No. 23-941

IN THE

Supreme Court of the United States

IN RE: FIRST CHOICE WOMEN'S RESOURCE CENTERS INC.,
Petitioner.

On Petition for Writ of Mandamus to the United States District Court for the District of New Jersey

BRIEF IN OPPOSITION

MATTHEW J. PLATKIN
Attorney General of New Jersey
JEREMY M. FEIGENBAUM*
Solicitor General
ANGELA CAI
Deputy Solicitor General
DAVID LEIT
Assistant Attorney General
KEVIN BUI
LIZA B. FLEMING
MEGHAN MUSSO
JESSICA L. PALMER
SAMUEL L. RUBINSTEIN
LAUREN E. VAN DRIESEN
Deputy Attorneys General
OFFICE OF THE ATTORNEY GENERAL OF NEW JERSEY
25 Market Street, Box 080
Trenton, NJ 08625
(862) 350-5800
jeremy.feigenbaum@njoag.gov

* *Counsel of Record*

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WILSON-EPES PRINTING CO., INC. – (202) 789-0096 – WASHINGTON, D.C. 20002

QUESTIONS PRESENTED

1. Whether mandamus to resolve this threshold question of ripeness is necessary to protect this Court's jurisdiction and is otherwise consistent with the stringent requirements for the writ.

2. Whether a challenge to the issuance of a non-self-executing civil subpoena is ripe when the subpoena has not been enforced and where the recipient faces no current consequences for non-compliance.

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INTRODUCTION

This Petition turns on the standards for two forms of extraordinary relief—the writ of mandamus and certiorari before judgment. Petitioner cannot satisfy the well-settled preconditions for either one.

Concerned that certain nonprofit entities in New Jersey, including Petitioner, may be misleading donors and potential clients regarding the character and scope of the health services they provide, the New Jersey Attorney General and Division of Consumer Affairs initiated an investigation, including issuing a subpoena requesting information that would bear on whether Petitioner's conduct violated state law. Their subpoena is not self-executing; it can only be enforced by a state court, before which Petitioner can lodge any defenses or move to quash. But before the State moved to enforce in state court, Petitioner filed suit in federal court, arguing that the mere issuance of the subpoena violated its constitutional rights. The district court dismissed the action, concluding that Petitioner's claims were not ripe. As that court explained, Petitioner faced no imminent injury: its claims depended on contingent decisions by the state court, the sole body with statutory authority to enforce the subpoena.

For three independent reasons, this Court should deny Petitioner's demand for mandamus or, in the alternative, certiorari before judgment. First, Petitioner cannot obtain a writ of mandamus because it fails all the mandatory prerequisites that inhere to this extraordinary writ. The basic thrust of Petitioner's argument is that this Court must grant mandamus in mere weeks, without merits briefing, without a substantive Third Circuit decision, and without the benefit of argument, on a question of ripeness, to avoid a situation in which the state court rather than the

federal district court resolves its case. Such relief is unavailable: mandamus can only issue in aid of this Court's own jurisdiction, 28 U.S.C. § 1651(a), and this Court would have jurisdiction over Petitioner's federal claims no matter whether they arose from a federal or state court judgment. Petitioner also could have obtained expedited Third Circuit review on this ripeness question, but made strategic decisions that led the panel to deny its belated motion to expedite. This Court has never granted mandamus in such a case.

Second, this Court should deny mandamus and certiorari before judgment because the underlying question of ripeness law cannot satisfy traditional certiorari criteria. For one, the Petition says there is *intra*-circuit conflict in the Third Circuit—a reason to decline review. But more fundamentally, no inter-circuit split is actually implicated at all: Petitioner is incorrect to contend that the Third, Sixth, and Eleventh Circuits have ever held similar claims ripe, and the Fifth Circuit in *Google v. Hood*, 822 F.3d 212 (CA5 2016), adopted the same reasoning as the district court here. Nor could these claims proceed under the Ninth Circuit's approach in *Twitter v. Paxton,* 56 F.4th 1170 (CA9 2022), because Petitioner neither pled facts nor presented any evidence showing issuance of the subpoena actually chilled its speech.

Third and finally, because the decision below correctly resolved the ripeness question, Petitioner neither has the clear and indisputable right to relief required for mandamus nor presents an extraordinary error sufficient to justify certiorari before judgment. As this Court held in *Reisman v. Caplin*, 375 U.S. 440 (1964), and as the lower courts have repeatedly reasoned, a challenge to a non-self-executing subpoena is unripe where the recipient can interpose good-faith defenses in a future

subpoena-enforcement action and will not face penalties for non-compliance before the court adjudicates them. That rule governs this case. Nor is this a state-court exhaustion requirement; rather, unless and until the state court decides to enforce the subpoena, Petitioner has not been injured and there is no ripe dispute at all. Petitioner cannot justify its extraordinary demands for these already extraordinary writs.

STATEMENT OF THE CASE

A. Statutory and Factual Background.

1. The New Jersey Legislature vested the Attorney General and the Division of Consumer Affairs with broad authority to investigate potential misconduct in areas involving consumer dealings, charitable solicitations, and licensed professions such as medicine and nursing.

Three such statutes are relevant. The Consumer Fraud Act ("CFA") prohibits deception, misrepresentation, or knowing omission of material facts "in connection with the sale or advertisement of any merchandise." N.J. Stat. Ann. § 56:8-2. The Charitable Registration & Investigation Act ("CRIA") prohibits any deceptive or misleading statements or omissions in the charitable context, including misconduct relating to "solicitation or charitable sales promotion[s]." N.J. Stat. Ann. §§ 45:17A-32(c)(3), (7); 45:17A-32(a). And the Professions and Occupations law ("P&O law") prohibits the unlicensed practice of medicine and deceptive practices by licensed professionals, N.J. Stat. Ann. §§ 45:1-18.2; -21, and regulates medical advertising for paid or free services, N.J. Admin. Code §§ 13:35-6.10(c); 13:35-6.10(g)(4). The Division may investigate whether an entity is engaged in an unlawful practice. See N.J. Stat. Ann.

§ 56:8-3 to -5 (CFA); § 45:17A-33(c) (CRIA); § 45:1-18 (P&O law).

Although these statutes authorize the Attorney General to issue subpoenas in support of investigations into potential misconduct, *id.*, they do not authorize it to unilaterally enforce those subpoenas. Instead, subpoenas issued pursuant to the CFA, CRIA, and P&O law are known as "non-self-executing" subpoenas; that is, the Attorney General must seek an order from the New Jersey Superior Court, which has exclusive power to require compliance. See N.J. Stat. Ann. § 56:8-6 (CFA) (providing that "the Superior Court" is the entity who issues "an order . . . [g]ranting such other relief as may be required" for subpoena enforcement); N.J. Stat. Ann. § 45:17A-33(g) (CRIA) (similar); N.J. Stat. Ann. § 45:1-19 (P&O law) (similar).

