No. 25-466

IN THE

Supreme Court of the United States

ONGARUCK SRIPETCH,

Petitioner,

v.

SECURITIES AND EXCHANGE COMMISSION,

Respondent.

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

BRIEF FOR *AMICUS CURIAE* BETTER MARKETS, INC. IN SUPPORT OF RESPONDENT

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April 1, 2026

WILSON-EPES PRINTING CO., INC. – (202) 789-0096 – WASHINGTON, D.C. 20002

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INTEREST OF *AMICUS CURIAE*[1]

Better Markets, Inc. (Better Markets) is a nonprofit, nonpartisan organization that promotes the public interest in the financial markets through comment letters, litigation, independent research, and public advocacy. It advocates for a more stable financial system, economic prosperity for all Americans, and regulatory measures that protect investors and consumers from fraud and abuse. Better Markets has submitted hundreds of comment letters to federal financial regulators, including the Securities and Exchange Commission (SEC or Commission), advocating for strong oversight, accountability, and transparency in the financial markets. And it has argued specifically for strong enforcement under the securities laws in many forums, including *amicus* briefs filed in federal court. *See generally* Better Markets, http://www.bettermarkets.com (including archive of comment letters and briefs).

Better Markets has an interest in this case because a ruling in favor of the Petitioner directly threatens investors and the securities markets in general, by unduly limiting the most important tool in the SEC's enforcement arsenal. It would thus hamstring a longstanding, judicially favored, and critically important equitable tool that the SEC has used successfully to protect investors from fraud and abuse in the securities markets. While those markets have served as engines for economic growth and prosperity, they have

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[1] Pursuant to Supreme Court Rule 37.6, *amicus* states that no counsel for a party authored this brief in whole or in part; no counsel for a party, or any party, made a money contribution intended to fund the preparation or submission of this brief; and no person or entity, other than *amicus,* its members, or its counsel, made such a monetary contribution.

also been—and continue to be—marked by significant fraud and abuse. A ruling that limits disgorgement to only those instances in which the SEC can demonstrate that victims suffered pecuniary harm would incentivize, embolden, and unjustly enrich fraudsters suddenly graced with far better prospects of retaining their ill-gotten gains, even when they *are* subject to an SEC enforcement action. The public's confidence in the integrity of the securities markets would decline—a confidence without which those markets cannot thrive.

INTRODUCTION

Petitioner Ongkaruck Sripetch made millions defrauding investors in low-priced "penny stocks" in violation of the securities laws. He does not deny that he engaged in this misconduct, nor does he contest his fraudulent profits. Rather, Petitioner insists that he should be able to keep that money unless the SEC can demonstrate that his fraud inflicted pecuniary harm on his victims. Before the lower courts, the SEC insisted it could make this showing, but the court of appeals rejected Petitioner's argument out of hand. It held that, even if the SEC were unable to demonstrate that victims suffered pecuniary harm, Petitioner is still required to disgorge his illegal profits under long-established equitable principles. *See SEC v. Sripetch*, 154 F.4th 980, 986 (9th Cir. 2025). Because the court of appeals was correct in its conclusion, this Court should affirm.

Petitioner's case highlights the peril of unduly restricting enforcement remedies in a time of rampant financial crime. While "only one-third of corporate frauds are detected," Alexander Dyck, *et al.*, *How Pervasive Is Corporate Fraud?*, 29 Rev. Acct. Stud. 736, 736 (2024), the scale of financial violations is

prodigious: "on average 10% of large publicly traded firms are committing securities fraud every year[.]" *Id.* at 736. And even more striking, "in an average year, 41% of companies"—*almost half*—"misrepresent their financial reports[.]" *Id.* at 738. "What people don't get is how widespread the problem of corporate fraud is." Ephrat Livni, *Just How Common Is Corporate Fraud?*, N.Y. Times (Jan. 14, 2023).

Nor do "people get" the harm that such crime inflicts on the economy. "Corporate fraud destroys" an estimated "1.6% of equity value each year, equal to $830 billion in 2021." Dyck, *supra*, at 736. That number—$830 billion destroyed by corporate fraud—corresponds to roughly 3.6% of the $23 trillion U.S. GDP for that same year.[2] And that only measures the immediate loss of equity value to shareholders of public companies—those figures do not account for the downstream impacts that the loss of value has on the overall economy, nor the relative numbers and costs related to fraud in private equity or credit markets, let alone the rest of the financial markets.

Global financial crime statistics are equally alarming, with an estimated $3 trillion in illicit funds flowing through the global financial system annually, "represent[ing] approximately 3% of global GDP." Racheal B. Akinloye, *The Economic Toll of Financial Crimes: Analyzing the $3.1 Trillion Impact on Global Markets*, 25 Asian J. Econ. Bus. & Acct. vol. 3, 135, 137 (2025). "[R]ampant" financial crimes "cost[] an estimated $485.60 billion in 2023" which is a significant portion of global GDP. *Id.* at 139. Financial crimes "exacerbate the risks faced by individuals and businesses" by

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[2] https://www.macrotrends.net/global-metrics/countries/usa/united-states/gdp-gross-domestic-product

increasing "corruption, bribery, and other illegal activities that undermine public institutions" creating "an environment of uncertainty, discouraging investment and hindering economic development." *Id.* at 138. Insufficient or ineffective enforcement of financial regulations also erodes "consumer confidence, leading to a decline in investment, a rise in the cost of capital, and lower economic growth." *Ibid.*

It would seem obvious that those who violate the law should not be allowed to retain their illegal profits, quite apart from any losses inflicted on investors. It is also important to affirm that principle to help deter the enormous and growing incidence of securities fraud and related crimes. Rooting out financial malfeasance is difficult work; letting the captured fraudster keep the money for no good reason would be counterproductive.

STATEMENT

Given the importance of effective financial regulation, Congress has provided a framework to root out and deter fraud and abuse in the securities markets. This framework focuses on effective remedies, like disgorgement, designed to make securities violations unprofitable.

