No. 25-

IN THE

Supreme Court of the United States

AST & SCIENCE LLC,

Petitioner,

v.

DELCLAUX PARTNERS SA,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Section 27 of the Securities Exchange Act confers exclusive federal jurisdiction over claims "brought to enforce any liability or duty created by" the Exchange Act. *See* 15 U.S.C. § 78aa. In *Merrill Lynch, Pierce, Fenner & Smith Inc. v. Manning*, 578 U.S. 374 (2016), this Court held that the jurisdictional reach of Section 27 is equivalent to that of 28 U.S.C. § 1331. Accordingly, for state-law claims implicating the Exchange Act, courts must apply the test in *Grable & Sons Metal Products, Inc. v. Darue Eng'g & Mfr.*, 545 U.S. 308 (2005). Justices Thomas and Sotomayor have cautioned that applying the "arising under" test in Section 27 cases could introduce unnecessary complexity and potentially exclude from federal courts lawsuits brought to enforce liabilities or duties created by the Exchange Act. That is what happened here. Both the district court and the Eleventh Circuit acknowledged that Petitioner's claim necessarily depended on a violation of the Exchange Act. Nevertheless, federal jurisdiction was lacking because the particular duty at issue was not "substantial" under *Grable*. The question presented is as follows:

> Whether the Supreme Court's decision in *Manning* should be revisited to determine if the "arising under" jurisdictional test should continue to be used for purposes of assessing jurisdiction under Section 27 of the Exchange Act?

PARTIES TO THE PROCEEDING

All parties to the proceeding are set forth in the caption.

CORPORATE DISCLOSURE STATEMENT

Pursuant to this Court's Rule 29.6, undersigned counsel state that AST & Science LLC has no parent corporation. AST SpaceMobile, Inc., which is publicly traded on the NASDAQ Stock exchange under the trading symbol ASTS and whose Warrants trade under the trading symbol ASTSW, is AST & Science LLC's Managing Member and owns 10% or more of the stock. In addition, the following persons or entities own 10% or more of the stock in AST & Science LLC: Abel Avellan.

RELATED PROCEEDINGS

Pursuant to this Court's Rule 14.1(b)(iii), the following proceedings are related to this case:

- *AST & Sci. LLC v. Delclaux Partners SA*, No. 23-11985 (11th Cir.) (judgment entered July 9, 2025).

- *AST & Sci. LLC v. Delclaux Partners SA*, No. 1:20-cv-23335-GAYLES (S.D. Fla.) (order issued February 23, 2024).

There are no additional proceedings in any court that are directly related to this case.

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JURISDICTION

The Eleventh Circuit entered judgment on July 9, 2025, vacating the district court's order dated February 23, 2024 and remanding with instructions that the case be dismissed for want of subject matter jurisdiction. Pursuant to this Court's Rule 13, this petition is due ninety days after the Eleventh Circuit's entry of judgment. The Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

Section 27 of the Securities Exchange Act of 1934, 15 U.S.C. 78aa(a), provides, in relevant part:

> The district courts of the United States and the United States courts of any Territory or other place subject to the jurisdiction of the United States shall have exclusive jurisdiction of violations of this chapter or the rules and regulations thereunder, and of all suits in equity and actions at law brought to enforce any liability or duty created by this chapter or the rules and regulations thereunder. Any criminal

> proceeding may be brought in the district wherein any act or transaction constituting the violation occurred. Any suit or action to enforce any liability or duty created by this chapter or rules and regulations thereunder, or to enjoin any violation of such chapter or rules and regulations, may be brought in any such district or in the district wherein the defendant is found or is an inhabitant or transacts business, and process in such cases may be served in any other district of which the defendant is an inhabitant or wherever the defendant may be found.

Section 1331 of the United States Code, 28 U.S.C. § 1331, provides:

> The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

INTRODUCTION

Congress enacted the Securities Exchange Act to establish a uniform national system for regulating securities transactions. To that end, Section 27 of the Exchange Act confers on federal courts "exclusive jurisdiction" over "all suits" brought to enforce "any liability or duty created by [the Exchange Act]." 15 U.S.C. § 78aa(a). The broad jurisdictional grant under Section 27 is as important as it is clear: Congress wants *federal* courts to decide matters of *federal* securities law.

In this case, both the district court and the Eleventh Circuit acknowledged that the breach of contract claim asserted by Petitioner necessarily depended on issues of federal law. Specifically, the contractual obligation at issue was the requirement that Respondent not take any action requiring registration under United States Securities laws without first having obtained all necessary memberships and registrations. The breach alleged by Petitioner was that Respondent violated United States Securities laws by acting in the capacity of a broker-dealer without first registering with the Securities and Exchange Commission ("SEC") and obtaining membership with the Financial Industry Regulatory Authority ("FINRA"). In other words, the lawsuit was brought to enforce liabilities and duties created by the Exchange Act.

As a result, this lawsuit is squarely within the bounds of Section 27. Notwithstanding, the Eleventh Circuit reversed the district court's judgment, entered in Petitioner's favor after five years of substantive litigation, and held that federal jurisdiction was lacking. The Eleventh Circuit's decision was based entirely on its application of the "arising under" test set forth in *Grable*. Specifically, the Eleventh Circuit determined that Petitioner's claim did not satisfy the substantiality prong of that test.

If left to stand, the Eleventh Circuit's decision will shut out from the federal courts a lawsuit that clearly invokes the Exchange Act and turns on its application and construction. This would run directly counter to the plain meaning of Section 27.

Accordingly, this Court should grant certiorari and reverse.

STATEMENT OF THE CASE

I. Factual Background

Petitioner AST & Science LLC ("AST") was founded in 2017 and is in the business of satellite technology and global satellite-based communications. App. 2a. AST began working with Respondent Delclaux Partners SA ("Delclaux") in late 2017 as it prepared to begin its initial round of financing. *Id.* AST and Delclaux entered a contract—the Finder's Fee Agreement—that governed their working relationship. App. 2a–3a.

The Finder's Fee Agreement restricted the activities Delclaux could perform on behalf of AST. App. 3a. Specifically, the Finder's Fee Agreement required that Delclaux not perform any act that would require it to register "as an investment advisor or broker-dealer." *Id.* The Finder's Fee Agreement further required that, even outside of registration requirements, Delclaux was required not to otherwise act in violation of any federal securities laws. *See id.* On this basis, Delclaux represented and warranted to AST that it would maintain all necessary licenses and registrations, as well as ensuring all of its conduct would be within the confines of federal securities laws, rules, and regulations. *Id.*

The idea was that Delclaux would stay within the bounds of a "finder"—as that concept is understood within federal law—or would obtain the necessary memberships and registrations needed to perform its work. The so-called "finder exception" is an uncodified exception to the registration and licensure requirements imposed by the Exchange Act and FINRA rules. *See* App. 23a. It

has arisen by implication through a series of "No Action Letters" issued by the SEC. *Id.* Courts considering it have noted that "the line between a 'finder' and a 'broker' remains elusive," and consequently, the boundaries of the finder exception remain undeveloped and undefined. *See Rhee v. SHVMS, LLC*, No. 21-CV-4283 (LJL), 2023 WL 3319532, at *8 (S.D.N.Y. May 8, 2023).

Following AST's successful Series B financing round, Delclaux began to make claims for fees that AST believed were not earned. App. 15a–16a. In connection with Delclaux's repeated demands, AST looked more closely into Delclaux's activities under the Finder's Fee Agreement. *See id.* It discovered that Delclaux's activities went beyond the scope of a "finder," and that Delclaux had been acting as an unregistered broker-dealer in violation of United States Securities laws. *Id.* This constituted a breach of the Finder's Fee Agreement, which AST terminated on January 26, 2020. *See id.*

AST then filed the instant lawsuit asserting this breach of contract. App. 14a–15a.

