No. 24-_____

SUPREME COURT OF THE UNITED STATES

John Doe,

Petitioner,

v.

The Securities and Exchange Commission,

Respondent.

On Petition for a Writ of Certiorari to
the United States Court of Appeals
for the District of Columbia Circuit

PETITION FOR A WRIT OF CERTIORARI

John Doe
Petitioner
Address Withheld

QUESTIONS PRESENTED

In light of the Court's recent holdings in *Loper Bright/Relentless* and *Lissack v. Commissioner*, whether the Securities and Exchange Commission's (the "SEC") issuance of a Final Order denying the petitioner a whistleblower award where the petitioner provided original information which led to the SEC's successful $2.6 billion enforcement action against The Goldman Sachs Group, Inc., was a violation of the Dodd-Frank Act (the "DFA"), the Administrative Procedures Act (the "APA"), and the due process clause of the United States Constitution.

In light of Bloomberg's FOIA-based article about corruption in the SEC whistleblower program, "SEC Enriches Fraudsters, Lawyers as Secrecy Shrouds Tips Program," whether the fact that in the 13-year history of the SEC's whistleblower program, no circuit court has ever granted a petition for review of the denial of a whistleblower award is the incorrect standard of review and violates the DFA, the APA, and due process.

LIST OF PARTIES

[X] All parties appear in the caption of the case on the cover page.

RELATED CASES

None.*

* Of the eight claimants in *In the Matter of Goldman Sachs Group, Inc.*, File No. 3-20132, Notice of Covered Action 2020-125, only the petitioner filed an appeal to the circuit court.

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PETITION FOR WRIT OF CERTIORARI

John Doe respectfully petitions this Court for a writ of certiorari to review the judgment of the United States Court of Appeals for the District of Columbia Circuit.

OPINIONS BELOW

The opinion of the United States court of appeals appears at Appendix to the petition at 3 and is unpublished.

The order of the Securities and Exchange Commission appears at Supplemental Appendix to the petition at 1 and is unpublished.

JURISDICTION

The date on which the United States court of appeals decided John Doe's case was March 21, 2024.

A timely petition for rehearing was denied by the United States court of appeals on the following date: May 7, 2024, and a copy of the order denying rehearing appears at Appendix at 2.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1), John Doe's having timely filed this petition for a writ of certiorari within ninety days of the circuit court's judgment.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution, Article V

United States Constitution, Article XIV

Administrative Procedures Act, 5 U.S.C. § 706

Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010)

SEC Final Regulations implementing Section 21F of the Securities Exchange Act of 1934, 15 U.S.C. § 78a *et seq.*

STATEMENT OF THE CASE

The issue in this petition is whether the Securities and Exchange Commission (the "SEC" or the "Commission"), and the circuit court on review, erroneously denied the petitioner a whistleblower award after he provided invaluable original information to the SEC for years in connection with the largest covered action in the history of the SEC's whistleblower program, *In the Matter of Goldman Sachs Group, Inc.* ("Goldman Sachs"), File No. 3-20132, Notice of Covered Action 2020-125, regarding Goldman Sachs' Foreign Corrupt Practices Act, 15 U.S.C. § 78dd-1, *et seq.* ("FCPA") violations as part of the Malaysian 1MDB scheme, whether it improperly based its denial on two proven to be false declarations from SEC staff attorneys, and whether the petitioner was effectively afforded no meaningful right of appeal as required by the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010) (the "DFA"), since the circuit courts have been acting as a de facto rubber stamp for the SEC's final orders in whistleblower cases.

The SEC's whistleblower program was created by Congress on July 21, 2010 in Section 922 of the DFA, and for which the SEC issued Final Rules on May 25, 2011.

The petitioner provided the SEC with original information about Goldman Sachs' FCPA violations including its anti-bribery, books and records, and internal accounting controls provisions.[1] Among other things, the petitioner furnished the

[1] According to the SEC's October 20, 2020 order: "This matter relates to a scheme perpetrated by now former senior employees of Goldman Sachs who authorized and paid bribes and kickbacks to

SEC with the names of Goldman Sachs Politically Exposed Person or "PEP" accounts which the firm was attempting to cover up as part of the 1MDB "damage control".

