No. _____

In the
Supreme Court of the United States

MARTIN A. ARMSTRONG,

Petitioner,

v.

SECURITIES AND EXCHANGE COMMISSION, UNITED STATES COMMODITY FUTURES TRADING COMMISSION, ALAN M. COHEN, in his capacity as receiver, and THE UNITED STATES OF AMERICA,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Second Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the constitutional right to counsel of choice extends to cases where a criminal defendant's assets are frozen as part of a parallel civil enforcement action.

2. Whether the failure to return untainted personal property to a defendant violates the constitutional guarantee of due process.

STATEMENT OF RELATED PROCEEDINGS

United States District Court for Southern District of New York:

CFTC v. Princeton Global Mgmt.,
No. 99-cv-9669 (Oct. 6, 2017)

SEC v. Princeton Economics,
No. 99-cv-9667 (Oct. 6, 2017)

United States v. Armstrong,
No. 99-cr-997 (Oct. 13, 2017)

Armstrong v. Guccione,
No. 04-cv-6943 (Mar. 6, 2007)

United States Court of Appeals for the Second Circuit:

CFTC v. Princeton Global Mgmt.,
No. 17-3576 (July 15, 2019)

SEC v. Princeton Economics,
No. 17-3572 (July 15, 2019)

United States v. Armstrong,
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SEC v. Princeton Economics,
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CFTC v. Princeton Global Mgmt.,
No. 08-5899 (Apr. 10, 2009)

United States v. Armstrong,
No. 08-5045 (Mar. 16, 2009)

CFTC v. Princeton Global Mgmt.,
No. 08-3614 (Oct. 8, 2008)

United States v. Armstrong,
No. 07-2499 (Jan. 1, 2008)

Armstrong v. Guccione,
No. 04-5448 (Nov. 5, 2007)

In Re: Armstrong,
No. 00-3060 (July 7, 2007)

Armstrong v. Guccione,
No. 05-0280 (Nov. 27, 2006)

In re: Martin A. Armstrong,
No. 06-2603 (July 26, 2006)

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SEC v. Cohen,
No. 03-6080 (Jan. 23, 2004)

SEC v. Princeton Economics,
No. 03-6230 (Dec. 15, 2003)

In re: M. Armstrong v. SEC,
No. 03-3069 (July 30, 2003)

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CFTC v. Princeton Global Mgmt.,
No. 02-6263 (Feb. 28, 2003)

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No. 02-6262 (Feb. 28, 2003)

SEC. v. Princeton Economics,
No. 02-6260 (Jan. 28, 2003)

SEC. v. Princeton Economics,
No. 02-6259 (Jan. 28, 2003)

SEC. v. Princeton Economics,
No. 02-6258 (Jan. 28, 2003)

SEC. v. Armstrong,
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In Re: Armstrong,
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No. 01-6159 (June 12, 2002)

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No. 01-3073 (June 12, 2002)

In re: Armstrong,
No. 02-3007 (Mar. 6, 2002)

In re: Armstrong,
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In re: Armstrong,
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PETITION FOR WRIT OF CERTIORARI

A majority of this Court has established that a pretrial order freezing assets "untainted by" an alleged crime is unconstitutional to the extent it "prevents [the defendant] from paying" his or her counsel of choice. *Luis v. United States*, 136 S. Ct. 1083, 1087 (2016) (plurality op.); *see also id.* at 1096 (Thomas, J., concurring in the judgment) (agreeing that "a pretrial freeze of untainted assets violates a criminal defendant's Sixth Amendment right to counsel of choice"). This case presents an even more pernicious variant of the unconstitutional practice invalidated in *Luis*, and likewise calls out for this Court's review.

Twenty years ago—and over fifteen years before *Luis*—the federal government instituted parallel criminal and civil proceedings against petitioner Martin Armstrong. Both sets of cases—one instituted by the U.S. Attorney's Office, the others instituted by the Securities and Exchange Commission (SEC) and Commodity Futures Trading Commission (CFTC), respectively—arose out of the same basic facts. Upon initiating the civil actions, the SEC and CFTC obtained an ex parte order that froze Armstrong's and his corporate codefendants' assets and established a receiver to preserve corporate assets. The receiver then secured a court order compelling the return of retainer payments Armstrong had made to law firms before the restraining order went into effect.

In light of this restriction on his ability to secure counsel of choice, Armstrong objected to the court order. He sought a hearing under *United States v. Monsanto*, 491 U.S. 600 (1989), and its successor case

United States v. Monsanto, 924 F.2d 1186 (2d Cir. 1991) (en banc), which together hold that "the fifth and sixth amendments … require an adversary post-restraint, pretrial hearing in order to continue a restraint ordered ex parte … of assets needed to retain counsel of choice." *Id.* at 1188. Given the posture of the proceedings, however, Armstrong faced a Catch-22. On the one hand, any objection to the asset freeze in the criminal case would have no effect, because the SEC and CFTC (the entities that secured the freeze) were not parties to that action. On the other hand, any motion to release funds in the civil cases would be denied even if the asset freeze deprived Armstrong of untainted assets necessary to secure counsel of choice, because "the Sixth Amendment does not govern civil cases." *Turner v. Rogers*, 564 U.S. 431, 441 (2011). Notwithstanding this procedural trap wherein the civil court and the criminal court played jurisdictional ping pong with Armstrong's rights, Armstrong's objection was overruled. Armstrong was thus forced to defend himself without the counsel of choice he would have obtained had his untainted assets been freely available.

The law should not tolerate this dilemma. The right to counsel of choice is distinct from the right to effective assistance of counsel. Unlike the latter, a denial of the former is structural; it cannot be excused just because a defendant may go onto receive adequate representation from someone else. *United States v. Gonzalez-Lopez*, 548 U.S. 140, 148 (2006). Indeed, "few things could do more to undermine the criminal justice system's integrity than to allow the Government to … disarm its presumptively innocent opponent by depriving him of his counsel of choice."

Kaley v. United States, 571 U.S. 320, 350 (2014) (Roberts, C.J., dissenting) (citation omitted). That is precisely why a number of lower courts have held—contrary to the result the courts blessed below—that a defendant facing parallel criminal and civil enforcement actions has a constitutional right to challenge the government's civil-case seizure of his untainted assets needed to secure counsel of choice. In light of that conflict over this important and recurring question, the Court should grant certiorari.

