

[Securities Regulation Daily Wrap Up, ENFORCEMENT—U.S.: Supreme Court hears oral argument on disgorgement in SEC enforcement actions, \(Apr. 20, 2026\)](#)

Securities Regulation Daily Wrap Up

[Click to open document in a browser](#)

By [Lene Powell, J.D.](#)

The U.S. articulated a fallback position that it would be better for the government to have to go through a jury trial to get disgorgement than not to have disgorgement available at all.

At oral argument in *Sripetch v. SEC*, the Supreme Court pressed the parties on the limits of disgorgement in SEC enforcement actions. Does the SEC need to show pecuniary harm to investors? Does it trigger the right to jury trial? Do disgorged funds need to be returned to investors in all cases? (*Sripetch v. SEC*, No. 25-466 (U.S. argued Apr. 20, 2026)).

The Court is expected to [resolve a circuit split](#) over whether the SEC must show investor harm to seek disgorgement from defendants.

Overall, the Court did not seem inclined to significantly limit disgorgement beyond guardrails set forth in *Liu v. SEC* (2020). Rather, justices seemed intent on developing outer bounds and protecting due process for defendants.

Justices sought to clarify amendments to the Exchange Act that explicitly added disgorgement as a remedy following the Court's decision in *Liu v. SEC* (2020).

Prior proceedings. In 2024, a California district court [ordered](#) the petitioner to pay disgorgement of over \$2 million in connection with a fraudulent pump-and-dump scheme. The petitioner appealed to the Ninth Circuit, arguing that the SEC did not adequately show the amount of investor harm.

The Ninth Circuit [affirmed the judgment](#), holding that an award of disgorgement does not require a showing that investors experienced pecuniary harm. The Supreme Court [granted](#) certiorari.

Investor harm vs. unjust enrichment. The justices probed the relationship between disgorgement, civil penalties, and damages.

Liu held that disgorgement was an equitable remedy that must be awarded “for victims,” reasoning that the Exchange Act provides that the SEC may seek equitable relief “for the benefit of investors.” Congress subsequently amended the Act to provide that the SEC could seek disgorgement “of unjust enrichment” gained from violations.

In his opening statement, the U.S. deputy solicitor general discussed restitution as designed to recompense victims, while disgorgement is designed to get wrongdoers to surrender ill-gotten gains.

“If you look at “restitution” [in dictionaries], you see lots of entries about passing from a wrongdoer funds or property that rightfully belongs to someone else,” he said. “If you look at the Black’s Law Dictionary definition of ‘disgorgement,’ you just see an act of giving up. It’s the surrender, full stop.”

Justice Sotomayor said she thought disgorgement was meant to make it easier to recover where investor loss is difficult to prove. Counsel for Sripetch said that, in enforcing the securities laws, the SEC has the option to seek civil penalties and obtain full gross proceeds. If they want to compensate victims, they can seek disgorgement.

Justice Alito asked why the SEC doesn’t have a substantive entitlement to the profits under the current statute. Counsel for Sripetch responded that the SEC is not the victim and is not seeking disgorgement for itself, but for the injured parties.

Proof. Counsel for *Sripetch* said they were not arguing that wrongdoers should get to keep proceeds from their violations, only that the SEC should have to go through the same hoops in seeking disgorgement as for civil penalties.

In response to a question from Justice Barrett, counsel for *Sripetch* said that just because victims had suffered a violation of their legal interests, that did not give them a legal right to the proceeds.

“If all you need to do to get a disgorgement remedy is come to a court, you don't need a jury trial, you can overestimate the amounts of the gains, as they did here,” counsel for *Sripetch* said. “They asked for over \$4 million and the court found over 2 million of that was inflated. Then you coerce defendants to settle because they don't have much of an option when they're facing that kind of demand from the government.”

Equitable remedy or penalty. Justices probed whether disgorgement is an equitable remedy or penalty.

Counsel for *Sripetch* argued that disgorgement may not be a penalty or deterrent, and is limited to restoring the status quo and providing fair compensation to injured investors.

Justice Jackson zeroed in on the idea of disgorgement as penalty.

“Why is it a punishment if we're not taking anything more from the defendant than he unlawfully gained?” she asked. “If we're just disgorging his ill-gotten gains, I'm not sure I understand why that's a punishment.”

Counsel for *Sripetch* responded that disgorgement still deprives the wrongdoer in the same way that a penalty is a punishment, because the purpose is to deprive and deter.

Jackson asked why it was necessary to determine the amount of the victim's loss.

“Because that's the core function of disgorgement,” counsel for *Sripetch* responded. “It's to get the asset from the person who shouldn't hold it to the person who should.”

Legal vs. equitable. Justice Thomas asked if the SG's argument would be cleaner if it accepted that disgorgement is a legal remedy rather than equitable.

The deputy SG responded that their position did not depend on whether the remedy of disgorgement under (d)(3)(A)(ii) and (d)(7) is legal or equitable. Rather, in the 2021 amendments, Congress said the SEC has a remedy that compels the defendant to give up its profits on certain conditions. Whether the remedy is legal or equitable might go to whether a jury trial is required for disgorgement, not to whether the remedy is available at all.

Thomas pressed on the percentage of disgorged funds retained by the government rather than distributed to victims. The deputy SG said he understood from the SEC that something like 88 percent of funds actually collected were designated for distribution.

He added that distribution would be more difficult if the court agreed with the petitioner that the only victims the SEC could legally distribute funds to are people who could establish their own right to sue under the private cause of action.

SEC actions vs. private actions. Chief Justice Roberts asked if there was any reason the SG's office did not discuss *Jarkesy*. The deputy SG said it was because *Jarkesy* involved civil penalties ordered in SEC administrative proceedings, while *Sripetch* involved disgorgement ordered in court proceedings.

Disgorgement limitations. Justice Gorsuch asked the deputy SG if he agreed to a few points:

- Disgorgement under d)(7) is for net profits only;
- Unjust enrichment has to be causally connected to the defendant's actions, as a result of the defendant's actions; and
- The money has to go back to investors unless it's infeasible.

The deputy SG said he agreed with the first two but pushed back on returning the money to investors.

“We agree that the statute would permit us to get it without routing it to investors because (d)(3)(A)(ii) lists certain prerequisites and routing to investors is not one of them,” he said.

Gorsuch suggested this was a “perilous” position that would bring disgorgement within Seventh Amendment and jury trial territory.

Principle of unjust enrichment. Sotomayor asked if the government is keeping the money, what legally recognizable right is it protecting?

“It is simply accomplishing a public interest at an effort to deprive the defendant of his unlawful profits,” said the deputy AG.

“For deterrence?” asked Sotomayor.

“I think substantially for purposes of deterrence, but kind of the utilitarian justification is, there is a sense that it is inherently unfair—inherently inequitable—to have an adjudicated violator and say you can keep the money,” the deputy SG said.

The deputy SG then suggested a fallback position. “If push comes to shove, we would rather be in a situation where we can get disgorgement but may have to go through a jury trial to get it, than to be in a position where we can’t get it at all.”

The case is [No. 25-466](#).

Attorneys: Daniel L. Geyser for petitioner. Malcolm L. Steward for the U.S.

MainStory: TopStory Enforcement FraudManipulation GCNNews SECNewsSpeeches SupremeCtNews