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The SpaceX and Jarkesy Ripple Effect: What Recent Court Decisions Could Mean for OSHA's Whistleblower Program

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A New Constitutional Reckoning for Agency Adjudication

The Supreme Court's decision in ***SEC v. Jarkesy* (2024)** and the Fifth Circuit's ruling in ***SpaceX v. NLRB* (2025)** together mark the most significant challenge in decades to the modern administrative state. Both decisions question how—and by whom—federal agencies may prosecute and adjudicate enforcement actions.

Although neither case arose under OSHA or the Department of Labor (DOL), their reasoning reaches squarely into the heart of OSHA's whistleblower program, which relies on Administrative Law Judges (ALJs) in DOL's Office of Administrative Law Judges (OALJ) and Administrative Review Board (ARB) to decide retaliation claims.

For employers, these rulings signal not an enforcement surge, but a structural shift that could fundamentally alter how whistleblower cases are handled and appealed.

How OSHA's Whistleblower System Works

When an employee alleges retaliation for raising a safety or compliance concern, OSHA investigates under one of more than 25 federal whistleblower statutes it enforces. If OSHA finds that a complaint has merit and cannot be resolved, or if OSHA determines there is no merit and the complainant appeals, the case proceeds to a hearing before a DOL ALJ, with the ARB serving as the appellate body.

Both ALJs and ARB members are insulated by for-cause removal protections, meaning they can be removed only under limited circumstances. That structure—long viewed as essential to impartiality—is now directly at issue after *Jarkesy* and *SpaceX*.

However, not every OSHA-related whistleblower claim follows this administrative model. One notable exception—and one that operates in an entirely different legal forum—is Section 11(c) of the OSH Act.

Why Section 11(c) Is Different

It is important to note that Section 11(c) of the Occupational Safety and Health Act (OSH Act) is unique among the whistleblower statutes administered by OSHA. Unlike the 24 other statutes—which Congress later delegated to OSHA from agencies such as the DOT, SEC, and EPA—Section 11(c) is the OSH Act's original anti-retaliation provision, designed to protect employees who raise workplace safety and health concerns or participate in OSHA inspections and investigations.

Under Section 11(c):

- OSHA investigates complaints from employees who allege retaliation for reporting unsafe conditions, injuries, or cooperating with OSHA.
- If OSHA finds merit and cannot secure a voluntary settlement, only the Secretary of Labor may file suit in federal district court, seeking reinstatement, back pay, and even punitive damages on the employee's behalf.
- The case proceeds under the Federal Rules of Civil Procedure and Federal Rules of Evidence, giving employers and the government access to summary judgment, discovery, motions practice, and the right to a jury trial before an Article III judge.

This makes Section 11(c) a different animal entirely from almost all other OSHA-administered whistleblower statutes. For statutes such as Sarbanes–Oxley Act (SOX), Surface Transportation Assistance Act (STAA), or the Pipeline Safety Improvement Act (PSIA), OSHA first investigates and issues a merit determination—but even if OSHA concludes that a complaint lacks merit, the complainant may still appeal and obtain a *de novo* hearing before an ALJ in DOL's OALJ. As a result, cases may proceed to litigation even when DOL's own investigators have already found no violation, which can be frustrating for employers expecting closure after the investigation stage.

Once before an ALJ, proceedings follow 29 C.F.R. Part 18 — the DOL's Rules of Practice and Procedure for Administrative Hearings. These hearings are informal by design: the Federal Rules of Evidence do not strictly apply, discovery is limited, and while parties may move for summary decision, such motions are rarely granted, as ALJs generally prefer to develop a full evidentiary record. To conserve agency resources, most OALJ whistleblower hearings are now conducted remotely by video conference, with in-person proceedings reserved for exceptional cases.

A further distinction is that many of these newer whistleblower statutes—including the PSIA, STAA, and SOX—contain "kick-out" provisions that permit only the complainant, not the employer**,** to file a de novo action in federal district court if the Department of Labor has not issued a final decision within 180 days (for SOX) or 210 days (for STAA and PSIA), provided the delay is not due to the complainant's bad faith. This hybrid model, which combines administrative and judicial options, functions somewhat like the EEOC process, where a charging party may proceed to court after administrative exhaustion. Section 11(c), by contrast, contains ***no private right of action***: only the Secretary of Labor can bring a claim on behalf of the employee.

By contrast, Section 11(c) actions require full federal litigation—in-person proceedings, strict evidentiary

standards, and the attendant expense and formality of Article III court practice. Because of this procedural structure, 11(c) claims are largely insulated from the constitutional challenges raised in *Jarkesy* and *SpaceX*, which target the agency-run adjudication systems used for all other whistleblower statutes.

Understanding that distinction is critical. The constitutional questions raised in *Jarkesy* and expanded in *SpaceX* do not directly affect 11(c) claims, which play out in federal court, but they could have profound implications for the administrative whistleblower cases that make up the bulk of DOL's docket.

What *Jarkesy* Held

In *SEC v. Jarkesy* (2024), the Supreme Court struck down the SEC's use of in-house administrative proceedings to impose civil penalties for securities fraud. The Court held that such actions violated the Seventh Amendment because they sought legal remedies that historically required adjudication in an Article III court, where the right to a jury trial applies. In other words, when an agency pursues penalties that are essentially judicial in nature, the case must proceed in an Article III forum rather than before an agency ALJ. While the decision reaffirmed the right to a jury trial in such cases, that right—like most constitutional rights—may be waived by the parties.

