

No.

In the Supreme Court of the United States

ONGKARUCK SRIPETCH, PETITIONER

v.

U.S. SECURITIES AND EXCHANGE COMMISSION

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

This case presents a clear and acknowledged conflict over an exceptionally important question regarding the SEC’s civil-enforcement power.

In *Liu v. SEC*, 591 U.S. 71 (2020), this Court held the SEC may seek equitable “disgorgement” in civil-enforcement actions if an award “does not exceed a wrongdoer’s net profits” and “is awarded for *victims*.” 591 U.S. at 74-75 (emphasis added).

In the proceedings below, the Ninth Circuit held that investors can be “victims” for disgorgement purposes despite not suffering pecuniary harm. In so holding, the Ninth Circuit recognized a direct “split” on this question, “reject[ed] the reasoning of the Second Circuit,” and “joined the First Circuit in holding that a finding of pecuniary harm is not required.” This statutory holding was the sole basis of the Ninth Circuit’s decision, and it leaves the SEC’s enforcement power in disarray: disgorgement requests are ubiquitous in SEC actions, and there are now conflicting rules in the two main circuits (the Second and Ninth) where enforcement actions are most prominent. There are millions (if not billions) of dollars at stake.

The question presented is:

Whether the SEC may seek equitable disgorgement under 15 U.S.C. 78u(d)(5) and (d)(7) without showing investors suffered pecuniary harm.

II

PARTIES TO THE PROCEEDING BELOW

Petitioner is Ongkaruck Sripetch, the appellant below and defendant in the district court.

Respondent is the U.S. Securities and Exchange Commission, the appellee below and plaintiff in the district court.*

RELATED PROCEEDINGS

United States District Court (S.D. Cal.):

Securities and Exchange Commission v. Ongkaruck Sripetch, et al., No. 3:20-cv-01864 (Apr. 17, 2024)

United States Court of Appeals (9th Cir.):

U.S. Securities and Exchange Commission v. Ongkaruck Sripetch, et al., No. 24-3830 (Sept. 3, 2025)

* The following parties were defendants in the district court but did not participate in proceedings in the court of appeals: Amanda Flores, Brehnen Knight, Andrew McAlpine, Ashmit Patel, Michael Wexler, Dominic Williams, Adtron Inc. (also known as Stockpalooza.com), ATG Inc., DOIT, Ltd., Doji Capital, Inc., King Mutual Solutions Inc., Optimus Prime Financial Inc., Orca Bridge, Redline International, and UAIM Corporation.

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PETITION FOR A WRIT OF CERTIORARI

Ongkaruck Sripetch respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals (App., *infra*, 1a-18a) is available at 2025 WL 2525848. The order and opinion of the district court (App., *infra*, 19a-35a) is unreported but available at 2024 WL 1546917.

JURISDICTION

The judgment of the court of appeals was entered on September 3, 2025. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATUTORY PROVISIONS INVOLVED

Section 78u(d)(5) of Title 15 of the United States Code provides:

EQUITABLE RELIEF.—In any action or proceeding brought or instituted by the Commission under any provision of the securities laws, the Commission may seek, and any Federal court may grant, any equitable relief that may be appropriate or necessary for the benefit of investors.

Section 78u(d)(7) of Title 15 of the United States Code provides:

DISGORGEMENT.—In any action or proceeding brought by the Commission under any provision of the securities laws, the Commission may seek, and any Federal court may order, disgorgement.

INTRODUCTION

This case presents a square, acknowledged conflict over an important and recurring question regarding the SEC’s remedial authority: whether the SEC may seek equitable disgorgement in civil-enforcement suits without showing investors suffered pecuniary harm.

In the proceedings below, the Ninth Circuit held that “pecuniary harm” is not a statutory “precondition” to disgorgement. App., *infra*, 17a. In resolving that question, the Ninth Circuit recognized its “sister circuits [were] split”: the First Circuit “h[olds] that no showing of pecuniary harm is required,” whereas the Second Circuit “reached the opposite conclusion.” *Id.* at 2a (contrasting *SEC v. Navellier & Assocs., Inc.*, 108 F.4th 19 (1st Cir. 2024), with *SEC v. Govil*, 86 F.4th 89 (2d Cir. 2023)); see also *id.* at 7a-8a (“the Second and First Circuits have disagreed about whether disgorgement under § 78u(d)(5) and (d)(7) requires a finding of pecuniary harm”). The

Ninth Circuit ultimately “join[ed]” the First Circuit, “reject[ed]” the Second Circuit’s rationale as “[un]persua[sive],” and upheld over \$2.2 million in disgorgement without requiring pecuniary harm. *Id.* at 9a-11a, 17a-18a. That statutory holding was the sole basis of the decision below (*id.* at 10a); it is a pure question of law, and there is no conceivable obstacle to resolving it here.

