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The Third Circuit's *Sun Valley* Decision:
An Illumination of *Jarkesy*'s Article III Implications

by Amit R. Vora

While the Supreme Court's 2024 decision in *Securities and Exchange Commission (SEC) v. Jarkesy* held that the SEC may not fine private parties without affording them a civil jury trial under the Seventh Amendment,[1] the U.S. Court of Appeals for the Third Circuit's recent decision in *Sun Valley Orchards v. Department of Labor (DOL)* sheds light on *Jarkesy*'s equally important Article III implications.[2] To be sure, *Jarkesy* is correctly characterized as a watershed Seventh Amendment opinion. The respondent there brought a Seventh Amendment challenge, not an Article III challenge, and the Court set forth triggering conditions for the Seventh Amendment right. Respondents may thus invoke *Jarkesy* to challenge juryless agency proceedings on Seventh Amendment grounds. In explaining why the case did not fall into the public-rights exception, however, *Jarkesy* also set forth triggering conditions for an entitlement to Article III adjudication. As *Sun Valley* shows, respondents may thus also invoke *Jarkesy* to challenge agency proceedings on the ground that the forum itself—a non-Article III tribunal, rather than an Article III court—renders the proceedings unconstitutional, regardless of the Seventh Amendment.

The panel opinion, written by Judge Hardiman, follows *Jarkesy*'s holding that if an agency seeks to deprive a respondent of its "private rights," the respondent is presumptively entitled to have its case heard in an Article III court—that is, a court over which a life-tenured, salary-protected, and (therefore) independent judge presides. An agency may not sidestep Article III adjudication by funneling its claims through in-house adjudicative proceedings. This Article III protection, moreover, does not turn on the nature of the agency; rather, it turns on the nature of the case—specifically, whether the case concerns "private rights," a category that encompasses the individual property and contractual rights that common-law actions historically sought to vindicate. As *Jarkesy* recognized: "If a suit is in the nature of an action at common law, then the matter presumptively concerns private rights, and adjudication by an Article III court is mandatory."[3] Taking *Jarkesy*'s logic to its conclusion, the Third Circuit held that since the DOL had ordered Sun Valley, a New Jersey farm, to pay fines and back wages for violating the contract that arose from its participation in the H-2A visa program, the substance of the agency's suit implicated Sun Valley's private rights. That private-rights determination, in turn, triggered Sun Valley's entitlement to Article III adjudication—whether or not the farm was separately entitled to a civil jury trial.

Stakeholders should track variations on *Sun Valley*'s theme. For one, future cases with harder facts—particularly cases grounded in equitable causes of action and remedies—will refine *Jarkesy*'s Article III implications. Because private rights are at stake not only in Cases in Law, but also in Cases

[1] 603 U.S. 109 (2024).

[2] No. 23-2608, 2025 WL 2112927 (3d Cir. July 29, 2025).

[3] 603 U.S. at 129.

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in Equity, *Jarkesy* presumably identified a sufficient but not a necessary condition for finding private rights. The utility of the alternative equitable pathway to private rights, and consequently to Article III, remains to be seen. In addition, future cases will illustrate the degree to which *Jarkesy* and *Sun Valley*'s Article III reasoning reaches beyond the SEC and the DOL to other agencies. The National Labor Relations Board (NLRB), with its regular resort to causes of action and remedies that appear to impinge on private rights, may likewise find itself within constitutional crosshairs—if not under the Seventh Amendment, then under Article III.

Background Principles

Article III of the U.S. Constitution vests the "judicial Power" to adjudicate "all Cases" in "Law and Equity" arising under federal law in life-tenured, salary-protected judges.[4] Although the guarantees of life tenure and salary protection might be easy to gloss over as technicalities in a passage describing the "judicial Power," they were far from afterthoughts. To the framers, those two attributes were essential for maintaining the federal judiciary's "independent spirit" (in Hamilton's words),[5] a critical aspect of the separation of powers that the framers demanded of the fledgling federal government. They understood that "a power over … subsistence amounts to a power over … will,"[6] and that "[p]eriodic appointments" of judges would be "fatal to their necessary independence."[7] In fact, the colonial vice-admiralty courts' lack of independence was among the inspirations for the American Revolution. The delegates of the First Continental Congress complained that the vice-admiralty judges had become "dependant on the crown."[8] And the drafters of the Declaration of Independence echoed that frustration when, two years later, they condemned the King for "mak[ing] Judges dependent on his Will alone, for the tenure of their offices, and the amount and payment of their salaries."[9]

Crucially, the framers did not seek to separate powers merely for separation's sake, or simply to neatly structure the new government. They did so to protect individual liberty.[10] As Madison warned: "The accumulation of all powers, legislative, executive, and judiciary, in the same hands, whether of one, a few, or many, and whether hereditary, self[-]appointed, or elective, may justly be pronounced the very definition of tyranny."[11] Or more specifically, to quote Hamilton quoting Montesquieu: "there is no liberty if the power of judging be not separated from the legislative and executive powers."[12] The Supreme Court has accordingly recognized that the separation of powers is the "central guarantee of a just government"[13] and a precondition to the "liberty of all the people."[14] This uniquely American bulwark against a backslide into despotism appropriately lies "at the heart of our Constitution."[15]

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[4] U.S. Const., art. III, § 1, 2.

