**UNITED STATES DISTRICT COURT**
**EASTERN DISTRICT OF TEXAS**

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| **SECURITIES AND EXCHANGE COMMISSION,** | § | |
| | § | |
| **PLAINTIFF/PETITIONER,** | § | |
| | § | **Civil Action No. 4:25-CV-00844-JCB** |
| **v.** | § | |
| | § | |
| **THOMAS ROSE,** | § | |
| | § | |
| | § | |
| **DEFENDANT/RESPONDENT.** | § | |
| | § | |

**DEFENDANT/RESPONDENT THOMAS ROSE'S RESPONSE TO THE COMMISSION'S APPLICATION FOR AN ORDER TO ENFORCE COMPLIANCE**

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## INTRODUCTION

This Court stayed this enforcement action pending the Supreme Court's decision in *Sripetch v. SEC*. That decision has now been issued, along with another. *Sripetch v. SEC*, 146 S. Ct. 1403 (2026), and *FCC v. AT&T, Inc.*, 146 S. Ct. 1418 (2026), together undercut the legal basis for the Commission's Application. Both decisions weigh against enforcement.

*Sripetch* decided less than it might appear. The Court held that the Commission need not prove pecuniary loss to investors before obtaining disgorgement. 146 S. Ct. at 1413. Rose does not contend otherwise and withdraws the *Liu*-based pecuniary-loss argument that this holding forecloses. But *Sripetch* resolved a narrow equitable question while expressly reserving the constitutional one that controls here. The unanimous Court warned that, should the Commission "attempt to use §78u(d)(7) to secure penalties, it would of course proceed beyond what *Liu* held §78u(d)(5) tolerates." *Id.* at 1412. That warning invoked *Jarkesy*'s jury-trial holding directly. *Id.* at 1412–13 (citing *SEC v. Jarkesy*, 603 U.S. 109, 123–25 (2024)). Justice Thomas, concurring, went further: disgorgement under the amended statutes is a legal remedy that "requires a jury trial." *Id.* at 1413, 1417 (Thomas, J., concurring).

On that same day, the Supreme Court decided *FCC v. AT&T*. The Court upheld the FCC's forfeiture scheme for one reason: 47 U.S.C. §504(a) guarantees a "trial de novo"—before a jury, in an Article III court—before any obligation to pay attaches. 146 S. Ct. at 1429. In explaining why that scheme survives, the Court deployed the SEC's own enforcement architecture—penalties immediately enforceable, no jury available at any stage—as the constitutional counterexample. *Id.* at 1430. Eight Justices, including all three *Jarkesy* dissenters, joined that reasoning. The order the Commission asks this Court to enforce is the model *Jarkesy* held unconstitutional and *FCC v.*

*AT&T* now reaffirms as the constitutional counterexample. Rose raised this framework in his prior response, before either decision was issued.[1] The Supreme Court has since confirmed it.

The Application should be denied and judgment withheld.

## PROCEDURAL BACKGROUND

This matter has been pending for nearly a decade.[2] In July 2017, the Commission instituted Administrative Proceeding File No. 3-18061, alleging that Rose and co-respondents participated in an unregistered securities offering in violation of Sections 5(a) and 5(c) of the Securities Act and acted as unregistered brokers in violation of Section 15(a)(1) of the Exchange Act.[3] In November 2017, Rose entered a partial settlement on a no-admit, no-deny basis as to liability, reserving disgorgement, prejudgment interest, and civil penalties for further proceedings.[4] The Commission's initial decision was issued in April 2018 and vacated after *Lucia v. SEC*, 585 U.S. 237, 251 (2018), held that SEC ALJs are "Officers of the United States" subject to the Appointments Clause. On remand, the proceeding was reassigned to ALJ James E. Grimes, who issued a new initial decision on December 20, 2019.[5] That decision found that Rose did not act with scienter, imposed a first-tier civil penalty of $3,750—the lowest of the three statutory tiers—

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[1] *See* Defendant/Respondent Thomas Rose's Response to Order to Show Cause ("Rose's Response to Order"), Dkt. #6.

