No. _____

In the
Supreme Court of the United States

IFTIKAR A. AHMED,
Petitioner,

v.

UNITED STATES SECURITIES AND EXCHANGE COMMISSION, ET AL.,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Second Circuit

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PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

As this Court has recognized, "it takes a cross-appeal to justify a remedy in favor of an appellee." *Greenlaw* v. *United States*, 554 U.S. 237, 244-45 (2008). This is an "inveterate and certain" rule, and this Court has never recognized any exception to it. *Ibid*.

Still, "[t]he cases are in disarray." Wright & Miller, Federal Practice and Procedure § 3904. Five Circuits adhere to *Greenlaw* and refuse to find exceptions to application of the cross-appeal rule (properly invoked) on the basis that it is either jurisdictional or at least mandatory, while another six circuits (including the Second Circuit in the decision below) all but ignore *Greenlaw* to hold that this rule is discretionary and may be disregarded by an appellate court in appropriate circumstances.

The question presented is:

1. Whether the cross-appeal rule, which prohibits the granting of a remedy in favor of an appellee absent the filing of a cross-appeal, is jurisdictional or otherwise mandatory, or whether it admits of any exception, including, *inter alia*, for remands or changes in substantive law.

PARTIES TO THE PROCEEDING

Petitioner Iftikar A. Ahmed was a defendant in the district court and an appellant below.

Respondents Iftikar Ali Ahmed Sole Prop, Shalini Ahmed, I.I. 1, a minor child, by and through his next friends Iftikar and Shalini Ahmed, his parents, I.I. 2, a minor child, by and through his next friends Iftikar and Shalini Ahmed, his parents, I.I. 3, a minor child, by and through his next friends Iftikar and Shalini Ahmed, his parents, I-Cubed Domains, LLC, Shalini Ahmed 2014 Grantor Retained Annuity Trust, Diya Holdings, LLC, Diya Real Holdings, LLC were defendants in district court and appellants below.

Respondents United States Securities and Exchange Commission and Jed Horwitz were the appellees below.

RELATED CASES

United States Securities and Exchange Commission v. *Iftikar A. Ahmed, Iftikar Ali Ahmed Sole Prop, Shalini Ahmed, I.I. 1, a minor child, by and through his next friends Iftikar and Shalini Ahmed, his parents, I.I. 2, a minor child, by and through his next friends Iftikar and Shalini Ahmed, his parents, I.I. 3, a minor child, by and through his next friends Iftikar and Shalini Ahmed, his parents, I-Cubed Domains, LLC, Shalini Ahmed 2014 Grantor Retained Annuity Trust, Diya Holdings, LLC, Diya Real Holdings, LLC*, No. 3:15 cv 675, U.S. District Court for the District of Connecticut. Amended judgment entered July 6, 2021.

United States Securities and Exchange Commission v. *Iftikar A. Ahmed, Iftikar Ali Ahmed Sole Prop, Shalini Ahmed, I.I. 1, a minor child, by and through his next friends Iftikar and Shalini Ahmed, his parents, I.I. 2, a minor child, by and through his next friends Iftikar and Shalini Ahmed, his parents, I.I. 3, a minor child, by and through his next friends Iftikar and Shalini Ahmed, his parents, I-Cubed Domains, LLC, Shalini Ahmed 2014 Grantor Retained Annuity Trust, Diya Holdings, LLC, Diya Real Holdings, LLC* v. *Jed Horwitt*, Nos. 21-1686, 21-1712, U.S. Court of Appeals for the Second Circuit. Judgment entered June 28, 2023.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Rules

Other Authorities

PETITION FOR A WRIT OF CERTIORARI

Petitioner respectfully submits this petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Second Circuit.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Second Circuit is reported at 72 F.4th 379 and reproduced at Appendix ("App.") 1-52. The district court originally entered summary judgment on liability and damages in published decisions at, respectively, 308 F.Supp.3d 628 and 343 F.Supp.3d 16. The decisions are reproduced at App. 116-202 and App. 75-115. On partial remand, the district court entered an amended judgment in an unpublished order available at 2021 WL 2471526 and reproduced at App. 53-72.

JURISDICTION

The Second Circuit filed its published decision on June 28, 2023. That court denied Petitioners' request for rehearing *en banc* on October 12, 2023. App. 203. Thus, the petition for writ of certiorari is due January 10, 2024. This petition is therefore timely, and the Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Federal Rule of Appellate Procedure 3(a) provides in relevant part:

(a) Filing the Notice of Appeal.