Yet while events at the beginning of Armstrong's proceedings give rise to one basis for review, events at the close give rise to another. At the outset, Armstrong was deprived of the ability to use his own untainted assets to secure counsel of choice. In the middle of this case, Armstrong was deprived of his liberty, confined to a prison cell for more than a decade on a charge that carries a five-year maximum. And now at the end of this case, Armstrong has been deprived of the untainted personal property the court-ordered receiver seized from him two decades ago. Needless to say, if a criminal defendant has a constitutional right to use untainted assets to secure counsel of choice, *see Luis*, 136 S. Ct. at 1087 (plurality op.); *id.* at 1098 (Thomas, J., concurring in the judgment), then he has no less of a constitutional right to the return of those assets that are not subject to forfeiture. Anything less would be a direct and substantial violation of due process. The time has come for this Court to put an end to the litany of constitutional violations that have infected these proceedings from the outset. The Court should grant certiorari.

OPINIONS BELOW

The Second Circuit's opinion is available at 767 F. App'x 166 and reproduced at App.1-6. The Second Circuit's unpublished order regarding the right-to-counsel issue is reproduced at App.7-9. The district court's order granting the motion to wind down the receivership is available at 2017 WL 6729861 and reproduced at App.10-13.

JURISDICTION

The Second Circuit issued its opinion on April 23, 2019. Justice Ginsburg extended the time for filing a petition for certiorari until September 20, 2019. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS INVOLVED

The Fifth Amendment to the United States Constitution provides in relevant part: "No person shall be … deprived of life, liberty, or property, without due process of law …." U.S. Const. amend. V.

The Sixth Amendment to the United States Constitution provides in relevant part: "In all criminal prosecutions, the accused shall enjoy the right … to have the Assistance of Counsel for his defence." U.S. Const. amend. VI.

STATEMENT OF THE CASE

A. The Government Initiates Parallel Criminal and Civil Actions.

On September 13, 1999, Armstrong self-surrendered to federal officers in connection with alleged securities fraud. A grand jury subsequently indicted Armstrong on three counts of securities fraud, ten counts of wire fraud, and one count of conspiracy

to commit the same. *See* Sealed Indictment, *United States v. Armstrong*, No. 99-cr-997 (S.D.N.Y. Sept. 29, 1999), Dkt. 5. According to the indictment (which was not filed until *after* Armstrong self-surrendered), Armstrong, acting via non-U.S.-based subsidiaries of companies he founded, deceived non-U.S.-based investors about the nature and value of the unsecured notes they purchased. *See id.*

Also on September 13, 1999—though, again, not until after Armstrong self-surrendered, *but cf.* 15 U.S.C. § 77v(c)—the SEC and CFTC filed twin civil enforcement actions against Armstrong and two companies he founded, Princeton Global Management (PGM) and Princeton Economics International, Ltd. (PEIL). *See* Complaint, *SEC v. PEIL*, No. 99-cv-9667 (S.D.N.Y. Sept. 13, 1999), Dkt. 1; Complaint, *CFTC v. PGM*, No. 99-cv-9669 (S.D.N.Y. Sept. 13, 1999), Dkt. 1. The two civil enforcement actions, which were consolidated, arose from the same alleged conduct as the criminal case.

Armstrong moved to dismiss the civil enforcement actions for failure to state a claim and lack of subject matter jurisdiction, as all of the notes at issue not only were unsecured, but were issued by foreign entities and purchased by foreign investors. *See SEC v. PEIL*, 2000 WL 1264295, at *1 (S.D.N.Y. Sept. 9, 2000). The district court (Judge Owen) rejected both arguments. Judge Owen found "that the complaint sufficiently plead[ed] that Armstrong, acting with scienter, made material representations in connection with the sale of securities." *Id.* at *2. And as to jurisdiction, Judge Owen rejected Armstrong's position "that the offer and sale of the Princeton Notes was an extraterritorial

offering occurring outside the United States involving foreign issuers and foreign investors, and therefore [was] not subject to either the [Securities Act of 1933] or the [Securities Exchange Act of 1934]," ruling that the complaint set forth sufficient facts to allege that Armstrong "controlled not only … the Turks and Caicos subsidiaries of PEIL that issued the notes to the Japanese investors, but [also] … the Japanese brokerage firm that marketed the notes." *Id.* at *1-2.[1]

B. The District Court Orders Armstrong Imprisoned for Civil Contempt.

Upon initiating the civil enforcement actions, the SEC and CFTC obtained an ex parte temporary restraining order, later converted into a preliminary injunction, that froze Armstrong's companies' assets—save for "reasonable attorney's fees not to exceed $10,000"—and set up a receiver to preserve corporate assets. *SEC v. PEIL*, 84 F. Supp. 2d 443, 444 (S.D.N.Y. 2000); *see SEC v. PEIL*, 2001 WL 237376, at *1 n.2 (S.D.N.Y. Mar. 9, 2001). The order "required Armstrong and his agents to provide the Receiver with 'all assets of the corporate defendants which they have in their current possession, custody, or control.'" 84 F. Supp. 2d at 448.

Pursuant to that order, the receiver demanded that Armstrong turn over all items in his possession that allegedly constituted corporate property. Armstrong complied, notwithstanding this Court's

[1] This Court later held that §10(b) of the Securities Exchange Act does not apply to claims of foreign investors who purchased securities of foreign issuers on foreign exchanges. *See Morrison v. Nat'l Austl. Bank Ltd.*, 561 U.S. 247, 255-73 (2009).

decision in *Grupo Mexicano de Desarrollo S.A. v. Alliance Bond Fund, Inc.*, 527 U.S. 308 (1999), which cast considerable doubt on the court's authority to order the asset freeze in the first place given that all of the notes underlying the government's claims were unsecured. *See id.* at 329 (recognizing that in both England and the United States asset-freeze orders—"the 'nuclear weapo[n] of the law'"—were traditionally not available with respect to unsecured creditors (quoting Richard N. Ough & William Flenley, *The Mareva Injunction and Anton Piller Order: Practice and Precedents* xi (2d ed. 1993))).[2]

Armstrong's compliance with the asset freeze was complicated considerably by the fact that the receiver sought various property that Armstrong insisted he did not have. Armstrong unsurprisingly objected to being ordered to turn over property he did not possess. He also asserted his Fifth Amendment privilege against self-incrimination in light of the pending criminal charges. The district court rejected all of Armstrong's arguments, adjudged him in contempt, and ordered him detained until he agreed to deliver the missing items. *SEC v. PEIL*, 7 F. App'x 65, 66 (2d Cir. 2001) (discussing district court order).[3]

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[2] The receiver also requested property of foreign entities owned and operated by non-U.S. citizens. The district court rejected Armstrong's objections to that "equitable" overreach, despite the lack of any historical analog for asserting such prejudgment control over foreign property, and despite *Grupo Mexicano*'s clear instruction that the equitable authority of the federal courts is limited to that which the courts of England applied in 1789.

