

5-15-2024

Legal Summaries of Administrative Law Cases

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Recommended Citation

Keyana Young, *Legal Summaries of Administrative Law Cases*, 44 J. Nat'l Ass'n Admin. L. Judiciary 1 (2024)

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Legal Summaries of Administrative Law Cases

Keyana Young

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Department of Agriculture Rural Development Rural Housing Service v. Kirtz **601 U.S. __ (2024)**

Synopsis:

Under the Fair Credit Reporting Act of 1970 (FCRA), consumers can sue lenders who willfully or negligently supply false information about them to entities that generate credit reports.¹ Consumer, Reginald Kirtz, secured a loan through a United States Department of Agriculture division. He then sued the division alleging that “the USDA falsely told TransUnion—a credit reporting agency— that his account was past due” causing damage to his credit score and ability to secure loans at affordable rates². The USDA invoked sovereign immunity and moved for dismissal,

¹ Dep’t of Agric. Rural Dev. Rural Hous. Serv. v. Kirtz, 601 U.S. 42 (2024).

² *Id.*

and the district court agreed.³ The Third Circuit reversed holding that the Act authorizes suits against the government.⁴

Facts:

Congress passed the Fair Credit Reporting Act of 1970, recognizing the importance of accurate credit reporting.⁵ Reginald Kirtz received a loan from Rural Housing Service (The Service)—a division of the United States Department of Agriculture (USDA)—that he repaid by mid-2018. USDA repeatedly reported his account to be past due to a credit reporting agency—Trans Union.⁷ Mr. Kirtz suffered damage to his credit score and he was prevented from receiving loans at affordable rates.⁸ Mr. Kirtz sued the USDA under the FCRA after the agency failed to act toward correcting their misrepresentation. The Government claimed that they possess sovereign immunity which prevents Mr. Kirtz suing the agency.⁹ The Court answered whether Mt. Kirtz may sue the federal government.¹⁰

Analysis:

The Court finds waiver of a government’s sovereign immunity in one of two situations, either “when a statute says . . . that is it stripping immunity from a sovereign entity,” or when a “statute creates a cause of action’ and explicitly ‘authorizes suit against a government on that claim.’”¹¹ “Statutes in the second category may not directly address sovereign immunity, but dismissing a claim against the government would negate a claim specifically authorized by Congress.”¹² The FCRA allows suits against persons who “furnish information to consumer reporting agencies.”¹³ Specifically the Act allows to sue any person—e.g., any governmental agency—who willfully or negligently fails to comply with the statute.¹⁴ Other portions of the statute also lead to the inference that sovereign immunity is waived by the Act’s terms.¹⁵ The Court rejected the

³ *Id.*

⁴ *Id.*

⁵ *Id.* at 45

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.* at 42.

¹² *Id.* at 42.

¹³ *Id.* at 43.

¹⁴ *Id.*

¹⁵ *Id.*

government's argument that sovereign immunity could only be waived by a separate provision directly addressing the issue.

Conclusion:

The Court held that consumers may sue federal agencies for defying the FCRA.¹⁶

Impact:

Agencies are liable for monetary damages caused by inaccurately reporting consumer's credit information. Federal agencies can face lawsuits for willfully or negligently supplying inaccurate consumer credit information and will not be granted sovereign immunity if a consumer sues under the FCRA.

**Federal Bureau of Investigation v. Fikre
601 U.S. __ (2024)**

Synopsis:

The Federal Bureau of Investigation (FBI) informed Fikre, a U.S. resident and Sudanese emigree, that he was placed on the No-Fly List and could not return to his home in Portland, Oregon unless he agreed to serve as an FBI informant.¹⁷ The FBI provided no information as to why Fikre was placed on the list in 2009, and Fikre was later removed from the No-Fly List in 2016 after he sued alleging violations of his constitutional rights.¹⁸ The District Court found the government's removal of Fikre from the No-Fly List sufficient to moot the case.¹⁹ The Ninth Circuit disagreed and reversed the decision, holding that the case is not mooted by a defendant's voluntary cessation of their challenged conduct unless the defendant shows that the practice cannot "reasonably be expected to recur."²⁰

Facts and Analysis:

In 2009, A U.S. Citizen and Sudanese emigree went on a business trip traveling from his home in Portland, Oregon to Sudan.²¹ Fikre's

¹⁶ *Id.*

¹⁷ FBI v. Fikre, 601 U.S. 1, 2–3 (2024).