[5] The Federalist No. 78 (Alexander Hamilton).

[6] The Federalist No. 79 (Alexander Hamilton).

[7] The Federalist No. 78 (Alexander Hamilton).

[8] Declaration and Resolves of the First Continental Congress (Oct. 14, 1774).

[9] The Declaration of Independence para. 11 (1776).

[10] *Metro. Wash. Airports Auth. v. Citizens for the Abatement of Aircraft Noise, Inc.*, 501 U.S. 252, 272 (1991) ("to protect the liberty and security of the governed"); *Bond v. United States*, 564 U.S. 211, 222 (2011) ("The structural principles secured by the separation of powers protect the individual as well.").

[11] The Federalist No. 47 (James Madison).

[12] The Federalist No. 78 (Alexander Hamilton) (quoting 1 Montesquieu, The Spirit of Laws 181 (10th ed. 1773)).

[13] *Freytag v. Comm'r*, 501 U.S. 868, 870 (1991).

[14] *Collins v. Yellen*, 594 U.S. 220, 245 (2021) (noting that the Court has "explained" this principle "on many prior occasions").

[15] *Buckley v. Valeo*, 424 U.S. 1, 119 (1976).

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Given Article III's reference to "all Cases, in Law and Equity," the Supreme Court has also long held that the legislative and executive branches may not "withdraw from judicial cognizance any matter which, from its nature, is the subject of a suit at the common law, or in equity, or admiralty."[16] After all, "Article III could neither serve its purpose in the system of checks and balances nor preserve the integrity of judicial *decisionmaking* if the other branches of the Federal Government could confer the Government's 'judicial Power' on entities outside Article III."[17] An important category of cases falling into Article III's ambit are those involving "private rights," a term of art that has defied precise definition but on which *Jarksey*, citing *Stern*, offered the following: "A hallmark that we have looked to in determining if a suit concerns private rights is whether it is made of the stuff of the traditional actions at common law tried by the courts at Westminster in 1789. If a suit is in the nature of an action at common law, then the matter presumptively concerns private rights, and adjudication by an Article III court is mandatory."[18]

This test appears to set forth a sufficient but not a necessary condition for deeming a case to implicate the "private rights" that presumptively require Article III adjudication: "if the suit is in the nature of an action at common law." The condition is sufficient but not necessary because a case in equity could also implicate private rights—an issue that future decisions will develop. For our purposes, *Jarkesy*'s formulation is important insofar as it supplements and operationalizes the Supreme Court's prior references to private rights, such as *Crowell*'s recognition that "the liability of one individual to another under the law as defined" is a matter of "private right,"[19] or the *Northern Pipeline* plurality's observation that "the right to recover contract damages" is an "obvious[]" example of a private right.[20]

Granted, *Jarkesy* resolved a Seventh Amendment challenge, not an Article III challenge. It held that the SEC had violated the Seventh Amendment by imposing monetary penalties on investment adviser George Jarkesy and his firm for securities fraud without affording them the right to a civil trial by jury.[21] Writing for the majority, Chief Justice Roberts explained that a civil suit requires a right to a jury trial under the Seventh Amendment if it is "legal in nature," which turns on (i) whether the cause of action resembles common-law causes of action and (ii) whether the remedy is the sort that was traditionally obtained in a court of law.[22] The SEC's case readily satisfied that two-part test. First, the securities fraud suit closely resembled a common-law fraud action.[23] Second, the remedy—a monetary penalty intended to "punish and deter"—was "a type of remedy at common law that could only be enforced in courts of law," and was distinct from the type of remedy that courts of equity could grant, such as an order "to return unjustly obtained funds."[24]

Jarkesy's discussion of the public-rights exception, however, invoked not only the Seventh Amendment, but also Article III.[25] Under that exception—which must remain "narrow," the majority cautioned, since it "has no textual basis in the Constitution"—Congress may assign certain cases to

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[16] *Murray's Lessee v. Hoboken Land & Improvement Co.*, 59 U.S. 272, 284 (1856).

[17] *Jarkesy*, 603 U.S. at 132.

[18] *Id.* at 129 (citation modified) (citing *Stern v. Marshall*, 564 U.S. 462, 484 (2011)).