[3] Armstrong appealed, but the Second Circuit dismissed for lack of appellate jurisdiction. 7 F. App'x at 67.

Notwithstanding the Recalcitrant Witness Statute, which provides that "in no event shall such confinement exceed eighteen months," 28 U.S.C. § 1826(a)(2), Armstrong remained confined in New York City's Metropolitan Correctional Center for civil contempt for the next seven-and-a-half years.[4]

In July 2001, Judge Owen issued a new opinion extending the contempt sanctions (and thus Armstrong's time in "civil" confinement). Armstrong still maintained that he did not have the "missing" assets the receiver sought, but Judge Owen ordered that "Armstrong's confinement" would continue *indefinitely*, "with th[e] Court evaluating from time to time … whether release is warranted." *SEC v. PEIL*, 152 F. Supp. 2d 456, 463 (S.D.N.Y. 2001).[5]

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[4] *See Armstrong v. Guccione*, 351 F. Supp. 2d 167, 168-76 (S.D.N.Y. 2004) (concluding that Armstrong was a custodian of corporate property and therefore not a "witness" for purposes of § 1826). Armstrong appealed that 2004 opinion, but the Second Circuit again affirmed for lack of appellate jurisdiction. *Armstrong v. Guccione*, 470 F.3d 89 (2d Cir. 2006), *cert. denied*, 552 U.S. 989 (2007). Then-Judge Sotomayor wrote separately "to articulate [her] belief that the eighteen-month maximum duration imposed on a civil contempt sanction by the Recalcitrant Witness Statute should be a presumptive benchmark for all civil contempt incarcerations," and to urge the new district court judge to "undertake soon to revisit whether Armstrong's imprisonment has slipped into the impermissible terrain of a punitive sanction." *Id.* at 113-14 (Sotomayor, J., concurring).

[5] Armstrong again appealed, and the government again sought to dismiss the appeal on jurisdictional grounds. A screening panel denied the motion to dismiss "without prejudice to renewal before the panel considering the merits," and ordered the appeal "expedite[d]." *CFTC v. Armstrong*, 269 F.3d 109, 110 (2d Cir. 2001). But the merits panel accepted the finding "that Armstrong's incarceration continues to serve a coercive purpose"

Armstrong again moved to vacate the contempt order in November 2003. Judge Owen again denied the request. *SEC v. PEIL*, 294 F. Supp. 2d 550, 550 (S.D.N.Y. 2003).[6] Petitions for the writ of habeas corpus yielded the same result, *see Armstrong v. Guccione*, 2004 WL 2336989, at *1-5 (S.D.N.Y. Oct. 14, 2004) (denying bail pending a decision on the merits of habeas petition); *SEC v. PEIL*, 338 F. Supp. 2d 465, 466-70 (S.D.N.Y. 2004) (denying habeas petition on the merits); *Armstrong v. Guccione*, 351 F. Supp. 2d 167, 168-76 (S.D.N.Y. 2004) (same), *aff'd*, *Armstrong v. Guccione*, 470 F.3d 89 (2d Cir. 2006), as did a Second Circuit petition for "writ of original injunction, stay or writ of prohibition," *see United States v. Armstrong*, No. 99-cr-997 (S.D.N.Y. Jan. 6, 2006), Dkt. 118.

C. Armstrong Objects to the Receiver's Acquisition and Distribution of Untainted Personal Property.

Shortly after Judge Owen first ordered Armstrong confined and deprived him of the assets necessary to retain private counsel, the court-appointed receiver began seizing all of Armstrong's (and not just his corporate codefendants') assets. First, the receiver secured an order compelling the return of retainer payments Armstrong had made to law firms before the restraining order went into effect, which the receiver

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and "dismiss[ed] Armstrong's appeal for lack of appellate jurisdiction," *CFTC v. Armstrong*, 284 F.3d 404, 405-06 (2d Cir. 2002) (per curiam), *cert. denied*, 537 U.S. 864 (2002), *reh'g denied*, 537 U.S. 1068 (2002).

[6] The Second Circuit again dismissed Armstrong's appeal for lack of jurisdiction. *SEC v. Armstrong*, 88 F. App'x 460, 461-62 (2d Cir. 2004).

alleged had been made using corporate funds. 84 F. Supp. 2d at 446-47. Second, the receiver secured an order placing "a beach house … in Loveladies, New Jersey," in the receiver's control, over Armstrong's objection that the house was personal property. 84 F. Supp. 2d at 448-51. (The receiver ultimately sold the beach house while Armstrong was still in prison. *See* Order, *SEC v. PEIL*, No. 99-cv-9667 (S.D.N.Y. Apr. 27, 2012), Dkt. 473.) In addition, the receiver seized various non-cash assets from both Armstrong and the corporate defendants, which were placed in storage units in Pennsylvania, New Jersey, and New York.

Armstrong—still confined for "civil" contempt—sought a hearing under *United States v. Monsanto*, 491 U.S. 600 (1989), and its progeny, which hold that "the fifth and sixth amendments … require an adversary post-restraint, pretrial hearing in order to continue a restraint ordered ex parte … of assets needed to retain counsel of choice." *Monsanto*, 924 F.2d at 1188. Armstrong specifically sought to show that the beach house and other personal property the receiver had seized could not lawfully be linked to the alleged fraud because he had acquired them before the government claimed the fraud began. Armstrong also asked the district court presiding over his criminal case to stay the civil enforcement actions pending resolution of the issue. The district court denied the motion. *See* Order, *United States v. Armstrong*, No. 99-cr-997 (S.D.N.Y. June 20, 2003), Dkt. 82.

