

No. 26-341

IN THE
Supreme Court of the United States

SPARTAN SECURITIES GROUP, LTD.;
ISLAND CAPITAL MANAGEMENT LLC;
CARL E. DILLEY; AND MICAH J. ELDRED,
Petitioners,

v.

U.S. SECURITIES AND EXCHANGE COMMISSION,
Respondent.

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

**BRIEF OF INVESTOR CHOICE ADVOCATES
NETWORK AND JAMIE QUICK AS AMICI
CURIAE IN SUPPORT OF PETITIONERS**

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TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES.....	iii
INTEREST OF AMICI CURIAE	1
SUMMARY OF ARGUMENT.....	2
ARGUMENT.....	5
I. <i>Sripetch</i> Reserved the Question This Judgment Presents	5
A. The Court has twice declined to decide whether the government may keep disgorged funds when distribution is infeasible.....	5
B. <i>Sripetch</i> rested on a concession that is absent here	6
C. The two rationales below must be reviewed together	7
II. Ms. Quick’s Case Shows the Question Recurring, and What the Rule Below Does to <i>Liu</i> ’s Investor-Benefit Requirement.....	8
A. The award against Ms. Quick rested on victims the Commission later could not identify.....	8
B. Under the rule below, that failure would not have mattered	9
C. Courts are giving opposite answers to what the absence of victims means	11
III. The Question Recurs, and the Sums at Stake Are Large	12

TABLE OF CONTENTS—Continued

	Page
IV. The Eleventh Circuit’s Answer Cannot Be Reconciled with the Premises of <i>Liu</i> and <i>Sripetch</i>	13
V. The Eleventh Circuit’s Statutory Holding Independently Warrants Review	15
A. It raises the classification and jury-trial questions <i>Sripetch</i> identified	15
B. It makes the penalty provision’s limits optional.....	17
CONCLUSION	18

TABLE OF AUTHORITIES

CASES	Page(s)
<i>AMG Capital Management, LLC v. FTC</i> , 593 U.S. 67 (2021).....	14
<i>Burk Builders, Inc. v. Wirtz</i> , 355 F.2d 451 (5th Cir. 1966).....	14
<i>FTC v. Gem Merchandising Corp.</i> , 87 F.3d 466 (11th Cir. 1996).....	14
<i>Great-West Life & Annuity Insurance Co.</i> <i>v. Knudson</i> , 534 U.S. 204 (2002).....	15, 16
<i>Liu v. SEC</i> , 591 U.S. 71 (2020).....	3-5, 7, 9-11, 13, 15, 16
<i>Marshall v. City of Vicksburg</i> , 82 U.S. (15 Wall.) 146 (1873).....	14
<i>National Federation of Independent</i> <i>Business v. OSHA</i> , 595 U.S. 109 (2022).....	16
<i>Porter v. Warner Holding Co.</i> , 328 U.S. 395 (1946).....	14
<i>SEC v. Ahmed</i> , 72 F.4th 379 (2d Cir. 2023).....	7, 8
<i>SEC v. Commonwealth</i> <i>Equity Services, LLC</i> , 133 F.4th 152 (1st Cir. 2025).....	11
<i>SEC v. Gallagher</i> , No. 21-cv-8739, 2026 U.S. Dist. LEXIS 137934 (S.D.N.Y. June 18, 2026)	13

TABLE OF AUTHORITIES—Continued

	Page(s)
<i>SEC v. Govil</i> , 86 F.4th 89 (2d Cir. 2023).....	7
<i>SEC v. Hallam</i> , 42 F.4th 316 (5th Cir. 2022)	7
<i>SEC v. Jarkesy</i> , 603 U.S. 109 (2024).....	16
<i>SEC v. Navellier & Associates, Inc.</i> , 108 F.4th 19 (1st Cir. 2024).....	14, 15
<i>SEC v. Padilla</i> , No. 1:23-cv-11331 (D. Mass.), <i>appeal</i> <i>docketed</i> , No. 26-1245 (1st Cir.)	1, 2, 8-11
<i>SEC v. Sanchez-Diaz</i> , 88 F.4th 81 (1st Cir. 2023).....	8
<i>SEC v. Sargent</i> , 329 F.3d 34 (1st Cir. 2003)	9
<i>Sripetch v. SEC</i> , 608 U.S. ___, 146 S. Ct. 1403 (2026).....	1-7, 10-13, 16
<i>United States v. Padilla</i> , No. 1:23-cr-10075 (D. Mass. Nov. 7, 2023).....	8

