No. 24-1192

In the Supreme Court of the United States

OVATION FUND MANAGEMENT II, LLC,
Petitioner,

v.

NOSSAMAN LLP, ET AL.,
Respondents.

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

BRIEF IN OPPOSITION

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CORPORATE DISCLOSURE STATEMENT

Chicago Title Company, a California corporation, is a wholly owned subsidiary of FNF UTC, LLC, a California limited liability company. FNF UTC, LLC is a wholly owned subsidiary of Fidelity National Financial, Inc., a Nevada corporation.

Chicago Title Insurance Company, a Florida corporation, is a wholly owned subsidiary of Fidelity National Title Group, Inc., a Nevada corporation, which is a wholly owned subsidiary of FNTG Holdings, LLC, a Nevada limited liability company, which is a wholly owned subsidiary of Fidelity National Financial, Inc., a Nevada corporation.

Fidelity National Financial, Inc., the ultimate parent of both Chicago Title Company and Chicago Title Insurance Company, is a publicly traded corporation (NYSE: FNF).

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INTRODUCTION

The petition does not warrant review. The claimed circuit conflict is illusory, the decision below is consistent with this Court's precedent and otherwise unworthy of review, and this case presents a poor vehicle for resolving the question presented.[1]

First, there is no conflict between the circuits on the question presented. Indeed, the petition's cited circuit decisions expressly describe how they are consistent with one another. To the extent their outcomes diverge, the courts explain that is because they have different critical facts—namely, whether specific claims of loss are independent of the receiver's claims.

The sole circuit case petitioner asserts creates a conflict involved claims that the court determined were independent of the receiver's claims. In this case, and in other appellate authorities the petition cites, the court determined the claims were not independent. Petitioner has waived any challenge to that factbound determination, yet ignores that this factual difference accounts entirely for the cases' different outcomes.

Second, the petition's allusions to *Harrington v. Purdue Pharma L.P.*, 603 U.S. 204 (2024), similarly gloss over critical case-specific circumstances. *Harrington* firmly grounded its analysis in the text of bankruptcy statutes inapplicable here. *Harrington* is entirely consistent with the decision below anyway, and it is also less than two years old, so percolation

[1] This brief in opposition is similar in several respects, but meaningfully different in others, to the simultaneously filed brief in opposition in *Peterson v. Freitag*, No. 25-151.

would be beneficial. No other justifications for review are present.

Third, there are several reasons why this case is a poor vehicle for this Court's review. In particular, the case does not really implicate the question presented—whether federal courts have authority to enter a bar order "without the claimant's consent"—since Petitioner Ovation Fund Management II, LLC (Ovation) *consented* to the court's power to issue a bar order that petitioner treats as identical in this case. Further, petitioner's briefs below confirm that it waived several times over the argument it now presses. Petitioner repeatedly acknowledged that the "court has authority" to bar third-party claims in circumstances akin to those of the court decisions petitioner now criticizes. The only argument petitioner advanced below was a factbound one that petitioner has now abandoned. As a result, the courts below never had an opportunity to address the petition's sole issue. Petitioner's assertion of interests at odds with the vast majority of investors, along with shifting positions, would complicate any merits briefing.

Finally, as the district court found, the settlements below helped achieve a "remarkably favorable" degree of recovery, achieving on average "between 90% and 95%" compensation for net investment losses. Pet. App. 40a, 53a-54a. Settlement was contingent on entry of bar orders ending the litigation. *Id.* at 40a. The goal of the securities-enforcement receivership, consistent with applicable law, was to protect investors from further harm and maximize the recovery for investors who suffered losses. It did that with "remarkabl[e]" effectiveness and efficiency.

STATEMENT

A. Cain's Ponzi Scheme

Gina Champion-Cain, through her companies including ANI Development, LLC (ANI), ran a Ponzi scheme involving fraudulent investments in nonexistent state liquor-license loans. Pet. App. 7a-10a.

Kim Peterson, "Cain's friend" and eventual business partner, aided Cain in recruiting investors into the scheme. Pet. App. 10a-11a; Pet. 5. Peterson created business entities to "raise additional funds for Cain's scheme." Pet. App. 11a.[2]

In operating the scheme, Cain arranged for investors to deposit their funds into specific "escrow account[s]." Pet. App. 9a, 38a. Although Cain described those accounts as being held by Chicago Title and controlled by investors, investors' funds were in an account controlled by Cain, who allegedly bribed some Chicago Title employees to provide false documents. *Id.* at 9a-10a, 8a n.1. Cain pled guilty to securities fraud and related counts and is serving a fifteen-year prison sentence. *Id.* at 12a n.4, 38a.

B. District Court Proceedings

The Securities and Exchange Commission (SEC) filed a federal district-court securities-fraud enforcement action against Cain and ANI in 2019 when the Ponzi scheme unraveled. Pet. App. 11a-12a; SEC

[2] Although Peterson and his entities (collectively, Peterson) are nominal respondents on this petition (Pet. ii), their separate petition seeks review of the same court decision and what they describe as "nearly identical issues" (25-151 Pet. 14).

Br. 3; D.Ct. Doc. 1. The district court promptly appointed a Receiver to "take control of ANI" and "collect," "preserve," and "make an accounting of" its assets. Pet. App. 12a. As part of that process, the court "ordered the Receiver" to pursue "causes of action" and "prevent [the assets'] dissipation, concealment, or disposition so that [they] could be distributed to defrauded investors." *Id.* at 12a, 38a.

In her capacity as receiver for ANI and on behalf of the receivership estate, the Receiver pursued third-party litigation to recover the assets for distribution. Pet. App. 13a-14a & n.7, 32a, 8a (traditionally, a receiver may assert claims for the company through which a Ponzi scheme operated, which is considered a "victim" of the scheme); *see* SEC Br. 2.

The court also froze Cain's and ANI's assets and temporarily stayed litigation against ANI. Pet. App. 12a. While those assets were frozen, some litigants sought to get out ahead of the Receiver by filing claims against other entities in state court, seeking funds based on Cain's fraud. *Id.* at 12a, 38a-39a. The "primary target" of these lawsuits was Chicago Title, which had "the deepest pockets." *Id.* at 12a.

