No. 23-987

In the Supreme Court of the United States

SHALINI AHMED, PETITIONER

v.

SECURITIES AND EXCHANGE COMMISSION

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

BRIEF FOR THE RESPONDENT IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether the courts below correctly calculated the disgorgement liability of petitioner's husband.

2. Whether the courts below correctly concluded that petitioner was merely a nominal owner of certain assets, so that those assets could be used to satisfy the disgorgement judgment of her husband, who was found to be their true owner.

RELATED PROCEEDINGS

United States District Court (D. Conn.):

SEC v. *Ahmed*, No. 15-cv-675 (June 16, 2021)

United States Court of Appeals (2d Cir.):

SEC v. *Ahmed*, No. 15-2658 (Nov. 4, 2016)

Camabo Indus., Inc. v. *Hudson Ins. Co.*, No. 16-248 (Jan. 3, 2017)

SEC v. *Ahmed*, No. 20-475 (Oct. 29, 2020)

In re Ahmed, No. 21-181 (Feb. 16, 2021)

SEC v. *Ahmed*, Nos. 18-2903, 18-2932, 19-102, 19-103, 19-355, 19-2974, 19-3375, 19-3610, and 19-3721 (Mar. 11, 2021)

SEC v. *Ahmed*, Nos. 20-434, 20-439, and 20-959 (Mar. 11, 2021)

SEC v. *Ahmed*, No. 21-283 (Mar. 18, 2021)

SEC v. *Ahmed*, No. 20-4198 (June 10, 2021)

SEC v. *Ahmed*, Nos. 21-1686 and 21-1712 (June 28, 2023)

SEC v. *Ahmed*, Nos. 22-135, 22-184, 22-3077, and 22-3148 (June 28, 2023)

SEC v. *Ahmed*, No. 24-235 (notice of appeal filed Jan. 25, 2024)

SEC v. *Ahmed*, No. 24-487 (notice of appeal filed Feb. 17, 2024)

Supreme Court of the United States:

Iftikar Ahmed v. *SEC*, No. 23-741 (petition filed Jan. 5, 2024)

TABLE OF CONTENTS

Page

Opinions below 1
Jurisdiction 1
Statement 2
Argument 7
Conclusion 16

TABLE OF AUTHORITIES

Cases:

Berkshire Bank v. *Town of Ludlow*,
708 F.3d 249 (1st Cir. 2013) 15
Dalton v. *Commissioner*,
682 F.3d 149 (1st Cir. 2012) 15
Disraeli v. *SEC*,
334 Fed. Appx. 334 (D.C. Cir. 2009),
cert. denied, 559 U.S. 1008 (2010) 11
Fourth Inv. LP v. *United States*,
720 F.3d 1058 (9th Cir. 2013) 15
Graver Tank & Mfg. Co. v. *Linde Air Prods. Co.*,
336 U.S. 271 (1949) 8
Kyles v. *Whitley*, 514 U.S. 419 (1995) 8
Liu v. *SEC*, 591 U.S. 71 (2020) 6, 9, 10
SEC v. *Govil*, 86 F.4th 89 (2d Cir. 2023) 10, 11
SEC v. *Levin*, 849 F.3d 995 (11th Cir. 2017) 11
Sherman v. *SEC*, 491 F.3d 948 (9th Cir. 2007) 11
Shinseki v. *Sanders*, 556 U.S. 396 (2009) 13
Spotts v. *United States*,
429 F.3d 248 (6th Cir. 2005) 15
United States v. *Bogart*,
715 Fed. Appx. 161 (3d Cir. 2017) 15
United States v. *Johnston*, 268 U.S. 220 (1925) 8, 15
Wisniewski v. *United States*, 353 U.S. 901 (1957) 10

Statutes: Page

Investment Advisers Act of 1940, 15 U.S.C. 80b-1 *et seq.* 2
Securities Act of 1933, 15 U.S.C. 77a *et seq.* 2
Securities Exchange Act of 1934, 15 U.S.C. 78a *et seq.* 2
William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, Pub. L. No. 116-283, Tit. LXV, § 6501(a)(3), 134 Stat. 4626 (15 U.S.C. 78u(d)(8)(A) (Supp. III 2021)) 5
28 U.S.C. 2111 13

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1-52) is reported at 72 F.4th 379. The opinion of the district court (Pet. App. 53-93) is reported at 343 F. Supp. 3d 16. A subsequent opinion of the district court is not published in the Federal Supplement but is available at 2021 WL 2471526. An earlier opinion of the district court is reported at 308 F. Supp. 3d 628.