2. This case arises from a challenge to a subpoena the Division issued under the CFA, CRIA, and P&O law. The Division initiated its investigation upon learning that certain nonprofit organizations operating in New Jersey, including Petitioner, may be misleading donors, potential clients, and others into believing they provide comprehensive reproductive health care services when their objective is deterring individuals from seeking such services. Based on an initial investigation, including a review of publicly available information, the Division determined that a subpoena was warranted in order to gather additional information about Petitioner's activities and representations. See CA3 Dkt. 15, at Add.0018-20.[1]

[1] Contrary to Petitioner's claim, Pet.8-9, outside groups had no role in the decision to issue the subpoena, and Petitioner's cited evidence does not suggest they did, Pet. App. 85a-90a.

Among other things, the Division learned that Petitioner maintains different websites for different audiences, with different representations about Petitioner's mission and conduct. For example, Petitioner's donor-targeted website candidly publicizes its mission to prevent women from terminating their pregnancy. *Id.*, at Add.0199, Add.0203. By contrast, its websites targeted towards potential clients omit reference to that mission; they suggest that Petitioner provides such reproductive health care services, prominently inviting anyone "considering an abortion" to "[l]earn more about the abortion pill, abortion procedures, and your options in New Jersey." *Id.*, at Add.0022; see also *id.*, at Add.0060; Add.0241. And while these websites contain disclaimers that the facilities do not offer such services, this text appears at the bottom of the web pages. Because the representations across its distinct websites diverged drastically, that raised concerns about whether Petitioner is misleading the public about its mission and the services it provides.

The Division's review also uncovered Petitioner's representations relating to the roles of licensed professionals at its facilities. Among other things, Petitioner has represented "licensed medical professional[s]" provide services, *id.*, at Add.0238; DNJ Dkt. 6, at 5, such as STI testing and treatment, pregnancy tests, and ultrasounds. CA3 Dkt. 15, at Add.0019; Add.0028; Add.0087. The Division uncovered evidence that Petitioner also represents to potential clients that physicians oversee its medical services and "medical staff can answer all of [clients'] questions . . . with professional accuracy," *id.*, at Add.0093, but the Division uncovered evidence that doctors may not be on site, *id.*, at Add.0019. For example, at Petitioner's facility, individuals who may not have the requisite qualification and licensure may be performing diagnostic sonograms

and purporting to determine gestational age, viability, and ectopic pregnancies. *Id.*, at Add.0249. Moreover, staff refuse to provide information about medical options to terminate a pregnancy unless the client first agrees to submit to a pregnancy test. *Id.*, at Add.0019. Finally, Petitioner makes medical representations that may be misleading. *Inter alia*, Petitioner claims that "a pre-abortion ultrasound is generally required before you take the abortion pill," *id.*, at Add.0272, and "[t]here is an effective process for reversing the abortion pill," *id.*, at Add.0106.

These concerns about whether Petitioner's practices are contrary to state law led the State to investigate further. On November 15, 2023, the Division served a subpoena on Petitioner. Pet. App. 62a-84a. The subpoena's requests were tailored towards evaluating whether Petitioner or its staff engaged in misrepresentations and other prohibited conduct, and seek copies of Petitioner's advertisements and donor solicitations, documents substantiating the claims therein, and identification of the licensed medical personnel involved in the provision of its services. Pet. App. 73a-84a. The subpoena set a December 15, 2023 response deadline. Pet. App. 63a.

B. Procedural History.

Rather than meeting with the State to modify or narrow the subpoena's scope or seek additional time to comply, two days before its response was due, Petitioner sued in federal court, raising a host of constitutional challenges to the subpoena. See Pet. App. 23a-61a. On the subpoena's return date, Petitioner filed an emergency motion for an injunction for the first time. See DNJ Dkt. 12.

On January 12, 2024, after reviewing briefing and argument on the motion for preliminary relief, the district court dismissed the case for lack of jurisdiction and denied the emergency application as moot. See Pet. App. 1a-14a. The court reasoned that the Division lacked power to enforce the subpoena. Pet. App. 6a. Instead, state law places exclusive authority to enforce or quash the subpoena with the New Jersey Superior Court. *Id.* (citing N.J. Stat. Ann. §§ 56:8-6; 45:17A-33(g); 45:1-19). As a result, the court held, because it "cannot yet know whether the state court … will, in fact, enforce the Subpoena in its current form, this matter is not ripe for resolution because no actual or imminent injury has occurred." Pet. App. 12a.

The district court cited significant precedential support for its ripeness ruling. In particular, it emphasized the "factually identical" *Google*, 822 F.3d 212, in which the Fifth Circuit found a federal constitutional challenge to a non-self-executing state investigatory subpoena was unripe because the recipient had not "be[en] forced to comply with the subpoena[] nor subjected to any penalties for noncompliance." *Id.*, at 225; see Pet. App. 9a. This had long been the rule for review of non-self-executing federal subpoenas, Pet. App. 10a (citing *Reisman*, 375 U.S. 440), and *Google* and the district court were "skeptical that a state administrative subpoena can be ripe for federal court adjudication where a similar federal administrative subpoena would not be." *Id.* (explaining that principles of "comity should make [federal courts] less willing to intervene when there is no current consequence for resisting the subpoena and the same challenges raised in the federal suit could be litigated in state court." (quoting *Google*, 822 F.3d, at 226)).

Petitioner filed a notice of appeal and sought an emergency injunction pending appeal from the Third Circuit on January 23, 2024, but did not move for expedited treatment of the merits appeal. CA3 Dkt. 6. The State filed its subpoena-enforcement action in state court on January 30, 2024. CA3 Dkt. 15, at Add.0328-44. The Third Circuit (Krause, Freeman, Scirica, JJ) denied Petitioner's motion for an injunction on February 15, 2024, noting that it was without prejudice to "the filing of a request for an expedited briefing schedule." Pet. App. 21a-22a.

Petitioner filed a petition for a writ of mandamus from this Court on February 26, 2024. The State consented to Petitioner's request to extend briefing and adjourn the state court show-cause hearing until May 20, 2024. CA3 Dkt. 24, at 1. Petitioner then informed this Court that it would not seek emergency injunctive relief.