1. Starting with the Securities Act of 1933, 15 U.S.C. § 77a *et seq*., Congress adopted a series of laws "designed to eliminate certain abuses in the securities industry which were found to have contributed to the stock market crash of 1929 and the depression of the 1930s." *SEC v. Capital Gains Research Bureau*, 375 U.S. 180, 186 (1963). The securities laws' "fundamental purpose … was to substitute a philosophy of full disclosure for the philosophy of *caveat emptor* and thus to achieve a high standard of business ethics in the securities industry." *Id.*

In 1934, Congress created the SEC to enforce those laws. 15 U.S.C. § 78d(a). Initially, the SEC could seek only injunctive relief in federal court, *e.g., id.* § 78u(d)(1), and could administratively bar or suspend registered entities like broker-dealers, *id.* § 78o(b), and investment advisers, Investment Advisers Act of 1940, 15 U.S.C. § 80b-3. "Disgorgement" was an "ancillary" equitable remedy that courts began to apply in SEC actions in the early 1970s "to make violations unprofitable." *SEC v. Manor Nursing Ctrs., Inc.*, 458 F.2d 1082, 1103 (2d Cir. 1972).

2. "The voluminous legislative record" that followed "clearly establishes that Congress has repeatedly expanded the remedies available to the SEC in its enforcement actions to increase deterrence of securities-law violations, bolster investor protection, and further the public interest in fair, orderly, and efficient securities markets." Donna M. Nagy, *Public Rights, Public Harms, and SEC Enforcement Remedies*, 22 Berkeley Bus. L.J. 305, 309 (2025). Congress wanted to provide remedies beyond traditional equitable remedies "such as the disgorgement (giving up) of illegal profits," which "merely restores a defendant to his original position" and imposes no "real penalty for his illegal behavior[.]" H.R. Rep. No. 98-355, at 7 (1983).

Congress thus expanded and sharpened the SEC's enforcement tools. Congress authorized the Commission to seek civil monetary penalties, first for insider trading (Insider Trading Sanctions Act of 1984, Pub. L. No. 98-376, 98 Stat. 1264 (1984); Insider Trading and Securities Fraud Enforcement Act of 1988, Pub. L. No. 100-704, 102 Stat. 4677 (1988)), and then for any violation of the securities laws (Securities Enforcement Remedies and Penny Stock Reform Act of 1990, Pub. L. No. 101-429, 104 Stat. 931 (1990) (Remedies Act)).

Congress also expanded the types of remedies the SEC could impose administratively (adding 15 U.S.C. § 21C), as well as the universe of people potentially subject to administrative enforcement proceedings (Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, Pub. L. No. 111-203, 124 Stat. 1376 (Dodd-Frank)).

And to "allow courts to go beyond orders 'to disgorge funds that a wrongdoer received as a result of the violation,'" Nagy, *supra*, at 324 (quoting S. Rep. No. 107-205, at 27 (2002) (cleaned up)), Congress authorized the Commission to seek "any equitable relief that may be appropriate or necessary for the benefit of investors" (Sarbanes-Oxley Act of 2002, Pub. L. No. 107-24, 116 Stat. 745 (2002) (Sarbanes-Oxley)).[3] This history confirms Congress's consistent desire to expand the array of enforcement remedies available to the SEC, not limit their number or the circumstances in which they may be applied.

3. Months after this Court's decision in *Liu v. SEC*, 591 U.S. 71, 79 (2020), interpreting the Sarbanes-Oxley amendment to § 78u(d)(5) as codifying a disgorgement remedy limited by certain equitable principles, including that, where feasible, disgorgement should "be awarded for victims," Congress again amended § 78u(d) in the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, Pub. L. No. 116-283, 134 Stat. 3388 (2021) (NDAA). Congress specified that, in any action brought by the SEC, courts may order "disgorgement … of any unjust

[3] This provision, codified at 15 U.S.C. § 78u(d)(5), represented Congress's "response to the SEC's request 'for additional relief in enforcement cases,' … beyond orders 'to disgorge funds that a wrongdoer received 'as a result of the violation.'" Nagy, *supra*, at 324 (quoting S. Rep. No. 107-205, at 27 (2002) (cleaned up)).

enrichment by the person who received such unjust enrichment as a result of such violation." *Id.* § 78u(d)(3)(A)(ii). And the NDAA added § (d)(7), which provides that "[i]n *any action* … brought by the Commission *under any provision* of the securities laws, the Commission may seek, and any Federal court may order, disgorgement." *Id.* § 78u(d)(7) (emphasis added). Section (d)(7) contained no requirement that disgorgement be "appropriate or necessary for the benefit of investors"—the language on which *Liu* relied in stating the Court's preference that disgorgement under § (d)(5) should be awarded to victims.

SUMMARY OF ARGUMENT

History, statutory interpretation, and common sense defeat Petitioner's argument that he does not have to disgorge the profits of his fraud unless the Commission demonstrates that victims suffered pecuniary harm.

I.A. Petitioner's argument is belied by centuries of jurisprudence recognizing that a wrongdoer cannot retain the profits of his wrongdoing. Developed in courts of equity and following a well-trod path, the disgorgement remedy is a "profit-based measure of unjust enrichment" designed to "deprive wrongdoers of their net profits from unlawful activity." *Liu v. SEC*, 591 U.S. 71, 79 (2020) (cleaned up). The remedy's "primary purpose … is not to compensate investors" but to "forc[e] a defendant to give up the amount by which he was unjustly enriched." *SEC v. Commonwealth Chem. Sec., Inc.*, 574 F.2d 90, 102 (2d Cir. 1978) (Friendly, J.). Disgorgement is thus focused on returning the wrongdoer to the *status quo*—no more, no less—regardless of whether the wrongdoer has caused harm to others.

