ORIGINAL

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SUPREME COURT, U.S.

IN THE SUPREME COURT OF THE UNITED STATES

GEORGE GEORGIOU,

Petitioner,

v.

SECURITIES AND EXCHANGE COMMISSION,

Respondent.

On Petition for a Writ of Certiorari to the
United States Court of Appeals
for the Third Circuit
(No. 23-1751)

PETITION FOR A WRIT OF CERTIORARI

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November 2026

QUESTIONS PRESENTED

1. Whether a court of appeals may affirm a civil disgorgement award as "net profits" under *Liu v. SEC*, 591 U.S. 71 (2020), when the figure and the label originated in the Commission's proposed order, no court analyzed the defendant's gains, and the court of appeals validated the figure by citing a criminal forfeiture calculated on "amount of loss" — where this Court's decision in *Sripetch v. SEC*, No. 25-466 (June 4, 2026), issued three weeks after the panel ruling and five days before the denial of rehearing en banc, holds that the award "is not measured by [the plaintiff's] loss but by the defendant's gain," and the court of appeals addressed neither.

2. Whether collateral estoppel may attach to a criminal conviction when preserved claims of structural error — judicial bias and an undisclosed prosecutorial conflict — have never been adjudicated on the merits under the governing constitutional standards, the only examination having been presided over by the same judge and controlled by the same prosecutor after his formal disqualification as a necessary fact witness. *See Allen v. McCurry*, 449 U.S. 90 (1980); *Parklane Hosiery Co. v. Shore*, 439 U.S. 322 (1979); *In re Murchison*, 349 U.S. 133 (1955); *Young v. United States ex rel. Vuitton et Fils S.A.*, 481 U.S. 787 (1987).

3. Whether the Securities and Exchange Commission may invoke collateral estoppel from a criminal conviction resting on its own analyst's testimony, presented as false, when the disqualified prosecutor who communicated with that analyst blocked examination of both the communications and the falsity and authored the finding that the testimony was true. *See Young v. United States ex rel. Vuitton et Fils S.A.*, 481 U.S. 787 (1987); *Napue v. Illinois*, 360 U.S. 264 (1959).

PARTIES TO THE PROCEEDING

Petitioner George Georgiou was the defendant-appellant below. He is currently confined at FCI Otisville, Otisville, New York, and proceeds pro se.

Respondent is the Securities and Exchange Commission, represented below by counsel from the SEC's Office of General Counsel.

There are no corporate parties. No corporate disclosure statement is required.

RELATED PROCEEDINGS

A petition for a writ of certiorari in the criminal stream is pending before this Court in *Georgiou v. United States*, No. 26-5915, filed May 28, 2026, docketed October 23, 2026. That petition presents four questions arising from the same criminal conviction whose structural integrity is at issue in Questions Two and Three here. The civil disgorgement judgment now sought to be reviewed rests on collateral estoppel from that conviction.

On September 28, 2026, the district court in the criminal proceedings denied relief under Federal Rule of Civil Procedure 60(b). *United States v. Georgiou*, No. 2:09-cr-00088, ECF 717 (E.D. Pa.). On October 14, 2026, the same court denied a certificate

of appealability by incorporating ECF 717. ECF 722. An appeal is pending in the Third Circuit, No. 26-3549, docketed October 15, 2026, and listed for possible summary action under I.O.P. 10.6. Whatever the disposition of that appeal, it does not affect the questions presented. That appeal concerns whether the district court had jurisdiction over a Rule 60(b) motion in the criminal case and whether a certificate of appealability should issue; it cannot reach whether the civil judgment at issue here rests on a conviction that satisfied the due process predicate for collateral estoppel. The structural claims remain without merits adjudication under the governing constitutional standards in any proceeding with jurisdiction to decide them.

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Opinions Below

The opinion of the United States Court of Appeals for the Third Circuit affirming the judgment of the district court (App., *infra*, 1) is unpublished and non-precedential. It was filed May 14, 2026, in No. 23-1751, by a panel consisting of Circuit Judges Bibas, Chung, and Bove.

The order of the Third Circuit denying rehearing en banc (App., *infra*, 2) was entered June 9, 2026. Twelve active judges participated. Not one requested rehearing.

The district court's orders granting summary judgment (App., *infra*, 3) were entered March 2, 2023, by the United States District Court for the Eastern District of Pennsylvania (Baylson, J.), in Civil No. 2:09-cv-00616-MMB. The final judgment (App., *infra*, 4) was entered April 12, 2023. All are unreported.

Jurisdiction

The United States Court of Appeals for the Third Circuit entered judgment on May 14, 2026 (App., *infra*, 1). The court denied rehearing en banc on June 9, 2026 (App., *infra*, 2). On August 21, 2026, Petitioner applied to Justice Alito, as Circuit Justice for the Third Circuit, for a sixty-day extension of time. Justice Alito granted

the application on August 28, 2026 (No. 26A257), extending the time to file to and including November 6, 2026. This petition is timely filed.

This Court has jurisdiction under 28 U.S.C. § 1254(1). The district court had jurisdiction under 15 U.S.C. §§ 77v(a), 78u(d)(1), and 78aa, and 28 U.S.C. §§ 1331 and 1345.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution, Amendment V (Due Process Clause):

No person shall . . . be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Relevance: Questions Two and Three invoke the Fifth Amendment's due process guarantee that collateral estoppel may not attach without a full and fair opportunity to litigate. *Allen v. McCurry*, 449 U.S. 90, 95 (1980); *Kremer v. Chem. Constr. Corp.*, 456 U.S. 461, 480-81 (1982). Question Two further invokes the guarantee against adjudication by a partial tribunal and prosecution by an interested prosecutor. *In re Murchison*, 349 U.S. 133, 136 (1955); *Young v. United States ex rel. Vuitton et Fils S.A.*, 481 U.S. 787, 807-09 (1987).

15 U.S.C. § 78u(d)(5) — SEC Disgorgement Authority:

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

15 U.S.C. § 78u(d)(7) — Disgorgement (NDAA 2021):

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

Relevance: These provisions are the statutory basis for the $21 million disgorgement award. Question One turns on whether that award — entered on the Commission's proposed order, affirmed as "net profits" on a finding no court made, and validated by reference to a criminal forfeiture calculated on victim losses — satisfies the limitation this Court established in *Liu v. SEC*, 591 U.S. 71 (2020), and restated in *Sripetch v. SEC*, 608 U.S. ___ (June 4, 2026).