This case easily satisfies the traditional criteria for granting review. The 2-1 conflict is obvious, acknowledged, and entrenched. The split features the two leading circuits for securities cases (the Second and the Ninth) adopting opposite approaches. Further percolation is pointless: the arguments have been exhaustively developed on each side, and there is no realistic prospect that either faction will back down. The Ninth Circuit considered, and rejected, every aspect of the Second Circuit’s decision (App., *infra*, 10a-17a), and the Second Circuit declared itself bound by *Liu*—while rejecting the irreducible core of the Ninth Circuit’s rationale (*Govil*, 86 F.4th at 102-106). Future circuits will be simply left to pick sides—while litigants are left wondering whether disgorgement is available in routine SEC enforcement actions.

The stakes nationwide are massive. The SEC treats disgorgement as the centerpiece of its multibillion-dollar enforcement arsenal. See Resp. Br. 10, *Kokesh v. SEC*, No. 16-529 (filed Dec. 9, 2016) (*Kokesh* Resp.) (so admitting). This Court has granted review on the subject twice in recent years, reflecting its obvious importance. See *Liu v. SEC*, 591 U.S. 71 (2020); *Kokesh v. SEC*, 581 U.S. 455 (2017). And this critical issue arises all the time—indeed, it is so pervasive it has reached three courts of appeals in the past two years alone.

Yet as it now stands, the SEC’s remedial authority varies depending on whether an enforcement action arises in California or New York. That disparity is untenable,

and the stark division will not dissipate on its own. This Court alone can resolve the confusion and confirm which side is reading Section 78u(d) and *Liu* correctly.

At bottom, the Ninth Circuit’s decision overrides critical limits on the SEC’s enforcement power, and it permits an unbounded form of disgorgement rejected by this Court and unmoored from its traditional common-law roots. There is an urgent need for guidance. Because this case presents an ideal vehicle for resolving this important question of federal law, the petition should be granted.

STATEMENT

1. a. “Disgorgement” is a term of “relatively recent vintage.” *Liu v. SEC*, 591 U.S. 71, 76 n.1 (2020). It is a modern label for a “profits-based award,” “parallel[ing]” the traditional equitable remedies of “restitution” and “an accounting for profits.” *Id.* at 76 & n.1, 79. While the remedy generally focuses on a defendant’s “ill-gotten gains,” it is confined by important checks: “to avoid transforming an equitable remedy into a punitive sanction, courts restrict[] the remedy to an individual wrongdoer’s net profits to be *awarded for victims*.” *Id.* at 79 (emphasis added). Under that rule, a “wrongdoer” cannot be “punished by ‘pay[ing] more than a *fair compensation* to the *person wronged*.’” *Id.* at 80 (emphases added).

“Over the years,” the SEC has invoked disgorgement in “ways that test the bounds of equity practice.” *Liu*, 591 U.S. at 85. And this Court has found the SEC’s non-traditional variant “constitute[d] a penalty”—as the SEC was imposing disgorgement “for punitive purposes,” was not “standing in the shoes of particular injured parties,” and was seizing disgorgement that was “not compensatory.” *Kokesh v. SEC*, 581 U.S. 455, 461-465 (2017). Although the SEC’s past efforts “exceed[ed] the bounds of traditional

equitable principles,” this Court held the SEC could continue pursuing disgorgement by “conform[ing] future requests for a defendant’s profits to the limits outlined in common-law cases.” *Liu*, 591 U.S. at 85-86.

b. In two provisions relevant here, Congress authorized the SEC to obtain disgorgement in civil-enforcement suits. First, under 15 U.S.C. 78u(d)(5), the SEC may seek “any equitable relief that may be appropriate or necessary for the benefit of investors.” *Liu* confirmed Section 78u(d)(5)’s “equitable relief” includes disgorgement. 591 U.S. at 74. Second, after *Liu*, Congress added 15 U.S.C. 78u(d)(7), which expressly authorizes “disgorgement”—without elaboration. In doing so, Congress nowhere suggested any modification or departure from disgorgement’s traditional common-law limitations.

Although the SEC often fronts disgorgement as a centerpiece of relief (*Kokesh* Resp., *supra*, at 10), Congress granted the SEC a variety of additional tools to sanction and prevent securities violations. In neighboring provisions, for example, the SEC is authorized to obtain severe monetary penalties (15 U.S.C. 78u(d)(3)(A)(i), (B)-(D)), and it may also seek orders barring defendants—possibly forever—from serving as officers or directors of public companies (15 U.S.C. 78u(d)(2), (d)(6)). Accordingly, even where disgorgement is unavailable, the SEC has powerful means to punish wrongdoers.

