Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

KOKESH *v.* SECURITIES AND EXCHANGE COMMISSION

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

No. 16–529. Argued April 18, 2017—Decided June 5, 2017

The Securities and Exchange Commission (SEC or Commission) possesses authority to investigate violations of federal securities laws and to commence enforcement actions in federal district court if its investigations uncover evidence of wrongdoing. Initially, the Commission's statutory authority in enforcement actions was limited to seeking an injunction barring future violations. Beginning in the 1970's, federal district courts, at the request of the Commission, began ordering disgorgement in SEC enforcement proceedings. Although Congress has since authorized the Commission to seek monetary civil penalties, the Commission has continued to seek disgorgement. This Court has held that 28 U. S. C. §2462, which establishes a 5-year limitations period for "an action, suit or proceeding for the enforcement of any civil fine, penalty, or forfeiture," applies when the Commission seeks monetary civil penalties. See *Gabelli* v. *SEC*, 568 U. S. 442, 454.

In 2009, the Commission brought an enforcement action, alleging that petitioner Charles Kokesh violated various securities laws by concealing the misappropriation of $34.9 million from four business-development companies from 1995 to 2009. The Commission sought monetary civil penalties, disgorgement, and an injunction barring Kokesh from future violations. After a jury found that Kokesh's actions violated several securities laws, the District Court determined that §2462's 5-year limitations period applied to the monetary civil penalties. With respect to the $34.9 million disgorgement judgment, however, the court concluded that §2462 did not apply because disgorgement is not a "penalty" within the meaning of the statute. The Tenth Circuit affirmed, holding that disgorgement was neither a penalty nor a forfeiture.

Held: Because SEC disgorgement operates as a penalty under §2462, any claim for disgorgement in an SEC enforcement action must be commenced within five years of the date the claim accrued. Pp. 5–11.

(a) The definition of "penalty" as a "punishment, whether corporal or pecuniary, imposed and enforced by the State, for a crime or offen[s]e against its laws," *Huntington* v. *Attrill*, 146 U. S. 657, 667, gives rise to two principles. First, whether a sanction represents a penalty turns in part on "whether the wrong sought to be redressed is a wrong to the public, or a wrong to the individual." *Id.*, at 668. Second, a pecuniary sanction operates as a penalty if it is sought "for the purpose of punishment, and to deter others from offending in like manner" rather than to compensate victims. *Ibid.* This Court has applied these principles in construing the term "penalty," holding, *e.g.*, that a statute providing a compensatory remedy for a private wrong did not impose a "penalty," *Brady* v. *Daly*, 175 U. S. 148, 154. Pp. 5–7.

(b) The application of these principles here readily demonstrates that SEC disgorgement constitutes a penalty within the meaning of §2462. First, SEC disgorgement is imposed by the courts as a consequence for violating public laws, *i.e.*, a violation committed against the United States rather than an aggrieved individual. Second, SEC disgorgement is imposed for punitive purposes. Sanctions imposed for the purpose of deterring infractions of public laws are inherently punitive because "deterrence [is] not [a] legitimate nonpunitive governmental objectiv[e]." *Bell* v. *Wolfish*, 441 U. S. 520, 539, n. 20. Finally, SEC disgorgement is often not compensatory. Disgorged profits are paid to the district courts, which have discretion to determine how the money will be distributed. They may distribute the funds to victims, but no statute commands them to do so. When an individual is made to pay a noncompensatory sanction to the government as a consequence of a legal violation, the payment operates as a penalty. See *Porter* v. *Warner Holding Co.*, 328 U. S. 395, 402. Pp. 7–9.

(c) The Government responds that SEC disgorgement is not punitive but a remedial sanction that operates to restore the status quo. It is not clear, however, that disgorgement simply returns the defendant to the place he would have occupied had he not broken the law. It sometimes exceeds the profits gained as a result of the violation. And, as demonstrated here, SEC disgorgement may be ordered without consideration of a defendant's expenses that reduced the amount of illegal profit. In such cases, disgorgement does not simply restore the status quo; it leaves the defendant worse off and is therefore punitive. Although disgorgement may serve compensatory goals in some cases, "sanctions frequently serve more than one purpose."