28 U.S.C. § 455(a) — Judicial Disqualification:

> *Any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.*

Relevance: Question Two invokes § 455(a) as the governing standard for the judicial bias component of the full-and-fair-opportunity inquiry. The objective reasonable-observer test asks whether a person with knowledge of all the facts would question the judge's impartiality — not whether the jury heard any particular remark. *Liteky v. United States*, 510 U.S. 540, 555 (1994); *United States v. Antar*, 53 F.3d 568, 573 (3d Cir. 1995). No court with jurisdiction has applied it.

Introduction

This petition arises from a $21 million civil disgorgement judgment entered after an ex parte conference from which Petitioner was excluded, based entirely on collateral estoppel from a criminal conviction whose structural defects — a judge who adopted the prosecutor's framing of guilt before verdict, and a prosecutor with an undisclosed conflict — have never been examined under the governing standards, because the post-conviction examination was presided over by that judge and controlled by that prosecutor after his formal disqualification as a witness. The $21 million figure and the words "net profits gained" came from the Commission's proposed order; no court found either. The Commission's only explanation of the number, offered when Petitioner raised *Liu* below, was that it approximates the $26 million criminal forfeiture — a figure the government's own forfeiture motion called "amount of loss." The court of appeals affirmed in six pages. It attributed to the district court a finding the district court never made, and validated it by citing the forfeiture. It addressed no structural claim.

Three weeks after the panel affirmed, this Court decided *Sripetch v. SEC*, No. 25-466 (June 4, 2026), unanimously holding that the disgorgement award "is not

measured by [the plaintiff's] loss but by the defendant's gain." Slip op. at 8. Five days after *Sripetch*, the Third Circuit denied rehearing en banc without mentioning it. That is a court of appeals affirming a figure under a measure this Court has since confirmed is the wrong one. The question stands alone: even if collateral estoppel establishes liability, *Liu* requires an analysis of the amount. None was performed by anyone.

The second question asks whether collateral estoppel may attach when preserved claims of structural error at trial — a judge who adopted the prosecutor's framing of guilt mid-trial, and a prosecutor who had personally directed the undercover operation and concealed it — have never been adjudicated under § 455(a) or *Young*, because the only examination was presided over by that judge and controlled by that prosecutor after the court had disqualified him as a necessary fact witness. The one court that has since engaged with the claims disclaimed jurisdiction in the same ruling. *Parklane Hosiery Co. v. Shore*, 439 U.S. 322 (1979), commits offensive estoppel to the court's discretion where the first proceeding's procedures differed; no court exercised that discretion because no court examined what those procedures were.

The third question asks whether the Commission may invoke collateral estoppel from a conviction resting on its own analyst's testimony — presented as false and never rebutted — when the disqualified prosecutor who communicated with that analyst blocked examination of both the communications and the falsity and then authored the finding that the testimony was true. The Commission benefits from a conviction built on its own witness, shielded from examination by the disqualified prosecutor who coordinated with that witness, in a finding that disqualified prosecutor wrote. The compromised proceeding immunizes itself through the doctrine whose application depends on the integrity it destroyed.

Only this Court can answer these questions.

STATEMENT OF THE CASE

I. The Criminal Conviction and Its Structural Defects.

Following a thirteen-day jury trial, Petitioner George Georgiou was convicted of securities fraud, wire fraud, and conspiracy in the Eastern District of Pennsylvania. The district court (Kelly, J.) sentenced him to 300 months' imprisonment on November 19, 2010, and issued a $26 million criminal forfeiture judgment under 18 U.S.C. § 981(a)(1)(C). The government's forfeiture motion stated that the figure represented the "amount of loss" to victims. ECF 220 n.1 (Supp. App., *infra*, SA-1). The conviction and sentence were affirmed. *United States v. Georgiou*, 777 F.3d 125 (3d Cir. 2015), cert. denied, 136 S. Ct. 401 (2015).

In January 2017, Petitioner filed a § 2255 petition making a colorable showing that the trial prosecutors — Acting United States Attorney Louis D. Lappen and AUSA Derek A. Cohen — had personally directed the undercover operation using cooperating witness Kevin Waltzer, rendering themselves unsworn necessary fact witnesses whose conflict was concealed. ECF 307.

Disqualification and what followed. On August 10, 2017, the district court found that Lappen and Cohen were necessary fact witnesses and disqualified Lappen

from acting as the government's attorney at the evidentiary hearing. ECF 413 (Supp. App., *infra*, SA-5). The order did not purport to govern his conduct outside the hearing, and Petitioner does not claim it did. The claim is that a prosecutor whose own conduct and credibility were the subject of the inquiry could not, consistent with *Young*, hold litigation authority over that inquiry at all — and that he did. Lappen never recused. He authored every government filing, controlled discovery, argued at every appearance, prepared every witness, coordinated his own testimony with his co-accused, and drafted the 181-page proposed findings the court adopted verbatim. ECF 557; ECF 570. At the hearing itself, after representing that he "will not serve as the government's attorney or advocate at this hearing," ECF 421 at 5, he told the court he had "been involved in" the government's objections, and the government did not deny it. Hr. Tr. 11/16/17 at 135; ECF 496 at 3. *See infra* Part II.D.

Purchased witness loyalty. Before the hearing, Lappen arranged the early release of Waltzer — nearly five years ahead of schedule. Waltzer's email to Lappen: "I can't thank you enough for my freedom. As promised, *I will do anything and everything possible to assist you* in any way with the GG matter or any other." ECF 657 at 25 (emphasis added).

Judicial bias — the sidebar. During trial, with the jury present in the courtroom and before verdict, the prosecutor who would later be disqualified called a sidebar and argued that the liquidation at issue was "a result of exactly what George Georgiou had done in his fraud in this case." Trial Tr. Feb. 1, 2010, at 214-16 (Supp. App., *infra*, SA-4). When defense counsel pointed to contrary testimony from the government's own witness, the presiding judge asked what it had to do with "your client's committing this massive fraud," then said, "So what? Your guy never made any payments at all, did he?" and cut off counsel's answer: "Oh, come on." *Id.* at 216-17. The court adopted the prosecutor's characterization of the defendant's guilt mid-trial. Whether any juror heard the exchange is not established and is not the § 455(a) question. The same judge issued the forfeiture order on which the civil disgorgement rests, ECF 228, and later presided over the § 2255 proceedings examining the conduct of that same prosecutor — by then formally disqualified — whose characterization he had adopted.