One year later, Judge Owen held that the receivership assets were the exclusive property of the victims of Armstrong's (still-then-only-alleged) fraud. Order, *SEC v. PEIL*, No. 99-cv-9667 (S.D.N.Y. Jan. 13,

2004), Dkt. 316. Armstrong appealed that decision to the Second Circuit, but the court of appeals dismissed before briefing. According to the Second Circuit, Armstrong lacked "standing to challenge the settlement distribution" because he was "a non-settling defendant." Order, *SEC v. PEIL*, No. 04-3091 (2d Cir. July 21, 2004), *mandate issued* (2d Cir. Nov. 12, 2004). In support of that pre-briefing holding, the Second Circuit relied on *Zupnick v. Fogel*, 989 F.2d 93 (2d Cir. 1993). *Zupnick* noted that, "[u]sually, a nonsettling defendant lacks standing to object to a court order approving a partial settlement." *Id.* at 98. But *Zupnick* also highlighted "a recognized exception to this general rule which 'permit[s] a non-settling defendant to object where it can demonstrate that it will sustain some formal legal prejudice as a result of the settlement.'" *Id.* (quoting *Waller v. Fin. Corp. of Am.*, 828 F.2d 579, 583 (9th Cir. 1987)). The receiver thereafter made an interim distribution of $56,611,324.82 (out of almost $81 million collected) to the Japanese Princeton Noteholders holding outstanding notes. *See* Report of Receiver in Response to the March 2, 2007 Directive of the Court 71-72, *SEC v. PEIL*, No. 99-cv-9667 (S.D.N.Y. Mar. 12, 2007), Dkt. 383.

D. Armstrong Pleads Guilty in the Criminal Case and Agrees to Consent Orders in the Civil Cases, But Objects to the Plan of Final Distribution.

More than six years after Judge Owen first ordered Armstrong imprisoned for civil contempt, the Second Circuit reassigned the consolidated civil enforcement actions "to another district court judge."

Armstrong v. Guccione, 470 F.3d 89, 113 (2d Cir. 2006). The case was reassigned to Judge Castel. Shortly thereafter, the parties reached what seemed at the time to be a global resolution.

On August 17, 2006, after the government placed him in the Metropolitan Correctional Center's Special Housing Unit (*i.e.*, the "hole") without justification and left him there, in isolation, for eight days straight, Armstrong agreed to plead guilty on the single count of conspiracy in the criminal case. *See* Transcript of Proceedings on August 17, 2006, *United States v. Armstrong*, No. 99-cr-997 (S.D.N.Y. Aug. 25, 2006), Dkt. 136. After the government extracted that plea, the court sentenced Armstrong to the statutory maximum of 60 months in prison, plus three years of supervised release. Judgment, *United States v. Armstrong*, No. 99-cr-997 (S.D.N.Y. Apr. 10, 2007), Dkt. 150. Armstrong was also ordered to pay $80,000,101.00 in restitution, which he later paid in full. *See* Satisfaction of Judgment, *United States v. Armstrong*, No. 99-cr-997 (S.D.N.Y. Mar. 16, 2012), Dkt. 188.

During the plea negotiations, the government represented that Armstrong would be entitled to request credit for his seven-plus years in civil confinement. According to the district court, however, that was an issue left to the Bureau of Prisons. As such, after the Bureau of Prisons made no effort to make good on its representation, the district court found "no viable authority" to allow it "to credit Armstrong's criminal sentence for the time he has served on the civil contempt proceeding." Order, *United States v. Armstrong*, No. 99-cr-997 (S.D.N.Y.

Apr. 10, 2007), Dkt. 160. Armstrong's five-year criminal sentence thus did not "commence" until "the contempt case" was finally "resolved" on April 27, 2007. Judgment, *United States v. Armstrong*, No. 99-cr-997 (S.D.N.Y. Apr. 10, 2007), Dkt. 150; *see* Oral Order, *United States v. Armstrong*, No. 99-cr-997 (S.D.N.Y. Apr. 27, 2007).

In the civil enforcement actions, Armstrong agreed to be permanently enjoined from further violations of the applicable securities and commodity trading laws. *See CFTC v. PGM*, 2008 WL 6926640 (S.D.N.Y. June 24, 2008) (judgment and consent order against Armstrong); *see also CFTC v. PGM*, 2009 WL 3241527 (S.D.N.Y. July 31, 2009) (judgment and consent order against PGM and PEIL). Armstrong did not admit the allegations as part of the agreements.

The final issue was the distribution of the assets the receiver had seized. In June 2008, the receiver submitted a proposed plan of distribution in the consolidated enforcement actions. The district court then set a Bar Date, "*i.e.*, the deadline by which persons and entities were required to raise objections to the Plan and to assert claims to receivership property, or forever be barred from doing so." *See* App.3. Armstrong, still in prison, timely "filed a proof of claim" that "asked the court 'to direct the Receiver to refrain from liquidating or abandoning any physical items' in the storage lockers until Armstrong had a chance to identify any personal property." App.3. But the court never adjudicated Armstrong's claim.[7]

[7] Armstrong's then-counsel also filed a claim on its own behalf requesting legal fees from the receivership. The firm ultimately withdrew the claim after reaching a settlement for $900,000.

Instead, the court approved the Plan of Final Distribution, which instructed the receiver to sell all remaining non-cash assets. *SEC v. PEIL*, 2008 WL 7826694 (S.D.N.Y. Sept. 30, 2008). The receiver subsequently auctioned off several items of Armstrong's untainted personal property, including property Armstrong had acquired long before any of the allegedly unlawful conduct.

E. Armstrong is Deprived of His Property and His Ability to Raise Constitutional Objections to the Closing of the Receivership.

In August 2017, nearly a decade after the district court approved the Plan of Final Distribution, the receiver submitted a final report and motion seeking to wind down the receivership, *i.e.*, to enjoin all remaining claims, discharge the receiver, and close the civil enforcement actions. *See SEC v. PEIL*, No. 99-cv-9667 (S.D.N.Y. Aug. 4, 2017), Dkts. 475-85.

Armstrong opposed the motion. He argued that the receiver had not returned "personal property" under its control, and so the receivership could not be wound up until that occurred. Objections of Defendant Martin Armstrong 3, *SEC v. PEIL*, No. 99-cv-9667 (S.D.N.Y. Aug. 31, 2017), Dkt. 490 ("Objections"). He further argued that "[t]he Receiver is seeking to distribute proceeds from untainted assets that should have been available to Armstrong to retain counsel of choice" in the criminal case. *Id.* As Armstrong explained, this Court held in *Luis v. United States*, 136 S. Ct. 1083 (2016), that "it is a denial of the Sixth Amendment right to counsel of choice to deny a defendant access to untainted assets." Objections 3.

The district court rejected all of Armstrong's arguments, ruling that Armstrong had waived any right to oppose the wind-down of the receivership "by not objecting" to the Plan of Final Distribution "prior to its 2008 approval." App.12.