2. a. The SEC brought this civil-enforcement suit against petitioner and “fourteen other defendants,” charging petitioner with six counts of “securities fraud” and one count of “selling unregistered securities.” App., *infra*, 8a; see also *id.* at 23a-26a (detailing those allegations). Petitioner agreed to a consent judgment on the

merits, but resisted the SEC’s disgorgement request under Sections 78u(d)(5) and (d)(7). *Id.* at 8a-9a, 19a-20a, 22a-23a.¹

As petitioner explained, under the Second Circuit’s *Govil* decision, “disgorgement under § 78u(d) ‘requires a finding that victims suffered pecuniary harm,’” and “the Commission failed to make this showing.” App., *infra*, 9a; see also *id.* at 28a. In response, the SEC “urged the district court to reject *Govil*” and otherwise “argued that [petitioner’s] victims suffered pecuniary harm.” *Id.* at 9a.

b. The district court granted the SEC’s motion in relevant part. App., *infra*, 19a-35a. Rather than resolve the statutory question, the district court “assumed without deciding” that “pecuniary harm was required” for disgorgement, and “concluded the [SEC] had made the requisite showing.” *Id.* at 9a (summarizing the district court’s decision); see also *id.* at 30a-31a. It accordingly ordered \$2,251,923.16 in disgorgement and an additional \$1,051,353.77 in prejudgment interest. *Id.* at 34a-35a, 41a-42a.²

3. The Ninth Circuit affirmed on different grounds. App., *infra*, 1a-18a. Unlike the district court, it squarely decided the statutory question, holding that “pecuniary harm” is not a “precondition” to disgorgement under Sections 78u(d)(5) and (d)(7). *Id.* at 17a-18a. It thus “d[id] not

¹ While this civil suit was pending, petitioner pleaded guilty to one count of selling unregistered securities, in violation of 15 U.S.C. 77e(a)(1) and 77x, and was sentenced to 21 months’ imprisonment. See App., *infra*, 22a & n.2. In light of petitioner’s criminal sentence, the SEC “declined to seek a monetary civil penalty.” *Id.* at 9a n.3.

² The district court refused to grant the SEC’s full request of \$4,115,365.88 in disgorgement. App., *infra*, 31a. It found that amount was “not a reasonable approximation” because it failed to credit petitioner’s expenses and overstated his gross profit. *Id.* at 33a. It accordingly cut down the SEC’s request by nearly half. *Id.* at 33a-34a.

reach” whether the SEC established “pecuniary harm.” *Id.* at 10a.³

The Ninth Circuit began by acknowledging the question was one on which “[o]ur sister circuits have split.” App., *infra*, 2a (citing conflict between First and Second Circuits). But it ultimately “reject[ed] the reasoning of the Second Circuit and join[ed] the First Circuit in holding that a finding of pecuniary harm is not required.” *Id.* at 10a.⁴

As the Ninth Circuit explained, the Second Circuit was correct that disgorgement requires “[a] victim,” a point “made clear” from *Liu*. App., *infra*, 10a-11a. But the Ninth Circuit “disagree[d]” that “‘victim’ is narrowly defined as an individual or entity that has suffered pecuniary harm” (*id.* at 11a), and it found “[t]he Second Circuit’s analysis fails to persuade.” *Ibid.*

The Ninth Circuit initially declared the Second Circuit’s approach “contrary to the common law.” App., *infra*, at 11a. In the court’s view, “[a]t common law,” disgorgement required only “‘an actionable interference by the defendant with the claimant’s legally protected interests.’” *Id.* at 11a-12a. Unlike the Second Circuit, the court thus believed a “claimant need not show any loss whatsoever, let alone a pecuniary loss.” *Id.* at 12a.

³ While leaving this separate question technically unresolved, the Ninth Circuit was skeptical that the SEC could prevail under the district court’s rationale: “we note that the Commission’s contention that the investors suffered pecuniary harm merely because they paid artificially inflated prices for securities is in tension” with this Court’s precedent. App., *infra*, 10a n.4 (citing *Dura Pharmaceuticals, Inc. v. Broudo*, 544 U.S. 336, 342-343 (2005)).

⁴ The Ninth Circuit also identified a separate circuit conflict over potential daylight between Section 78u(d)(5) and Section 78u(d)(7), but confirmed that conflict is not “relevant here.” App., *infra*, 7a-8a.

The Ninth Circuit then rejected each aspect of the Second Circuit’s decision, asserting it “misapprehended the meaning of certain language in *Liu*, certain language in the Restatement, and the relationship between private securities actions and SEC civil enforcement actions.” App., *infra*, 13a. It found “the Second Circuit erred by gleaning a pecuniary harm requirement” from specific “observation[s]” in *Liu*. *Ibid.*; see also *id.* at 14a (instead crediting the First Circuit’s opposite take). It likewise declared the Second Circuit “placed great weight” on other “statement[s]” in *Liu* it believed the Second Circuit misread—finding *Liu* “neither adopted a pecuniary harm requirement nor discarded the common law’s definition of victim.” *Id.* at 15a. And it further rejected the Second Circuit’s understanding of “the Restatement itself,” reading the same passages to reach the opposite conclusion. *Id.* at 15a-16a.

