No. _____

In the Supreme Court of the United States

Lee Michael Pederson,

Petitioner,

v.

U.S. Securities and Exchange Commission,

Respondent.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether a legal argument concerning the standard of review may be deemed waived, notwithstanding that other courts of appeals—including the Sixth and Seventh Circuits—have held that the standard of review is not waivable.
2. Whether a court, in reviewing an administrative order, may substitute its own determination in place of an agency's missing determination on a dispositive issue, notwithstanding that 5 U.S.C. § 706 limits the court's role to review.
3. Whether 17 C.F.R. § 240.21F-13 may be interpreted to permit the SEC to withhold portions of the administrative record from judicial review.
4. Whether a pattern of disregard for a petitioner's legal and factual arguments may deprive the petitioner of a meaningful hearing and violate due process.

DIRECTLY RELATED PROCEEDINGS:

Pederson v. U.S. Securities & Exchange Commission, No. 24-2330 (8th Cir. 2025)

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PETITION FOR WRIT OF CERTIORARI

Petitioner Lee Michael Pederson respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eighth Circuit in this case.

OPINION BELOW

The opinion of the United States Court of Appeals for the Eighth Circuit is available at *Pederson v. U.S. Securities & Exchange Commission*, 153 F.4th 624 (8th Cir. 2025), (Pet.App.2–34). The Securities and Exchange Commission's Final Order is available at Exchange Act Release No. 34-100252, 2024 WL 2827883 (May 31, 2024) (Pet.App.35–50).

JURISDICTION

The United States Court of Appeals for the Eighth Circuit entered judgment on August 22, 2025. A petition for rehearing was denied on October 31, 2025. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTES AND REGULATIONS INVOLVED

U.S. Const. amend. V provides, in pertinent part: "No person shall be . . . deprived of life, liberty, or property, without due process of law. . . ."

5 U.S.C. § 706 (Pet.App.53), provides in pertinent part: "To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional

and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing court shall . . . (2) hold unlawful and set aside agency action, findings, and conclusions found to be— (A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; . . . (C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right . . . . In making the foregoing determinations, the court shall review the whole record . . . ."

17 C.F.R. § 240.21F-13 (Pet.App.51), provides in pertinent part: "(b) The record on appeal shall consist of the Final Order, any materials that were considered by the Commission in issuing the Final Order, and any materials that were part of the claims process leading from the Notice of Covered Action to the Final Order. . . ."

STATEMENT OF THE CASE

A. Legislative Background and Relevant Definitions

Section 21F of the Securities Exchange Act of 1934 ("Exchange Act") (15 U.S.C. 78u-6) was enacted in response to the SEC's repeated failures to detect major corporate frauds, most notably the Madoff Ponzi scheme. In a report submitted to Congress in 2009, the SEC's Inspector General detailed the agency's mishandling of the Madoff investigation. That report, together with testimony before Congress, concluded that the SEC's lack of expertise and institutional

capacity was a central reason the fraud went undetected for so long.[1]

In response to this documented shortcoming, one of Section 21F's key innovations was to expand the definition of "whistleblower" beyond corporate insiders to include individuals who analyze publicly available information and assist the government in policing the securities markets. Under 17 C.F.R. § 240.21F-2(a)(1), these whistleblowers must submit their information in the form of written tips.

This rule also provides that two or more whistleblowers may act jointly. Because the regulations do not define joint status, the SEC's policy[2] has treated whistleblowers as joint when they represent themselves as acting jointly at the time they provide information to the agency. The SEC's stated policy expressly avoids inquiry into the personal relationships between whistleblowers.

Based on 17 C.F.R. § 240.21F-4(b)(5), whistleblowers are also eligible for an award when the SEC obtains their information through other authorities. In such cases, "the Commission may seek assistance and confirmation," from those authorities.

A. Case Background

Lee Pederson (Claimant 7) identified evidence of a pump-and-dump fraud scheme involving BioZone

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[1] *Oversight of the Securities and Exchange Commission's Failure to Identify the Bernard L. Madoff Ponzi Scheme and How to Improve SEC Performance: Hearing Before the S. Comm. on Banking, Hous., & Urban Affairs*, 111th Cong. 368 (2009)

[2] *Order Determining Award Claims*, Rel No.34-91902 (May 17, 2021)

Pharmaceuticals Company and, in December 2013, submitted a tip to the SEC identifying the perpetrators, their roles, and how the scheme operated, including an analysis of the company's filing patterns. His initial submission was not acted upon.

