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 RESPONDENTS

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Emigrant's supplemental brief urges this Court to grant certiorari based on a rule amending the Department of Justice's regulations implementing Title VI of the Civil Rights Act of 1964. 90 Fed. Reg. 57,141 (Dec. 10, 2025). That rule addresses different issues under a different statute; it has nothing to do with this case brought under the Fair Housing Act (FHA) and the New York City Human Rights Law (NYCHRL). Emigrant's strained attempt to argue otherwise only further confirms that the petition should be denied.

1. Title VI prohibits recipients of federal funds from discriminating based on race. 42 U.S.C. § 2000d. In *Alexander v. Sandoval*, 532 U.S. 275 (2001), this Court held that Title VI "prohibits only intentional discrimination" but assumed that DOJ's implementing regulations "validly proscribe[d] activities that have a disparate impact" as well. *Id.* at 280-81. DOJ's new rule rescinds those disparate-impact regulations "to more closely align" with "the language that Congress enacted in Title VI." 90 Fed. Reg. at 57,141.

DOJ's rule doesn't address—or even mention—the different language Congress enacted in the FHA. Nor does it mention *Texas Department of Housing & Community Affairs v. Inclusive Communities Project*, 576 U.S. 519 (2015), which relied on the FHA's "results-oriented language" to hold that, unlike Title VI, the FHA authorizes "disparate-impact claims." *Id.* at 545. And the rule says nothing at all about the timing, disproportionality, and causation questions presented here.

2. Emigrant disputes none of that. And its efforts to connect DOJ's rule to this case fall flat.

First, Emigrant says that the rule "shows the importance that the federal government now places on limiting the scope of disparate impact liability." Supp.

Br. 1. But this case isn't about disparate-impact liability in the abstract; Emigrant's petition raises specific questions about the meaning of the FHA. Courts must answer those statutory questions based on their "independent judgment," not the Executive Branch's views. *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 394 (2024). Indeed, even this Court's pre-*Loper* decision in *Inclusive Communities* didn't give any deference to the agency that is actually responsible for implementing the FHA. *See* 576 U.S. at 527, 530-47. A different agency's views about a different question under a different statute are entirely irrelevant.

Second, Emigrant asserts that DOJ's general "concerns about disparate impact liability" echo concerns this Court expressed in *Inclusive Communities*; that the Court addressed those concerns by emphasizing the importance of a "robust causality requirement"; and that the Court should therefore "grant review to affirm the importance" of that requirement. Supp. Br. 3. But again, DOJ's rule says nothing about *Inclusive Communities* or causation. It certainly provides no reason to review the Second Circuit's case-specific holding that the jury instructions given here were consistent with *Inclusive Communities*. Pet. App. 47a-48a & n.13. Emigrant's contrary argument recycles its already-debunked assertion that the Second Circuit "jettisoned" a requirement that the court explicitly found to be satisfied. Pet. i; *see* BIO 24-27.

3. Emigrant's attempt to leverage the Administration's general opposition to disparate-impact liability into a grant of certiorari (or a call for the views of the Solicitor General) also rests on the same mistaken premise as the petition: It pretends that the judgment below rested solely on an FHA disparate-impact claim.

In fact, as the Second Circuit emphasized, this was more than just a disparate-impact case. Respondents also "prove[d] disparate treatment" by showing that Emigrant "intentionally target[ed]" its predatory STAR NINA loans at "communities of color." Pet. App. 52a; *see* BIO 10-12. And even as to disparate impact, the jury's award rested not just on the FHA, but also on an independent finding that Emigrant violated the NYCHRL. Pet. App. 198a-200a. The NYCHRL explicitly authorizes disparate-impact claims, and that authorization does not depend in any way on this Court's interpretation of the FHA. BIO 4-5, 9-10.

Accordingly, even if this Court were to grant certiorari, overrule *Inclusive Communities*, and entirely abolish disparate-impact liability under the FHA, it still would have no basis for disturbing the judgment below. And that means that even if the Court were otherwise inclined to revisit *Inclusive Communities* or call for "the federal government's current views on FHA disparate impact liability" (Supp. Br. 2), this would be the wrong case in which to do it.

Respectfully submitted,

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