The Second Circuit affirmed. The court of appeals concluded that the district court was under no "obligation" to provide a hearing on the question of whether the receiver obtained and distributed property that properly belonged to Armstrong. App.6. According to the Second Circuit, "Armstrong never affirmatively moved or otherwise requested that the District Court identify some receivership assets as his personal property, hold a hearing on this issue, or order the return of his personal property." App.6. As to the property in storage, the court held that "the District Court reasonably found that the Receiver gave Armstrong an adequate opportunity to reclaim [his] personal possessions." App.5. The court thus held that Judge Castel "did not exceed the bounds of [his] discretion in authorizing case closure over Armstrong's objection that some of his personal property had not been returned to him." App.5. The court likewise affirmed the decision not to hold a jury trial on the issue of whether the distributed property included untainted personal assets, concluding that "Armstrong explicitly waived the right to a jury trial in the Final Consent Judgment." App.6.

In its opinion, the Second Circuit made no mention of Armstrong's argument that the district court violated his constitutional rights by refusing to hold a hearing on the question of whether the funds the government seized prior to trial—which left

Armstrong unable to pay counsel of choice—were actually untainted personal property. That is because, prior to briefing on the merits, the Second Circuit dismissed Armstrong's consolidated appeals "to the extent [they sought] to challenge" either "his criminal conviction or sentence" or "the final distribution plan with respect to corporate assets." App.8.

In support of that decision, the Second Circuit cited two prior decisions the court had issued during the various related litigations. The first held that Armstrong "does not have standing to challenge the settlement distribution." App.8 (quoting Order, No. 04-cv-3091 (2d Cir. July 21, 2004)). The second held that "challenges to civil proceedings are 'precluded by the terms of the consent judgment, which includes an explicit waiver of the right to appeal.'" App.8 (quoting Order, No. 08-cv-5902 (2d Cir. Apr. 10, 2009)). In light of those prior decisions, the court "limit[ed]" the appeals "to the issue of whether the district court correctly held that the receiver had properly disposed of Armstrong's personal property and, if not, what further proceedings are required." App.9.

REASONS FOR GRANTING THE PETITION

Petitioner Martin Armstrong endured a twenty-year legal labyrinth that was marked with constitutional errors from beginning to end—errors that now warrant this Court's review in two separate respects. At the outset, this Court should grant certiorari to determine whether its holding in *Luis* applies in parallel civil and criminal enforcement actions, and thus the constitutional right to counsel of

choice extends to cases where a criminal defendant's assets are frozen as part of a parallel civil enforcement action. This Court has repeatedly affirmed that the Sixth Amendment guarantees the right to select counsel of one's choice. In *Luis*, the Court applied that principle to hold that the pretrial restraint of untainted assets violates that constitutional right. Since *Luis*, lower courts have reached divergent conclusions as to whether its reasoning applies where a criminal defendant's assets necessary to secure counsel of choice are frozen as part of parallel civil enforcement proceedings. That uncertainty is intolerable, as is the notion that a criminal defendant can be deprived of counsel of choice because parallel civil proceedings have resulted in the (pre-conviction) seizure of his assets. This Court's review is plainly warranted to provide uniformity and clarity on this question.

The Court should also grant certiorari to review an issue implicated by a separate constitutional violation that arose at the end of the proceedings below—*viz.*, whether the failure to return untainted personal property to a defendant violates the constitutional right to due process. Even assuming that a receiver can be appointed in securities fraud cases—something neither the Securities Act of 1933, the Securities Exchange Act of 1934, or any precedent from this Court authorizes—the scope of the receiver's charge here extended solely to corporate property connection to the charged fraud. But the receiver, with the imprimatur of the lower courts, never provided a full accounting of the enormous amount of property seized, and the FBI provided no inventory at all, leaving Armstrong completely powerless to

distinguish between properly seized assets and personal property that was off-limits to the receiver. The government thus improperly shifted the burden to Armstrong to *disprove* that seized property was "tainted" corporate property, in violation of well-established due process principles. All of this, moreover, occurred two decades after the initial seizure, following which Armstrong spent more than eleven years in prison on a five-year sentence with every attempt at an appeal to the Second Circuit rebuffed, all underscoring the due process violation.

The Court should grant review of these questions in this case. There can be no serious dispute that these issues, which implicate fundamental constitutional protections, are important and far-reaching. And there can equally be no serious dispute that, having survived his own personal Bleak House, Armstrong is finally entitled to the review of this Court to right the wrongs perpetrated throughout the last two decades. The Court should grant certiorari.

I. The Court Should Grant Certiorari To Resolve Whether *Luis* Applies In Parallel Criminal And Civil Enforcement Actions.

The Sixth Amendment guarantees a defendant a fair opportunity to secure counsel of his own choice. U.S. Const. amend. VI. In *Luis v. United States*, this Court held "that the pretrial restraint of legitimate, untainted assets needed to retain counsel of choice violates the Sixth Amendment." 136 S. Ct. at 1088 (plurality op.); *see id.* at 1096 (Thomas, J., concurring in the judgment) ("I agree with the plurality that a pretrial freeze of untainted assets violates a criminal defendant's Sixth Amendment right to counsel of

choice."). This case presents the question of whether the Fifth and Sixth Amendments also prevent the pretrial restraint *in civil enforcement proceedings* of untainted personal property needed to retain counsel of choice *in parallel criminal proceedings*. Lower courts have not reached consensus on the issue. This Court should take up the question and hold that the answer is yes.

1. "The right to select counsel of one's choice" is the "root meaning" of the Sixth Amendment. *United States v. Gonzalez-Lopez*, 548 U.S. 140, 147-48 (2006); *see Powell v. Alabama*, 287 U.S. 45, 53 (1932) ("It is hardly necessary to say that[,] the right to counsel being conceded, a defendant should be afforded a fair opportunity to secure the counsel of his own choice."). Indeed, as originally understood, the Sixth Amendment protected *only* the right to counsel of choice for those who could afford it. *Luis*, 136 S. Ct. at 1098 (Thomas, J., concurring in the judgment); *see United States v. Van Duzee*, 140 U.S. 169, 173 (1891). Incursions on the right to counsel of choice must therefore be closely scrutinized, as the "consequences" of an "erroneous deprivation of the right to counsel of choice … are necessarily unquantifiable and indeterminate." *Gonzalez-Lopez*, 548 U.S. at 150; *see Kaley v. United States*, 571 U.S. 320, 350 (2014) (Roberts, C.J., dissenting) ("[F]ew things could do more to undermine the criminal justice system's integrity than to allow the Government to … disarm its presumptively innocent opponent by depriving him of his counsel of choice[.]" (citation omitted)).