Recusal motion — never decided on the merits. The bias was raised in August 2018, before any notice of appeal. ECF 593; ECF 594. The court acknowledged it and did not address recusal. ECF 600. A formal § 455(a) motion followed on October 12, 2018. ECF 620. The government never contested it on the merits. The disqualified

prosecutor asked the court to dismiss it for lack of jurisdiction — a notice of appeal had been docketed — and the court did so without prejudice. ECF 623. The claim was renewed within six months of the case's return from this Court in 2021. ECF 642. Before September 28, 2026, no court had applied § 455(a) to the circumstances.

ECF 717 and ECF 722. On September 28, 2026, the district court denied a Rule 60(b) motion raising the structural claims. ECF 717 (Supp. App., *infra*, SA-6). It held it lacked jurisdiction, then addressed the claims in the alternative "in the interest of judicial economy." It did not cite § 455(a), *Tumey v. Ohio*, 273 U.S. 510 (1927), *Murchison*, or *Williams*. It addressed the sidebar by noting it was at sidebar. It addressed the disqualified prosecutor by reading the disqualification order as limited to the hearing, without reaching the personal-interest question *Young* poses. On October 14, 2026, the same court denied a certificate of appealability by incorporating those alternative findings as a merits ruling. ECF 722 (Supp. App., *infra*, SA-7). The appeal is pending. No. 26-3549 (3d Cir.). The government has never defended the structural claims on the merits in any filing at any level.

II. The SEC — Brought In by Conflicted Prosecutors — and the False Trading Analysis.

Unlike most securities enforcement actions, which originate at the Commission, this case ran in the opposite direction. Lappen and Cohen brought in the SEC — confirmed by SEC Analyst Daniel Koster at the habeas hearing. Hr. Tr. 11/16/17 at 54-56. The SEC then turned over foreign banking records to the prosecutors, who had no jurisdiction to obtain them. ECF 85-1.

Koster's trading analysis — presented as false. Koster presented trading charts — Trial Exhibit 305 — purporting to show "matched trades" constituting market manipulation. Post-trial analysis revealed the charts omitted order entry and execution times that would have shown the trades were not matched. What Koster presented as coordinated manipulation was lawful flow of stock between market makers. The SEC has never rebutted this showing. Civ. ECF 62 at 6-9.

The withheld communications. Not one communication between the prosecutors and Koster has been produced in seventeen years. When Petitioner sought to examine Koster at the habeas hearing on whether his charts were false, Lappen — sitting at counsel table as the government's "agent" despite his disqualification — objected. The court sustained. Hr. Tr. 11/16/17 at 88-89, 123-125.

The finding that Koster's testimony was not false was then authored by Lappen in his proposed findings (ECF 557) and adopted verbatim (ECF 570). ECF 717 later credited Lappen's testimony about his own conduct in part because the court had adopted his proposed findings — using the scripted denial to validate the person who scripted it.

III. The Civil Action, the Ex Parte Conference, and the $21 Million Disgorgement.

In 2009, the SEC filed this civil enforcement action alleging the same conduct at issue in the criminal case. Civil No. 2:09-cv-00616-MMB. The case was stayed pending the criminal proceedings.

The 2016 motion. On January 15, 2016, the SEC moved for summary judgment. Civ. ECF 16. Its memorandum stated that Petitioner "realized at least $20.9 million in illegal profits by making profitable trades after manipulating public stock prices, and by obtaining fraudulent margin loans based on artificially inflated stock values," and asked that he be held liable for disgorgement of $21,079,074. Civ. ECF 16-1 at 33. The memorandum cited no exhibit, declaration, or computation for that figure. Its own statement of facts described the source: at one broker, Petitioner's margin debit balance "grew to approximately $22,000,000" — and grew, in the SEC's words, "[a]s a result of the decline in Avicena and Neutron's stock prices throughout the latter part of 2007, along with other trading losses in the account." *Id.* at 17 (citing Facts ¶ 66). His cash withdrawals from that account were $2.1 million. *Id.* at 18 (citing Facts ¶ 68). At a second broker, "several millions dollars-worth of cash withdrawals," after which "[a]s the value of these manipulated stocks plummeted," the broker "was left with two illiquid securities." *Id.* at 18-19 (citing Facts ¶¶ 78, 80).

The memorandum separately identified the criminal forfeiture as $26 million and investor losses as exceeding $55 million. *Id.* at 7-8.

The record on gain. In the criminal proceedings, Petitioner presented an account-by-account analysis showing $599,000 in gross proceeds — $400,000 of it personal loans — and millions in net trading losses. ECF 384; ECF 469. The government did not rebut that analysis and the district court made no contrary finding. ECF 457; ECF 568. The government's own trial evidence put gross proceeds to Petitioner and his wife combined at $3,090,000, and the prosecutor told the jury the person who profited most was an alleged co-conspirator. Tr. Feb. 9, 2010, at 207-08. The government's forfeiture motion described the $26 million as the "amount of loss." ECF 220 n.1 (SA-1). In the first *audita querela* proceeding the government stated that the principal restrained account was not necessarily proceeds at all. ECF 457 at 18 (SA-2). No court has examined any figure under *Liu*.

Ex parte conference. On February 21, 2023, the district court convened a telephonic conference with SEC counsel and disqualified AUSA Lappen. Petitioner was not given notice and was excluded. Civ. ECF 65. The court "did not attempt to get Mr. Georgiou on the phone." Civ. ECF 65, Trans. at 4.

Summary judgment. On March 2, 2023, the district court granted summary judgment in a four-page memorandum resting entirely on collateral estoppel. Civ. ECF 59 (App., *infra*, 3). The memorandum does not mention disgorgement. The accompanying order directed the SEC to "submit a form of order with any proposed further remedies or relief" within ten days, with ten days for Petitioner to reply. Civ. ECF 60.

The Commission's proposed judgment. On March 13, 2023, the SEC submitted its proposed final judgment. Civ. ECF 61-1. Paragraph IV provided that Petitioner "is liable for disgorgement of $21,079,074, representing net profits gained as a result of the conduct alleged in the Complaint, together with prejudgment interest thereon in the amount of $2,069,251, but those obligations are deemed satisfied by the Court's order of restitution in the amount of $55,832,398 in the criminal case." *Id.* at 4. The SEC sought no civil penalty. Civ. ECF 61 at 2.

