to the implementation of the APA, the Special Committee on Administrative Law of the American Bar Association drafted what became known as the Walter-Logan Bill, which would have created an appellate court entirely for administrative agencies.[54] Although the Walter-Logan Bill passed through both houses of Congress, President Roosevelt vetoed the bill upon it reaching his desk in 1939.[55] While the bill died on the desk of the President, it stood as a precursor

45. 5 U.S.C. § 3105 (1966).

46. 30 U.S.C. § 823(b)(2) (1977) (citing title 5 of the United States Code regarding the power to assign, remove, and compensate administrative law judges).

47. Roni A. Elias, *The Legislative History of the Administrative Procedure Act*, 27 FORDHAM ENV'T L. REV. 207, 207 (2016).

48. Virginia Huth, *Celebrating the 75th Anniversary of the Administrative Procedure Act*, U.S. GEN. SERVS. ADMIN. (June 11, 2021), https://www.gsa.gov/blog/2021/06/11/celebrating-the-75th-anniversary-of-the-administrative-procedure-act.

49. Gillian Metzger, *The Administrative Procedure Act: An Introduction*, POVERTY AND RACE RSCH. ACTION COUNCIL 1 (Apr. 2017), https://www.prrac.org/pdf/APA.summary.ProfMetzger.pdf.

50. Elias, *supra* note 47, at 208.

51. *Id.*

52. *Id.* at 209.

53. *Id.*

54. *Id.* at 210.

55. *Id.*

to the enactment of the APA. A few years after the conclusion of World War II in 1946, President Harry Truman signed the APA into law.[56]

Among the myriad of regulations and procedures that were created with the passage of the APA, one of the most integral parts of the Act was the creation of the Administrative Law Judge.[57] As stated in the APA, "[e]ach agency shall appoint as many administrative law judges as are necessary for the proceedings…[a]dministative law judges shall be assigned to cases in rotation so far as practicable, and may not perform duties inconsistent with their duties and responsibilities as administrative law judges."[58] In formal administrative hearings, ALJs are in numerous roles.[59] For example, "ALJs rule on preliminary motions, conduct pre-hearing conferences, issue subpoenas, conduct hearings (which may include written and/or oral testimony and crossexamination), review briefs, and prepare and issue decisions, along with written findings of fact and conclusions of law."[60]

Along with having an extensive workload, ALJs are used in a wide range of agencies throughout the United States.[61] For instance, ALJs conduct work for agencies ranging from the Drug Enforcement Administration to the National Labor Relations Board (NLRB), and many agencies in between.[62] In numerous agencies, such as the NLRB, ALJs constitute the first step in the adjudication process.[63] Typically, ALJ decisions are appealable to other panels or boards within an agency.[64] Furthermore, once one has exhausted all of their in-agency appeal methods, they will have the right to appeal to either a federal or state court, depending on the agency.[65]

As stated earlier, ALJ decisions are typically reviewable by the agency in which ALJ decision took place.[66] For instance, the Social Security Administration Appeal Council reviews the decisions that are appealed by the ALJ within the Social Security Administration.[67] Additionally, upon the Appeal Council either denying hearing a request or rendering a decision, a party may appeal the matter up to a Judicial, Article III tribunal.[68] Depending on the administrative agency, the court that receives the appeal would either be a federal district court or a federal

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56. Susan E. Dudley, *Milestones in the Evolution of the Administrative State*, 150 DÆDALUS 33, 36 (2021).

57. *See* 5 U.S.C. § 3105 (1966) (authorizing the appointment of administrative law judges).

58. *Id.*

59. *See Administrative Law Judges Overview*, U.S. OFF. OF PERS. MGMT., https://www.opm.gov/services-for-agencies/administrative-law-judges/#url=Overview (last visited Oct. 4, 2025).

60. *Id.*

61. *Id.*

62. 5 U.S.C. § 3105 (1966); *Administrative Law Judges Overview*, *supra* note 59.

63. *E.g.*, 29 U.S.C. § 160(c) (1935).

64. *Appeals from Administrative Proceedings & Your Legal Options*, JUSTIA (May 2025), https://www.justia.com/administrative-law/appeals-from-administrative-proceedings/.

65. *Id.*

66. *Id.*

67. *Your Right to an Administrative Law Judge Hearing and Appeals Council Review of Your Social Security Case*, SOC. SEC. ADMIN. 8 (Nov. 2024), https://www.ssa.gov/pubs/EN-70-10281.pdf.

68. *See id.*

circuit court. For instance, the appeals stemming from an Appeal Council decision under the Social Security Act will grant federal district courts appellate jurisdiction.[69] Conversely, appeals from administrations such as MSHA and the NLRB go directly to either the circuit court where the issue took place or the Court of Appeals for the District of Columbia.[70]

Although all agencies with enforcing powers differ in procedure and cover different subject matters, for the most part, they tend to have the same structure that is derived from the APA. Through the APA, administrations enforce and adjudicate particular and complex subject matters within their own confines. For example, the APA allows agencies such as the Social Security Administration, which handles over a half a million cases per year, to make determinations in their own chambers rather than adjudicate in federal court.[71] As for the number of cases that MSHA keeps out of the federal district court system, the Federal Mine Safety and Health Review Commission's 2023 budget justification and annual performance plan for fiscal year 2024 listed that there were 71 anticipated cases pending in front of the Mine Safety and Health Review Commission by the end of 2024.[72] Through administrative agencies, Congress not only prevents federal district courts from being overwhelmed by an increased workload, but allows certain issues to be adjudicated by experts in a particular subject matter.

Other than simply adjudicating various subject matters in another venue, there are other important procedural differences between agencies and federal courts. For instance, hearings in front of ALJs do not have to comply with traditional mandated guidelines, like the Federal Rules of Evidence or Federal Rules of Civil Procedure, despite being a trial-adjacent forum.[73] Thus, barring explicit instruction by Congress via statute, administrative agencies are free to have their own individual rules regarding evidence and procedure.

There are two reasons why agencies being able to set their own rules for procedure and evidence is vital. First, since agencies have original jurisdiction over cases governed by a particular statute, all cases controlled by that statute must conform with administrative rules rather than federal judicial rules. For instance, cases that are adjudicated in the Mine Safety and Health Review Commission are governed by the procedure laid out in 29 C.F.R. § 2700.[74] By having different procedural and evidence rules in an administrative agency, compared to a judicial

69. 42 U.S.C. § 405(g) (1935); Sims v. Apfel, 530 U.S. 103, 108 (2000).

70. 30 U.S.C. § 816(a)(1) (1969); Richards v. NLRB, 702 F.3d 1010, 1014 (7th Cir. 2012) (quoting 29 U.S.C. § 160(f) (1935)).

71. *Information About Social Security's Hearings and Appeals Process*, SOC. SEC. ADMIN., https://www.ssa.gov/appeals/ (last visited Oct. 4, 2025).

72. *Federal Mine Safety and Health Review Commission Congressional Budget Justification and Annual Performance Plan*, FED. MINE SAFETY AND HEALTH REV. COMM'N 14-15 (Mar. 13, 2023), https://www.fmshrc.gov/sites/default/files/plans/FMSHRC FY2024.pdf (recounting the Mine Safety and Health Review Commission's expected appellate caseload in regard to budget requests).

73. Johnson v. Bos. Pub. Schs., 906 F.3d 182, 192 (1st Cir. 2018); *see* Associated Dry Goods Corp. v. E.E.O.C., 720 F.2d 804, 809 (4th Cir. 1983) ("This follows from what is characterized as a 'basic tenet of administrative law' that administrative agencies are 'free to fashion their own rules of procedure,' without judicial constraint or supervision.").

74. *See generally* 29 C.F.R. § 2700.1 (1993) (introducing the rules that are to be followed when a proceeding is before the Mine Safety and Health Review Commission).

court, parties will have to work with the record that was created under those procedures on appeal. Therefore, if a case from MSHA were appealed to the D.C. Circuit Court, the parties and the court would have to use the record that was established under the ALJ.