Moreover, the petitioner provided the SEC with the original information that Goldman Sachs had secretly and without disclosure to its shareholders or the public closed its Bangkok Representative Office in Thailand. This was part of Goldman Sachs' continuing cover up of its FCPA violations in Southeast Asia in violation of the FCPA's internal control requirements. The petitioner informed the SEC that in the middle of the SEC's investigation of Goldman Sachs, "Bangkok", a major financial center, mysteriously disappeared from Goldman Sachs' list of offices and from its webpage. At the SEC's specific request, the petitioner translated and faxed 80 pages of Thai language documents regarding the surreptitious Bangkok office closure to the SEC, which it used against Goldman Sachs since it showed a continuing pattern of misconduct while the investigation was pending.

As was contained in the over 400-page joint appendix, the petitioner had been assisting, meeting with, and providing answers to questions from the SEC staff on a regular basis during the pendency of the action.

In fact, the SEC admitted, after its initial denials, that it used the petitioner's original information as the basis for *multiple document requests* to Goldman Sachs

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government officials in Malaysia and the Emirate of Abu Dhabi ('Abu Dhabi') in order to secure lucrative business for the Company and benefits for themselves. Goldman Sachs violated the antibribery, books and records and internal accounting controls provisions of the Foreign Corrupt Practices Act ('FCPA') in connection with the scheme."
https://www.sec.gov/files/litigation/admin/2020/34-90243.pdf

as part of the 1MDB investigation. A document request from the SEC is considered to be a very serious matter. The SEC must have considered the petitioner's information to be very substantial and reliable to use it as the basis for such requests.

After the SEC staff received responses to the document requests from Goldman Sachs, they contacted the petitioner to review and confirm whether they were accurate or not. The petitioner answered all the SEC's questions thereby enabling it to evaluate the truthfulness and completeness of Goldman Sachs' responses.

In 2021, the petitioner was one of eight claimants to file a claim for a whistleblower award in the Goldman Sachs Covered Action. All eight claims were denied.

In the petitioner's case, the SEC based its denial of his claim on a single declaration from an SEC staff attorney, who falsely stated that 1) the SEC never used the petitioner's information and 2) the petitioner did not give the SEC the names of the PEP account holders. The first declaration falsely stated: "Moreover, Claimant 3 was unable to provide staff with a copy of his reports or to identify the persons he claimed were the account holders involved in the fraud." The record below showed that both of these statements were lies.

Only two of the original eight Goldman Sachs claimants, including the petitioner, appealed the SEC's denial of their claims to the full Commission. Those requests for reconsideration were also both denied as part of the SEC's Final Order.

However, in response to the SEC appeal, the SEC presented a second hearsay declaration from a second SEC staff attorney, who did not even join the SEC until the end of the Goldman Sachs Covered Action. The second declaration admitted that, contrary to the first declaration, the SEC had in fact used the petitioner's original information as the basis for "multiple document requests" to Goldman Sachs.

The only reasonable conclusion is that the first SEC attorney lied in his affidavit so that the SEC could deny the petitioner's claim, since the record clearly and obviously contradicted his declaration. However, both SEC attorneys continued to falsely state that the petitioner had never given the SEC the names of the PEP account holders, also contradicted by the joint appendix.

Thus, the SEC's sole basis for denying the petitioner an award were two false and unreliable declarations from its own staff attorneys. The petitioner argued that the SEC's reliance on these declarations was a violation of the Administrative Procedures Act (the "APA").

The petitioner filed a petition for review of the SEC's Final Order to the circuit court under the provisions of the DFA.

The SEC argued for *Chevron* deference, citing *AT&T Corp. v. FCC*, 220 F.3d 607, 621 (D.C. Cir. 2000) ("Because ATT and Covad's argument rests on their interpretation of section 271, we employ the familiar two-step Chevron process.").