II. Procedural Background

AST initiated this lawsuit on August 11, 2020. *Id.* A review of AST's Complaint demonstrates that its claim against Delclaux clearly and unequivocally turned on federal law. Indeed, the centrality of federal law is reflected in the very first allegation, where AST alleges that Delclaux, in breach of contract and in violation of United States Securities Laws, acted in the capacity of a broker-dealer without the requisite registrations and licensures. *See* App. 21a–22a. The Complaint explains that AST contracted with Delclaux to serve as a "finder" in connection with its Series A and B financing rounds. *See*

id. The Complaint alleges that Delclaux was required to stay within the scope of the "finder exception," but despite this restriction, it acted beyond this scope, such that its role became that of a broker-dealer under federal law. *See id.* The Complaint discusses the registration and licensure requirements imposed by federal law under 15 U.S.C. § 78o(a)(1), as well as the prohibitions under FINRA Rule 2040 against receipt of transaction-based compensation for unregistered brokers. *See* App. 15a. AST's claim was that, despite representing that it would have and maintain all necessary licenses and registrations needed to provide services on behalf of AST, Delclaux acted as a broker-dealer, but violated federal law by not registering with the SEC and by not becoming a member of FINRA, thereby breaching the parties' contract. *See id.*

On December 29, 2020, Delclaux filed its Amended Answer, Affirmative Defenses, and Counterclaim. App. 16a. The parties then engaged in lengthy discovery.

After filing cross-motions for summary judgment, on February 27, 2023, the district court entered summary judgment in AST's favor on Delclaux's counterclaims. App. 16a–17a. Delclaux appealed to the Eleventh Circuit on March 29, 2023. App. 4a. On appeal, the Eleventh Circuit issued jurisdictional questions to Delclaux and AST asking whether the appeal was timely and whether there was any basis for federal subject matter jurisdiction. *Id.* Delclaux voluntarily dismissed the appeal before either party responded to the jurisdictional questions. *Id.* The parties subsequently reached a settlement with respect to AST's claim against Delclaux and final judgment was entered by the district court. *Id.*

On May 31, 2023, Delclaux moved for relief from the final judgment, arguing the district court lacked

subject matter jurisdiction. App. 18a. The district court rejected Delclaux's motion for relief from final judgment on February 23, 2024, finding "that federal question jurisdiction exists under the Exchange Act," as well as under the Supreme Court's *Grable* framework. *See* App. 14a–27a.

Delclaux appealed again to the Eleventh Circuit on June 9, 2024. *See* App. 1a–13a. Following briefing and oral argument, the Eleventh Circuit reversed the district court, holding that federal jurisdiction was lacking. *See id.* In reaching its decision, the Eleventh Circuit applied *Grable* in lieu of the Exchange Act's plain language. *Id.* This is despite the fact that, at oral argument, the Eleventh Circuit acknowledged that "[t]he breach that AST alleged depends on our interpretation of federal law," specifically "whether [Delclaux] acted outside the scope of the contract and violated . . . FINRA and SEC rules." In other words, the Eleventh Circuit acknowledged that AST's claim was about enforcing a duty created by the Exchange Act. Nevertheless, it rejected AST's request to apply Section 27 of the Exchange Act directly. *See id.* Instead, the Eleventh Circuit cited this Court's ruling in *Manning*, and stated that the only applicable test was the "arising under" test set forth in *Grable*. *See id.*

The Eleventh Circuit held that AST's claim failed to satisfy one of the four *Grable* factors, namely, substantiality. *Id.* Accordingly, it reversed and remanded with instructions to dismiss the case for "want of subject-matter jurisdiction." *Id.*

The Eleventh Circuit's mandate issued on September 19, 2025. This petition for certiorari timely follows.

REASONS FOR GRANTING THE PETITION

I. The Plain Language of Section 27 Confers Federal Subject Matter Jurisdiction Over Claims Brought to Enforce Liabilities or Duties Created by the Exchange Act

Section 27 of the Exchange Act, 15 U.S.C. § 78aa, gives federal courts exclusive subject matter jurisdiction over cases brought to enforce liabilities or duties created by the Exchange Act. The text of Section 27 is clear. "The district courts of the United States and the United States courts of any Territory or other place subject to the jurisdiction of the United States ***shall have exclusive jurisdiction*** of violations of this chapter or the rules and regulations thereunder, and of ***all*** suits in equity and actions at law brought to enforce ***any*** liability or duty created by this chapter or the rules and regulations thereunder." 15 U.S.C. § 78aa(a) (emphasis added).

Section 27 does not turn on how substantial the liability or duty at issue might be. The implications of enforcing that liability or duty for other cases is also not a factor. There is, moreover, no balancing requirement whereby a court must assess whether resolving the claim in federal court will somehow disrupt the federal-state balance. Section 27 simply asks whether the suit is seeking to enforce a liability or duty created by the Exchange Act. If the answer is "yes," then Section 27's conferral of ***exclusive*** federal jurisdiction applies.

In this case, Petitioner clearly sought enforcement of the Exchange Act. While Petitioner's claim was for breach of contract, that breach—as described above—was

squarely premised on Delclaux's violation of the Exchange Act's registration requirements. If Delclaux complied with the Exchange Act, AST's breach of contract claim would have failed. Conversely, if Delclaux violated the Exchange Act, AST's claim would succeed. The claim, therefore, was indisputably seeking to enforce a duty created by the Exchange Act.

As a result, under the plain meaning of Section 27, exclusive federal jurisdiction should apply. "As with any question of statutory interpretation, [the Court's] analysis begins with the plain language of the statute." *Jimenez v. Quarterman*, 555 U.S. 113, 118 (2009). "It is well established that, when the statutory language is plain, [courts] must enforce it according to its terms." *Id.* "When the words of a statute are unambiguous, then, this first canon is also the last: judicial inquiry is complete." *Conn. Nat. Bank v. Germain*, 503 U.S. 249, 254 (1992) (citation modified).

The Eleventh Circuit did not apply the plain meaning of Section 27.

II. The Warnings Raised By Justice Thomas and Justice Sotomayor in *Manning* are Being Realized; This Court Should Revisit *Manning* and Limit or Overrule It

The reason that the plain language of Section 27 was not applied by the Eleventh Circuit is because it was constrained by this Court's decision in *Manning*. Indeed, the Eleventh Circuit rejected AST's argument for jurisdiction under Section 27 via a footnote in which it stated that *Manning* required the same jurisdictional

test for Section 27 cases as the test formulated under 28 U.S.C. § 1331. *See* App. 7a–8a.

This "arising under" test is set forth in *Grable*. 545 U.S. at 313. It includes four prongs, asking whether federal issues are (1) necessarily raised, (2) actually disputed, (3) substantial, and (4) capable of resolution in federal court without disrupting the federal-state balance approved by Congress. *Id.* at 314. In *Manning*, this Court held that Section 27's "brought to enforce" language means the same thing as Section 1331's "arising under" language; hence, the same test should apply in both circumstances. *Manning*, 578 U.S. at 385. Justices Thomas and Sotomayor disagreed.

In a concurrence, Justices Thomas and Sotomayor warned that "importing factors from our § 1331 arising-under jurisprudence—such as a substantiality requirement and a federal-state balance requirement—risks narrowing the class of cases that Congress meant to cover with § 27's plain text." *Id.* at 399 (Thomas, J., concurring in judgment). They said it would be "unwise to read into § 27a decision to adopt the arising-under standard." *Id.* The Court in *Manning*, however, did not heed those warnings.