B. Equitable jurisprudence is thus replete with examples of courts ordering a wrongdoer to disgorge the proceeds of his misconduct even where, as in the case of a trustee's breach of fiduciary duty, the trust suffered no pecuniary harm and, in fact, "was to the advantage of the trust." *Mosser v. Darrow*, 341 U.S. 267, 272 (1950). As this Court explained, "equity has sought to limit difficult and delicate fact-finding tasks … by precluding such transactions for the reason that their effect is often difficult to trace, and the prohibition is not merely against injuring the estate—it is against profiting out of the position of trust." *Id.* at 273.

II.A. Petitioner's retort that this equates to remedying "victimless" violations misses the point. Congress's regulatory scheme was established to protect the public markets from exactly the type of fraudulent abuse that Petitioner engaged in, not to redress individual harms. In these circumstances, the federal courts' inherent equitable authority does not shrink, but takes on "an even broader and more flexible character … than when only a private controversy is at stake." *Porter v. Warner Holding Co.*, 328 U.S. 395, 398 (1946). Violations of these provisions may result in no measurable pecuniary harm to individual victims or harms that are so dispersed as to be impossible to prove. That does not make them "victimless."

Just as this Court recognized that a trustee who breached his fiduciary duty must account for any profits to an estate that lost nothing of value (*Mosser*, 341 U.S. at 273), an investment adviser is required to disgorge the profits from a breach of fiduciary duty regardless of whether or not his client was injured (*see, e.g., Montford & Co. v. SEC*, 793 F.3d 76, 84 (D.C. Cir. 2015)). And this principle equally applies to various

aspects of the securities laws, whether they require certain corporate disclosures, prohibit insiders from trading on the company's securities, or, as is the case here, prohibit fraud or deceit in connection with securities transactions. In all of these instances, Congress has directed the courts to make securities law violations unprofitable, in an attempt to ensure the protection of investors and the proper function of the public markets.

B. Deterrence is a feature of disgorgement, not a bug. Though intended to deter further wrongdoing, equitable remedies like "disgorgement" are "limited to restoring the *status quo*" and thus differ from fines that extend beyond disgorgement or criminal penalties such as incarceration, which "exact[] punishment." *Tull v. United States*, 481 U.S. 412, 422-24 (1987). A remedy that deters misconduct by restoring the *status quo*—and goes no further—is fully consistent with traditional equitable principles. There is therefore no reason to layer a compensatory limitation on a remedy that strikes this appropriate balance.

III.A. Petitioner's reliance on *Liu* is based on a misreading of that decision. Although the Court suggested that the profits-based equitable remedy authorized by 15 U.S.C. § 78u(d)(5) should be used to compensate "victims" of the violation, 591 U.S. at 88, this reading was irrevocably tied to that provision's definition of the type of equitable relief that it was authorizing: that which is "appropriate or necessary for the benefit of investors," 15 U.S.C. § 78u(d)(5).

It is hard to imagine that, in this statement, the Court intended to impose a pecuniary harm requirement on disgorgement. If the Court were intending to upend centuries of equitable precedent, the Court surely would have said so more directly. This is

especially so given the lower courts' uniform rejection of any pecuniary harm requirement until the Court of Appeals for the Second Circuit's decision in *SEC v. Govil*, 86 F.4th 89 (2023). *See, e.g., SEC v. Bilzerian*, 29 F.3d 689, 697 (D.C. Cir. 1994); *SEC v. Rind*, 991 F.2d 1486, 1490 (9th Cir. 1993); *Commonwealth Chem.*, 574 F.2d at 102.

B. Moreover, Petitioner's argument does not account for Congress's swift legislative response to *Liu*. Within months of the decision, Congress amended § 78u(d) to make clear that the SEC could seek, and courts could order, "disgorgement" of a defendant's "unjust enrichment" with no mention of victim harm. *See* 15 U.S.C. §§ 78u(d)(3)(A)(ii), (d)(7) (authorizing "disgorgement" for "any person" who "has violated any provision of this chapter" "of any unjust enrichment" that person "received … as a result of such violation"). The NDAA's amendments to § 78u(d) eschew the "for the benefit of investors" language from § 78u(d)(5) where *Liu* located such a requirement. *Liu*, 591 U.S. at 89.

IV. Petitioner's attempts to unduly limit the SEC's authority to seek and obtain disgorgement from federal courts poses a direct and substantial threat to a wide variety of investor and consumer protections. Limiting disgorgement by injecting a pecuniary harm requirement into the analysis would not only conflict with Congress's intent to equip the SEC, and other financial and consumer regulators, with the disgorgement remedy but also would expand the harm to countless additional consumers who need protection from fraud and abuse in financial transactions. Effective judicial remedies for securities violations is all the more important given the recent reductions in administrative enforcement options, as well as the SEC's recent blessing of corporations' desire to push

investors into forced arbitration. The combined effects of these developments have the potential to further decrease the government's ability to effectively and efficiently police the securities and other financial markets.

ARGUMENT

I. EQUITY DOES NOT REQUIRE A VICTIM TO SUFFER PECUNIARY HARM TO JUSTIFY DISGORGING A WRONGDOER'S UNJUST ENRICHMENT.

Petitioner's argument that disgorgement can be awarded only where investors have suffered pecuniary harm is inconsistent with centuries of jurisprudence, in which courts sitting in equity have long ordered a wrongdoer to give up the profits of his or her wrongdoing apart from any showing of victim harm.

A. Equity does not allow a wrongdoer to benefit from his or her wrongdoing.

Equity courts evolved in response to the shortcomings of courts of law governed by rigid rules, which often unfairly obstructed a party's ability to recover damages or allowed wrongdoers to retain benefits in the absence of cognizable injury to another party. "Applying this conception of equity, Chancellors exercised extremely broad discretion, doing justice in individual cases based on their personal notions of fairness, informed by natural law principles, despite the common law's limits." Michael T. Morley, *The Federal Equity Power*, 59 B.C. L. Rev. 217, 227 (2018). Thus, equity courts devised remedies to fill the gaps where legal remedies were inadequate.