CONSTITUTION, STATUTES, AND RULES

U.S. Const. amend. VII	4, 16
------------------------------	-------

STATUTES

15 U.S.C. § 78u(d)(3)(B)	17
15 U.S.C. § 78u(d)(3)(B)(i)-(iii)	17

TABLE OF AUTHORITIES—Continued

	Page(s)
15 U.S.C. § 78u(d)(5)	3, 5, 10
15 U.S.C. § 78u(d)(7)	3, 7
15 U.S.C. § 78u(d)(8)	15
Sup. Ct. R. 37.2.....	1
Sup. Ct. R. 37.6.....	1

OTHER AUTHORITIES

Brief of Amicus Curiae Investor Choice Advocates Network, <i>SEC v. Spartan Securities Group, Ltd.</i> , No. 22-13129 (11th Cir. Jan. 24, 2023), ECF No. 28.....	1
Brief of Brenda Barry, Caleb Moody, and Eric Cannon as <i>Amicus Curiae</i> , <i>SEC v. Sripetch v. SEC</i> , No. 25-466 (Nov. 17, 2025)	1
Brief of Investor Choice Advocates Network as <i>Amicus Curiae</i> , <i>SEC v. Sripetch v. SEC</i> , No. 25-466 (March 2, 2026)	1, 12
Restatement (Third) of Restitution and Unjust Enrichment § 51 (2011).....	11
SEC, <i>Fiscal Year 2025 Agency Financial Report</i> (2025).....	12

INTEREST OF AMICI CURIAE¹

Investor Choice Advocates Network (“ICAN”) is a nonprofit public-interest law firm that serves as a legal voice for smaller investors and entrepreneurs. Its work includes representing individuals subjected to monetary remedies in Commission enforcement actions, where the asserted equitable basis for the remedy has lasting consequences for their property and their ability to participate in the capital markets. ICAN filed an amicus brief supporting petitioners in the Eleventh Circuit, Brief of Amicus Curiae Investor Choice Advocates Network, No. 22-13129 (11th Cir. Jan. 24, 2023), ECF No. 28, and filed briefs at both the petition and merits stages of *Sripetch v. SEC*, 608 U.S. ___, 146 S. Ct. 1403 (2026). Justice Thomas relied on ICAN’s merits brief for the figures showing the distance between what the Commission obtains in disgorgement orders and what it returns to investors. *Id.* at 1417 (Thomas, J., concurring).

Jamie Quick is an individual against whom the Commission has obtained, and is attempting to collect, a disgorgement judgment of \$44,159. *SEC v. Padilla*, No. 1:23-cv-11331 (D. Mass.). The Commission named her only as a relief defendant and has never accused her of wrongdoing. The *Padilla* court entered the

¹ Pursuant to Rule 37.6, amici curiae state that no counsel for a party authored this brief in whole or in part, and that no person or entity other than amici curiae and their counsel made a monetary contribution intended to fund the preparation or submission of this brief. Pursuant to Rule 37.2, counsel of record for all parties received notice on September 15, 2026, more than 10 days before the due date, of ICAN’s intention to file this brief. On October 8, 2026, counsel supplemented that notice to advise all parties that Ms. Quick would join the brief, and petitioners responded that they do not object.

award after accepting the Commission's representation that it had identified 34 specific victims; it later found that the Commission had failed to identify any specific victims of the trading at issue. The award stands, and the Commission has pursued garnishment of her bank accounts. Ms. Quick has challenged the award on the ground that disgorgement may not be imposed where no victim of the relevant conduct has been identified, and her appeal is pending in the First Circuit. No. 26-1245. ICAN and Dickinson Wright PLLC represent her. The question this petition presents will bear directly on whether the judgment against her, and others like it, may be collected for the Treasury.