¹⁸ *Id.* at 3–4.

¹⁹ *Id.* at 4.

²⁰ *Id.* at 4.

²¹ *Id.* at 2.

business interest involved selling electronic products related to cell phones.²² After informing U.S. officials of his interest in pursuing business opportunities in Sudan, he was invited to the U.S. Embassy to attend a luncheon.²³ At the Embassy, he was approached by two FBI agents.²⁴ The agents informed him that he was placed on the No Fly List and could not return to the United States, unless he agreed to serve as an FBI informant reporting on activities of the mosque he attended in Portland.²⁵ After several weeks of being unable to return to the United States, Fikre traveled to the United Arab Emirates to continue pursuing his business venture.²⁶ There, Fikre was arrested, imprisoned, and tortured at the behest of the FBI.²⁷ After being held for 106 days, authorities had him flown to Sweden where Fikre had a relative.²⁸ While in Sweden, Fikre filed a suit alleging that the government violated his due process rights by adding him to the No Fly List without notice or information regarding the factual basis for why he was placed on the list.²⁹ Additionally, he alleged that the government placed him on the list for unconstitutional reasons involving his race, national origin, and religious beliefs.³⁰ Fikre sought a declaratory judgment confirming violation of his constitutional rights, and an injunction prohibiting him from being placed back on the No Fly List.³¹ In May 2016, Fikre received notice from the government that he was removed from the No Fly List without explanation.³² The District Court dismissed the case as moot.³³ The Ninth Circuit reversed holding that the government failed to meet the requisite showing that the defendant's unlawful conduct is not "reasonably [] expected to recur."³⁴

The Court has an obligation to hear and resolve "cases and controversies" before it.³⁵ In contrast when a case is completely resolved outside the court room, a court must dismiss the case as moot.³⁶ However, a defendant cannot "moot" a case by suspending its challenged conduct after it has been sued.³⁷ A defendant's voluntary cessation of its conduct will moot a case only if the defendant can show that the conduct is

²² *Id.* at 2.

²³ *Id.* at 2.

²⁴ *Id.* at 2.

²⁵ *Id.*

²⁶ *Id.* at 3.

²⁷ *Id.* at 3.

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.* at 3.

³² *Id.* at 3–4.

³³ *Id.* at 4.

³⁴ *Id.* at 6.

³⁵ *Id.* at 5.

³⁶ *Id.* at 5–6.

³⁷ *Id.* at 6.

reasonably expected to occur.³⁸ The government attempted to meet this burden by declaring that Fikre will not be placed on the No Fly List based on the information currently available.³⁹ However the governments assurances that Fikre will not be relisted based on “currently available information” are insufficient.⁴⁰ The government could “mean that his past actions are not enough to warrant [] relisting” but it fails to explain if they would relist him if he was to do the same or similar things that landed him on the list initially—“attend a particular mosque or refuse renewed overtures to serve as an informant.”⁴¹ The court also rejected the government’s propositions that relisting Fikre is unlike to recur since they removed him from the list way back in 2016, and he has presumably joined other religious organizations, and has not been relisted because of it.⁴² “A case does not automatically become moot when a defendant suspends its challenged conduct and then carries on litigating for some specific period [nor] can a defendant’s speculation about a plaintiff’s actions make up for a lack of assurance about its own” conduct.⁴³ The government also argued that the Ninth Circuit seemed to be convinced that the government needed to repudiate its behavior to meet their showing that their behavior was not reasonable expected to recur.⁴⁴ The court also refuted argued that a defendant’s repudiation of their conduct alone, may or may not be sufficient to moot a case, it depends on “what repudiation can prove about its future conduct.”⁴⁵