[2] The history of this matter is set out in Rose's prior response, Dkt. #6, and is summarized here only as relevant.

[3] Application by the Securities and Exchange Commission for an Order Pursuant to Section 20(c) of the Securities Act of 1933 and Section 21(e) of the Securities Exchange Act of 1934 to Enforce Compliance with a Commission Order ("Application"), Dkt. #1, ¶¶ 11–14.

[4] Application ¶¶ 15–16; Rose's Response to Order, Dkt. #6 at 7.

[5] Rose's Response to Order, Dkt. #6 at 6–8 (summarizing procedural history); Initial Decision Release No. 1392 ("Initial Decision"), Dkt. # 2-2 at 2.

and ordered $297,360 in disgorgement plus prejudgment interest.[6] The decision became final on January 4, 2021.[7]

More than four years later, on August 6, 2025, the Commission filed its Application under Section 21(e) of the Exchange Act and Section 20(c) of the Securities Act, seeking to convert the administrative order into a federal judgment for $449,696.91.[8] On February 10, 2026, the Court issued an Order to Show Cause; Rose responded on April 14, 2026.[9] The Court then stayed the case pending *Sripetch*, which was decided on June 4, 2026; this Court lifted the stay on June 18, 2026, directing this response.[10] The Application predates both *Sripetch* and *FCC v. AT&T*, addresses neither, and does not mention *Jarkesy*.

## ARGUMENT

### I. This Court should withhold enforcement of an order issued without constitutional authority.

The Commission treats a §21(e) application as a ministerial act: confirm a final order, confirm non-payment, enter judgment. That framing was strained when Rose first answered this Application; *FCC v. AT&T* now refutes it. A §21(e) enforcement proceeding exercises this Court's own judicial power, invoked because the Commission chose to seek compliance through an Article III court. A court that lends its coercive authority to an agency order exercises independent judgment; it does not act as a rubber stamp. *See Hecht Co. v. Bowles*, 321 U.S. 321, 329–30 (1944) (a "grant of jurisdiction to issue compliance orders hardly suggests an absolute duty to do so under any and all circumstances").

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[6] Initial Decision at 19–22, 25–26.

[7] Notice That Initial Decision Has Become Final ("Final Order"), Dkt. #2-1 at 1–2.

[8] Application ¶¶ 5, 19.

[9] Order to Show Cause, Dkt. #4 at 1–2.

[10] Order Lifting Stay, Dkt. #16.

The Commission's principal authorities, *SEC v. McCarthy*, 322 F.3d 650 (9th Cir. 2003) and *SEC v. Pinchas*, 421 F. Supp. 2d 781 (S.D.N.Y. 2006), a 2003 court of appeals and 2006 district court decision, predate every relevant development—*Lucia*, *Liu*, *Axon*, *Jarkesy*, *Sripetch*, and *FCC v. AT&T*. The Supreme Court in *FCC v. AT&T* quoted *McCarthy*'s own words—"[b]y the time a [§78u(e)] application is filed by the Commission, the time and opportunity for adjudicating the merits of the claim have been exhausted; all that is left to do is enforce the order"—as its illustration that, in the SEC's scheme, "no jury was available—at least as to the underlying legal violation." 146 S. Ct. 1418, 1430 (2026) (quoting *McCarthy*, 322 F.3d at 658). The case the Commission cites to foreclose review is the same case the Supreme Court invoked to illustrate the constitutional defect.

Rose does not seek to relitigate the merits. He raises structural constitutional challenges to the tribunal's authority—challenges that *Axon Enterprise, Inc. v. FTC*, 598 U.S. 175, 190–93 (2023), holds are "collateral" to the merits and need not be channeled through administrative review. The injury is being subjected "to an illegitimate proceeding, led by an illegitimate decisionmaker"—a "here-and-now injury" that is "impossible to remedy once the proceeding is over." *Id.* at 191–92. A court cannot enforce an order that is void for want of constitutional authority. *Ex parte Siebold*, 100 U.S. 371, 376–77 (1880). Finality bars relitigating voidable error; it does not compel enforcing an order void from its inception.

