

No. 17-1300

In the
Supreme Court of the United States

DAVID FINDLAY, NATHAN GORIN, JOHN P. GRAHAM,
N. DANTE LARocca, JOHN MCCARTHY, *et al.*,
Petitioners,

v.

FEDERAL HOUSING FINANCE AGENCY, as
Conservator for the Federal National Mortgage
Association and the Federal Home Loan Mortgage
Corporation,
Respondent.

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

REPLY BRIEF FOR PETITIONERS

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REPLY BRIEF

All agree that petitioners here did not sell any of the securities in question or receive any of the proceeds from those sales. Nor does the government contest that for a restitution remedy “to lie in equity, the action generally must seek ... to restore to the plaintiff particular funds or property *in the defendant’s possession.*” *Great-West Life & Annuity Ins. Co. v. Knudson*, 534 U.S. 204, 214 (2002) (emphasis added). Under this Court’s precedent, therefore, this should have been an easy case: Because petitioners did not possess any of the proceeds of the sales, they could not “restore to” FHFA the “funds or property” at issue in the underlying transactions. Instead, the judgment imposed personal liability against petitioners (including five individuals who never sold any securities) to pay over \$800 million. And as the government concedes, the “imposition of such ‘personal liability ... to pay money’ was a *legal remedy.*” Opp.28 (quoting *Great-West*, 534 U.S. at 210) (emphasis added). Thus, under *Great-West* and the Seventh Amendment, petitioners were entitled to a jury trial.

In addition to that inescapable conflict with *Great-West*, the decision below is inconsistent with this Court’s broader Seventh Amendment jurisprudence. The government does not dispute that the elements of a claim under Section 12(a)(2) parallel the elements of a claim under Section 11, which all agree is “legal” for Seventh Amendment purposes. Instead, the government asserts that the parallelism is irrelevant because the rescission remedy that Section 12 authorizes is equitable. But even the

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