The second relevant implication created by administrative agencies following different rules for procedure and evidence is judicial economy. As stated earlier, administrative agencies handle significantly more controversies than federal judicial courts.[75] Therefore, administrative procedure and rules allow administrative controversies to be adjudicated in an efficient and non-encumbering manner. Allowing administrative agencies to streamline the adjudication process by procuring their own rules of procedure can help lower the costs not only of the agencies itself, but the parties involved in the proceeding.[76] This can be seen through components such as lower filing costs and lower attorney fees, if an attorney is even used at all.[77] Moreover, many have argued, including now the Supreme Court, certain administrative adjudications are unconstitutional.[78] Specifically, the Supreme Court in *Jarkesy* attacked administrative adjudication on a Seventh Amendment argument.[79] However, the Fifth Circuit Court of Appeals in *Jarkesy* held that SEC adjudication was unconstitutional for violation of the Seventh Amendment and on other grounds as well.[80] Before discussing the substance of the *Jarkesy* opinions, it is important to briefly touch on the underlying facts that led to both decisions.

III. THE FACTS: THE BACKGROUND AND CONTEXT BEHIND *JARKESY*

First passed as a result of the Great Depression,[81] the Securities Exchange Act of 1934 created the SEC as a means to regulate the securities industry.[82] As part of creating the SEC, the Securities Exchange Act granted it the power to create

75. *See Administrative Law Judges Overview*, *supra* note 59; 5 U.S.C. § 3105 (1966); 29 U.S.C. § 160(c) (1935).

76. *See, e.g.*, Jessica D. Bradley, *Copyright Claims Board: Comparison Chart with Federal Court Litigation,* LEXIS+, https://plus.lexis.com/api/permalink/1bcc6796-fc61-4e91-a2f3-9f72b5765f78/?context=1530671 (last visited Oct. 4, 2025) (displaying that Board "are designed to offer a streamlined, less expensive, and simpler alternative to federal district court litigation.").

77. *See, e.g.*, *id.*; *see also* 29 C.F.R. § 2700.3(b)(1)-(4) (1993) (displaying that "other persons," who are not attorneys, may appear before Mine Safety and Health Review Commission proceedings).

78. *See, e.g.*, Martin H. Redish & Samy Abdelsalam, *The Seventh Amendment Right to Jury Trial in the Administrative State: Recognizing the Dangers of the Constitutional Moment*, 99 NOTRE DAME L. REV. 1743, 1744 (2024) ("Our goal in this Article is to explore the basis for this as yet unexplained dichotomy and to explain why it is unjustifiable as a matter of constitutional theory or logic."); *see generally* SEC v. Jarkesy, 603 U.S. 109 (2024) (holding that SEC administrative adjudications for securities fraud is a violation of the Seventh Amendment).

79. Jarkesy v. SEC, 34 F.4th 446, 446 (5th Cir. 2022).

80. *Id.* at 465.

81. *SEC: Securities and Exchange Commission*, HIST. (Dec. 6, 2019), https://www.history.com/topics/us-government-and-politics/securities-and-exchange-commission [https://web.archive.org/web/20250430124644/https://www.history.com/articles/securities-and-exchange-commission].

82. *Securities Law History*, CORN. L. SCH. (Oct. 2023), https://www.law.cornell.edu/wex/securities_law_history.

and enforce rules.[83] For example, the SEC enforces rules concerning stock trading, investment protection, and overseeing the stock market.[84] Furthermore, the Securities and Exchange Act gave the SEC the authority to pursue civil penalties against individuals and corporations who were in violation of federal law and regulations.[85] Since the creation of the first enactment of securities law and the creation of the 1930s, Congress has had to implement new securities law to continue to combat fraud within the financial sector.[86] However, after the 2008 financial collapse, legislators were prompted to pass reform to prevent a similar situation from happening in the future.[87]

Passed in the in 2010 as a reaction to the 2008 financial crisis, the Dodd-Frank Act Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) was one of the largest pieces of financial regulation legislation passed since the New Deal in the 1930s.[88] Essentially, the Dodd-Frank Act created a multitude of regulations to be executed by the SEC that range from reducing risks within the U.S. financial system to preventing financial fraud and abuse.[89] One particular aspect that is worth noting regarding the Dodd-Frank Act is that it gave the SEC the authority to pursue enforcement of civil remedies against individuals within its own agency or in federal district court.[90] Prior to the enactment of the Dodd-Frank Act, the SEC only had the authority to acquire civil penalties within its own agencies when it was charging entities; penalties against non-entity parties had to be adjudicated in federal court.[91]

In 2013, after the passing of the Dodd-Frank Act, the SEC initiated administrative proceedings against George Jarkesy and Patriot28 LLC, an investment agency which was managed by Jarkesy, alleging fraud and violation of security law.[92] In their initial proceeding before an ALJ, Jarkesy and Patriot28 were ordered to pay a $450,000 fine to disgorge their $1,278,597 of "ill-gotten gains" and ordered to cease and desist from violating antifraud provisions.[93] Upon appealing to the Securities and Exchange Commission from the ALJ, Jarkesy and Patriot28 raised constitutional arguments against the structure of the SEC and its

83. *Id.*

84. *SEC: Securities and Exchange Commission*, *supra* note 81.

85. *Id.*

86. *See Federal Securities Law Research Guide: Statutes*, BROOK. L. SCH., https://guides.brooklaw.edu/FederalSecuritiesLaw/Statutes [https://web.archive.org/web/20250523041614/https://guides.brooklaw.edu/FederalSecuritiesLaw/Statutes] (last visited Oct. 4, 2025).

87. Noah Berman, *Was It the Dodd-Frank Act?*, COUNCIL ON FOREIGN RELS., https://www.cfr.org/backgrounder/what-dodd-frank-act (May 8, 2023, at 13:21 ET) ("In the wake of the 2008 financial crisis, the U.S. Congress created a sweeping financial regulation that its proponents hailed as a safeguard against future crises.").

88. *Id.*

89. *Id.*

90. SEC v. Jarkesy, 603 U.S. 109, 118 (2024).

91. *Id.* at 117-18.

92. *Supreme Court Limits SEC's Use of In-House Administrative Proceedings*, HUNTON (July 8, 2024), https://www.hunton.com/insights/legal/supreme-court-limits-secs-use-of-in-house-administrative-proceedings.

93. John Thomas Capital Mgmt. Grp., Exchange Act Release No. 693, 2014 WL 5304908, 28 (ALJ Oct. 17, 2014).

process of administrative adjudication.[94] Specifically, Jarkesy and Patriot28 argued that the SEC's administrative adjudication was in violation of the separation of powers doctrine, that the structure of the SEC's ALJs violated of the Appointment Clause in Article II of the Constitution, that adjudication of a civil penalty during an administrative hearing violated of the Seventh Amendment right to a jury trial, a violation of the Equal Protection Clause, and a Due Process violation.[95] The Securities and Exchange Commission quickly dismissed each of these arguments and ordered sanctions.[96]

After ineffectively raising constitutional arguments regarding the SEC ALJs in front of the review commission, Jarkesy petitioned the Fifth Circuit Court of Appeals for review.[97] However, unlike the administrative setting Jarkesy was previously in, the Fifth Circuit was sympathetic to the grounds used to argue the SEC's administrative proceedings are unconstitutional.[98] In holding that certain administrative statutes that authorized SEC administrative proceedings were unconstitutional, the Fifth Circuit relied on Jarkesy's separation of powers argument.[99] Specifically, the Fifth Circuit reasoned that due to there being two layers of for-cause removal between the president and the ALJs within the SEC, the structure violated the Take Care Clause in Article II of the Constitution.[100] Moreover, the Fifth Circuit ruled that the action brought by the SEC is not one that falls under the public-rights doctrine, therefore the Seventh Amendment would apply to the claim.[101] Upon being granted certiorari, the Supreme Court primarily concerned itself with the Seventh Amendment issue raised in the previous *Jarkesy* decisions.[102] Ultimately, for reasons discussed further in this paper, the Supreme Court affirmed and remanded the Fifth Circuit's holding that adjudicating securities fraud within the SEC violated the Seventh Amendment right to a jury trial.[103]

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94. John Thomas Capital Mgmt. Grp., Exchange Act Release No. 5572, 2020 WL 5291417, 24-28 (ALJ Sep. 4, 2020) (discussing Respondent's separation of powers, removal restrictions, Seventh Amendment, equal protection, and due process arguments).

95. *Id.*

96. *Id.* at 24-29 (dismissing Respondent's constitutional arguments and ordering remedial sanctions).

97. Jarkesy v. SEC, 34 F.4th 446, 450 (5th Cir. 2022).

98. *Id.* at 465 ("In sum, we agree with Petitioners that the SEC proceedings below were unconstitutional.").

99. *Id.* at 464.