Conclusion:

The Court held that the government failed to demonstrate that the case is moot because after voluntary cessation of the case they did not show that “that the practice cannot ‘reasonably expected to recur.’”⁴⁶

Impact:

Per the Court’s Case and Controversies doctrine a case is not moot when defendant’s voluntary ceases their conduct that led to the suit without a showing that the conduct is not reasonably likely to recur. This burden applies to private and government defendants alike. Additionally, a declaration by the defendant stating they are not likely to engage in the

³⁸ *Id.*

³⁹ *Id.* at 7.

⁴⁰ *Id.* at 7.

⁴¹ *Id.* at 7.

⁴² *Id.*

⁴³ *Id.* at 8.

⁴⁴ *Id.* at 8–9.

⁴⁵ *Id.* at 9.

⁴⁶ *Id.* at 6.

conduct that led to plaintiff’s suit based on currently available information is insufficient. The defendant must explain what led to their own challenged conduct initially and explain why it not reasonably expected to recur, separate from speculating about the plaintiff’s behavior.

Wilkinson v. Garland
601 U.S. ___ (2024)

Synopsis:

According to 8 U.S.C. §1229b(b)(1)(D), a noncitizen requesting their removal be cancelled four requirements must be met. The fourth requirement is a “showing that the noncitizen’s removal would result in ‘exceptional and extremely unusual hardship’” to a U.S.-citizen or permanent-resident family member.⁴⁷ Petitioner—Situ Kamu Wilkinson—presented to the Immigration Judge (IJ) that his “removal would cause exceptional and extremely unusual hardship to his U.S. Citizen son that suffers from serious asthma and relies on Wilkinson for financial and emotional support.”⁴⁸ The IJ held that Wilkinson’s level of hardship did not meet the requisite hardship and the Board of Immigration Appeals affirmed. The Third Circuit held it lacked jurisdiction to “review the IJ’s hardship determination.”⁴⁹ The Court granted certiorari to determine “whether the IJ’s hardship determination is reviewable under §1252(a)(2)(D), which [grants] Courts of Appeals jurisdiction to review ‘questions of law.’”⁵⁰ The Court found that the hardship determination constitutes a question of law reviewable on appeal.⁵¹

Facts and Analysis:

Federal immigration officers arrested Wilkinson in a Pennsylvania courthouse while he appeared to contest charges in a criminal case.⁵² Wilkinson requested relief in different forms including cancellation of removal based on hardship to his U.S.-citizen son. Wilkinson had witnesses testify to the hardship his removal would cause on his son.⁵³ After hearing the witness’s testimony, the IJ found Wilkinson’s evidence

⁴⁷ Wilkinson v. Garland, 601 U.S. 1, 1 (2024); 8 U.S.C. §1229b(b)(1)(D).

⁴⁸ *Id.* at 4.

⁴⁹ *Id.* at 1.

⁵⁰ *Id.* at 1.

⁵¹ *Id.*

⁵² *Id.* at 4.

⁵³ *Id.*

credible but found that “‘the evidence of hardship’ in the case did not rise to the level of ‘exceptional and extremely unusual hardship.’”⁵⁴ After the IJ denied Wilkinson’s application, Wilkinson appealed and the BIA affirmed the IJ ruling without issuing an opinion.⁵⁵ The Third Circuit rejected Wilkinson’s petition for review arguing that it lacked jurisdiction “because the hardship determination was ‘discretionary,’” which the court could not review.⁵⁶

The Court granted certiorari to “resolve whether the removal cancellation standard—exceptional and extremely unusual hardship— is reviewable as a mixed question of law and fact under §1252(a)(2)(D) or “a discretionary judgment call unreviewable under §1252(a)(2)(B)(i).⁵⁷