Disgorgement is of a piece with traditional equitable remedies (accounting for profits, constructive trust,

and equitable restitution) based on "[t]he cardinal principle … that the wrongdoer shall derive no benefit from his wrong." *May v. Le Claire*, 78 U.S. 217, 236 (1870). *See also Root v. Railway Co.*, 105 U.S. 189, 207 (1882) ("[I]t would be inequitable that [a wrongdoer] should make a profit out of his own wrong."); Restatement (Third) of Restitution and Unjust Enrichment § 51(4) (2011) (the remedy was designed "to eliminate profit from wrongdoing").

B. Equity provides relief when a wrongdoer profits from violating a plaintiff's legally protected right, even where the victim suffers no pecuniary harm.

Petitioner's argument that he should be able to keep his illegal profits unless the SEC demonstrates that investors suffered pecuniary harm confuses disgorgement and its equitable cousin, restitution. Despite the remedies' overlapping origins and concerns, equity has long distinguished between disgorgement and restitution—the former singularly focused on *depriving wrongdoers* of ill-gotten gains and the latter focused on *restoring to victims* what has been wrongfully taken from them.

As Judge Friendly explained, "the primary purpose of disgorgement is not to compensate investors… it is a method of forcing a defendant to give up the amount by which he was unjustly enriched." *SEC v. Commonwealth Chem. Sec., Inc.*, 574 F.2d 90, 102 (2d Cir. 1978). Conversely, restitution provided justice to a victim where contract remedies were inadequate, either because no contract had been formed, *see, e.g., Morris Pumps v. Centerline Piping, Inc.,* 273 Mich. App. 187, 193, 729 N.W.2d 898, 903 (2006), or because the measure of damages available at law would be inadequate, as where a mistake led to unjust

enrichment but no contract breach occurred. *Heacock v. Fly*, 14 Pa. 540, 543 (1850) ("Equity will grant relief against acts done and contracts executed under a mistake of facts.").

An early chancery court decision from Virginia illustrates the concept: a mortgagor who unlawfully retained possession of the mortgaged property and "taketh the profits thereof," was ordered "to account for such aftertaken profits" to the mortgagee, without any demonstration of pecuniary loss to the mortgagee. *Cadwallader v. Mason*, 2 Va. (Wythe) 188, 188, 1793 WL 251 (Mar. 1793). As the Second Circuit later described the decision: "[t]he rule against unjust enrichment compelled an award equal to the defendant's gain, regardless of how much money the plaintiff actually would have earned from the land during the mortgagor's wrongful possession." *Cavanaugh*, 445 F.3d at 120 (discussing *Cadwallader*).

As the Restatement explains, "[w]hile the paradigm case of unjust enrichment is one in which the benefit on one side of the transaction corresponds to an observable loss on the other, the consecrated formula 'at the expense of another' can also mean 'in violation of the other's legally protected rights,' without the need to show that the claimant has suffered a loss." Restatement (Third) of Restitution and Unjust Enrichment § 1 cmt. *a* (2011). In other words, it is the defendant's violation of plaintiff's legal rights that gives rise to the duty to disgorge any profits connected with that violation—and that is so whether or not the plaintiff has suffered additional harm, pecuniary or otherwise.

For example, in *United States v. Carter*, 217 U.S. 286 (1910), this Court ordered the defendant former officer of the United States to disgorge the profits he earned

as bribes in overseeing a government improvement project, even though the government could not "show that it had suffered any actual loss" in its expenditures on the improvements. *Id.* at 305. The Court reasoned, "It is not enough for one occupying a confidential relation to another, who is shown to have secretly received a benefit from the opposite party, to say, 'You cannot show … that you have sustained any loss by my conduct.'" *Ibid*. Similarly, in *Magruder v. Drury*, 235 U.S. 106 (1914), this Court ordered a trustee to disgorge all profits that he earned in breach of his fiduciary duty, even though "the estate was not a loser in the transaction[.]" *Id.* at 120.

Those decisions are far from outliers. *See also, e.g., Mosser v. Darrow*, 341 U.S. 267, 273 (1950) ("But equity has sought to limit difficult and delicate fact-finding tasks … by precluding such transactions for the reason that their effect is often difficult to trace, and the prohibition is not merely against injuring the estate—it is against profiting out of the position of trust."); *Jackson v. Smith*, 254 U.S. 586, 589 (1921) ("[T]he law made him accountable to the trust estate for all the profits obtained by him … although the estate may not have been injured thereby."); *Raven Red Ash Coal Co. v. Ball*, 39 S.E.2d 231, 238 (Va. 1946) (ordering disgorgement of profits from trespass where "the illegal use caused no damage to the realty"; to rule otherwise "would place a premium on trespassing, because it makes the position of the trespasser more favorable than that of one lawfully contracting"); *Edwards v. Lee's Adm'r*, 96 S.W.2d 1028, 1032 (Ky. 1936) (Where "there may be no tangible loss other than the violation of a right," the "law, in seeking an adequate remedy for the wrong, has been forced to adopt profits received, rather than damages sustained, as a basis of recovery.").

Yet, that is precisely what Petitioner argues here. He insists that, absent a showing of investor losses, he should be entitled to keep the $3.3 million in profits he admittedly earned from defrauding investors. Petitioner is essentially saying that he is entitled to keep all of his illegal proceeds because "'You cannot show … that you have sustained any loss by my conduct.'" *Carter*, 217 U.S. at 305. That argument failed to persuade this Court in 1910, and it has hardly improved with age.

II. THERE IS NO SUCH THING AS A "VICTIMLESS" SECURITIES LAW VIOLATION.

Petitioner's argument fails for another independent reason: Securities fraud and abuse always inflicts a form of harm on the markets, the rule of law, and investors—even if investor harm is sometimes indirect. Petitioner characterizes disgorgement as inappropriately punitive because, he claims, his fraud was a "victimless" violation. Br. 14, 19. This argument ignores Congress's comprehensive regulatory scheme, which was established to protect the public markets from exactly the type of fraudulent abuse that Petitioner engaged in, not to redress individual harms.