100. *Id.*

101. *Id.* at 456-57.

102. *See* SEC v. Jarkesy, 603 U.S. 109, 120 (2024) ("This case poses a straightforward question: whether the Seventh Amendment entitles a defendant to a jury trial when the SEC seeks civil penalties against him for securities fraud.").

103. *Id.* at 140-41.

IV. THE PROCEDURAL POSTURE: THE FIFTH CIRCUIT'S REASONING AND ARGUMENT IN *JARKESY*

A. Nondelegation and Separation of Powers

Before discussing the Supreme Court holding in *Jarkesy*, it is important to discuss what the Fifth Circuit held in the case. What makes the Fifth Circuit's holding in *Jarkesy* so important is that the Supreme Court only addressed one of the three issues that the Fifth Circuit decided.[104] As a result, the Fifth Circuit's ruling on these issues will remain good law within its jurisdiction, and it will be persuasive in other jurisdictions. Specifically, the Fifth Circuit in *Jarkesy* found ALJ adjudications within the SEC to be unconstitutional for three reasons.[105] Other than the Seventh Amendment reason, which will be discussed later in this article,[106] the Fifth Circuit also invalidated the SEC's administrative adjudication by ruling that it violated the constitutional non-delegation doctrine and the removal restrictions regarding the Take Care Clause in Article II.[107]

Before discussing how the Fifth Circuit reached its conclusion that Congress wrongfully delegated power to the SEC,[108] it is necessary to examine how it defines nondelegation. According to the Fifth Circuit, nondelegation is triggered when a branch of the federal government conveys the powers that they were assigned in the Constitution to another federal branch.[109] Specifically, the Fifth Circuit looked to the Federalist Papers to establish their definition of nondelegation.[110] As stated by the Fifth Circuit, "[b]ut in keeping with the Founding principles that (1) men are not angels, and (2) '[a]mbition must be made to counteract ambition,'…the People did not vest all governmental power in one person or entity. It separated the power among the legislative, executive, and judicial branches."[111]

In the constitutional context, the "People" refers to the people of the United States.[112] The Fifth Circuit cited paragraph out of Justice Gorsuch's dissent in *Gundy v. United States* which quotes John Locke's Second Treatise of Civil Government and a Letter Concerning Toleration.[113] In *Gundy*, Justice Gorsuch's dissent quotes Locke by stating that "[t]he legislative cannot transfer the power of making laws to any other hands; for it being but a delegated power from the people,

104. *See id.* at 121 ("[W]e do not reach the nondelegation or removal issues.").

105. Jarkesy v. SEC, 34 F.4th 446, 449 (5th Cir. 2022).

106. *See infra* Part V.

107. *Jarkesy*, 34 F.4th at 465.

108. *Id.* at 462.

109. *See id.* at 459 (quoting THE FEDERALIST NO. 10 (James Madison); THE FEDERALIST NO. 51 (James Madison)).

110. *Id.*

111. *Id.*

112. Stephen R. Rolandi, *Who Are "We the People" in the Constitution? Some Thoughts and Reflections*, AM. SOC'Y FOR PUB. ADMIN. (Sep. 23, 2024), https://patimes.org/who-are-we-the-people-in-the-constitution-some-thoughts-and-reflections/ (stating that the initial wording it creates supersedes any state government).

113. Jarkesy v. SEC, 34 F.4th 446, 460 (5th Cir. 2022) (citing Gundy v. United States, 588 U.S. 128, 153-54 (2019) (Gorsuch, J., dissenting)).

they who have it cannot pass it over to others."[114] Following citing Justice Gorsuch's dissent, the Fifth Circuit cited 19th and 20th century Supreme Court authority before laying out a test to determine whether the legislature improperly delegated its power to the executive.[115] The Fifth Circuit's test is comprised of two questions: "(1) whether Congress has delegated power to the agency that would be legislative power but-for an intelligible principle to guide its use and, if it has, (2) whether it has provided an intelligible principle such that the agency exercises only executive power."[116]

In addressing the first part of the test, the Fifth Circuit simply stated that, "[g]overnment actions are 'legislative' if they have 'the purpose and effect of altering the legal rights, duties and relations of persons…outside the legislative branch.'"[117] In coming to this conclusion, the Fifth Circuit cited *INS v. Chadha*, which is a case about either house of Congress having the power to veto administrative decisions regarding immigration matters with a simple majority of votes.[118]

In *Chadha*, the Supreme Court held that it was a violation of the nondelegation doctrine for one house of Congress to be able to veto administrative immigration decisions.[119] However, in order to make that decision, the Supreme Court first had to interpret whether the statute that Congress passed conveyed "legislative power" to the Immigration and Naturalization Service.[120] In deciding whether something constituted "legislative power" the Court drew language from the second session of the 54th Congress, stating that "an exercise of legislative power depends not on their form but upon 'whether they contain matter which is properly to be regarded as legislative in its character and effect.'"[121] Although the Supreme Court did not cite authority when stating so, it stated that changing "the legal rights, duties, and relations of persons" was "legislative in purpose and effect."[122] However, the legislature in *Chadha* would not have the aforementioned power absent a provision within a larger act.[123]

Since *Chadha*, the "legislative purpose and effect" test has been used by a myriad of federal courts in order to distinguish what is and is not "legislative power."[124] For instance in 1998, the Tenth Circuit found that a county commissioners board denying certain individuals access to a commission meeting was an administrative action, not a legislative action.[125] In contrast in 2012, a

114. Gundy v. United States, 588 U.S. 128, 153-54 (2019) (Gorsuch, J., dissenting) (quoting JOHN LOCKE, SECOND TREATISE OF GOVERNMENT § 141 (1690)).

115. *Jarkesy*, 34 F.4th at 460-61.

116. *Id.* at 461.

117. *Id.* (quoting INS v. Chadha, 462 U.S. 919, 952 (1983)).

118. *Id.*; INS v. Chadha, 462 U.S. 919, 919 (1983).

119. *Chadha*, 462 U.S. at 959 (Powell, J., concurring).

120. *Id.* at 944-46.

121. *Id.* at 952 (quoting S. Rep. No. 1335, at 8 (1897)).

122. *Id.*

123. *Id.*

124. *See, e.g.*, Sullivan v. Nassau Cnty. Interim Fin. Auth., 959 F.3d 54, 61 (2d Cir. 2020) (using the "legislative power" test formulated by the Supreme Court in *Chadha*).

125. Kamplain v. Curry Cnty. Bd. of Comm'rs, 159 F.3d 1248, 1253 (10th Cir. 1988).

district court using the *Chadha* "legislative purpose and character" formulation as a part of a four-factor test determined that that the creation of rules and plans by the Board of Forestry "are statutory in nature and arise out of a need to regulate conduct and management."[126]

Although the Supreme Court did not clearly define its language when stating how an act can be "legislative [in] purpose and effect," one of the controlling variables tends to be whether an action taken by Congress, an agency, or some other entity is promulgating a standard or set of rules that should be followed.[127] Conversely, an action is more likely to be taken as executive or administrative if it is making a decision in applying a set of rules or standards.[128] For example, if Congress enacts a statute that gives them the power to oversee and remand a decision made by an executive agency, a court is likely to find that Congress did not act within its "legislative power."[129]

Returning to the Fifth Circuit's ruling in *Jarkesy*, once the first prong of the separation powers test is satisfied, the question becomes "whether [Congress] has provided an intelligible principle such that the agency exercises only executive power."[130] In its decision that Congress did not direct the SEC on how to use its enforcement power, the Fifth Circuit analogized it to a law discussed in the 1935 case *Panama Refining Co. v. Ryan*.[131] Specifically, the Fifth Circuit stated that the legislation in *Panama Refining*, which gave the President broad discretion on how to control interstate commerce of petroleum, was similar to the Act that gives the SEC discretion to pick what issues will be adjudicated within its agency.[132]

Although the Fifth Circuit does not elaborate much more upon this prong of the test, the concept that the Court hooks onto is the amount of discretion Congress coveys onto another branch of government when it creates a law.[133] For instance, if Congress were to create a statute that conveyed onto the executive branch the power to regulate a certain kind of conduct with unfettered discretion, that would be deemed an unconstitutional delegation of legislative power onto the executive branch. Since the primary purpose of the legislature is to create and enact policy through laws,[134] creating statutes that give other branches broad discretion in how

126. Cascadia Wildlands v. Kitzhaber, 911 F. Supp. 2d 1075, 1083-84 (D. Or. 2012).

127. *See Chadha*, 462 U.S. at 952 (focusing on the House using constitutional power to establish a uniform Rule of Naturalization).