Liu raised below. On March 28, 2023, Petitioner moved for reconsideration. Civ. ECF 62. He cited *Liu*, stated that the SEC "has never proven any such 'net profits'" and that no such finding had been made in the criminal case, set out the $599,000 record, and objected that the SEC "casually slips into its proposed judgment" the words "net profits gained" with nothing behind them. *Id.* at 4-5.

The Commission's answer. On April 11, 2023, the SEC responded. Civ. ECF 66 (SA-8). It did not identify what Petitioner had gained. It stated that the criminal court "determined that Georgiou earned $26 million from his misconduct, which served as the basis of the forfeiture order," quoted the Third Circuit's 2015 affirmance of that forfeiture under § 981, and concluded: "Georgiou achieved ill-gotten gains of $26 million. The SEC's conservative disgorgement figure of approximately $21 million is therefore a reasonable approximation of those ill-gotten gains." *Id.* at 15, 18. It read *Liu* as concerning only the deduction of "legitimate" expenses, of which it said there were none. *Id.* at 15-16. And it told the court the amount did not matter: "even if Defendant is correct about the SEC's disgorgement figure being too high – which he is not – it would not matter. The proposed Final Judgment will impose no additional monetary obligation upon or sanction against the Defendant." *Id.* at 18.

Judgment. The next day, April 12, 2023, the district court entered the SEC's proposed judgment verbatim, including paragraph IV. Civ. ECF 69 (App., *infra*, 4). Petitioner's motion for leave to reply was denied as moot. Civ. ECF 70. No court made a finding of net profits. The phrase "representing net profits gained" is the Commission's.

IV. The Undefended Structural Claims.

At no level of the civil proceedings has the SEC addressed the structural claims on their merits. It has never contested the judicial bias claim. It has never contested that Lappen controlled the habeas proceedings while disqualified. It has never contested that the finding rejecting the false testimony claim was authored by the disqualified prosecutor. It has relied on "finality" and collateral estoppel alone.

V. The Proceedings Below.

The Third Circuit affirmed on May 14, 2026. App., *infra*, 1. The opinion is six pages. On collateral estoppel it held that "a judgment's preclusive effect is generally immediate, notwithstanding any appeal," citing *Coleman v. Tollefson*, 575 U.S. 532, 539 (2015). On the ex parte conference it "reviewed the transcript" and agreed "[n]o rulings were made of any kind nor did anything else occur that was prejudicial," citing *United States v. Skulsky*, 786 F.2d 558 (3d Cir. 1986), for the rule that ex parte contact on "the procedural question of forum" is tolerated. On disgorgement it stated the district court "acted within its discretion in finding that Georgiou was liable for disgorgement of $21,079,074, representing the net profits gained" — language that appears in the record only in the Commission's proposed order — cited *Liu*, and then

stated: "we have already rejected this argument and concluded that $26 million 'constitutes[] or is derived from proceeds traceable to the offenses,'" citing 777 F.3d at 146-47 and 800 F. App'x at 139. It did not address the judicial bias claim, the disqualified prosecutor claim, or the withheld communications.

On June 4, 2026, this Court decided *Sripetch v. SEC*, No. 25-466. On June 9, 2026, the Third Circuit denied rehearing en banc. App., *infra*, 2. Twelve active judges participated. The order does not mention *Sripetch*.

This petition follows.

Summary of Argument

First. Even if collateral estoppel establishes liability, *Liu* requires an analysis of the amount. None was performed by anyone. The $21,079,074 figure and the words "representing net profits gained" originated in the Commission's proposed judgment, which the district court entered verbatim the day after the Commission filed its response to Petitioner's *Liu* objection. The Commission's 2016 motion cited no exhibit for the figure. Its 2023 response explained the number as a "conservative" approximation of the $26 million criminal forfeiture — which the government's own forfeiture motion described as "amount of loss" — and told the court the amount "would not matter" because the obligation was deemed satisfied. The court of appeals then attributed to the district court a "finding" of net profits that the district court never made, and validated it by citing the forfeiture under 18 U.S.C. § 981. Three weeks later this Court unanimously held in *Sripetch* that the award "is not measured by [the plaintiff's] loss but by the defendant's gain," and recorded the SEC's own concession that disgorgement is limited to "net profits . . . causally connected to" the violation. Five days after that, the Third Circuit denied rehearing without addressing it. The "reasonable approximation" practice does not save the award, because no

approximation of Petitioner's gain was attempted — the Commission approximated a loss figure and labeled it. The question stands alone.

Second. Collateral estoppel requires a full and fair opportunity to litigate. *Allen*; *Montana*. Where the party invoking preclusion was not a party to the first action, *Parklane Hosiery* makes offensive estoppel discretionary and directs courts to refuse it where the first proceeding's procedures differed. The Restatement withholds preclusion where "the conduct of [the] adversary" denied an adequate opportunity. *Coleman v. Tollefson* — the panel's only authority — holds that preclusion is immediate notwithstanding appeal, not that it attaches to a judgment whose structural predicate has never been examined. The trial defects — a judge who adopted the prosecutor's framing of guilt before verdict, a prosecutor with an undisclosed conflict — were examined only by that judge and that prosecutor after his disqualification as a witness, and never under § 455(a) or *Young*.

Third. The Commission invokes preclusion from a conviction resting on its own analyst's testimony. That testimony was presented as false and the Commission has never rebutted the showing. The disqualified prosecutor who had communicated with that analyst blocked production of the communications and examination of the falsity at the habeas hearing, then authored the finding that the testimony was true.

Question Two concerns the tribunal; Question Three concerns the Commission's own witness and the disqualified prosecutor who shielded him. *Young* forbids an interested prosecutor from controlling the inquiry into his own conduct; *Napue* forbids the knowing presentation of false testimony. No court has examined either.

Reasons for Granting the Writ

I. No Court Found Net Profits. The Court of Appeals Attributed to the District Court a Finding That Exists Only in the Commission's Proposed Order, and Validated It by Citing a Forfeiture Calculated on Loss — in Conflict with *Liu* and with This Court's Intervening Decision in *Sripetch*.

