

In the Supreme Court of the United
States

ONGKARUCK SRIPETCH,

Petitioner,

v.

U.S. SECURITIES AND EXCHANGE COMMISSION,

Respondent.

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

**BRIEF OF INVESTOR CHOICE ADVOCATES
NETWORK AS *AMICUS CURIAE* IN SUPPORT
OF PETITIONER**

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INTEREST OF *AMICUS CURIAE**

Investor Choice Advocates Network (ICAN) is a nonprofit public interest law firm dedicated to protecting the rights of entrepreneurs, investors, and businesses in securities matters. ICAN represents clients in securities enforcement matters and appellate proceedings, and advocates for sensible regulation that balances investor protection with capital formation and economic opportunity.

ICAN has a direct and concrete interest in the question presented. It represents clients in three active enforcement proceedings in which the SEC has sought or obtained disgorgement without proving that any investor suffered pecuniary harm. In each case, the absence of such proof has produced a distinct failure: disgorgement predicated on victims who do not exist, disgorgement sustained through a fictional theory of loss, and disgorgement pursued without any expert evidence of causation. Those cases, discussed in Part II, *infra*, provide necessary context that illustrates how the decision below operates in practice and why the traditional equitable principles this Court reaffirmed in *Liu v. SEC*, 591 U.S. 71 (2020), require reversal.

* Pursuant to Supreme Court Rule 37, *amicus curiae* states that no counsel for any party authored this brief in whole or in part and no entity or person, aside from *amicus curiae*, its members, or its counsel, made any monetary contribution intended to fund the preparation or submission of this brief.

INTRODUCTION AND SUMMARY OF ARGUMENT

In *Liu v. SEC*, 591 U.S. 71, this Court held that disgorgement under 15 U.S.C. § 78u(d)(5) must be consistent with “longstanding equitable principles” and must “return a defendant’s gains to wronged investors for their benefit.” *Id.* at 79, 85, 88. That holding is not an abstract description of disgorgement generally; it defines the conditions under which that relief is available at all. Before disgorgement may be ordered, the government must establish (1) identifiable persons, (2) who suffered actual pecuniary harm, (3) caused by the defendant’s violations.

Section 78u(d)(7), enacted months after *Liu*, does not change the analysis. Congress used the term “disgorgement,” a term that this Court in *Liu* held is itself defined by equitable limitations. 591 U.S. at 85-86. A statute that authorizes “disgorgement” without further elaboration incorporates those limitations.

The Ninth Circuit’s rule eliminates all three requirements simultaneously. The court of appeals’ holding that disgorgement is available whenever the defendant has committed “an actionable interference ... with the claimant’s legally protected interests,” *SEC v. Sripetch*, 154 F.4th 980, 986 (2025), regardless of whether any investor suffered pecuniary harm, collapses disgorgement into an automatic consequence of liability. A remedy that follows liability without regard to compensable loss is not equitable. It is a penalty, unauthorized by Congress, and expressly cautioned against by this Court in *Liu*. 591 U.S. at 82-85, 87-89.

The experience of three ICAN clients demonstrates the practical implications of the Ninth Circuit’s error.

In *SEC v. Padilla*, No. 1:23-cv-11331 (D. Mass.), the SEC told the district court that it had identified thirty-four specific victims and obtained a \$44,159 disgorgement award against Jamie Quick, a relief defendant whom the Commission has never accused of wrongdoing. The court later found that representation unfounded and that the SEC failed to identify any specific victims. The award nevertheless remains in force and the SEC has garnished Ms. Quick’s bank accounts. If the funds are collected, they will go to the Treasury, because there are no victims to receive them.

In *SEC v. Barry*, 146 F.4th 1242 (9th Cir. 2025), the Ninth Circuit upheld a disgorgement award against defendants charged only with registration violations, where investors were projected to recover their full principal, by holding that the “loss of the time value of their money” constitutes pecuniary harm as a matter of law. The SEC brought no fraud claims and the investors lost nothing. But under the panel’s theory, the loss is presumed and irrebuttable, eliminating the factual inquiry *Liu* demands.