128. *See* Smith v. Lomax, 45 F.3d 402, 406 (11th Cir. 1995); Crymes v. Dekalb Cnty, Ga., 923 F.2d 1482, 1485 (11th Cir. 1991).

129. *See generally Chadha*, 462 U.S. 919 (facts regarding Congress's ability to veto an administrative decision with a majority vote in a singular house).

130. Jarkesy v. SEC, 34 F.4th 446, 461 (5th Cir. 2022).

131. *Id.* at 462.

132. *Compare* Panama Refining Co. v. Ryan, 293 U.S. 388, 430 (1935) ("As to the transportation of oil production in excess of state permission, the Congress has declared no policy, has established no standard, has laid down no rule.") *with* Jarkesy, 34 F.4th at 462 ("Even the SEC agrees that Congress has given it exclusive authority and absolute discretion to decide whether to bring securities fraud enforcement actions within the agency instead of in an Article III court.").

133. *See Jarkesy*, 34 F.4th at 462.

134. *See* Gundy v. United States, 488 U.S. 128, 153 (2019) (Gorsuch, J., dissenting) ("When it came to the legislative power, the framers understood it to mean the power to adopt generally applicable rules of conduct governing future actions by private persons—the power to 'prescrib[e] the rules

to utilize and interpret said statute would essentially grant them the power to create the law itself. In the context of the SEC statute in *Jarkesy*, the Fifth Circuit reasoned that since Congress gave the SEC no direction in how to use its in-house adjudication system, the SEC's *discretion* in choosing venues is beyond their authority of simply enforcing the law, it is a congressional act.[135]

B. Removal Restrictions

Although the Fifth Circuit invalidated the SEC's authority to adjudicate within its own agency on nondelegation grounds, it also invalidated the same authority on removal restriction grounds.[136] Specifically, the Fifth Circuit argued that SEC ALJ proceedings violated the Take Care Clause located within Article II of the Constitution.[137] The Take Care Clause states that, "[the President] shall take Care that the Laws be faithfully executed."[138] Using the Take Care Clause, the theory upon which the Fifth Circuit based its argument can be summed up in one sentence out of their opinion. As Judge Elrod states, "[t]he President therefore must have sufficient control over the performance of their functions, and, by implication, he must be able to choose who holds the positions."[139]

As Professor Jed Shugerman of Boston University School of Law states, modern courts, and more specifically the Roberts Court, have been encouraging arguments which would consolidate the control of administrative agencies solely in the hands of the President.[140] The underlying theory behind using constitutional provisions such as Article II's Vesting Clause and Take Care Clause to eliminate removal provisions in executive agencies is called the "unitary executive theory."[141] Essentially, the unitary executive theory rests on the principle that the president's Article II powers should be unfettered and not subject to checks and balances from the other federal branches.[142] Although not expressly stated, the philosophy behind the unitary executive was at the heart of their decision to strike 15 U.S.C. § 78u-2, the civil remedies section of the Securities Exchange Act, as unconstitutional on Article II grounds.[143] For instance, at the beginning of the section regarding the removal restrictions, the Fifth Circuit used language and authority coated in rhetoric exemplifying the importance of unrestricted presidential power.[144]

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by which the duties and rights of every citizen are to be regulated,' or the power to 'prescribe general rules for the government of society.'").

135. *See Jarkesy*, 34 F.4th at 462.

136. *Id.* at 463.

137. *Id.*

138. U.S. CONST. art. II, § 3.

139. *Jarkesy*, 34 F.4th at 463.

140. Jed Handelsman Shugerman, *The Ebb, Flow, and Twilight of Presidential Removal*, 49 ADMIN. & REGUL. L. NEWS 6, 6 (2024).

141. *Id.*

142. *Id.*

143. *Jarkesy*, 34 F.4th at 463-66.

144. *See id.* at 463 ("The Supreme Court has held that this provision guarantees the President a certain degree of control over executive officers; the President must have adequate power over office-

The two cases that the Fifth Circuit primarily relied on in establishing its argument are *Free Enterprise Fund v. Public Co. Accounting Oversight Board* and *Lucia v. SEC*.[145] Although both cases are outside of the scope of this note, it is helpful to understand their holdings. The 2010 Supreme Court in *Free Enterprise Fund* held that it was unconstitutional for Congress to create a dual-layer, for-cause removal for certain officials.[146] Dual-layer, for-cause removal would insulate an individual from firing except "for cause" by a superior who, in turn, can only be dismissed by the president for "inefficiency, neglect, or malfeasance in office."[147] Being consistent with the underlying principles of the unitary executive theory, the *Free Enterprise Fund* Court relied on the Article II Vesting Clause and Take Care Clause in arguing for an unrestricted, powerful executive branch.[148] The *Free Enterprise Fund* Court states, by establishing an official within an agency who is not either directly dismissed by the president for-cause or dismissed for-cause by an officer who the president can discretionarily discharge, the Constitution's Article II powers are undermined.[149]

Therefore, the Fifth Circuit in *Jarkesy* analogized SEC ALJs to the officer in question in *Free Enterprise Fund* since both positions are only able to be dismissed by SEC Commissioners for-cause and the president can only dismiss SEC Commissioners for-cause.[150] As for *Lucia*, the Fifth Circuit used the opinion to establish that SEC ALJs amount to "inferior officers" under the Constitution since they are necessary for the president to execute the laws that the Constitution requires the executive to execute.[151] As stated by the Fifth Circuit, "[i]f principal officers cannot intervene in their inferior officers' actions except in rare cases, the president lacks the control necessary to ensure that the laws are faithfully executed."[152] Therefore, since the Fifth Circuit found that the dual good-cause insulation that SEC ALJs possessed to be undermining the president's constitutional duty to execute the laws, the Court found the SEC ALJ adjudication structure unconstitutional.[153]

Although the Fifth Circuit found § 78u-2 of the Dodd Frank Act on Seventh Amendment, nondelegation, and Article II grounds, the Supreme Court only

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ers' appointment and removal…. Only then can the People, to whom the President is directly accountable, vicariously exercise authority over high-ranking executive officials.") (citation omitted).

145. *Id.* at 463-64 (citing Free Enter. Fund v. Pub. Co. Acct. Oversight Bd., 561 U.S. 477, 492 (2010) and Lucia v. SEC, 585 U.S. 237, 257 (2018)).

146. *Free Enter. Fund*, 561 U.S. at 492.

147. *Id.* at 486-87 (quoting Humphrey's Ex'r v. United States, 295 U.S. 602, 620 (1935)).

148. *Id.* at 492-93.

149. *See id.* at 496 ("Without the ability to oversee the Board, or to attribute the Board's failings to those whom he can oversee, the President is no longer the judge of the Board's conduct. He is not the one who decides whether Board members are abusing their offices or neglecting their duties. He can neither ensure that the laws are faithfully executed, nor be held responsible for a Board member's breach of faith.").

150. Jarkesy v. SEC, 34 F.4th 446, 464 (5th Cir. 2022).

151. *Id.*; *see also* Lucia v. SEC, 585 U.S. 237, 255 (2018) (holding that administrative law judges in the Securities and Exchange Commission are "Officers of the United States").

152. *Jarkesy*, 34 F.4th at 464.

153. *Id.* at 465.

reached the same conclusion with the Seventh Amendment.[154] However, what is important to note is that by not reaching the nondelegation and Article II issues, the Supreme Court has allowed other future plaintiffs to challenge the validity of administrative proceedings on those grounds. For instance, on December 10, 2024, the District Court of the District of Columbia held that dual good-cause protection afforded to ALJ within the National Labor Relations Board is unconstitutional.[155] Furthermore, the lack of discussing the merits of the nondelegation and Article II issue at the Supreme Court level has led to numerous challenges to a wide array of administrative agencies.[156] That being said, the implications on what the Supreme Court did reach in *Jarkesy* could have more immediate impacts not only on the MSHA, but on the administrative state as a whole.