Peterson had retained respondent Nossaman LLP, which became another target for suit after the scheme unraveled. Pet. App. 28a-29a, 39a. Peterson had sought to attract investors by claiming that a Nossaman partner had advised him about liquor-license escrows. *Id.* at 11a.

Neither Nossaman nor Chicago Title has been found liable or responsible for the scheme. Pet. App. 23a, 33a, 38a-39a (noting that "there has been no adjudication of Chicago Title's liability as an intentional tortfeasor" or for negligence, and that the "same . . . applies" to Nossaman).

Peterson was among those who sued Chicago Title in state court. Pet. App. 12a. Peterson also cross-claimed against Chicago Title in the state-court suits against Peterson. *Id.* at 12a-13a. Chicago Title counter-claimed against Peterson and cross-claimed against Nossaman. *Id.*

Another state-court suit was filed by petitioner, a registered investment adviser for a fund that invested more than $50 million of its clients' money in Cain's scheme. Pet. App. 28a-29a; *see* SEC, Investment Adviser Public Disclosure, https://adviserinfo.sec.gov/firm/summary/166145 (last accessed Dec. 2, 2025). Petitioner initially sued Chicago Title in state court and later sued Nossaman. Pet. App. 28a-29a, 39a. Nossaman was also brought into petitioner's suit against Chicago Title via Chicago Title's cross-claim. *Id.* at 32a.

Meanwhile, the district court authorized the Receiver and Chicago Title to sue one another. Pet. App. 8a, 13a-14a, 38a-39a. The Receiver's suit against Chicago Title substantially overlapped with state-court actions by other litigants, which were directed toward the "same losses" and the same res as the receivership. *Id.* at 15a, 17a-25a, 30a-35a, 46a-50a.

Chicago Title began a process to settle the many suits and claims. The process resulted in numerous settlements, including a 2022 global settlement that resolved all remaining claims against Chicago Title. Pet. App. 8a, 14a, 40a, 55a-56a. The district court approved that settlement after notice, an opportunity for investors to join, and briefing and a hearing for objectors. *Id.* at 14a, 52a-56a, 37a-42a, 27a, 61a; D.Ct. Doc. 795-4, ¶14; D.Ct. Doc. 795-1, at 12-13; D.Ct. Doc. 796, at 8. The court determined that the global settlement was "fair, equitable, and in the best interest of the Receivership," and that it benefited defrauded investors generally. Pet. App. 53a-56a, 21a.

The settlements, including the global settlement, provided for nearly complete recovery for the scheme's victims. Through the settlements, Chicago Title paid a total of $187 million, exceeding the Receiver's court-approved calculation of $183 million in aggregate net losses of the roughly 300 victims. Pet. App. 13a-14a & n.8; *see SEC v. Peterson*, 2024 WL 5670686, at *1-2 (9th Cir. Apr. 28, 2025) (Distribution Decision) (affirming that court approval). The funds for distribution represented an estimated "aggregate investor recovery between 90% and 95% [of net losses]." Pet. App. 53a-54a, 40a, 13a. Some investors received 100% of their net losses. *Id.* Chicago Title also gave up its right to sue the ANI estate, which conserved the receivership res. *Id.* at 41a, 21a-22a; D.Ct. Doc. 795-4, ¶5. The district court declared this to be a "remarkably favorable recovery for investors in [its] experience." Pet. App. 40a; *see id.* at 39a-40a, 13a-14a & n.8, 53a.

Among the settlements was the Ovation settlement, through which "Chicago Title agreed to pay Ovation $47 million." Pet. App. 29a, 39a. That settlement amount "covered all of [petitioner's] investors' losses," as well as petitioner's "attorneys' fees" plus $10 million of petitioner's "management fees." *Id.* at 29a. As part of its settlement, petitioner agreed to "support" and "not to oppose" the court's entry of an order barring claims against Chicago Title (the Chicago Title Bar Order). D.Ct. Doc. 757-13, ¶¶7, 10.

For its part, Nossaman paid $4.75 million to Chicago Title on the settled cross-claims. Pet. App. 29a; D.Ct. Doc. 796-14, ¶¶1, 3. In exchange, the Receiver agreed to support an order barring claims against Nossaman (the Nossaman Bar Order), including state-court claims that petitioner filed while that bar order request was pending. Pet. App. 29a; D.Ct. Doc. 796-14, ¶6(b).

The Chicago Title Bar Order and the Nossaman Bar Order were "necessary conditions" for the settlements the Receiver reached with those parties. Pet. App. 49a. Neither Chicago Title nor Nossaman would have entered into the settlements without them. *Id.* at 49a-50a, 21a, 41a (also noting that Chicago Title's $24.3 million global settlement payment was contingent on the Chicago Title Bar Order).

The district court approved the settlements and entered both bar orders. Pet. App. 56a, 14a, 29a, 40a-41a, 21a-22a, 49a-50a; D.Ct. Doc. 769, at 2; D.Ct. Doc. 795-1, at 28. The global settlement "benefitted the receivership" and the scheme's victims by "bringing in more than $24 million to pay defrauded investors' net losses." Pet. App. 21a; *see id.* at 40a.

All the victims of Cain's scheme joined, did not oppose, or did not appeal the settlements. Pet. App. 39a, 55a, 13a; *see* D.Ct. Doc. 769, at 2-3. The Receiver, district court, and court of appeals determined that Peterson and his entities were, in contrast, "net Ponzi-scheme winners" who participated in the scheme. Distribution Decision *1; Pet. App. 26a-28a, 13a. The Receiver and courts thus rejected their request for payments from the settlement funds. Distribution Decision *1; Pet. App. 26a-28a, 13a. Peterson and two of his entities objected to the global settlement and the Chicago Title Bar Order. Pet. App. 42a; D.Ct. Doc. 832.

Petitioner, which received 100% of its net investment losses from settlement, did not object to the global settlement. Pet. App. 29a; D.Ct. Doc. 833, at 5. It did object to the Nossaman Bar Order, but only on fact-specific grounds. Pet. App. 29a, 39a; D.Ct. Doc. 833, at 5, 7-8, 19-27. Petitioner acknowledged—citing favorably the Fifth Circuit decisions its petition now criticizes (Pet. 17-18)—the court's "equitable power[ ]" to issue bar orders. D.Ct. Doc. 833, at 17-18. Petitioner sought to upset the Nossaman Bar Order so that it could seek "management fees" beyond the $10 million in fees it already had received. D.Ct. Doc. 833, at 5; Pet. App. 29a, 31a-32a.