Lastly, in *SEC v. Thurlow*, No. 21-cv-7700 (S.D.N.Y.), the SEC seeks disgorgement against the estate of Joseph Jordan without having retained a single expert to establish that his alleged registration violations caused any investor to lose money. The Commission has advised the court that it will not seek penalties or injunctive relief, leaving disgorgement as the sole remaining claim, resting on no evidentiary foundation at all.

The SEC’s own Agency Financial Reports confirm that these cases are not anomalies. At the conclusion of the SEC’s 2025 fiscal year, the Commission held \$5.12

billion in collected disgorgement and penalties that have not been distributed to harmed investors, more than triple the balance at the time *Liu* was decided. In fiscal year 2024 alone, the SEC obtained \$8.2 billion in financial remedies and distributed \$345 million, or four percent. A pecuniary harm requirement would narrow that gap by requiring the SEC to identify victims, quantify losses, and prove causation before it collects disgorgement, generating the information that the SEC needs to equitably distribute what is collected. Without that requirement, the remedy this Court preserved in *Liu* as an equitable tool for compensating wronged investors operates as something else entirely: a power to extract money from defendants and deposit it in the Treasury, unconstrained by the equitable limits that justified the remedy's existence in the first place.

ARGUMENT

I. DISGORGEMENT'S EQUITABLE NATURE REQUIRES IDENTIFIED VICTIMS, PECUNIARY HARM, AND CAUSAL CONNECTION TO THE DEFENDANT'S VIOLATIONS

Disgorgement is an available remedy in SEC enforcement actions only because this Court, in *Liu*, confined it within traditional equitable limits. Disgorgement's legitimacy derives from a longstanding equitable tradition of depriving wrongdoers of profits from unlawful activity. *Liu*, 591 U.S. at 79-80. That tradition requires that disgorgement serve a compensatory function—returning to victims the funds they were deprived of as a result of the defendant's misconduct, rather than simply stripping wrongful gains for the public fisc.

There are three concrete implications for SEC disgorgement: the Commission must identify victims, those victims must have suffered pecuniary harm, and the loss must be causally connected to the defendant's violations. Because those requirements inhere in the equitable nature of the remedy itself, they apply where Congress has authorized "disgorgement," including in 15 U.S.C. §§ 78u(d)(5) and (d)(7). The Ninth Circuit's contrary rule—that disgorgement is available whenever a defendant has committed "an actionable interference with the claimant's legally protected interests," *Sripetch*, 154 F.4th at 986, regardless of whether any investor suffered financial harm—cannot be reconciled with that tradition or this Court's precedent.

A. *Liu*'s Equitable Framework Requires Identified Victims, Actual Loss, And Causal Connection

In *Liu*, this Court grounded disgorgement in equitable principles drawn from restitution and an accounting for profits, which share a common foundation: the defendant's gain must have come at the plaintiff's expense. *Liu*, 591 U.S. at 76 n.1, 79-80. Restitution "order[s] the return of that which rightfully belongs" to the victim, *Tull v. United States*, 481 U.S. 412, 424 (1987) (quoting *Porter v. Warner Holding Co.*, 328 U.S. 395, 402 (1946)), and an accounting for profits compels repayment of "those profits that belong to the plaintiff in equity," *Liu*, 591 U.S. at 94 (Thomas, J., dissenting). Neither remedy operates as a free-standing deterrent and both presuppose a victim who lost something and a defendant whose gain came at the victim's expense.

The *Liu* Court drew on these equitable principles when it held that disgorgement must be “restricted” to “an individual wrongdoer’s net profits to be awarded for victims” to “avoid transforming an equitable remedy into a punitive sanction.” 591 U.S. at 79. The Court disapproved of the SEC’s longstanding practice of depositing disgorgement proceeds in the Treasury rather than returning them to injured investors, *id.* at 85-89, holding both that “the equitable nature of the profits remedy generally requires the SEC to return a defendant’s gains to wronged investors for their benefit,” *id.* at 88, and that a disgorgement remedy “must do more than simply benefit the public at large by virtue of depriving a wrongdoer of ill-gotten gains,” *id.* at 89.