[19] *Crowell v. Benson*, 285 U.S. 22, 51 (1932).

[20] *N. Pipeline Const. Co. v. Marathon Pipe Line Co.*, 458 U.S. 50, 71 (1982).

[21] 603 U.S. at 126.

[22] *Id.* at 123.

[23] *Id.*

[24] *Id.* at 123–26 (citations modified).

[25] For an insightful discussion of the relationship between Article III and the Seventh Amendment, see Note, *Unliking the Seventh Amendment and Article III*, 138 Harv. L. Rev. 588 (2024).

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a non-Article III tribunal and without affording a jury.[26] The majority proceeded to detail particular public-rights matters, and the consequent catalogue, since its inception, has loomed large in administrative law: "the collection of revenue," "immigration," "tariffs," "relations with Indian tribes," "the administration of public lands," and "the granting of public benefits."[27] The SEC's suit did not qualify because it was "in the nature of an action at common law" and thus "presumptively concerned private rights," and because it did not fall into any of the circumscribed public-rights buckets.[28] The "substance" of the SEC's suit therefore precluded Congress not only from "conjur[ing] away the Seventh Amendment"—but also from "siphon[ing] this action from an Article III court."[29] In this way, *Jarkesy* is both a Seventh Amendment and an Article III case—and precedent for the Third Circuit's decision in *Sun Valley*.

The Third Circuit's Decision

In *Sun Valley*, the DOL charged Sun Valley Orchards, a New Jersey farm, with violating the employment agreement that arose from the farm's participation in the H-2A nonimmigrant visa program.[30] Under that regime, a domestic employer may temporarily hire foreign laborers for seasonal agricultural work.[31] Rather than pursuing its charges against Sun Valley in an Article III court, however, the DOL channeled its charges through in-house administrative processes. After agency investigators identified violations, the agency sent Sun Valley a letter assessing $212,250 in civil penalties and $369,703.22 in back wages.[32] Sun Valley then exercised its right to request a hearing before an Administrative Law Judge (ALJ), who agreed with the DOL but slightly modified the amount of penalties and back wages owed: $211,800 and $344,945.80, respectively.[33] The DOL's Administrative Review Board affirmed the ALJ's decision in its entirety.[34] Sun Valley responded with a federal action challenging the DOL's administrative decision, raising a host of statutory and constitutional claims, all of which Judge Rodriguez of the U.S. District Court for the District of New Jersey rejected—including the claim that the DOL, by adjudicating Sun Valley's private rights in house, had violated Article III.[35] But a unanimous Third Circuit panel reversed. According to Judge Hardiman's opinion, the DOL's maneuver amounted to an Article III violation.[36] And because the panel's Article III holding was adequate on its own to void the DOL's administrative decision, there was no need for the panel to reach Sun Valley's alternative statutory and constitutional arguments.[37]

The Third Circuit panel oriented its Article III analysis around two inquiries: first, whether the action concerned private rights; and second, whether it fell into the public-rights exception.[38] On the first question, the panel adopted *Jarkesy*'s touchstone: a case implicates private rights if it is "made of the stuff of the traditional actions at common law tried by the courts at Westminster in 1789."[39] As

[26] 603 U.S. at 131.

[27] *Id.* at 128–32.

[28] *Id.* at 140.

[29] *Id.* at 135 (citation modified).

[30] 2025 WL 2112927, at *1.

[31] *Id.*

[32] *Id.* at *2–3.

[33] *Id.* at *3.

[34] *Id.*

[35] *Id.* at *3; *see also id.* at *4 n.3 (noting that Sun Valley did not bring a Seventh Amendment claim).

[36] *Id.* at *8.

[37] *Id.* at *8 n.6.

[38] *Id.* at *4.

[39] *Id.* (quoting *Jarkesy*, 603 U.S. at 128).

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the panel reasoned, the case was indeed made of such "stuff" because the "nature of the DOL's claim" was "contractual," and the DOL's "action was … litigated like a suit for breach of contract, which would have traditionally been heard in common law courts."[40] The DOL, for example, had alleged to the ALJ that Sun Valley had "violat[ed]" the "contractual obligations" that had formed "part of the farm's contract with H-2A workers."[41]

The Third Circuit panel also seized on the ALJ and the Administrative Review Board's framing of the case. The ALJ had found that Sun Valley "breached" contractual terms, and the agency had ultimately assessed (i) civil penalties, which are punitive remedies that could be enforced only in courts of law, and (ii) back wages, which are typically considered equitable but which the panel viewed as punitive because the agency had ordered them "at least in part" to "punish and deter" wrongdoing.[42] The ALJ had remarked that back wages were needed to "deter such harm from occurring in the future," and in upholding the award, the Administrative Review Board had cited the need to "deter other H-2A employers."[43] The agency was hoisted by its own petard.