Nor did Rose forfeit these defenses by declining to petition for review in 2021. That path offered no jury: on a §78y petition, "[t]he findings of the Commission as to the facts, if supported by substantial evidence, are conclusive." 15 U.S.C. § 78y(a)(4). Unlike the trial de novo that saved the FCC's scheme—when "it is as if the Commission never found any facts at all," *FCC v. AT&T*, 146 S. Ct. at 1429—appellate review of Commission orders is deferential, record-bound, and jury-free. A respondent cannot forfeit a jury right by declining a pathway that never included one. And when Rose's review window closed, *Jarkesy*, *Sripetch*, and *FCC v. AT&T* all lay in the future. Structural objections to the adjudicator's constitutional authority may be entertained notwithstanding an earlier failure to raise them. *Freytag v. Commissioner*, 501 U.S. 868, 878–80 (1991) (exercising discretion to entertain Appointments Clause challenge).

A federal court in this State has already declined an analogous request. *United States v. Sagoo*, No. 4:24-cv-01159-O, 2025 WL 2689912 (N.D. Tex. Sept. 19, 2025), appeal docketed, No. 25-11271 (5th Cir.). In *Sagoo*, the court dismissed with prejudice the government's suit to reduce administratively assessed FBAR penalties to judgment: the agency had adjudicated liability and levied penalties without a neutral factfinder and could collect through administrative offsets before any jury acted. While *Sagoo* applied the Fifth Circuit's decision in *AT&T*, the Supreme Court's subsequent reversal does not diminish *Sagoo*'s relevance. The reversal rested on §504(a)'s guarantee of a jury trial de novo before any obligation to pay attaches—a rationale that confirms, rather than undermines, the objection to a scheme in which the order is immediately enforceable. Under §21(e), no de novo jury pathway exists at any stage. Nor does it matter that Rose received a full evidentiary hearing before an ALJ—so did the *Jarkesy* respondent. Process before a non-Article III factfinder is the defect the Seventh Amendment addresses, not its cure.

## II. After *FCC v. AT&T*, the Seventh Amendment defect in the Commission's Order is confirmed by an eight-Justice majority.

### A. *Jarkesy* holds that SEC civil penalties require an Article III jury.

In *Jarkesy*, the Supreme Court held that when the Commission seeks civil penalties for securities claims that "replicate common law fraud," the Seventh Amendment guarantees a jury trial in an Article III court. 603 U.S. at 120. Congress cannot "conjure away the Seventh Amendment by mandating that traditional legal claims be … taken to an administrative tribunal."

*Id.* at 120, 127–28 (quoting *Granfinanciera, S.A. v. Nordberg*, 492 U.S. 33, 52 (1989)). An ALJ assessed Rose's civil penalty in exactly the forum *Jarkesy* condemned—an in-house proceeding, with no jury, before a non-Article III factfinder employed by the prosecuting agency.

The Commission may respond that Rose's violations—registration provisions, not fraud—fall outside *Jarkesy*. That distinction does not remove the case from *Jarkesy*'s reach. "[T]he remedy is all but dispositive": a monetary sanction "designed to punish or deter the wrongdoer," rather than "solely to 'restore the status quo,'" is legal in nature whatever its statutory source. *Jarkesy*, 603 U.S. at 123 (quoting *Tull v. United States*, 481 U.S. 412, 422 (1987)). *Tull* itself guaranteed a jury on liability for Clean Water Act civil penalties—regulatory obligations with no common-law fraud analogue. 481 U.S. at 425. This circuit has since confirmed that reading: in *Intuit, Inc. v. FTC*, No. 24-60040, 2026 WL 787527 (5th Cir. Mar. 20, 2026), the Fifth Circuit held that FTC deceptive-advertising claims—requiring no proof of fraudulent intent or damages—implicate private rights requiring Article III adjudication because they share a "common core" with claims known to the common law. Element-for-element identity with common-law fraud is not the test. Nor was Rose's proceeding free of fraud-type adjudication: to fix the penalty tier, the ALJ had to determine whether the conduct involved "fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement," 15 U.S.C. §§ 77h-1(g)(2)(B), 78u-2(b)(2), and conduct precisely the scienter inquiry the common law committed to juries.[11]