The district court determined that the bar orders were appropriate because the state-court suits, including those brought by petitioner and Peterson, sought recovery for the "same loss" as the Receiver, the bar orders protected the receivership res, and the bar orders and global settlement were not otherwise contrary to law. Pet. App. 45a-56a. The court rejected objectors' factual assertion that their claims were "sufficiently independent" of the Receiver's to not be barred. *Id.* at 46a. The court determined on the facts that the objectors' claims were instead "derivative" of and "dependent" on the Receiver's claims. *Id.* The court thus approved the settlement and bar orders. *Id.* at 56a.

C. Appellate Proceedings

Petitioner appealed only as to the Nossaman Bar Order. Pet. App. 8a. Peterson and its entities appealed only as to the Chicago Title Bar Order. *Id.* No one else appealed either the global settlement or the bar orders.

The court of appeals (Bade, Forrest, and Ebel (sitting by designation), JJ.) unanimously affirmed. Pet. App. 7a-35a. The court decided that the district court could issue the bar orders in this context, where the claims sought to "recover for the same losses" from the Ponzi scheme as those of the receivership and barring them was "necessary to protect the receivership res." *Id.* at 15a, 30a-35a, 17a-20a, 25a. The court of appeals recognized "limits" to permissible circumstances for bar orders, but affirmed as a factual matter that they did not preclude an order barring petitioner's claims, which were not "independent" and which reached "assets claimed by the receivership." *Id.* at 16a, 46a, 15a-25a, 30a-32a (citation omitted). The court observed that petitioner had taken a position consistent with that approach. *Id.* at 30a n.18 (quoting petitioner as similarly focused on "independent, non-derivative third party-claims that do not affect the res of the receivership estate"). Accordingly, the court affirmed the district court's approval of the Nossaman bar order. *Id.* at 35a.

Ovation filed this petition, purporting to challenge only the Nossaman Bar Order. Unlike in its district-court and appellate briefing (*see, e.g.*, Pet. C.A. Br. 20 n.1; D.Ct. Doc. 833, at 19), petitioner now does not distinguish the two bar orders on factual or legal grounds, despite petitioner's settlement agreement to "support" the Chicago Title Bar Order. *See supra* pp.6-7; Pet. i. Rather, petitioner newly challenges whether federal courts may enter bar orders as a more general matter. Pet. i.

ARGUMENT

I. The circuits are not split, and no other reason warrants review.

A. The claimed circuit conflict is illusory.

The petition asserts that circuits have adopted different positions on "whether federal courts have the power to bar third-party claims agai[n]st non-receivership entities." Pet. i, 12. The petition is mistaken.

1. The petition bases its assertion of conflict on a single Sixth Circuit decision: *Digital Media Solutions, LLC v. South University of Ohio, LLC*, 59 F.4th 772 (6th Cir. 2023). Pet. 1.

Under petitioner's own characterization, at most this would raise a recent, shallow, undeveloped, lopsided split in favor of affirmance. But even that weak alleged split does not exist, because *Digital Media* does not conflict with the court of appeals decision below or with the petition's other cited decisions (Pet. i, 17-21). The appellate decisions themselves—including *Digital Media*—describe *Digital Media* as consistent with those other invoked circuit decisions in the case-specific analysis they employ.

In *Digital Media*, the court concluded that particular claims that were independent and not "derivative" of a receiver's claims could not be barred. 59 F.4th at 785, 781-782. In this case, by contrast, the district court factually determined that petitioner's claims "depend on the same loss as the Receiver's claims" and so were "derivative . . . and dependent." Pet. App. 46a. The court of appeals similarly understood this case's record, ruling consistently with the Fifth Circuit's decision in *Zacarias v. Stanford International Bank, Ltd.*, 945 F.3d 883 (5th Cir. 2019), *cert. denied*, 141 S. Ct. 950, *and* 141 S. Ct. 952 (2020), and expressly reconciling both decisions with *Digital Media*. Pet. App. 15a-16a, 21a n.13, 31a-35a. The court explained that the factual situation presented in *Digital Media* is "distinguishable" because "[u]nlike [in] this case (and *Zacarias*), [in *Digital Media*] the improperly barred claims were for an injury that the receivership entity itself did not suffer and, therefore, the receiver could not assert claims for the same alleged losses." *Id.* at 21a n.13. The petition expressly disclaims any challenge to those factual determinations. Pet. 11 n.2.

The court of appeals further explained that, as a factual matter, petitioner sought to advance claims of Ponzi-scheme losses that were of the same type that the Receiver sought to address and that would deplete the res of the receivership. Pet. App. 28a-35a. Thus, the court concluded the facts were different in critical ways from *Digital Media*, which involved "distinct" and independent claims of loss (59 F.4th at 785). *See* Pet. App. 31a-33a, 17a-21a; *see also* SEC Br. 5 (describing the court of appeals decision as following the Fifth Circuit decision in *Zacarias* as to "claims that are independent of the receivership and that do not involve assets claimed by the receivership").

Digital Media harmonized itself with the Fifth Circuit's *Zacarias* decision on the very same ground.

See Digital Media, 59 F.4th at 785. *Digital Media* explained that the *Zacarias* receiver and investors had been judicially determined to be seeking "recovery for the *same injury*." *Id.* (emphasis added). By contrast, the parties in *Digital Media* "ha[d] distinct injuries." *Id.* Their claims were "for personal harms that are distinct from" the insolvency and receivership, and thus were independent and not "derivative" of them. *Id.* at 785, 782.