Amici write to address the second question presented: whether courts may deviate from traditional equitable principles by awarding the Commission disgorgement in the absence of any harmed investors and directing the disgorged funds to the Treasury. Ms. Quick's case brings the Court something the parties cannot: the same question arising in a second circuit, against a different kind of defendant, on a record showing what happens when the investor-benefit requirement can be satisfied by a representation that later fails. Amici support petitioners on that question and take no position that departs from theirs.

SUMMARY OF ARGUMENT

Sripetch held that the Commission need not prove investor pecuniary loss to obtain disgorgement. 146 S. Ct. at 1410-12. It reached that holding by assuming, "without deciding," that disgorgement under paragraph (7) "remains an equitable remedy—so that it must comply with traditional equitable rules, including the rule that disgorgement must be awarded for victims." *Id.* at 1410. It expressly left open whether the

Commission may obtain disgorgement when distribution to investors is infeasible, and what showing establishes infeasibility. *Id.* at 1408. And it cautioned that if the government were to “attempt to use § 78u(d)(7) to secure penalties, it would of course proceed beyond what *Liu* held § 78u(d)(5) tolerates,” and “would invite other questions too.” *Id.* at 1412.

The petition squarely presents the reserved question. The Commission identified no investor whose protected interests petitioner Island Capital Management LLC (“Island”) invaded. Infeasibility of distribution was stipulated. And the decree directs \$154,394.05 to the Treasury on the express finding that doing so “is consistent with equitable principles.” Pet. App. 264a. The courts below sustained that disposition on two independent grounds: that paragraph (7) carries no investor-benefit requirement, and that, if equity governs, infeasibility plus unlawful gain suffices. Pet. App. 61a-69a, 245a-248a.

Ms. Quick’s case shows that the question is not confined to this record, and shows what the rule below would do to *Liu*. The District of Massachusetts entered a disgorgement judgment against an uncharged relief defendant after accepting the Commission’s representation that it had identified 34 specific victims, and it withheld prejudgment interest pending identification of those victims. When the Commission could not identify any specific victims of the trading at issue, the court denied interest as to Ms. Quick, reasoning that nothing required interest “to make investors whole.” But the principal award remained, and collection attempts followed. Under the alternative holding the Eleventh Circuit applied to Island, whether victims existed would never have mattered to the award: if they exist, the money goes to them, and if they do not,

it goes to the Treasury. A requirement satisfied either way is not a requirement. The two courts have already given opposite answers on whether the absence of identified victims weighs against a monetary award or in favor of sending it to the Treasury.

The question recurs at scale. In 2024 the Commission obtained disgorgement orders totaling \$6.1 billion while returning \$345 million to victims. 146 S. Ct. at 1417 (Thomas, J., concurring). And it reports a \$5.124 billion liability for disgorgement and penalties awaiting distribution as of September 30, 2025.

Review is also warranted because the Eleventh Circuit's answer cannot be squared with the premises of *Liu* and *Sripetch*. *Liu* holds that the remedy "must do more than simply benefit the public at large by virtue of depriving a wrongdoer of ill-gotten gains." 591 U.S. at 89. The rule below makes the impossibility of benefiting investors the reason the award is permissible. And the Eleventh Circuit's statutory holding raises the further questions *Sripetch* flagged, including the Seventh Amendment and the absence of authority for the prejudgment interest added to Island's judgment. The Court should grant the petition.