The Ninth Circuit, finally, believed the Second Circuit “erred by equating restoration of the status quo with compensatory damages,” and repudiated the Second Circuit’s “compar[ison]” of “private securities actions” (which require economic loss) and “disgorgement under § 78u(d)(5).” App., *infra*, 15a n.7, 16a-17a. While admitting the Second Circuit’s reading alone would align private Section 10(b) litigation with Section 78u(d), the Ninth Circuit concluded the “asymmetry” in its own position was “by design.” *Id.* at 16a-17a.

Although the Ninth Circuit’s analysis focused predominantly on Section 78u(d)(5), it determined the identical outcome was required under Section 78u(d)(7). App., *infra*, 17a (finding “[n]either party argues” otherwise and “no reason to suppose” otherwise). It thus “join[ed] the First Circuit in holding that the SEC is not required to

show that investors suffered pecuniary harm as a precondition to a disgorgement award under § 78u(d)(5) or (d)(7).” *Id.* at 17a-18a.

REASONS FOR GRANTING THE PETITION

A. There Is A Square And Intractable Conflict Over A Significant Question Regarding The SEC’s Civil-Enforcement Power

The decision below cements an acknowledged conflict over an important and ubiquitous question regarding the SEC’s civil-enforcement power. The Ninth Circuit canvassed all sides of the debate, including this Court’s decision in *Liu*; it concluded “‘common-law’ principles and ‘traditional equity practice’” “do[] not require a showing of pecuniary harm.” App., *infra*, 11a; *id.* at 10a-17a. The Second Circuit extensively examined the same materials, including *Liu*, and reached the opposite conclusion. *Govil*, 86 F.4th at 106 (“‘Equitable relief’ requires that the relief be ‘awarded for victims,’ and that in turn requires a finding of pecuniary harm.”) (quoting *Liu*, 591 U.S. at 75).

Each decision is detailed and exhaustive, and the issue has now been fully ventilated—producing conflicting results in the nation’s two most important circuits for securities litigation (the Second and the Ninth).⁵ There is no reason to let the SEC collect millions (or billions) in disgorgement solely because a civil-enforcement action happens to arise in California instead of New York.

The undeniable 2-1 split is not going anywhere on its own, and the intolerable confusion will persist until this Court intervenes. Immediate review is warranted.

1. The decision below squarely conflicts with settled law in the Second Circuit. In *SEC v. Govil*, 86 F.4th 89 (2d

⁵ See U.S. Courts, *Judicial Business 2024 Tables, Table C-7* (Sept. 30, 2024) <https://www.uscourts.gov/sites/default/files/2025-01/jb_c7_0930.2024.pdf>.

Cir. 2023), the Second Circuit confronted the identical question presented here, and it adopted the opposite holding: “disgorgement” is not “authorized” under Sections 78u(d)(5) or 78u(d)(7) “without finding that the defrauded investors suffered pecuniary harm.” 86 F.4th at 97-98. In reaching that conclusion, the Second Circuit rejected the exact proposition embraced by the Ninth Circuit below: “disgorgement must be ‘awarded for victims,’” and “a defrauded investor is not a ‘victim’ for equitable purposes if he suffered no pecuniary harm.” *Id.* at 94 (quoting *Liu*, 591 U.S. at 75); contra App., *infra*, 10a-12a (opposite holding).

In *Govil*, the defendant defrauded investors when offering securities (by misrepresenting how the offering’s proceeds would be used). 86 F.4th at 94. But notwithstanding that fraud, it was unclear investors suffered pecuniary harm: they “profited on the securities,” and the defendant agreed to restore the funds to the company’s coffers. *Id.* at 97. The district court thus “did not find that those investors suffered pecuniary harm.” *Id.* at 102.

Applying *Liu*’s “guiding [equitable] principles,” the Second Circuit concluded the SEC could not obtain disgorgement without pecuniary harm. 86 F.4th at 103. As the Second Circuit explained, “[e]quitable relief” requires that the relief be ‘awarded for victims,’” which “restores the status quo.” *Id.* at 103, 106 (quoting *Liu*, 591 U.S. at 74, 80, 88). Yet “[w]hen disgorgement is awarded to an investor who suffered no pecuniary harm, the remedy does not aim to restore the status quo at all.” *Id.* at 103 n.14. On the contrary, the Second Circuit reasoned, such relief would instead “confer[] a windfall on those who received the benefit of the bargain,” violating *Liu*’s command to “bring disgorgement within equitable bounds.” *Id.* at 103.

