U.S. Supreme Court | Curtis Notes

On Decisions and Trends for International Business and World Affairs

August 2026

CURTIS

Curtis, Mallet-Prevost, Colt & Mosle LLP

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Letter from the Editors

More than a decade ago, Justice Stephen Breyer authored a book titled "The Court and the World," in which he envisioned the U.S. Supreme Court as a pivotal player in resolving disputes of international significance in an increasingly globalized world. Although the Court seems to have retrenched towards more domestic matters in recent years, several of its decisions this term reverberated globally, starting with its much anticipated decision striking down President Trump's signature policy imposing tariffs on virtually all U.S. trade partners. This year, we review seven cases with implications for international business and world affairs.

Learning Resources v. Trump: The U.S. Executive lacks authority under the International Emergency Economic Powers Act (IEEPA) to impose tariffs, but other statutes grant the president the power to do so subject to strict procedural and substantive requirements. Importers are seeking refunds of the IEEPA tariffs.

Cisco Systems, Inc. v. Doe: Companies cannot be sued for aiding and abetting human rights violations committed abroad unless the claim was a recognized violation of international law at the time the Alien Tort Statute was enacted in 1789, virtually shutting the doors of U.S. courts to such claims.

Exxon Mobil Corp. v. Corporación Cimex, S.A.: A statute that creates a cause of action for trafficking in property taken by the Cuban government and names agencies and instrumentalities of foreign states as potential defendants abrogates their foreign sovereign immunity, obviating the need to establish a separate exception to jurisdictional immunity under the Foreign Sovereign Immunities Act (FSIA). The FSIA's grant of immunity from execution against sovereign property could still present a significant bar to recovery.

Jules v. Andre Balazs Properties: A federal court with jurisdiction to stay an action for arbitration retains jurisdiction to confirm or vacate a resulting arbitral award under the Federal Arbitration Act. This approach is consistent with the Act's structure of allowing the court that stayed the action to supervise the arbitration.

Cox Communications, Inc. v. Sony Music Entertainment: Knowingly providing internet services to copyright infringers does not by itself make the internet service provider liable for the infringement. Affirmative conduct such as inducement is needed to create contributory liability under the Copyright Act.

FS Credit Opportunities Corp. v. Saba Capital Master Fund, Ltd.: The Securities and Exchange Commission is the primary enforcer of provisions allowing for rescission of contracts that allegedly violate the Investment Company Act. The Act does not create an implied private right of action to sue under those provisions.

Sripetch v. Securities and Exchange Commission: No proof that investors suffered pecuniary damages is needed for the Securities and Exchange Commission to obtain disgorgement of ill-gotten gains in securities fraud cases.

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A Word About Our Process

In preparing this year's report, we asked our contributing associates to prompt Lexis Protégé to generate the first draft of each case summary. Each associate employed their own prompting techniques.

Consistent with Curtis' internal AI policy, our contributing attorneys reviewed and revised Protégé's outputs to ensure accuracy, appropriateness and completeness based on their independent analyses. While we continue to develop our AI capabilities for the benefit of our clients, our most valuable asset remains our professional experience and human judgment.

We disclose this process consistent with Curtis' internal AI policy's emphasis on transparency. Nothing in this disclosure implies Lexis' affiliation, endorsement, or sponsorship.

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Learning Resources, Inc. v. Trump

NO EXECUTIVE POWER TO IMPOSE TARIFFS UNDER IEEPA

Summary: The International Emergency Economic Powers Act (IEEPA) does not grant the President authority to impose tariffs.

Author: Roberts, C.J.

Decision Issued: February 20, 2026

Vote: 6-3

In 1977, Congress enacted IEEPA, which grants the Executive certain economic powers, including to "regulate" imports after declaring a national emergency under the National Emergencies Act (NEA) in response to an unusual and extraordinary threat originating in whole or substantial part from outside the United States. Presidents have long invoked IEEPA to impose economic sanctions.