In *Manning* itself, those concerns did not matter. As even Justices Thomas and Sotomayor recognized, the state-law claim advanced by the plaintiff in *Manning* was not brought to enforce a duty or liability created by the Exchange Act, which is why Justice Thomas and Sotomayor concurred in the judgment and did not dissent. *Id.* at 396 (Thomas, J., concurring in judgment). Here, however, AST's claim was about enforcing a duty

created by the Exchange Act—as both the district court and Eleventh Circuit acknowledged. Indeed, the Eleventh Circuit did not order dismissal because AST's claim was not brought to enforce a duty under the Exchange Act. It ordered dismissal because AST's claim purportedly did not meet the substantiality prong of *Grable*. This basis for dismissal is exactly what Justices Thomas and Sotomayor warned against.

The Court's opinion in *Manning* appears to presume that a case like the present one would never arise. Indeed, in discussing the arguments made by the parties in *Manning*, the Court noted that both sides went too far in their interpretation of Section 27. On one hand, Merrill Lynch argued, essentially, that Section 27 applies whenever a claim implicates—directly or indirectly—liabilities or duties under the Exchange Act. Discussing that argument, the Court stated:

> Consider, for example, a simple state-law action for breach of contract, in which the plaintiff alleges, for atmospheric reasons, that the defendant's conduct also violated the Exchange Act—or still less, that the defendant is a bad actor who infringed that statute on another occasion. On Merrill Lynch's view, §27 would cover that suit; indeed, Merrill Lynch points to just such incidental assertions as the basis for federal jurisdiction here. But that hypothetical suit is "brought to enforce" state contract law, not the Exchange Act—***because the plaintiff can get all the relief he seeks just by showing the breach of an agreement, without proving any violation of federal securities law***. The

> suit, that is, can achieve all it is supposed to even if issues involving the Exchange Act never come up.

Id. at 382–83 (emphasis added) (citation omitted).

Contrary to Merrill Lynch, Manning argued for too restrictive a view of Section 27—contending that it could only apply to claims brought directly under the Exchange Act. Rejecting this reading, the Court stated that Section 27 could also apply to a state-law claim that "necessarily depends on a showing that the defendant breached the Exchange Act." *Id.* at 383. The Court reasoned as follows:

> Suppose, for example, that a state statute simply makes illegal "any violation of the Exchange Act involving naked short selling." A plaintiff seeking relief under that state law must undertake to prove, as the cornerstone of his suit, that the defendant infringed a requirement of the federal statute. (Indeed, in this hypothetical, that is the plaintiff's *only* project.) Accordingly, his suit, even though asserting a state-created claim, is also "brought to enforce" a duty created by the Exchange Act.

Id.

After rejecting the respective interpretations offered by the parties in *Manning*, the Court went on to conclude that the "arising under" test would work for Section 27 and would guard against both extremes. *Id.* at 383–84. In other words, the Court concluded that the "arising under" test would not limit Section 27 to claims brought directly

under the Exchange Act, but would also not extend Section 27 to cover state-law claims that merely referenced the Exchange Act, where a plaintiff "can get all the relief he seeks" without needing to otherwise prove any violation of the Exchange Act. *Id.* at 382.

Justices Thomas and Sotomayor saw a different possibility. They recognized that by applying the additional factors of the *Grable* test, such as substantiality and the federal-state balance (factors which have nothing to do with whether a claim is brought to enforce a liability or a duty created by the Exchange Act), you could end up with a case, like this one, where federal jurisdiction is not upheld even where a plaintiff cannot get all the relief he is seeking without proving a violation of the Exchange Act. They saw that it would be possible for cases to be shut out of federal court even where a state-law claim necessarily depended on enforcing liabilities or duties created by the Exchange Act.

This possibility has become a reality. There is no question that AST's claim necessarily depended on applying and enforcing a duty created by the Exchange Act. AST could not get all the relief it was seeking in its lawsuit against Delclaux without proving a violation of the Exchange Act. Section 27's application could not be clearer. In recognition of the same, this Court should take the opportunity to revisit *Manning* and either limit its holding or overrule it with respect to the requirement that courts must apply the *Grable* test in Section 27 cases. Alternatively, this Court could take the opportunity to provide further guidance on how the *Grable* test should be administered such that situations like the current one are avoided.

In revisiting *Manning*, AST urges the Court to adopt the straightforward test offered by Justices Thomas and Sotomayor in their concurrence—namely, that "Section 27 confers federal jurisdiction over a case if the complaint alleges claims that necessarily depend on establishing a breach of an Exchange Act requirement." *Id.* at 396 (Thomas, J., concurring in judgment). There are at least three reasons why the Court should take this action: (1) It is faithful to Section 27's plain meaning. The unambiguous text of Section 27 confers subject matter jurisdiction over any claims brought to enforce a liability or duty created by the Exchange Act. (2) It complies with traditional canons of statutory interpretation. Section 27 does not use the same "arising under" language as Section 1331 and therefore must mean something different. (3) It results in a more practical, administrable outcome, promoting uniformity and predictability, while avoiding a situation like the one at hand, where the result is directly counter to the plain meaning of the governing statute.

First, the plain language of Section 27 grants federal jurisdiction over any claims necessarily raising issues under the Exchange Act. "[U]nder § 27 a suit belongs in federal court when the complaint requires a court to enforce an Exchange Act duty or liability." *Id.* at 394–95 (Thomas, J., concurring in judgment). As discussed *supra*, any other interpretation of Section 27 betrays the statute's plain meaning, and in turn, "risks narrowing the class of cases that Congress meant to cover with § 27's plain text." *Id.* at 399 (Thomas, J., concurring in judgment).

Congress' statutory directive is clear. Cases like this one, where the claim necessarily requires the court to adjudicate a violation of the Exchange Act, are and should

be covered. The straightforward test urged by Justices Thomas and Sotomayor in *Manning* would ensure that result.

Otherwise, as this case demonstrates, cases will arise in which state courts are called upon to interpret and enforce the Exchange Act, despite the fact that Congress could have, but ultimately did not, grant concurrent subject matter jurisdiction to state courts. *See Lippitt v. Raymond James Fin. Servs., Inc.*, 340 F.3d 1033, at 1036 n.2 (9th Cir. 2003).

Second, it has long been established that when interpreting a statute, the judiciary's work begins and ends with the plain language of the statute insofar as that language is unambiguous. *See Bostock v. Clayton Cnty., Ga.*, 590 U.S. 644, 673–74 (2020) ("This Court has explained many times over many years that, when the meaning of the statute's terms is plain, our job is at an end. The people are entitled to rely on the law as written, without fearing that courts might disregard its plain terms based on some extratextual consideration."). Furthermore, "when Congress enacts a statute that uses different language from a prior statute, [this Court] normally presume[s] that Congress did so to convey a different meaning." *See Manning,* 578 U.S. at 398 (Thomas, J., concurring in judgment) (citing *Crawford v. Burke*, 195 U.S. 176, 190 (1904)); *see also Stanley v. City of Sanford, Fla.*, 145 S. Ct. 2058, 2064 (2025) ("That Congress used different language in these two provisions strongly suggests that it meant for them to work differently.").

Adopting the straightforward test urged by Justices Thomas and Sotomayor would comport with these

traditional canons of statutory interpretation. Section 27 confers "exclusive jurisdiction" over "all suits in equity and actions at law ***brought to enforce*** any liability or duty created by [the Exchange Act]." 15 U.S.C. § 78aa(a) (emphasis added). The plain language is unambiguous and clearly should extend to cases, like this one, where a state-law claim necessarily depends on proving a violation of the Exchange Act.

In addition, the language in Section 27 is different from the language in Section 1331, which provides that subject matter jurisdiction is vested in federal courts over "all civil actions ***arising under*** the Constitutions, law, or treaties of the United States." 28 U.S.C. § 1331 (emphasis added). While the Court's analysis in *Manning* provides grounds to potentially equate the "brought to enforce" language of Section 27 with the "arising under" language in Section 1331, that conclusion was certainly not required. Indeed, had Congress intended the same "arising under" test of Section 1331 to apply to Section 27 cases, it is not clear why it would have needed to adopt Section 27 in the first place. The "arising under" standard already existed. *See, e.g.*, *S. Kan. Ry. Co. v. Briscoe,* 144 U.S. 133, 135 (1892) (conferring federal subject matter jurisdiction on the basis that "the judicial power extends to all cases, in law and equity, arising under the laws of the United States"). Adopting another statute that imposes the same standard would be superfluous.