Only after that point did Petitioner move to expedite its appeal in the Third Circuit on February 29, 2024—14 days after the Third Circuit denied the injunction pending appeal and 37 days after Petitioner filed the notice of appeal. CA3 Dkt. 24. While the Third Circuit motions panel had originally indicated Petitioner could seek expedited treatment, the same panel explained why Petitioner's intervening litigation choices undermined its belated request for expedition: Petitioner had both delayed seeking expedited treatment and claimed expedited treatment was needed to preserve federal district court jurisdiction without ever informing the panel that it was "simultaneously pursuing extraordinary relief from the Supreme Court." CA3 Dkt. 29. The panel also noted that Petitioner had incorrectly represented to this Court that it lacked any "effective recourse remaining in the Third Circuit," *id.* (quoting

Pet.27), notwithstanding its ability to seek expedited treatment, and it thus warned Petitioner to "exercise complete candor in all future filings." *Id.* The motions panel then issued a briefing schedule. CA3 Dkt. 30-2.

REASONS FOR DENYING THE PETITION

This Court should reject Petitioner's extraordinary demands for mandamus or certiorari before judgment. First, Petitioner cannot meet the threshold preconditions for granting mandamus—including showing mandamus is necessary to preserve this Court's own jurisdiction or otherwise appropriate. Second, Petitioner cannot justify mandamus or certiorari before judgment because the question here is not certworthy: no circuit conflict is implicated. Third, Petitioner cannot establish either a clear and indisputable right to mandamus or a basis for certiorari before judgment because the decision below is correct as a matter of hornbook ripeness law.

I. PETITIONER CANNOT SATISFY THE PRECONDITIONS FOR GRANTING MANDAMUS.

For multiple threshold reasons, Petitioner cannot obtain mandamus. This writ represents a "'drastic and extraordinary' remedy 'reserved for really extraordinary causes,'" and has multiple prerequisites beyond the merits. *Cheney v. U.S. Dist. Ct. for Dist. of Colum.*, 542 U.S. 367, 380 (2004); see *Allied Chem. Corp. v. Daiflon, Inc.*, 449 U.S. 33, 34-36 (1980) (noting mandamus is "hardly ever" appropriate given "unfortunate consequence[s]" of the remedy); *Will v. United States*, 389 U.S. 90, 95 (1967) (agreeing "only exceptional circumstances amounting to a judicial usurpation of power will justify the invocation of this extraordinary remedy."). Consistent with that high bar and with the

plain text of 28 U.S.C. § 1651(a), this Court can only grant mandamus if the writ is "necessary or appropriate in aid of [its] jurisdiction[] and agreeable to the usages and principles of law." *Cheney*, 542 U.S., at 380. Moreover, Petitioner must establish that "no other adequate means [exist] to attain the relief he desires" and that "the writ is appropriate under the circumstances." *Id.*, at 380-81. And even if Petitioner makes each of those threshold showings, it must still establish that its arguments are not merely correct but that its "right to issuance of the writ is clear and indisputable." *Id.* Petitioner fails each of these preconditions.

1. As an initial matter, mandamus is not necessary or appropriate to protect this Court's own jurisdiction to hear the parties' ultimate case or controversy. See 28 U.S.C. § 1651(a) (authorizing courts, including this Court, only to "issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law"); *Chandler v. Judicial Council of Tenth Cir. of U.S.*, 398 U.S. 74, 112 (1970) (Harlan, J., concurring) (explaining that the question is whether "the lower court's action might defeat or frustrate this Court's eventual jurisdiction," and collecting cases). As the Petition acknowledges, Petitioner intends to pursue the same federal challenges against the same state subpoena in both federal district court and state court alike. See Pet.28-29; DNJ Dkt. 25, at 4-5; DNJ Dkt. 17, at 6. Its fear is that if a state court rejects those constitutional claims, that judgment would have preclusive effect on litigation in federal district court. See Pet.29.

But that concern cannot support mandamus before this Court. Even assuming an adverse state court ruling would preclude relitigation in a suit in federal

district court—which turns on issues of New Jersey preclusion law—*this Court* would still have the same jurisdiction to review the state court's federal constitutional rulings. This Court, of course, has jurisdiction to entertain certiorari from a final state-court judgment. See 28 U.S.C. § 1257(a); see also *Huffman v. Pursue, Ltd.*, 420 U.S. 592, 605 (1975) ("A civil litigant may, of course, seek review in this Court of any federal claim properly asserted in and rejected by state courts."). In other words, no matter whether a New Jersey state court or the Third Circuit decides Petitioner's claims on the merits, this Court would maintain the same jurisdiction to review these claims if it ultimately sees fit. And that means granting a writ on mandamus would in no way impact this Court's own "respective jurisdiction[]," 28 U.S.C. § 1651(a), and this is not a circumstance where this Court's "appellate review will be defeated"—or even affected—"if a writ does not issue." *Parr v. United States*, 351 U.S. 513, 520 (1956).

The same problem can be understood a second way: Petitioner cannot obtain mandamus because there are "other adequate means" to litigate its claims. *Cheney*, 542 U.S., at 380-81; see *Heckler v. Ringer*, 466 U.S. 602, 616 (1984) (mandamus can only issue if Petitioner "has exhausted all other avenues of relief"). Petitioner's ability to seek relief from the state courts for the same federal constitutional claims, and, barring that, its ability to seek this Court's review, provide adequate alternative paths. "[S]tate courts have inherent authority, and are thus presumptively competent, to adjudicate claims arising under the laws of the United States." *Tafflin v. Levitt*, 493 U.S. 455, 458 (1990); *Mo. Pac. Ry. Co. v. Fitzgerald*, 160 U.S. 556, 583 (1896) (same). Petitioner has not shown the burdens of "litigation in state court," Pet.27, will exceed the burdens of federal district court litigation, but in any event, Petitioner

overlooks "the bedrock principle of mandamus jurisprudence that the burdens of litigation are normally not a sufficient basis for issuing the writ." *In re al-Nashiri*, 791 F.3d 71, 80 (CADC 2015); cf. also *FTC v. Standard Oil Co. of Cal.*, 449 U.S. 232, 244 (1980) ("Mere litigation expense, even substantial and unrecoupable cost, does not constitute irreparable injury."); *Coinbase, Inc. v. Bielski*, 599 U.S. 736, 746 (2023) (same). Because an alternative to litigate these claims and to eventually seek this Court's review is so readily available, mandamus is necessarily not.

Indeed, Petitioner's theory of mandamus proves far too much: if parties could seek mandamus from this Court every time a state court judgment may be preclusive of litigation in federal district court, all manner of concurrent state suits would justify granting the writ regardless of their impact on this Court's own jurisdiction. But this Court has long held that when there are parallel litigations in state and federal courts, "each court is free to proceed in its own way and in its own time, without reference to the proceedings in the other court." *Kline v. Burke Constr. Co.*, 260 U.S. 226, 230 (1922) (recognizing this holds true notwithstanding the potential res judicata effect). This Court should decline Petitioner's invitation to turn the extraordinary mandamus remedy into an ordinary one. See *Bankers Life & Cas. Co. v. Holland*, 346 U.S. 379, 382-83 (1953) ("If we applied the reasoning advanced by the petitioner, then every interlocutory order which is wrong might be reviewed under the All Writs Act.").