V. THE RULE: *JARKESY* AT THE SUPREME COURT

A. The Seventh Amendment and "Suits at Common Law"

As previously stated, the issue regarding the Seventh Amendment right to a jury trial was the only issue that the Supreme Court discussed on its merits when it decided *Jarkesy* on appeal from the Fifth Circuit.[157] To begin the discussion about how the Supreme Court decided that an ALJ proceeding for securities fraud required a Seventh Amendment jury trial,[158] it is first necessary to present what the Seventh Amendment declares. The Seventh Amendment states:

> In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.[159]

What is of particular importance in this constitutional amendment, and what the Supreme Court hinged its decision on, is deciding what constitutes a "[s]uit at common law" and if any exception applies.[160] Before discussing how the Supreme Court analyzed the Seventh Amendment, it is necessary to understand have a basic grasp on its origin.

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154. SEC v. Jarkesy, 603 U.S. 109, 121 (2024).

155. VHS Acquisition Subsidiary No. 7 v. NLRB, 759 F. Supp. 3d 88, 92 (D.D.C. Dec. 10, 2024).

156. *See generally, e.g.*, Reply Brief for Petitioner at 2, Axalta Coating Sys. LLC v. United States Dep't of Transp., 2024 WL 5279424 (3d Cir. Oct. 17, 2024) (No. 23-2376) (arguing that the structure of the Department of Transportation's adjudicatory system in unconstitutional).

157. *Jarkesy*, 603 U.S. at 140-41 ("We do not reach the remaining constitutional issues and affirm the ruling of the Fifth Circuit on the Seventh Amendment ground alone.").

158. *Id.* at 135-36 ("The object of this SEC action is to regulate transactions between private individuals interacting in a pre-existing market. To do so, the Government has created claims whose causes of action are modeled on common law fraud and that provide a type of remedy available only in law courts. This is a common law suit in all but name. And such suits typically must be adjudicated in Article III courts.").

159. U.S. CONST. amend. VII.

160. *Jarkesy*, 603 U.S. at 120.

The origin of the constitutional right to a jury trial finds itself in the historical Federalist and Antifederalist debate regarding fear of unregulated federal persecution and biased punishment.[161] Originally, the Constitution as first drafted did not contain a provision that would guarantee a right to a trial by jury.[162] As one commentator notes, the lack of such a provision led to vehement Antifederalist attacks on the Constitution arguing there would be prejudiced proceedings and corruption.[163] As an initial response to the Antifederalist arguments, the Federalists argued that since the different states had different methods concerning jury trials, implementing universal language would be unfeasible.[164] However, the Antifederalists were ultimately victorious in their argument, which resulted in the Seventh Amendment.[165]

In *Jarkesy*, the Supreme Court began its analysis of the Seventh Amendment issue referencing the importance of a jury trial and how early Americans were deprived of such trials under British control.[166] For instance, the Supreme Court cited the Resolutions of the Stamp Act while saying, "[w]hen the English began evading American juries by siphoning adjudications to juryless admiralty, vice admiralty, and chancery courts, Americans condemned Parliament for 'subvert[ing] the rights and liberties of the colonists.'"[167] Furthermore, the Court cited the Declaration of Independence when stating that the lack of a jury trial was one justification of the Founders for leaving England.[168]

Regarding SEC administrative adjudication, the Court used the distinction created in *Parsons v. Bedford*, which differentiated suits at Seventh Amendment common law suits from equity, admiralty, and maritime suits.[169] Therefore, the Seventh Amendment language of "[s]uits at common law" refers to suits which "settle legal rights" or suits which are "legal in nature."[170] Although differentiating suits that are "legal in nature" from admiralty or maritime suits may be apparent, the line blurs with equitable suits.[171] To separate the two, precise definitions and explanations must be given to both types of suits. Put plainly, the difference between what is deemed "legal" and what is deemed "equitable" is dependent on the remedy for a given cause of action.[172] As stated by the Supreme Court in *Tull v. U.S.*, "[r]emedies intended to punish culpable individuals, as opposed to those intended simply to extract compensation or restore the status quo, were issued by courts of law, not courts of equity."[173] Therefore, a suit which is "legal in nature"

161. Margaret L. Moses, *What the Jury Must Hear: The Supreme Court's Evolving Seventh Amendment Jurisprudence*, 68 GEO. WASH. L. REV. 183, 186 (2000).
162. *Id.* at 185.
163. *Id.* at 186.
164. *Id.* at 185-86.
165. *Id.* at 186.
166. SEC v. Jarkesy, 603 U.S. 109, 121 (2024).
167. *Id.*
168. *Id.*
169. *Id.* at 122; Parsons v. Bedford, 28 U.S. 433, 447 (1830).
170. *Jarkesy*, 603 U.S. at 122; *Parsons*, 28 U.S. at 447.
171. *Jarkesy*, 603 U.S. at 122; *Parsons*, 28 U.S. at 447.
172. Tull v. United States, 481 U.S. 412, 417-18 (1987).
173. *Id.* at 422.

has a remedy that is meant to be punitive, and a suit in equity involves a compensative remedy.[174]

In determining that the suits brought before the SEC ALJs were "legal," the Supreme Court categorized the factors used to determine the availability and size of civil penalties as being punitive.[175] Specifically, the Court reasoned that since some of the factors used to determine whether a penalty will be given concerned the need for deterrence and the culpability of the action, the determination on whether to penalize was punitive.[176] Further, the Court reasoned that since the size of the civil fine was determined on the culpability of the action and the need for deterrence, as opposed to the size of the injury, the determination of the fine was legal in nature.[177] Additionally, the Supreme Court relied on the fact that the SEC was *not required* to return money to victims of financial fraud to demonstrate that the SEC suits are legal.[178] Finally, the Supreme Court made sure to note that it was not relevant whether or not a cause of action was in a statute for Seventh Amendment purposes.[179]

B. The Public Rights Doctrine

After establishing that the SEC securities fraud cause of action constituted a "suit at common law," which was somewhat analogous to common law fraud, the Court looked at whether an exception applied to the Seventh Amendment requirement.[180] Particularly, the Court addressed the issue as to whether an exception called the "public rights" doctrine applied.[181] As detailed by both the Supreme Court and many commentators, the public rights doctrine has been notoriously hard to work with and understand.[182] At its most basic characterization, the public rights doctrine allows adjudication in non-Article III tribunals, as in non-traditional courts, for matters which "historically could have been determined exclusively by [the executive and legislative] branches."[183]

First conceived by the Supreme Court in 1855, in its simplest terms the public rights doctrine establishes rights which are conveyed onto the public through

174. *Jarkesy*, 603 U.S. at 122; *Parsons*, 28 U.S. at 447.

175. *Jarkesy*, 603 U.S. at 123-24.

176. *Id.*

177. *Id.* at 123.

178. *Id.* at 124.

179. *Id.* at 122.

180. *Id.* at 126-27.

181. *Id.* at 127.

182. Oil States Energy Servs., LLC v. Greene's Energy Grp., LLC, 584 U.S. 325, 334 (2018) ("This Court has not 'definitively explained' the distinction between public and private rights,…and its precedents applying the public-rights doctrine have 'not been entirely consistent.'") (citation omitted); *e.g.*, Note, *Unlinking the Seventh Amendment and Article III*, 138 HARV. L. REV. 558, 592 (2024) ("Of these, public rights cases are the most elusive, with boundaries that have escaped precise definition for more than a century.").

183. *Jarkesy*, 603 U.S. at 128 (alteration in original) (quoting Stern v. Marshall, 564 U.S. 462, 493 (2011)).

Congress through the creation of statues.[184] In other words, the Supreme Court in *Crowell v. Benson* described public rights as "those which arise between the Government and persons subject to its authority in connection with the performance of the constitutional functions of the executive or legislative departments."[185] In contrast, private rights are those that are personal to a specific individual or party.[186] When deciding whether a public or private right is being adjudicated, the Court assess "whether it 'is made of "the stuff of the traditional actions at common law tried by the courts at Westminster in 1789."'"'[187] If the matter is one which would have been heard at common law by a colonial era court, then it would have to be heard by an Article III court, resulting in the Seventh Amendment applying.

Returning to *Jarkesy*, the Court stated that the penalties which were adjudicated within the SEC are analogous to common law fraud and that putting the claim in a statutory scheme did not turn the matter into a public right.[188] To further emphasize the importance of the substance of the suit, the Court further stated that it was irrelevant whether the United States, in this case the SEC, was the party that brought the suit.[189] In making the point that it is irrelevant whether the United States is a party which brings a claim, the *Jarkesy* Court attempted to distinguish a prior case called *Atlas Roofing Co. v. Occupational Safety and Health Review Commission*.[190] *Atlas Roofing Co.* held that the enforcement of violations of the Occupational Safety and Health Act standards are deemed as public rights and could be adjudicated in juryless non-Article III tribunals.[191] In doing so, however, the *Jarkesy* Court likely overruled an essential part of *Atlas* without expressly saying so.