A. Courts consistently recognize that equity becomes more, not less, flexible when dealing with public administration of a regulatory scheme.

The Court has recognized that, when redressing violations of federal law in the public interest, the federal courts' inherent equitable authority does not shrink, but takes on "an even broader and more flexible character … than when only a private controversy is at stake." *Porter v. Warner Holding Co.*, 328 U.S. 395, 398 (1946). Indeed, it is "[t]he emphasis

on public protection, as opposed to simple compensatory relief, [that] illustrates the equitable nature of the [disgorgement] remedy." *SEC v. Cavanaugh*, 445 F.3d 105, 117 (2d Cir. 2006).

For example, in *Porter*, the Court reversed a lower court's decision that it lacked the authority to order a landlord to disgorge excessive rents in violation of the Emergency Price Control Act of 1942, reasoning that the court could utilize its inherent equitable authority to order such relief to further "the public interest by restoring the status quo" and "give effect to the policy of Congress." 328 U.S. at 400, 403. And the Court repeated this sentiment in *Kansas v. Nebraska*, 574 U.S. 445 (2015), noting that "equitable authority to grant remedies is at its apex when public rights and obligations are [] implicated." *Id.* at 472. These cases demonstrate the important role that equitable remedies play when administering "the executive branch's duty to implement the law and preserve functioning commerce by deterring violations of market protection schemes." Prentiss Cox & Christopher L. Peterson, *Public Compensation for Public Enforcement*, 39 Yale J. Reg. 61, 65 (2022) (discussing role of "public compensation").

B. The regulation of the national securities markets is one such public protection.

The securities laws' guiding principle "is to protect investors by requiring publication of material information thought necessary to allow them to make informed investment decisions concerning public offerings of securities in interstate commerce." *Pinter v. Dahl*, 486 U.S. 622, 638 (1988). *See also SEC v. Ralston Purina Co.*, 346 U.S. 119, 124 (1953) (The Securities Act is designed "to protect investors by promoting full disclosure of information thought

necessary to informed investment decisions."). Violations of these provisions may result in no measurable pecuniary harm to specific individual victims or harms that are so dispersed as to be impossible to prove. That does not make the crimes "victimless."

For one thing, the denial of access to information is a cognizable—albeit nonpecuniary—injury. *See, e.g., Pub. Citizen v. DOJ*, 491 U.S. 440 (1989); *Havens Realty Corp. v. Coleman*, 455 U.S. 363 (1982). Applying that principle to securities regulation, an investor is injured if he or she is deprived of information from the omission of the disclosures that the securities laws require issuers to include in registration statements and prospectuses (*Gustafson v. Alloyd Co.*, 513 U.S. 561, 569-70 (1995)), from an issuer's failure to satisfy periodic "disclosure requirements" designed to "protect" investors (*Piper v. Chris-Craft Indus., Inc.*, 430 U.S. 1, 22-27, 35 (1977)), or from a material omission in a proxy statement that frustrates "the process of deciding how to vote," (*Mills v. Elec. Auto-Lite Co.*, 396 U.S. 375, 384 (1970)). In none of these circumstances does it make sense to require a showing that investors suffered some further individualized harm before a court may require the wrongdoers to disgorge profits from those violations. The harm is real even if it is not distilled to an individual economic injury.

And there is more. Exchange Act Section 16(b), 15 U.S.C. § 78p(b), requires corporate insiders with nonpublic information to disgorge any "short-swing" profits—defined as those earned within six months of a purchase or sale of the company's securities—in any action brought either by the corporation itself or, if the corporation does not file suit, by any shareholder. *See generally Gollust v. Mendell*, 501 U.S. 115, 121-22

(1991). Such a shareholder (or even the issuer itself) would be unlikely to have suffered pecuniary harm from the short-swing purchase or sale, but Congress thought that such a prohibition "was an important part of [its] plan … to 'insure the maintenance of fair and honest markets,'" *id.* at 121 (quoting 15 U.S.C. § 78b), by "taking the profits out of a class of transactions in which the possibility of abuse was believed to be intolerably great." *Reliance Elec. Co. v. Emerson Elec. Co.*, 404 U.S. 418, 422 (1972). Requiring a showing of pecuniary harm would contravene the very reason why Congress prohibited this conduct in the first place.

These principles apply equally to the antifraud provisions. Just as this Court recognized that a trustee who breached his fiduciary duty must account for any profits to the estate, even when the estate lost nothing of value (*Mosser*, 341 U.S. at 273), an investment adviser is required to disgorge the profits from a breach of fiduciary duty regardless of whether or not his client lost a dime (*see, e.g., Montford & Co. v. SEC*, 793 F.3d 76, 84 (D.C. Cir. 2015) (affirming disgorgement for amount of undisclosed kickbacks adviser received to steer clients to another adviser without mention of client harm)).

The same can be said about those who profit from insider trading, since, "in 'classical' insider-trading cases, it is difficult to identify the victims of the unlawful trade." Jennifer J. Schulp, *Liu v. SEC: Limiting Disgorgement, But By How Much?*, 2020 Cato Sup. Ct. Rev. 203, 220-21 (2019-2020). And yet, insider trading is widely viewed "as unfair" and "a form of cheating," Sung Hui Kim, *Insider Trading as Private Corruption*, 61 UCLA L. Rev. 928, 966-67 (2014). Moreover, the extent of insider trading on a market

negatively impacts its volatility: "More insider trading is found to be associated with a higher market volatility even after one controls for the volatility of the real output growth, volatility of monetary and fiscal policies, and maturity of the stock market." Julan Du & Shang-Jin Wei, *Does Insider Trading Raise Market Volatility*, NBER Working Paper (No. 9541) 23 (Mar. 2003).[4] Strong enforcement, including the use of disgorgement and other targeted remedies, is thus essential to preserve the integrity of market price signals, enabling investors to make efficient capital allocation decisions based on accurate information. None of that turns on whether regulators could identify individualized harm.