Equating Section 27 with Section 1331 also creates tension with precedent, whereby different language used in statutes of a similar kind are presumed to convey different meanings. *See Wis. Cent. Ltd v. United States,* 585 U.S. 274, 279 (2018) (reasoning that, where "Congress

passed both statutes to handle much the same task," the Court "presumes differences in language convey differences in meaning" (citation modified)). Here, both Section 27 and Section 1331 are jurisdictional statutes. They use different language; hence, different tests should be utilized when applying them.

Third, the straightforward test urged by Justices Thomas and Sotomayor would promote uniformity and a more practical, administrable outcome. Assessing whether a complaint alleges claims that necessarily depend on establishing a breach of an Exchange Act requirement is far more administrable than utilizing the *Grable* "arising under" test. That test "involves numerous judgments about matters of degree that are not readily susceptible to bright lines." *Manning*, 578 U.S. at 402 (Thomas, J., concurring in judgment). "The arising-under standard may be many things, but it is not one that consistently 'provides ready answers' to hard jurisdictional questions. The text-based view promises better." *Id.* (citation modified).

Applying the straightforward test will not undercut the authority of state courts to adjudicate cases that are brought to enforce state law simply because they reference or indirectly implicate the Exchange Act (like the claims in *Manning*). On the other hand, the straightforward test will ensure that cases that center on the Exchange Act and necessarily require its application and enforcement (like AST's claim in this case) will not be kept out of federal court. In that regard, it will be the prerogative of federal courts to construe and adjudicate rights and liabilities created by the Exchange Act, which is precisely what Congress intended in providing "exclusive jurisdiction" over all Exchange Act claims.

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX

TABLE OF APPENDICES

APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT, FILED JULY 9, 2025

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 23-11985

AST & SCIENCE LLC,

Plaintiff-Counter Defendant-Appellee,

versus

DELCLAUX PARTNERS SA,

Defendant-Counter Claimant-Appellant.

Filed July 9, 2025

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 1:20-cv-23335-DPG

Before ROSENBAUM, NEWSOM, and MARCUS, Circuit Judges.

NEWSOM, Circuit Judge:

This is a breach-of-contract case involving two corporate parties to an agreement under which one engaged the other to help it "find" investment capital. After almost three years of litigation, a decision on

the merits, and an appeal to this Court, a question arose regarding whether diversity jurisdiction existed. Following a voluntary dismissal of the appeal, the district court held that, in fact, the parties were not diverse. Even so, the court ruled—addressing the issue for the first time—that it had *federal-question* jurisdiction over the case and, therefore, that its merits decision should stand.

We disagree. We hold that, because the breach-of-contract claim asserted in this case is a creature of state (rather than federal) law, and because the case doesn't satisfy the multi-factor test established by the Supreme Court in *Grable & Sons Metal Products, Inc. v. Darue Eng'g & Mfg.*, 545 U.S. 308, 125 S. Ct. 2363, 162 L. Ed. 2d 257 (2005), the district court lacked federal-question jurisdiction. Accordingly, we vacate the district court's judgment and remand with the instruction that the case be dismissed for lack of subject-matter jurisdiction.

I

AST & Science LLC is a company "in the business of satellite technology and global satellite-based communications." Br. of Appellee at 3. In the process of seeking investors, AST hired Delclaux Partners SA to be a "finder"—that is, to introduce AST to registered broker-dealers. Delclaux did so by introducing AST to LionTree Advisors LLC, which AST hired to handle its Series A financing.

Two contracts arose out of this arrangement. First, AST and Delclaux signed what we'll call the Finder's Fee

Agreement, which entitled Delclaux to a percentage of any fee payable to broker-dealers it found. Notably here, provisions in that agreement required Delclaux to abstain from any action that "would require [it] to be registered as an investment advisor or broker-dealer" and to "maintain all licenses, permits and other authorizations required by applicable laws, rules or regulations in order to perform the services hereunder." Finder's Fee Agreement, at 2, 4, Dkt. No. 70-3. Second, and separately, AST and LionTree executed what we'll call the LionTree Agreement, which established a transaction fee payable to LionTree for its services.

After the Series A financing concluded, AST terminated the LionTree Agreement. Later that year, it commenced its Series B financing with a new broker-dealer. Following the Series B financing, Delclaux informed AST that it thought it was owed fees from four of the transactions in that series because, it said, they triggered certain "tail" provisions of the LionTree Agreement.

II

AST refused to pay and instead sued Delclaux for breaching the Finder's Fee Agreement by acting as an unregistered broker-dealer. Delclaux denied that it had violated the Finder's Fee Agreement and counterclaimed for fees related to the four Series B transactions. The parties cross-moved for summary judgment on AST's complaint and Delclaux's counterclaim. Adopting a magistrate judge's report and recommendation, the district

court denied summary judgment on AST's complaint and granted it to AST on Delclaux's counterclaim.

Delclaux appealed. We issued jurisdictional questions asking both (1) whether the district court's order was final given the pendency of AST's claim against Delclaux and (2) whether AST's complaint properly alleged diversity jurisdiction. In response, Delclaux voluntarily dismissed its appeal, presumably because of the absence of finality. The parties then settled AST's claim against Delclaux, leaving only Delclaux's counterclaim remaining.

Back before the district court, and now realizing that diversity jurisdiction might not exist, Delclaux moved under Federal Rule of Civil Procedure 60(b)(4) for relief from final judgment and dismissal for lack of subject-matter jurisdiction. The district court denied the motion, holding that while it didn't have diversity jurisdiction, it *did* have federal-question jurisdiction.

In this second appeal, Delclaux challenges both the district court's holding that it had subject-matter jurisdiction and its grant of summary judgment for AST on Delclaux's counterclaim.[1]

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1. "We review de novo . . . a district court's ruling upon a Rule 60(b)(4) motion to set aside a judgment as void, because the question of the validity of a judgment is a legal one." *Burke v. Smith*, 252 F.3d 1260, 1263 (11th Cir. 2001) (citation modified). Even if Delclaux hadn't filed a Rule 60(b)(4) motion, we "are obligated to inquire into subject-matter jurisdiction *sua sponte* whenever it may be lacking." *Williams v. Chatman*, 510 F.3d 1290, 1293 (11th Cir. 2007) (per curiam) (citation modified). That review is also de novo. *Id.*

III

"Generally, a judgment is void under Rule 60(b)(4) if the court that rendered it lacked jurisdiction of the subject matter. . . ." *Burke v. Smith*, 252 F.3d 1260, 1263 (11th Cir. 2001) (citation modified). "In a given case, a federal district court must have at least one of three types of subject matter jurisdiction: (1) jurisdiction under a specific statutory grant; (2) federal question jurisdiction pursuant to 28 U.S.C. § 1331; or (3) diversity jurisdiction pursuant to 28 U.S.C. § 1332(a)." *Baltin v. Alaron Trading Corp.*, 128 F.3d 1466, 1469 (11th Cir. 1997).