President Donald Trump was the first president to invoke IEEPA to impose tariffs. On February 1, 2025, President Trump imposed tariffs on China, Mexico, and Canada based on a national emergency declared in response to a public health crisis caused by the influx of illicit drugs into the United States (the "trafficking tariffs"). On April 2, 2025, he imposed a second set of tariffs affecting virtually all U.S. trading partners based on a national emergency declared in response to a lack of reciprocity in U.S. bilateral trade relationships and persistent annual trade deficits that, in the government's view, had eroded the nation's critical manufacturing capacity and supply chains (the "liberation day tariffs"). Both sets of tariffs were later modified but generally remained in effect.

Several parties challenged the trafficking and liberation day tariffs, mainly arguing that IEEPA does not authorize the imposition of tariffs. The *V.O.S. Selections* plaintiffs—five small importing businesses and twelve states—filed suit in the Court of International Trade ("CIT"), which has exclusive jurisdiction over civil actions against the government arising out of laws "providing for" tariffs. The *Learning Resources* plaintiffs—two small businesses—filed suit in the U.S. District Court for the District of Columbia.

In *V.O.S. Selections*, the CIT held both sets of tariffs unlawful and permanently enjoined their collection. The U.S. Court of Appeals for the Federal Circuit affirmed, concluding that IEEPA does not confer authority on the President to impose tariffs of unlimited scope, amount, or duration.

In *Learning Resources*, the district court likewise held that IEEPA does not authorize the imposition of tariffs. The court reasoned that because IEEPA is not a statute "providing for" tariffs, the CIT lacked jurisdiction and, on that basis, denied the government's motion to transfer the case to the CIT. The D.C. Circuit did not reach the merits because the Supreme Court granted certiorari before judgment and consolidated the case with *V.O.S. Selections*.

In the consolidated disposition of *V.O.S. Selections* and *Learning Resources*, the Supreme Court agreed with the lower courts and held that IEEPA does not authorize the Executive to impose tariffs. The Court's analysis rested on separation-of-powers concerns and ordinary principles of statutory interpretation. It reasoned that the imposition of tariffs derives from the taxing power (power of the purse), one of Congress' most consequential Article I powers, and declined to construe IEEPA's authorization to "regulate" importation as an implicit grant of such authority. The Court emphasized that Congress does not ordinarily delegate major powers through ambiguous language and held that the President had failed to identify the clear congressional authorization required for the sweeping tariffs. The Court further concluded that the statutory term "regulate," read in context and light of Congress' historical practice, does not encompass the taxing power, but rather refers to the day-to-day dealings of the government.

Following the Supreme Court's decision, U.S. Customs and Border Protection (CBP) ceased collection of the tariffs. However, the Court's opinion did not address whether, or by what means, importers of record that had paid the now-unlawful tariffs could seek refunds. In anticipation of and after this ruling, importers filed a wave of refund claims both before the CIT and directly with CBP. Judge Eaton of the CIT ordered CBP to refund all IEEPA tariffs collected—an order that is currently on appeal by the government. To comply with aspects of that order, CBP developed the Consolidated Administration and Processing of Entries (CAPE) system to process refund requests through an administrative procedure. The CAPE system has been implemented in phases: Phases I and II cover certain categories of entries that have not been finally liquidated, while Phase III may be limited to importers who have filed court actions and have entries that have been finally liquidated.

This decision is among the most consequential of the term, not only because of the breadth of prospective refunds (more than $160 billion by some projections), but also because the tariffs affected a wide range of cross-border contracts in which parties allocated tariff risk and renegotiated prices accordingly. Also, some consumers have already brought class actions claiming that they bore the economic burden of the tariffs through increased prices and are entitled to refunds.

Contributor: Sara Lucía Dangón

Cisco Systems, Inc. v. Doe I

AIDING AND ABETTING HUMAN RIGHTS VIOLATIONS ABROAD

Summary: Federal courts lack authority to create new causes of action for violations of international law beyond those recognized when Congress enacted the Alien Tort Statute (ATS), which did not include torture, arbitrary detention, or extrajudicial killing; and the Torture Victim Protection Act (TVPA) limits liability to those who directly commit torture, not to those who aid-and-abet torture.