The Court need look no further than Petitioner's conduct to see the fallacy in his "victimless" violations assertion. In pleading guilty to one count of engaging in an unregistered securities offering, Petitioner admitted that his conduct "had actual impact on the lives of real people—people who invested their money in empty companies so that [Petitioner] and his partners could buy nice cars and houses"—and that "many of the investors" had suffered "financial troubles" as a result of the fraud. Sentencing Memorandum, *United States v. Sripetch*, No. 3:20-cr-160, Doc. No. 125 (S.D. Cal. July 26, 2022). Equity would not countenance allowing Petitioner to keep the $3.3 million that he profited from this malfeasance, whether or not the SEC were able to locate the investors on the losing end of his fraud.

[4] http://www.nber.org/papers/w9541

C. The deterrent impact of disgorgement does not transform this classically equitable remedy into a legal punishment.

Petitioner likewise errs in suggesting (Br. 11, 15-17) that, because disgorgement deters the defendant and others from violating the securities laws, it is punitive and thus loses its equitable nature. Depriving a wrongdoer of ill-gotten gains "serves a deterrent purpose distinct from any punitive purpose." *Bennis v. Michigan*, 516 U.S. 442, 452 (1996); *see also Hecht Co. v. Bowles*, 321 U.S. 321, 329-30 (1944) (Equitable remedies are "designed to deter, not punish."); Restatement (Third) of Restitution and Unjust Enrichment § 51, cmt. *k* (2011) ("Disgorgement of wrongful gain is not a punitive remedy."). Though intended to deter further wrongdoing, equitable remedies like "disgorgement" are "limited to restoring the *status quo*" and thus differ from fines that extend beyond disgorgement or criminal penalties such as incarceration, which "exact[] punishment." *Tull v. United States*, 481 U.S. 412, 422-24 (1987). That is why the Court has not hesitated to order disgorgement while exercising original equitable jurisdiction over state water rights' disputes, reasoning that "a disgorgement award reminds [the state] of its legal obligations, deters future violations, and promotes the Compact's successful administration." *Kansas*, 574 U.S. at 463-64.

This treatment—recognizing that a remedy may deter further malfeasance but remains equitable if it restores the *status quo* and goes no further—is consistent with traditional equitable principles. The equitable remedy of accounting for profits (from which disgorgement derives) "punishes" the wrongdoer by forcing him to give up his profits to ensure "that he

shall not profit by his wrong." *Rubber Co. v. Goodyear*, 76 U.S. (9 Wall.) 788, 804 (1869). As the Court explained, "[a] more favorable rule would offer a premium to dishonesty, and invite to aggression." *Ibid.*

The constructive trust likewise serves as a deterrent. The remedy evolved "for the wisest purposes and upon the soundest public policy": "It is to aid in the maintenance of right and in the suppression of meditated wrong." *Oliver v. Piatt*, 44 U.S. (3 How.) 333, 401 (1845). A constructive trust forces defendants to surrender property they would rather retain, and it stands as an example to potential wrongdoers who face the possibility that they will have to forego the fruits of their misconduct. *See Snepp v. United States*, 444 U.S. 507, 515 (1980) (affirming imposition of a constructive trust on the profits from former CIA agent's unauthorized book "tailored to deter those who would place sensitive information at risk").

Finally, "[i]t goes without saying that an injunction is an equitable remedy," *Weinberger v. Romero-Barcelo*, 456 U.S. 305, 311 (1982), and yet an injunction is designed for the very purpose of deterrence: to halt ongoing violations and prevent future violations of the law through a judicial command that is reinforced by the threat of contempt sanctions. Injunctions stigmatize the enjoined party and subject it to onerous consequences under the securities laws, including a potential bar from the industry and a loss of livelihood. Yet a properly issued injunction unquestionably is an equitable remedy.

III. PETITIONER'S ARGUMENT MISREADS *LIU* AND § 78u(d)(7).

Petitioner argues (Br. 15-20) that, in construing § 78u(d)(5) as requiring "that a disgorgement award" under that provision be "awarded for victims," the Court in *Liu* established a rule whereby disgorgement can never be awarded absent a showing that victims suffered pecuniary harm as a result of the violation. That argument misconstrues *Liu* and, in any event, does not account for Congress's legislative response to the decision.

A. Petitioner's argument misreads *Liu*.

Liu did not hold that disgorgement is available only where victims suffer pecuniary harm. To be sure, the Court suggested that the profits-based equitable remedy authorized by § 78u(d)(5) should be used to compensate "victims" of the violation. 591 U.S. at 88. But the Court acknowledged that even this precatory reading was irrevocably tied to that provision's definition of the type of equitable relief that it was authorizing: that which is "appropriate or necessary for the benefit of investors." 15 U.S.C. § 78u(d)(5).

To hold otherwise would be contrary to centuries of equitable precedent holding that a wrongdoer must disgorge or account for the profits from his or her own wrong, even where victim harm was nonexistent. *See, e.g., Carter*, 217 U.S. at 305 (ordering constructive trust even though plaintiff was unable "to show that it had suffered any actual loss"); *Tilghman v. Proctor*, 125 U.S. 136, 145 (1888) ("it is inconsistent with the ordinary principles and practice of courts of chancery … to permit the wrongdoer to profit by his

own wrong");[5] *Rubber Co.*, 76 U.S. at 804 ("The rule is founded in reason and justice" with "[t]he controlling consideration" that the defendant "shall not profit by his wrong."); *Stevens v. Gladding*, 58 U.S. (17 How.) 447, 455 (1855) (ordering court on remand "to take account of the profits received by the defendants from the sales of" copyrighted material without any mention of harm to plaintiff).