A sanction that does not compensate an identifiable victim for an actual loss is, as this Court recognized in *Kokesh*, one “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 v. SEC*, 581 U.S. 455, 462 (2017) (citation omitted). Monetary sanctions imposed without regard to whether any investor suffered financial harm cannot plausibly be described as restorative. Such sanctions do not return funds or repair injury. They extract money from the defendant because of the violation itself. That is the hallmark of an unlawful penalty, and 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)).

Liu’s requirement that disgorgement be “for victims,” 591 U.S. at 79, 84, is not satisfied by the SEC’s mere invocation of that label. Rather, it implies three concrete requirements that must be established by a

preponderance of the evidence. First, disgorgement requires identified victims. Without them, there is no basis to conclude that the defendant's gains were obtained at anyone's expense rather than through legitimate services, market conditions, or other causes unrelated to the violation. See, e.g., *Dura Pharmaceuticals, Inc. v. Broudo*, 544 U.S. 336, 343 (2005) (recognizing that price changes in securities “may reflect ... changed economic circumstances ... or other events” rather than a defendant's conduct). This Court cautioned in *Liu* that it “test[s] the bounds of equity practice” for proceeds to be “deposited in Treasury funds” rather than “disbursed to known victims,” presupposing that there are actual injured investors capable of compensation, not hypothetical beneficiaries. 591 U.S. at 85, 88. A disgorgement award entered without identified victims has no compensatory purpose to serve at the time it is entered and no equitable foundation on which to rest.

Second, disgorgement requires pecuniary harm: When there is no loss, there is nothing to restore, and an award in favor of an uninjured investor is not restitution but a windfall that forces the wrongdoer to “pay more than a fair compensation to the person wronged.” *Liu*, 591 U.S. at 80 (citation omitted). As the Second Circuit concluded in *Govil*, “[t]he return of funds presupposes pecuniary harm” and “[f]unds cannot be returned if there was no deprivation in the first place.” *SEC v. Govil*, 86 F.4th 89, 103 (2d Cir. 2023). A rule that substitutes a legal presumption of harm—such as the theory that all investors in a fraudulent offering inherently suffer the loss of the time value of money—does not satisfy this requirement. It converts a fact-specific equitable inquiry into a

categorical rule, transforming disgorgement from a compensatory remedy into a penalty applicable whenever a particular type of violation occurs. That *Liu* measured disgorgement by the defendant’s gains rather than the plaintiff’s losses speaks to how the remedy is calculated once its predicate is established, not to whether the predicate—an actual loss—must be shown at all. *See* 591 U.S. at 89 (emphasizing SEC’s remedy “must do more than simply benefit the public at large by virtue of depriving a wrongdoer of ill-gotten gains”).

Third, disgorgement requires a causal connection between the defendant’s violations and the investor’s pecuniary harm. *Liu* confines disgorgement to “net profits from unlawful activity,” 591 U.S. at 79—not gains attributable to legitimate services, market movements, or other causes independent of the charged conduct. Where an investor’s loss results from factors unrelated to the violation, the defendant’s enrichment is not unjust as to that investor and there is nothing to disgorge on that investor’s behalf. What that standard demands in practice is illustrated by proceedings in *Govil*: On remand, the SEC retained an expert economist who conducted an event study isolating the price impact attributable specifically to the defendants’ misrepresentations, distinguishing those effects from market conditions, industry trends, and other information reaching investors during the relevant period. *SEC v. Govil*, No. 21-cv-6150, 2026 WL 145342, at *3, *6-7 (S.D.N.Y. Jan. 20, 2026). Absent that inquiry, investors could receive a windfall—a concept foreign to equity.