Petitioner's miscellaneous efforts to address this shortcoming are unavailing. Primarily, Petitioner contends that it is irrelevant that this Court would still maintain jurisdiction, asserting mandamus is

proper "to save a litigant from the loss of its right to redress in the federal courts." Pet.30. To the extent Petitioner demands mandamus to preserve a federal district court's jurisdiction, that ignores Section 1651(a)'s plain language requiring that a court must first find that granting mandamus would be "in aid of [its] respective jurisdiction[]" before issuing the writ; the law does not extend to protecting the hypothetical jurisdiction of a different lower court. Pet.14 (alterations in original) (quoting 28 U.S.C. § 1651(a)). And it ignores that this Court remains a "federal court" in which "redress" could ultimately be had, Pet.30, just as much from a future state-court decision as from a federal one.

Although Petitioner repeatedly cites the 114-year old decision in *McClellan v. Carland*, 217 U.S. 268 (1910), Petitioner badly misunderstands that case, where this Court's eventual jurisdiction was actually imperiled. In *McClellan*, out-of-state plaintiffs, alleged heirs of a decedent, invoked diversity jurisdiction to pursue state-law claims against an in-state estate administrator in the District of South Dakota. See 217 U.S., at 275-76. The federal district court stayed the federal action, and in the meantime, a state-court action was instituted to establish South Dakota's "title and interest in and to the property in the estate" of the same decedent. *Id.* Crucially, because the state-court action turned on questions of state law—and there was no suggestion the resolution of the state-law question would impact federal rights—this Court would have had no jurisdiction over the future state-court judgment. See *Herb v. Pitcairn*, 324 U.S. 117, 125-26 (1945) ("Our only power over state judgments is to correct them to the extent that they incorrectly adjudge federal rights."). That explains why this Court reversed the Eighth Circuit's denial of a writ of mandamus and

concluded that the writ may issue if the state court judgment would "prevent further proceedings in the Federal court," *McClellan*, 217 U.S., at 281-82; had this Court not stepped in, no federal court would have had jurisdiction.[2] That is unlike in this case, where this Court would retain full jurisdiction to review a final state-court judgment involving Petitioner's federal constitutional rights.

Finally, contrary to Petitioner's arguments, there is no risk that allowing this case to proceed in the state court would eventually moot this Court's ability to review Petitioner's federal constitutional claims. See Pet.29. Petitioner claims that the state court may require Petitioner to produce the subpoenaed documents, but even if the state court does so, Petitioner could seek an emergency stay from the state appellate courts and then from this Court—confirming, again, that this Court's jurisdiction is unaffected and an alternative to mandamus exists. See, e.g., *Wis. Legislature v. Wis. Elections Comm'n*, 595 U.S. 398, 399-401 (2022) (per curiam) (granting certiorari on stay application and reversing state court decision); *Maryland v. King*, 569 U.S. 435, 441 (2013) (reversing state court judgment, after granting a stay); *Am. Tradition P'ship, Inc. v. Bullock*, 565 U.S. 1187 (2012) (Kennedy, J., in Chambers) (granting stay of state court judgment pending disposition of petition for writ of certiorari). The State is not suggesting Petitioner would be entitled to a stay

[2] Moreover, this Court did "not [hold] that the writ should issue," in *McClellan*, "but that the Court of Appeals should have required the District Judge to show cause why the writ should not issue." *Will v. Calvert Fire Ins. Co.*, 437 U.S. 655, 663 & n.6 (1978). Petitioner would go significantly further here.

on the merits. But what matters for mandamus is that this Court has *jurisdiction* to grant one.[3]

More fundamentally, even accepting Petitioner's premise that it will produce documents before this Court can consider an emergency application, the case would still not be moot at that point, and this Court's jurisdiction would be preserved. After all, even if documents were produced, there would still be a live controversy for this Court to resolve because Petitioner could obtain judicial relief through an order that documents be destroyed or returned. See *Church of Scientology of Cal. v. United States*, 506 U.S. 9, 15 (1992) (compliance with IRS subpoena did not moot appeal "because if the summons were improperly issued or enforced a court could order" that the records be "returned or destroyed"); *Exxon Mobil Corp. v. Healey*, 28 F.4th 383, 393 (CA2 2022) (same); *Gluck v. United States*, 771 F.2d 750, 754 (CA3 1985) (production of documents did not moot controversy because if "summonses were illegal, [court] can still fashion a remedy—prohibition of the use of the summoned

[3] Petitioner's stated concern that the state court will require Petitioner to produce the subpoenaed documents without considering the merits because it has done so before is baseless and irrelevant. Pet.29-30. The state appellate and trial court decisions Petitioner cites considered and rejected the federal constitutional arguments raised. See *Platkin v. Smith & Wesson Sales Co., Inc.*, 289 A.3d 481, 491-97 (N.J. Super. Ct. App. Div. 2023); Order, *Grewal v. Smith & Wesson Sales Co.*, No. C-25-21 (N.J. Super. Ct. June 30, 2021). In any event, the dispositive jurisdictional point remains: if the state court does require Petitioner to produce documents without considering its constitutional defenses, Petitioner could always seek emergency relief from state appellate courts or ultimately from this Court on that very basis.

documents").[4] In short, no judgment from the state court would moot this Court's authority to ultimately review the merits of Petitioner's federal claims. Because this Court retains full jurisdiction, mandamus is inappropriate.

2. Mandamus is also not available because adequate alternative remedies are available from the Third Circuit, and Petitioner's own litigation choices rendered mandamus inappropriate under all the circumstances. See *Cheney*, 542 U.S., at 380 (detailing both preconditions). The Petition's central premise is that the Third Circuit will not resolve the ripeness question before a state court considers the parallel state-court action, see Pet.27-29, but that is speculation. Moreover, Petitioner's contention that the Third Circuit's appellate process is not moving quickly enough is a problem of Petitioner's own making. To begin, Petitioner *chose* not to seek expedited review in the Third Circuit in a timely manner. Although the district court issued its decision on January 12, 2024, Petitioner did not initiate any appeal for 11 days, and it waited another 37 days to file any motion to expedite. CA3 Dkt. 24 (Feb. 29, 2024). That is long after the 14-day window set by the local rules. CA3 L.A.R. 4.1. And although Petitioner sought an injunction pending appeal before moving to expedite, there was no reason why it could not have sought expedition simultaneously. See, e.g., *Donald J. Trump for President, Inc. v. Sec'y of Pa.*, 830 F. App'x 377, 385 (CA3 2020); *In re Revel AC, Inc.*, 597

[4] Petitioner misunderstands the import of *Exxon*, see Pet.30, which concluded that Exxon's federal constitutional claims against the New York Attorney General were moot only because Exxon *won* at a state-court trial, and therefore there was no longer any risk that the documents would be used against it. See 28 F.4th, at 396.