A. Even If Estoppel Establishes Liability, *Liu* Requires a Finding of the Defendant's Gain. There Was None.

Collateral estoppel resolved whether Petitioner violated the securities laws. It did not — it could not — resolve what he gained from doing so. Issue preclusion reaches only issues "actually and necessarily determined" in the prior action. *Montana*, 440 U.S. at 153. The amount of Petitioner's net profits under *Liu* was never an issue in the criminal case. The criminal case determined forfeiture under 18 U.S.C. § 981, on a figure the government described as the "amount of loss." ECF 220 n.1 (SA-1). The jury was not asked what Petitioner netted. The sentencing court did not find it.

Nor did the civil court. Its memorandum addresses estoppel and nothing else; the words "representing net profits gained" entered the judgment from the

Commission's proposed order. *Supra* at 16-17; Civ. ECF 59, 61-1, 69. A proposed order adopted verbatim is not a finding; it is the moving party's characterization, given the force of judgment without the exercise of judgment. *Liu* permits disgorgement under § 78u(d)(5) only when it "does not exceed a wrongdoer's net profits" — gains less legitimate expenses — because equity does not impose a penalty under the guise of restitution. 591 U.S. at 75, 80-84, 91-92; *see also Kokesh v. SEC*, 581 U.S. 455, 464-65 (2017). The ceiling is the defendant's gain. Someone must find it. No one did.

Lower courts after *Liu* permit the SEC to offer a "reasonable approximation" of the defendant's gain, shifting to the defendant the burden of showing the figure is unreasonable. *SEC v. First City Fin. Corp.*, 890 F.2d 1215, 1231-32 (D.C. Cir. 1989). The Commission invoked that practice below. Civ. ECF 66 at 17 (SA-8). But the practice presupposes an approximation *of gain*. What the Commission approximated, by its own account, was the forfeiture: "Georgiou achieved ill-gotten gains of $26 million. The SEC's conservative disgorgement figure of approximately $21 million is therefore a reasonable approximation of those ill-gotten gains." *Id.* at 18. The $26 million was loss. ECF 220 n.1. A conservative approximation of a loss figure is a smaller loss figure. It is not gain.

B. *Sripetch* Fixed the Measure, and the Panel's Decision Cannot Be Squared With It.

On June 4, 2026 — three weeks after the panel affirmed — this Court unanimously decided *Sripetch v. SEC*, No. 25-466. The question was whether the SEC must prove pecuniary harm to investors before obtaining disgorgement. The Court held it need not, and explained why. The distinction between damages and disgorgement is the measure: damages are "measured by the plaintiff's loss," while in equity "the final award to the plaintiff is not measured by his loss but by the defendant's gain attributable to his wrongdoing against the plaintiff." Slip op. at 8. The Court restated *Liu*'s first limitation as settled: "any remedy must be limited to the defendant's net profits (not total revenues) derived from his securities-law violations." Slip op. at 3 (citing *Liu*, 591 U.S. at 79, 85, 91-92). And the Commission itself conceded the point. As the Court recorded, the SEC "concedes that under §78u(d)(7), as under §78u(d)(5), the SEC may seek disgorgement of only (1) a defendant's net profits that were (2) causally connected to his unlawful conduct." Slip op. at 7. *Sripetch* resolved the split among the Second, First, and Ninth Circuits, *SEC v. Govil*, 86 F.4th 89 (2d Cir. 2023), on the pecuniary-loss question and, in doing so, confirmed what the measure of disgorgement is: the defendant's net gain.

The Third Circuit's panel decision cannot be squared with that holding. The panel wrote that "the district court acted within its discretion in finding that Georgiou was liable for disgorgement of $21,079,074, representing the net profits gained." App., *infra*, 1, at 6. The district court made no such finding. The quoted words are paragraph IV of the Commission's proposed order. The panel then cited *Liu* and, in the next sentence, explained what the figure actually rested on: "we have already rejected this argument and concluded that $26 million 'constitutes[] or is derived from proceeds traceable to the offenses,'" citing its 2015 and 2020 forfeiture holdings under 18 U.S.C. § 981. *Id.* That is not a net-profits analysis. It is a label attached to a forfeiture figure, the label supplied by the Commission and the forfeiture figure supplied by the government's loss calculation. Neither authority the panel cited is a finding of what Petitioner netted. The 2015 opinion disposed of the forfeiture challenge on waiver. 777 F.3d at 147. The 2020 opinion held the writ unavailable; its "ample evidence" remark was introduced with "[e]ven if it were available" — alternative, non-precedential, on an argument the government had not briefed, and addressed to § 981, not *Liu*. 800 F. App'x at 139. The forfeiture statute asks what is "traceable to" the offense — a category that sweeps in losses and co-conspirator gains.

Liu asks what the defendant netted. The panel used the words of one standard and the substance of another.

Five days after *Sripetch*, the Third Circuit denied rehearing en banc. The order does not mention *Sripetch*. Twelve active judges had before them a petition challenging a loss-derived disgorgement affirmed as "net profits," and a five-day-old unanimous decision of this Court holding that disgorgement measures gain and not loss. Not one requested rehearing.

C. The Commission's Own Record Shows What the Figure Is.

The Commission's 2016 motion cited nothing for the $21,079,074 figure, and its own facts describe the margin balance it was counting as a product of stock-price decline and trading losses. *Supra* at 14; Civ. ECF 16-1 at 17-18, 33. The record itself draws the distinction a *Liu* analysis would require. The cash actually withdrawn on those loans — $2.1 million at one broker, "several millions" at the other — is what the borrower obtained. Civ. ECF 16-1 at 18. The $22 million is the balance owed after the collateral collapsed — what the broker lost. *Id.* at 17. Net profits would separate the two, deduct repayments, and identify what was retained. No court did. The Commission's figure tracks the balance owed, not the cash obtained. When Petitioner raised *Liu*, the Commission did not identify what he gained. It said the criminal court

had "determined that Georgiou earned $26 million" — it had not; it entered the government's loss figure as forfeiture — read *Liu* as concerning only "legitimate" expenses, and told the court the amount did not matter. *Supra* at 17; Civ. ECF 66 at 15-18 (SA-8); ECF 220 n.1 (SA-1). The court entered the Commission's judgment the next day.