B. Section 78u(d)(7) Incorporates Rather Than Displaces These Requirements

Congress enacted 15 U.S.C. § 78u(d)(7) in 2021, months after *Liu* was decided, to provide express statutory authorization for disgorgement in SEC enforcement actions. The government misreads both *Liu* and the statute when it argues that because subsection (d)(7) uses the term “disgorgement” without the phrase “for the benefit of investors” found in subsection (d)(5), it authorizes a broader form of disgorgement unconstrained by *Liu*’s equitable framework. Resp. Cert. Br. 7-8.

Liu itself addresses the point. The Court held that “Congress does not enlarge the breadth of an equitable, profit-based remedy simply by using the term ‘disgorgement’ in various statutes.” 591 U.S. at 86. *See also Kokesh*, 581 U.S. at 466 (holding disgorgement is punitive when it “does not simply restore the status quo”). When Congress employs a term with established equitable content, it incorporates the limitations equity attaches to that term: “statutory references to a remedy grounded in equity must, absent other indication, be deemed to contain the limitations upon its availability that equity typically imposes.” *Liu*, 591 U.S. at 87 (alterations and internal quotation marks omitted). The government reads certain textual differences to mean that subsection (d)(7) authorizes a broader form of disgorgement free of *Liu*’s equitable constraints. Resp. Cert. Br. 6-8. But the omission of the “benefit of investors” phrase in subsection (d)(7) does not constitute the requisite “other indication.” It tells us only that subsection (d)(7) does not expressly require that proceeds flow to investors—not that it authorizes disgorgement stripped of the victim and loss

requirements that *Liu* derived from the nature of the equitable remedy itself. The government’s reading also emphasizes that subsection (d)(7) omits the term “equitable relief,” but it does not follow that the remedy it authorizes is therefore unmoored from equity. Congress used the word “disgorgement”—a term that, as *Liu* held, reflects equity itself. 591 U.S. at 86-87. A statute that authorizes “disgorgement” without further elaboration incorporates the equitable limitations that define the remedy, just as a statute authorizing an “injunction” incorporates the traditional requirements for injunctive relief. *See Starbucks Corp. v. McKinney*, 602 U.S. 339, 346 (2024).

The structure of the 2021 legislation confirms this reading. The same enactment that added subsection (d)(7) also added subsection (d)(3)(A)(ii), which authorizes courts to award “disgorgement under paragraph (7) of any unjust enrichment.” 15 U.S.C. § 78u(d)(3)(A)(ii). That cross-reference to “unjust enrichment” is significant: The concept requires that the defendant’s gain come at the plaintiff’s expense. *See* Restatement (Third) of Restitution and Unjust Enrichment §§ 1, 3 cmt. b. A defendant who profits from a violation that caused no investor loss has not been unjustly enriched at any investor’s expense. The proper remedy for such violations is civil penalties, which Congress separately authorized and calibrated to punitive purposes. *See* 15 U.S.C. § 78u(d)(3). It is implausible that Congress, in the same statute that identifies a precise punitive remedy, silently converted disgorgement into a second, unlimited penalty. The vehicle—a rider to an appropriations bill with no statement of intent—makes that inference all the more untenable.

C. The Ninth Circuit’s Standard Converts Disgorgement Into An Automatic Penalty For Securities Violations

The court of appeals held that disgorgement is available whenever the defendant has committed “an actionable interference ... with the claimant’s legally protected interests,” regardless of whether that interference caused any investor financial loss. *Sripetch*, 154 F.4th at 986 (citation omitted). That standard cannot be squared with *Liu*.

Under the Ninth Circuit’s holding, the existence of a securities violation is sufficient to support disgorgement. But nearly every securities violation interferes with investors’ legally protected interests—that is what makes it a violation. If “actionable interference” alone suffices, disgorgement becomes automatic upon liability. But a remedy that automatically follows liability without regard to compensable loss is punitive, not equitable. This Court prohibited such punitive remedies in *Liu* when it rejected the government’s argument that the SEC’s decision to bring an enforcement action itself satisfies the “benefit of investors” requirement. 591 U.S. at 87-89. It is impossible to distinguish a rule that locates the requisite harm in the violation itself from the approach expressly rejected by this Court in *Liu*.