JURISDICTION

The judgment of the court of appeals was entered on June 28, 2023. Petitions for rehearing were denied on October 12, 2023 (Pet. App. 94-95). On December 28, 2023, Justice Sotomayor extended the time within which to file a petition for a writ of certiorari to and including March 11, 2024, and the petition was filed on March 6, 2024. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. Between 2005 and 2015, petitioner's husband Iftikar Ahmed (Ahmed) fraudulently stole more than $65 million from his employer, Oak Management Corporation (Oak), a venture-capital firm, and from the portfolio companies in which Oak's funds invested. Pet. App. 4, 6-8. In 2015 the Securities and Exchange Commission (SEC or Commission) filed a civil enforcement action in the United States District Court for the District of Connecticut charging Ahmed with violations of the Securities Act of 1933 (Securities Act), 15 U.S.C. 77a *et seq.*; the Securities Exchange Act of 1934 (Exchange Act), 15 U.S.C. 78a *et seq.*; and the Investment Advisers Act of 1940 (Advisers Act), 15 U.S.C. 80b-1 *et seq*. Pet. App. 8. The SEC also joined as relief defendants several entities and individuals, including petitioner, that had received ill-gotten gains from Ahmed's fraud. *Id.* at 8 & n.3. Shortly after the Commission filed suit, Ahmed fled the United States; he remains a fugitive. *Id.* at 8, 62.

The district court entered summary judgment for the SEC on liability, finding that Ahmed had violated the Securities Act, the Exchange Act, and the Advisers Act. 308 F. Supp. 3d 628. The court subsequently ordered the payment of $41.9 million in disgorgement, $1.5 million in prejudgment interest, and $21 million in civil penalties; found that certain assets could be used to satisfy its judgment; and permanently enjoined Ahmed from violating the federal securities laws. Pet. App. 9-10, 53-93. In reaching those conclusions, the court rejected three arguments made by petitioner that would have reduced the amount of disgorgement and limited the assets available to satisfy Ahmed's judgment.

First, petitioner argued that the district court should not award disgorgement for two stock investments (called "C1" and "C2") in "Company C" that Ahmed had arranged for Oak's funds. Pet. App. 66-69. In rejecting that argument, the court explained that the securities laws "authorized" the disgorgement of "'profits reaped through [Ahmed's] securities law violations.'" *Id.* at 67 (citation and emphasis omitted). As to the C1 investment, the court found that Ahmed had "concealed" his "conflict of interest in the transaction": He owned the company selling the shares and "would personally profit by more than $8 million upon" Oak's investment in Company C. *Id.* at 66-67. The court also found that Ahmed had profited from the C2 investment after "conceal[ing] the fact that he was on both sides of the deal." *Id.* at 67. The court measured Ahmed's profits for both transactions by comparing his purchase and sale prices for Company C stock, and it concluded that Ahmed's disgorgement liability for those transactions was $14.4 million. See *id.* at 67-68.

Second, petitioner argued that the total disgorgement amount should be offset by the value of Ahmed's "carried interest" in certain Oak funds. Pet. App. 87-90. Ahmed was a party to an Oak partnership contract that provided that, if a member was removed from the partnership because of disabling conduct, the member's carried interest in Oak's funds would be forfeited. *Id.* at 88. Because of Ahmed's fraud, Oak terminated Ahmed for disabling conduct and forfeited his rights to carried interest. *Id.* at 88-89. Petitioner argued that Ahmed's forfeiture of that interest constituted a return of money to his victims, and that his disgorgement liability should be offset by the amount of that forfeiture. *Id.* at 87-90. The district court rejected that argument,

finding that "these forfeited interests are not ill-gotten gains that Oak * * * recover[ed] from" Ahmed because they "were sacrificed by [Ahmed] upon his termination for 'Disabling Conduct.'" *Id.* at 89. For that reason, the court also found that declining to offset Ahmed's disgorgement liability by the amount of carried interest "will not result in a double recovery" by Oak. *Ibid.*