Author: Barrett, J.

Decision Issued: June 23, 2026

Vote: 6-3 (ATS); 8-1 (TVPA)

The ATS, enacted in 1789, grants federal courts jurisdiction over any civil action brought by a foreigner for a tort committed in violation of the law of nations or a treaty of the United States. In *Sosa v. Alvarez-Machain* (2004), the Supreme Court held that the ATS is "strictly jurisdictional" but also provides causes of action for international law violations recognized when it was enacted. The Court also proposed a two-step framework for courts to recognize new causes of action: (i) whether defendant's conduct violated a norm with "definite content and acceptance among civilized nations," and (ii) whether it would be prudent for a court to create the proposed cause of action when the political branches had not done so. Since *Sosa*, some lower courts have recognized new ATS causes of action for torture and other human rights abuses. Separately, the TVPA, enacted in 1991, permits certain victims of torture to recover damages against the perpetrators.

In *Cisco*, members of the Falun Gong religious movement alleged that the Chinese government persecuted them on account of their religious beliefs and that Cisco Systems, Inc., a U.S. company, facilitated that persecution by developing surveillance technology that enabled Chinese authorities to identify and apprehend them. Plaintiffs brought claims under the ATS against Cisco for "aiding and abetting" violations of international law, including torture, cruel and inhuman treatment, forced labor, prolonged arbitrary detention, crimes against humanity, extrajudicial killing, and forced disappearance. One plaintiff separately brought TVPA claims against two Cisco executives for "aiding and abetting" torture.

The district court dismissed the complaint after concluding that the facts alleged by the plaintiffs did not establish "aiding-and-abetting" liability. The U.S. Court of Appeals for the Ninth Circuit reversed, holding that aiding-and-abetting liability is cognizable under the ATS and the TVPA.

The Supreme Court reversed. It held that federal courts lack authority under the ATS to create new causes of action for violations of international law beyond those recognized when Congress enacted the ATS, which did not include torture, arbitrary detention, or extrajudicial killing. The Court reasoned that creating new causes of action belongs exclusively to Congress and that allowing courts to exercise this power would impermissibly interfere with the political branches' power to direct foreign policy. Because courts cannot create new causes of action to remedy violations of international law under the ATS, there is no liability for "aiding-and-abetting" such violations. As to the TVPA, the Court held that the statute's language imposing liability on any individual who "subjects" another to torture is not broad enough to cover aiding-and-abetting.

With this decision, the Supreme Court pulled back the *Sosa* two-step framework and closed the door to new causes of action under the ATS. This decision substantially narrows the types of claims that could be brought against U.S. corporations, particularly multinational corporations, for allegations that their conduct facilitated human rights abuses by foreign governments abroad.

Contributors: Robert Groot and Sara Lucía Dangón

Exxon Mobil Corp. v. Corporación Cimex, S.A.

SUING CUBAN ENTITIES FOR DEALING IN SEIZED PROPERTY

Summary: The Helms-Burton Act not only creates a private cause of action against Cuba's agencies and instrumentalities for trafficking in U.S.-owned property taken by the Cuban government without compensation, but also abrogates their foreign sovereign immunity. Consequently, plaintiffs suing under the Helms-Burton Act are not required to separately satisfy one of the exceptions to sovereign immunity under the Foreign Sovereign Immunities Act (FSIA).

Prior to Fidel Castro's assumption of power, Exxon operated an oil refinery, bulk products terminals, and over 100 service stations in Cuba. In 1960, under the Castro regime, the Cuban government expropriated Exxon's assets in Cuba without compensation. Since then, two Cuban government-owned companies, CUPET and CIMEX, have allegedly operated and profited from those assets.