If the Commission relies on *Atlas Roofing Co. v. OSHRC*, 430 U.S. 442 (1977), and the public-rights doctrine, *Jarkesy* has already cabined that decision to statutory schemes resting on causes of action and remedies "unknown to the common law." 603 U.S. at 138–140. Selling securities and effecting transactions for compensation are not regulatory novelties of that kind;

[11] Initial Decision at 16, 19–22.

they arise under the same statutory family *Jarkesy* addressed, and the remedy—a civil money penalty—is the classic legal sanction. *FCC v. AT&T* further counsels against any categorical public-rights carve-out for regulatory penalties: the forfeitures there punished violations of statutory duties governing customer location data—obligations with no common-law fraud analogue—yet the Court resolved the Seventh Amendment question by pointing to §504(a)'s guarantee of a jury trial de novo. 146 S. Ct. at 1427–30.

**B. The Commission's § 21(e) scheme fails the test *FCC v. AT&T* articulates by the majority's own reasoning.**

*FCC v. AT&T* supplies the analytic framework and applies it to the SEC directly. The Court upheld the FCC's forfeiture procedure for one reason: a forfeiture order does "not definitively resolve the parties' legal obligations," because forfeitures "shall be recoverable," exclusively, in a "trial de novo" before any obligation to pay attaches. 146 S. Ct. at 1427–28 (quoting 47 U.S.C. § 504(a)). The Seventh Amendment was satisfied because the jury trial came before any obligation to pay attached.

The Court then drew the contrast itself: "But *Jarkesy* only proves our point," the majority wrote: the SEC's penalties "were immediately enforceable," the Commission "could garnish the recipient's wages or deduct a portion of the forfeiture from his tax return," and "if the SEC were required to resort to judicial means of enforcement, no jury was available—at least as to the underlying legal violation." *FCC v. AT&T,* 146 S. Ct. at 1430 (citing 17 C.F.R. §§ 204.50, 204.52, 204.54–204.56, 204.60–204.65 (2024); 15 U.S.C. § 78u(e)). "That means that the ultimate determination of the facts giving rise to the obligation to pay rested not with a jury, but with the SEC alone. As we held, the Seventh Amendment forbids that result." *Id.* (citing *Jarkesy*, 603 U.S. at 117, 120–121).

Rose's order matches that failing model in every respect. Upon finality the order became immediately enforceable, and the Commission has in fact been collecting on it: through the Treasury Offset Program, it has intercepted twenty-eight payments from Rose's Social Security benefits and tax refunds since October 2023, totaling $14,477.70—several times the $3,750 civil penalty—meaning the offsets have necessarily reached the disgorgement.[12] There is no statutory pathway to a de novo jury determination of the underlying violation—on the Commission's own theory, §21(e) enforcement is the end of the line. The only other exit was likewise sealed: §78y review is deferential, record-bound, and jury-free. Under §504(a), by contrast, "it is as if the Commission never found any facts at all," and "[b]efore a regulated party can be made to pay, the jury gets the last word." *FCC v. AT&T*, 146 S. Ct. at 1429. In the Commission's scheme, the facts can never be untried, and the law is never revisited de novo. Under *FCC v. AT&T*, that is the constitutional vice, not a safe harbor. The Commission asks this Court to supply the final coercive step—convert an unreviewed administrative penalty into a collectible judgment when no jury has ever passed on the underlying violation.