F. App'x 115, 116 (CA3 2015). And when the Third Circuit declined to issue an injunction on February 15, 2024, the panel expressly reminded Petitioner in its denial order that it could file a motion to expedite—yet Petitioner waited another two weeks before actually doing so.

The motions panel ultimately denied Petitioner's eventual motion to expedite partly because of this delay, see Order, CA3. Dkt. 29 ("Appellant did not promptly file a motion to expedite."), and partly because Petitioner failed to "advise [the Third Circuit] it was seeking that relief in the Supreme Court" via mandamus and failed to "advise the Supreme Court that it was filing a motion to expedite in this Court." *Id.* (noting Petitioner had suggested to both courts that they represented the only path to protecting federal district court jurisdiction and cautioning Petitioner to express "full candor" to the court going forward). Because Petitioner's own choices contributed to its claimed predicament, Petitioner cannot now complain that it has no "effective recourse" remaining in the Third Circuit. Pet.27.[5]

3. "[E]ven if" the other prerequisites to mandamus "have been met," *Cheney*, 542 U.S., at 381, the Petition

[5] Nor does Petitioner successfully overcome this problem and prove that mandamus is "appropriate" by citing *Ex parte Schollenberger*, 96 U.S. 369 (1877), and *In re Hohorst*, 150 U.S. 653 (1893). See Pet.30-31. Both cases, of course, long predate 28 U.S.C. § 1651(a) and this Court's modern mandamus caselaw. More fundamentally, however, neither case involves a situation in which the basis for the predicament of which Petitioner complains is its own litigation choices below. Nor did they involve a situation in which this Court would retain its jurisdiction to review the same merits dispute between the parties arising from a state-court judgment.

has additional defects that preclude such extraordinary relief: the writ is neither necessary nor "peculiarly appropriate" for reviewing this threshold ripeness argument, *Ex parte United States*, 287 U.S. 241, 248-49 (1932). What Petitioner demands of this Court is extraordinary: to issue mandamus in mere weeks, without merits briefing, without a substantive Third Circuit decision, without the benefit of argument, on a question of ripeness on which both the district court and the Fifth Circuit have ruled against Petitioner's view. Petitioner claims this truncated "procedural posture" is necessary or "this important question might forever elude this Court's review," Pet.34, but as this very case shows, that is wrong: Petitioner had time to seek an injunction pending appeal and an expedited appeal, but at least in large part due to its litigation choices, was unsuccessful before the Third Circuit in those efforts. See *supra* at 10-11. Other cases could tee up this ripeness issue in the normal course.

Regardless of how this issue may be raised in the future, Petitioner must still establish its "clear and indisputable" right to relief from this Court on the ripeness question. *Cheney*, 542 U.S., at 381. That requires two distinct showings: that the Court would "clearly and indisputably" find the ripeness question worthy of review under traditional certiorari criteria, and that it would "clearly and indisputably" find the district court's resolution of the ripeness question incorrect. Cf. *Does 1-3 v. Mills*, 142 S. Ct. 17, 18 (2021) (Barrett, J., concurring) (explaining that in determining when "to grant extraordinary relief," this Court's review should "encompass not only an assessment of the underlying merits but also a discretionary judgment about whether the Court should grant review in the case," to avoid this Court resolving disputes "in cases that it would be unlikely to take—and to do so on a

short fuse without benefit of full briefing and oral argument"). As explained *infra*, Petitioner cannot "clearly and indisputably" demonstrate certworthiness or error on this question.

II. TRADITIONAL CERTIORARI CRITERIA UNDERMINE MANDAMUS AND CERTIORARI BEFORE JUDGMENT.

To justify mandamus or certiorari before judgment, Petitioner must show that its Petition "clear[ly] and indisputabl[y]" justifies certiorari on the ripeness question, *Cheney*, 542 U.S., at 381, or that the ripeness question is so important as to "justify deviation from normal appellate practice and to require immediate determination in this Court," Sup. Ct. R. 11. Perhaps for that reason, Respondents have not identified a single instance in which this Court has granted certiorari before judgment solely to review a threshold jurisdictional question that would not dispose of the parties' overall case or controversy—the very sort of piecemeal review that the Federal Rules have long disfavored. Nor should this case be the first: Petitioner does not satisfy the traditional certiorari criteria, Sup. Ct. R. 10, let alone the stricter standards governing mandamus or certiorari before judgment. To the contrary, Petitioner fails to identify a single circuit that would find this dispute ripe, and relies on the very sort of intra-circuit tension that undermines the case for certiorari.

1. Petitioner fails to demonstrate a split is implicated here. The decision below and the Fifth Circuit both hold that a federal-court challenge to a non-self-executing subpoena is not ripe before a court with

jurisdiction to enforce that subpoena actually orders its enforcement. See Pet. App. 6a-10a; *Google*, 822 F.3d, at 224-26. Petitioner errs in claiming that decisions from the Sixth and Eleventh Circuits conflict with that ripeness holding. And its claim of a 1-1 split between the Fifth and Ninth Circuits is not implicated here, because under either circuit's test, Petitioner's claims are unripe for federal adjudication.

Begin with the cases from the Sixth and Eleventh Circuits. *Online Merchants Guild v. Cameron*, 995 F.3d 540 (CA6 2021), could not create a split regarding the ripeness of a pre-enforcement challenge to a subpoena because that decision did not involve a challenge to a subpoena whatsoever. Instead, the question was whether an organization had *standing* to challenge a binding Kentucky price-gouging *statute*. See *id.*, at 544, 549-52. The Sixth Circuit held that the Guild had standing because its members alleged they were engaging in activity that was arguably proscribed by the statute. *Id.*, at 549-52. The sole reason the Sixth Circuit even mentioned a civil investigative demand (CID) issued to one of the Guild's members was because the CID's language helped confirm there was "a credible threat of prosecution" under the statute. *Id.* That is not a holding that a federal challenge to a CID that had not yet been enforced would itself be ripe—which likely explains why *Online Merchants Guild* did not mention *Google* or the cases on which *Google* relied.

A Sixth Circuit decision two years later confirms Petitioner misread *Online Merchants Guild*—and that it has nothing to do with the ripeness issue in this case. *CBA Pharma, Inc. v. Perry*, No. 22-5358, 2023 WL 129240 (CA6 Jan. 9, 2023), involved a challenge from the recipient of a state investigative subpoena. Far from treating *Online Merchants Guild* as relevant, the

panel relied instead on *Google* in agreeing that the recipient's challenge was not yet ripe and noting the recipient could instead "challenge the scope of [the] subpoena" in a future "subpoena-enforcement action" in state court. *Id.*, at *3-4 (explaining the recipient had not alleged sufficient harms separate from the hardship of waiting for such enforcement). *CBA Pharma*'s reliance on *Google* underscores that the Sixth Circuit did not split from it.

