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In Depth: Fifth Circuit Bombshell on SEC ALJs Raises Questions about DEA ALJs



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In a decision that likely will reverberate throughout the administrative state, a three-judge panel of the United States Court of Appeals for the Fifth Circuit recently held in *Jarkesy v. Securities and Exchange Commission* that the Securities and Exchange Commission's use of its in-house administrative law judges ("ALJs") to adjudicate securities fraud actions seeking the imposition of monetary penalties was unconstitutional for three independent reasons. While the first two reasons the Fifth Circuit discussed are inapplicable to the Drug Enforcement Administration administrative hearing process, the third reason is directly relevant. Specifically, the court found that the statutory removal protections afforded to the SEC's ALJs, providing that ALJs cannot be removed from office without a Merit Systems Protection Board hearing, violated the Take Care Clause of Article II of the Constitution by insulating SEC tribunals from Presidential control. Because DEA administrative judges enjoy the same statutory removal protections as those the Fifth Circuit panel found unconstitutional, *Jarkesy* might serve to invalidate the DEA's judicial hearing processes.

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