On March 21, 2024, the circuit court summarily denied the petitioner's petitioner for review. The order found: "The declarations submitted by agency

attorneys explain that the whistleblower information submitted by petitioner did not in any way assist or contribute to the covered action. Petitioner has provided no persuasive reason to question these assertions. *See Doe v. SEC*, 846 F. App'x 1, 4 (D.C. Cir. 2021)." This was the same manner in which the circuit court disposed of all other petitions for review over a 13-year period.

The petitioner filed a motion for reconsideration and for an en banc rehearing which was also denied.

On July 26, 2022, Bloomberg's Senior Investigative Reporter John Holland published an article about the whistleblower program, "SEC Enriches Fraudsters, Lawyers as Secrecy Shrouds Tips Program."[2]

Using Freedom of Information Act ("FOIA") requests, Bloomberg learned that the SEC was issuing awards preferentially to the law firms of ex-SEC staff attorneys. The story said: "SEC whistleblower decisions are inconsistent, cloaked in secrecy, often go to clients of agency ex-officials."

Bloomberg also found through FOIA requests that although the DFA expressly provides claimants with a right of appeal to the circuit courts, *in the 13-year history of the SEC's whistleblower program, no petition for review has ever been granted.*

[2] https://news.bloomberglaw.com/securities-law/sec-enriches-fraudsters-lawyers-as-secrecy-shrouds-tips-program

The petitioner's own research showed that the District of Columbia Circuit, while two judges criticized the SEC,[3] had never granted a claimant's petition for review.

This is a violation of the petitioner's right to review under the DFA and also of his due process rights under the United States Constitution. The review process was as arbitrary as the SEC's claims procedures and appears in practice to have interpreted "*Chevron* deference" to be "*Chevron* total acquiescence".

The chances for successful review of the denial of an SEC whistleblower award is in fact zero.

This explains why the petitioner was the only one of the eight claimants to even bother to seek review of the SEC's Final Order in the Goldman Sachs Covered Action.

The procedural history is that on February 12, 2021, the petitioner filed a Form WB-APP: Application for Award for Original Information Submitted Pursuant to Section 21F of the Securities Exchange Act of 1934 in connection with the covered action *In the Matter of Goldman Sachs Group, Inc.*

On September 20, 2021, the SEC issued a Preliminary Determination recommending denial of the petitioner's application.

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[3] The two judges are the Hon. Davis S. Tatel and the Hon. Douglas H. Ginsburg. *See* Jody Godoy, "Judge blasts SEC's 'sloppy' whistleblower regulations," Reuters, Feb. 1, 2022. https://www.reuters.com/legal/litigation/judge-blasts-secs-sloppy-whistleblower-regulations-2022-01-31/

On January 21, 2022, the petitioner submitted a timely Response to the Preliminary Determination and Request for Reconsideration. In his application, the petitioner demonstrated that he met Dodd-Frank's statutory requirements for an award.

On May 26, 2023, the SEC issued its Final Order denying the petitioner's claim with incorporated Supplemental Declarations.

On June 16, 2023, the petitioner filed a timely Petition for Review of an Agency, Board, Commission, or Officer in the circuit court.

On March 21, 2024, the panel issued its judgment denying the petition for review. APX at 3.

On May 7, 2024, the panel denied the petitioner's petition for rehearing en banc. APX at 2.

On May 16, 2024, the panel issued the mandate. APX at 1.

REASONS FOR GRANTING THE PETITION

I. The case presents an issue of national importance.

The standard of review for SEC whistleblower claim denials has in practice been total deference, leading to dangerous lack of oversight in a program in which an administrative agency has the power to award millions of dollars to claimants and their lawyers.

This case and Bloomberg's investigation show that, in practice, there is effectively no right of appeal of an SEC final order denying a whistleblower claim. This is excessive deference that goes even beyond *Chevron* so that the circuit courts have been a rubber stamp for the SEC.