In 1996, Congress passed the Cuban Liberty and Democratic Solidarity Act, commonly referred to as the LIBERTAD Act or the Helms-Burton Act, which creates a private right of action for U.S. nationals whose property was confiscated by the Cuban government under the Castro regime. The Act allows suits against "any person" that "traffics" in confiscated property, with "person" defined to include any agency or instrumentality of a foreign state. The Act remained suspended until 2019, when President Trump ended the suspension. Exxon immediately sued CUPET and CIMEX in the U.S. District Court for the District of Columbia, alleging that they "trafficked" in property that was unlawfully seized by the Cuban government from Exxon.

The Cuban agencies and instrumentalities moved to dismiss the suit on sovereign immunity grounds under the FSIA. Exxon argued that the Helms-Burton Act served as a waiver of the Cuban agencies and instrumentalities' sovereign immunity by creating a cause of action expressly applicable to foreign sovereign agencies and instrumentalities. The district court agreed with the Cuban agencies and instrumentalities, and a divided panel of the U.S. Court of Appeals for the D.C. Circuit affirmed, in relevant part, concluding that the Helms-Burton Act does not override but instead coexists with the FSIA.

The Supreme Court reversed, holding that the Helms-Burton Act abrogates the sovereign immunity of Cuban agencies and instrumentalities. The Court based this holding on four main points. First, the majority found that, when Congress creates a cause of action that explicitly applies against a sovereign, Congress abrogated immunity even absent a separate, express waiver provision. Since the Act's cause of action defines "person" to include any agency or instrumentality of a foreign state, it abrogated their sovereign immunity.

Author: Kavanaugh, J.

Decision Issued:
June 23, 2026

Vote: 6-3

Second, since Congress does not typically enact self-defeating statutes, the majority found that applying the FSIA exceptions would largely “eviscerate” the Act’s cause of action because the relevant FSIA exceptions require commercial activity in the United States or direct effects in the United States, which would be nearly impossible to demonstrate given the Act simultaneously codified a comprehensive economic embargo against Cuba.

Third, the majority pointed to the fact that Helms-Burton Act suits fall within general federal-question jurisdiction under 28 U.S.C. § 1331, not under the FSIA’s specific jurisdictional grant in 28 U.S.C. § 1330, elucidating Congress’ understanding that actions under the Act are distinct from actions under the FSIA.

Fourth, the majority found that the Act grants the President plenary power to suspend suits based on national security and foreign policy assessments, operating similarly to the pre-FSIA immunity regime where immunity decisions fell within the discretion of the Executive Branch. Therefore, in the Court’s view, it would make no sense that the current FSIA regime regarding jurisdictional immunity would apply to this Act.

In totality, these four factors led to the majority’s conclusion that the Helms-Burton Act itself abrogates the foreign sovereign immunity of Cuban agencies and instrumentalities, and the FSIA’s jurisdictional immunity provisions do not apply.

Justice Kagan, joined by Justices Sotomayor and Jackson, authored the dissent. Despite the majority’s concern that upholding the immunity of Cuban agencies and instrumentalities would negate the purpose of the Act, the dissent noted that plaintiffs are still able to sue Cuban agencies and instrumentalities if they satisfy an FSIA exception to jurisdictional immunity, and highlighted that the Act also allows suits against private parties trafficking in the same confiscated property. Moreover, the dissent noted that a win for plaintiffs may ultimately remain symbolic rather than tangible, as the FSIA provides for the immunity of foreign states’ property from execution, subject to exceptions that are tethered to the FSIA’s exceptions for jurisdictional immunity.

This ruling is specific to the unique features of the Helms-Burton Act, but it could open the door for plaintiffs suing foreign states to argue that other statutes similarly waive foreign sovereign immunity. However, as noted by the dissent, successful plaintiffs may obtain nothing more than a symbolic victory if they cannot ultimately satisfy one of the FSIA’s narrow exceptions to execution immunity.

