

SEC Wins at the Supreme Court: SEC Disgorgement Doesn't Require Pecuniary Harm

June 5, 2026

Yesterday, the U.S. Supreme Court unanimously affirmed the Ninth Circuit's decision in *Sripetch v. SEC*, holding that the U.S. Securities and Exchange Commission ("SEC") may obtain disgorgement of a defendant's ill-gotten gains without proving that the victims of the defendant's securities law violation suffered a pecuniary loss. The decision resolves a circuit split regarding the scope of the SEC's disgorgement authority following the Court's 2020 decision in *Liu v. SEC* and represents a significant victory for the SEC, which has generally not fared well in recent years at the Court, in its ongoing efforts to preserve disgorgement as a central enforcement remedy. The key takeaways are:

- As has been true in the First and Ninth Circuits, defendants nationwide will no longer be able to challenge disgorgement awards based on the absence of investor losses.
- Justice Thomas's concurring opinion suggests that the SEC may face further challenges to how it seeks disgorgement, namely whether defendants facing disgorgement are entitled to a jury trial.
- As a result, the SEC may enhance the language in its consent judgments, requiring defendants to waive their right to a jury trial.

Background

Disgorgement has been in the SEC's arsenal since the 1970s.¹ It is a form of "[r]estitution measured by the defendant's wrongful gain" that requires a defendant to forfeit "those gains... properly attributable to the defendant's interference with the claimant's legally protected rights."² For many years, the SEC took the position that it

¹ *Kokesh v. S.E.C.*, 581 U.S. 455, 459 (2017).

² *Kokesh v. S.E.C.*, 581 U.S. 455, 458-59 (2017) (quoting Restatement (Third) of Restitution and Unjust Enrichment § 51, Comment a, p. 204 (2010) (Restatement (Third))).

could obtain as disgorgement any gain a wrongdoer obtained as the result of his or her violation, regardless of whether there was a discernible victim entitled to compensation. In many cases, disgorgement obtained by the SEC went to the U.S. Treasury.³

In 2020, the SEC's practice of seeking disgorgement without a discernible victim changed after the Supreme Court's decision in *Liu v. SEC*. In *Liu*, the Court addressed whether courts possessed the authority to order disgorgement in SEC enforcement actions, holding that disgorgement that does not exceed a wrongdoer's net profits and is "awarded for victims" is equitable relief permissible under the Securities Exchange Act of 1934 ("Exchange Act").⁴ Shortly after *Liu*, Congress codified the courts' power to order disgorgement in SEC enforcement matters.⁵

Since *Liu*, the circuits split on whether the "awarded for victims" language in the Supreme Court's decision required the SEC to prove that a victim suffered pecuniary harm to obtain disgorgement. In 2023, in *SEC v. Govil*, the Second Circuit held that courts must find that investors suffered pecuniary harm to order disgorgement,⁶ while in 2024, the First Circuit held in *SEC v. Navellier & Associates, Inc.* that no such finding was needed, given that disgorgement is tethered to a defendant's unlawful gains.⁷

Sripetch's Argument

Ongkaruck Sripetch consented to a district court order finding that he engaged in fraudulent schemes involving numerous penny-stock companies and, along with his associates, obtained more than \$6.6 million in illicit proceeds.⁸ On the basis of this order, the SEC sought over \$4.1 million in disgorgement as the net proceeds of his fraud.⁹ Sripetch objected, asserting that the SEC failed to identify any "victims" who had suffered financial losses as a result of his schemes, and thus could not obtain disgorgement under *Liu*.¹⁰ In response, the SEC posited that investors who did not lose money could still be considered "victims" under *Liu* and that anyway, investors had suffered financial harm as a result of Sripetch's schemes.¹¹

³ See *Kokesh v. S.E.C.*, 581 U.S. 455, 465 (2017).

⁴ See *Liu v. SEC*, 591 U.S. 71, 75 (2020).

⁵ See 15 U.S.C. § 78u(d)(7).

⁶ See *SEC v. Govil*, 86 F.4th 89, 98 (2d Cir. 2023).

⁷ See *SEC v. Navellier & Associates, Inc.*, 108 F.4th 19, 41 (1st Cir. 2024).

⁸ See Brief for the Respondent at 7–8, *Sripetch v. SEC*, No. 45-466 (Mar. 25, 2026).

⁹ See *Sripetch v. SEC*, 608 U.S. ___ (2026), No. 25-466, slip. op. at 5 (U.S. 2026) ("*Sripetch Op.*").

¹⁰ See *Sripetch Op.* at 5.

¹¹ See *Sripetch Op.* at 5.

The Ninth Circuit sided with the SEC, holding that courts could award disgorgement without a showing of pecuniary harm to investors, further deepening the circuit split on the issue.¹²

The Supreme Court's Ruling

The Supreme Court affirmed the Ninth Circuit and held that proof of investor financial loss is not a prerequisite to disgorgement.