The *Digital Media* opinion similarly reconciled itself with the Tenth Circuit's *DeYoung* decision. *See Digital Media*, 59 F.4th at 785. *Digital Media* explained that in *DeYoung*, "the receiver and investors pursued the bank on the *same* contract and fiduciary-duty claims and sought recovery for the *same* injury (the stolen funds)." *Id.* (emphases added) (citing *SEC v. DeYoung*, 850 F.3d 1172 (10th Cir. 2017)); *see* SEC Br. 17-18, *DeYoung*, 850 F.3d 1172 (No. 16-4013) (*DeYoung* SEC Br.) (emphasizing that the *DeYoung* district court found the claims of loss to be the "same" in meaningful respects). But in *Digital Media*, the claimants "by contrast [to those in *DeYoung*], seek to recover for personal harms that are distinct from" the receivership and insolvency. 59 F.4th at 785. Thus, *Digital Media* concluded, *DeYoung* involved a fundamentally different case than *Digital Media*. *Id.*

2. Contradicting the courts of appeals, which say their decisions are consistent, the petition seeks to conjure up a conflict by focusing narrowly on language of whether claims "belong" to particular plaintiffs. Pet. i, 10, 15. But *Digital Media* made clear that it referenced ownership of claims as a shorthand for determining whether those claims "are 'derivative' of" claims that are "subject to [the Receiver's] settlement

power." 59 F.4th at 781. Indeed, *Digital Media* framed that question as whether "the Receiver ha[d] the authority to settle the [claimants'] claims," which the receiver would have if the claimants' "claims are 'derivative of' [the] now-settled claims." *Id.* at 781-782 (describing "derivative" status of claims as "a fact that would mean" the receiver may settle them, and "thus" they would "belong" to the receivership). Moreover, *Digital Media* expressly restated the "real question" in the case as "whether the Receiver has the 'authority' to sue on those claims." *Id.* at 782. That question, *Digital Media* explained, warrants treating claims as settled where they are "derivative." *Id.* at 781-782.

The petition argues that references to "belong[ing]" in *Digital Media* established a distinct legal standard from other cited circuit decisions. Pet. 15, 12. That is simply incorrect, as the petition itself reveals. Indeed, when describing *Zacarias*, the petition explains that *Zacarias* distinguished a prior decision on the ground that those prior "claims *belonging* to third parties . . . were '*independent*' of the receiver's claims." Pet. 18 (emphases added). In so doing, the petition at least implicitly concedes that a "belonging" assessment attributed to *Digital Media* (Pet. 15) is not meaningfully distinct from an "independence" assessment attributed to decisions of the Fifth Circuit and the court of appeals here (Pet. 17-18).

Nor does *Digital Media* diverge from these other circuit decisions on considering whether claims would interfere with the federal court's control and authority over the relevant property, or res. *Digital Media* expressly addressed that receiver's argument that claims that "interfere[ ] with [the court's] jurisdiction" over the relevant res should be enjoined. 59 F.4th at 781, 785 (considering whether enjoined claims "interfered with the court's exclusive control of receivership property"). On that issue, *Digital Media* simply found no such interference there as to some of the enjoined claims. *Id.* at 786; *see* Pet. 15-16 (acknowledging as much). *Digital Media* expressly approved, however, of "property-protective injunction[s]" confined to claims that do so interfere. 59 F.4th at 786. Accordingly, *Digital Media* declared that "the district court may well have possessed [such] power" as to a particular set of "proceeds." *Id.* Such reasoning is consistent with that of other circuit decisions the petition invokes. *See, e.g.*, Pet. App. 32a-33a, 15a-16a; *Zacarias*, 945 F.3d at 897; *DeYoung*, 850 F.3d at 1183; *see also DeYoung* SEC Br. 9-10, 18-19.

The petition suggests that other circuit decisions also conflict with *Digital Media*. Pet. 20, 17-18. But those circuits' positions reconcile with *Digital Media* on the same grounds as those described above. *See, e.g.*, *In re U.S. Oil & Gas Litig.*, 967 F.2d 489, 496 (11th Cir. 1992) ("The propriety of the settlement bar order should turn upon the interrelatedness of the claims that it precludes[.]");[3] *SEC v. Stanford Int'l Bank, Ltd.*, 927 F.3d 830, 843 (5th Cir. 2019) (reconciling itself with *SEC v. Kaleta*, 530 F. App'x 360 (5th Cir. 2013) (per curiam), on the ground that *Stanford* concerned "independent, non-derivative third-party

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[3] The petition's invoked decision (Pet. 20) in *SEC v. Quiros*, 966 F.3d 1195, 1200 (11th Cir. 2020), cites *In re U.S. Oil & Gas Litigation*, 967 F.2d 489. This case's judicial determination is consistent with those Eleventh Circuit decisions. *See, e.g.*, Pet. App. 15a-16a & n.10.

claims that do not affect the *res* of the receivership estate").

The petition seeks to undermine the Fifth Circuit's decision in *Zacarias* because the panel was divided. Pet. 18-19. But the majority opinion governs, and anyway, the panel members' only disagreement was in the factbound application of considerations discussed above to the case's circumstances. Judge Higginbotham's majority opinion described the "factbound cases" illustrating a focus on "substantially identical" claims. *Zacarias*, 945 F.3d at 897-898. Judge Willett's dissent expressly agreed with the majority on that focus. He confined his disagreement only to the "narrow issue" of whether the claims "were the same" or "distinct," based on "fact[bound]" considerations. *Id.* at 905-906 & n.3 (Willett, J., dissenting); *see also* Pet. 19 (acknowledging that the *Zacarias* dissent concluded the "claims were distinct"). As noted, petitioner has waived any challenge to the district court's determination that its claims of loss are not distinct. Pet. 11 n.2.

Accordingly, *Digital Media* expressly and meaningfully distinguished the securities-enforcement receivership context that the courts described this case as fitting: involving claims of loss that are not independent and that would implicate the receivership res. 59 F.4th at 785; *see also DeYoung* SEC Br. 9-10, 17-20 (highlighting such facts in *DeYoung*, consistent with the Tenth Circuit's decision permitting that bar order); SEC Br. 7 (explaining that such "facts and circumstances" counseled for the SEC's position in

DeYoung).[4] Thus, *Digital Media* does not preclude the type of bar orders that the petition says other circuits permit. *See* Pet. 20.

3. *Digital Media* also arose in a distinct context that did not involve securities-fraud enforcement. The court there repeatedly emphasized that relatively unique context—a *non-securities* receivership that the court described as having been "largely supplanted" by Bankruptcy Code procedures. 59 F.4th at 778. *Digital Media*'s analysis focused on other decisions assessing the interaction of certain highly reticulated provisions of the Bankruptcy Code. *See id.* at 788 (citing, e.g., 11 U.S.C. §§ 524(e), 105(a)). *Digital Media* expressly described such decisions as focusing on statutory authority concerning what "*bankruptcy* courts" have "power" to do. *Id.* (emphasis added).