To be sure, the right to select counsel of choice is not unlimited. Courts need not give effect to a

defendant's choice to be represented by an individual that is not admitted to practice law. *Luis*, 136 S. Ct. at 1089 (plurality op.). Nor must courts respect the choice to be represented by an individual whose relationship with the opposing party poses a nonwaivable conflict of interest. *Id.* A defendant likewise "may not insist on representation by an attorney he cannot afford." *Wheat v. United States*, 486 U.S. 153, 159 (1988); *see Kaley*, 571 U.S. at 326 ("'A defendant has no Sixth Amendment right to spend another person's money' for legal fees—even if that is the only way to hire a preferred lawyer." (quoting *Caplin & Drysdale, Charted v. United States*, 491 U.S. 617, 626 (1989))). And just as "the Government may sometimes 'restrain persons where there is a finding of probable cause to believe that the accused has committed a serious offense,'" the government sometimes may restrain a defendant's property if doing so is necessary "to protect 'the community's interest' in recovering 'ill-gotten gains.'" *Kaley*, 571 U.S. at 327 (emphasis omitted) (quoting *Monsanto*, 491 U.S. at 616). But outside those narrow and long-recognized confines, the right to counsel of choice is nearly inviolable, as this Court's decision in *Luis* confirms.

2. *Luis* began as a garden-variety criminal fraud case. In October 2012, a federal grand jury charged the defendant, Sila Luis, with "paying kickbacks, conspiring to commit fraud, and engaging in other crimes all related to health care." 136 S. Ct. at 1087 (plurality op.). The government claimed that Luis "had fraudulently obtained close to $45 million, almost all of which she had already spent." *Id.* In an attempt to "preserve the $2 million remaining in Luis'

possession for payment of restitution and other criminal penalties," the government sought, and obtained, a pretrial order prohibiting Luis from dissipating her remaining assets. *Id.* at 1087-88.

The government secured that order pursuant to 18 U.S.C. § 1345(a)(2), which authorizes pretrial restraining orders in criminal cases freezing property allegedly "obtained as a result of a[n alleged] banking law violation," plus property that is allegedly "traceable to such [alleged] violation," and further authorizes courts to freeze "property of equivalent value," *i.e.*, property that does *not* derive from unlawful conduct. However, the government stipulated that the pretrial restraining order "prevent[ed] Luis from using her own *untainted* funds, *i.e.*, funds not connected with the crime, to hire counsel to defend her in her criminal case." *Luis*, 136 S. Ct. at 1088 (plurality op.) (emphasis added).

This Court held that that pretrial restraint of such "untainted" assets necessary to secure counsel of choice violated Luis's constitutional rights. *Id.* at 1088-89; *see id.* at 1096 (Thomas, J., concurring in the judgment). The plurality distinguished two prior asset-freeze cases, *Caplin & Drysdale, Chartered v. United States*, 491 U.S. 617 (1989), and *United States v. Monsanto*, 491 U.S. 600 (1989). *Caplin & Drysdale* upheld a *post*conviction forfeiture "that took from a convicted defendant funds he would have used to pay his lawyer." *Luis*, 136 S. Ct. at 1090 (plurality op.); *see Caplin & Drysdale*, 491 U.S. at 626 (no Sixth Amendment violation where government "seizes the robbery proceeds and refuses to permit the defendant to use them" to pay for counsel of choice). *Monsanto*

upheld a *pre*trial restraining order "that prevented a not-yet-convicted defendant from using" assets "*that were traceable to the crime*" to pay for his lawyer. *Luis*, 136 S. Ct. at 1091 (plurality op.).

After *Luis*, this Court held that forfeiture pursuant to 21 U.S.C. § 853(a)(1), which "mandates forfeiture of 'any property constituting, or derived from, any proceeds the person obtained, directly or indirectly, as the result of' certain drug crimes," similarly "is limited to property the defendant himself actually acquired as the result of the crime." *Honeycutt v. United States*, 137 S. Ct. 1626, 1630-35 (2017). This Court has thus drawn a bright line: A defendant has no right to use *tainted* assets (*i.e.*, those derived from unlawful conduct) to secure counsel of choice; and the government has no ability to deprive a defendant of *untainted* assets. *See United States v. Marshall*, 754 F. App'x 157, 160 (4th Cir. 2018) (per curiam) ("So long as assets are neither traceable to nor obtained as a result of the crime, the pretrial restraint of these assets is not permitted if it will impede the defendant's right to secure counsel of choice, even if the funds might later be forfeitable as substitute assets."), *cert. denied*, 139 S. Ct. 1365 (2019).

3. Lower courts have reached divergent conclusions on the question presented here: Whether the constitutionally required right to counsel of choice applies where a criminal defendant's assets necessary to secure counsel of choice are frozen as part of parallel civil enforcement proceedings. *See United States v. Johnson*, 732 F. App'x 638, 651 n.9 (10th Cir. 2018) (recognizing but declining to resolve question).

CFTC v. Walsh, 2010 WL 882875 (S.D.N.Y. Mar. 9, 2010), involved almost identical facts as this case, but reached exactly the opposite conclusion. On February 24, 2009, the government charged Stephen Walsh and Paul Greenwood with criminal "conspiracy, securities fraud, and wire fraud." *Id.* at *1. "One day later," the SEC and CFTC separately "filed civil actions against Defendants Greenwood, Walsh, and other entities, alleging essentially the same fraudulent conduct." *Id.* The SEC and CFTC obtained "a restraining order" in the civil enforcement actions "freezing the assets of all of the defendants, including Greenwood and Walsh," who quickly challenged the asset freeze with respect to "untainted assets" that they claimed were necessary "to pay attorneys' fees." *Id.* In particular, "Greenwood and Walsh argue[d] that the Sixth Amendment guarantees them the right to counsel of their choice, and that the law permits them to use untainted funds to pay their legal fees and costs." *Id.* at *2. The government opposed Greenwood and Walsh's motions.

