

IN THE SUPREME COURT OF THE UNITED STATES

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ANGELIQUE DE MAISON, PETITIONER

v.

SECURITIES AND EXCHANGE COMMISSION

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ON PETITION FOR A WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

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BRIEF FOR THE RESPONDENT

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QUESTION PRESENTED

Whether a district court, in a civil enforcement action brought by the Securities and Exchange Commission, may order disgorgement of money acquired in violation of the federal securities laws.

ADDITIONAL RELATED PROCEEDINGS

United States District Court (S.D.N.Y.):

SEC v. Cope, No. 14-cv-7575 (Aug. 8, 2018)

United States Court of Appeals (2d Cir.):

SEC v. De Maison, No. 18-2564 (Aug. 30, 2019)

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No. 19-7714

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OPINIONS BELOW

The order of the court of appeals (Pet. App. 1a-7a) is not published in the Federal Reporter but is reprinted at 785 Fed. Appx. 3. The opinion and order of the district court (Pet. App. 10a-37a) is not published in the Federal Supplement but is available at 2018 WL 3628899.

JURISDICTION

The judgment of the court of appeals was entered on August 30, 2019. A petition for rehearing was denied on November 19, 2019 (Pet. App. 42a-43a). The petition for a writ of certiorari

was filed on February 18, 2020 (Monday). The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

#### STATEMENT

As part of a multifaceted fraudulent scheme, petitioner sold more than \$4 million of one company's unregistered securities and made misleading statements concerning another company for which she served as an officer. See Pet. App. 15a-16a. The Securities and Exchange Commission (SEC) brought this civil action against petitioner, alleging that petitioner's actions violated various provisions of the securities laws that require registration and prohibit fraud. SEC C.A. Br. 12; see 15 U.S.C. 77e(a) and (c), 77q(a), 78j(b), 78o(a), 78p(a), 78q(a)(1) and (3); 17 C.F.R. 240.10b-5, 240.16a-3.

Petitioner agreed to resolve the SEC's claims without admitting or denying the SEC's allegations. See D. Ct. Doc. 206, at 1 (Dec. 23, 2015). She consented to the entry of a judgment that permanently enjoined her from violating certain federal securities laws and that required her to disgorge ill-gotten gains and to pay pre-judgment interest and a civil penalty. See id. at 2-7. Petitioner agreed that the amount of disgorgement, interest, and civil penalties would be set at a later date, upon the SEC's motion. See id. at 6.

In response to that later motion, petitioner argued that, in light of this Court's intervening decision in Kokesh v. SEC, 137 S. Ct. 1635 (2017), the district court no longer possessed

authority to order disgorgement to the SEC. The court concluded that "Kokesh \* \* \* did not disrupt settled precedent" recognizing courts' authority to award disgorgement in actions brought by the SEC. Pet. App. 20a. The district court accordingly directed petitioner to disgorge \$4,240,049.30 in ill-gotten gains, to pay \$913,818.80 in pre-judgment interest on that amount, and to pay \$4,240,049.30 in civil penalties. Id. at 38a.

The court of appeals affirmed. Pet. App. 1a-7a. The court rejected petitioner's challenge to the imposition of disgorgement, explaining that the Second Circuit had previously held that district courts may award disgorgement in actions brought by the SEC and that this Court's decision in Kokesh did not upset that circuit precedent. Id. at 3a-5a.

#### DISCUSSION

Petitioner contends (Pet. 3-4) that courts lack the power to award disgorgement in civil actions brought by the SEC. In Liu v. SEC, No. 18-1501 (argued Mar. 3, 2020), this Court has granted review on the same question. The United States therefore agrees with petitioner (see Pet. 3-4) that the Court should hold this petition for a writ of certiorari pending the Court's decision in Liu, and then dispose of the petition as appropriate in light of that decision.

## CONCLUSION

The petition for a writ of certiorari should be held pending this Court's decision in Liu v. SEC, No. 18-1501 (argued Mar. 3, 2020), and then disposed of as appropriate in light of the Court's decision in that case.

Respectfully submitted.

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