Third, the district court found that various Ahmed family assets could be used to satisfy Ahmed's judgment because they "belong to Mr. Ahmed and were placed in the names of Relief Defendants as nominees only, in an effort to protect and hide the fraudulently obtained assets." Pet. App. 78; see *id.* at 74-90. As relevant here, the court rejected petitioner's claim that she owned a particular Fidelity account. *Id.* at 82 n.19. The court explained that petitioner "did not recall receiving the $18 million check (the proceeds of [Ahmed's] Company B fraud) that funded this account, and specifically testified the account was opened only so she could access assets 'should anything happen to [Ahmed].'" *Ibid.* (citation omitted). Petitioner also claimed that a particular trust "[could not] be used to satisfy a judgment against [Ahmed] because the beneficiaries are [Ahmed's] descendants," and that a "MetLife insurance policy [wa]s also exempt from collection because it [wa]s owned by the Family Trust for the benefit of the minor children." *Id.* at 83 n.21. In rejecting that argument, the court credited the SEC's contrary evidence and found "that the Family Trust was funded with [Ahmed's] money, including approximately $1.577 million from the Company G fraud and approximately $2.0 million from the Company I fraud"; that "there is no indication that any other Relief Defendant also [funded the trust]"; and "that [Ahmed] control[led]" the trust. *Ibid.*

The court therefore concluded that the trust and the related MetLife insurance policy "can be used to satisfy a judgment against" Ahmed. *Ibid.*

2. Ahmed and petitioner appealed. While the appeal was pending, Congress enacted a new, ten-year statute of limitations for disgorgement that applies to all Commission actions that were pending on the date of enactment. See William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 (NDAA), Pub. L. No. 116-283, Tit. LXV, § 6501(a)(3), 134 Stat. 4626 (15 U.S.C. 78u(d)(8)(A) (Supp. III 2021)). Pet. App. 10-11. The court of appeals remanded for the district court to reassess Ahemed's disgorgement obligation in light of that new law. The district court applied the NDAA's ten-year statute of limitations and recalculated Ahmed's disgorgement obligation as $64.2 million and his prejudgment-interest obligation as $9.8 million. *Id.* at 11-12.

3. Ahmed and petitioner appealed again, and the court of appeals affirmed the district court's determination of Ahmed's liability and its disgorgement calculation. Pet. App. 17-34. The court of appeals also affirmed the district court's application of the nominee doctrine to the extent the district court had concluded that Ahmed was the actual owner of the Fidelity account, the trust, and the MetLife insurance policy; but the court of appeals vacated the remainder of the district court's nominal-ownership determinations. *Id.* at 44-51.

The court of appeals rejected petitioner's assertion that the district court had "miscalculated 'net profits' from [the] two fraudulent" C1 and C2 transactions. Pet. App. 21; see *id.* at 21-24. The court of appeals explained that "[d]isgorgement must 'not exceed a wrongdoer's

net profits'"—"'that is, the gain made upon any business or investment, when both the receipts and payments are taken into account.'" *Id.* at 21 (quoting *Liu* v. *SEC*, 591 U.S. 71, 75, 83 (2020)). The court found that Ahmed's failure "to disclose his conflicts of interest * * * violated the Advisers Act," and that his personal profits from the C1 and C2 transactions could therefore be disgorged because they "constituted his 'net profits from wrongdoing' under *Liu*." *Id.* at 23 (citation omitted).