The court agreed with the defendants. The court found no "case law which stands for the proposition that a defendant is not entitled to use untainted funds, frozen in a civil action, in order to pay legal fees for his counsel of choice in a parallel criminal action." *Id.* at *3. The court thus ordered hearings on whether the assets the defendants sought to have unfrozen to pay for counsel of choice were indeed untainted by the alleged wrongdoing. *Id.* ("Money shall be available to Greenwood up to the requested amount of $1,000,000, and to Walsh up to $900,000 … for payment of reasonable attorneys' fees incurred in the criminal case, if the Government cannot meet its burden of

demonstrating that there is probable cause to believe that those funds are tainted by fraud."); *see* Br. for the United States of America 25, *United States v. Bonventre*, No. 12-3574 (2d Cir. Dec. 14, 2012), 2012 WL 6625756 (citing *Walsh* as "authority for holding a '*Monsanto* type hearing' in the civil context where an asset freeze in the civil case is shown to 'affect[] a defendant's right to counsel in a parallel criminal case' (alteration in original)).

That is exactly the opposite of what happened here. As in *Walsh*, here the government instituted parallel criminal and civil enforcement actions against Armstrong. As in *Walsh*, here the government obtained an asset freeze in the civil actions that was not limited to tainted assets. As in *Walsh*, here the defendant (Armstrong) sought a pretrial hearing to challenge the freeze order that was entered in his civil enforcement actions. As in *Walsh*, here the government responded by arguing that, because *Monsanto* arose in the context of a *criminal* asset freeze, it had no applicability in the civil context. But *unlike* in *Walsh*, here the court denied Armstrong's motion, thus leaving him without any ability to pay for counsel of choice. Order, *United States v. Armstrong*, No. 99-cr-997 (S.D.N.Y. June 20, 2003), Dkt. 82; *see also Estate of Lott v. O'Neill*, 165 A.3d 1099 (Vt. 2017) (holding, similar to the decision below, that *Luis* does not apply to parallel civil proceedings in state court); *United States v. Feathers*, 2016 WL 7337518, at *9 (N.D. Cal. Dec. 19, 2016) (denying motion for release of funds in parallel civil enforcement action).

Walsh predated *Luis*, as did a number of other cases that reached a similar result. *See, e.g.*, *FTC v.*

Johnson, 2015 WL 8751693, at *3 (D. Nev. Dec. 14, 2015) ("Allowing the government to circumvent the narrowed exceptions recognized in *Monsanto* … by seizing assets in parallel civil cases would undermine the important protections guaranteed under the Sixth Amendment."); *SEC v. McGinn*, 2012 WL 1142516, at *1-12 (N.D.N.Y. Apr. 4, 2012) (holding that "a defendant in a civil enforcement action [who] seeks to lift an asset freeze to retain counsel in a parallel criminal action" is entitled to "reasonable" assets not "traceable to criminal [conduct]"); *see also United States v. Bonventre*, 720 F.3d 126, 130 (2d Cir. 2013) ("District courts in this circuit have found that a defendant may also have the right to a *Monsanto*-like hearing in the civil context when, as here, the civil forfeiture action may affect the defendant's right to counsel in a parallel criminal case."). But the Sixth Amendment rule applied in those cases is precisely the same as the one applied in *Luis*. *See* 136 S. Ct. at 1090-96 (plurality op.) (criminal defendant "has a Sixth Amendment right to use her own 'innocent' property to pay a reasonable fee for the assistance of counsel"). And the result in those cases was fundamentally irreconcilable with the result here.[8]

4. Not applying *Luis* in cases involving parallel civil enforcement actions would put defendants between Scylla and Charybdis. Unlike in *Monsanto*

[8] Although *Luis* postdated the relevant proceedings in this case, that has no bearing on the resolution of the question presented here. Armstrong "repeatedly" argued in both district court cases that depriving him of assets necessary to secure counsel of choice violated his Sixth Amendment rights, and did so via specific reference to *Caplin & Drysdale* and *Monsanto*, the "two principal cases on which [this] Court relied in … *Luis*." *E.g.*, Objections 8.

and *Luis*, the government here did not establish probable cause that Armstrong had committed any criminal securities violations before freezing his assets. Indeed, the government did not even show a likelihood of success on the merits of its civil case. The government was able to freeze all funds and assets that were even arguably traceable to Armstrong and the companies he managed, regardless of whether those funds and assets were tainted by any illegality. And yet Armstrong had no recourse to protest. Any objection to the asset freeze in the criminal case would fail because the relevant federal agency was not a party. And objections to the asset freeze fell on deaf ears in the civil actions because "the Sixth Amendment does not govern civil cases." *Turner v. Rogers*, 564 U.S. 431, 441 (2011).

As such, the government was able not only to obtain a conviction based on facts that this Court later declared outside the scope of the relevant securities laws, *see supra* n.1; *cf. United States v. Kordel*, 397 U.S. 1, 11 (1970) (evidence from parallel civil investigation that is infirm may not be used to prosecute a defendant), but to incarcerate Armstrong for more than eleven years based on a charge that carried a maximum of less than half that. That is an intolerable result. This Court's review is necessary.

II. The Court Should Grant Certiorari To Determine Whether The Failure To Return Untainted Personal Property Violates Constitutional Due Process.

In addition to being deprived of his counsel of choice at the outset of these proceedings in violation of the Sixth Amendment, Armstrong was deprived of his

untainted personal property at the end of these proceedings in violation of due process. That independent constitutional violation warrants this Court's review as well.

Neither the Securities Act of 1933 nor the Securities Exchange Act of 1934 (or any other statute) expressly authorizes the appointment of receivers in securities-fraud cases. *See SEC v. Callahan*, 193 F. Supp. 3d 177, 188 (E.D.N.Y. 2016). Despite that lack of authority, the Second Circuit has long held "that district courts have the power to appoint receivers at the SEC's request to 'restore to a defrauded entity or defrauded persons that which was fraudulently diverted from its or their custody and control.'" *Id.* (quoting *SEC v. Malek*, 397 F. App'x 711, 713 (2d Cir. 2010)). The propriety of that practice—which, given the lack of clear statutory authority, must derive, if at all, from the federal courts' background equity powers, *see generally SCA Hygiene Prod. Aktiebolag v. First Quality Baby Prod., LLC*, 137 S. Ct. 954, 960 n.3 (2017) ("federal courts [have] always had equity powers as well as law power")—is not directly at issue here. But if that extra-textual authority does in fact exist, it is all the more important to carefully delineate the metes and bounds of a receiver's authority to deprive individuals of their untainted personal property consistent with due process. And whatever the outer boundaries of that authority, they were flagrantly overstepped here.