By contrast, in this case and *Zacarias*, the federal district courts' authority over a securities-enforcement receivership for recovery of losses from a Ponzi scheme nests in the "'federal statutory framework'" of the *securities* laws, such as the Securities Act of 1933 and the Securities Exchange Act of 1934. *Zacarias*, 945 F.3d at 895 & nn.26-28 (citing, e.g., 15 U.S.C. §§ 77v, 78aa); *see* D.Ct. Doc. 1, at 1-2 (invoking these laws); *see also* Pet. App. 21a n.13 (highlighting the distinction between such context and *Digital Media*);

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[4] The SEC's *DeYoung* brief (at 18) emphasized, for example, that the claims were "closely intertwined" and "[a]ny recovery on [them] would also necessarily come from the same limited fund." Any fact-intensive focus in that brief (*see* SEC Br. 7) only reinforces that the circuits are not split on a legal standard and petitioner seeks at most factbound error correction.

DeYoung, 850 F.3d 1172 (also involving such a receivership); *Quiros*, 966 F.3d 1195 (similar). *Digital Media* did not examine the scope of receiverships in the securities-enforcement context.

If anything, *Digital Media* undercuts the petition by recognizing that distinct statutory context may strengthen judicial authority to issue injunctions such as bar orders. *See* 59 F.4th at 788 (expressly approving that "statutory authority . . . can give . . . courts the power to permit" the relevant releases (citing *In re Dow Corning Corp.*, 280 F.3d 648, 657-658 (6th Cir. 2002)). *Contra* Pet. 22.

4. In any event, contrary to the petition's suggestion (Pet. i, 1-2, 12-13), *Digital Media* does not establish any general Sixth Circuit restriction regarding bar orders in the context of receiverships or in general. *Digital Media* does not purport to overrule the Sixth Circuit's generally supportive position on judicial authority to issue bar orders. *See, e.g.*, *United States v. Elliott*, 57 F.2d 843, 844 (6th Cir. 1932) (establishing that bar orders "lie in the inherent power of the court") (citing 2 Edmund Robert Daniell et al., *Pleading and Practice of the High Court of Chancery* 1204 (4th Am. ed. 1871)); *Gordon v. Dadante*, 336 F. App'x 540, 545 (6th Cir. 2009) (reinforcing the broad "discretion" of the district court to approve settlement agreements, including bar orders, in the context of equity receiverships). And a petition-cited decision has described the Sixth Circuit as having "affirmed a settlement similar to the one here that included a bar order." *DeYoung*, 850 F.3d at 1183 n.5 (citing *Gordon*, 336 F. App'x at 551).

5. Finally, even if there were any conflict between *Digital Media* and the court of appeals decision here, *Digital Media* is relatively recent. As of early December 2025, no other published circuit decision appears to have cited *Digital Media* on this point besides the decision in this case, which distinguished *Digital Media* in a footnote (Pet. App. 21a n.13). No circuit decisions have described the Sixth Circuit as employing a different rule, let alone grappled with implications of that possibility. It is not even clear that the Sixth Circuit has internally settled on the import of *Digital Media*. Further percolation would be prudent.

In sum, neither *Digital Media* nor any other cited appellate opinion conflicts with the decision below. The petition's assertion that the decision below would have come out differently in the Sixth Circuit is mistaken.

B. *Harrington* is not a basis for review, and no other grounds exist.

1. The court of appeals decision follows the Court's precedent. The Court long ago established that a federal district court's equitable authority includes substantial discretion to tailor its decrees to the particular case. *See, e.g.*, *Hecht Co. v. Bowles*, 321 U.S. 321, 329 (1944). This has particularly applied to injunctive relief in securities-enforcement receivership contexts. *See, e.g.*, *Deckert v. Indep. Shares Corp.*, 311 U.S. 282, 288-290 (1940) (enforcement power entails "the power to make effective the right of recovery afforded by the [Securities] Act . . . according to the exigencies of the particular case").

Orders barring claims in the context of property distribution have a long pedigree under this Court's precedent. The Court has emphasized the "necessity" for such orders for "finality," so that estates may be "promptly closed" and to afford an "'important . . . place to end'" litigation. *See, e.g.*, *New York v. Irving Tr. Co.*, 288 U.S. 329, 331 (1933); *Travelers Indem. Co. v. Bailey*, 557 U.S. 137, 140, 154 (2009) (citation omitted); *Reed v. Campbell*, 476 U.S. 852, 855-856 (1986); *see Nevada v. United States*, 463 U.S. 110, 139-140 (1983) (emphasizing interests in "final adjudication" and "[s]tability" as to water-rights apportionment (citations omitted)).

2. The petition vaguely implies that this Court's recent decision in *Harrington v. Purdue Pharma L.P.*, 603 U.S. 204 (2024), might create a basis for review. It does not, particularly given its recency.

The Court's decision in *Harrington* turned on the bankruptcy-specific statutory text at issue. As the Court observed, the Bankruptcy Code "contains hundreds of interlocking rules" concerning creditor-debtor relations, including provisions informing the "construction" of a "catchall" provision, which was "tacked on at the end of a long and detailed list of specific directions." 603 U.S. at 209, 217; *see id.* at 214-223. The Court emphasized that the relevant Bankruptcy Code provision "must be interpreted in light of its surrounding context" of that highly reticulated bankruptcy statutory scheme. *Id.* at 217; *see id.* at 217-219, 221-222.

Neither the specific statutory text at issue in *Harrington* nor the Bankruptcy Code in general governs the securities-enforcement receivership here. *See* Pet. App. 30a n.18. The petition essentially admits as much. Pet. 3; *see also* Pet. 10. It further acknowledges that *Harrington* concerns a meaningfully distinct statutory context. *See* Pet. 3. But the petition mistakenly overlooks that the context here is subject to a distinct statutory framework.