**C. The 8-1 alignment forecloses the Commission's anticipated narrow reading.**

The Commission will likely argue that *FCC v. AT&T* is merely a government victory that vindicates administrative adjudication. The lineup forecloses that reading: Chief Justice Roberts wrote for eight Justices—including all three *Jarkesy* dissenters—who joined an opinion that expressly reaffirms *Jarkesy* and deploys the SEC's no-de-novo-jury structure as the constitutional counterexample. That is a cross-ideological reaffirmation, not a narrow holding, that a civil penalty may not be collected until the underlying legal violation has been tried before an Article III jury.

[12] Dkt. #6 at 16 & Ex. A.

Justice Thomas's lone dissent only confirms the point. "The Court agrees with AT&T and Verizon that they were entitled to a jury trial *de novo* before an Article III court before they could be forced to pay," he wrote. *FCC v. AT&T*, 146 S. Ct. at 1432 (Thomas, J., dissenting). "Thus, as this Court held in *Jarkesy* and reaffirms today, agencies can collect penalties only after adjudication in court through a trial *de novo*." *Id.* at 1433 (citing *Jarkesy*, 603 U.S. at 120, 134). Justice Thomas agreed that the majority's "[i]nterpretation of the Act should govern future proceedings so as to bring the Commission's enforcement practices into harmony with the Constitution," *id.* at 1434–35 and dissented only from the denial of relief to parties whose money the government had already taken before any jury acted. *Id.* at 1435. That grievance is Rose's own: the Commission has intercepted his Social Security benefits and tax refunds for nearly three years, without any jury or judgment. On the principle that matters here—no collection of penalties without a prior jury adjudication of the violation—no Justice disagreed.

## III. After *Sripetch*, the disgorgement award—the bulk of the judgment—is a legal remedy subject to the Seventh Amendment.

### A. *Sripetch* forecloses the pecuniary-loss argument, and Rose withdraws it.

Rose's prior response argued that the disgorgement award failed because the Commission never proved investor pecuniary loss under *Liu v. SEC*, 591 U.S. 71 (2020). *Sripetch* rejects that premise: traditional equitable principles do not require "a showing of pecuniary loss" before a disgorgement award may issue. 146 S. Ct. at 1413. Rose accordingly withdraws the pecuniary-loss argument.

### B. In this circuit, disgorgement under the amended statutes is a legal remedy—and *Sripetch* reinforces that conclusion.

Binding circuit precedent supplies the starting point. In *SEC v. Hallam*, 42 F.4th 316, 338–41 (5th Cir. 2022), the Fifth Circuit held that disgorgement under the securities statutes as amended in 2021 is not "equitable relief." Congress made disgorgement a freestanding, enumerated statutory remedy, and the relief it authorizes resembles legal restitution—the personal money judgment historically obtained at law and tried to a jury. *See Sripetch*, 146 S. Ct. at 1416–17 (Thomas, J., concurring). Rose's disgorgement fits that description a fortiori: it was imposed in an administrative penalty proceeding, under provisions "accounting and disgorgement" within the statutes' civil-penalty architecture. Securities Act §8A(e), 15 U.S.C. §77h-1(e); Exchange Act §21B(e), 15 U.S.C. §78u-2(e). And *Kokesh v. SEC*, 581 U.S. 455, 461–67 (2017), already held unanimously that SEC disgorgement "bears all the hallmarks of a penalty": imposed for violations of public laws, offenses "committed against the United States rather than an aggrieved individual," and with deterrence as its primary purpose.

*Sripetch* did not disturb that conclusion; it pointedly reserved it. Should the Commission "seek to depart from traditional equitable principles and attempt to use §78u(d)(7) to secure penalties," the unanimous Court explained, "it would of course proceed beyond what *Liu* held §78u(d)(5) tolerates," and "[t]hat development would raise questions"—the Court citing *Jarkesy* for its holding "that, when the SEC seeks penalties, the Seventh Amendment entitles the defendant to a jury trial." *Sripetch*, 146 S. Ct. at 1412–13 (citing *Jarkesy*, 603 U.S. at 123–25). That language signals that the constitutional question survives *Sripetch*'s equitable holding.