Contributors: Olivia Wang

Jules v. Andre Balazs Properties

JURISDICTION TO CONFIRM OR VACATE AN ARBITRAL AWARD

Summary: A federal court that had an independent basis for federal jurisdiction to stay litigation of claims pending arbitration under the Federal Arbitration Act (FAA) retains jurisdiction to confirm or vacate any resulting arbitration award.

Under Section 3 of the FAA, a party may ask a federal court to stay a lawsuit that involves claims that are referrable to arbitration, so that the parties can then arbitrate those claims. After an arbitral award is rendered, a party may petition a court to confirm, vacate, or modify the award under Section 9, 10 or 11 of the FAA.

However, the FAA does not itself provide a basis for federal courts to exercise jurisdiction over domestic arbitration matters. A federal court must have a separate, independent jurisdictional basis for doing so. This independent jurisdictional basis may be established if the dispute arises between citizens of different States with over $75,000 at issue (known as diversity jurisdiction) or if the dispute implicates a federal question other than the one under the FAA (known as federal-question jurisdiction).

Author: Sotomayor, J.

Decision Issued:
May 14, 2026

Vote: 9-0

In 2020, Adrian Jules sued his former employer, the Chateau Marmont hotel in Los Angeles, and related entities in federal court in New York, alleging unlawful discrimination under federal and state law. Jules, however, had signed an agreement to arbitrate disputes with his former employer. Citing that agreement, the defendants moved to stay the lawsuit pending arbitration pursuant to Section 3 of the FAA. The district court granted that motion and stayed the lawsuit, while the parties arbitrated their dispute. In 2023, an arbitral tribunal denied all of Jules' claims and awarded monetary sanctions in favor of the defendants for Jules' and his attorney's misconduct in the arbitration. The defendants moved to confirm the award pursuant to Section 9 of the FAA in the same district court that had stayed Jules' lawsuit.

Jules opposed confirmation of the award while cross-moving to vacate it. Jules argued that the court lacked jurisdiction because the defendants' motion to confirm the award did not independently raise a federal question, other than one under the FAA, or satisfy the requirements for diversity jurisdiction. The district court disagreed and confirmed the award, and the Second Circuit affirmed.

The Supreme Court agreed and held that courts with jurisdiction to stay a case in favor of arbitration under Section 3 of the FAA retain jurisdiction to confirm or vacate the resulting award under Section 9 or 10 of the FAA. The Court reasoned that the power to stay an action under Section 3 includes the power to confirm or vacate any resulting arbitration award under Section 9 or 10. Otherwise, the FAA's structure would fall apart because the court that stayed the action would lack authority to supervise the arbitration and enforce the final award.

In this case, the district court had federal-question jurisdiction over Jules' original lawsuit because it presented a claim for discrimination under federal law. It was this jurisdiction that had authorized the court to rule on the arbitrability of Jules' claims and stay the action pending arbitration. The Court found that nothing in the FAA eliminated that jurisdiction while the parties arbitrated the claims. Thus, the Court ruled that, when the defendants returned to court to confirm the resulting arbitral award, the court had jurisdiction to decide the motion to confirm the award even though that motion was not supported by an independent basis for federal jurisdiction.

Contributors: Robert García and Robert Ruggiero

Cox Communications, Inc. v. Sony Music Entertainment

COPYRIGHT INFRINGEMENT AND INTERNET SERVICE PROVIDERS

Summary: An internet service provider is not contributorily liable for copyright infringement merely because it continued to provide internet services to known infringers.

Author: Thomas, J.

Decision Issued: March 25, 2026

Vote: 9-0

Sony Music Entertainment and other major copyright owners sued Cox Communications, an internet service provider, alleging that Cox was contributorily liable for copyright infringement because it continued to provide internet access to subscribers whose IP addresses it knew were used to illegally share copyrighted works such as songs and movies. Sony and the copyright owners secured a billion-dollar judgment. The U.S. Court of Appeals for the Fourth Circuit affirmed, holding that Cox was a wilful infringer because it supplied internet service to known infringers.