The court of appeals also rejected petitioner's argument that Ahmed's disgorgement judgment should be offset by the value of his "carried interest" in Oak funds. Pet. App. 24-25. The court explained that "disgorgement does not protect the wrongdoer's expectancy interests; it attempts to 'restore the status quo' by 'taking money out of the wrongdoer's hands.'" *Id.* at 24 (quoting *Liu*, 591 U.S. at 80) (brackets omitted). The court found that "Ahmed's forfeited 'carried interest' is not an ill-gotten gain from his fraud but rather was his expectancy to a portion of Oak's profits conferred by the General Partnership Agreement." *Ibid.* (emphasis omitted). The court therefore concluded that "[e]quity does not require an offset for the carried interest, which was contingent on Ahmed's relationship with Oak and was not derived directly from his fraud." *Ibid.*

Finally, the court of appeals found that, to satisfy Ahmed's judgment, the district court could properly invoke the traditional nominee doctrine to reach assets held by petitioner and the other relief defendants. Pet. App. 47-48. The court of appeals observed that "the nominee doctrine is necessarily an asset-specific inquiry," *id.* at 48, and concluded that the district court

had abused its discretion by failing to conduct an appropriate individualized inquiry for most of the disputed assets, *id.* at 48-51. But the court of appeals found that "the district court's analysis regarding the * * * Family Trust, MetLife Policy (which was owned by the * * * Family Trust), and Fidelity * * * account was sufficient because the district court weighed the SEC's evidence and considered the Relief Defendants' counter-evidence as to each asset and made findings on the record." *Id.* at 49. The court of appeals therefore affirmed the district court's conclusion that those assets could be attributed to Ahmed under the nominee doctrine. *Id.* at 50. The court of appeals vacated the remainder of the district court's disgorgement order to the extent it addressed the claimed assets of petitioner and the other relief defendants, and it remanded for the district court to conduct an asset-by-asset nominal-ownership analysis. *Id.* at 50-51.

4. Ahmed has filed his own petition for a writ of certiorari, see *Iftikar Ahmed* v. *SEC*, No. 23-741 (filed Jan. 5, 2024), which is currently pending before the Court. That petition argues that the court of appeals' initial remand order, and the district court's subsequent decision to increase the amount of Ahmed's disgorgement liability in light of the NDAA, see p. 5, *supra*, violated the "cross-appeal rule." See Pet. at 12-14, *Iftikar Ahmed*, *supra* (No. 23-741).

ARGUMENT

The court of appeals correctly affirmed the district court's calculation of Ahmed's disgorgement liability for the C1 and C2 transactions; its refusal to offset disgorgement by the amount of Ahmed's carried interest in Oak's funds; and its finding that petitioner was only a nominal holder of the Fidelity account, the trust, and

the MetLife insurance policy. At each step of its analysis, the court of appeals applied the correct legal principles, and its decision does not conflict with any decision of this Court or of another court of appeals.

Petitioner primarily disagrees with the manner in which the courts below applied those legal principles to the evidentiary record before them. But the lower courts' granular determinations regarding particular transactions and individual assets are highly factbound and do not warrant further review, particularly because the district court and the court of appeals were in agreement with respect to the findings that petitioner challenges here. See *United States* v. *Johnston*, 268 U.S. 220, 227 (1925) ("We do not grant a [writ of] certiorari to review evidence and discuss specific facts."); see also *Kyles* v. *Whitley*, 514 U.S. 419, 456-457 (1995) (Scalia, J., dissenting) ("[U]nder what we have called the 'two-court rule,' the policy [in *Johnston*] has been applied with particular rigor when district court and court of appeals are in agreement as to what conclusion the record requires.") (citing *Graver Tank & Mfg. Co.* v. *Linde Air Prods. Co.*, 336 U.S. 271, 275 (1949)). Further review is not warranted.

1. The courts below correctly rejected petitioner's claims (Pet. 7-13) that Ahmed should not be required to disgorge the profits from the transactions involving Company C and that his disgorgement liability should be offset by the amount of carried interest he forfeited to Oak. Those factbound conclusions do not conflict with any decision of this Court or of another court of appeals.

a. The traditional equitable remedy of disgorgement is governed by the "foundational principle" that "'[i]t would be inequitable that a wrongdoer should make a

profit out of his own wrong.'" *Liu* v. *SEC*, 591 U.S. 71, 79-80 (2020) (brackets and citation omitted). The Court in *Liu* emphasized "that a remedy tethered to a wrongdoer's net unlawful profits * * * has been a mainstay of equity courts." *Id.* at 80. The Court therefore held that "a disgorgement award that does not exceed a wrongdoer's net profits" is "equitable relief" that the SEC may "permissibl[y]" obtain. *Id.* at 75.