As the Fifth Circuit noted, a securities-enforcement receivership for Ponzi-scheme losses, like this one, nests in the "'federal statutory framework'" of the securities laws. *Zacarias*, 945 F.3d at 895 & nn.26-28 (citing, e.g., 15 U.S.C. §§ 77v, 78aa; James R. Farrand, *Ancillary Remedies in SEC Civil Enforcement Suits*, 89 Harv. L. Rev. 1779, 1782, 1788 (1976)); *see* Pet. App. 21a n.13, 11a-12a, 15a-16a; *supra* p.16. Some securities statutes allow courts to grant broad equitable or injunctive relief, and some expressly contemplate "bar order[s]" foreclosing third-party claims. *E.g.*, 15 U.S.C. §§ 77v, 78aa, 78u, 77t, 78u-4(f)(7)(A); *see, e.g.*, *Deckert*, 311 U.S. at 288; *supra* pp.16, 18-19.

The statutory frameworks for these respective contexts meaningfully differ. For example, *Harrington* explained that the Bankruptcy Code imposes a "general[ ]" "rule[ ]" *restricting* bankruptcy "discharge" to debtors, not third parties, for most claims. 603 U.S. at 214-215, 221, 222 (citing 11 U.S.C. § 524(e)). That provision was central to *Harrington*'s analysis. *See id.* at 215 ("The question we face . . . boils down to whether a court in bankruptcy may effectively extend to *nondebtors* the benefits of a Chapter 11 discharge usually reserved for *debtors*."). Petitioner has not even attempted to argue the same for the securities-enforcement receivership context (and, of course, it would be far too late at this juncture). *See* Pet. 24 (instead mistakenly suggesting *absence* of relevant statutes).

The Court's limited consideration of history in *Harrington*—only as a last point corroborating the Bankruptcy Code's "text and context" (603 U.S. at 223)—confirms the meaningful distinction between these contexts. Indeed, *Harrington*'s consideration of "historical practice" relied only on bankruptcy-specific "pre-code practice" (historical bankruptcy-specific statutes), English bankruptcy statutes, and the Constitution's Bankruptcy Clause, as discussed by Court decisions. *See id.* at 223-224 (citing *Sturges v. Crowninshield*, 17 U.S. (4 Wheat.) 122, 176 (1819); *Cent. Va. Cmty. Coll. v. Katz*, 546 U.S. 356, 363-364 (2006)). And this brief, unlike the briefing in *Harrington*, "direct[s]" the Court to "statute[s]" and "case[s]" illustrating past "power" of the relevant type. *Id.* at 224; *see, e.g.*, *supra* pp.16, 18-20.

Harrington's references to "consent" were similarly grounded in the bankruptcy question there. That question concerned a Bankruptcy Code requirement applying to a bankruptcy court's approval, consistent with bankruptcy court rules, for a bankruptcy reorganization plan addressing private parties' legal interests. *See* 603 U.S. at 209, 214-224, 226-227 ("[c]onfining" decision to that question presented).

Petitioner acknowledges the Bankruptcy Code context is distinct. Pet. 3. It even concedes the Court might well determine that "differential treatment" of "Chapter 11 bankruptcy proceedings" and "receiverships" (let alone Ponzi-scheme securities receiverships) is "warranted." *Id.* And the petition offers no basis in *Harrington* to conclude otherwise. If anything, the petition's discussion of *Digital Media* reinforces the distinction between the Bankruptcy Code and even the *non*-securities-enforcement receivership context there at issue. *See* Pet. 25 (quoting *Digital Media*, 59 F.4th at 777, as distinguishing "bankruptcy law[ ]" from that context). This context is even further afield.

In this respect, petitioner is poorly positioned to rely on *Harrington* as it does. The very circuit whose approach the petition extols (Pet. 17) has noted a "circuit[ ]" consensus that a court is "not [to be] confined to traditional equity jurisprudence" where there is "a statutory basis" for its injunctive order. *Dow Corning*, 280 F.3d at 657-658; *Digital Media*, 59 F.4th at 788 (citing *Dow Corning* with approval on that point). As noted, an extensive supportive "statutory framework" provides statutory basis in this context. *Zacarias*, 945 F.3d at 895, 902-903 & nn.26-28; *see supra* pp.16, 18-20.[5]

Even if *Harrington* were relevant in the abstract, its reasoning would distinguish this particular case. The Court in *Harrington* noted, for example, that it agreed with the dissent that "a bankruptcy estate may settle creditors' '*derivative* claims' against non-debtors." 603 U.S. at 219 (emphasis added). It was only because the claims at issue in *Harrington* were *not* "derivative," but instead independent, of the debtor's estate that the *Harrington* decision denied their release. *Id.* at 219-220. In this case, petitioner's claims of loss were judicially determined to be "dependent" and "derivative" of those of the receivership. Pet. App. 44a-47a, 17a-21a, 31a-32a; *see* Pet. 11 n.2

[5] *See also, e.g.*, 28 U.S.C. § 2283; Pet. App. 34a-35a, 44a, 50a, 16a; Pet. 11 n.2.

(waiving challenge to that determination). To the extent that "derivative" has different meaning in the two contexts, that only underscores that this case is far afield from *Harrington*.

Finally, *Harrington* was issued less than two years ago. The courts of appeals have had very little time to assess whether it has any implication for this question, let alone what any might be. *See* Pet. 3 (acknowledging *Harrington* was decided "just one year ago"). The fact that the *Harrington* decision was only recently issued is a reason *against*, not for, granting certiorari based on it.

3. The petition demonstrates no "important" and "recurring" issue.

The petition is mistaken in suggesting there is something untoward about receivership in this context. Pet. 23-24. Courts within their discretion appoint receivers as impartial officials tasked with maximizing recovery to injured investors—which amounted to a "remarkably favorable recovery" here (Pet. App. 40a). *See* Receiver Br.; SEC Br. 2; *Zacarias*, 945 F.3d at 899 ("[T]he receivership exists precisely to gather [claims] in the service of equity and aggregate recovery."); Pet. App. 49a, 14a n.7. Any "higher values" recovered (Pet. 24) thus generally inure to the benefit of investors and claimants like petitioner. And, as the petition acknowledges (Pet. 8, 17), the courts here observed that independent claims not interfering with the receivership property are not barred (Pet. App. 16a, 30a-35a, 46a-50a). *Accord* SEC Br. 5. A concern that the receivership somehow misappropriates claims (Pet. 24) is unfounded.