In sum, the Second Circuit found, *Liu* “emphasized” that “an equitable remedy is about ‘return[ing] the funds

to victims.” 86 F.4th at 103 (quoting *Liu*, 591 U.S. at 80, 88). But an investor who lost nothing is owed nothing: “The *return* of funds presupposes pecuniary harm,” and “[f]unds cannot be returned if there was no deprivation in the first place.” *Ibid.*

The Second Circuit then bolstered its conclusion by examining “the other profit-stripping remedies that the *Liu* Court discussed: constructive trust and accounting.” 86 F.4th at 103-104. As with those traditional remedies, *Govil* explained, disgorgement is premised upon the plaintiff “suffer[ing] pecuniary harm.” *Ibid.* And the court again reinforced that conclusion by analyzing “the securities fraud context” and “common-law deceit and misrepresentation”—all contexts again where “pecuniary harm is an element of the claim.” *Id.* at 104; see also *ibid.* (Section 10(b) litigation “requires that the investor have suffered ‘economic loss’”). In the Second Circuit’s view, if unharmed investors were deemed “victims” in the disgorgement-context alone, it “would allow the SEC” to “circumvent the limitations on private claims under § 10(b) and the common law.” *Id.* at 104-105; contra App., *infra*, 16a-17a (rejecting this reasoning).

The Second Circuit then confronted “[t]he SEC’s counterarguments” and declared them “unavailing.” 86 F.4th at 105. It recognized the SEC’s theory that “a defrauded investor is *ipso facto* a victim of fraud—whether or not the investor suffered pecuniary harm as a result.” *Id.* at 105-106; accord App., *infra*, 11a (an investor is a “victim” merely by showing “an actionable interference * * * with the [investor’s] legally protected interests”). Unlike the Ninth Circuit, the Second Circuit found that position lacking: “[e]quitable relief” requires that the relief be ‘awarded for victims,’ and that in turn requires a finding of pecuniary harm.” 86 F.4th at 106 (quoting *Liu*,

591 U.S. at 74). The SEC’s contrary position was “inconsistent with the substance of *Liu*.” *Ibid*.

The Second Circuit finally discarded the SEC’s argument that pecuniary harm must not be a “prerequisite” because “disgorgement” is ““measured by” a defendant’s “wrongful gain,” not an investor’s pecuniary “loss.” 86 F.4th at 105. As the Second Circuit explained, that might “describe[] how to *calculate* disgorgement,” but it does not establish whether disgorgement is “authorized * * * in the first place.” *Ibid*. (emphasis added). That conclusion again directly contravenes the Ninth Circuit’s holding. App., *infra*, 14a-15a (adopting contrary position).

2. Like the Ninth Circuit, however, the First Circuit reached the opposite conclusion—holding that equitable disgorgement does not require pecuniary harm. In *SEC v. Navellier & Associates, Inc.*, 108 F.4th 19 (1st Cir. 2024), the court again confronted the same question, and it directly repudiated *Govil*’s holding. See *id.* at 41 & n.14 (rejecting *Govil* by name).

Navellier involved defendants who misrepresented “the performance track record of the[ir offered] investment strategies.” 108 F.4th at 28-33. Those defendants resisted disgorgement on the ground that their clients “suffered no pecuniary harm,” but the First Circuit squarely rejected that proposition. *Id.* at 41 (defendants “mischaracterize[] the nature and purpose of disgorgement”). In the First Circuit’s view, “[d]isgorgement is a ‘profit-based measure of unjust enrichment,’ reflecting the inequity of permitting wrongdoers to “profit out of [their] own wrong.” *Ibid*. It thus held disgorgement is “tethered to a *wrongdoer*’s net unlawful profits,” not a victim’s pecuniary loss. *Ibid.*; contra *Govil*, 86 F.4th at 103 & n.14 (adopting opposite position and declaring contrary view at odds with *Liu*).

In so holding, the First Circuit recognized *Govil*'s position that "[a]n investor who suffered no pecuniary harm * * * is not a victim,' and thus disgorgement * * * would not be 'awarded for victims[]' as *Liu* requires." 108 F.4th at 41 n.14 (quoting *Govil*, 86 F.4th at 98). But the First Circuit ultimately disagreed: "Neither *Liu* nor our case law * * * require investors to suffer pecuniary harm as a precondition to a disgorgement award." *Ibid.* That holding is impossible to square with the Second Circuit's contrary disposition. See *Govil*, 86 F.4th at 98 (requiring investors to "suffer[] pecuniary harm" to support a "disgorgement" award).⁶

3. As the above reflects, these three circuits emphatically disagree over every core aspect of the question presented. The decision below addressed a factual scenario materially indistinguishable from *Govil* (per the SEC's own description): each involves "a seller who defrauded potential buyers when offering securities." *Navellier Br. in Opp.* 8-9, *supra*; see App., *infra*, 8a-9a. Yet the Ninth