The court of appeals correctly articulated and applied those principles in concluding that, because the C1 and C2 transactions were tainted by Ahmed's undisclosed conflict of interest, his net profits from those transactions were subject to disgorgement. Pet. App. 21-24. Ahmed's personal profits from those transactions constituted "net profits from wrongdoing," *Liu*, 591 U.S. at 78, regardless of whether his victims suffered any loss. Nothing in *Liu* requires a different calculation of Ahmed's disgorgement obligation, and petitioner has not identified a contrary decision from any other court of appeals. See Pet. 11-13.

Petitioner asserts that, because the "victims experienced no loss in" the C1 and C2 transactions, Ahmed's disgorgement liability must be "offset" by "the value of the shares returned during" those transactions. Pet. i; see Pet. 11-13. But as *Liu* makes clear, disgorgement is calculated as the amount necessary to "deprive[] wrongdoers of their net profits from unlawful activity"—not the amount victims lost in a particular transaction. 591 U.S. at 79. Indeed, the Court in *Liu* repeatedly emphasized that disgorgement involves "profits-based relief." *Id.* at 81; see *id.* at 82 ("profits-based remed[y]"); *id.* at 84 ("profits from wrongdoing"); *id.* at 85 (same); *id.* at 88 ("profits remedy"); *id.* at 90 ("profits-focused remedy"); *id.* at 92 ("profits-based remedy"). And although

disgorgement generally must "be awarded for victims," *id.* at 79, that is a separate question from how disgorgement is *calculated*. Petitioner has not disputed that Ahmed's fraudulent scheme caused pecuniary harm to Oak's investors and that the disgorgement judgment will be distributed to those and other victims.*

b. The court of appeals likewise correctly held that Ahmed's forfeiture to Oak of his "carried interest" did not constitute a return of funds to a victim because that interest was a performance-based expectancy contingent on Ahmed maintaining a good relationship with Oak. Pet. App. 24-25. Because that contingent interest "was not derived directly from his fraud," it was "not an ill-gotten gain from his fraud" that could be returned to a victim. *Id.* at 24. And Oak did not receive double compensation because the forfeited interest held only contingent value (and thus no concrete value) under the terms of Ahmed's contractual relationship with Oak. Nothing in *Liu* or any other decision of this Court undermines that conclusion.

Petitioner asserts (Pet. 9) that Ahmed's carried interest had concrete value because it was "valued by *Oak*

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* For those reasons, the Second Circuit's decision in *SEC* v. *Govil*, 86 F.4th 89 (2023), does not cast doubt on the correctness of the court of appeals' decision here. See Pet. 10, 23 (citing *Govil*). The court in *Govil* confirmed that "disgorgement is 'measured by' the wrongful gain obtained by the defendant rather than by the loss to the investor," and it went on to "address the separate question of when disgorgement qualifies as 'equitable relief' * * * in the first place." 86 F.4th at 105. That separate question is not at issue here. And any tension between *Govil* and the court of appeals' decision in this case would at most reflect an intracircuit conflict that the Second Circuit can resolve. See *Wisniewski* v. *United States*, 353 U.S. 901, 902 (1957) (per curiam) ("It is primarily the task of a Court of Appeals to reconcile its internal difficulties.").