The Ninth Circuit’s holding enables the Commission to impose billions in monetary exactions without satisfying either the historical limits of equity or the procedural safeguards Congress attached to penalties. The practical result is a remedy that operates as a penalty in every meaningful sense: imposed to deter violations and strip wrongful gains, with no requirement

that the proceeds reach anyone who was actually injured.

II. THREE ILLUSTRATIONS OF WHAT DISGORGEMENT LOOKS LIKE WHEN COURTS DO NOT REQUIRE PROOF OF PECUNIARY HARM

Each of the three requirements established in Part I—identified victims, pecuniary harm, and causal connection—serves as an independent check on the transformation of disgorgement from an equitable remedy into a penalty. The experience of three ICAN clients illustrates the consequences of removing those checks: disgorgement imposed on an innocent party with no identified victims, disgorgement sustained through a fictional theory of harm, and disgorgement collected without any expert proof that the defendant’s conduct caused the losses the award purports to remedy.*

A. Quick: The SEC Collected Disgorgement From An Innocent Party After Its Claimed Victims Proved Nonexistent

Last year, the SEC successfully obtained a \$44,159 disgorgement award against Jamie Quick, a relief defendant whom the Commission has never accused of wrongdoing.

The Commission brought suit against Joseph Paddilla and others for allegedly orchestrating a fraudulent

* ICAN’s clients in these matters are also represented by co-counsel: Jamie Quick by Dickinson Wright PLLC, Brenda Barry, Eric Cannon, and Caleb Moody by Paul Hastings LLP, and the estate of Joseph Jordan by Boies Schiller Flexner LLP.

stock-selling scheme involving manipulating penny stocks through trades in his friends' and families' brokerage accounts. Compl. ¶¶ 1-3, *SEC v. Padilla*, No. 1:23-cv-11331 (D. Mass.), ECF No. 1. It named Ms. Quick, the ex-wife of Mr. Padilla's friend, as a relief defendant, alleging only that her brokerage account "generated net proceeds of \$44,159 from trading in securities associated with" the scheme. Compl. ¶¶ 13-14.

The SEC has never alleged that Ms. Quick participated in, directed, or had knowledge of any wrongdoing. *Liu* held that disgorgement must be awarded "for victims" and assessed against "culpable actors." 591 U.S. at 84. Mr. Padilla, the actual wrongdoer, has already pleaded guilty to criminal securities fraud and forfeited \$3 million. Order of Forfeiture, *United States v. Padilla*, No. 1:23-cr-10075 (D. Mass. Nov. 7, 2023), ECF No. 168. Ms. Quick is, in the Commission's own framing, a passive recipient of funds, the category of party this Court in *Liu* distinguished from "partners engaged in concerted wrongdoing" and cautioned against subjecting to disgorgement. 591 U.S. at 90-91.

Nevertheless, at summary judgment, the SEC represented to the court that "the agency has identified 34 specific victims and seeks disgorgement for the benefit of these individuals." Order, ECF No. 88. The court accepted "the representation of the lawyers at the SEC, as officers of the court," and ordered Ms. Quick to pay \$44,159. *Id.*

That representation ultimately proved false. When the court adjudicated the remaining question of prejudgment interest, it found that "the SEC has failed to identify any specific victims of that trading," that

“Quick’s then-husband, Hernandez—i.e., not Quick herself—directed the relevant trading in Quick’s account,” and on those bases held that “fairness and equity” counseled against a prejudgment interest award. Order, ECF No. 98.

Yet, the disgorgement award remains in place. Despite finding the absence of victims and scienter fatal to a prejudgment interest award, the court has not revisited the disgorgement order that rested on the SEC’s now-discredited claim that victims existed. Ms. Quick is appealing to the First Circuit. Notice of Appeal, ECF No. 112; *see also* Mot. to Stay, ECF No. 113.