Austin v. *United States*, 509 U. S. 602, 610. Because they "go beyond compensation, are intended to punish, and label defendants wrongdoers" as a consequence of violating public laws, *Gabelli*, 568 U. S., at 451–452, disgorgement orders represent a penalty and fall within §2462's 5-year limitations period. Pp. 9–11.

834 F. 3d 1158, reversed.

SOTOMAYOR, J., delivered the opinion for a unanimous Court.

SUPREME COURT OF THE UNITED STATES

No. 16–529

CHARLES R. KOKESH, PETITIONER *v.* SECURITIES AND EXCHANGE COMMISSION

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

[June 5, 2017]

JUSTICE SOTOMAYOR delivered the opinion of the Court.

A 5-year statute of limitations applies to any "action, suit or proceeding for the enforcement of any civil fine, penalty, or forfeiture, pecuniary or otherwise." 28 U. S. C. §2462. This case presents the question whether §2462 applies to claims for disgorgement imposed as a sanction for violating a federal securities law. The Court holds that it does. Disgorgement in the securities-enforcement context is a "penalty" within the meaning of §2462, and so disgorgement actions must be commenced within five years of the date the claim accrues.

I

A

After rampant abuses in the securities industry led to the 1929 stock market crash and the Great Depression, Congress enacted a series of laws to ensure that "the highest ethical standards prevail in every facet of the securities industry."[1] *SEC* v. *Capital Gains Research*

[1] Each of these statutes—the Securities Act of 1933, 15 U. S. C. §77a *et seq.*; the Securities Exchange Act of 1934, 15 U. S. C. §78a *et seq.*; the

Bureau, Inc., 375 U. S. 180, 186–187 (1963) (internal quotation marks omitted). The second in the series—the Securities Exchange Act of 1934—established the Securities and Exchange Commission (SEC or Commission) to enforce federal securities laws. Congress granted the Commission power to prescribe "'rules and regulations . . . as necessary or appropriate in the public interest or for the protection of investors.'" *Blue Chip Stamps* v. *Manor Drug Stores*, 421 U. S. 723, 728 (1975). In addition to rulemaking, Congress vested the Commission with "broad authority to conduct investigations into possible violations of the federal securities laws." *SEC* v. *Jerry T. O'Brien, Inc.*, 467 U. S. 735, 741 (1984). If an investigation uncovers evidence of wrongdoing, the Commission may initiate enforcement actions in federal district court.

Initially, the only statutory remedy available to the SEC in an enforcement action was an injunction barring future violations of securities laws. See 1 T. Hazen, Law of Securities Regulation §1:37 (7th ed., rev. 2016). In the absence of statutory authorization for monetary remedies, the Commission urged courts to order disgorgement as an exercise of their "inherent equity power to grant relief ancillary to an injunction." *SEC* v. *Texas Gulf Sulphur Co.*, 312 F. Supp. 77, 91 (SDNY 1970), aff'd in part and rev'd in part, 446 F. 2d 1301 (CA2 1971). Generally, disgorgement is a form of "[r]estitution measured by the defendant's wrongful gain." Restatement (Third) of Restitution and Unjust Enrichment §51, Comment *a*, p. 204

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Public Utility Holding Company Act of 1935, 15 U. S. C. §79 *et seq.*; the Trust Indenture Act of 1939, 15 U. S. C. §77aaa *et seq.*; the Investment Company Act of 1940, 15 U. S. C. §80a–1 *et seq.*; and the Investment Advisers Act of 1940, 15 U. S. C. §80b–1 *et seq.*—serves the "fundamental purpose" of "substitut[ing] a philosophy of full disclosure for the philosophy of *caveat emptor* and thus . . . achiev[ing] a high standard of business ethics in the securities industry." *SEC* v. *Capital Gains Research Bureau, Inc.*, 375 U. S. 180, 186 (1963).

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