Justice Thomas's concurrence amplifies the point. Because Congress, after *Liu*, enacted §78u(d)(7) as a freestanding disgorgement provision—separate from §78u(d)(5)'s "any equitable relief," with its own limitations period—"Congress has now made disgorgement a legal remedy, not an equitable one." *Sripetch*, 146 S. Ct. at 1414 (Thomas, J., concurring). The concurrence adopts *Hallam*'s structural reading and notes the circuit division with *SEC v. Ahmed*, 72 F.4th 379, 395 (2d Cir. 2023). *Id.* at 1418. SEC disgorgement "does not resemble any traditional equitable remedy," *id.* at 1415–16; it "more closely resembles legal restitution"—the assumpsit-style personal money judgment historically tried to a jury—and "bears all the hallmarks of a legal remedy that requires a jury trial." *Id.* at 1416, 1417. The concurrence added that "in 2024, the SEC obtained orders to disgorge $6.1 billion, while it returned only $345 million to victims," a practice "difficult to see … as anything other than a fines regime, an inherently legal process." *Id.* at 1417 (citing Brief for Investor Choice Advocates Network as Amicus Curiae 20–21).

This matters because disgorgement and prejudgment interest constitute the overwhelming bulk of the $449,696.91 judgment the Commission seeks; the civil penalty is a mere $3,750. If disgorgement is a legal remedy—as *Hallam* holds and Justice Thomas's concurrence confirms—then over 99 percent of the judgment the Commission asks this Court to enter rests on a legal claim no jury has ever heard.

**C. The fair-fund designation does not convert this exaction into victim compensation.**

The Commission will respond that the Initial Decision directed, under Rule of Practice 1100, that "any funds recovered by disgorgement or civil penalties be placed in a fair fund for the benefit of investors harmed by the violations," Initial Decision at 26, and that the ALJ found the Verto notes "caus[ed] some investors to lose money," *id.* at 20. Rose does not dispute either statement. Neither changes the remedy's legal character. Twenty-three of Rose's investor-clients submitted declarations expressing satisfaction with his services, and eleven received a complete return of principal and interest.[13]

*Kokesh* precludes the inference the Commission will draw. The Court held—unanimously—that SEC disgorgement operates as a penalty notwithstanding that disgorged funds are sometimes distributed to injured investors: whether victims ultimately receive anything is a

[13] Initial Decision at 20–21.

matter of administrative discretion, not legal entitlement. 581 U.S. at 461–67. A post-hoc distribution mechanism does not transform a gain-based public sanction into victim compensation.

The structure of this award confirms the point. It is measured by Rose's brokerage commissions—$297,360—not by any investor's loss; it involves no tracing and no identified res; and it runs to the Commission in the first instance, with any distribution committed to administrative discretion. The investors' principal and interest are addressed through an entirely separate vehicle: the fair fund established in *SEC v. Schantz* against the Verto principals.[14] In Justice Thomas's terms, an exaction with that shape is legal restitution, not any "traditional equitable remedy." *Sripetch*, 146 S. Ct. at 1415–16 (Thomas, J., concurring). And it presents the circumstance the *Sripetch* majority reserved: the Court set aside amici's concern that disgorgement might be sought for violations invading no investor's legally protected interest only because the petitioner there had conceded the point. *Id*. at 1413 (quoting *SEC v. Sripetch*, 154 F.4th 980, 986 n.6 (9th Cir. 2025)). Rose has conceded nothing of the kind: the ALJ found after a full hearing that he did not act with scienter, the violations were registration violations, and the award restores no identified investor's protected interest—it exacts payment from Rose as a sanction for a public wrong.

The Commission's own Application removes any doubt about how it understands this money. It asks for a judgment "requiring that Rose pay the SEC what he owes"; it seeks enforcement of the disgorgement "through civil contempt"; and it invokes the Federal Debt Collection Procedures Act, 28 U.S.C. §§ 3001 et seq., for the penalty. (Prayer ¶¶ II–IV); *see id.* ¶5. Nowhere does the Application mention the fair fund, a distribution plan, or a single investor.

[14] Initial Decision at 19-20.