Nor did *Major League Baseball v. Crist*, 331 F.3d 1177 (CA11 2003), address whether a federal challenge to a non-self-executing state subpoena is ripe. There, the MLB challenged an antitrust investigation and CID brought by the Florida Attorney General, claiming the state investigation was preempted by the federal "business of baseball" exemption to antitrust laws. *Id.*, at 1181-82. The Eleventh Circuit agreed and held that this exemption immunized the MLB from any antitrust investigation. *Id.*, at 1188-89. But the court did not, as Plaintiff contends, "recognize[] that MLB had a ripe federal challenge" to the CID. Pet.24. Neither party raised ripeness and/or jurisdiction to the Eleventh Circuit, and so the court did not address the ripeness of a federal challenge to a subpoena. And it is hornbook law that "[w]hen a potential jurisdictional defect is neither noted nor discussed in a federal decision, the decision does not stand for the proposition that no defect existed." *Ariz. Christian Sch. Tuition Org. v. Winn*, 563 U.S. 125, 144 (2011); see also, e.g., *Hagans v. Lavine*, 415 U.S. 528, 533 n.5 (1974) (disregarding cases in which parties contend that "jurisdiction ha[s] been passed . . . *sub silentio*"). Said another way, *MLB* could not have split with *Google* and the decision below on an issue never presented to it and that it did not address once in its opinion.

Finally, Petitioner's assertion of a 1-1 split between the Fifth and Ninth Circuits is not implicated here—because under either circuit's test, these claims could not proceed. Petitioner is correct that *Twitter*, 56 F.4th 1170, expressly declined to follow *Google*'s reasoning that challenges to a non-self-executing state subpoena are unripe until they are enforced. 56 F.4th, at 1178 n.3. But even assuming a 1-1 split could satisfy the heightened standards for mandamus and certiorari before judgment, Petitioner overlooks that no conflict is implicated in this case, because *Twitter* would still bar Petitioner's claims. After all, *Twitter* found that the company's claims were still unripe on other grounds—namely, that a subpoena recipient's "naked assertion that its speech has been chilled is 'a bare legal conclusion' upon which it cannot rely to assert injury-in-fact" to proceed under the strictures of Article III. *Id.*, at 1175; see *id.* (requiring Twitter to "clearly . . . allege *facts* demonstrating" that the subpoena "actually chilled employees' speech" or chilled Petitioner's decision-making); *Laird v. Tatum*, 408 U.S. 1, 10-14 (1972) (holding the "mere existence" of an investigation does not "produce[] a constitutionally impermissible chilling effect" that warrants review); *CBA Pharma*, 2023 WL 129240, at *4 (same).

The same is true in this case. Like Twitter, Petitioner only offers speculative and conclusory assertions that mere issuance of the subpoena "would" chill speech. See Pet. App. 44a-48a. Petitioner fails to "clearly . . . allege *facts* demonstrating" chill, and offers no facts supporting the notion that the mere issuance of the subpoena "actually chilled employees' speech" and/or Petitioner's own decisions. *Twitter*, 56 F.4th, at 1175. That failure is particularly striking here: while *Twitter* arose on a motion-to-dismiss posture, Petitioner seeks a preliminary injunction and therefore had to provide

"evidence" of its chill. See *Nat'l Shooting Sports Found. v. Att'y Gen. N.J.*, 80 F.4th 215, 220 (CA3 2023) (noting parties cannot obtain preliminary relief based only on "bold assertion" of "subjective chill" that is "backed by no evidence"). Because Petitioner makes the same conclusory allegations of chilled speech that the *Twitter* court rejected, no split between *Google* and *Twitter* is implicated in this case: this particular action is unripe under either court's reasoning.

2. Petitioner's additional claims of a split between the Third and Fifth Circuits are particularly strange. See Pet.23-24. Were Petitioner correct that the Third Circuit had previously held federal challenges to non-self-executing subpoenas to be ripe, Pet.23, that would cut against certiorari. After all, that a petition comes from a circuit that already favors Petitioner's rule is reason to deny review—not to grant it. And indeed, any sign of intra-circuit tension would suggest that the proper remedy is appeal and/or en banc review in that circuit, not this Court's review. See, e.g., *Davis v. United States,* 417 U.S. 333, 340 (1974) (acknowledging certiorari had been denied when the claimed "conflict" was actually "an intra-circuit one").

In any event, Petitioner is incorrect: the Third Circuit has never concluded that a challenge to a non-self-executing state subpoena is ripe. Although Petitioner relies on *Smith & Wesson Brands v. Attorney General of New Jersey*, 27 F.4th 886 (CA3 2022), that decision did not split from *Google* (or even mention it). *Smith & Wesson* did not ask whether federal courts enjoy jurisdiction over challenges to investigatory subpoenas before those subpoenas are enforced in state court. Nor could it have: by the time the Third Circuit issued an opinion, the New Jersey Attorney General had *already* obtained a state court order enforcing a state-law

subpoena—thus obviating the ripeness problem that exists in this case. *Id*. at 890. Nor does the Third Circuit's decision to reject *Younger* abstention bear in any way on this case or on the purported split. Contrary to Petitioner's claim, "rejecting a district court's abstention" decision does not "necessarily affirm[]" that the court also had Article III jurisdiction. Pet.23. Instead, this Court has confirmed that a federal court need not "decide whether the parties present an Article III case or controversy before abstaining under *Younger v. Harris*, 401 U.S. 37 (1971)." *Sinochem Int'l Co. v. Malaysia Int'l Shipping Corp.*, 549 U.S. 422, 431 (2007); see also *Kelly v. Maxum Specialty Ins. Grp.*, 868 F.3d 274, 281 n.3 (CA3 2017). Indeed, *Google* itself held that *Younger* abstention did not apply before finding the claims unripe. See 822 F.3d, at 223-24.

Petitioner at most musters a shallow dispute between the Fifth and Ninth Circuits that is not implicated here, as both courts would bar this challenge. That is insufficient for certiorari, let alone for mandamus or certiorari before judgment.

III. THE LACK OF AN ERROR BELOW UNDERMINES MANDAMUS AND CERTIORARI BEFORE JUDGMENT.

Finally, Petitioner cannot demonstrate a clear and indisputable right to relief, or justify deviation from normal appellate practice, because it cannot even establish that the district court's resolution of the ripeness question was incorrect.