(1) An appeal permitted by law as of right from a district court to a court of appeals may be taken only by

filing a notice of appeal with the district clerk within the time allowed by Rule 4. At the time of filing, the appellant must furnish the clerk with enough copies of the notice to enable the clerk to comply with Rule 3(d).

(2) An appellant's failure to take any step other than the timely filing of a notice of appeal does not affect the validity of the appeal, but is ground only for the court of appeals to act as it considers appropriate, including dismissing the appeal.

Federal Rule of Appellate Procedure 4(a) provides in relevant part:

(a) Appeal in a Civil Case.

(1) Time for Filing a Notice of Appeal.

(A) In a civil case, except as provided in Rules 4(a)(1)(B), 4(a)(4), and 4(c), the notice of appeal required by Rule 3 must be filed with the district clerk within 30 days after entry of the judgment or order appealed from.

(B) The notice of appeal may be filed by any party within 60 days after entry of the judgment or order appealed from if one of the parties is:

(i) the United States; [or]
(ii) a United States agency;

* * * *

(3) Multiple Appeals. If one party timely files a notice of appeal, any other party may file a notice of appeal within 14 days after the date when the first notice was filed, or within the time otherwise prescribed by this Rule 4(a), whichever period ends later.

STATEMENT OF THE CASE

This case concerns the authority of the federal courts to award tens of millions of dollars in relief to an appellee, after a final judgment, despite that appellee never having filed a cross-appeal, on the basis that, during the pendency of the appeal, Congress enlarged the statute of limitations applicable to S.E.C. enforcement actions seeking disgorgement.

I. Initial District Court Proceedings

From 2004 until his 2015 arrest on insider-trading charges unrelated to this suit, Petitioner was employed by venture-capital firm Oak Management Corporation ("Oak"). App. 155. Petitioner served as a managing member for certain of Oak's investment funds. App. 120. As compensation for his work, Petitioner received tens of millions of dollars that neither Oak nor the S.E.C. claimed to be unlawful.

On May 6, 2015, following the arrest, the S.E.C. initiated this enforcement action against Petitioner, alleging that Petitioner misappropriated assets and defrauded his employer over a roughly 10-year period. The complaint sought disgorgement and civil penalties of roughly $65 million. After the S.E.C. brought the action, Petitioner fled the United States, and the district court determined that he was a fugitive from the insider-trading case (but not this one).

On June 5, 2017, while the case was pending in district court, this Court resolved a circuit split regarding the applicable limitation period for S.E.C. disgorgement actions. In *Kokesh* v. *S.E.C.*, 581 U.S. 455 (2017), it held that S.E.C. disgorgement actions were governed by the five-year limitation period prescribed

in 28 U.S.C. § 2462, rather than a ten-year period prevailing in certain Circuits – and which the S.E.C. had invoked in the instant case.

On March 29, 2018, the district court granted summary judgment in favor of the S.E.C. on liability and found that Petitioner had violated the securities laws. That ruling recognized that, insofar as the S.E.C. sought disgorgement, it was limited to the five-year limitation period recognized in *Kokesh*; the court thus confirmed that Petitioner had a vested statute-of-limitations defense as to any disgorgement liability for the preceding period. App. 150.

On September 6, 2018, the district court entered an order on remedies, awarding the S.E.C. injunctive and monetary relief. App. 76. As relevant here, it ordered Petitioner to disgorge $41,920,639—the total sum, according to the court, attributable to unlawful transactions within the five-year limitations period. App. 89-90. In doing so, the court did not order disgorgement for conduct outside the five-year limitation because the S.E.C. had conceded that "claims for disgorgement tied to the transactions" outside the five-year limitation were "time-barred." App. 150.

II. The Second Circuit Remand

On February 8, 2019, Petitioner appealed. The S.E.C. did not cross-appeal.

On January 1, 2021, more than two years after the final judgment issued, and while the appeal was pending, Congress enacted the National Defense Authorization Act for FY 2021 ("NDAA"). (codified at 15 U.S.C. § 78u(d)(3), (7)-(8)). Among other things, the NDAA amended the Exchange Act of 1934 to establish

a ten-year limitation for S.E.C. "disgorgement" claims. *Id.* § 78u(d)(8)(A). The NDAA prescribed that it "shall apply with respect to any action or proceeding that is pending on, or commenced on or after, the date of enactment of this Act." NDAA § 6501(b).