The application of a statutory legal standard—like the exceptional and extremely unusual hardship standard—to an established set of facts is a quintessential mixed question of law and fact. In *Guerrero-Lasprilla v. Barr* the Court held that this type of mixed question are reviewable under §1252(a)(2)(D).⁵⁸ The Guerrero Court held that the “statutory term ‘questions of law’ in §1252(a)(2)(D) includes the application of a legal standard to established facts.⁵⁹ Similarly, the “exceptional and extremely unusual hardship” standard in §1229(b)(1)(D) is a legal standard that an IJ applies to facts.⁶⁰ The government counter argues that a mixed question of law that is primarily factual should classify as a question of fact.⁶¹ The Court rejected the government’s proposal that would place line-drawing on the court to determine if a question is primarily factual, and argued that mixed questions will be reviewable as questions of law.⁶²

Conclusion:

The Court reverses the Third Circuit’s holding denying jurisdiction and remanded the case—allowing the “exceptionally and extremely unusual” determination to be reviewable by the court.

Impact:

Court appeals will be able to review the IJ and BIA’s “hardship determination” decisions on removal cancellations as reviewable questions of law. Additionally, statutory legal standards applied to

⁵⁴ *Id.* at 6.

⁵⁵ *Id.*

⁵⁶ *Id.* at 6.

⁵⁷ *Id.*

⁵⁸ *Id.* at 2.

⁵⁹ *Id.*

⁶⁰ *Id.* at 11.

⁶¹ *Id.*

⁶² *Id.* at 11.

established facts will classify as mixed questions of law and fact, and therefore classified as a mixed question of law. The Justice wrote to emphasize that court's should respects Congress intent to have discretionary determinations unreviewable.

Concurrence:

Justice Jackson wrote a concurring opinion.⁶³ The Justice expressed her reservation that Congress intended primarily factual based questions to be conclusively determined as questions of law.⁶⁴

Dissent:

Chief Justice Roberts wrote a dissenting opinion.⁶⁵ His dissent is in agreeance with Justice Alito's dissent based on the belief that the Court errs in reading the language of "Guerrero-Lasprilla" too broadly in its application to this case.⁶⁶

Dissent:

Justice Alito, joined by the Chief Justice and Justice Thomas wrote a dissenting opinion.⁶⁷ The reading of Guerrero-Lasprilla read too broadly will have effects averse to Congress's intentions of what is considered questions of law.⁶⁸ Mixed questions that are primarily factual should not be considered questions of law.⁶⁹

Loper Bright Enterprises v. Raimondo
45 F.4th 359 (D.C. Cir. 2022)

Synopsis:

A group of commercial fishing companies brought action against Secretary of Commerce and National Marine Fisheries Service, alleging that Magnuson-Stevens Fishery Conservation and Management Act did not authorize the Service, in implementing amendment establishing industry-funded monitoring programs in New England fishery

⁶³ *Id.* at 21.

⁶⁴ *Id.* at 21.

⁶⁵ *Id.* at 1.

⁶⁶ *Id.*

⁶⁷ *Id.* at 1.

⁶⁸ *Id.*

⁶⁹ *Id.*

management plans, to promulgate final rule requiring industry to fund at-sea monitoring programs, and that the rulemaking process was procedurally irregular.⁷⁰ The D.C. Circuit Court granted summary judgment in favor of the Secretary and Service.⁷¹ The D.C. Circuit court granted summary judgment in favor of the government—the Council’s was able to require the fisheries to pay for the cost of monitoring herring fish to operate.⁷²

Facts and Analysis:

The Magnuson-Stevens Fishery Conservation and Management Act authorizes the National Marine Fisheries Service (“the Service”) to implement a comprehensive fishery management program.⁷³ The Acts statutory scheme allows for the promulgation and enforcement of fishery management plans which are developed by regional fishery management councils.⁷⁴ Section 1853(a)(1) allows the regional fishery management councils to also enforce measures “necessary and appropriate and implementing regulations for the conservation and management of the fishery.”⁷⁵ The New England Fishery Management Council (“the Council”) manages nine fisheries including the Atlantic herring fishery.⁷⁶ “The Council submitted the Omnibus Amendment to the Service, which published a notice of availability and subsequently opened a comment period.”⁷⁷ “[T]he Service approved the Omnibus Amendment on December 18, 2018, and published the Final rule on February 7, 2020.”⁷⁸ The Amendment established a “standardized process to implement and revise industry-funded monitoring programs in the New England fisheries.”⁷⁹ The plans coverage requirements could be waived if monitoring was unavailable or certain exemptions applied based on available monitoring equipment or catch sizes.⁸⁰ The Atlantic Herring Fishery’s monitoring program covered 50 percent of its herring trips.⁸¹ To meet the 50 percent monitoring target, the monitoring program combined Service-funded monitoring and industry-funded monitoring.⁸² Industry-funded monitoring required vessel owners selected by the Service to carry

⁷⁰ Loper Bright Enters., Inc., v. Raimondo, 45 F.4th 359 (D.C. Cir. 2022).

⁷¹ *Id.* at 364.

⁷² *Id.* at 364.

⁷³ 16 U.S.C. §§ 1801–84.

⁷⁴ Loper Bright Enters., Inc., v. Raimondo, 45 F.4th 359, 363 (2022).

⁷⁵ *Id.*

⁷⁶ *Id.* at 364.

⁷⁷ *Id.* at 364.

⁷⁸ *Id.* at 364.

⁷⁹ *Id.* at 364.

⁸⁰ *Id.* at 364.

⁸¹ *Id.*

⁸² *Id.* at 364.

an industry-funded monitor and additionally pay for associated costs.⁸³ Altogether, the Service industry estimated the costs of industry-funded monitoring to reduce annual returns by 20 percent.⁸⁴ The effected commercial fisherman filed suit challenging the Service’s authority to require industry-funding monitoring and the rule making process as procedurally irregular.⁸⁵ The issue before the Court was whether Congress spoke clearly, and if not, whether the implementing agency’s interpretation was reasonable.⁸⁶ The Court found that “[a]lthough the Act may not unambiguously resolve whether the Service can require industry-funded monitoring, the Service’s interpretation of the Act as allowing it to do so is reasonable.”⁸⁷

The Court applied a two-step Chevron test to determine if the Service’s interpretation of the Act authorized the Service to require industry-funded monitoring. Under Chevron’s two-step analysis, first the Court determines whether Congress directly spoke to the precise question at issue—“if the intent of Congress is clear then the court and agency must give effect to the unambiguously expressed intent of Congress. For part two, “if the statute considered [is] ambiguous, then . . . the court defers to any ‘permissible construction of the statute’ adopted by the agency.”⁸⁸ For a statute to be permissible the court looks at whether the agency’s interpretation of the Act was reasonable.⁸⁹ The Court concluded the Service’s interpretation was reasonable.⁹⁰

First the Court answered if Congress spoke clearly under part one of Chevron.⁹¹ The Court referred to the statutes the Service used to justify their permission to make the industry-funded monitoring requirement.⁹² The Court found that the text—“fishery management plans may require that one or more observers be carried on a board or vessel . . . for the purpose of collecting data necessary for the conservation and management of the fishery”—clearly allows the Service to require at sea monitors but leaves open the question as to if the Service can require the industry to bear the cost of doing so.⁹³ Finding that the gap over the question of who could be made to pay for the sea monitors meant that Congress had not directly spoken on the issue, the court shifted to the second part of Chevron to analyze if the Service’s interpretation was reasonable.⁹⁴

⁸³ *Id.* at 364.

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.* at 365.

⁸⁷ *Id.* at 365.

⁸⁸ *Id.* at 365.

⁸⁹ *Id.* at 365.

⁹⁰ *Id.* at 365.

⁹¹ *Id.* at 365.

⁹² *Id.* at 365.

⁹³ *Id.* at 365.

⁹⁴ *Id.* at 365.