The key phrase in *Atlas Roofing Co.* which the *Jarkesy* Court expressly distinguishes is as follows:

> At least in cases in which 'public rights' are being litigated e.g., in which *the government sues in its sovereign capacity* to enforce public rights created by statutes within the power of Congress to enact the Seventh Amendment does not prohibit Congress from assigning the factfinding function and initial adjudication to an administrative forum with which the jury would be incompatible.[192]

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184. *See* Matthew Stanford, *Administrative Injuries*, 46 FLA. ST. U.L. REV. 129, 133-34 (2018). *See generally* Murray's Lessee v. Hoboken Land & Improvement Co., 59 U.S. 272, 284 (1856) (establishing the public rights doctrine).

185. Crowell v. Benson, 285 U.S. 22, 50 (1932).

186. *Right*, BLACK'S LAW DICTIONARY (12th ed. 2024).

187. *Jarkesy*, 603 U.S. at 128 (quoting Stern v. Marshall, 564 U.S. 462 (2011) and N. Pipeline Constr. Co. v. Marathon Pipe Line Co., 458 U.S. 50, 90 (1982) (Rehnquist, J., concurring)).

188. *Id.* at 134.

189. *Id.* at 135.

190. *See id.* at 136.

191. *See* Atlas Roofing Co. v. Occupational Safety & Health Rev. Comm'n, 430 U.S. 442, 461 (1977) (determining that enforcing Occupational Safety and Health Act regulations through use of civil fines in a juryless non-Article III tribunal is constitutional).

192. *Jarkesy*, 603 U.S. at 136; *Atlas Roofing Co.*, 430 U.S. at 450 (1977) (emphasis added).

The *Jarkesy* Court expressly notes that it does not matter if the United States is the party which brings a suit to enforce a statute created by Congress.[193] According to the *Jarkesy* Court, all that matters in determining whether something is a public or private right is the substance of the cause of action.[194] Specifically, the Court notes that common law claims are presumptively private and must be brought in front of Article III tribunals, not a non-Article I tribunal which does not offer a jury trial.[195] Thus, by disregarding the importance of the government being the party who brings the cause of action, the *Jarkesy* Court narrowed this essential part of the *Atlas Roofing Co.* holding.

Finally, since the *Jarkesy* Court strictly rejected the importance of the language in *Atlas Roofing Co.* regarding the importance of the government being the party bringing the action, the Court relied on distinguishing the cause of action brought in the two cases.[196] The *Jarkesy* Court reasoned that cause of action that was brought against the defendants in *Atlas Roofing Co.* was distinguishable from the SEC's securities fraud claim since it was not an "action from the common law."[197] And once the *Jarkesy* Court made the distinction with *Atlas Roofing Co.*, the fate for adjudicating securities fraud within an administrative setting was sealed. Once the Court determined that the SEC's adjudication of securities fraud did not fall within the public rights doctrine, they consequently held that such adjudications violated the Seventh Amendment.[198]

Although the holding of the Supreme Court is narrow due to it only applying to proceedings regarding securities fraud in the SEC, it has the potential to open the flood gates for further proceedings. For instance, even though the SEC and MSHA pursue distinguishable kinds of civil penalties, there is no doubt that the holding in *Jarkesy* will encourage challenges to MSHA's authority. The weaking of administrative authority combined with the Roberts Court's continued approval of administrative-skeptical arguments surely will, and in fact already has, encourage challengers to not only the SEC or MSHA, but various other administrative agencies.[199]

VI. THE ANALYSIS: THE SUPREME COURT'S HOLDING IN *JARKESY* AND ITS POTENTIAL APPLICATION TO THE MINE SAFETY AND HEALTH ADMINISTRATION

Even though the full consequences of *Jarkesy* are not fully realized, all the theories used to invalidate the SEC's ALJ adjudication could apply to numerous non-Article III tribunals across the administrative state. For instance, many administrative agencies that enforce citations through ALJ non-Article III tribunals

193. *Jarkesy*, 603 U.S. at 139-40.
194. *Id.* at 134.
195. *Id.* at 128.
196. *Id.* at 136-37.
197. *Id.*
198. *Id.* at 140-41.
199. *See generally, e.g.*, Reply Brief for Petitioner, *supra* note 156, at 14-15 (arguing that the structure of the Department of Transportation's adjudicatory system in unconstitutional).

have similar remedies which the *Jarkesy* Court found were "all but dispositive" to be legal in nature.[200]

To elaborate, one of the reasons why the Supreme Court found the SEC's civil penalties to be "legal in nature" was because it used the six-factor test from the Securities Exchange Act and the Investment Advisers Act to determine whether civil penalties were designed to "punish the defendant rather than to restore the victim."[201] MSHA, like many other administrative agencies that enforce civil penalties, uses a factor test similar to that of the Securities Exchange Act to determine the availability and extent of civil penalties.[202] Although not perfectly analogous, the Mine Act's criteria used to determine the amount in civil penalties is similar to the factor list the *Jarkesy* Court examined in the Securities and Exchange Act used to determine the availability of a penalty.[203] For example, both the Mine Act and Securities Exchange Act look to criteria regarding the violation's nature, the history of a violator's past violations, the damage caused to others, and the need to prevent future violations.[204]

Another similarity between the enforcement of civil penalties between the SEC and MSHA is how the money obtained from violations are used.[205] Just as the SEC does not have to compensate the victims from the money obtained from civil penalties, MSHA does not have to compensate those who were injured by Mine Act violations committed by mine operators.[206] Finally, another possible argument that civil penalties from violations of Mine Act are "legal in nature" goes to the essence of how regulations are formed under the Mine Act.[207] Since many of the

200. *Jarkesy*, 603 U.S. at 123.

201. *Id.* at 124.

202. *Compare* 30 C.F.R. § 100.3(a)(1) (2025) (displaying criteria used to access extent of a civil penalty under the Mine Act), *and e.g.*, 33 U.S.C. § 1319(d) (2023) (displaying the factors used to determine civil penalties under the Clean Water Act), *with Jarkesy*, 603 U.S. at 123 (discussing the factors used by the SEC to determine if and how much to assign in civil penalties under the Securities Exchange Act and the Investment Advisors Act).

203. *Compare* 30 C.F.R. § 100.3(a)(1) (2025) (setting forth factors used by MSHA to access the extent to assign in civil penalties under the Mine Act), *with* 15 U.S.C. § 78u-2(c) (2025) (displaying factors used by the SEC to determine whether to impose a civil penalty under the Securities Exchange Act).

204. *Compare* 30 C.F.R. § 100.3(a)(1)(ii)-(v) (2025) (setting forth factors used by MSHA to access the extent to assign in civil penalties under the Mine Act), *with* 15 U.S.C. § 78u-2(b), (c)(1)-(2), (5) (2025) (displaying the criteria used by the SEC to assess if an how much to assign in civil penalties under the Securities Exchange Act).

205. *Compare Jarkesy*, 603 U.S. at 124 (explaining the use of funds obtained from civil penalties by the SEC), *with* 30 U.S.C § 820(j) (2025) ("Civil penalties owed under this Act shall be paid to the Secretary for deposit into the Treasury of the United States and shall accrue to the United States and may be recovered in a civil action in the name of the United States brought in the United States district court for the district where the violation occurred or where the operator has its principal office.").

206. *Compare Jarkesy*, 603 U.S. at 124 (explaining the use of funds obtained from civil penalties by the SEC), *with* 30 U.S.C § 820(j) (2025) ("Civil penalties owed under this Act shall be paid to the Secretary for deposit into the Treasury of the United States and shall accrue to the United States and may be recovered in a civil action in the name of the United States brought in the United States district court for the district where the violation occurred or where the operator has its principal office.").