On January 13, 2021, the S.E.C. moved for a limited remand from the Second Circuit "to permit the district court to recalculate Ahmed's disgorgement based on the new 10-year statute of limitations" in the NDAA. Petitioner opposed the remand on several grounds, including that the S.E.C.'s failure to cross-appeal foreclosed any expanded relief for the S.E.C. The S.E.C. stated that, in the first instance, the district court should address this and Petitioner's other objections to application of the enlarged limitation period. Without addressing Petitioner's objections, a motions panel remanded the appeal to the district court for the limited purpose of determining the applicability of and, if necessary, application of the new limitation period. App. 12.

On remand, the district court overruled Petitioner's objections and applied the new, ten-year limitations period; it also increased Petitioner's disgorgement obligation to $64,171,646.14. App. 12.

III. The Second Circuit's Decision

After the district court entered its redetermined final judgment, Petitioner timely appealed. The S.E.C. did not appeal or cross-appeal.

In its opening brief, Petitioner argued, *inter alia*, that the cross-appeal requirement is jurisdictional or at least mandatory, and thus that the S.E.C.'s failure

to cross-appeal the prior judgment foreclosed imposition of disgorgement beyond what was previously awarded by the district court. The S.E.C. disagreed.

On June 28, 2023, the Second Circuit affirmed in part the district court's redetermined final amended judgment by published opinion, and upheld the district court's decision to apply the new limitation period retroactively despite the S.E.C. not having cross-appealed. As relevant here, the Circuit held that the cross-appeal rule "is a rule of practice which is not jurisdictional and in appropriate circumstances may be disregarded." App. 26. In this case, the Second Circuit declined to apply the cross-appeal rule, asserting to do so would "frustrate congressional intent and judicial economy." App. 28. In a related point, the panel suggested the cross-appeal requirement was inapplicable here because the S.E.C. first "sought to remand the case." App. 27.

Petitioner sought rehearing and rehearing *en banc*, which was denied on October 12, 2023.

Petitioner now seeks review by this Court.

REASONS FOR GRANTING THE PETITION

I. The Circuits Are Divided and Not Uniformly Adhering to *Greenlaw*.

Under the cross-appeal rule, "it takes a cross-appeal to justify a remedy in favor of an appellee." *Greenlaw*, 554 U.S. at 244-45. Although this Court has declined to resolve whether the cross-appeal rule is jurisdictional and exceptionless on that basis, it stated that "in more than two centuries of repeatedly endorsing the cross-appeal requirement, not a single one of

[this Court's] holdings has ever recognized an exception to the rule." *Id.* at 245.

Nonetheless, only five of the circuits adhere to the rule from *Greenlaw*, with three circuits holding that the cross-appeal rule is jurisdictional and therefore mandatory and another two holding that the rule is not jurisdictional but is still mandatory and must be applied (thus barring enlarged relief for an appellee) if timely and properly invoked. Six circuits (including the Second Circuit in the decision below) split with this Court's instructions in *Greenlaw*, holding the cross-appeal rule to be neither jurisdictional nor mandatory. This Court's guidance is required to ensure uniformity and that the rule in *Greenlaw* is consistently applied.

A. The First, Fifth and Tenth Circuits all hold that the cross-appeal rule presents a "jurisdictional" bar to augmenting relief in favor of the appellee who has not cross-appealed. There is no exception to such a mandatory bar going to jurisdiction.

To begin, the First Circuit has squarely held that the cross-appeal rule is a rule of jurisdiction. In *Sullivan* v. *City of Augusta*, plaintiffs challenged certain city ordinances as violating their First Amendment rights, the court granted summary judgment in their favor, and the city appealed. 511 F.3d 16 (1st Cir. 2007). On appeal, despite not having cross-appealed, the plaintiffs-appellees challenged the district court's finding that the city's waiver of a parade permit fee "did not 'disfavor or suppress one viewpoint in favor of another.'" 511 F.3d 16, 32 n.7 (1st Cir. 2007). The Circuit declined to consider this challenge: as plaintiffs

"never filed a cross-appeal from the district court's determination," the court "therefore lack[ed] jurisdiction to consider plaintiffs' objections to the district court's specific ruling on this issue." *Ibid.*