The record on what Petitioner actually gained is set out above. *Supra* at 15. It is specific — $599,000 in gross proceeds, unrebutted; $3,090,000 by the government's own trial evidence, one-seventh of the award — and no court has examined it under *Liu*.

D. "Deemed Satisfied" Does Not Make the Question Academic. It Is How the Question Arose.

The judgment provides that the disgorgement obligation is "deemed satisfied" by the criminal restitution order. Civ. ECF 69 at 3. The Commission will say the question is academic. It said the same below, and that is how a loss figure became a "net profits" judgment without analysis: the court was told the amount "would not matter," and did not examine it. Civ. ECF 66 at 18.

The judgment is not academic. It is a federal adjudication that Petitioner "gained" $21,079,074 in "net profits" from securities fraud, and it exists whether or

not a dollar is collected on it. It is the finding the court of appeals attributed to the district court and affirmed. The restitution order it is deemed satisfied by rests on the same loss-based criminal proceedings now before this Court in No. 26-5915. *Liu* governs whether a court may enter such a judgment at all. A court that enters it on the stated ground that the number does not matter has not applied *Liu*.

E. The Question Recurs and Stands Alone.

Civil enforcement routinely follows criminal prosecution. When the forfeiture and the disgorgement are computed on different bases — loss for one, gain for the other — the question whether a court may enter the first, relabeled, as the second arises in every such case. The Third Circuit answered yes, by attributing a finding to a court that made none. *Sripetch* did not decide that question, but it fixed the measure under which it must be answered — the defendant's gain — and recorded the SEC's concession to the same effect. This case presents the conflict in its clearest form: a figure the Commission itself derived from a loss calculation, entered as "net profits" without any examination of gain.

The question is independent of Questions Two and Three and does not require disturbing the conviction. It requires only that the amount of disgorgement be found — by someone — under the standard this Court has twice announced.

II. Collateral Estoppel Cannot Attach to a Conviction Whose Structural Integrity Has Never Received Merits Adjudication Under the Governing Constitutional Standards.

Petitioner does not ask this Court to vacate his conviction. He asks whether the civil court could apply offensive issue preclusion from that conviction without first examining whether its structural predicate was satisfied. That is a question about the civil judgment, and it is the question the court of appeals did not reach.

A. The Predicate: Full and Fair Opportunity, Offensive Estoppel, and Adversary Conduct.

Collateral estoppel applies only when the party against whom it is asserted had a full and fair opportunity to litigate the issue in the prior proceeding. *Allen v. McCurry*, 449 U.S. 90, 95 (1980); *Montana v. United States*, 440 U.S. 147, 153-54 (1979). The requirement is constitutional. *Kremer v. Chem. Constr. Corp.*, 456 U.S. 461, 480-81 (1982) (due process forbids preclusion absent a full and fair opportunity); *Blonder-Tongue Labs., Inc. v. Univ. of Ill. Found.*, 402 U.S. 313, 329 (1971).

The defects go to the trial itself, not only to the proceedings that later examined it, and they reach the issues the SEC now seeks to preclude: the prosecutor who had

personally directed the undercover operation and concealed it — rendering himself a necessary fact witness in his own case — directed the cooperating witness whose testimony established the violations, and the judge who adopted that prosecutor's framing of guilt before verdict presided over the trial that found them. Direct appeal could not cure the conflict because it was concealed until 2017, two years after the appeal concluded. The § 2255 proceeding that should have examined it was presided over by that judge and controlled by that prosecutor after his disqualification as a witness. Neither the original defect nor the failure to cure it has been adjudicated under the governing standards. That is the opportunity denied: not a hearing, but a hearing before a tribunal and against an adversary whose own conduct was not the subject of the inquiry.

Two further principles govern here. First, the SEC was not a party to the criminal case. It invokes that judgment offensively. *Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 331 (1979), holds that offensive collateral estoppel is not automatic: trial courts have "broad discretion" to refuse it, and should refuse it where "the second action affords the defendant procedural opportunities unavailable in the first action that could readily cause a different result." *Id.* The structural defects here — a prosecutor with an undisclosed conflict at trial and control of the post-conviction

inquiry into it, a presiding judge whose impartiality was never examined — are precisely the kind of procedural difference *Parklane* identifies. And the SEC's involvement is itself an equitable factor against preclusion: the agency invoking the judgment is the agency whose analyst supplied the testimony now presented as false, and whose records the conflicted prosecutors obtained without jurisdiction. ECF 85-1. No court exercised the discretion *Parklane* requires because no court examined whether the first proceeding's procedures were sound.

Second, the Restatement withholds preclusion where "the party sought to be precluded, as a result of the conduct of his adversary or other special circumstances, did not have an adequate opportunity or incentive to obtain a full and fair adjudication in the initial action." Restatement (Second) of Judgments § 28(5)(c) (1982). A prosecutor who was disqualified as a necessary fact witness and then controlled the discovery, witness preparation, and findings in the proceeding examining his own conduct is "the conduct of [the] adversary" in its paradigm form. And where, as here, the party invoking preclusion was not a party to the first action, the Restatement separately permits relitigation if "[t]he forum in the second action affords the party against whom preclusion is asserted a significantly different procedural opportunity." *Id.* § 29(2). That is *Parklane*'s rule in Restatement form.

B. *Coleman v. Tollefson* Does Not Answer the Question.

The panel's sole authority on this point was *Coleman v. Tollefson*, 575 U.S. 532, 539 (2015), for the proposition that "a judgment's preclusive effect is generally immediate, notwithstanding any appeal." App., *infra*, 1, at 4. That is correct and beside the point. *Coleman* holds that a judgment need not survive appellate review before it precludes. It does not hold that a judgment precludes regardless of whether the proceeding that produced it satisfied the due process predicate. Petitioner does not argue that the conviction is still open. He argues that the full-and-fair-opportunity requirement was never met, because the structural defects going to the integrity of the proceedings that examined those defects have never been adjudicated under the governing standards. *Coleman* addresses timing. *Allen*, *Parklane*, and the Restatement address predicate. The panel answered the first and did not reach the second.

C. The Judicial Bias Claim — Never Examined Under § 455(a).

At sidebar, with the jury present and before verdict, Judge Kelly took up the prosecutor's characterization of the defendant as "committing this massive fraud." Trial Tr. Feb. 1, 2010, at 214-17 (SA-4); *supra* at 10. He then presided over the § 2255

proceedings examining whether that prosecutor's undisclosed conflict had infected the trial, and adopted that prosecutor's 181-page proposed findings verbatim.