The Supreme Court reversed. The Court has previously recognized two categories of secondary copyright liability under the Copyright Act: vicarious and contributory liability. The Court explained that contributory liability, the type of secondary liability at issue in this case, requires proof that a service provider intended its service to be used for infringement. That intent can be established in two ways: (1) by showing that the provider affirmatively induced the infringement, or (2) by showing that the provider sold a service specifically tailored to infringement.

The Court emphasized that, under its precedents, a company is not liable as a copyright infringer merely for providing a service to the general public with knowledge that it will be used by some customers to infringe copyrights. Knowledge alone, coupled with insufficient action to prevent infringement, cannot support contributory liability. The Court noted that Cox provided general internet services capable of substantial lawful use and not designed specifically to promote infringement, and there was no indication that Cox actively induced copyright violations or created services specifically tailored to facilitate copyright violations.

The Court also addressed the safe-harbor defense under the Digital Millennium Copyright Act (DMCA), noting that Congress created a defense to secondary copyright liability for service providers that implement policies to address repeat infringers. The Court rejected Sony's argument that the DMCA safe harbor would have no effect if internet service providers must be held liable for providing service to known infringers. The Court held that liability cannot rest on the mere provision of internet access with knowledge of infringement, regardless of whether the service provider qualifies for the DMCA safe harbor.

The concurrence, authored by Justice Sotomayor and joined by Justice Jackson, criticized the majority for unnecessarily limiting secondary liability in the copyright context to vicarious and contributory liability. The concurrence argues that the Court's prior decisions leaves the door open for other common-law theories of secondary liability and that ignoring these decisions upends the statutory incentive structure created by Congress in the DMCA. Justice Sotomayor nevertheless agreed with the conclusion of the majority because the record cannot support a finding of intent necessary to hold Cox liable under a common-law theory.

Contributors: Eric Stenshoel and Grace Campbell

FS Credit Opportunities Corp. v. Saba Capital Master Fund, Ltd.

PRIVATE ACTIONS UNDER THE INVESTMENT COMPANY ACT

Summary: Section 47(b) of the Investment Company Act of 1940 (ICA) does not create an implied private right of action to sue for rescission of contracts that allegedly violate the ICA. Instead, the Securities and Exchange Commission (SEC) is the primary enforcer of those provisions.

Author: Barrett, J.

Decision Issued: June 11, 2026

Vote: 6-3

The ICA broadly protects the investing public by regulating abusive investment management practices. Saba Capital, a so-called activist investor in closed-end mutual funds, challenged corporate resolutions adopted by several Maryland-incorporated funds in which it held shares. These resolutions had opted into a provision of the Maryland Control Share Acquisition Act that limited the voting power of large shareholders, such as Saba. Alleging these resolutions violated the ICA's requirement that voting rights be equally distributed among voting shares, Saba sued for rescission (cancellation of contracts) under the ICA. Saba invoked Section 47(b), which provides that "a court may not deny rescission" of contracts that violate the ICA "at the instance of any party" unless doing so would be consistent with equity and the goals of the ICA. The district court concluded Section 47(b) created a private right of action for contract rescission and granted Saba summary judgment. The Second Circuit summarily affirmed.

The Supreme Court reversed. The Court explained that Congress, not the judiciary, determines who may enforce federal statutes, and the text of Section 47(b) does not evince Congress' intent to create a cause of action for rescission. The Court emphasized that Section 47(b)'s operative statement—"a court may not deny rescission"—is focused on the courts' remedial authority, not on the rights of private litigants. Moreover, the statute's reference to rescission "at the instance of any party," the Court explained, presumes that the parties are already properly before the court, indicating that Section 47(b) governs the availability of a remedy rather than the ability to bring an action. Looking to the ICA's structure, the Court found further support for its reading in the fact that Congress expressly created a private cause of action under two different ICA provisions but otherwise charged the SEC with enforcement. This demonstrated ability to expressly create private remedies under the ICA counseled against finding Congress intended to create an implied cause of action under Section 47(b).