ARGUMENT

I. *Sripetch* Reserved the Question This Judgment Presents

A. The Court has twice declined to decide whether the government may keep disgorged funds when distribution is infeasible

Liu held that § 78u(d)(5) authorizes disgorgement limited to net profits and “awarded for victims,” and it identified the deposit of disgorged proceeds in the Treasury as one of three practices that “test the bounds of equity practice.” 591 U.S. at 75, 85. The Court noted the government’s suggestion that the practice “may be justified where it is infeasible to distribute the collected funds to investors,” and declined to resolve it: “It is an open question whether, and to what extent, that practice nevertheless satisfies the SEC’s obligation to award relief ‘for the benefit of investors’ and is consistent with the limitations of § 78u(d)(5).” *Id.* at 89. No order directing proceeds to the Treasury was before the Court. *Id.* at 89-90.

Sripetch declined again:

We did not decide whether the SEC may seek disgorgement when it is “infeasible to distribute the collected funds to investors.” Nor did we decide what showing the Commission might have to make to prove “[in]feasibility.” (Those questions remain for another day yet, as they have no bearing on this case.)

146 S. Ct. at 1408 (citations omitted).

The order *Liu* found missing exists in petitioners’ case. The district court below required Island to pay \$114,520 in disgorgement and \$39,874.05 in pre-

judgment interest and directed the funds to the Treasury as a term of the decree. Pet. App. 58a, 264a-265a. Infeasibility is not contested; the parties stipulated to it. Pet. App. 68a, 245a. And the courts below supplied the answers this Court withheld. Pet. App. 61a-69a, 245a-248a.

B. *Sripetch* rested on a concession that is absent here

Sripetch rests on interference with protected rights, not on proof of loss. Courts sitting in equity issued profits remedies “[a]fter a showing that the defendant interfered with the plaintiff’s legally protected rights.” 146 S. Ct. at 1410. The invasion does the work; the loss is what proved unnecessary. That is why the Court could set aside the concern that the Commission “might try to seek disgorgement even for securities-law violations that do not invade the legally protected interests of any investor”: that worry was “beside the point in this case for, as it comes to us, Mr. *Sripetch* has not disputed that his victims ‘suffer[ed] a violation of their legally protected interests.’” *Id.* at 1413.

In petitioners’ case, the point is disputed and was disputed below. The Commission’s position was that the conduct “harmed the capital markets at large” but that “identifying specific investors who were harmed or the amount by which any particular investor was harmed is not possible.” Pet. App. 245a. In setting Island’s penalty, the district court below declined to find that the violations “resulted in substantial losses” or “created a significant risk of substantial losses to other persons,” and weighed “the inability of the SEC to identify any harmed investors.” Pet. App. 259a-260a. The statements found actionable were made to FINRA and to a DTC clearing firm, not to any purchaser or seller. Pet. App. 51a. And the fees the

judgment captures were paid to Island by Mirman and Rose, the fraudsters themselves, not by any investor. Pet. App. 69a.

C. The two rationales below must be reviewed together

The district court held that paragraph (7) “does not require that such disgorgement be ‘for the benefit of investors,’” and “[a]lternatively” that the equities “weigh in favor of disgorgement to the Treasury, rather than allowing Island to retain the money.” Pet. App. 246a. The Eleventh Circuit affirmed on both grounds. Pet. App. 61a-69a. A holding that paragraph (7) carries *Liu*’s limits forward would leave the equitable ground standing; a holding addressed only to equity would leave the statutory construction standing. Both were pressed and passed upon, and review of one without the other would resolve nothing.

Justice Thomas has observed that “[w]e will soon need to address whether disgorgement under § 78u(d)(7) is a legal remedy. The Circuits have already split on the answer.” 146 S. Ct. at 1418 (Thomas, J., concurring) (comparing *SEC v. Hallam*, 42 F.4th 316, 341 (5th Cir. 2022), with *SEC v. Ahmed*, 72 F.4th 379, 395 (2d Cir. 2023)). The Fifth Circuit reads the amended provision as authorizing disgorgement “in a legal—not equitable—sense,” *Hallam*, 42 F.4th at 338; the Second Circuit holds the remedy equitable and subject to traditional limits, *Ahmed*, 72 F.4th at 395-96; see *SEC v. Govil*, 86 F.4th 89, 100 (2d Cir. 2023), *abrogated in part on other grounds by Sripetch*, 146 S. Ct. 1403; and the Eleventh Circuit has now adopted a third position: equitable in name, but free of the investor-benefit requirement that made it equitable in *Liu*.