In the meantime, the SEC has moved to collect. The Commission obtained writs of garnishment against Ms. Quick’s bank accounts, threatening her ability to pay rent. Writs of Garnishment, ECF Nos. 105, 106; Decl. of Jamie Quick, ECF No. 107-2. If the \$44,159 is collected, the funds will not go to any injured investor because the SEC cannot identify any injured investors. Instead, the funds will go to the Treasury, exactly the practice this Court questioned in *Liu*. 591 U.S. at 88-89.

A rule requiring the SEC to identify harmed investors before obtaining disgorgement would have prevented this outcome: the Commission’s representation of 34 victims would have been tested before the award issued, not exposed as unfounded afterward. The Ninth Circuit’s framework imposes no such requirement and Ms. Quick is living with the consequence: garnishment of her bank accounts for the benefit of no one the government can name, to compensate losses the government cannot show anyone suffered.

B. Barry: The Ninth Circuit Adopted A Time-Value-of-Money Theory Of Harm To Avoid Requiring Proof Of Actual Loss

Brenda Barry, Eric Cannon, and Caleb Moody were sales agents who earned commissions on fractional interests in life settlements. *SEC v. Barry*, 146 F.4th 1242, 1248 (9th Cir. 2025). The SEC charged them with violations of Sections 5(a) and 5(c) of the Securities Exchange Act of 1934, registration provisions that require no scienter and carry no allegation of fraud or deception. *Id.* at 1250-51. The Commission brought no fraud claims against Barry, Cannon, or Moody, and the undisputed evidence on summary judgment and in remedies briefing showed that investors were “projected to recover the money they invested” through the ongoing maturity of the underlying life settlement policies. *Id.* at 1263. Nevertheless, the district court ordered defendants to disgorge a combined \$626,333 in commissions. *SEC v. Barry*, No. 2:15-cv-02563, 2023 WL 4491724, at *6 (C.D. Cal. July 12, 2023).

Under *Liu*’s framework, the undisputed facts should preclude disgorgement. *Liu* held that disgorgement must “[restore] the status quo” by returning funds “to wronged investors for their benefit.” 591 U.S. at 80, 88. The *Barry* investors will recover their principal, so there is no loss to remedy and no status quo to restore. When investors will receive what they were promised, disgorgement has no compensatory function. It is a penalty, and an inequitable one at that.

On appeal, a Ninth Circuit panel avoided that conclusion by inventing a novel theory of harm. Rather than require proof of actual financial loss, the panel held that investors in unregistered offerings “suffered

pecuniary harm through the loss of the time value of their money,” regardless of their actual financial outcomes. *Barry*, 146 F.4th at 1263. Under this theory, an investor who paid \$10,000, received \$10,000 back, and suffered no identifiable financial harm is still a “victim” of a disgorgement-eligible injury, because she theoretically could have invested elsewhere and earned a return during the period her money was committed to the unregistered security.

The panel’s sole authorities for this novel theory are cases addressing the Excessive Fines Clause and Article III standing. *Id.* at 1263 (citing *Pimentel v. City of Los Angeles*, 115 F.4th 1062, 1069 (9th Cir. 2024); *Van v. LLR, Inc.*, 962 F.3d 1160, 1161 (9th Cir. 2020)). Neither involves disgorgement. Neither applies equitable principles. And neither purports to define the kind of pecuniary harm that *Liu* requires before a court may strip a defendant of profits and award them to investors. The panel cited no authority applying the time-value theory to equitable disgorgement because no such authority exists.

The theory is also structurally incompatible with *Liu*. This Court held that disgorgement “must do more than simply benefit the public at large by virtue of depriving a wrongdoer of ill-gotten gains.” *Liu*, 591 U.S. at 89. It must compensate identified victims for actual losses. The time-value theory, however, does not identify actual losses. It presumes them, categorically, in every registration case, regardless of what investors actually experienced. Under this theory, the SEC need not quantify what any alternative investment would have returned and it need not present evidence of opportunity costs any investor actually incurred. The theory instead converts a fact-specific equitable inquiry

into an irrebuttable legal presumption, and in doing so transforms disgorgement from a compensatory remedy into a penalty applicable whenever a particular type of violation occurs.