207. *Jarkesy*, 603 U.S. at 121; Parsons v. Bedford, 28 U.S. 433, 447 (1830).

regulations under the Mine Act are meant to prevent injuries from occurring,[208] there is a possible argument that said penalties are meant be deterrents. This argument is important because the *Jarkesy* Court expressly noted deterrence as one of the factors which make the execution of civil fines under the Securities Exchange Act punitive, thus making the fines "legal rather than equitable."[209]

Although one may argue that civil penalties deriving from the Mine Act are "legal in nature," there is a stronger argument that they are more analogous to the penalties in *Atlas Roofing Co*. For example, the *Jarkesy* Court clearly stated the regulations for which the cause of actions was brought in *Atlas Roofing Co.* "[brought] no common law soil with them."[210] The specific civil penalties that were brought in *Atlas Roofing Co*. were regarding a safety standard which insured that trenches made of unstable material were to be strengthened through shoring, slopping, or other means.[211] The *Jarkesy* Court reasoned that the regulations being enforced in *Atlas* were not the kinds of suits brought in colonial English courts; thus these kinds of actions are public rights and have been exclusively accessible to the political branches.[212] Specifically, the *Jarkesy* Court stated that "[r]ather than reiterate common law terms of art, [the regulations] instead resembled a detailed building code."[213]

Much like the "detailed building code" found within the Code of Federal Regulations for Occupational Safety and Health Act, one can state that the regulations in the Mine Act also state "detailed code" which lacks resemblance to common law terms of art. For instance, one of the regulations implemented under the Mine Act has to do with specifications for electric headlamps to mitigate the chance of explosions within mines.[214] Specific MSHA regulations, like the required specifications for electric headlamps, would not have been litigated in colonial era courts due to the particularity of them. Nevertheless, the administrative skepticism by the Roberts Courts will foster new, creative arguments to attempt to analogize administrative regulations to common law proceedings.

One of the most apparent potential arguments which could be on the horizon to challenge administrative regulations in the Seventh Amendment conduct is analogizing violations to common law negligence and fraud. Negligence and fraud causes of action alone encompass many types of violations which administrative agencies seek to civilly penalize. For instance, MSHA institutes a definition of negligence that is similar to that of a common law definition.[215] Common law negligence entails a test which contains duty, breach of said duty, and both a

208. *E.g.*, 30 C.F.R. §§ 33.1, 33.20 (2025) (displaying the purpose and requirements for having a dust collector in use for drilling in mines).

209. *Jarkesy*, 603 U.S. at 123-34.

210. *Id.* at 127.

211. Atlas Roofing Co. v. Occupational Safety and Health Rev. Comm'n, 430 U.S. 442, 477 (1977).

212. *See Jarkesy*, 603 U.S. at 128, 137.

213. *Id.* at 137.

214. 30 C.F.R. § 19.7 (2025).

215. *See* Sims Crane, No. SE 2015-315, at *4 (Fed. Mine Safety and Health Rev. Comm'n May 3, 2016) (quoting A.H. Smith Stone Co., 5 FMSHRC 13, 15 (Jan. 1983)).

proximate cause and cause-in-fact harm to a plaintiff.[216] In *Sims Crane*, an ALJ hearing a MSHA case stated that

> Negligence is not defined in the Mine Act. The commission has found "[e]ach mandatory standard thus carries with it an accompanying duty of care to avoid violations of the standard, and an operator's failure to satisfy the appropriate duty can lead to a finding of negligence if a violation of the standard occurred."[217]

Additionally, although it is not explicitly mentioned, a type of causation analysis is likely used when assessing Mine Act violations. Moreover, even if a negligence violation under the Mine Act is not perfectly analogous to common law negligence, the former is likely derived from the latter. The analogy between the two standards coupled with the *Jarkesy* Court acknowledging the differences between the securities fraud the SEC was trying to enforce with common law fraud could open the door for Seventh Amendment administrative challenges.[218]

As for the removal restriction arguments proffered by the Fifth Circuit in *Jarkesy*, challenges to several have already been argued on these ideas.[219] For instance, a brief filed in June of 2024 argues that the ALJs within the Department of Agriculture (USDA) "are unconstitutionally shielded from removal" due to them having a dual for-cause removal provision.[220] In another brief filed in 2023 in the Fifth Circuit, arguments were offered to invalidate ALJ proceedings within the Drug Enforcement Administration (DEA) on both separation of powers and invalid removal restriction grounds.[221] Much like how both USDA and DEA ALJs are being attacked on nondelegation and removal restriction grounds, MSHA ALJs are susceptible to similar attacks. Since MSHA ALJs are subject to removal by commissioners only for good cause grounds stemming from § 7521 of the APA,[222] and MSHA commissioners can only be dismissed "by the President for inefficiency, neglect of duty, or malfeasance,"[223] MSHA ALJs are insulated from direct removal by the president.

As for the Fifth Circuit's separation-of-powers theory employed against the SEC, such an argument would not be successful against MSHA. Unlike the claims by the SEC in *Jarkesy*, which could be brought in either a federal court or in the

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216. *Negligence*, CORN. L. SCH.: LEGAL INFO. INST., https://www.law.cornell.edu/wex/negligence (last visited Oct. 4, 2025).

217. Sims Crane, *supra* note 215, at *4 (quoting A.H. Smith Stone Co., 5 FMSHRC 13, 15 (Jan. 1983)).

218. *Jarkesy*, 603 U.S. at 126.

219. *E.g.*, Reply Brief of Appellant at 1, Manis v. USDA, 2024 WL 3312227 (4th Cir. June 26, 2024) (No. 24-1367) (arguing that United States Department of Agriculture ALJs are "unconstitutionally shielded from removal.").

220. *Id.* at 18-20.

221. Petitioner's Opening Brief at 20-22, Morris & Dickson Co. v. U.S. Drug Enf't Admin., 2023 WL 6050340 (5th Cir. Sep. 7, 2023) (No. 23-60284).

222. 30 U.S.C. § 823(b)(2) (2025) ("Assignment, removal, and compensation of administrative law judges shall be in accordance with sections 3105, 3344, 5362 and 7521 of Title 5."); 5 U.S.C. § 7521(a) (2024) ("An action may be taken against an administrative law judge…only for good cause.").

223. 30 U.S.C. § 823 (2024).

Commission, MSHA has no such discretion.[224] Therefore, the nondelegation argument that the Fifth Circuit applied to SEC would not apply to MSHA since MSHA *must* bring its claims in front of an ALJ; MSHA has no choice in the matter of where violations of the Mine Act are to be adjudicated.

No matter whether MSHA ALJ adjudications are challenged under removal restriction or Seventh Amendment theories, a successful argument could heavily stunt the agency and result in worse working conditions for miners. First, if MSHA were forced to bring citations in front of a federal judge, the proceedings would be exponentially slower.[225] For instance, one finding states that administrative proceedings are resolved roughly twenty-seven times faster than federal trial.[226] Additionally, the efficiency of administrative proceedings combined with their hidden nature creates a less costly environment for agencies to enforce statutory violations.[227]

In contrast to the speedy proceeding that are seen within federal agencies, the federal court system has been continuously clogged with litigation, with the issue becoming exponentially worse over the past ten years.[228] For example, there has been consistently more than nine thousand pending motions in the federal court system between 2024 and 2022.[229] If the already backlogged federal court system would have to adjudicate every hearing within the Social Security Administration,[230] let alone every other agency, the system would be borderline

224. *See* Thunder Basin Coal Co. v. Reich, 510 U.S. 200, 218 (1994) ("We conclude that the Mine Act's administrative structure was intended to preclude district court jurisdiction over petitioner's claims and that those claims can be meaningfully reviewed through that structure consistent with due process.").

225. *See* Xin Zheng, *A Tale of Two Enforcement Venues: Why the SEC's Choice of Where to File Cases Matters*, COLUM. L. SCH.: THE CLS BLUE SKY BLOG (Dec. 11, 2020), https://clsbluesky.law.columbia.edu/2020/12/11/a-tale-of-two-enforcement-venues-why-the-secs-choice-of-where-to-file-cases-matters/ ("A striking finding is that administrative proceedings resolve cases in about 10 days, nearly 27 times faster than federal courts do.").

226. *Id.*

227. *Id.*

228. *See, e.g.*, *March 2023 Civil Justice Reform Act*, U.S. CTS. (Mar. 31, 2023), https://www.uscourts.gov/data-news/reports/statistical-reports/civil-justice-reform-act-report/march-2023-civil-justice-reform-act (discussing statistics of the pending cases as of March 31, 2023).