It bears mentioning that since a Case in Equity may implicate "private rights," the Third Circuit panel need not have gone so far as to conclude that the litigation resembled a Case in Law. Nor was it necessary for the panel to conclude that all the remedies—including backpay—could have been enforced at common law only in courts of law. In a sense, Sun Valley proved its entitlement to a Seventh Amendment civil jury, but because its federal action did not raise a Seventh Amendment claim, the panel held that it was entitled to the lesser protection contained within that greater protection: an Article III forum.[44] Future cases with harder facts—for example, a suit sounding in equity but not in law—will clarify the distinct triggering conditions for the Article III right.

Turning to public rights, the Third Circuit panel took seriously *Jarkesy*'s warning that this exception to Article III adjudication must remain just that: an exception. To avoid swallowing the rule, the public rights must remain few and narrow. On the immigration public-rights exception in particular, *Jarkesy* had explained that it covers only a specific immigration issue: determining immigration status, which qualifies as an issue of public right given our nation's unbroken history of empowering executive officials to control border crossings.[45] So even though *Sun Valley* touched on immigration, the Third Circuit panel properly declined to apply the immigration public-rights exception, as the case concerned penalties and back wages, not "the admission and exclusion of aliens."[46]

Looking Ahead

Sun Valley portends a continued extension of *Jarkesy*'s Article III reasoning to other contexts. If the DOL is vulnerable to *Jarkesy*'s Article III logic, then other agencies are, too. For example, the NLRB's charges and orders appear to implicate private rights—not only through the equity pathway, but in light of *Sun Valley*, perhaps also through the legal pathway. The agency not only compels action and inaction, but it also assesses backpay. Although courts have described the NLRB's backpay assessments as equitable, *Sun Valley* suggests that respondents could characterize them as partially

[40] *Id.* at *5.

[41] *Id.*

[42] *Id.* at *5 & n.5 (citation modified).

[43] *Id.* at *5.

[44] *But see Granfinanciera, S.A. v. Nordberg*, 492 U.S. 33, 64–65 (1989) (holding that a Seventh Amendment civil jury trial is required for a fraudulent conveyance action in bankruptcy court, a non-Article III forum). Perhaps *Granfinanciera* is best read as an exception to this greater-includes-the-lesser proposition.

[45] *Jarkesy*, 603 U.S. at 129.

[46] 2025 WL 2112927, at *7.

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punitive, depending on the agency's framing of the case.[47] In recent years, the NLRB has even awarded compensatory damages (though the availability of such *Thryv* remedies is in flux).[48] Still more, none of *Jarkesy*'s enumerated public-rights exceptions appears to apply. So even if the reach for the Seventh Amendment falls short, the grasp could close on Article III. And while the Supreme Court's 1937 decision in *Jones & Laughlin* upheld the National Labor Relations Act (NLRA) against an Article III attack,[49] that holding sits uneasily with *Jarkesy*'s list. Its days may be numbered. Justice Sotomayor's dissent recognized as much: "it is unclear how … the [NLRA] at issue in *Jones & Laughlin* … would fit the majority's view of the public-rights doctrine."[50] At bottom, private entities facing federal regulatory pressures should closely monitor how Article III doctrine evolves in *Jarkesy* and *Sun Valley*'s wake.

[47] *See* 29 U.S.C. § 160(c); 2025 WL 2112927, at *5 n. 5 ("In a different context, we recently described back wages as an equitable remedy. But because the back wages here were imposed to deter wrongdoers, rather than solely to provide restitution, they are properly characterized as legal.") (citations omitted).

[48] *See Thryv, Inc.*, 372 NLRB No. 22, 2022 WL 17974951 at *9 (Dec. 13, 2022) (authorizing NLRB to order respondents to compensate employees for "all direct or foreseeable pecuniary harms suffered as a result of the respondent's unfair labor practice"); *NLRB v. Starbucks Corp.*, 125 F.4th 78, 97 (3d Cir. 2024) (vacating *Thryv* order for exceeding NLRB's authority under NLRA); *Int'l Union of Operating Eng'rs, Stationary Eng'rs, Loc. 39 v. NLRB*, 127 F.4th 58, 83 (9th Cir. 2025) (rejecting challenge to *Thryv* order); NLRB General Counsel Mem. No. 25-06, 2025 WL 1454031, at *3 (May 16, 2025) (guiding regulators to "focus on addressing foreseeable harms that are clearly caused by the unfair labor practice").

[49] *NLRB v. Jones & Laughlin Steel Corp.*, 301 U.S. 1, 47 (1937).

[50] 603 U.S. at 185 (Sotomayor, J., dissenting).

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