No. 25-229

In the Supreme Court of the United States

EMIGRANT MORTGAGE COMPANY, INC.,
AND EMIGRANT BANK, PETITIONERS

v.

JEAN ROBERT SAINT-JEAN, ET AL.,
RESPONDENTS.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUPPLEMENTAL BRIEF FOR PETITIONERS

MATTHEW A. SCHWARTZ
Counsel of Record
RICHARD H. KLAPPER
JASON P. BARNES
SULLIVAN & CROMWELL LLP
125 Broad Street
New York, NY 10004
(212) 558-4000
schwartzmatthew@sullcrom.com

Counsel for Petitioners
Emigrant Mortgage Company,
Inc. and Emigrant Bank

SUPPLEMENTAL BRIEF FOR PETITIONERS

Pursuant to Rule 15.8, petitioners submit this supplemental brief to call the Court's attention to the Department of Justice's ("DOJ") December 9, 2025 issuance of a new rule eliminating disparate impact liability under Title VI regulations ("Rule").[1] The Rule supports this Court's review of Emigrant's petition in two key ways. First, the Rule shows the importance that the federal government now places on limiting the scope of disparate impact liability—the central issue in Emigrant's petition. *See* Pet. 3-4. Second, DOJ's rationale affirms the importance of this Court's "robust causality requirement"—which the Second Circuit below called "non-binding" *dicta*—in cabining Fair Housing Act ("FHA") disparate impact claims. *See* Pet. 26-32. At a minimum, the Rule demonstrates why the Court should call for the views of the Solicitor General.

1. In an April 23, 2025 Executive Order, President Trump announced that it "is the policy of the United States to eliminate the use of disparate-impact liability in all contexts to the maximum degree possible to avoid violating the Constitution, Federal civil rights laws, and basic American ideals." Exec. Order No. 14281 at 17538; *see* Pet. 7. In that order, President Trump directed federal agencies to "initiate appropriate action to repeal or amend the implementing regulations" that "contemplate

[1] *See* Rescinding Portions of Department of Justice Title VI Regulations To Conform More Closely With the Statutory Text and To Implement Executive Order 14281, 90 FR 57141-01 (Dec. 9, 2025), https://tinyurl.com/39kcyfwd.

disparate-impact liability." Exec. Order No. 14281 at 17537.

2. Consistent with that directive, several federal agencies, including the Office of the Comptroller of the Currency, the Consumer Financial Protection Bureau, and the Department of Housing and Urban Development ("HUD"), have rescinded or indicated that they will rescind guidance providing for disparate impact liability. *See* Pet. 7-8; Reply 8. Most relevant to this case, HUD has proposed a rule that would eliminate disparate impact liability under the FHA regulations that is currently pending Office of Information and Regulatory Affairs review before being published. *See* Reply 8 n.1.

The DOJ's Rule makes it the latest federal Department or Agency to act to limit or terminate disparate impact liability. The Rule rescinds the DOJ's existing disparate impact liability regulations under Title VI of the Civil Rights Act of 1964. Prior to the rule change, DOJ's Title VI regulations had permitted disparate impact liability, *see* 28 C.F.R. § 42.104(b)(2) (2024). The Rule clarifies that DOJ's "Title VI regulations do not prohibit conduct or activities that have a disparate impact" and that DOJ "will not pursue Title VI disparate-impact liability." 90 FR 57141-01 at 57141.

Contrary to the approach taken by these federal Departments and Agencies to eliminate disparate impact liability, the Second Circuit majority split with other circuits on the three important legal questions presented in Emigrant's petition in order to dramatically expand disparate impact liability under the FHA. The Court should, at a minimum, call for the views of the Solicitor General so that the Court can not only resolve the Circuit split, but also have the benefit of the federal government's current views on FHA disparate impact liability.

3. DOJ's Rule cogently explains why disparate impact claims should be eliminated or curtailed. DOJ's concerns over Title VI disparate impact liability overlap considerably with the concerns expressed by Justice Kennedy's majority opinion in *Texas Dept. of Housing and Community Affairs* v. *Inclusive Communities Project, Inc.* over allowing FHA disparate impact liability. Like DOJ, Justice Kennedy was concerned that disparate impact liability "might cause race to be used and considered in a pervasive way," resulting in "serious constitutional questions." 576 U.S. 519, 542 (2015); Pet. 5-6. Also, like DOJ, Justice Kennedy, was concerned that disparate impact liability could result in defendants "being held liable for racial disparities they did not create." 576 U.S. at 542. Finally, like DOJ, Justice Kennedy was concerned about the prospect that disparate impact liability could impose "onerous costs" on industry participants. *Id.* at 541. Although Justice Kennedy declined to do away with FHA disparate impact liability, he addressed his (and DOJ's) concerns with disparate impact liability by imposing a "robust causality requirement." The Second Circuit majority disregarded these constitutional concerns when it split with other circuits and eschewed the robust causality requirement as "non-binding" *dicta*. Pet. App. 47a & n.13. The Court should grant review to affirm the importance of the "robust causality requirement" and resolve the split across the circuits as to its meaning.

*****

The petition should be granted.

Respectfully submitted.

MATTHEW A. SCHWARTZ
Counsel of Record
RICHARD H. KLAPPER
JASON P. BARNES
SULLIVAN & CROMWELL LLP
125 Broad Street
New York, NY 10004
schwartzmatthew@sullcrom.com
(212) 558-4000

Counsel for Petitioners Emigrant Mortgage Company, Inc. and Emigrant Bank

DECEMBER 2025