The governing standard is 28 U.S.C. § 455(a): whether a reasonable person knowing all the circumstances would question the judge's impartiality. *Liteky v. United States*, 510 U.S. 540, 555 (1994). *Liteky* recognized that judicial remarks during proceedings require recusal when they "reveal such a high degree of favoritism or antagonism as to make fair judgment impossible." *Id.* Whether jurors heard the exchange is not the question. *See United States v. Antar*, 53 F.3d 568, 573-76 (3d Cir. 1995). The question is what an informed observer would make of a judge who adopts a prosecutor's framing of guilt mid-trial, then presides over the examination of that prosecutor's conduct after he has been disqualified as a necessary fact witness, then signs that disqualified prosecutor's findings without alteration. *Williams v. Pennsylvania*, 579 U.S. 1, 8-9 (2016); *In re Murchison*, 349 U.S. 133, 136 (1955).

No court has applied that standard. The § 455(a) motion was dismissed for lack of jurisdiction, ECF 623, and ECF 717 addressed the sidebar by observing it was a sidebar, without the standard and without jurisdiction. *Supra* at 11.

D. The Disqualified Prosecutor — The Personal-Interest Question *Young* Poses.

This Court has established "a categorical rule against the appointment of an interested prosecutor." *Young v. United States ex rel. Vuitton et Fils S.A.*, 481 U.S. 787, 814 (1987); *see* 28 U.S.C. § 528. The harm is structural: an interested prosecutor's decisions about "what information will be sought as evidence" cannot be reconstructed after the fact. *Young*, 481 U.S. at 807-09; *Arizona v. Fulminante*, 499 U.S. 279, 309-10 (1991).

The district court disqualified Lappen from acting as the government's attorney at the evidentiary hearing and compelled him to testify as a necessary fact witness. ECF 413 (SA-5). The order was limited to the hearing. Petitioner does not claim otherwise. He never recused. He controlled the discovery, prepared the witnesses, blocked the examination of the trading charts presented as false, and drafted the findings. ECF 717 found all of that permissible because the order was limited to "the evidentiary hearing." SA-6. That reads ECF 413 as a Rule 3.7 advocate-witness ruling and answers a Rule 3.7 question. The claim is different. It is that a prosecutor whose own conduct and credibility were the subject of the inquiry held a personal interest in its outcome that no advocate-witness analysis addresses —

the interest *Young* holds categorically disqualifying. 481 U.S. at 807-09. Rule 3.7's own comment refers that situation to Rule 1.7. ECF 717 did not reach it. No court has.

Nor was the order complied with on its own terms. Lappen obtained his seat at counsel table on the representation that he "will not serve as the government's attorney or advocate at this hearing." ECF 421 at 5. On the record, he then told the court he had "been involved in" the government's objections. Hr. Tr. 11/16/17 at 135. When Petitioner moved mid-hearing to stop him from directing those objections, the government's response did not deny the conduct; it stated that he "has engaged with AUSA Bonney on numerous issues as they arise." ECF 496 at 3; *see* ECF 490 ¶¶ 5-6; ECF 498. Whether engaging with trial counsel on objections as they arise, from counsel table, after representing that one will not act as advocate, is advocacy within the order is a question ECF 717 did not ask. It assumed the order was honored. The transcript and the government's own filing put that assumption in doubt, and no court has resolved it.

E. The Self-Sealing Circle.

The disqualified prosecutor scripted the denial of the structural claims. The scripted denial became "previously litigated" at every subsequent level. The SEC now invokes estoppel from the scripted denial to bar examination of the claims the denial

was scripted to foreclose. ECF 717 added an iteration: the first substantive engagement came from a court that simultaneously held it lacked jurisdiction. A court without jurisdiction cannot issue binding merits findings; whatever it says beyond the jurisdictional holding is advisory. *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 94 (1998). ECF 722 added another: the court invoked those advisory findings as a merits ruling to deny a certificate of appealability. SA-7. The Third Circuit has listed the appeal for possible summary action. No. 26-3549.

Hazel-Atlas Glass Co. v. Hartford-Empire Co., 322 U.S. 238 (1944), forbids giving preclusive force to a judgment procured through fraud without first adjudicating the fraud. The principle extends naturally: a court may not give preclusive force to a judgment whose structural predicate has never been examined, when the party asserting preclusion was not a party to the first action and the defects in that action were the work of the adversary. Eight years, four district court rulings, two summary affirmances, no merits adjudication under § 455(a) or *Young*. Only this Court can break the circle.

III. The Commission May Not Invoke Preclusion From a Conviction Resting on Its Own Analyst's Testimony When the Disqualified Prosecutor Who Communicated With That Analyst Blocked Examination of the Testimony and Authored the Finding That It Was True.

Question Two concerns the tribunal. Question Three concerns the Commission's own witness. They share a factual predicate but present distinct legal questions: whether structural defects defeat the predicate for preclusion, and whether the Commission may benefit from preclusion when the conviction rested on its own analyst's testimony, presented as false, and the disqualified prosecutor who communicated with the analyst blocked the examination and authored the finding that there was nothing to find.

A. The False Trading Analysis and the Withheld Communications.

Koster's charts were presented as "matched trades." The showing that they omitted the order entry and execution data that would have revealed lawful market-maker flow is set out above and has never been rebutted. *Supra* at 12; Civ. ECF 62 at 6-9.

Not one communication between the prosecutors and Koster has been produced in seventeen years. The prosecutors brought Koster into the case. Hr. Tr. 11/16/17 at

54-56. When Petitioner sought to examine Koster at the habeas hearing on whether his charts were false, Lappen objected from counsel table and the court sustained. *Id.* at 88-89, 123-125. The claim is not speculative: the communications were sought in discovery, their existence is confirmed by Koster's own testimony, and the examination that would have established their content was blocked by the person whose communications they were.

B. The Finding Was Authored by the Suppressor.

The prior ruling that Koster's testimony was not false — now invoked as preclusive — was authored by the disqualified prosecutor, Lappen, in proposed findings (ECF 557) and adopted verbatim (ECF 570). ECF 717 later credited Lappen's testimony in part because the court had adopted his findings. SA-6. That is the circle: the scripted denial is used to validate the person who scripted it.