The Fifth Circuit follows the same approach. In *Art Midwest Inc.* v. *Atl. Ltd. P'ship XII*, the defendants had prevailed in obtaining reversal of a jury verdict in a first appeal as to which plaintiffs had not noticed a cross-appeal. 742 F.3d 206, 208-09 (5th Cir. 2014). After the case was remanded and came back up on appeal, the Fifth Circuit held that plaintiffs' failure to notice a cross-appeal on the first jury verdict prevented the plaintiffs, in the second appeal, from challenging an adverse ruling that could have been challenged in the first appeal. *Ibid.* As the Fifth Circuit instructed, "in the absence of a cross-appeal, an appellate court has no jurisdiction to modify a judgment so as to enlarge the rights of the appellee or diminish the rights of the appellant." *Id.* at 211. The Fifth Circuit noted that the Circuits had divided on the question, but followed Circuit precedent characterizing the rule as jurisdictional. *Id.* at 212-13. The Fifth Circuit favorably cited cases finding it "elementary that where an argument could have been raised on an initial appeal, it is inappropriate to consider that argument on a second appeal following remand." *Id.* at 211-12 (internal quotation marks omitted) (collecting cases).

The Tenth Circuit also abides by this approach. In *Johnson* v. *Spencer*, the plaintiff noticed an appeal and, in the appeal, defendants-appellees argued, despite not having cross-appealed, that the district court erred in granting a motion that the plaintiff had filed. 950 F.3d 680, 722-23 (10th Cir. 2020). Declining to consider the argument, the Tenth Circuit held that

"the fundamental problem is that [defendants] did not cross-appeal the district court's order." *Id.* at 723. Thus, the court said that it lacked "jurisdiction to afford the defendants any relief based on their arguments." *Id.*

B. Next, two Circuits hold that the cross-appeal rule, although not jurisdictional, is mandatory and must be applied by the appellate court if timely and properly invoked by the appellee. Thus, the Eleventh and Federal Circuits have both termed the cross-appeal rule to be a claim-processing rule. Neither circuit, however, has found an exception to it (other than waiver or forfeiture by the appellee). *See*, *e.g.*, *Rubinstein* v. *Yehuda*, 38 F.4th 982, 999-1000 (11th Cir. 2022) (holding that the cross-appeal rule is "not jurisdictional," and considering a cross-appeal "because the [appellant] raised no objection"); *In re IPR Licensing, Inc.*, 942 F.3d 1363, 1370-72 (Fed. Cir. 2019) (cross-appeal rule is "claim-processing rule" which "does not withdraw a case from [appellate] jurisdiction").

C. Finally, six Circuits, including the Second Circuit in the decision below, as well as the Third, Fourth, Eighth, Ninth and D.C. Circuits, hold that the cross-appeal rule is neither jurisdictional nor mandatory, and non-compliance may be excused. In so doing, they largely fail to grapple with or even cite *Greenlaw*.

In the decision below, as noted, the Second Circuit squarely held that the cross-appeal rule was not mandatory and could be disregarded in appropriate circumstances. App. 26. It rejected Petitioner's arguments to the effect that the rule was jurisdictional, or

at least mandatory and without exception, while making no attempt to reconcile its holding with *Greenlaw*. And, as explained, this was the basis for upholding a judgment enlarging the relief that the district court awarded to the S.E.C.

The Third Circuit follows a similar approach. In *Mathias* v. *Superintendent Frackville SCI*, after recognizing that the nature of the cross-appeal rule "has divided the Courts of Appeals," the Third Circuit "conclude[d] Rule 4(a)(3) is not jurisdictional so that a party's failure to comply with it may be excused by the reviewing court." 876 F.3d 462, 470, 471-72 (3d Cir. 2017). In so holding, the Third Circuit distinguished between statutory rules and court-issued rules. *Id.* at 471. Based on that distinction, it reasoned that the cross-appeal rule is "nonjurisdictional" and may be waived "in the interest of justice under appropriate circumstances." *Id.* at 471-72 (internal quotations omitted). On the facts of that case, the court found waiver appropriate as there was "no reason to believe the Government would suffer any prejudice by opposing [plaintiff's] claims while litigating its own appeal"; the issues in the cross-appeal were "substantively related to the claims already before" the panel; and plaintiff "may well have believed he could not raise additional claims through a cross-appeal mechanism" while *pro se*. *Id.* at 473. Nowhere in its opinion did the Circuit cite *Greenlaw*.