The panel itself acknowledged the implications of its approach, stating: “We do not need to address the question of whether disgorgement is permissible in the absence of pecuniary harm[,] [s]ince there was pecuniary harm to investors here in the form of investors’ lost time value of money.” *Barry*, 146 F.4th at 1264. The novel time-value theory thus enabled the panel to avoid the very question now before this Court and ensures that “pecuniary harm” is always present in registration cases as a matter of law, eliminating the factual inquiry *Liu* demands. That is not an answer to the question presented, but an evasion of it.

Barry thus confirms that the Ninth Circuit’s framework has no meaningful limiting principle. If the SEC need only show a registration violation to establish disgorgement, then the only constraint on the remedy is the defendant’s gross revenues, exactly the calculation this Court in *Liu* held insufficient. 591 U.S. at 79, 91-92.

C. Jordan: The SEC Seeks Disgorgement Without Any Expert Proof Of Causation

The SEC seeks disgorgement against the estate of Joseph Jordan, a deceased defendant whom the Commission charged only with non-fraud registration violations, without having retained a single expert to establish that those violations caused any investor to lose money. *SEC v. Thurlow*, No. 21-cv-7700 (S.D.N.Y.), Letter from ICAN Counsel to Court at 4, ECF No. 218.

The SEC alleges that Mr. Jordan purchased convertible debt, converted it to shares, and sold those shares into the public market without registration. Compl. ¶¶ 4, 59, ECF No. 1. Several co-defendants face fraud charges under Section 10(b) and Rule 10b-5, but Mr. Jordan and his estate do not. The SEC instead charged Mr. Jordan with violations of Sections 5(a) and 5(c) of the Securities Exchange Act of 1934, the same registration provisions at issue in *Barry*. Compl. ¶¶ 117-19.

The defense has since disclosed an expert prepared to testify that the SEC cannot establish a causal connection between Mr. Jordan's alleged violations and any investor losses. Letter at 1, ECF No. 218. The expert's analysis shows that investor outcomes were driven by factors unrelated to the registration violations: general market conditions, company-specific developments, and individual trading decisions. *Id.* at 1-2. In response, the SEC has presented no expert, no event study, no damages analysis, and no rebuttal of the defense's showing that the violations did not cause pecuniary harm. *Id.*

This evidentiary gap is not an oversight but rather a product of the SEC's perception of the appropriate legal standard. Compare Mr. Jordan's case to *Govil*. On remand from the Second Circuit, the SEC retained an expert economist who conducted an event study isolating the price impact of the defendants' misrepresentations from market conditions, industry trends, and other factors. *Govil*, 2026 WL 145342, at *3-4. That analysis became essential to the disgorgement award. *Id.* Where the legal standard required the SEC to prove causation, the SEC did the work. In Mr. Jordan's

case, the SEC has not, and the Ninth Circuit’s framework, if adopted by this Court, would not require it.

If this Court holds that disgorgement necessitates proof of pecuniary harm causally connected to the defendant’s violations—as *amicus curiae* respectfully submits it should—then the SEC’s failure to produce causation evidence will be dispositive. On the other hand, if the Ninth Circuit’s framework is applied, then the estate of a man who was never charged with fraud will face an indefinite disgorgement claim supported by no evidentiary foundation at all. This Court can prevent that injustice by reversal here.

III. THE SEC’S OWN FINANCIAL DATA CONFIRM THAT DISGORGEMENT HAS BECOME SYSTEMIC REVENUE COLLECTION

The SEC’s financial reporting demonstrates that the three cases described above are not aberrations. They are the systemic product of a legal rule that permits disgorgement without requiring the SEC to identify whom was harmed, prove a victim’s loss, or connect that loss to the defendant’s conduct. When the SEC need not make those showings before it collects, it cannot distribute what it collects afterward. The result is funds accumulating in the Treasury that benefit no one but the government.