That is not the posture of an agency administering a compensatory trust. It is the posture of a creditor collecting a debt—and, constitutionally, a penalty.

## IV. The removal defect independently corroborates the Order's invalidity.

As Rose's prior response explained, the ALJ who decided this case was insulated from presidential removal in violation of the separation of powers—a defect the Fifth Circuit identified in *Jarkesy* and the Supreme Court left undisturbed. *Jarkesy v. SEC*, 34 F.4th 446, 463–65 (5th Cir. 2022). *Collins v. Yellen*, 594 U.S. 220 (2021), does not foreclose relief. *Collins* governs remedies for removal defects; it says nothing about the Seventh Amendment, which independently and fully disposes of the Application. The Court therefore need not decide what showing *Collins* would require for removal-based relief standing alone. *See Collins*, 594 U.S. at 259–60. What remains true is that the ALJ made discretionary, outcome-determinative findings—including the no-scienter finding that drove the penalty to the first tier and the disgorgement calculation—while unconstitutionally insulated from the accountability Article II demands. This ground reinforces, but is not necessary to, the relief the Seventh Amendment already compels.

The Commission's own conduct underscores the point. When *Lucia* identified an Appointments Clause violation—a structural defect of the same character—the Commission did not treat it as harmless. It vacated the initial decision and started over with a new officer.[15] Yet when the Fifth Circuit identified the removal-protections violation in *Jarkesy*, the Commission made no corresponding correction. It sought no remand. It appointed no new officer. It has never acknowledged the removal-protections problem in any filing before this Court. The Commission cannot credibly argue that one structural defect requires complete remediation while another—of

[15] *See* Dkt. #6 at 7.

the same constitutional character, arising from the same adjudicatory apparatus—requires nothing at all.

**V. The Court should deny the application and decline to enter judgment.**

On direct review, the Fifth Circuit's remedy for constitutional defects in agency adjudication has been vacatur of the resulting order. *See Jarkesy*, 34 F.4th 446; *Intuit*, 2026 WL 787527. This Court sits in a different posture: review of Commission orders lies in the courts of appeals, 15 U.S.C. § 78y, and Rose does not ask this Court to vacate anything. In an enforcement proceeding under §21(e) and §20(c), the appropriate relief is simply to withhold the coercive judicial act the Commission requests—deny the Application and decline to enter judgment on an order issued without constitutional authority. *Ex parte Siebold*, 100 U.S. at 376–77; *Hecht Co.*, 321 U.S. at 329–30.

At a minimum, the equities weigh against enforcement. The order issued from the enforcement architecture *Jarkesy* held unconstitutional and *FCC v. AT&T* reaffirmed as the constitutional counterexample. The disgorgement comprising almost all of the judgment is, after *Hallam* and *Sripetch*, a legal remedy imposed without a jury. And the Application overstates the balance due: it represents $449,696.91 outstanding as of May 2, 2025, without disclosing that since October 2023 the Commission has intercepted twenty-eight Treasury Offset payments from Rose's Social Security benefits and tax refunds, totaling $14,477.70.[16] Those interceptions lay bare the constitutional point: the Commission has been collecting for nearly three years without any judgment—the "immediately enforceable" self-help the Supreme Court identified as the defining defect of the SEC's scheme. *FCC v. AT&T*, 146 S. Ct. at 1430. The Commission's own regulations

[16] Dkt. #6 at 16 & Ex. A.

require its personnel to "carefully guard against any infringement of the constitutional rights" of those subject to its regulation. 17 C.F.R. § 200.54. Equity counsels against enforcement.

## CONCLUSION

For these reasons, Rose respectfully requests that the Court deny the Commission's Application, decline to enter judgment on the Commission's order, and grant such further relief as justice requires.

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Respectfully submitted,

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on August 3, 2026, this document was electronically filed with the Clerk of the Court using the CM/ECF system for filing. The CM/ECF system will send notice of such filing to all counsel of record who are registered CM/ECF users, in accordance with the Court's procedures.

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