II. Ms. Quick’s Case Shows the Question Recurring, and What the Rule Below Does to *Liu*’s Investor-Benefit Requirement

A. The award against Ms. Quick rested on victims the Commission later could not identify

Ms. Quick’s case is separate from petitioners’ and arises in a different circuit, but it presents the same reserved question. The Commission sued Joseph Padilla and others for a fraudulent stock-selling scheme supported by manipulative trading in friends’ and family members’ brokerage accounts. Compl. ¶¶ 1-2, *SEC v. Padilla*, No. 1:23-cv-11331 (D. Mass.), ECF No. 1. It named Ms. Quick as a relief defendant, alleging that her brokerage account “generated net proceeds of \$44,159 from trading in securities associated with” the scheme. *Id.* ¶ 14. The trading was directed by her then-husband, Carlos Hernandez, not by her. *Id.* ¶ 40; Order, *Padilla* (Apr. 14, 2025), ECF No. 98. The Commission has never alleged that Ms. Quick participated in, directed, or knew of any wrongdoing; relief defendants are, by definition, “third-party non-wrongdoers.” *SEC v. Sanchez-Diaz*, 88 F.4th 81, 87 (1st Cir. 2023) (quoting *Ahmed*, 72 F.4th at 407). Mr. Padilla pleaded guilty to criminal securities fraud and was ordered to forfeit \$3 million. Order of Forfeiture, *United States v. Padilla*, No. 1:23-cr-10075 (D. Mass. Nov. 7, 2023), ECF No. 168.

At summary judgment, in rejecting the contention that the requested recovery was legal or punitive rather than equitable, the *Padilla* court accepted “the representation of the lawyers at the SEC, as officers of the court, that the agency has identified 34 specific victims and seeks disgorgement for the benefit of these individuals.” Order, *Padilla* (Feb. 19, 2025), ECF No.

88. It ordered disgorgement of \$44,159, but it declined to award prejudgment interest “pending clarification by the SEC of the identity of the alleged victims and the amount of each victim’s loss that is attributable to these relief defendants.” *Ibid.*; see Judgment, ECF No. 92.

The clarification never came. In its renewed request for interest, the Commission described the 34 victims as “only examples of some harmed investors” in two of the seven securities at issue. SEC Interest Mem., *Padilla* (Mar. 21, 2025), ECF No. 95. The *Padilla* court then denied interest as to Ms. Quick, finding that “the SEC has failed to identify any specific victim(s) of that trading such that fairness requires prejudgment interest to make investors whole,” and that “considerations of fairness and equity” therefore counseled against it. Order, ECF No. 98 (quoting *SEC v. Sargent*, 329 F.3d 34, 40 (1st Cir. 2003)). The principal award, entered on the premise of identified victims, was left in place.

Collection attempts followed. The Commission applied for writs of garnishment against Ms. Quick’s bank accounts, on which she relies to pay rent and living expenses, and the *Padilla* court denied her motion to quash. *Padilla*, ECF Nos. 102-03, 107-08; Decl. of Jamie Quick, ECF No. 107-2. The court also denied a stay pending appeal. ECF No. 117. Her appeal remains pending. No. 26-1245 (1st Cir.).

B. Under the rule below, that failure would not have mattered

The District of Massachusetts treated identified victims as the predicate that kept the award equitable. That is what *Liu* requires: the remedy “must do more than simply benefit the public at large by virtue of depriving a wrongdoer of ill-gotten gains.” 591 U.S. at

89. Under the rule the Eleventh Circuit applied to Island, however, the existence of victims is not a predicate at all. If victims can be identified, the money goes to them; if they cannot, infeasibility plus unlawful gain makes the Treasury the more equitable recipient. Pet. App. 248a; *see* Pet. App. 67a-69a.