AST's complaint asserted both diversity jurisdiction and federal-question jurisdiction. On remand from the dismissal of Delclaux's initial appeal, the district court held "that it d[id] not have diversity jurisdiction in this case," Order Den. Mot. for Relief from Final J., at 9, Dkt. No. 162, and AST doesn't challenge that determination before us.[2]

The district court held, though—addressing the issue for the first time—that it had *federal-question*

2. Rightly so. "Alienage diversity, like general diversity under 28 U.S.C. § 1332(a)(1), must be complete; an alien on both sides of a dispute will defeat jurisdiction." *Caron v. NCL (Bah.), Ltd.*, 910 F.3d 1359, 1364 (11th Cir. 2018). AST is an LLC, which "like a partnership, is a citizen of any state of which a member of the company is a citizen." *Mallory & Evans Contractors & Eng'rs, LLC v. Tuskegee Univ.*, 663 F.3d 1304, 1305 (11th Cir. 2011) (per curiam) (citation modified). AST has seven members who are aliens, and Delclaux is a Spanish corporation (and therefore a citizen of Spain), so there is no complete diversity here.

jurisdiction. In particular, the court concluded that AST's state-law breach-of-contract claim required the resolution of a constituent federal issue—namely, whether Delclaux operated as an unregistered broker-dealer in violation of § 15(a)(1) of the Securities Exchange Act of 1934, 15 U.S.C. § 78o(a)(1). Having found jurisdiction, the district court left in place its decision rejecting Delclaux's counterclaim on the merits.

For reasons we will explain, we disagree with the district court's jurisdictional determination.

A

Pursuant to 28 U.S.C. § 1331, federal "district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States." According to Supreme Court precedent, a case can "aris[e] under" federal law in either of two ways. First, and most obviously, "a case arises under federal law when federal law creates the cause of action asserted." *Gunn v. Minton*, 568 U.S. 251, 257, 133 S. Ct. 1059, 185 L. Ed. 2d 72 (2013). This conventional path to federal-question jurisdiction isn't available here because AST's complaint—to which we must look in ascertaining arising-under jurisdiction, *see Kemp v. IBM Corp.*, 109 F.3d 708, 712 (11th Cir. 1997)—is founded exclusively on the Finder's Fee Agreement, which is governed by state law. Second, even "where a claim finds its origins in state rather than federal law," the Supreme Court has "identified a 'special and small category' of cases in which arising under jurisdiction still lies." *Gunn*, 568 U.S. at

258 (quoting *Empire Healthchoice Assurance, Inc. v. McVeigh*, 547 U.S. 677, 699, 126 S. Ct. 2121, 165 L. Ed. 2d 131 (2006)). This "slim category," *Empire*, 547 U.S. at 701, is circumscribed by a four-factor test outlined in *Grable & Sons Metal Products, Inc. v. Darue Eng'g & Mfg.*, 545 U.S. 308, 125 S. Ct. 2363, 162 L. Ed. 2d 257 (2005). The path described in *Grable* is successfully trod very rarely; in fact, since 1908, when the Supreme Court articulated the "well-pleaded complaint" rule in *Louisville & Nashville Railroad Co. v. Mottley*, 211 U.S. 149, 29 S. Ct. 42, 53 L. Ed. 126 (1908), the Court "has upheld § 1331 jurisdiction over claims lacking a federal cause of action in only four contexts." William Baude et al., *Hart and Wechsler's The Federal Courts and The Federal System* 1050 (8th ed. 2025); *see Grable*, 545 U.S. at 314-16; *City of Chicago v. Int'l Coll. of Surgeons*, 522 U.S. 156, 164, 118 S. Ct. 523, 139 L. Ed. 2d 525 (1997); *Smith v. Kansas City Title & Tr. Co.*, 255 U.S. 180, 201, 41 S. Ct. 243, 65 L. Ed. 577 (1921); *Hopkins v. Walker*, 244 U.S. 486, 490-91, 37 S. Ct. 711, 61 L. Ed. 1270 (1917).

Under *Grable*, "federal jurisdiction over a state law claim will lie if a federal issue is: (1) necessarily raised, (2) actually disputed, (3) substantial, and (4) capable of resolution in federal court without disrupting the federal-state balance approved by Congress." *Gunn*, 568 U.S. at 258 (citing *Grable*, 545 U.S. at 313-14). For federal-question jurisdiction to exist, "all four of these requirements" must be satisfied. *Id.* [3]

3. AST contends that jurisdiction also lies directly under 15 U.S.C. § 78aa(a), which, as described by the Supreme Court, "provides federal district courts with exclusive jurisdiction 'of all

Because we find the "substantial[ity]" element missing, we needn't reach the remaining factors.

B

The federal issue underlying AST's state-law breach-of-contract claim—again, whether Delclaux operated as an unregistered broker-dealer in violation of the Securities Exchange Act—is not "substantial." To be clear, the substantiality requirement isn't about whether "the federal issue [is] significant to the particular parties in the immediate suit"—as it often is—but is "instead [about] the importance of the issue to the federal system as a whole." *Gunn*, 568 U.S. at 260. We have recognized three factors that assist in deciding substantiality:

> First, a pure question of law is more likely to be a substantial federal question. Second, a question that will control many other cases is

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suits in equity and actions at law brought to enforce any liability or duty created by [the Exchange Act] or the rules and regulations thereunder.'" *Merrill Lynch, Pierce, Fenner & Smith Inc. v. Manning*, 578 U.S. 374, 380, 136 S. Ct. 1562, 194 L. Ed. 2d 671 (2016) (quoting 15 U.S.C. § 78aa(a)). Citing a concurring opinion in *Merrill Lynch*, AST asserts that § 78aa(a) establishes a simpler test than *Grable*'s—namely, whether "AST's contract claim necessarily depends on a breach of a requirement created by the Exchange Act." Br. of Appellee at 26 (citing *Merrill Lynch*, 578 U.S. at 394 (Thomas, J., concurring)). That is incorrect. In fact, the *majority* opinion in *Merrill Lynch* says exactly the opposite—that § 78aa(a)'s "jurisdictional test matches the one we have formulated for § 1331." *Merrill Lynch*, 578 U.S. at 384. So regardless of whether we apply § 1331 or § 78aa(a), the analysis is the same.

> more likely to be a substantial federal question. Third, a question that the government has a strong interest in litigating in a federal forum is more likely to be a substantial federal question.

MDS (Can.) Inc. v. Rad Source Techs., Inc., 720 F.3d 833, 842 (11th Cir. 2013) (per curiam) (citations omitted). All three factors point away from substantiality in this case, as do assorted other considerations that the Supreme Court mentioned in *Gunn*.

1

First, the federal question arguably at issue here isn't purely legal. Contrast, for instance, the sorts of federal issues the Supreme Court has deemed substantial. *Smith* is paradigmatic; as the Court later explained it, *Smith* involved a substantial federal issue "because the 'decision depend[ed] upon the determination' of 'the constitutional validity of an act of Congress which is directly drawn in question.'" *Gunn*, 568 U.S. at 261 (quoting *Smith*, 255 U.S. at 201). Similarly, the Court explained in *Empire* that "*Grable* presented a nearly pure issue of law" because "[t]he dispute there centered on the action of a federal agency (IRS) and its compatibility with a federal statute." 547 U.S. at 700 (citation modified). In contrast, the *Empire* Court held that there was no federal-question jurisdiction over the "reimbursement claim" before it because the federal issue—which involved alleged "overcharges or duplicative charges by care providers"—was "fact-bound and situation-specific." *Id.* at 700-01.

We agree with AST and the district court that whether Delclaux falls into the "finder" exception to the federal securities laws' broker-dealer rules is "complex" and "evolving," Br. of Appellee at 21-22, and that it "would require an analysis and interpretation of a body of federal case law," Order Den. Mot. for Relief at 8. But those considerations cut against—not in favor of—substantiality because they tend to render the finder-status question "heavily fact-bound." *MDS*, 720 F.3d at 842. We aren't aware of—and haven't been pointed to—any binding precedent distinguishing between finders and broker-dealers, but the analysis employed by various district courts and in the SEC's "no-action" letters "is highly dependent upon the facts of [the] particular arrangement." *SEC v. Kramer*, 778 F. Supp. 2d 1320, 1336-37 & n.51 (M.D. Fla. 2011) (collecting cases); *see also Cornhusker Energy Lexington, LLC v. Prospect St. Ventures*, No. 8:04CV586, 2006 U.S. Dist. LEXIS 68959, 2006 WL 2620985, at *6 (D. Neb. Sept. 12, 2006) (describing activities that could transform a finder into a broker-dealer, such as "analyzing the financial needs of an issuer, recommending or designing financing methods, involvement in negotiations, discussion of details of securities transactions, making investment recommendations, and prior involvement in the sale of securities"). That sort of context-intensive inquiry is "poles apart," *Empire*, 547 U.S. at 700, from the more straightforward analyses in *Smith* and *Grable*, which, again, turned respectively on the constitutionality of a federal statute and the statutory validity of a federal agency's action.