229. *Compare March 2024 Civil Justice Reform Act*, U.S. CTS. (Mar. 31, 2024), https://www.uscourts.gov/data-news/reports/statistical-reports/civil-justice-reform-act-report/march-2024-civil-justice-reform-act ("The total number of motions pending more than six months for all district judges and magistrate judges increased by 43 motions (up less than 1 percent) from 9,545 on September 30, 2023, to 9,588 on March 31, 2024."), *with March 2023 Civil Justice Reform Act*, U.S. CTS. (Mar. 31, 2023), https://www.uscourts.gov/data-news/reports/statistical-reports/civil-justice-reform-act-report/march-2023-civil-justice-reform-act ("The total number of motions pending more than six months for all district judges and magistrate judges decreased by 590 motions (down 6 per-cent) from 10,113 on September 30, 2022, to 9,523 on March 31, 2023."), *and March 2022 Civil Justice Reform Act*, U.S. CTS. (Mar. 31, 2022), https://www.uscourts.gov/data-news/reports/statistical-reports/civil-justice-reform-act-report/march-2022-civil-justice-reform ("The total number of motions pending more than six months for all district judges and magistrate judges decreased by 115 motions (down 1 percent) from 10,414 on September 30, 2021, to 10,299 on March 31, 2022.").

230. *See* Hedges v. Comm'r of Sec., 530 F. Supp. 3d 1083, 1102 (M.D. Fla. 2021) (displaying that there were 2.6 million disability claims and 689,500 ALJ hearings within the SAA between 2018 and 2020) (citing SSA's Annual Performance Report, Fiscal Years 2018-2020, at 4, 42, 46 (2019)).

unworkable. If administrative hearings were adjudicated within federal courts, the bottleneck of cases would undoubtedly cause even the simplest cases to be lengthy and expensive. The inefficiency of having to adjudicate within federal court would likely result in agencies not pursuing smaller violations due to the cost of litigation outweighing any benefit of the potential compliance. For agencies such as MSHA, these cost saving measures are necessary to continuously enforce the Mine Act. For the fiscal year of 2025, MSHA was set to receive only about $11 million to enforce mine operator compliance with the Mine Act.[231] If MSHA were compelled to bring all their claims in front of a federal court, their yearly funds would quickly be strained, and enforcement of the Mine Act would become untenable.

Due to the budget constraints on MSHA, only the enforcement of the most egregious violations would likely be enforced. Knowing that the agency's hands are tied due to budgetary constraints, mine operators would be incentivized to commit smaller violations of the Mine Act. These violations would subsequently lead to worse working conditions for miners and an exploitation of labor on behalf of the mine operators. Without the safeguards that MSHA provides, miners would be subject to hazardous work conditions which could lead to health complications and possibly death.

VII. THE HOLDING: CONCLUSION AND WHAT'S NEXT

In determining how to remedy the potential crisis the administrative state will face with *Jarkesy* and administrative proceedings, there must be a change in public opinion regarding the role of agencies. Traditionally, law is seen as a delayed adaptation of societal norms;[232] therefore, the heart of the issue lies in how administrative agencies are viewed. If administrative agencies are continuously viewed by the public as an inefficient use of public resources,[233] the current attack of the administrative state will only intensify. For instance, although both cases are currently stayed,[234] the Fifth Circuit's reasoning regarding removal provisions could be at the forefront of the lawsuits involving the firing of former NLRB member Gwynne Wilcox and three member of the Consumer Product Safety Commission, who Trump fired without for-cause.[235] Unfortunately, a change in

231. *Federal Mine Safety and Health Review Commission (FMSHRC)*, USASPENDING.GOV (May 30, 2025), https://www.usaspending.gov/agency/federal-mine-safety-and-health-review-commission?fy=2025.

232. *See* Aditya Shastri, *Our Society Keeps Changing. Does the Law Change Too?*, MEDIUM (May 20, 2019), https://medium.com/@adityashastri/our-society-keeps-changing-does-the-law-change-too-e12f4071d4.

233. *See* Jon D. Michaels, *Running Government Like a Business…Then and Now*, 128 HARV. L. REV. 1152, 1152 (2015) (reviewing NICHOLAS R. PARRILLO, AGAINST THE PROFIT MOTIVE: THE SALARY REVOLUTION IN AMERICAN GOVERNMENT, 1780-1940 (2013)).

234. Trump v. Wilcox, 145 S.Ct. 1415, 1415 (2025) (granting stay to the March 4, 2025, and March 6, 2025, orders of the United States District Court for the District of Columbia); Trump v. Boyle, 2025 WL 2056889, at *1 (July 23, 2025) (granting stay to the June 13, 2025 order from the United States District Court for the District of Maryland).

235. Nick Niedzwiadek, *Trump Fired This Independent Labor Regulator. Now, She's Suing.*, POLITICO (Feb. 5, 2025, at 11:33 ET); Madiba K. Dennie, *The Conservative Justices Expect Lower Court Judges to Read Their Minds Now*, BALLS & STRIKES (July 25, 2025), https://ballsandstrikes

broad public opinion regarding the administrative state will be a lengthy process which will likely require a decade or more.

Although the attitude of the public and the judiciary would have to change regarding the administrative state, it would be in the United States' best interest if both the Fifth Circuit's and Supreme Court's holdings in *Jarkesy* were overturned. As previously stated, MSHA and administrative agencies at large, are essential to enforcing laws which are necessary in areas ranging from mine safety to receiving social security benefits.[236] Without quick, efficient adjudication and processing of claims normally handled by agencies, these matters will likely go unaddressed and unremedied. Without administrative agencies that can efficiently hear claims, there will be incentives for bad actors to abuse the system and violate federal law.[237] Though many have argued against the administrative state on separation-of-powers or Seventh Amendment grounds,[238] the lack of administrative adjudication would result in laws that are just mere words that hold no actual power.

Returning to a pre-*Jarkesy* state would allow agencies such as MSHA to enforce violations of the laws which it was assigned to administer. It is likely that the determination of the administrative state will continue in the second quarter of the 21st century with no end in sight.[239] With the potential of being disempowered from what they are tasked with enforcing, MSHA and many other administrative agencies are likely to become a husk of what they once were. As a result, many essential protections and procedures that citizens of the United States take for granted are likely to stripped away. In the case of MSHA, these lost protections would include basic safety workplace regulations to ensure the safety of workers in a dangerous profession.[240] The lack of competent administrative oversight and authority will create a regression of workplace safety and other societal benefits, resulting in exploitation of labor, the environment, and many other resources.[241] Although it would be ideal to have a quick, realistic solution, there will likely be a

.org/scotus/trump-v-boyle-surpeme-court-read-minds/; *see* Complaint for Declaratory & Injunctive Relief, at 3; Wilcox v. Trump, 775 F. Supp. 3d 215 (D.D.C. 2025) (stating that the NLRA provides that a board member can be removed by the President for neglect of duty or malfeasance in office).

236. *See supra* text accompanying notes 7-8; *Mission and Structure*, SOC. SEC. ADMIN., https://www.ssa.gov/agency/ (last visited Oct. 4, 2025).

237. *See supra* text accompanying notes 202-03.

238. *E.g.*, Richard Lorreen Jolly, *The Administrative State's Jury Problem*, 98 WASH. L. REV. 1187, 1189-91 (2023).

239. *See* Tom Perkins, *US Supreme Court May Revive Doctrine That Would Curb Federal Agencies' Power*, THE GUARDIAN (Feb. 6, 2025, at 08:03 ET), https://www.theguardian.com/us-news/2025/feb/06/nondelegation-doctrine-supreme-court (discussing the possibility that the Supreme Court will revive the nondelegation doctrine); *see also* Michael J. Lebowish et al., *Breaking: NLRB Drops Opposition to SpaceX's Constitutionality Arguments*, THE NAT'L L. REV. (Feb. 6, 2025), https://natlawreview.com/article/breaking-nlrb-drops-opposition-spacexs-constitutionality-arguments (indicating that the NLRB will defend against constitutional arguments in its lawsuit against SpaceX).

240. *See generally* 30 U.S.C. § 801 (demonstrating that purpose of the Mine Safety and Health Act is to ensure safe work conditions for those working in mines).

241. *See* Annie Palmer, *Amazon's Whole Foods Cites Trump's NLRB Purge as Grounds for Rejection Union Win*, CNBC (Feb. 6, 2025, at 15:51 ET), https://www.cnbc.com/2025/02/06/whole-foods-cites-trumps-nlrb-purge-as-grounds-to-reject-union-win.html (displaying lack of recognition to the results of a union election which would grant employees the right to collectively bargain).

continued degradation of administrative agencies until there is a change in public perception regarding their importance.