It is unlikely that the Court intended to depart from this well-trod ground without so much as an acknowledgement that it was doing so. This would be even more surprising given the lower courts' uniform rejection of any pecuniary harm requirement until the Second Circuit's novel ruling in *SEC v. Govil*, 86 F.4th 89 (2023). *See, e.g., SEC v. Bilzerian*, 29 F.3d 689, 697 (D.C. Cir. 1994) ("Whether or not [defendant's] securities violations injured others is irrelevant to … whether disgorgement is appropriate."); *SEC v. Rind*, 991 F.2d 1486, 1490 (9th Cir. 1993) ("The theory behind the remedy is deterrence and not compensation."); *Commonwealth Chem.*, 574 F.2d at 102 ("[T]he

[5] In arguing that a victim must suffer pecuniary harm before disgorgement may be awarded in equity, Petitioner points to (Br. 17) *Tilghman*'s statement that "it is inconsistent with the ordinary principles and practice of courts of chancery … to undertake to punish [a wrongdoer] by obliging him to pay more than a fair compensation to the person wronged." 125 U.S. at 146. But in that case, the "fair compensation to the person wronged" *was* the defendants' profits from unauthorized use of the plaintiff's intellectual property. *Id.* at 145-46. Contrary to Petitioner's view, the Court did not order the defendant to pay compensatory "damages" but rather applied the "rule in equity requiring [the] infringer to account for the gains and profits which he has made from the use of a patented invention, instead of limiting the recovery to the amount of royalties paid to the patentee by third persons[.]" *Id.* at 148.

primary purpose of disgorgement is not to compensate investors," but to "forc[e] a defendant to give up the amount by which he was unjustly enriched."). There is thus little reason to think that this Court's decision in *Liu* was setting the table to impose a pecuniary harm requirement on the remedy's availability.

B. Congress amended § 78u(d) to ensure that disgorgement of ill-gotten gains was unrestricted by (d)(5)'s "benefit of investors" language.

Petitioner's argument fails for an even more fundamental reason: Congress amended § 78u(d) within six months of this Court's decision in *Liu* to make clear that the SEC could seek, and courts could order, "disgorgement" of a defendant's "unjust enrichment" without regard to victim harm. *See* 15 U.S.C. §§ 78u(d)(3)(A)(ii), (d)(7) (authorizing "disgorgement" for "any person" who "has violated any provision of this chapter" "of any unjust enrichment" that person "received … as a result of such violation"). The language Congress inserted lacks the "for the benefit of investors" limitation from § 78u(d)(5) where *Liu* located such a requirement. *Liu*, 591 U.S. at 89. "We presume sections 21(d)(3)(A)(ii) and (d)(7) lack the investor-benefit requirement Congress provided for in section 21(d)(5)" because Congress acts "deliberate[ly]" in omitting language from one provision of an act that is included in another provision of the same act. *SEC v. Spartan Sec. Grp.*, 164 F.4th 1231, 1268 (11th Cir. 2026) (per curiam). And that is without even accounting for the fact that Congress was clearly reacting to *Liu*'s interpretation of § 78u(d)(5)'s investor benefit language.

This is not to dismiss the Court's concern with ensuring that the government exercises its authority

both in the manner that Congress instructed and also with an eye toward ensuring that statutory remedies are being imposed efficaciously. That is an undeniably laudable goal.

But the Court's preference that monies be distributed to harmed investors, where feasible, is already reflected in existing law. Congress has codified the SEC's preference, expressed in its earliest uses of disgorgement, "to refund the misappropriated proceeds to defrauded public investors" as "an appropriate exercise … of [a district court's] equity powers." *Manor Nursing*, 458 F.2d at 1105. *See also* Oversight of the Securities and Exchange Commission Before the Senate Committee on Banking, Housing, and Urban Affairs, 116th Cong. (2019) (statement of Jay Clayton, former SEC Chairman) ("[P]rotecting retail investors also means, whenever possible, putting money back in their pockets as soon as possible after they are harmed by violations of the federal securities laws.").

Section 308 of Sarbanes-Oxley, titled "Fair Funds for Investors," provides that if "the Commission obtains an order requiring disgorgement against any person for a violation of" the securities laws, and "also obtains pursuant to such laws a civil penalty against such person, the amount of such civil penalty shall, on the motion or at the direction of the Commission, be added to and become part of the disgorgement fund for the benefit of victims of such violation." 116 Stat. 784. Congress amended that "Fair Fund" provision in Dodd-Frank to allow for collected monetary sanctions "not added to a disgorgement fund … or otherwise distributed to victims" to be placed in a new "Investor Protection Fund" in the Treasury to fund "paying awards to whistleblowers," 15 U.S.C. § 78u-6(g), as well as to fund the SEC's Inspector General. *Id*. § 78d-4(e).

There is thus no basis on which to conclude that a pecuniary harm requirement would serve any equitable or remedial purpose here—where the result would be to allow Petitioner to retain millions of dollars in profits he earned from engaging in numerous schemes to manipulate the penny-stock market. Under *Liu* and the revised § 78u(d), courts will continue to work with the SEC to return disgorged amounts to harmed investors where feasible, but remain free to determine that "it would be more equitable to direct the money be paid to the Treasury because 'it would be inequitable that [a wrongdoer] should make a profit out of his own wrong.'" *Spartan*, 164 F.4th at 1270 (quoting *Liu*, 591 U.S. at 79-80).

That makes sense. Disgorgement serves its essential purpose of depriving wrongdoers of their ill-gotten gains equally well regardless of whether the funds are used to fund whistleblower awards or the SEC's Inspector General, or to compensate victims.