⁶ The *Navellier* defendants later sought certiorari, and the SEC acknowledged the "tension" between the First Circuit's decision and "*Govil*." Br. in Opp. 8, *Navellier & Associates, Inc. v. SEC*, No. 24-949 (filed May 5, 2025) (*Navellier Br. in Opp.*). But the SEC urged this Court to deny review on case-specific grounds. For one, the SEC quibbled that *Navellier*'s facts were different from *Govil*'s: *Navellier* "involve[d] registered investment advisers who defrauded their clients, while *Govil* involved a seller who defrauded potential buyers when offering securities." *Id.* at 8-9. For another, both lower courts in *Navellier* found the investors "*did* suffer pecuniary harm," a "fact-bound" issue triggering this Court's "two-court rule" (where such twice-supported "findings of fact" are not disturbed). *Id.* at 7-8 (citing *United States v. Reliable Transfer Co.*, 421 U.S. 397, 401 n.2 (1975)). Without violating that rule and reversing both lower courts on the facts, the statutory question was entirely academic. This Court (unremarkably) denied review. 145 S. Ct. 2777 (June 6, 2025). Suffice it to say that no such concerns are present in this case.

Circuit reached the opposite conclusion on the SEC’s disgorgement power, joining the First Circuit and repudiating the Second Circuit.

Each side debated these issues in exhaustive decisions; they considered virtually identical arguments, read the same core sources (including this Court’s decision in *Liu*), and addressed the same set of contentions. This is not merely some inadvertent or indirect tension between courts. This “split” (App., *infra*, 2a) is as square, concrete, and deliberate as it gets. And the stark divide over this statutory question produces vastly different penalties for identical conduct under the same federal scheme. Disgorgement under Section 78u(d) is a powerful weapon; its use should not be determined by geography.

The 2-1 circuit conflict is undeniable and entrenched, and it should be resolved by this Court.⁷

B. The Question Presented Is Exceptionally Important And Warrants Review In This Case

1. a. The question presented is of obvious legal and practical importance. This critical issue arises all the time, and the SEC’s remedial authority now varies depending on whether an enforcement action arises in California or New York. Further percolation is pointless. The Second Circuit declared itself bound by *Liu*, and the Ninth Circuit carefully examined the Second Circuit’s position and repudiated its reasoning—siding instead with the First Circuit. There is no chance either side will back down.

⁷ These three courts of appeals have definitively resolved this important question post-*Liu*, but the same issue was decided by multiple courts under the pre-*Liu* regime. See, e.g., *Zacharias v. SEC*, 569 F.3d 458, 471 (D.C. Cir. 2009); *SEC v. Bilzerian*, 29 F.3d 689, 697 (D.C. Cir. 1994). Because those courts did not consider *Liu*’s controlling framework, petitioner focuses solely on the 2-1 circuit conflict exhaustively confronting the relevant version of the question presented.

In the meantime, this important national scheme will be forced to endure confusion and uncertainty. Defendants will have no clue whether to resist a disgorgement demand or settle. Courts will be left to guess whether the SEC is required to show pecuniary harm or not. And the SEC will have to set priorities and devise litigation strategies without knowing the baseline rules governing its centerpiece enforcement relief. *Kokesh* Resp., *supra*, at 10.

The existing conflict is intolerable. This Court routinely grants review to resolve lesser splits, and there is no reason to leave this critical division in place.⁸

b. In response, the SEC will predictably disagree with petitioner on the merits, but it will have no basis for contesting the urgent need for further review.

This Court has twice granted review in recent years to examine the SEC's disgorgement authority (*Kokesh* and *Liu*), confirming the issue's obvious significance. Indeed, in *Liu*, the issue's importance was so plain the Court granted review without a circuit conflict. Even more telling, in *Kokesh*, the government (as respondent) *acquiesced* in the grant. *Kokesh* Resp., *supra*, at 7. And its rationale applies with equal force here: “[d]isgorgement

⁸ This Term alone, the Court is already set to resolve 2-1 and 1-1 splits in the following cases: *United States Postal Service v. Konan*, No. 24-351 (cert. granted Apr. 21, 2025) (2-1); *First Choice Women's Resource Centers, Inc. v. Platkin*, No. 24-781 (cert. granted June 16, 2025) (2-1); *FS Credit Opportunities Corp. v. Saba Capital Master Fund, Ltd.*, No. 24-345 (cert. granted June 30, 2025) (2-1); *M & K Employee Solutions, LLC v. Trustees of the IAM National Pension Fund*, No. 23-1209 (cert. granted June 30, 2025) (1-1); *Galette v. New Jersey Transit Corporation*, No. 24-1021 (cert. granted July 3, 2025) (1-1). As the Solicitor General explained in successfully urging further review in *Konan*, “[t]his Court has recently and repeatedly granted certiorari in cases arising from 1-1 or 2-1 circuit conflicts.” Pet. 19, *Konan*, *supra* (filed Sept. 27, 2024).

plays a central role in the enforcement of the securities laws”; the SEC “seeks disgorgement in the majority of its enforcement actions”; and any conflict “stands as a significant obstacle to national uniformity in administration of the securities laws.” *Id.* at 10-11. The government’s top-line summary remains on point: “because the issue is important to the administration of the securities laws, and the courts of appeals have reached conflicting conclusions, this Court’s review is warranted.” *Id.* at 7.

c. The government’s candid assessment in *Kokesh* is both compelling and correct.