The same is true of the petition's insinuation of unfairness or improper deprivation of legal rights. Pet. 23-25. Petitioner had ample opportunity to participate in the settlement process and before the courts, including to demonstrate that it sought to advance its own independent claims. *See supra* pp.5-8. Yet petitioner failed to do so. *See* Pet. App. 30a-35a, 46a-50a. Petitioner has explicitly waived challenge to that fact-bound judicial conclusion and to the process of reaching it. Pet. 11 n.2; *see* Pet. App. 15a.

For similar reasons, the few cited unpublished district-court orders (Pet. 23) are unavailing. Those non-precedential orders are not of a type generally considered to warrant certiorari, particularly not in this case. *See, e.g.*, Sup. Ct. R. 10; Pet. 11 n.2; *infra* Section II.

Accordingly, the petition presents no important issue that warrants this Court's review.

II. This petition presents a poor vehicle for review because, among other reasons, petitioner waived, forfeited, and contractually agreed not to make its argument, thus lower courts never ruled on it.

This petition is not well-suited for review.

1. The court of appeals decision in this case does not implicate the question presented. Petitioner describes that question as whether a federal court may enter an order barring a claim against a non-receivership entity "without the claimant's consent." Pet. i. But petitioner *consented* to the court's power to enter

the Chicago Title Bar Order. Petitioner formally agreed, in a settlement agreement approved and entered by the district court (D.Ct. Doc. 769), to "support" and "not to oppose" that Bar Order. *See supra* pp.6-7; Pet. C.A. Br. 20 n.1. By so doing, petitioner took a legal position before the court approving the settlement that a federal court has authority to enter such a bar order, an order petitioner now declines to distinguish from the one its petition challenges. That legal position, which petitioner took to obtain the benefits of settlement approval, obviates the question presented and undercuts petitioner's challenge here.

The question presented also is not implicated by this case because it is directed toward certain orders barring "third-party claims" against "non-receivership third parties." Pet. i, 11 n.2. In these circumstances, neither the claimant (petitioner Ovation) nor the parties it sued (including Chicago Title and Nossaman) are "third parties" in any meaningful sense. Instead, petitioner participated in the district-court proceedings, including on settlement, reaching its own settlement with Chicago Title through which it obtained compensation of all its net investment losses and some "management" fees. Pet. App. 29a. Regardless of petitioner's position on the Nossaman Bar Order, petitioner had assented to the district court's authority over this litigation by participating in it to obtain court approval of petitioner's own settlement, including that settlement's provision regarding a bar order. *Id.* And petitioner's claims were against Chicago Title and Nossaman, which undisputedly participated as parties in this litigation in entering multiple settlements providing the "remarkably favorable recovery" to investors that the district court described. *Id.* at 29a, 40a.

Moreover, petitioner compounded on appeal its affirmative waiver of the question it now asks this Court to answer. In its appellate briefing, petitioner expressly declared that it "does not challenge the district court's authority to enter the [Chicago Title] bar order." Pet. C.A. Br. 20 n.1. Petitioner thereby confirmed it had waived any challenge to the court's authority to enter a bar order that petitioner describes as having the features it now deems impermissible.

Further, petitioner's briefing agreed with an approach and circuit decisions that it now criticizes. *See, e.g.*, Pet. C.A. Br. 25 (acknowledging that "[t]he court *has* authority" to bar third-party claims "when those claims are derivative of the receiver's claims" (emphasis added)); D.Ct. Doc. 833, at 7, 17 (invoking the Fifth Circuit's decisions in *Zacarias*, 945 F.3d at 897, and *Stanford*, 927 F.3d at 840, 843, concerning "claims that are *independent and non-derivative* and that do not involve assets claimed by the receivership" (emphasis altered) (quoting *Zacarias*, 945 F.3d at 897)). Petitioner did not ask the courts below to adopt what it now asserts is a preferable standard.

Indeed, the court of appeals documented petitioner's support of the approach it now criticizes. That court described petitioner's position as focusing on "independent, non-derivative third-party claims" and whether they "affect the res of the receivership estate." Pet. App. 30a n.18 (citation omitted). Petitioner thereby invited the courts in this case to adopt that approach. A petitioner cannot complain of an alleged error that it invited by its own requests. *See, e.g.*, *F.W. Woolworth Co. v. Contemp. Arts, Inc.*, 344 U.S. 228, 231 (1952); *see also, e.g.*, *Minneapolis & St. Louis R.R. v. Winters*, 242 U.S. 353, 356 (1917) ("[A party] cannot complain of a course to which it assented below.").

By having conceded and repeatedly waived the petition's current position (Pet. 11 n.2), petitioner rendered it unsuitable for certiorari. This Court recently confirmed that "[i]f a party neglects to raise, concedes, or waives an issue, a court generally has no obligation to consider it." *Riley v. Bondi*, 606 U.S. 259, 273 (2025).

2. Rather than urging a different legal standard in the court of appeals, petitioner sought only to distinguish the Chicago Title Bar Order from the Nossaman Bar Order on factual grounds. *See* Pet. C.A. Br. 20 n.1, 25, 30 (asserting that the bar orders involve "separate agreement[s]" and "significant factual differences"); D.Ct. Doc. 833, at 7-8, 27-28. *Contra* 25-151 Pet. 7 (the petition in *Peterson* calls the two bar orders "nearly identical").[6]

Thus, petitioner forfeited, in addition to waiving, the petition's current legal challenge.

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[6] Petitioner has taken inconsistent positions even as to the facts. After initially asserting "factual differences" between the two bar orders that it described as "*significant*" for their permissibility, petitioner now portrays them similarly to advance its unpreserved general challenge to bar-order authority. *Compare* Pet. C.A. Br. 20 n.1 (emphasis added), *with, e.g.*, Pet. i, 11 n.2, 7, 9, 10. Such internal tension and shifts in position counsel against granting certiorari.

Such a factbound dispute would not warrant this Court's review in any event. *See, e.g.*, Sup. Ct. R. 10(a), (c) (review generally concerns "an important question of federal *law*"; a petition is "rarely granted" for mere "asserted error[s]" or "misapplication" of law to fact (emphasis added)). The petition recognizes as much, as it expressly disclaims now pursuing that sole preserved circumstance-specific argument. Pet. 11 n.2 (expressly disclaiming any "case-specific arguments"). This Court generally does not review arguments that were not presented both to the courts below and in the petition for certiorari. *See Rivers v. Guerrero*, 605 U.S. 443, 457-458 (2025); *Lewis v. Clarke*, 581 U.S. 155, 164 n.2 (2017).