1. This Court has long concluded that constitutional challenges to a non-self-executing subpoena are not ripe until the agency obtains an enforcement order

from the court with the authority to issue one. In *Reisman*, this Court held that the recipient of an IRS subpoena could not obtain an injunction before the subpoena was enforced. 375 U.S., at 445-47. This Court noted there was an "adequate remedy at law": to enforce the subpoena, the IRS Commissioner must first obtain an order from a federal district court, which could only issue such order after conducting "an adversary proceeding affording a judicial determination of the challenges to the summons," including an opportunity for the recipient to lodge any challenges to the subpoena. *Id.*, at 443, 446. And because the recipient would have a "full opportunity for judicial review before any coercive sanctions may be imposed," the recipient "would suffer no injury while testing the summons." *Id.*, at 449-50.

That rule follows from blackletter ripeness principles. In *Abbott Laboratories v. Gardner*, this Court explained that the ripeness doctrine's "basic rationale is to prevent the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements over administrative policies, and also to protect the agencies from judicial interference until an administrative decision has been formalized and its effects felt in a concrete way by the challenging parties." 387 U.S. 136, 148-49 (1967). As this Court held, only when an administrative action "requires an immediate and significant change in the plaintiffs' conduct of their affairs with serious penalties attached to noncompliance," has the plaintiff suffered a "hardship" to render the pre-enforcement challenge ripe for judicial review. *Id.*, at 149, 153. The *Reisman* rule simply applies those principles to non-self-executing subpoenas. After all, (1) if the enforcement of the subpoena depends on a different court that may or may not issue an enforcement order after an adversary

proceeding, the issue is not fit for review until then, and (2) where the subpoena recipient will not face sanctions before having its day in court in that separate proceeding, the recipient will face no hardship, either. See *Reisman*, 375 U.S., at 440, 447-50.

For decades, courts have uniformly applied *Reisman* to find that constitutional challenges to non-self-executing federal agency subpoenas are unripe until they are enforced by the court with the authority to enforce them. See, e.g., *Atl. Richfield Co. v. FTC*, 546 F.2d 646, 649 (CA5 1977) (pre-enforcement challenge to subpoena unripe because plaintiff "had an adequate remedy at law through FTC enforcement actions and suffered no undue hardship"); see also *Schulz v. IRS*, 413 F.3d 297, 303 (CA2 2005); *Mobil Expl. & Producing U.S., Inc. v. Dep't of Interior*, 180 F.3d 1192, 1203 (CA10 1999); *Gen. Fin. Corp. v. FTC*, 700 F.2d 366, 371 (CA7 1983); *Wearly v. FTC*, 616 F.2d 662, 667-68 (CA3 1980).

As the district court correctly explained, those principles hold true here. As in *Reisman* and *Google*, the State may only enforce the subpoena against Petitioner by initiating an enforcement action in the New Jersey Superior Court and obtaining an enforcement order from that court. Pet. App. 6a (noting state law requires the State to "file an enforcement action in state court"); N.J. Stat. Ann. § 56:8-6 (CFA); § 45:17A-33(g) (CRIA); § 45:1-19 (P&O law). That is, Petitioner's claims "would ripen only after the contingent future event that forms the basis of its alleged injury occurs, i.e., if and when the state court enforces the Subpoena in its current form." Pet. App. 11a. Under *Reisman* and its progeny, "neither 'the issuance of [a] non-self-executing administrative subpoena nor the possibility of some future enforcement action created an imminent threat of irreparable injury ripe for adjudication.'" Pet.

App. 7a (alteration in original) (quoting *Google*, 822 F.3d, at 228).

2. Petitioner presses two unpersuasive counter-arguments to this straightforward analysis—that *Reisman* categorically never applies to state subpoenas, and that Petitioner faces sanctions from this New Jersey subpoena. Both fail.

a. *Google* and the district court rightly rejected the argument that a challenge to a non-self-executing state subpoena is ripe even if the subpoena would otherwise fall within *Reisman* and its progeny. While *Reisman* involved a federal subpoena, there is simply "no reason why a state's non-self-executing subpoena should be ripe for review when a federal equivalent would not be." *Google*, 822 F.3d, at 226; see Pet. App. 7a (same). In both cases, the officials can only enforce their subpoenas by "'apply[ing]' to" the court designated by statute for "'an order' granting injunctive or other relief." *Google*, 822 F.3d, at 225. And in both cases, if the recipient would not be "forced to comply" or face sanctions "absent a court order," then that recipient "would 'suffer no undue hardship from denial of judicial relief.'" *Id.* And so, "[i]f anything, comity should make [federal courts] less willing to intervene when there is no current consequence for resisting the subpoena and the same challenges raised in the federal suit could be litigated in state court." *Id.*, at 226.

Petitioner replies that *Google* and the decision below misapplied *Reisman*, but its three arguments—that *Reisman* is a federal Administrative Procedure Act case, not a ripeness case; that applying *Reisman* to state subpoenas contravenes *Knick v. Township of Scott*, 139 S. Ct. 2162 (2019); and that subpoena recipients should not be required to litigate in state court—are all inconsistent with precedent.

First, Petitioner's sole response to *Reisman* is that it is better understood as a federal APA case and is therefore inapplicable to state subpoenas, see Pet.22, but its reading is incorrect. *Reisman* made clear that its holding did not turn on whether the subpoena recipient brought a "challenge to the summons" that was "rejected" in an IRS proceeding; instead, the problem was that the recipient would not experience "injury" until a court with jurisdiction to enforce the IRS summons did so. See 375 U.S., at 445-46 (explaining that the witness could not face "contempt" until there was "an order of the district judge"). Understandably, a substantial body of case law applying *Reisman* likewise understands the decision to fit within the *Abbott Labs* ripeness framework, not exhaustion. See *Schulz*, 413 F.3d, at 303; *Mobil Expl.*, 180 F.3d, at 1203; *In re Ramirez*, 905 F.2d 97, 98-100 (CA5 1990); *Gen. Fin. Corp.*, 700 F.2d, at 371; *Wearly*, 616 F.2d, at 667-68; *Atl. Richfield*, 546 F.2d, at 649.[6] As such, *Reisman* is equally applicable to subpoenas issued under state law.

Second, contrary to Petitioner's claims, Pet.20-21, applying *Reisman* to non-self-executing state subpoenas is in no way inconsistent with *Knick*, 139 S. Ct. 2162. *Knick* confirms that Section 1983 imposes no state-court administrative-exhaustion requirement. That case involved a situation in which a property owner had already suffered the taking of his property, but had not obtained a state court's determination of what "just compensation" is owed. See 139 S. Ct., at 2172-73. As this Court held, because the "Fifth Amendment

[6] And while *Twitter* saw *Reisman* as a lack-of-injury decision rather than a ripeness one, 56 F.4th, at 1178-79, that does not suggest, as Petitioner claims, that *Reisman* was an APA exhaustion decision applicable only to federal subpoenas.

right to compensation" attaches "immediately upon a taking," the owner suffered a complete injury under Section 1983 the moment the government took the property—allowing it to initiate a federal-court action. *Id.*, at 2171-72. Because the constitutional injury had already occurred, the property owner need not take additional steps to exhaust state remedies regarding just compensation before vindicating his Fifth Amendment rights. *Id.*, at 2172-73.