itself at $35 million." But, as Oak's chief operating officer testified in district court, Oak's bookkeeping of the carried interest "reflected an accounting allocation and did not purport to represent cash that was guaranteed to be paid." 21-1686 Gov't C.A. Br. 24-25. Petitioner identifies no error in the lower courts' decision to credit that record evidence. And those courts' factbound determination that the carried interest had no concrete value distinguishes the decisions below from the court of appeals decisions that petitioner identifies (Pet. 9-10), all of which involved offsets based on the concrete value of assets surrendered by the defendant. See *SEC* v. *Govil*, 86 F.4th 89, 107-109 & n.19 (2d Cir. 2023) (remanding for determination of offset based on the defendant's surrender of shares that "h[eld] value in his own hands"); *SEC* v. *Levin*, 849 F.3d 995, 1007 (11th Cir. 2017) (defendant could petition for offset based on "a partial return of [his] ill-gotten gains" if investors "recover[ed]" from the defendant in other litigation); *Disraeli* v. *SEC*, 334 Fed. Appx. 334, 335 (D.C. Cir. 2009) (per curiam) (offset available "[t]o the extent [the defendant] can establish that he has repaid the funds he transferred from [another] bank account to his own"), cert. denied, 559 U.S. 1008 (2010); *Sherman* v. *SEC*, 491 F.3d 948, 965 n.19 (9th Cir. 2007) (offset appropriate as measured "by any amount already disgorged pursuant to" a separate settlement agreement).

c. As noted above, see p. 7, *supra*, Ahmed has filed his own petition for a writ of certiorari seeking review of the court of appeals' judgment. Although Ahmed contends that the amount of his disgorgement liability was improperly increased in light of the NDAA, he does not challenge the computation of his disgorgement liability on the grounds that petitioner asserts here. Because

petitioner's own interest in the amount of the disgorgement award is derivative of Ahmed's, it would be especially anomalous to grant review here to consider computational challenges that Ahmed himself has declined to assert in this Court.

2. The court of appeals also correctly held that the district court had not abused its discretion in attributing the Fidelity account, the trust, and the MetLife insurance policy to Ahmed under the nominee doctrine. That fact-bound conclusion does not conflict with any decision of this Court or of another court of appeals.

a. Under the nominee doctrine, a "'nominee' holds bare legal title to an asset but is not its true equitable owner"; "[s]uch an asset may be disgorged to satisfy a judgment against a third party deemed to be the asset's true equitable owner." Pet. App. 47.

The district court correctly found that the three relevant assets "belong to Mr. Ahmed and were placed in the names of Relief Defendants as nominees only, in an effort to protect and hide the fraudulently obtained assets." Pet. App. 78. The court found, based on record evidence, that the Fidelity account was "funded" by "the proceeds" of one of Ahmed's fraudulent transactions and was "opened only so [petitioner] could access assets 'should anything happen to [Ahmed].'" *Id.* at 82 n.19 (citation omitted). The court also found that Ahmed had "funded th[e] Trust" using money obtained through two separate frauds; that "there is no indication that any other Relief Defendant also" funded the trust; and that Ahmed "control[led]" the trust. *Id.* at 83 n.21. And the court concluded that the "MetLife insurance policy" was "owned by the Family Trust." *Ibid.* Based on those factual findings, the district court appropriately concluded that those three assets could be

used to satisfy the judgment against Ahmed because Ahmed was their true equitable owner. The court of appeals correctly held that the district court had not abused its discretion in reaching that conclusion. *Id.* at 49.

b. i. Petitioner's primary assertion (Pet. 13-17) appears to be that, because the court of appeals found the district court's nominee analysis insufficient as to *other* assets, the court of appeals should also have vacated the district court's determination that the Fidelity account, the trust, and the MetLife insurance policy could be used to satisfy Ahmed's judgment. But "the district court weighed the SEC's evidence and considered the Relief Defendants' counter-evidence as to each" of those three assets and "made findings on the record." Pet. App. 49. The court of appeals therefore appropriately affirmed the district court's conclusion regarding those assets, while vacating its treatment of other assets based on the district court's failure to conduct an asset-by-asset analysis. And even assuming that a legal error infected the entirety of the district court's reasoning, petitioner is wrong to assert (Pet. 15) that "reversal" is "mandate[d]" wholesale "when decisions are made on an erroneous basis of law." An appellate court can affirm where trial-court errors are harmless. See, *e.g.*, *Shinseki* v. *Sanders*, 556 U.S. 396, 406 (2009) (noting the "'harmless-error' rule that courts ordinarily apply in civil cases"); 28 U.S.C. 2111 ("On the hearing of any appeal * * * in any case, the court shall give judgment after an examination of the record without regard to errors or defects which do not affect the substantial rights of the parties."). Given petitioner's clearly nominal interest in the three presently contested assets, that course would be

appropriate here even if the district court had committed legal error in applying disgorgement principles to those assets.