A requirement satisfied whether or not its condition is met does not constrain anything. Under the Eleventh Circuit's rule, the representation on which the Massachusetts court relied would have carried no weight, and its later failure no consequence. The Commission would have no reason to establish at the remedies stage who was harmed, because the answer would affect only the destination of the money, never the award itself. That is the prospect the petitioner in *Sripetch* raised—using paragraph (7) “as a tool to resume [the Commission’s] efforts to seek penalties for the Treasury rather than compensation for victims”—and that the Court said would “proceed beyond what *Liu* held § 78u(d)(5) tolerates.” 146 S. Ct. at 1412.

Ms. Quick's posture makes the stakes especially plain. Island is an adjudicated violator; Ms. Quick has never been accused of a violation. The question presented by the petition does not depend on that difference, and amici do not ask the Court to resolve in this case the further questions that disgorgement from an uncharged recipient raises after *Liu*. *See* 591 U.S. at 90-91. The point is that the investor-benefit requirement is the protection *Liu* gave every person from whom the Commission seeks disgorgement. If it does not protect a person the Commission has never accused of wrongdoing, in a case where the *Padilla* court found that no specific victim of the relevant trading had been identified, it protects no one.

C. Courts are giving opposite answers to what the absence of victims means

The two cases also show courts resolving the reserved question in opposite directions. In Ms. Quick’s case, the absence of identified victims was a reason to *withhold* a monetary award: the *Padilla* court held that interest serves “to make investors whole,” and that without identified victims of the trading, fairness and equity did not support it. ECF No. 98. In petitioners’ case, the absence of identified victims was a reason to *redirect* the award: the courts below held that, because the money could not reach investors, equity favored sending it, including \$39,874.05 in prejudgment interest, to the Treasury. Pet. App. 246a, 264a.

The divergence extends to how closely the award must be tied to identified investors. The First Circuit recently vacated a disgorgement award that a district court had sustained on the reasoning that “at least some” clients were affected, explaining that moving from “a few” investors to “every” investor requires more analysis and connection, and that “enrichment, if sufficiently attenuated, no longer appears unjust.” *SEC v. Commonwealth Equity Services, LLC*, 133 F.4th 152, 171-72 (1st Cir. 2025) (quoting Restatement (Third) of Restitution and Unjust Enrichment § 51 cmt. f (2011)). Under the Eleventh Circuit’s rule, no investor need be identified at all.

Both courts were applying the equitable inquiry *Liu* described and *Sripetch* reserved, and neither had guidance from this Court on what the absence of identified victims means for the award. Within Ms. Quick’s case, the same finding defeated the interest but did not disturb the principal, an asymmetry that persists because nothing in this Court’s decisions says

what that finding requires. The First Circuit has not yet addressed the question. Until this Court does, the answer will depend on the circuit, and sometimes on whether the sum at issue is labeled principal or interest.

III. The Question Recurs, and the Sums at Stake Are Large

Justice Thomas, citing ICAN’s merits brief, recorded that “[i]n 2024, the SEC obtained orders to disgorge \$6.1 billion, while it returned only \$345 million to victims.” 146 S. Ct. at 1417 (Thomas, J., concurring). Asked at argument how much of the \$6.1 billion was ever collected, the Commission could not say. And its suggestion that 88 percent of collected funds are “designated for distribution” came with the acknowledgment that designation “doesn’t mean it would necessarily have been distributed at the end of the day.” *Id.* at 1417 n.2.