Applying step two of Chevron, the Court found that Section 1853(b)(8) paired with the Act’s “necessary and appropriate” clause demonstrates that the Act “considers monitoring ‘necessary and appropriate’ to further the Act’s conservation and management goals.”⁹⁵ Furthering that the Service’s acts were reasonable, the Court cited to the Service’s Final Rule that it published which provided a “reasoned explanation for the Service’s interpretation.” The Service’s reasoning for requiring the industry-funded monitoring which the Court found to be reasonable included the Service’s findings that industry-funded monitoring best served the fishery’s goal to reach the 50-percent coverage target in accordance with the Act’s conservation and management goals.⁹⁶ More specifically, the increased monitoring would permit the Service to assess the amount and type of catch, more accurately monitor annual catch limits, and/or provide other information for management . . . and that the industry-funded monitoring was consistent with other provisions of the Act that impose compliance costs on industry.”⁹⁷ The Court concluded that the Service’s findings were reasonably tied to the decision to require industry-funded monitoring.⁹⁸

The court also rejected the plaintiff’s argument that the Service’s adoption of the Amendment and Final rule were arbitrary and capricious because they failed to account the economic burden the industry-funding requirement imposes on the Atlantic herring fishery.⁹⁹ The Court held that the record actually reflects that the Service noted evidence that the “Atlantic herring industry-funded program costs impacted vessels \$710 per day and could reduce annual returns by approximately 20 percent.”¹⁰⁰ Additionally, the Service evaluated the economic impact in detail, responded to comments of cost-related concerns, and described its efforts to minimize the economic impact on the fishery.¹⁰¹ Finally the court rejected the plaintiff’s argument that the Service’s procedural flaws should warrant the Amendment invalid.¹⁰² The Court concluded that the plaintiffs failed to show that the procedural flaws created “a lack of fair notice” or removed a meaningful opportunity for comments of the Amendment.¹⁰³

Impact:

⁹⁵ *Id.* at 369.

⁹⁶ *Id.* at 369.

⁹⁷ *Id.* at 369.

⁹⁸ *Id.* at 369.

⁹⁹ *Id.* at 370.

¹⁰⁰ *Id.* at 370.

¹⁰¹ *Id.* at 371.

¹⁰² *Id.* at 371–72.

¹⁰³ *Id.* at 372.

The dissent’s opinion proposes that the Chevron analysis requires a different outcome if the statutory text does not clearly authorize the agency’s action. Arguing that the court should proceed to the second step of Chevron, “only if ‘the statute is ambiguous,’ and [only if] ‘Congress either explicitly or implicitly delegated authority to cure that ambiguity.’”¹⁰⁴ Similarly, critics strongly believe that the Supreme Court’s grant of certiorari could lead to the Court overturning Chevron partially or completely.

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

Synopsis:

The Securities and Exchange Commission (SEC) brought an enforcement action within the agency against Petitioners for securities fraud.¹⁰⁵ An SEC administrative law judge (ALJ) adjudged Petitioners liable and ordered various remedies.¹⁰⁶ The SEC affirmed the judgment on appeal over several.¹⁰⁷ Constitutional arguments that Petitioners raised.¹⁰⁸ Regarding the arguments the Petitioners raised, the Court held that the SEC’s in-house adjudication of Petitioner’s case violated their Seventh Amendment right to a jury trial, Congress unconstitutionally delegated legislative power to the SEC by failing to provide an intelligible principle by which the SEC would exercise the delegated power, in violation of Article I’s vesting of “all” legislative power in Congress, and statutory removal restrictions on SEC ALJs violate the Take Care Clause of Article II.¹⁰⁹ Decision vacated and remanded.¹¹⁰

Facts and Analysis:

Petitioners established hedge funds that brought in about 100 investors and held about \$24 million in assets.¹¹¹ The SEC launched an investigation into the Petitioners committing fraud that resulted in the agency bringing charges against Petitioners.¹¹² Petitioners were charged because they allegedly misrepresented who served as the prime broker and

¹⁰⁴ *Id.* at 374.

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

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ *Id.* at 450.