Disgorgement has staggering consequences for the SEC and individual defendants alike. Last fiscal year, the SEC seized \$6.1 billion in disgorgement—a new record. *SEC Announces Enforcement Results for Fiscal Year 2024* (Nov. 22, 2024) <<https://www.sec.gov/newsroom/press-releases/2024-186>> (*SEC 2024 Results*). Disgorgement even dwarfed the SEC’s civil penalties, which totaled roughly a third (\$2.1 billion) last year. *Ibid.* And the SEC wields the threat of disgorgement as a cudgel. It routinely threatens defendants (including individuals) with millions of dollars in disgorgement, and it aims high when making demands—as it need not actually prove profits beyond a “reasonable approximation.” App., *infra*, 27a-28a; see also, *e.g.*, *id.* at 22a (\$4.1 million demand); *Govil*, 86 F.4th at 93 (\$7.3 million demand). These threats predictably coerce many defendants into settling. See Verity Winship, et al., *An Empirical Study of Admissions in SEC Settlements*, 60 Ariz. L. Rev. 1, 17-18 (2018) (the SEC collected \$800 million in disgorgement through settlements from 2010-2017). It is thus imperative to restrain the SEC’s authority within its proper scope.

Yet the decision below has the opposite effect. Under the rule adopted by the First and Ninth Circuits, disgorgement is available in virtually every case—no matter

the effect on investors. And these incentives play out aggressively on the ground. Take last year alone. Despite *Liu*'s holding that disgorgement must "be awarded for victims" (591 U.S. at 79), the SEC collected \$6.1 billion in disgorgement and returned only \$345 million to investors—less than 6% of that total. See *SEC 2024 Results*, *supra*. Indeed, in the entire post-*Liu* period, the *total* disgorgement allocated to investors is not even half the amount the SEC collected last year alone. *Ibid.* (\$6.1 billion collected last year; \$2.7 billion given to investors since October 2020). The stakes, in short, are extraordinary. *E.g.*, *SEC v. Ripple Labs, Inc.*, No. 20-10832, 2024 WL 3730403, at *2, *5-*6 (S.D.N.Y. Aug. 7, 2024) (vacating disgorgement order of over \$1 billion for failure to establish pecuniary harm).

At bottom, the SEC should not exercise a disgorgement power it does not have—but it especially should not exercise such a power merely because a defendant operates in San Francisco's Financial District instead of the NYSE. The current situation is untenable. This Court alone can cabin the SEC and restore national uniformity, and its immediate review is warranted.

2. This case is an ideal vehicle for deciding this important question. The dispute turns on a pure question of law: whether Sections 78u(d)(5) and (d)(7) require pecuniary harm. That was the sole basis of the decision below. App., *infra*, 2a, 17a-18a. There are no factual or procedural impediments: petitioner squarely raised the question at every possible stage (*id.* at 10a, 28a-29a), the Ninth Circuit refused to address any alternative ground (while casting doubt that any such ground exists (*id.* at 10a & n.4)), and the judgment is otherwise final. The vehicle is as clean as it gets.

C. The Decision Below Is Incorrect

Review is also warranted because the decision below is wrong. As it now stands, the SEC can seek a disgorgement remedy in the nation’s largest circuit that departs from traditional limits on disgorgement and ignores important checks imposed by Congress.

1. The SEC cannot seek equitable disgorgement without showing investors suffered pecuniary harm. As *Liu* explained, “statutory references” to an equitable remedy generally “contain the [same] limitations * * * that equity typically imposes.” 591 U.S. at 87 (quoting *Great-West Life & Annuity Ins. Co. v. Knudson*, 534 U.S. 204, 211 n.1 (2002)). And disgorgement without pecuniary harm contravenes those traditional equitable limits.