This decision forecloses private contract-rescission actions under Section 47(b) and leaves the SEC as the primary enforcer of the ICA. Additionally, by making it more difficult for investors to challenge ICA violations through private litigation, this decision may strengthen investment companies' leverage in fund management disputes with activist investors.

Contributor: Nancy Delaney

Sripetch v. Securities and Exchange Commission

SEC MAY OBTAIN DISGORGEMENT OF ILL-GOTTEN GAINS

Summary: The Securities and Exchange Commission (SEC) may obtain disgorgement of ill-gotten gains in securities fraud cases under the Securities Exchange Act of 1934 without proving that investors suffered pecuniary loss.

Author: Gorsuch, J.

Decision Issued: June 4, 2026

Vote: 9-0

Ongkaruck Sripetch engaged in fraudulent schemes involving at least 20 penny-stock companies, including what are commonly known as "pump and dump" operations. The SEC brought a civil enforcement action against him, alleging six counts of securities fraud and one count of selling unregistered securities. Sripetch objected when the SEC sought over $4.1 million in disgorgement, arguing that the SEC failed to prove that his schemes caused investors financial losses.

The district court ruled in favor of the SEC, finding sufficient evidence of pecuniary loss. The Ninth Circuit affirmed but on the basis that the SEC is not required to show pecuniary loss to obtain disgorgement. The Ninth Circuit's holding deepened a developing split among the circuits on this issue.

The Supreme Court affirmed, holding that the SEC is not required to prove pecuniary loss to investors before obtaining disgorgement under the relevant provisions of the Securities Exchange Act of 1934.

As the Court noted, the SEC's practice of seeking disgorgement as an equitable remedy had initially been developed in the lower courts in the 1970s. In 2002, Congress authorized the SEC to seek "any equitable relief that may be appropriate or necessary" under Section 78u(d)(5). In a 2020 decision, the Court pared back the SEC's powers to seek disgorgement, holding that to the extent the SEC sought disgorgement under Section 78u(d)(5), it must follow "traditional equitable principles." The Court specifically held that certain aspects of the SEC's practices—in particular its "practice of depositing a defendant's gains with the Treasury" rather than returning disgorged profits to victims—were not consistent with traditional equitable principles. In 2021, Congress responded by expressly authorizing the SEC to seek disgorgement in a new provision, Section 78u(d)(7).

The dispute between Sripetch and the SEC focused on whether the "traditional equitable principles" requirement applied to claims brought under the new statutory provision enacted in 2021. The Court side-stepped that dispute, holding that even assuming that "disgorgement under section 78u(d)(7) remains an equitable remedy . . . so that it must comply with traditional equitable principles, including the rule that disgorgement must be awarded for victims," nothing in those traditional principles required a showing of pecuniary loss to investors.

The Court's holding therefore narrowly resolved the question of whether a showing of "pecuniary loss" to investors was required, while leaving open the question of whether "traditional equitable principles" the Court had previously invoked under Section 78u(d)(5) apply to disgorgement under Section 78u(d)(7).

As Justice Thomas noted in a separate concurrence, the question of whether disgorgement under Section 78u(d)(7) is an equitable or a legal remedy is likely to continue to raise significant issues in future litigation. In particular, Justice Thomas suggested that, in light of the new statutory basis for disgorgement, the Seventh Amendment would require a jury trial when the SEC seeks that remedy.

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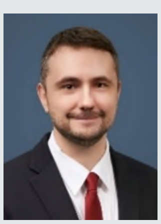

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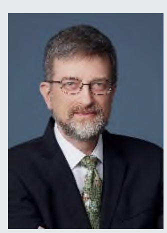

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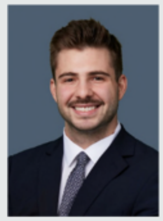

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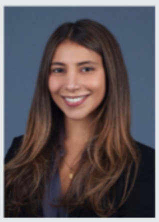

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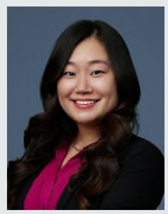

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