The district court "placed into receivership the assets of Armstrong's companies and their subsidiaries and affiliates." App.2. Armstrong's own personal property, by contrast, was not supposed to be

subject to the receivership. Nevertheless, the receiver took possession of a range of Armstrong's personal property that did not trace to any corporate defendant. The final consent judgment entered by the district court in 2008 accordingly required the SEC to "assist the Court, receiver and/or the parties in returning to Armstrong property that belongs to him." App.5-6.

It is difficult to imagine a clearer command, or a command more clearly derived from the limitations on a receiver's authority, *see Eberhard v. Marcu*, 530 F.3d 122, 132 (2d Cir. 2008), and the constitutional requirement that one receive due process of law before one may be deprived of personal property. Unfortunately, it is also difficult to imagine a more obvious violation than the one that occurred here.

Upon his release from prison in 2011, Armstrong began the process of attempting to secure the return of his personal property from the receiver, per the terms of the final consent judgment with the SEC. Assisting Armstrong in that process should not have been difficult. It should have been obvious, for instance, that the clothes, children's toys, and personal effects that had been seized—which included his father's books, gifts from his mother, and a coin collection from his childhood—were not corporate property. It also should have been obvious that the property dating back to the 1970s—decades before any allegedly fraudulent activity began—was outside the scope of the receiver's authority. Yet Armstrong's many attempts to secure the return of even that small slice of his property went ignored by the receiver, the SEC, and, ultimately, the courts.

The Second Circuit nonetheless concluded that "the District Court reasonably found that the Receiver gave Armstrong an adequate opportunity to reclaim any personal possessions by giving Armstrong and his son unrestricted access to 'take whatever [they] want[ed]' from the storage lockers, not limiting the time they spent doing so, and refusing only Armstrong's demand to have 'the whole lot' shipped to Armstrong in Florida, which would have caused further delay, expense, and risk to the assets." App.5 (alterations in original). That determination rewrites history. To be sure, the receiver allowed Armstrong to visit the lockers containing the seized property after he had been been released from custody. *See* App.5. But neither the SEC nor the receiver ever provided Armstrong with a comprehensive inventory of all assets seized pursuant to the 1999 freeze order and subsequent injunction. Armstrong was therefore left simply to guess what assets remained in storage, when those items were seized, and from where.

While those details might seem trivial, in this context, they are anything but. The receiver's charge extended solely to corporate property that might have dissipated as a result of the charged fraud. Any property not traceable to the corporate entities was therefore not within the receiver's purview. But without a full accounting of the property the receiver had seized, let alone an accounting that identified when the receiver obtained an item and from where, it was all but impossible to distinguish between properly-seized assets on the one hand and personal property that the receiver should not have seized on the other. After all, when Armstrong arrived in a rental car, he found that the storage containers into

which the receiver had placed the remaining seized property spanned approximately 9,000 square feet.

The Second Circuit's conclusion that "Armstrong never affirmatively moved or otherwise requested that the District Court identify some receivership assets as his personal property, hold a hearing on this issue, or order the return of his personal property," App.6, is thus beside the point. There is nothing in the final consent order, or any order either before or since, that required Armstrong to file an affirmative request to obtain his personal property. Nor would such a requirement have made any sense; the receiver never had authority to take possession of untainted personal property in the first place.

The plain terms of the final consent order required the SEC to turn over all personal property to Armstrong. The burden to "identify … personal property" was therefore on the government, not on Armstrong, the individual the government deprived of his property. So even putting to the side the fact that Armstrong *did* request that the seized property be itemized (so that he could discern what was personal property and what was not), *see supra*, the decision below suffers from a more fundamental, legal flaw. This Court has long held that due process prohibits shifting burdens onto the accused. *See, e.g.*, *Mullaney v. Wilbur*, 421 U.S. 684 (1975). It should go without saying, then, that due process equally prohibits shifting the burden of proof onto an individual whose property the government seized two decades earlier, and who was then him to prison for more than eleven years on a five-year-maximum sentence. *Cf.*

Henderson v. United States, 135 S. Ct. 1780, 1784 (2015).

The Second Circuit waved away those objections. According to the Second Circuit, because the final consent judgment "does not impose any obligation *on the District Court*," the district court could not have abused its discretion in authorizing the wind down of the receivership *even if* winding down would result in depriving Armstrong of his personal property. App.6 (emphasis added). That makes no sense. That the First Amendment directs its mandates to Congress does not mean that courts may look the other way when government officials violate the freedom of speech. The same conclusion should obtain here.

Regardless of whether the final consent judgment imposed obligations on the district court, it clearly imposed obligations *on the government*. Under its plain terms, the final consent judgment required the SEC to "assist … in returning to Armstrong property that belongs to him." The government did not comply with those clear obligations. If a court does not abuse its discretion even where, as here, it endorses retroactive, systematic violations of law that leave an individual without recourse to retrieve his untainted personal property that was taken from him pursuant to a government-obtained court order, then there will be no viable mechanism left to enforce the law.

III. The Questions Presented Are Important And Merit Review In This Case.

As this Court has long recognized, the Sixth Amendment right "was designed to assure fairness in the adversary criminal process." *Wheat*, 486 U.S. at 158. Yet, in light of the broad scope of overlapping

federal criminal and civil securities laws, the federal government can almost always bring both types of actions in cases where financial wrongdoing is alleged. The need for this Court's intervention is thus particularly pronounced in the parallel criminal-and-civil-enforcement context presented here. If the decision below stands, then the government will effectively have a complete workaround to *Luis*. No less important is the question of whether a defendant has a constitutional right to the government's meaningful assistance in returning to him untainted personal property that a government-appointed receiver secured in violation of the Fifth Amendment.

Finally, the fact that the decision below is unpublished presents no barrier to this Court's review. This Court regularly grants certiorari to review unpublished opinions. *See, e.g.*, *E. Associated Coal Corp. v. United Mine Workers of Am., Dist. 17*, 531 U.S. 57, 61 (2000); *Murphy v. United Parcel Serv., Inc.*, 527 U.S. 516, 520 (1999); *Lynce v. Mathis*, 519 U.S. 433, 436 (1997); *Spectrum Sports, Inc. v. McQuillan*, 506 U.S. 447, 452-53 (1993). The Court should do so here, as its intervention is sorely needed to clarify the scope of the constitutional right to counsel of choice in the parallel criminal-and-civil-enforcement context, and to enforce fundamental due process protections.

CONCLUSION

For the foregoing reasons, this Court should grant the petition for certiorari.

Respectfully submitted,

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