To reach this conclusion, the Court drew a distinction between equitable relief—associated with disgorgement—and “damages.”¹³ Damages, the Court explained, are measured by the plaintiff’s loss, and are designed to make the plaintiff whole.¹⁴ In contrast, courts sitting in equity issue awards measured not by the loss of the plaintiff, “but by the defendant’s gain attributable to his wrongdoing against the plaintiff.”¹⁵ The purpose of an equitable remedy is thus not to compensate a plaintiff for their loss, but for a defendant to give a plaintiff the amount obtained from wrongfully invading that plaintiff’s legally protected interests.¹⁶ As a result, an individual may qualify as a “victim” for purposes of disgorgement where the defendant has invaded the individual’s legally protected interests, regardless of whether the individual can demonstrate financial losses.¹⁷

What the Court Did Not Decide

The SEC argued to the Court that the post-*Liu* additions to the Exchange Act not only obviate *Liu*’s requirement that disgorgement be “awarded for victims,” but also permit disgorgement even where funds are not ultimately distributed to investors.¹⁸ The Court declined to rule on this issue. In the Court’s view, for the purpose of this case, it could assume without deciding that disgorgement under the new provisions remained an equitable remedy subject to equitable limitations, including that disgorgement be “for victims.”¹⁹

Justice Thomas’s Concurring Opinion

Justice Thomas issued a notable concurrence in which he suggested where the next disgorgement battle lines may be drawn. Whereas the Court did not decide whether statutory disgorgement was an equitable remedy, Justice Thomas expressed the view

¹² See *SEC v. Sripetch*, 154 F.4th 980, 982 (9th Cir. 2025); *SEC v. Navellier & Associates, Inc.*, 108 F.4th 19 (1st Cir. 2024); *SEC v. Govil*, 86 F.4th 89 (2d Cir. 2023).

¹³ See *Sripetch* Op. at 8.

¹⁴ See *Sripetch* Op. at 8.

¹⁵ See *Sripetch* Op. at 8.

¹⁶ See *Sripetch* Op. at 9.

¹⁷ See *Sripetch* Op. at 10–11.

¹⁸ See *Sripetch* Op. at 7.

¹⁹ See *Sripetch* Op. at 7–8.

that Congress's post-*Liu* amendments to the Exchange Act transformed disgorgement into a legal remedy distinct from traditional equitable relief.²⁰ Moreover, Justice Thomas reasoned, under the Court's earlier decision in *SEC v. Jarkesy*, when the SEC seeks disgorgement under the current statutory framework, defendants are entitled to a jury trial under the Seventh Amendment.²¹

Justice Thomas emphasized that the SEC obtains disgorgement awards that are not ultimately all returned to investors, opining that the remedy increasingly resembles a monetary penalty rather than traditional equitable restitution.²² He noted an existing circuit split on the issue and suggested that the Court will likely confront whether current SEC procedure to obtain disgorgement—making a motion for a district court to enter a judgment, typically without a hearing but always without a jury—is constitutional.²³

Even if the Court were to ultimately adopt Justice Thomas's point of view, it may only come into play when a party takes the SEC to trial and a jury is already empaneled to determine liability. It will be interesting to see whether the SEC begins to ask juries to decide disgorgement in such cases. Most SEC cases, including the determination of the disgorgement amount, are resolved by settlement. Even when defendants enter bifurcated settlements, as *Sripetch* did, and do not agree to a disgorgement amount, they generally waive their rights to raise a procedural objection. In bifurcated settlements, the SEC has long required defendants to waive their right to dispute facts alleged in the SEC's complaint and to agree that the SEC may seek disgorgement by motion.²⁴ Given Justice Thomas's opinion, however, the SEC may update its form consent judgments to include an express waiver of a defendant's Seventh Amendment right to a jury trial on the issue of disgorgement.

Looking Ahead

The *Sripetch* decision strengthens the SEC's ability to pursue disgorgement in enforcement actions. Most immediately, defendants will be unable to challenge disgorgement awards based on the absence of investor losses. Following *Sripetch*, the SEC generally need only demonstrate that a defendant obtained gains through conduct that infringed investors' legally protected interests; it need not prove that investors suffered measurable financial harm.

²⁰ See *Sripetch v. SEC*, 608 U.S. ___, No. 25-466, slip op. at 1 (U.S. 2026) (Thomas, J., concurring) ("Thomas Concurring Op.").

²¹ See Thomas Concurring Op. at 1, 4–5.

²² See Thomas Concurring Op. at 8.

²³ See Thomas Concurring Op. at 10.

²⁴ See, e.g., Consent Judgment as to Defendant Ongkaruck Sripetch at 5, *SEC v. Sripetch*, No. 3:20-cv-1864 (S.D. Cal., Sept. 11, 2023), ECF No. 92.

At the same time, *Sripetch* leaves unresolved several important questions regarding the scope and constitutional status of SEC disgorgement. In particular, the Court's decision does not resolve whether disgorgement under the post-*Liu* statutory framework remains constrained by the equitable limitations recognized in *Liu*, nor does it address whether defendants are constitutionally entitled to jury trials when the SEC seeks disgorgement.

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