ii. Petitioner also claims (Pet. 17) that the court of appeals improperly affirmed the district court's finding of "nominee status" based on "just one" of the multiple factors that a court considers when assessing nominal ownership. But the district court articulated the same six-factor framework that petitioner endorses. Compare Pet. 17-18, with Pet. App. 77 (stating that the relevant factors are "[1] a defendant's control over the asset, [2] the length of time the asset had been held, [3] whether the defendant had an interest in and benefitted from the asset, [4] whether the defendant had transferred assets from his name into the asset, [5] whether he or she contributed to acquire the asset initially, and [6] whether the defendant ever withdrew any funds from the asset") (citation omitted). The court's detailed assessment of the evidence involving the Fidelity account, the trust, and the MetLife insurance policy indicates that it considered those various factors when conducting the nominee inquiry. See Pet. App. 82 n.19, 83 n.21 (discussing, *inter alia*, Ahmed's control over, interest in, and contribution of funds to the relevant assets). The court of appeals' affirmance of that conclusion does not suggest—let alone hold—that a finding of nominee status may be made without reference to the factors that indicate nominal ownership.

Petitioner identifies no decision of this Court or of another court of appeals that is inconsistent with the articulation of the nominee doctrine by the courts below. The court of appeals decisions that petitioner identifies (Pet. 17-18) recognize that "courts across many jurisdictions 'almost universally' utilize the same criteria in

evaluating nominee relationships." *Fourth Inv. LP* v. *United States*, 720 F.3d 1058, 1068 (9th Cir. 2013) (quoting *Dalton* v. *Commissioner*, 682 F.3d 149, 158 (1st Cir. 2012)) (brackets omitted); see *Berkshire Bank* v. *Town of Ludlow*, 708 F.3d 249, 253 (1st Cir. 2013) (similarly quoting *Dalton*); *Spotts* v. *United States*, 429 F.3d 248, 253 n.2 (6th Cir. 2005) ("Many courts use six factors in evaluating nominee questions."); see also *United States* v. *Bogart*, 715 Fed. Appx. 161, 167 (3d Cir. 2017) (per curiam) (considering the same factors as the Sixth Circuit). Petitioner has therefore failed to identify any conflict that would warrant this Court's review.

iii. Petitioner attempts to relitigate (Pet. 15-17) the district court's conclusions that petitioner was only a nominal owner of the trust and Fidelity account. But petitioner has not shown that the court abused its discretion in reaching those conclusions. In any event, the erroneous application of an established legal standard is not the type of error that would warrant this Court's intervention. See *Johnston*, 268 U.S. at 227.

Petitioner asserts that the district court found nominal ownership of the trust "sole[ly]" "because * * * Ahmed 'funded and created' the Trust." Pet. 15 (citation omitted). That is incorrect. The court also found that the trust was funded with more than $3.5 million in proceeds from two of Ahmed's frauds and "that [Ahmed] control[led] the Family Trust." Pet. App. 83 n.21 (citation omitted). Those factual findings were sufficient to support the conclusion that petitioner was a nominee who held bare legal title to the trust and was not a true equitable owner.

Petitioner notes (Pet. 16-17) that, in concluding that petitioner was solely a nominal owner of the Fidelity account, the district court relied in part on petitioner's

testimony at the preliminary-injunction stage of the proceedings. The court committed no error in treating that evidence as relevant to the nominal-ownership inquiry. Petitioner conceded in her testimony that she "did not recall receiving the $18 million check (the proceeds of [Ahmed's] Company B fraud) that funded th[e Fidelity] account," and that "the account was opened only so she could access assets 'should anything happen to [Ahmed].'" Pet. App. 82 n.19. Regardless of when that testimony occurred, it supported the court's decision here.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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