The Commission reports a “Liability for Disgorgement and Penalties” of \$5.124 billion as of September 30, 2025, consisting of amounts ordered and awaiting distribution to harmed investors. SEC, *Fiscal Year 2025 Agency Financial Report* 14 tbl.1.2, 53 (2025). Collections that are not distributed may be transferred to the Investor Protection Fund or the Treasury, *id.* at 53, and receipts are not held for distribution at all where the Commission “determines it is not practical to return funds to investors” or a court order directs them to the Treasury, *id.* at 75. As the Commission acknowledged in *Sripetch*, designation is not distribution.

The connection between the legal rule and these figures is straightforward. When the Commission need not identify whose protected interests were invaded to

obtain an award, it does not develop the information required to distribute the award later, and the money stays with the government. Both petitioners' case and Ms. Quick's illustrate the pattern.

Lower courts are meanwhile applying *Sripetch* to substantial awards without addressing what it left open. In *SEC v. Gallagher*, the court ordered disgorgement of \$1,255,889, quoting *Sripetch* for the proposition that "any amounts the SEC secures must be 'awarded for victims,'" without addressing what that requires when victims cannot be found or paid. No. 21-cv-8739, 2026 U.S. Dist. LEXIS 137934, at *1, *51-*52 (S.D.N.Y. June 18, 2026). The recitation answers nothing in that situation, and until the reserved question is answered, courts will continue to send such awards to the Treasury. *See, e.g.*, Pet. App. 264a-265a.

IV. The Eleventh Circuit's Answer Cannot Be Reconciled with the Premises of *Liu* and *Sripetch*

Sripetch held that a claimant seeking a wrongdoer's profits "does not need to prove he has 'suffered a corresponding loss or,' indeed, 'any loss.'" 146 S. Ct. at 1410. Amici do not question that holding. But the claimant must still have "suffered an interference with protected interests," and it is that interference that entitles him to "restitution of [the defendant's] wrongful gain." *Id.* at 1410-11. Loss is a measure; invasion is a predicate. *Liu* likewise made the beneficiary relationship the source of the remedy's equitable character, because to hold otherwise "would render meaningless" the statutory direction that relief be "appropriate or necessary for the benefit of investors." 591 U.S. at 89. The Eleventh Circuit's rule inverts those premises: it treats the inability to benefit

investors as the reason a payment to the Treasury is equitable.

The authorities on which the Eleventh Circuit relied do not support that inversion. Pet. App. 67a-68a. In *Burk Builders, Inc. v. Wirtz*, 355 F.2d 451, 452-53 (5th Cir. 1966), the employees' entitlement to unpaid wages was established first, and the Treasury served only as a residual when payment could not be delivered. *Porter v. Warner Holding Co.*, 328 U.S. 395, 398-400 (1946), which the court cited for equity's flexibility in public-interest cases, involved restitution of rent overcharges to the tenants who paid them. *FTC v. Gem Merchandising Corp.*, 87 F.3d 466, 470 (11th Cir. 1996), was decided under a provision this Court has since held authorizes no monetary relief at all. See *AMG Capital Management, LLC v. FTC*, 593 U.S. 67, 75 (2021). And *cy pres*, which the Commission invoked below, Pet. App. 246a, presupposes an established class and a substitute recipient that approximates its interest, not the sovereign that sought the award.

The rule amici urge is bounded. A court should identify the investor interest invaded, connect the recoverable gains to it, and explain how the disposition it orders serves that interest. The Commission may make that showing for an affected class through common evidence; it need not prove loss, name every investor, or trace each dollar. What cannot substitute for the showing is the announcement that it cannot be made. Equity has never lent "its aid to enforce a forfeiture or penalty." *Marshall v. City of Vicksburg*, 82 U.S. (15 Wall.) 146, 149 (1873).

The First Circuit's decisions show that the inquiry is administrable. In *SEC v. Navellier & Associates, Inc.*, 108 F.4th 19 (1st Cir. 2024), it sustained an award as "for the benefit of investors" because the

advisory clients “were induced into paying advisory fees” by the defendants’ misrepresentations and the Commission “intends to distribute to the Vireo AlphaSector clients any disgorgement awarded.” *Id.* at 42. Every element of that reasoning is absent from petitioners’ case: no identified investors, no invaded interest described beyond harm to “the capital markets at large,” Pet. App. 245a, no distribution plan, and fees paid to Island by Mirman and Rose, who pleaded guilty to conspiracy to commit securities fraud. Pet. App. 15a, 69a. The Eleventh Circuit sustained the award without asking the questions *Navellier* answered. Pet. App. 67a-69a. The two circuits are thus applying different inquiries to the same remedy.