The D.C. Circuit in *Shatsky* v. *Palestine Liberation Org.* also held the rule to be nonjurisdictional and waivable. 955 F.3d 1016 (D.C. Cir. 2020). Citing *Greenlaw* only in passing, the court found that, "unlike an original notice of appeal, 'a cross-appeal is not a jurisdic-

tional requirement.'" *Id.* at 1030 (quoting *Spann* v. *Colonial Village*, Inc., 899 F.2d 24, 33 (D.C. Cir. 1990)). Still, the court reiterated its holding in *Spann* that compliance with the rule would only be excused in "exceptional circumstances." 955 F.3d at 1030. The court found such circumstances to be present where, *inter alia*, the plaintiffs-appellants did not timely raise the rule in objecting to the arguments of defendants-appellees on personal jurisdiction, and instead addressed those arguments on the merits. *Ibid.*; *see also Spann* v. *Colonial Village, Inc.*, 899 F.2d 24, 31–33 (D.C. Cir. 1990) (excusing failure to notice cross-appeal where defendant "plainly intended to preserve" argument, but was reasonably confused about timeliness of appeal).

The same is true of the Fourth, Eighth and Ninth Circuits, which have each held that the cross-appeal rule is not jurisdictional and may be set aside in the discretion of the court. *U.S.* v. *Hill*, 927 F.3d 188, 209 n.7 (4th Cir. 2019) ("As the Government acknowledges, however, the cross-appeal rule is not jurisdictional. . . and we may reach Defendant's objections in our discretion."); *Duit Constr. Co. Inc.* v. *Bennett*, 796 F.3d 938, 941-42 (8th Cir. 2015) (considering the rule non-jurisdictional but declining to disregard the "firmly entrenched" rule) (quoting *El Paso Nat. Gas Co.* v. *Neztsosie*, 526 U.S. 473, 479-80 (1999)); *Stormans, Inc.* v. *Wiesman*, 794 F.3d 1064, 1085 (9th Cir. 2015) ("Because the cross-appeal requirement is a rule of practice and not a jurisdictional bar, an appellate court has broad power to make such dispositions as justice requires.") (internal quotation marks omitted). And like their sister circuits finding the rule non-ju-

risdictional and non-mandatory, they each fail to reconcile their holdings with *Greenlaw* or in some cases even cite it.

* * *

As this survey shows and as Wright & Miller put it, "[t]he cases are in disarray." Wright & Miller, Federal Practice and Procedure § 3904. Had the S.E.C. sued Petitioner in the First, Fifth, Tenth, Eleventh or Federal Circuit, the disgorgement award against him would have been substantially diminished. That is an unfair result and one which *Greenlaw* disallows. There is no reasonable probability that the circuits, which have expressly acknowledged the split over the years, will resolve the divide on their own. This Court should grant certiorari to resolve the entrenched divide.

II. The Decision Below Is Wrong.

As noted above, this Court has not recognized a single exception to the cross-appeal rule in more than two centuries. *Greenlaw*, 554 U.S. at 245. It was wrong of the court below to find an exception in this case.

Although this Court has not decided the "theoretical" status of whether the cross-appeal rule is jurisdictional or mandatory without exception, the notice-of-appeal requirement *is* jurisdictional, *Bowles* v. *Russell*, 551 U.S. 205, 209-213 (2007), and the Government has taken the position before this Court, in both civil and criminal cases, that the cross-appeal requirement also is jurisdictional. *See* Brief for the United States, *Greenlaw* v. *United States*, 2008 WL 466092, at *13) (2008) (arguing that cross-appeal requirement

is jurisdictional in criminal cases); *El Paso Nat. Gas Co.*, 526 U.S. at 480 (arguing that cross-appeal requirement is jurisdictional in civil cases). Indeed, in *Greenlaw* the Government conceded error and this Court appointed an amicus to support the judgment below.

Moreover, even if the cross-appeal requirement is a "claim-processing" rather than a jurisdictional rule, it is still mandatory, so that if an adverse party properly and timely invokes the failure to cross-appeal as a ground to deny relief (as here), the cross-appeal rule must be enforced. Indeed, since *Greenlaw*, the Court has reiterated that "properly invoked, mandatory claim-processing rules must be enforced." *See Hamer* v. *Neighborhood Hous. Servs. of Chicago*, 583 U.S. 17, 20 (2017). The exceptions are for "waive[r] or forfeit[ure]." *Ibid.*

Here, it is not disputed that the S.E.C. did not cross-appeal the district court's judgment, nor is it up for debate that Petitioner timely invoked the cross-appeal rule and neither waived nor forfeited the rule. This Court has never found an exception to the rule despite endorsing it for over 200 years.

