

17-1077 LORENZO V. SECURITIES AND EXCHANGE COMMISSION

DECISION BELOW: 872 F3d 578

LOWER COURT CASE NUMBER: 15-1202

QUESTION PRESENTED:

The antifraud provisions of the federal securities laws prohibit two well-defined categories of misconduct. One category is the use of *fraudulent statements* in connection with the offer and sale of securities. The other category is employing *fraudulent schemes* in connection with the offer and sale of securities. In *Janus Capital Group, Inc. v. First Derivative Traders*, 564 U.S. 135 (2011), this Court considered the elements of a fraudulent statement claim and held that only the "maker" of a fraudulent statement may be held liable for that misstatement under Section 10(b) of the Securities Exchange Act of 1934 and SEC Rule 10b-5 (b).

The question presented is whether a misstatement claim that does not meet the elements set forth in *Janus* can be repackaged and pursued as a fraudulent scheme claim. The Circuits have split 3-2 on this question. The Second, Eighth and Ninth Circuits have held that a misstatement alone cannot be the basis of a fraudulent scheme claim, while the DC Circuit and the Eleventh Circuit have held that a misstatement standing alone can be the basis of a fraudulent scheme claim.

JUSTICE KAVANAUGH IS RECUSED IN THIS CASE.

CERT. GRANTED 6/18/2018