This case could hardly be more different: this is a case about ripeness (which does apply to Section 1983), not a case about exhaustion (which does not). Unlike the constitutional injury suffered "immediately upon a taking," *Knick*, 139 S. Ct., at 2172, a subpoena recipient "suffer[s] no injury" from the mere issuance of a non-self-executing subpoena, *Reisman*, 375 U.S., at 449. And that distinction makes all the difference: try as Petitioner might to reframe a normal ripeness requirement as an exhaustion requirement, Pet.20-23, its problem is not failure to exhaust state-law remedies, but lack of any proper claim to begin with. See Pet. App. 11a (explaining Petitioner's "alleged injury" turns entirely on a "contingent future event"). Unlike in *Knick*, Petitioner has not "been injured by the Government's action" and is merely "suing over a hypothetical harm" that may never come to pass if the state court—the government actor that New Jersey statute tasks with subpoena enforcement—does not compel compliance. *Pakdel v. City & Cnty. of San Francisco*, 594 U.S. 474, 479 (2021). At this juncture, "the Court could only speculate as to whether the state court would, in fact, find the Subpoena enforceable." Pet. App. 11a.

Third, Petitioner complains that unlike in *Reisman* and other cases involving federal subpoenas, the

upshot of the ripeness holding means that a state court would be adjudicating the federal constitutional claims. But Petitioner's effort to resist such state court process flies in the face of this Court's teachings, which have repeatedly rejected the "premise that every litigant who asserts a federal claim is entitled to have it decided on the merits by a federal, rather than a state, court." *Huffman*, 420 U.S., at 606; see also *id.*, at 606 n.18 (adding state-court res judicata does not offend policies underlying Section 1983). Although the state court may not be Petitioner's "first choice," Pet.16, the same is true for litigants in the federal-subpoena cases who prefer their claims be heard in a different federal district court, see *Wearly*, 616 F.2d, at 663; *Atl. Richfield*, 546 F.2d, at 650. "State courts, like federal courts, have a constitutional obligation to safeguard personal liberties and to uphold federal law," *Stone v. Powell*, 428 U.S. 465, 493 n.35 (1976), and are "competent to adjudicate constitutional claims," *Doran v. Salem Inn*, 422 U.S. 922, 930 (1975). See *supra* at 14. And because Petitioner may still seek certiorari from this Court after state-court adjudication, denying relief will not "foreclose its right to federal redress." Pet.5.[7]

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[7] Moreover, Petitioner's fears that any hypothetical state court order enforcing this subpoena will preclude its claims in federal district court is speculative. It remains to be seen what claims or defenses Petitioner presents in state court, how the court resolves them, and what procedures it employs. See, e.g., *Bank Leumi USA v. Kloss*, 233 A.3d 536, 541 (N.J. 2020) (state "entire controversy doctrine" for preclusion turns on "the factual circumstances of individual cases"). And Petitioner's claim the *Rooker-Feldman* doctrine would bar federal-court review after a state court's enforcement order, Pet.21-22, is wrong. *Rooker-Feldman* applies if (1) "the losing party in state court filed suit in federal court after the state proceedings ended," (2) "complaining

b. Finally, Petitioner errs in claiming that even if some challenges to non-self-executing state subpoenas are unripe under *Reisman*, the challenge to this particular New Jersey subpoena may still proceed. Petitioner contends that it actually is facing a present threat of sanctions for failure to comply with the subpoena that is causing harm, Pet.19, but Petitioner's argument overlooks both state law and the record. As to the former, New Jersey statutes require the Attorney General to apply to the state court for an order enforcing the subpoena, and that court has complete discretion on whether to grant relief. See N.J. Stat. Ann. § 56:8-6 (CFA) (providing upon failure to "obey any subpoena," the Attorney General "may apply to the Superior Court and obtain an order . . . [g]ranting such other relief as may be required"); N.J. Stat. Ann. § 45:17A-33(g) (CRIA) (similar); N.J. Stat. Ann. § 45:1-19 (P&O law) (similar). In other words, the Attorney General and Division cannot themselves impose penalties.

Moreover, precisely as in *Reisman*, the State acknowledges that any sanctions are "inapplicable to persons who appear and in good faith interpose defenses as a basis for noncompliance." 375 U.S., at 447, n.6. Indeed, Petitioner does not allege (and cannot show) that New Jersey courts would impose penalties for not responding to the subpoena while the recipient brings good-faith challenges to the subpoena's validity, and the State is not aware of a single instance in which a

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of an injury caused by the state-court judgment" and (3) "seeking review and rejection of that judgment." *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 291 (2005). Given Petitioner's ability to appeal the state trial-court order, "the state court proceedings" would not have "ended." *Id.*; see also, e.g., *Malhan v. Sec'y U.S. Dep't of State*, 938 F.3d 453, 459 (CA3 2019) (collecting cases).

New Jersey court has done so. Finally, that the State is in fact not seeking penalties for noncompliance with the subpoena before a court rules on Petitioner's defenses, see CA3 Dkt. 15, at Add.0344, and has committed not to do so, see DNJ Dkt. 17, 21, forecloses any claim that Petitioner is confronted with the "horns of a dilemma" between "turn[ing] over the documents . . . or suffer[ing] civil . . . penalties as a result." *Wearly*, 616 F.2d at 667. And because Petitioner is facing no risk of sanctions from its present noncompliance, the district court rightly concluded that Petitioner will only suffer "a constitutionally-sufficient injury" to ripen its claims "if and when the state court enforces the Subpoena in its current form." Pet. App. 10a-11a. Until then, and consistent with decades of caselaw from this Court and the lower courts, this action cannot proceed.

CONCLUSION

The Petition should be denied.

Respectfully submitted,

MATTHEW J. PLATKIN
Attorney General of New Jersey
JEREMY M. FEIGENBAUM*
Solicitor General
ANGELA CAI
Deputy Solicitor General
DAVID LEIT
Assistant Attorney General
KEVIN BUI
LIZA B. FLEMING
MEGHAN MUSSO
JESSICA L. PALMER
SAMUEL L. RUBINSTEIN
LAUREN E. VAN DRIESEN
Deputy Attorneys General
OFFICE OF THE ATTORNEY
GENERAL OF NEW JERSEY
25 Market Street, Box 080
Trenton, NJ 08625
(862) 350-5800
jeremy.feigenbaum@njoag.gov

* *Counsel of Record*

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