¹¹² *Id.* at 450.

as the auditor, misrepresented the funds' investment parameters and safeguards, and overvalued the funds' assets to increase the fees that they could charge investors.¹¹³ Petitioners sued in the U.S. District Court for the District of Columbia to enjoin the agency proceedings arguing that they infringed on various constitutional rights.¹¹⁴ The district Court and Court of Appeals denied jurisdiction and ruled that Petitioners had to continue with the agency proceedings.¹¹⁵ The Commission affirmed the evidentiary hearing finding that Petitioners committed fraud.¹¹⁶ The Commission rejected several constitutional arguments raised by the Petitioners.¹¹⁷ The Court agreed with Petitioners finding that they suffered three independent constitutional defects.¹¹⁸

The Court determined there were three independent constitutional defects that Petitioners suffered because of the SEC's proceedings.¹¹⁹ The Court found those defects to be that the Petitioners were deprived of their right to a jury trial, Congress's delegation of its legislative power to the SEC violated the constitutional limits, and statutory removal restrictions on SEC ALJs violated Article II.¹²⁰

The court emphasized that the seventh amendment protects the right to a jury trial—“a fundamental component of our legal system which remains one of our most vital barriers to governmental arbitrariness.”¹²¹ The Government argued that under the public rights doctrine, because the government is a party to the proceedings the rights being vindicated are of public nature and thus a jury trial is not owed.¹²² The Court rejected the Government's contention and instead argued that the real question is whether the rights being vindicated are public or private, and how those rights are being vindicated.¹²³ The Court determined that fraud claims, including the securities-fraud claims at issue, are “quintessentially about the redress of private harms.”¹²⁴

Congress gave the SEC “power to bring securities fraud actions for monetary penalties within the agency instead of an Article III court” through the exercise of unfettered discretion.¹²⁵ However, Congress “may only grant regulatory power to another entity only if it provides an

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ *Id.* at 451.

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ *Id.* at 451.

¹²² *Id.* at 456–57.

¹²³ *Id.* at 458.

¹²⁴ *Id.* at 458.

¹²⁵ *Id.* at 461.

‘intelligible principle’ by which the recipient of the can exercise it.”¹²⁶ The court addressed the constitutionality of Congress’s delegation through two-part analysis.¹²⁷ First the Court answered, “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,” second, “whether it has provided an intelligible principle such that the agency exercises only executive power.”¹²⁸ First, the court concluded that Congress has delegated legislative power to the SEC absent guidance of an “intelligible principle.”¹²⁹ Then the court concluded that Congress did not provide an intelligible principle for the SEC to use as guidance, but instead gave the SEC “exclusive authority and absolute discretion to whether to bring securities fraud enforcement actions within the agency instead of in an Article III court.”¹³⁰

The Court then addressed the third issue of whether statutory removal restrictions of SEC ALJ were unconstitutional. The Court determined whether “SEC ALJs serve sufficiently important executive functions, and whether the restriction on their removal are sufficiently onerous, that the President has lost the ability to take care that the laws are faithfully executed. The court found that SEC ALJS “exercise considerable power over administrative case records by controlling the presentation and admission of evidence;” they may punish contemptuous conduct; and often their decision are final and binding.¹³¹ The Court also reasoned that SEC ALJS have two-layers of for-cause protection between them and the President.¹³² SEC ALJs can only be removed if the MSPB finds good cause and the Commission must and both the Commission and the MSPB have for-cause protection from removal by the President.¹³³

Conclusion:

The Court concluded that the SEC’s judgment should be vacated for depriving the Petitioners of their seventh amendment right to a jury trial and because Congress unconstitutionally delegated legislative power to the SEC without an intelligible principle to use for guidance.¹³⁴ Also the Court held that the statutory removal restrictions unconstitutional.¹³⁵

¹²⁶ *Id.* at 461.

¹²⁷ *Id.* at 460–61.

¹²⁸ *Id.* at 461.

¹²⁹ *Id.*

¹³⁰ *Id.* at 462.

¹³¹ *Id.* at 463.

¹³² *Id.* at 465.

¹³³ *Id.* at 465.

¹³⁴ *Id.* 465.

¹³⁵ *Id.*