In *Liu*, this Court expressly questioned whether the SEC’s practice of depositing disgorgement proceeds into Treasury accounts “satisfies the SEC’s obligation to award relief ‘for the benefit of investors’ and is consistent with the limitations of § 78u(d)(5).” 591 U.S. at 88-89. This Court held that “the equitable nature of the profits remedy generally requires the SEC

to return a defendant's gains to wronged investors for their benefit." *Id.* at 88. Five years of SEC financial reporting since then demonstrate that the agency has moved further from that standard, not closer.

The SEC tracks a line item in its annual Agency Financial Reports for disgorgement and penalties held for distribution to harmed investors, representing funds the Commission has collected but not yet returned to victims. In fiscal year 2019, the year before *Liu* was decided, that balance stood at approximately \$1.7 billion. SEC, FY 2019 Agency Financial Report 90, <https://www.sec.gov/files/sec-2019-agency-financial-report.pdf>. By fiscal year 2022, it had grown to approximately \$3.9 billion. SEC, FY 2022 Agency Financial Report 102, <https://www.sec.gov/files/sec-2022-agency-financial-report.pdf>. By fiscal year 2024, it reached \$4.6 billion. SEC, FY 2024 Agency Financial Report 112, <https://www.sec.gov/files/sec-2024-agency-financial-report.pdf>. And as of fiscal year 2025, the balance had climbed to \$5.12 billion, more than triple the pre-*Liu* figure. SEC, FY 2025 Agency Financial Report 75, <https://www.sec.gov/files/sec-2025-agency-financial-report.pdf>.

The gap between what the SEC obtains in financial remedies and what it distributes is equally telling. In fiscal year 2024, the Commission obtained orders for \$8.2 billion in financial remedies, including \$6.1 billion in disgorgement and prejudgment interest—both figures the highest on record. SEC, Press Release, SEC Announces Enforcement Results for Fiscal Year 2024 (Dec. 17, 2024), <https://www.sec.gov/newsroom/press-releases/2024-186>. The government cited these numbers to this Court in its response to the petition for certiorari, describing them as evidence of disgorgement's

importance to the Commission's enforcement program. Resp. Cert. Br. 10. That same year, the SEC distributed only four percent of obtained financial remedies, or \$345 million, to harmed investors, down from \$930 million the prior year and the lowest distribution figure since *Liu*. SEC, Addendum to SEC Div. of Enforcement Press Release, Fiscal Year 2024 (Nov. 22, 2024), <https://www.sec.gov/files/fy24-enforcement-statistics.pdf>. The trend lines run in opposite directions: the amounts ordered grow while the amounts distributed shrink. Meanwhile, the undistributed balance climbs past \$5 billion.

The SEC's own reporting explains why. The Fiscal Year 2025 Agency Financial Report states that collected amounts may be held for future distribution, deposited directly into the U.S. Treasury General Fund, or transferred to the Investor Protection Fund. Amounts are not held for distribution when the SEC "determines it is not practical to return funds to investors" or when court orders direct funds to the Treasury. SEC, FY 2025 Agency Financial Report 75. In other words, when the SEC has not identified victims at the time it obtains a disgorgement order, it may later conclude that returning funds to victims is "not practical," and the money goes to the government instead.

This is the predictable consequence of the Ninth Circuit's framework. When disgorgement may be ordered without identifying victims or proving pecuniary harm, the SEC obtains awards in cases where it has not established whom was harmed or how. Having not established those things at the remedies stage, the SEC cannot find the victims to compensate them at the distribution stage.

A pecuniary harm requirement would impose much-needed discipline the SEC currently lacks. To demonstrate investor harm, the government must identify investors, quantify their losses, and connect those losses to the defendant's conduct. That process necessarily generates the information required to distribute what is collected. A pecuniary harm requirement would therefore narrow the gap between collection and distribution, aligning the remedy with its equitable purpose and with this Court's instruction in *Liu* that disgorgement proceeds be returned to "wronged investors for their benefit," 591 U.S. at 88, not deposited in the Treasury for the benefit of the government.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted.

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March 2, 2026