2

Second, and relatedly, our resolution of the finder-broker issue wouldn't have any meaningful precedential effect. As in *MDS*, "[b]ecause this question . . . is heavily fact-bound, our resolution of [it] is unlikely to control any future cases." 720 F.3d at 842. And "the highly specialized nature" of securities claims regarding an entity's finder status strongly "suggest[s] that the resolution of this issue is unlikely to impact any future constructions of claims." *Id.*

3

Third, the government has no strong interest in having cases like this litigated and adjudicated in a federal forum. Contrast *Grable*, where a "plaintiff filed a state law quiet title action against [a] third party that had purchased [] property" from the IRS that the agency had seized to satisfy a tax delinquency. *Gunn*, 568 U.S. at 260 (citing *Grable*, 545 U.S. at 310-11). There, the Supreme Court concluded that the IRS's "direct interest in the availability of a federal forum to vindicate its own administrative action" warranted federal jurisdiction. *Grable*, 545 U.S. at 314-15. Here, the government isn't a party, nor is there any governmental action upstream of the suit. To the contrary, the SEC took no action against Delclaux, and this case arose solely because AST accused Delclaux of violating a private agreement.

Finally, several other considerations emphasized in *Gunn* likewise counsel against a finding of substantiality. Allowing a state court to decide cases like this won't undermine the development of a uniform body of securities law. "[A]ctual" securities cases will continue to be decided in federal court because, as was true of the patent-law question at issue in *Gunn*, Congress has "vest[ed] exclusive jurisdiction over actual [securities] cases" in federal courts. 568 U.S. at 261-62; *see* 15 U.S.C. § 78aa(a). In resolving those cases, "the federal courts are of course not bound by state court case-within-a-case [securities] rulings." *Gunn*, 568 U.S. at 262. Relatedly, "more novel questions of [securities] law . . . will at some point be decided by a federal court in the context of an actual [securities] case." *Id.* And finally, "the possibility that a state court will incorrectly resolve a state claim is not, by itself, enough to trigger the federal courts' exclusive [] jurisdiction, even if the potential error finds its root in a misunderstanding of [securities] law." *Id.* at 263.[4]

4. The Second Circuit cases cited by AST don't advance its cause. Both involved registered broker-dealers suing national stock exchanges for failing to operate their markets in compliance with federal securities law. *See NASDAQ OMX Group, Inc. v. UBS Sec., LLC*, 770 F.3d 1010, 1018-31 (2d Cir. 2014); *D'Alessio v. New York Stock Exch., Inc.*, 258 F.3d 93, 99-104 (2d Cir. 2001). Those decisions are not binding on us, and they are, in any event, a far cry from the situation we confront, which involves a single contract dispute between two private parties, the resolution of which won't directly affect anyone else.

IV

For the foregoing reasons, we hold that the district court lacked federal-question jurisdiction over this case. Accordingly, we **VACATE** the district court's judgment and **REMAND** with the instruction that the case be dismissed for want of subject-matter jurisdiction.

APPENDIX B — ORDER OF THE UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF FLORIDA, ENTERED FEBRUARY 23, 2024

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 1:20-cv-23335-GAYLES

AST & SCIENCE LLC,

Plaintiff/Counterclaim Defendant,

v.

DELCLAUX PARTNERS SA,

Defendant/Counterclaim Plaintiff.

Entered February 23, 2024

ORDER

THIS CAUSE comes before the Court on Defendant/Counter-Plaintiff Delclaux Partners SA's ("Delclaux") Motion for Relief from Final Judgment and Dismissal for Lack Subject Matter Jurisdiction (the "Motion"). [ECF No. 153]. The Court has reviewed the Motion, the record, and is otherwise fully advised. For the reasons that follow, the Motion is DENIED.

FACTUAL AND PROCEDURAL BACKGROUND

On August 11, 2020, Plaintiff AST & Science LLC ("AST") filed this breach of contract action against

Delclaux alleging violations of the parties' finder's fee agreement (the "Finder's Fee Agreement"). [ECF No. 1]. Though breach of contract is typically a state law claim, AST alleges that the Court has both diversity and federal question jurisdiction. *Id.* ¶¶ 11–12. AST argues that in rendering services under the Finder's Fee Agreement, Delclaux exceeded the scope of a finder's role and impermissibly acted as an unregistered broker-dealer, thereby contravening both the Finder's Fee Agreement and federal securities law. *Id.* ¶¶ 23, 39–43. Specifically, AST contends that Delclaux provided certain services without registering with the Securities and Exchange Commission ("SEC") and becoming a member of the Financial Industry Regulatory Authority ("FINRA") and thus breached Sections 1 and 6 of the Finder's Fee Agreement, which provide, in pertinent part, as follows:

> 1. Role of Finder. . . . In no event shall [Delclaux] perform any act in connection with [the Finder's Fee Agreement], which (i) would require [Delclaux] to be registered as an investment advisor or broker-dealer or (ii) is in violation of any state or federal securities laws in the United States of America or any other relevant securities laws in other jurisdictions.
>
> . . .
>
> 6. Representations of Finder. [Delclaux] covenants, represents and warrants to AST that [Delclaux] has and will maintain all licenses, permits and other authorizations required by

> applicable laws, rules or regulations in order to perform the services hereunder, and [Delclaux] will conduct its activities in connection with its engagement hereunder in compliance with all applicable securities and other laws, rules and regulations. . . .

[ECF No. 1-1 at 2, 4]; *see also* [ECF No. 1 ¶¶ 23, 25]. AST contends that, because federal securities laws are implicated in the Finder's Fee Agreement, the Court has federal question jurisdiction.

On December 29, 2020, Delclaux filed its Amended Answer and Affirmative Defenses and Counterclaims (the "Amended Counterclaim"). [ECF No. 17]. In its Amended Counterclaim, Delclaux alleges that it lawfully performed under the Finder's Fee Agreement by introducing AST to an investment bank, LionTree, and that, pursuant to Section 2 of the Finder's Fee Agreement, AST was obligated to pay Delclaux fees "if [AST] raised money from certain entities within a one year tail period of AST's termination of its agreement with LionTree" (the "LionTree Agreement"). *Id.* ¶¶ 63–65. Delclaux alleges that, although AST did raise funds during the LionTree Agreement's tail periods, AST "failed and refused to pay to Delclaux the fees due to be paid to Delclaux", and thus breached the Finder's Fee Agreement. *Id.* ¶¶ 66, 151–55.

AST moved to dismiss Delclaux's Amended Counterclaim, which the Court denied, [ECF No. 49], leading AST to file its Answer and Affirmative Defenses to the Amended Counterclaim, [ECF No. 50]. Thereafter,

the parties filed cross-motions for summary judgment on each other's breach of contract claims. [ECF Nos. 70, 74, 92]. On December 12, 2022, Chief Magistrate Judge Edwin G. Torres issued a Report and Recommendation (the "Report") regarding the cross-motions for summary judgment. [ECF No. 114]. In the Report, Judge Torres recommended that the Court deny Delclaux's Motion for Summary Judgment because there were disputed issues of material facts regarding whether and to what extent Delclaux may have exceeded the terms of the Finder's Fee Agreement by acting as an unregistered broker-dealer in its communications with prospective investors." *Id.* at 7–9.