The Court further questioned whether Congress may delegate expansive enforcement authority to administrative agencies without clear statutory boundaries. *Jarkesy* thus signaled growing judicial skepticism toward agency adjudications that impose traditional legal penalties without Article III oversight—a theme likely to extend beyond the SEC to other agencies with comparable administrative enforcement schemes.

How *SpaceX* Extended *Jarkesy*

The Fifth Circuit's decision in *SpaceX v. NLRB* (2025) built directly on *Jarkesy*'s reasoning. The court held that the NLRB's use of ALJs was unconstitutional because double-layer removal protections insulated those judges from presidential oversight, violating the separation of powers.

Drawing on *Jarkesy* and prior Supreme Court decisions addressing the limits of agency adjudication, the Fifth Circuit concluded that the NLRB's adjudicatory framework concentrated too much authority in officers insulated from presidential oversight, undermining Article II's accountability structure. In effect, *SpaceX* built on *Jarkesy*'s structural reasoning—extending the Supreme Court's concerns about agency adjudication under Article III to the realm of Article II removal protections—and in doing so, cast broader doubt on the constitutional legitimacy of agency-run adjudications.

Implications for DOL and OSHA

The combined effect of *Jarkesy* and *SpaceX* is a wave of procedural and constitutional uncertainty across federal administrative adjudication. Although OSHA's investigative authority remains unaffected, the legitimacy of the Department of Labor's in-house adjudicatory system – which adjudicates almost all OSHA-administered whistleblower statutes – now faces serious constitutional scrutiny. These challenges question whether the government may continue to adjudicate private-rights disputes through executive-branch tribunals rather than in

Article III courts.

Constitutional challenges are coming. Employers facing whistleblower claims before DOL ALJs are likely to raise constitutional objections as discussed above. However, neither the ALJ nor the ARB has authority to decide constitutional questions. Both are Article II tribunals created by statute, limited to enforcing the whistleblower laws as written; they cannot invalidate their own governing structure or rule on the constitutionality of the administrative process itself.

In practice, a respondent must litigate the case fully before the ALJ, where the record is developed under relaxed evidentiary and procedural standards that differ substantially from the federal rules. Any appeal first goes to the ARB, and only after the ARB issues a final decision may the party seek review in the U.S. Court of Appeals. At that stage, the constitutional challenge becomes reviewable—but only after an arguably unconstitutional record has already been created. The alternative is a collateral injunction action in federal district court challenging the proceeding midstream, which remains a procedurally demanding and costly avenue that few employers may be willing to pursue.

Hearings could stall. Some ALJs may move forward while others may stay proceedings pending appellate clarification—although that remains less likely—creating inconsistent outcomes across DOL cases.

Final orders are vulnerable. If *SpaceX* or a related decision confirms that agency adjudications by non–Article III officers are unconstitutional, existing ALJ or ARB rulings could later be vacated or remanded.

Agency reform is likely. DOL may pursue short-term administrative fixes—such as revising delegation structures or reconsidering ALJ tenure protections—but lasting clarity will likely require judicial or legislative action.

In short, *Jarkesy* and *SpaceX* do not slow OSHA's investigative machinery, but they cast real doubt on the constitutionality of the system that decides most DOL-administered whistleblower cases—though notably not Section 11(c), which already proceeds in federal district court and therefore sits outside the current constitutional crossfire.

These constitutional realities frame the practical steps employers should consider next. Here are some Strategic Takeaways for Employers.

1. **Preserve Objections, but plan for federal court.**
   Raise *Jarkesy*/*SpaceX*-based objections during the administrative process, but don't expect DOL to rule on them—the OALJ lacks jurisdiction over constitutional issues. Increasingly, courts recognize that employers may bypass administrative exhaustion and seek relief directly in federal district court, as SpaceX did.
2. **Prepare for procedural pauses.**
   Expect potential stays, delayed decisions, and extended timelines as the constitutional landscape evolves.
3. **Leverage uncertainty.**
   The current procedural instability can create negotiation leverage for early resolution or settlement.

4. **Watch for policy shifts.**
   DOL or Congress may move to revise ALJ authority or alter how whistleblower cases are delegated.
5. **Stay compliant and document everything.**
   Constitutional questions don't suspend anti-retaliation laws. Continue to document safety complaints and employment decisions carefully to preserve credibility and mitigate risk.

Looking Ahead: A Constitutional Crossroads for OSHA Whistleblower Adjudication

The implications of *Jarkesy* and *SpaceX* extend well beyond the agencies directly involved. Together, these decisions mark a constitutional inflection point in the balance between executive enforcement and judicial power. They signal a judiciary increasingly willing to re-draw the boundaries of administrative adjudication and to reexamine whether agencies may constitutionally act as both prosecutor and judge in imposing legal penalties.

For OSHA's whistleblower program, that shift could gradually reshape how retaliation claims are resolved. If the reasoning in *SpaceX* gains traction beyond the Fifth Circuit, the Department of Labor may need to reconfigure its entire adjudicatory framework to withstand constitutional scrutiny. That could mean more whistleblower complaints proceeding directly in federal district court, greater judicial oversight of preliminary orders, or even legislative reforms redefining how OSHA investigations interface with adjudication.

While Section 11(c) of the OSH Act remains largely unaffected, most of DOL's other whistleblower statutes could face structural change. The question is no longer whether DOL will continue adjudicating these claims, but whether it constitutionally can.

For employers, this shift underscores a broader reality: constitutional structure now shapes enforcement strategy. Staying informed, preserving objections, and maintaining strong compliance documentation are no longer just best practices—they are essential tools for navigating what may become the most significant redefinition of administrative enforcement in a generation.