IV. RULING IN FAVOR OF PETITIONER WOULD WEAKEN THE ABILITY OF THE SEC TO PROTECT INVESTORS AND THE PUBLIC MARKETS.

The Petitioner's attempts to unduly limit the SEC's authority to seek and obtain disgorgement from federal courts poses a direct and substantial threat to a wide variety of investor and consumer protections. The SEC as well as other investor and consumer protection agencies depend heavily on disgorgement as a major, if not the primary, tool for recovering money from those who violate the law and prey on the public. Limiting disgorgement by injecting a pecuniary harm requirement into the analysis would not only conflict with Congress's intent to equip those agencies with the uniquely effective disgorgement remedy but also

expand the harm to countless additional consumers who need protection from fraud and abuse in financial transactions.

The Petitioner argues (Br. 27) that the SEC can well afford to lose its authority to seek disgorgement because it has essentially the same power to recover a defendants' pecuniary gains under the *civil penalty* provisions of the Exchange Act. This specious argument ignores the profound importance of the layered sanctions that Congress carefully reticulated to enable the SEC to effectively address securities law violations.

In the Exchange Act, Congress deliberately set forth an array of remedial and punitive measures that it deemed essential for disincentivizing, deterring, preventing, and remediating lawless behavior in the securities markets. Among them are injunctions; equitable relief (including disgorgement); and a tiered system of monetary penalties. All of these remedies were intended to complement, not substitute for, each other. *Cf.* 15 U.S.C. § 77t(d)(3)(D) (actions authorized may be brought in addition to any other action that the Commission or the Attorney General is entitled to bring); 15 U.S.C. § 78u(d)(3)(C)(iii) (same). As it stands today, the SEC has the authority to recover all of the ill-gotten gains that a defendant has derived from a fraudulent scheme and to impose monetary penalties *in addition* to such disgorgement.

Congress determined that these cumulative remedies were essential to the effectiveness of the SEC's enforcement regime. The reason is clear: If the consequence of committing fraud were limited to disgorgement alone—or in the Petitioner's preferred world, to penalties capped under a disgorgement formula—then the deterrent effect of the law would be

woefully inadequate. Many violators would be inclined to take the risk of engaging in fraud, facing a huge upside with little downside. Far from deterring fraud, such an outcome would incentivize it. Unduly limiting the SEC's disgorgement remedy would have a devastating impact on the agency's ability to effect justice, deter fraud, and help victims recover their losses.

The vitality of effective judicial remedies for securities violations, moreover, is all the more important given other recent developments. First, in calling into question the "public rights" doctrine's validity in *SEC v. Jarkesy*, 603 U.S. 109 (2024), this Court has significantly restricted the capacity and flexibility of federal regulators, including the SEC, to effectively enforce the law in the public interest. *Jarkesy* held that the SEC may not utilize one of the tools Congress granted it—administrative enforcement against registered entities to impose civil money penalties to deter and punish fraud—without running afoul of the Seventh Amendment right to a jury trial. *Id.* at 120-21. Combined with the Court's decision in *Kokesh v. SEC*, 581 U.S. 455 (2017), that SEC disgorgement is a "penalty" in some circumstances and therefore subject to the general statute of limitations, *Jarkesy* has all but neutered the SEC's administrative forum. *Id.* at 457.[6]

[6] As one recent commentator put it, "it's difficult to see how the SEC's [administrative] forum continues to function as anything other than—at best—a destination for settled actions or a limited category of cases such as a revocation of the registration of an issuer's securities under Section 12(j) of the Exchange Act [15 U.S.C. § 78l(j)]." Dean M. Conway, *The SEC's Administrative Law Courts Are at a Crossroads* (Apr. 24, 2025), https://www.carltonfields.com/insights/publications/2025/the-secs-administrative-law-courts-are-at-a-crossroads.

Moreover, "[i]n recent years, arbitration clauses have increasingly barred the courtroom doors to millions of Americans." Prentiss Cox & Christopher L. Peterson, *Public Compensation for Public Enforcement*, 39 Yale J. Reg. 61, 65 (2022). "[F]orced confidential arbitration hobbles private enforcement of market protection regimes," with many consumer industries exhibiting a 90% or more rate of mandatory arbitration for private disputes, including such mainstays of modern life as credit cards, wireless connectivity, mobile phones, student loans, and "pay-day" loans. *Id.* at 72. And "over 90 percent" of these agreements "expressly prohibit class arbitration." *Id.* at 73. Consequently, "in many markets, class actions no longer solve *any* problem because they are nearly extinct." *Ibid.*

The SEC recently announced that it would allow public companies to join this trend, forcing shareholders into mandatory arbitration "by fiat." Benjamin Schiffrin, Better Markets, *The SEC's Attempt to Kill Securities Class Actions Through Mandatory Arbitration Violates Congressional Action* 1-2 (Nov. 5, 2025).[7] This is so despite the fact that Congress and this Court have repeatedly "recognized that meritorious private actions to enforce federal antifraud securities laws are an essential supplement to criminal prosecutions and civil enforcement actions brought, respectively, by the Department of Justice and the [SEC]." *Amgen v. Conn. Ret. Plans & Trust Funds*, 568 U.S. 455, 478 (2013) (citation omitted); *see also* H.R. Rep. No. 104-369, at 31 (1995) (Conf. Rep.) (Meritorious private securities litigation is essential "to the integrity of American capital markets."). Mandatory arbitration would

[7] https://bettermarkets.org/wp-content/uploads/2025/11/PSLRA-Mandatory-Arbitration-Fact-Sheet-11.5.25.pdf

"*undercut* federal securities law by precluding most shareholders from seeking its enforcement through a class action … to the detriment of large and small shareholders alike." Mohsen Manesh & Joseph A. Grundfest, *The Corporate Contract and Shareholder Arbitration*, 98 N.Y.U. L. Rev. 1106, 1142 (2023) (emphasis in original).

The decrease in available administrative remedies, combined with the death-spiraling private securities action, only magnifies the important role that effective judicial remedies play in deterring fraud and abuse in the securities markets. Ensuring that fraudsters and other violators must disgorge their illegal profits without regard to victim harm is merely one small step in furtherance of that larger goal.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted,

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April 1, 2026