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*Lorenzo v. SEC*, No. 17-1077

The federal securities laws distinguish between claims for fraudulent misstatements and willful participation in a scheme to defraud. In this case, the D.C. Circuit concluded that the SEC erred in concluding that the petitioner made fraudulent misstatements, because the misstatements at issue came in emails that he did not actually author or read. But the D.C. Circuit nevertheless concluded that the fraudulent emails could form the basis for finding that the petitioner engaged in a scheme to defraud. Judge Kavanaugh dissented, asking “How could [petitioner] have intentionally deceived the clients when he did not draft the emails, did not think about the contents of the emails, and sent the emails only at his boss’s direction?” The Supreme Court granted certiorari to address this question: “[W]hether a misstatement claim that does not meet the elements set forth in [*Janus Capital Group, Inc. v. First Derivative Traders*, 564 U.S. 135 (2011)] can be repackaged and pursued as a fraudulent scheme claim.”