Conversely, the Report recommended that the Court grant AST's Motion for Summary Judgment on Delclaux's Amended Counterclaim. *Id.* at 9–11. Judge Torres found that the language of Section 2(b) of the Finder's Fee Agreement was clear and unambiguous in that "[t]he predicate for Delclaux's recovery of fees under the Finder's Fee Agreement is an amount first becoming due or payable to LionTree under the LionTree Agreement." *Id.* at 10. Therefore, because the record was devoid of any evidence that fees were due and payable to Lion Tree, AST was entitled to judgement as a matter of law on Delclaux's Amended Counterclaim for fees. *Id.* at 11. The Court affirmed the Report, [ECF No. 136], and entered a separate Final Judgment as to the Amended Counterclaim ("Final Judgment") against Delclaux, [ECF No. 138]. The parties settled AST's claim against Delclaux on April 28, 2023. [ECF No. 148]. Subsequently, the Court dismissed, with prejudice, the remaining claim on May 12, 2023. [ECF No. 152].

Appendix B

On May 31, 2023, Delclaux filed the instant Motion arguing that the Final Judgment is void because the Court lacked subject matter jurisdiction over this action at the time that it was filed. [ECF No. 153]. First, Delclaux asserts that AST failed to properly allege diversity jurisdiction because AST incorrectly treated itself as a corporation and alleged it was a citizen of Delaware with its principal place of business in Texas. *Id.* at 2–3; *see* [ECF No. 1 ¶¶ 11, 15]. Delclaux contends that AST has seven members, some of whom have foreign citizenship. [ECF No. 153 at 4]. Because Delclaux is a citizen of Spain, it argues that there were aliens on both sides of this case, destroying diversity jurisdiction. *Id.* at 6.

Next, Delclaux maintains that AST's breach of contract claim did not involve a substantial issue of federal law. *Id.* at 7–9. Specifically, AST's Complaint alleged four ways in which Delclaux breached the Finder's Fee Agreement: (1) by exceeding the agreed upon scope of its activities; (2) by not obtaining or maintaining all licenses, permits, and other authorizations required by applicable laws, rules, or regulations; (3) by not acting in compliance with all securities and other laws, rules, and regulations applicable to Delclaux's activities; and (4) by refusing to return confidential information obtained from AST. Delclaux maintains that breaches one and four are agnostic to federal law, while breaches two and three at best allege non-compliance with federal law, which is insufficient to confer federal question jurisdiction. *Id.* at 8.

In opposition, AST argues that the Court properly exercised subject matter jurisdiction in three ways. [ECF

No. 157]. First, AST states that the Court had federal question jurisdiction because AST's breach of contract claim was wholly dependent on an alleged violation of federal securities laws, i.e., whether Delclaux exceeded its scope as a finder as defined under federal securities law. *Id.* at 14–20. Next, AST argues that the Court also has jurisdiction under the Securities Exchange Act of 1934 (the "Exchange Act"), 15 U.S.C. § 78aa(a), which grants the Court exclusive jurisdiction over suits in equity and actions at law that are brought to enforce a duty created by the Exchange Act. *Id.* at 21–23. Finally, AST contends that the Court had an "arguable basis" to exercise diversity jurisdiction. *Id.* at 25–26.

LEGAL STANDARD

The movant seeking relief under Rule 60(b) "must demonstrate a justification so compelling that the [district] court [is] required to vacate its order." *Cano v. Baker*, 435 F.3d 1337, 1342 (11th Cir. 2006) (per curiam) (first alteration in original) (quoting *Cavaliere v. Allstate Ins. Co.*, 996 F.2d 1111, 1115 (11th Cir. 1993)). "By its very nature, the rule seeks to strike a delicate balance between two countervailing impulses: the desire to preserve the finality of judgments and the incessant command of the court's conscience that justice be done in light of all the facts." *Havana Docks Corp. v. Norwegian Cruise Line Holdings, Ltd.*, 454 F. Supp. 3d 1259, 1268 (S.D. Fla. 2020) (citation and internal quotation marks omitted). Under Rule 60(b)(4), a court may relieve a party from final judgment when "the judgment is void[.]" Fed. R. Civ. P. 60(b)(4) (alteration added). "[A] judgment is void

under Rule 60(b)(4) if the court that rendered it lacked jurisdiction of the subject matter, or of the parties, or if it acted in a manner inconsistent with due process of law." *Burke v. Smith*, 252 F.3d 1260, 1263 (11th Cir. 2001). [W]hen it reviews a motion for relief from judgment under Rule 60(b)(4), a district court has no discretion: the judgment is either void or it is not." *Id.* at 1267. "If the judgment is void, the only relief that may be afforded under Rule 60(b)(4) is to set aside the judgment." *Id.*

"Federal courts are courts of limited jurisdiction. They possess only that power authorized by Constitution and statute . . . ." *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377, 114 S. Ct. 1673, 128 L. Ed. 2d 391 (1994) (citations omitted). "A district court must have jurisdiction under at least one of the three types of subject-matter jurisdiction: (1) jurisdiction pursuant to a specific statutory grant; (2) federal question jurisdiction pursuant to 28 U.S.C. § 1331; or (3) diversity jurisdiction pursuant to 28 U.S.C. § 1332(a)." *Butler v. Morgan*, 562 F. App'x 832, 834 (11th Cir. 2014) (per curiam) (citation omitted). "It is to be presumed that a cause lies outside this limited jurisdiction . . . and the burden of establishing the contrary rests upon the party asserting jurisdiction . . . ." *Kokkonen*, 511 U.S. at 377 (citations omitted).

DISCUSSION

The Court finds that it has federal question jurisdiction. "Title 28 U.S.C. § 1331 vests in federal district courts 'original jurisdiction' over 'all civil actions arising under the Constitution, laws, or treaties of the United States.

A case 'aris[es] under' federal law within the meaning of § 1331 [] if 'a well-pleaded complaint establishes either that federal law creates the cause of action or that the plaintiff's right to relief necessarily depends on resolution of a substantial question of federal law.'" *Empire Healthchoice Assur., Inc. v. McVeigh*, 547 U.S. 677, 689–90, 126 S. Ct. 2121, 165 L. Ed. 2d 131 (2006) (internal quotations and citations omitted). Both parties agree that AST's Complaint for a breach of contract claim is a state-law cause of action. Thus, for there to be proper federal question jurisdiction over AST's state-law claim, a federal issue must be "(1) necessarily raised, (2) actually disputed, (3) substantial, and (4) capable of resolution in federal court without disrupting the federal-state balance approved by Congress." *Gunn v. Minton*, 568 U.S. 251, 258, 133 S. Ct. 1059, 185 L. Ed. 2d 72 (2013) (citing *Grable & Sons Metal Prods. Inc. v. Darue Eng'g & Mfg.*, 545 U.S. 308, 314, 125 S. Ct. 2363, 162 L. Ed. 2d 257 (2005)); *Handy Land & Timber, LLLP v. Transcon. Gas Pipe Line Co., LLC*, 762 F. App'x 810, 812 (11th Cir. 2019).