First and foremost, “equity never ‘lends its aid to enforce a forfeiture or penalty.’” *Liu*, 591 U.S. at 77 (quoting *Marshall v. Vicksburg*, 15 Wall. 146, 149 (1873)). Consistent with that principle, *Liu* held that SEC disgorgement must be “circumscribe[d] * * * to avoid transforming it into a penalty.” 591 U.S. at 82. A penalty “is sought ‘for the purpose of punishment, and to deter others from offending in like manner’—as opposed to compensating a victim for his loss.” *Kokesh*, 581 U.S. at 462 (quoting *Huntington v. Attrill*, 146 U.S. 657, 668 (1892)) (emphasis added). An SEC sanction that “does not provide anything to the victims to make them whole or to remedy their losses” is “a penalty, not a remedy.” *Saad v. SEC*, 873 F.3d 297, 305 (D.C. Cir. 2017) (Kavanaugh, then-J., concurring).

Applying that basic distinction between penalty and remedy, *Liu* limited equitable disgorgement to compensating victims—and any disgorgement must accordingly be “restricted” to a “wrongdoer’s net profits *to be awarded for victims*.” 591 U.S. at 79 (emphasis added); *id.*

at 88 (“[t]he equitable nature of the profits remedy generally requires the SEC to return a defendant’s gains to wronged investors for their benefit”); see also 15 U.S.C. 78u(d)(5) (expressly requiring that equitable relief be “for the benefit of investors”). Otherwise, the Court explained, wrongdoers would be “punished by ‘pay[ing] more than a fair compensation to the person wronged.’” *Liu*, 591 U.S. at 80.

This conclusion is reinforced by disgorgement’s doctrinal foundation. “Disgorgement” is not itself a traditional equitable remedy; it is a modern term whose equitable roots lie in “restitution” and “accounting for profits”—each premised upon restoring funds to victims. *Liu*, 591 U.S. at 76 n.1, 79-81; see *id.* at 97 (Thomas, J., dissenting). Restitution “order[s] the *return* of that which rightfully belongs” to the victim. *Tull v. United States*, 481 U.S. 412, 424 (1987) (emphasis added); see *Great-West*, 534 U.S. at 214 (“for restitution to lie in equity, the action generally must seek not to impose personal liability on the defendant, but to restore to the plaintiff particular funds or property in the defendant’s possession”). Likewise, accounting for profits restores profits that are rightfully the victim’s. *Great-West*, 534 U.S. at 214 n.2 (providing a canonical example: where “a plaintiff is entitled to a constructive trust on particular property held by the defendant,” “he may also recover profits produced by the defendant’s use of that property”); see *Liu*, 591 U.S. at 94 (Thomas, J., dissenting) (“[A]n accounting for profits * * * has a well-accepted definition: It compels a defendant to account for, and *repay to a plaintiff, those profits that belong to the plaintiff* in equity.”) (emphasis added).

These principles preclude equitable disgorgement without pecuniary harm to investors. If there is no loss to compensate, disgorgement only penalizes the defendant.

And that is assuredly the case where an investor lost nothing or even *profited* from the transaction. To be sure, wrongdoers can be still held accountable—but that is the role of civil monetary penalties and Congress’s other sanctions. See, *e.g.*, 15 U.S.C. 78u(d)(2), (3), (6). It is not the role of disgorgement.

2. The Ninth Circuit mistakenly asserted that disgorgement traditionally did not require “any loss whatsoever, let alone a pecuniary loss.” App., *infra*, 11a-12a. This stands the rule upside down. The basic distinguishing feature of equitable remedies (as opposed to penalties) is they “compensat[e] a victim for his loss.” *Kokesh*, 581 U.S. at 462 (quoting *Huntington v. Attrill*, 146 U.S. 657, 668 (1892)). Again, if there is no loss, there is nothing to compensate.

The Ninth Circuit also presumed that disgorgement does not require pecuniary loss because disgorgement is measured by profits, not losses. App., *infra*, 13a-15a. Again, that might “correctly describe[] how to *calculate* disgorgement,” but it “does not address” whether “disgorgement * * * is authorized * * * in the first place.” *Govil*, 86 F.4th at 105 (emphasis added). If disgorgement is possible for investors who in fact profited or lost nothing, disgorgement would become a “windfall” for investors and a penalty for defendants (*id.* at 103)—violating the rule against forcing “wrongdoer[s]” to “pay[] more than a fair compensation to the person wronged.” *Liu*, 591 U.S. at 80; see also App., *infra*, 16a-17a & n.9 (admitting investors could not sue the defendant directly without economic loss).

* * *

In the end, disgorgement is a powerful weapon in the SEC’s arsenal, but Congress cabined the SEC’s power in critical ways. The Ninth Circuit has now brushed aside those critical limits. It effectively treats disgorgement as

a sanction for wrongdoers; harmed investors are a mere afterthought. That converts Sections 78u(d)(5) and (d)(7) into a penalty, not equitable relief.

Equitable disgorgement requires a showing of pecuniary harm, and Congress did not authorize the non-traditional relief the SEC sought here. The Ninth Circuit erred in holding otherwise, and this Court's review is urgently warranted.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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OCTOBER 2025