As a direct result of what in practice has been complete deference, it is no surprise that Bloomberg has reported that there is corruption, nepotism, and lack of transparency in the SEC whistleblower program.

The DFA was designed to promote good government but, in this case, Congress' statutory intent has not been followed by the circuit courts.

II. The circuit court's decision is incorrect.

Under 5 U.S.C. § 706, the SEC's determination can be set aside if it is "unsupported by substantial evidence".

The circuit court incorrectly denied the petitioner's petition for review. The SEC reached an incorrect decision and improperly denied the petitioner an appropriate award under the DFA, when it was shown that the petitioner provided

sufficiently specific, credible, and timely information, "original information", which was (1) derived from the whistleblower's "independent knowledge or analysis;" (2) "not known to the Commission from any other source, unless the whistleblower is the original source of the information"; and (3) not exclusively derived from an allegation made in a judicial or administrative hearing, fully satisfying 15 U.S.C. § 78u-6(a), which resulted in a successful enforcement of an administrative or judicial action.

Setting aside the voluminous reasons the circuit court should have disregarded the two SEC staff declarations and considering the numerous reasons provided in the petitioner's Response to Preliminary Determination, the petitioner provided original information to the SEC that was sufficiently specific, credible, and timely to cause the staff to inquire concerning different conduct as part of a current examination or investigation, and the SEC brought a successful judicial or administrative action based at least in part on conduct that was the subject of the petitioner's original information. 17 C.F.R. § 240.21F- 4(c)(1). Further, the petitioner gave the SEC original information about conduct that was already under examination or investigation by the SEC, the Congress, any other authority of the Federal Government, a state attorney general or securities regulatory authority, any self-regulatory organization, or the PCAOB, and the Petitioner's submission significantly contributed to the success of the action. 17 C.F.R. § 240.21F-4(c)(2).

Regarding awards, the whistleblower statute specifically provides: "[T]he Commission... shall take into consideration.... the degree of assistance provided by

the whistleblower and any legal representative of the whistleblower in a covered judicial or administrative action." 15 U.S.C. § 78u-6 (b)(1)(B)(i)(II). The record clearly shows the petitioner and his legal representatives provided substantial assistance and cooperation to the SEC for years which was important enough to cause the SEC to issue document requests to Goldman Sachs during 1MDB.

The circuit court should not have denied the petitioner's petition for review in the context where he clearly showed that the two declarations which were the sole basis for the SEC's Final Order lied about the agency's use of his original information, lied about the contents of the information, and lied that he did not furnish the Commission with Goldman Sachs' PEP accountholder names.

The SEC was later forced to admit that it used the petitioner's original information as the basis for multiple document requests to Goldman Sachs.

Undoubtedly, the petitioner fulfilled the requirements for entitlement under 17 C.F.R. 240.21F-4(b)(3) and 17 C.F.R. 240.21F-4(c)(2). The record unequivocally supports that the petitioner gave the SEC original information about conduct that was already under examination or investigation by the SEC and the petitioner's submission significantly contributed to the success of the *In the Matter of Goldman Sachs Group, Inc.* action, leading to a recovery of over $2.6 billion, of which the petitioner is reasonably entitled to an award for his meaningful and long-lasting contributions.

III. *Lissack v. Commissioner* supports granting the petition

Post its striking down *Chevron* deference in *Loper Bright/Relentless*, the Court vacated and remanded the Internal Revenue Service's denial of a whistleblower award to the D.C. Circuit. *Lissack v. Commissioner*, 2024 WL 3259664 (July 2, 2024). There is even more reason for it to do so in this case, given the history of the circuit courts' never granting a petition for review of an SEC whistleblower final order.

This is not a "prior case" which would open all old cases for review. This case was still pending in the D.C. Circuit when *Loper Bright/Relentless* was decided on June 28, 2024.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

John Doe

John Doe

Dated: August 19, 2024