V. The Eleventh Circuit’s Statutory Holding Independently Warrants Review

A. It raises the classification and jury-trial questions *Sripetch* identified

Amici’s primary submission, like petitioners’, is that Congress used “disgorgement” in paragraph (7) with the meaning this Court had just given it, and so carried *Liu*’s limits forward. *See Liu*, 591 U.S. at 86-87 (statutory references to an equitable remedy carry “the limitations upon its availability that equity typically imposes” (quoting *Great-West Life & Annuity Insurance Co. v. Knudson*, 534 U.S. 204, 211 n.1 (2002))). The Eleventh Circuit held otherwise, relying on the omission of paragraph (5)’s investor-benefit language and on paragraph (8)’s separate limitations periods. Pet. App. 62a-65a; *see* 15 U.S.C. § 78u(d)(8). The Commission has urged that, under paragraph (7), “it does not have to connect the unlawful profits it seeks to any specific victims and the government may resume its former practice of keeping disgorgement

awards for itself.” *Sripetch*, 146 S. Ct. at 1410 (describing the Commission’s position).

If paragraph (7) authorizes a personal money judgment for a public violation, unconnected to any remedy for affected investors, the recovery does not become equitable because Congress called it disgorgement. This Court has long distinguished a claim to identified property from “impos[ing] a merely personal liability upon the defendant to pay a sum of money.” *Great-West*, 534 U.S. at 213. And *Sripetch* itself cited *SEC v. Jarkesy*, 603 U.S. 109, 123-25 (2024), which held that the Seventh Amendment entitles a defendant to a jury when the Commission seeks penalties. 146 S. Ct. at 1412-13; *see id.* at 1415-18 (Thomas, J., concurring); U.S. Const. amend. VII.

The prejudgment interest here makes the classification immediate. Paragraph (7) says nothing about interest. If the recovery is equitable, the \$39,874.05 award is an exercise of equitable discretion whose premise, an investor-directed remedy, is missing; the District of Massachusetts declined to award interest against Ms. Quick on the view that interest serves to make investors whole. If the recovery is legal, the Commission needs statutory authority it cannot identify, because an agency possesses “only the authority that Congress has provided.” *National Federation of Independent Business v. OSHA*, 595 U.S. 109, 117 (2022) (*per curiam*). The Commission cannot take the benefit of both characterizations, invoking paragraph (7) to escape *Liu*’s investor-benefit requirement while invoking equity to avoid the procedures that attend a legal money judgment.

B. It makes the penalty provision's limits optional

Congress already provided a tool for depriving violators of gains without regard to identified victims, and it placed that tool in the penalty provision. At each tier, § 78u(d)(3)(B) caps a civil penalty at the greater of a fixed sum or “the gross amount of pecuniary gain to such defendant as a result of the violation,” and conditions the higher tiers on findings about the conduct. 15 U.S.C. § 78u(d)(3)(B)(i)-(iii). A penalty is a sanction owed to the government, and Congress supplied the guardrails that a sanction requires.

Island was ordered to pay a \$250,000 civil penalty. Pet. App. 264a. The disgorgement award then sent an additional \$154,394.05 to the same destination, for the same conduct, without paragraph (3)'s constraints and without the investor beneficiary that distinguishes disgorgement from a penalty. Reading paragraph (7) to permit that result makes the penalty provision's guardrails optional. That is a strong reason to read paragraph (7) as petitioners do and, failing that, a strong reason to grant review.

CONCLUSION

The petition for a writ of certiorari should be granted as to the second question presented.

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