In addition to not having been pressed below, the petition's position concerning settlement affecting "third-party" claims without consent (Pet. i, 11 n.2) was not passed upon by the courts deciding this case. Instead, those courts rendered case-specific rulings, concluding that this petitioner could not prevail in its challenge to this bar order in these circumstances. Thus, the issue, as described by the petition, has not been properly developed and is not properly before this Court. *See McLane Co. v. EEOC*, 581 U.S. 72, 85 (2017) (the Court is "a court of review, not of first view" (citation omitted)).

3. Petitioner expressly agreed in its settlement with Chicago Title to "support" and "not to oppose" the entry of a bar order on which settlement was conditioned, in exchange for millions of dollars. D.Ct. Doc. 757-13, ¶¶7, 10. While petitioner actively litigated below to seek more money for itself—"fees" for managing funds implicated in a Ponzi scheme—petitioner

never challenged the court's authority to enter bar orders. Petitioner may not make that argument for the first time in this Court.

Petitioner's formal agreement to "support" and "not to oppose" the Chicago Title Bar Order undermines its petition in other respects. *First*, Chicago Title has a reasonable argument that petitioner has breached its settlement agreement by pursuing this petition. As petitioner acknowledges, Chicago Title is among this petition's respondents, and the petition proffers arguments purporting to invalidate the Chicago Title Bar Order as well as the Nossaman Bar Order. Pet. ii, 12-25. The Court generally does not review challenges dependent on theories that a petitioner has agreed, by contract or court-ordered settlement agreement, not to pursue. *See, e.g.*, *Atl. Marine Constr. Co. v. U.S. Dist. Ct.*, 571 U.S. 49, 63-64 (2013) (noting that parties that "agree" by contract to a judicial forum "waive the right to challenge" that forum as inconvenient); *Am. Express Co. v. Italian Colors Rest.*, 570 U.S. 228, 233-235 (2013) (enforcing a contractual "waiver of class arbitration"); *Matsushita Elec. Indus. Co. v. Epstein*, 516 U.S. 367, 369 (1996) (enforcing a court-approved settlement's release of claims).

Second, petitioner's agreement accepting the court's authority to enter bar orders enabled petitioner to accept the benefits of settlement finality regarding *others*' claims. *Cf. Donovan v. Penn Shipping Co.*, 429 U.S. 648, 649 (1977) (per curiam) (reaffirming the longstanding rule that a plaintiff cannot contest a reduced jury verdict (remittitur) when he has accepted the benefit of it). By agreeing to that bar order's entry, petitioner facilitated the settlement process, which resulted in settlements conditioned on entry of such order. Such settlement and bar orders "protect the res" of the receivership "by preserving the remaining balance for future distribution," including potentially to petitioner (beyond its $47 million settlement with Chicago Title). Pet. App. 49a; *see id.* at 47a-50a, 30a, 32a-33a, 21a-25a, 39a.

Absent such settlement and the corresponding bar orders, the receivership res could have been depleted by seemingly endless challenges by litigants seeking to jockey for a larger piece of injured investors' pie. *See* Pet. App. 47a-50a, 30a & n.17, 32a-33a & n.19, 21a-25a, 39a. Those litigants would include some that courts and petitioner itself have described as having been involved in, and having profited from, the Ponzi scheme. *See* Distribution Decision *1; 25-151 SEC Br. 4; Pet. 5; Pet. C.A. Br. 2; *supra* pp.6-8.

By staving off such claims, petitioner benefited itself. But to stave them off, petitioner depended on the settlement process conditioned upon the very type of court order petitioner now challenges judicial authority to enter. Petitioner should not be permitted to coopt the federal judicial system into letting it have its cake and eat it too.

4. Moreover, petitioner asserts interests substantially at odds with the vast majority of defrauded investors. Pet. App. 13a (settlement funds went to "more than 300 defrauded investors"). The "remarkably favorable recovery" (*id.* at 40a) from Chicago Title's provided settlement funds—which, together with receivership funds, amounted to almost all the true victims' net investment losses—was conditioned on

orders that petitioner now challenges judicial authority to enter. *Id.* at 39a-41a, 47a-54a, 12a-14a & n.8, 30a-33a, 21a-25a; *see supra* pp.6-8.

Petitioner has sought to command more "fees" for "management" of its investors' money, comprising a greater share of the recovery to their detriment. Pet. App. 39a, 31a, 29a. Petitioner previously argued that its claims for hypothetical "profits," but not investors' claims for losses on their underlying investments, should elude bar orders entered to preserve the receivership res. Pet. C.A. Br. 34-35, 27-30. Petitioner predicated that argument on its now-challenged basis that bar orders may cover "derivative," not "independent," claims. *E.g.*, *id.* at 25, 29-30. Petitioner's self-serving approach—seeking to privilege itself above injured investors in this manner—is not befitting of a grant of certiorari.

5. Finally, review is unwarranted because a decision on the question presented would be unlikely to affect petitioner's recovery. First, adopting the approach purportedly established in *Digital Media*, 59 F.4th 772, as petitioner advocates, would not be expected to alter petitioner's recovery. Under *Digital Media*'s reasoning (*id.* at 782, 785-786), petitioner's claims could still be barred. *See, e.g.*, Pet. App. 30a-35a, *supra* pp.10-17. In addition, on any remand the district court could rely upon petitioner's concession of authority regarding the Chicago Title Bar Order as basis for entering a new order similar to that one. *See supra* pp.6-7, 24-25; *Roell v. Withrow*, 538 U.S. 580, 582 (2003) (inferring consent from litigation conduct). Moreover, petitioner's claims for amounts in excess of its investment losses could fail in court for various factbound reasons. And finally, absent the Nossaman

Bar Order, other claimants might pursue unbarred claims in a manner depleting any receivership res as to which petitioner's recovery would ultimately lie. *See, e.g.*, Pet. App. 30a n.17, 32a-33a & n.19, 47a, 49a-50a, 53a; *supra* pp.5-8. Thus, answering the petition's question presented might well not provide petitioner further recovery, or even assist it in escaping the consequences of agreeing that the court may bar claims.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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