Under *Brady v. Maryland*, 373 U.S. 83 (1963), and *Giglio v. United States*, 405 U.S. 150 (1972), suppressed impeachment of a key government witness is material if there is a reasonable probability of a different result. *Whitton v. Dixon*, 608 U.S. ___ (2026), holds that the materiality inquiry is confined to what was before the jury; post-trial evidence may not be used to conclude the suppressed material would not have mattered. The finding that Koster's testimony was accurate rests entirely on post-

trial habeas testimony — from Lappen, Cohen, and Koster — none of which the jury heard. Under *Whitton*, that finding does not answer the materiality question, because it rests on a record the jury never had. The jury had Koster's charts unimpeached. That is the record on which materiality is assessed. *Whitton* arose on federal habeas review of a state conviction, but the rule it applied is *Giglio*'s, not AEDPA's; the measure of materiality is the same in every criminal case. And materiality is assessed cumulatively. *Kyles v. Whitley*, 514 U.S. 419, 436-37 (1995). The suppressed communications do not stand alone; they sit beside the undisclosed prosecutorial conflict and the undisclosed arrangements with the cooperating witness. Two things are established and one is inferred. Established: the charts omitted the order entry and execution data, and the SEC has never rebutted that showing. Established: the prosecutor-analyst communications were sought, exist by the analyst's own account, and were never produced. Inferred: what they would show about the prosecutors' knowledge of the omission. The inference is not a weakness in the claim; it is the claim. The examination that would have replaced inference with evidence was blocked by the disqualified prosecutor whose communications they were, and the finding that there was nothing to examine was written by him. If the communications show knowledge, the claim would be not suppression but the knowing presentation of

false evidence. *Napue v. Illinois*, 360 U.S. 264, 269 (1959). Whether they do is what the blocked examination would have determined. Petitioner has been prevented from finding out by the person who would know.

C. The Principle.

Hazel-Atlas holds that a judgment procured through fraud may not be given preclusive force without first adjudicating the fraud. The analogue here is direct: a court may not give preclusive force to a finding rejecting a suppression claim when the finding was authored by the person who did the suppressing, adopted by a judge whose impartiality was never examined, and insulated from scrutiny because the same person blocked the examination that would have tested it. No court has addressed whether preclusion operates in that configuration. The SEC's answer — "previously litigated" — assumes the integrity of the litigation whose integrity is the question.

IV. The Ex Parte Conference — The Court of Appeals Asked What Was Said, Not Who Was There.

On February 21, 2023, the district court convened a telephonic conference with SEC counsel and disqualified AUSA Lappen. Petitioner was excluded; the court "did

not attempt to get Mr. Georgiou on the phone." Civ. ECF 65, Trans. at 4. Nine days later the court granted summary judgment and invited the Commission to propose the remedies. Civ. ECF 59, 60. The judgment ultimately entered was the Commission's proposed order, verbatim. Civ. ECF 69.

The panel "reviewed the transcript" and found "[n]o rulings were made of any kind nor did anything else occur that was prejudicial," citing *United States v. Skulsky*, 786 F.2d 558, 561 (3d Cir. 1986), for the rule that ex parte contact on "the procedural question of forum" is tolerated. App., *infra*, 1, at 5 n.2. That analysis asked what was said. It did not ask who was there. A conference with a prosecutor formally disqualified as a fact witness in the related criminal proceeding — a prosecutor whose conduct is the subject of the structural claims the SEC relies on estoppel to foreclose — is not an administrative call about forum. The panel's no-prejudice finding examined the content of the conference. It did not examine whether the presence of a prosecutor disqualified as a witness in the related criminal case, at a conference from which the defendant was excluded, nine days before the dispositive ruling, was itself a defect the content could not cure. That question was not asked. It is an independent defect in the civil proceeding, presented as supporting Questions Two and Three rather than as a freestanding ground.

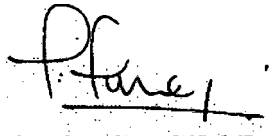
V. The Interests of Justice Independently Warrant Review.

Three questions converge in one record: a "net profits" judgment entered on the Commission's proposed order without any court finding what was gained; a conviction given preclusive effect at the instance of a non-party without any court examining its structural predicate; and the Commission's own analyst's testimony shielded from examination by a finding the disqualified prosecutor wrote. Petitioner has served nearly seventeen years. The petition should be granted.

Conclusion

The petition for a writ of certiorari should be granted. The judgment of the court of appeals should be reversed, the disgorgement order vacated, and the case remanded for a determination of net profits under *Liu* and *Sripetch*, and for adjudication of the structural predicate for collateral estoppel under the governing constitutional standards. In the alternative, the Court should grant the petition, vacate the judgment, and remand for reconsideration in light of *Sripetch v. SEC*, 608 U.S. ___ (2026), which the court of appeals has not had occasion to apply.

Respectfully submitted,

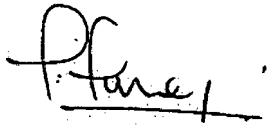


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November 2026

CERTIFICATE OF COMPLIANCE

I certify that this petition complies with the type-volume limitations of Supreme Court Rule 33.2. The petition contains 8,824 words, excluding the questions presented, the list of parties and related proceedings, the table of contents, the table of cited authorities, the listing of counsel, and the appendices, as permitted by Rule 33.1(d). The petition is presented in Century Schoolbook typeface, 12-point, double-spaced, on 8½ × 11-inch paper, pursuant to Rule 33.2.



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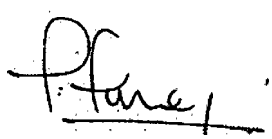
CERTIFICATE OF SERVICE

I, George Georgiou, hereby certify that on November 2, 2026, I caused a true and correct copy of the foregoing Petition for a Writ of Certiorari to be served by overnight commercial carrier and electronic mail upon counsel for Respondent:

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APPENDIX

App. 1. Per Curiam Opinion, United States Court of Appeals for the Third Circuit (May 14, 2026) (unpublished, non-precedential)

App. 2. Order Denying Rehearing En Banc (June 9, 2026)

App. 3. Orders Granting Summary Judgment, United States District Court for the Eastern District of Pennsylvania (March 2, 2023, ECF Nos. 59, 60)

App. 4. Final Judgment, United States District Court for the Eastern District of Pennsylvania (April 12, 2023, ECF No. 69)