The facts of this case do not call for this Court to find its first exception to the rule in more than two centuries. Petitioner had a vested and adjudicated limitations defense, reduced to a final order that he appealed but the S.E.C. did not. Congress then amended the law to enlarge the limitation period. This case thus concerns retroactive revocation of a vested limitation defense, in the absence of a cross-appeal. This is not the sort of situation where the cross-

appeal rule should be disregarded as a matter of judicial discretion. *Hughes Aircraft Co.* v. *U.S. ex rel. Schumer*, 520 U.S. 939, 950 (1997) ("extending a statute of limitations after the pre-existing period of limitations has expired impermissibly revives a moribund cause of action").

III. The Question Presented Is Important.

At its core, the cross-appeal rule is about protecting a parties' interests in "fair notice and finality." *See Greenlaw*, 554 U.S. at 252. "Thus a defendant who appeals but faces no cross-appeal can proceed anticipating that the appellate court will not enlarge" the scope of the judgment against him. *Ibid.* And, as this Court further explained, "if the Government files a cross-appeal, the defendant will have fair warning, well in advance of briefing and argument, that pursuit of his appeal exposes him to the risk of" an enlarged judgment against him. *Id.* at 252-53. That permits the defendant to tailor his arguments accordingly. *Id.* at 253.

This rule does not just serve the parties' interests. It also protects the "institutional interests in the orderly functioning of the judicial system" by putting, in addition to the parties, the "appellate courts on notice of the issues to be litigated and encouraging repose of those that are not." *El Paso Nat. Gas Co.*, 526 U.S. at 481-82.

The Second Circuit's decision, along with the circuits that deem the rule to be discretionary, upends these important and central considerations. Instead of promoting finality and fair notice, the decision below raises questions for parties and courts alike as to when an issue can ever appropriately be considered

decided. And it raises still more questions as to when a court may "appropriately" disregard the rule.

The ruling in the decision below has far-reaching consequences beyond the facts and circumstances of this case. The cross-appeal rule potentially affects any case that comes up on appeal in the federal system. This Court would be hard-pressed to find a rule with wider implications for the appellate process.

IV. This Case Is an Appropriate Vehicle.

The question presented was squarely before the Second Circuit and was clearly implicated by its published decision. The court described Petitioner's argument thusly: "Ahmed argues that the cross-appeal rule is jurisdictional, so the S.E.C.'s failure to cross-appeal from the amended final judgment deprived the district court of jurisdiction to enlarge disgorgement under the NDAA." App. 26. The Second Circuit addressed this argument head-on, finding that "the cross-appeal rule did not deprive the district court of jurisdiction to recalculate disgorgement." App. 26.

Admittedly, the Second Circuit tried to disclaim the rule's application to Petitioner's case on the basis that it had been remanded. App. 27. But that is no basis to deny review; if the error was the initial remand to the district court despite the lack of a cross-appeal from the S.E.C., that error remains. And it is settled in the Circuits that the cross-appeal requirement bars enlarged relief for an appellee even post-remand. *Art Midwest Inc.*, 742 F.3d at 211-12 (5th Cir.) (so holding); *see also Lazare Kaplan Int'l, Inc.* v. *Photoscribe Techs., Inc.*, 714 F.3d 1289, 1294 (Fed. Cir. 2013) ("[T]he district court erred by allowing [appellee] to address validity on remand despite its failure to file a

cross-appeal"); *Gross* v. *FBL Fin. Servs., Inc.*, 588 F.3d 614, 621 (8th Cir. 2009) ("[T]he general rule is that a party must file a cross appeal if he seeks to enlarge his rights beyond the district court's judgment. This rule has been applied to limit new trials on remand[.]") (internal citation omitted); *JGR, Inc.* v. *Thomasville Furniture Indus., Inc.*, 550 F.3d 529, 533 (6th Cir. 2008) (same); *Arnold* v. *Eastern Air Lines, Inc.*, 681 F.2d 186, 206 n.22 (4th Cir. 1982) (same).

There are thus no vehicle problems that would prevent this Court from resolving the question presented. If the Circuit had adhered to the cross-appeal rule and found no exception to it, it would not have allowed an order increasing Petitioner's disgorgement by tens of millions. The issue is therefore outcome-determinative.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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