Here, it is clear from both the allegations in the Complaint and the Court's prior rulings that this action involved a substantial question of federal law and that the Court had federal question jurisdiction. First, the Complaint alleges that this Court had jurisdiction not only under 28 U.S.C. § 1332, but also 28 U.S.C. § 1331, because this action "necessitates the resolution of disputed and substantial federal issues under United States Securities Laws." [ECF No. 1 ¶ 12]. Delclaux argues that AST's breach of contract claim merely references federal law and would stand on its own without the federal law allegations,

but the Complaint goes well beyond that. AST alleges that Delclaux acted beyond the scope of a mere finder in violation of the Exchange Act, and it was *those actions* that breached the Finder's Fee Agreement. *Id.* ¶¶ 4, 52. The Finder's Fee Agreement specifically prohibited Delclaux from "perform[ing] any act in connection with [the Finder's Fee] Agreement, which (i) would require Finder to be registered as an investment advisor or broker-dealer or (ii) is ***in violation of*** any state or ***federal securities laws*** in the United States of America or any other relevant securities laws in other jurisdictions." [ECF No. 1-1 at 2] (emphasis added). Therefore, a determination of whether Delclaux's actions required it to register as a securities broker is central to AST's claims. As AST notes, this is illustrated by the Court's prior Order ruling that AST's expert's opinion that Delclaux "was required to register as a broker with the SEC" went to "heart of AST's claim" and "effectively tells the jury what result to reach." [ECF No. 110 at 6]. There is no question that a federal issue was necessarily raised in this action.

Next, it is clear that Delclaux disputed that it acted beyond the scope of a finder and whether its actions warranted registration with the SEC. [ECF No. 70 at 15] (arguing that "Delclaux at all times worked only as a finder who was not required to be registered under the United States Securities Laws"); *id.* (citing federal case law and arguing that a finder is entitled to a fee "as long as the finder does not provide investment banking services and is strictly a finder"). Because of this dispute, the second prong is met.

Appendix B

A resolution of this dispute requires the Court to first understand what a finder is. Although a finder's exception exists to the requirements of registration, the SEC does not formally define "finder". Instead, informal "no-action" letters[1] from the Commission and federal case law provide some guidance on its meaning. *S.E.C. v. Kramer*, 778 F. Supp. 2d 1320, 1336 (M.D. Fla. 2011) ("[A] series of cases identified a limited, so-called 'finder's exception' that permits a person or entity to perform a narrow scope of activities without triggering the broker/dealer registration requirements. . . . Even if the 'finder' receives a fee in proportion to the amount of the sale—i.e., a percentage of the total payment rather than a flat fee—the Commission (in a series of "no-action" letters) has been willing to find that there was no need for registration . . . .") (internal quotations and citation omitted). As such, whether Delclaux violated federal securities law would not be a simple binary assessment as Delclaux suggests in its Motion. Rather, it would require an analysis and interpretation of a body of federal case law. Furthermore, the Court's determination of whether Delclaux acted beyond the scope of a finder would add to the development and clarification of federal law around the finder's exception. Thus, the substantiality requirement under the third prong is met.

Finally, the analysis and interpretation of federal securities law and whether Delclaux was required to

1. A "no-action" letter is a method of seeking advice from the Commission's staff on compliance with the securities laws. A "no-action" letter is informal and possesses no binding legal authority. *See* https://www.sec.gov/regulation/staff-interpretations/noaction-letters.

register with the SEC and become a FINRA member are areas of strong federal interest. 15 U.S.C.A. § 78aa ("The district courts of the United States . . . shall have ***exclusive jurisdiction*** of violations of [the Exchange Act] or the rules and regulations thereunder, and of all suits in equity and actions at law brought to enforce any liability or duty created by [the Exchange Act] or the rules and regulations thereunder.") (emphasis added); *Friedlander v. Troutman, Sanders, Lockerman & Ashmore*, 788 F.2d 1500, 1504 (11th Cir. 1986) ("The comprehensive scheme of statutes and regulations designed to police the securities industry is indicative of a strong federal interest."); *see also D'Alessio v. New York Stock Exch., Inc.*, 258 F.3d 93, 100 (2d Cir. 2001). Title 15 U.S.C.A. § 78aa makes clear that Congress intended for federal courts to have jurisdiction over these precise types of issues. As such, the Court's exercise of jurisdiction over this action would not upset the balance of power between federal and state courts. AST's claim meets the fourth prong. Thus, the Court finds that it had federal question jurisdiction under 28 U.S.C. § 1331 at the time this action was filed.

Lastly, the Court also finds that federal question jurisdiction exists under the Exchange Act.[2] *Merrill Lynch, Pierce, Fenner & Smith Inc. v. Manning*, 578 U.S. 374, 383, 136 S. Ct. 1562, 194 L. Ed. 2d 671 (2016) ("If a

2. The Eleventh Circuit applies "the same test to determine whether federal courts have exclusive jurisdiction over matters arising under the Exchange Act as we do to determine whether the district courts have original jurisdiction over suits under the general federal-question statute, 28 U.S.C. § 1331. *Turbeville v. Fin. Indus. Regul. Auth.*, 874 F.3d 1268, 1274 (11th Cir. 2017)

state-law action necessarily depends on a showing that the defendant breached the Exchange Act, then that suit could also fall within § [78aa]'s compass."). As stated above, it is clear that Delclaux's alleged violation of federal securities law is central to AST's breach of contract claim. Given federal courts' exclusive jurisdiction over the enforcement of duties outlined in the Exchange Act, this action would fall under this Court's jurisdiction.

For the sake of completeness, the Court also finds that it does not have diversity jurisdiction in this case. AST asks the Court to conclude that there was an "arguable basis" to exercise diversity jurisdiction and, in doing so, relies on *B.T. by and through Thompson v. Target Corp.*, No. 17-Civ-60871, 2020 U.S. Dist. LEXIS 169813, 2020 WL 5542066, at *1 (S.D. Fla. Sep. 16, 2020). In *Target Corp.*, the Court found that it had an arguable basis for diversity jurisdiction because the plaintiff could have easily recovered much more than $75,000 if he had prevailed on his claim. 2020 WL 5542066 at *7. It is true that "[f]ederal courts considering Rule 60(b)(4) motions that assert a judgment is void because of jurisdictional defect generally have reserved relief for the exceptional case in which the court that rendered judgment lacked even an 'arguable basis' for jurisdiction." *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 271, 130 S. Ct. 1367, 176 L. Ed. 2d 158 (2010). However, *Targett Corp.* is inapplicable here because Delclaux challenges diversity jurisdiction on the basis of the parties' alienage citizenship with facts that are a lot more certain than the potential amount of damages discussed in *Target Corp.*

"Alienage diversity, like general diversity under 28 U.S.C. § 1332(a)(1), must be complete; an alien on both sides of a dispute will defeat [diversity] jurisdiction." *See Caron v. NCL (Bah.), Ltd.*, 910 F.3d 1359, 1364 (11th Cir. 2018). Here, Delclaux argues—and AST admits—that AST has seven members who are citizens of foreign states, including the Dominican Republic, England, and Singapore. [ECF No. 153 at 4]; [ECF No. 157 at 26]. As a Spanish corporation, Delclaux is a citizen of Spain. [ECF No. 153 at 4]; [ECF No. 1 ¶ 16]. AST attempts to argue that Delclaux's corporate structure is unclear and that it possibly operates as an LLC with members whose citizenship could impact the Court's analysis of jurisdiction. However, AST fails to cite any authority supporting a finding that Spanish corporations are substantively different from United States corporations.[3] The law is clear that an alien on both sides of the dispute divests the Court of diversity jurisdiction. Therefore, with no evidence to the contrary, the Court finds no arguable basis that it has diversity jurisdiction in this case.

CONCLUSION

Accordingly, it is **ORDERED AND ADJUDGED** that Defendant/Counter-Plaintiff Delclaux Partners SA's Motion for Relief from Final Judgment and Dismissal for Lack Subject Matter Jurisdiction, [ECF No. 153], is **DENIED**.

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3. The Seventh Circuit has found a Spanish corporation to be similar in all major respects as to a United States corporation. *Twohy v. First Nat. Bank of Chicago*, 758 F.2d 1185, 1194 (7th Cir. 1985).

DONE AND ORDERED in Chambers at Miami, Florida, this **Friday, February 23, 2024**.

/s/ Darrin P. Gayles
DARRIN P. GAYLES
UNITED STATES DISTRICT JUDGE