

No. 19-978

In the Supreme Court of the United States

TEAM RESOURCES INCORPORATED, ET AL., PETITIONERS

v.

SECURITIES AND EXCHANGE COMMISSION

*ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT*

BRIEF FOR THE RESPONDENT

ROBERT B. STEBBINS
General Counsel
MICHAEL A. CONLEY
Solicitor
DANIEL STAROSELSKY
Senior Litigation Counsel
Securities and Exchange
Commission
Washington, D.C. 20549

NOEL J. FRANCISCO
Solicitor General
Counsel of Record
Department of Justice
Washington, D.C. 20530-0001
SupremeCtBriefs@usdoj.gov
(202) 514-2217

QUESTION PRESENTED

Whether a district court, in a civil enforcement action brought by the Securities and Exchange Commission, may order disgorgement of money acquired through fraud.

TABLE OF CONTENTS

	Page
Opinions below	1
Jurisdiction	1
Statement	1
Discussion	3
Conclusion	3

In the Supreme Court of the United States

No. 19-978

TEAM RESOURCES INCORPORATED, ET AL., PETITIONERS

v.

SECURITIES AND EXCHANGE COMMISSION

*ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT CIRCUIT*

BRIEF FOR THE RESPONDENT

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1-14) is reported at 942 F.3d 272. The order of the district court (Pet. App. 15-22) is not published in the Federal Supplement but is available at 2018 WL 6737675.

JURISDICTION

The judgment of the court of appeals was entered on November 5, 2019. The petition for a writ of certiorari was filed on February 3, 2020. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Petitioners and their salespeople induced 475 investors to invest \$33 million in oil-and-gas partnerships, even though petitioners had failed to register as securities brokers as required by law, and even though petitioners knew that the oil-and-gas investments were not commercially viable. Pet. App. 2-3. The investors ultimately “lost all or most of their money.” *Id.* at 3.

(1)

The Securities and Exchange Commission (SEC) sued petitioners, alleging violations of various securities-law provisions that require registration and prohibit fraud. Pet. App. 3; see 15 U.S.C. 77e(a) and (c), 77q(a), 78j(b), and 78o(a); 17 C.F.R. 240.10b-5. The parties settled the case. Pet. App. 3. Petitioners neither admitted nor denied the allegations, but they consented to judgments that enjoined them from future violations of the federal securities laws, and they agreed that the district court “shall order disgorgement of ill-gotten gains” in an amount to be determined. *Ibid.*

The district court entered permanent injunctions that prohibited petitioners from violating the federal securities laws. Pet. App. 3. The court also ordered petitioners to disgorge their ill-gotten gains, stating that it would determine the amount of disgorgement upon the motion of the SEC. *Id.* at 3-4. While the SEC’s motion was pending, this Court held in *Kokesh v. SEC*, 137 S. Ct. 1635 (2017), that disgorgement is a “penalty” within the meaning of the five-year statute of limitations in 28 U.S.C. 2462. Pet. App. 4. Petitioners argued that, under *Kokesh*, courts lack authority to order disgorgement in SEC proceedings. *Ibid.* The court rejected that contention and ordered petitioners to disgorge \$15,508,280. *Id.* at 5.

The court of appeals affirmed. Pet. App. 1-14. The court explained that it had previously held that courts had the power to order disgorgement in civil actions brought by the SEC, and that *Kokesh* did not overturn that established circuit precedent. *Id.* at 6-10. The court noted that this Court had granted certiorari in *Liu v. SEC*, No. 18-1501 (argued Mar. 3, 2020), to determine whether courts may order disgorgement in civil actions brought by the SEC, but explained that the

grant of certiorari did not change its obligation to follow circuit precedent. Pet. App. 2.

DISCUSSION

Petitioners contend (Pet. 9-23) that courts lack the power to award disgorgement in civil actions brought by the SEC. In *Liu v. SEC*, No. 18-1501 (argued Mar. 3, 2020), this Court has granted review on the same question. The United States therefore agrees with petitioners (see Pet. 32) that the Court should hold this petition for a writ of certiorari pending the Court's decision in *Liu*, and then dispose of the petition as appropriate in light of that decision.

CONCLUSION

The petition for a writ of certiorari should be held pending this Court's decision in *Liu v. SEC*, No. 18-1501 (argued Mar. 3, 2020), and then disposed of as appropriate in light of that decision.

Respectfully submitted.

ROBERT B. STEBBINS
General Counsel

MICHAEL A. CONLEY
Solicitor

DANIEL STAROSELSKY
*Senior Litigation Counsel
Securities and Exchange
Commission*

NOEL J. FRANCISCO
Solicitor General

MARCH 2020