In 2014, Pederson began cooperating with another whistleblower, Daniel Fisher, BioZone's former CEO (Claimant 1). Fisher had submitted two tips, in 2011 and 2012, concerning his termination as BioZone's CEO and alleged misrepresentations in the company's 2011 filings, matters unrelated to the pump-and-dump scheme. In 2013, Fisher also settled all of his claims against the same BioZone perpetrators in the U.S. District Court for the Northern District of California for approximately two million dollars.

In 2014, together, Pederson and Fisher transmitted Pederson's tips to multiple authorities including the U.S. Attorney's Office for the Northern District of California (NDCA), members of Congress, and the FBI. Their communications with authorities consistently identified Pederson and Fisher as joint actors.

In 2014, Fisher filed another lawsuit against the same BioZone perpetrators, concerning a leased drug-manufacturing facility, and incorporated Pederson's pump-and-dump analysis.

According to the SEC's declarations, the agency began investigating the fraud in 2015 and, early in that investigation, received helpful information from the NDCA, accompanied by the names of Fisher and Pederson.

The SEC finally contacted Pederson and Fisher in 2015, and on October 6, 2015, Katherine Bromberg, from the SEC's Enforcement Division in New York

City, contacted Fisher to arrange an interview. In his response, Fisher copied Pederson and expressly requested that Pederson join the meeting by phone. Later the same day, before Fisher's interview in New York on October 8, 2015, Pederson emailed the SEC a submission containing all the information about the fraud scheme.

In November 2015, Pederson and Fisher began negotiating by email the division of any potential whistleblower award. On December 23, 2015, after receiving an SEC subpoena, Fisher forwarded it to Pederson and, in the same email, confirmed their agreement to split the award, referred to Pederson as his "co-beneficiary," and requested Pederson's assistance in responding to the subpoena.

In 2017, before the SEC took action, Fisher obtained a second settlement arising from his 2014 property-lease lawsuit, again resulting in more than one million dollars. As part of that settlement, the U.S. District Court required Fisher to withdraw all his whistleblower complaints submitted to the SEC and other authorities. *See Fisher v. Biozone Pharms., Inc.,* No. 12-cv-03716-LB, 2017 WL 1097198, at *8 (N.D. Cal. Mar. 23, 2017). Following the settlement, Fisher terminated his relationship with Pederson.

On May 5 and August 19, 2017, observing that the fraud had expanded to additional companies and that investor losses were accumulating,[3] Pederson

[3] The SEC's complaint against the fraudsters acknowledged that by 2018 the scheme had spread to "at least 19 issuers" and caused over $27 million in losses. *See* Complaint at 19, *Securities and Exchange Commission v. Honig*, No. 18-cv-08175 (S.D.N.Y. Sept. 7, 2018, amended Mar. 16, 2020), available at:

wrote to the SEC's Office of Inspector General requesting an investigation into the agency's inaction. He identified Emily Pasquinelli of the Division of Enforcement and copied Katherine Bromberg on his emails. Pederson also copied several other officials, including US Senators.

In 2018, the SEC filed a covered action against the fraudsters and succeeded in collecting monetary sanctions. Pederson and Fisher separately applied for whistleblower awards.

B. Administrative Proceedings and SEC Determinations

On December 20, 2021, Emily Pasquinelli, then Acting Chief of the Office of the Whistleblower, informed Pederson of the SEC's Preliminary Determination. The SEC approved Fisher's claim stating that Fisher had provided "*valuable new information*" at the October 8, 2015 interview. The SEC did not identify what information was new, or explain how it differed from Pederson's prior tips or the written submission Pederson provided immediately before Fisher's interview. The SEC denied Pederson's claim on the ground that his information about the perpetrators and the fraud scheme was "duplicative of information" the agency had obtained from other authorities and therefore was not useful. The SEC further stated that "certain of [Pederson's information] was based solely on publicly available information."

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https://www.sec.gov/enforcement-litigation/litigation-releases/lr-24771

Pederson requested the administrative record, and on February 7, 2022, the SEC produced a heavily redacted staff declaration by Katherine Bromberg ("Bromberg Declaration"), signed on January 5, 2022, after the preliminary determination, as the sole record of the agency's decision. The Declaration provided no additional detail regarding the purported "valuable new information."

Pederson submitted a Request for Reconsideration, asking the SEC to clarify the nature of Fisher's purported "valuable new information." He also presented evidence demonstrating that the Bromberg Declaration was replete with omissions and inaccuracies regarding Fisher's October 8, 2015 interview, and that it incorrectly denied that Pederson and Fisher jointly provided the information related to that interview. Based on the Bromberg Declaration's acknowledgment that the SEC had received helpful information from the NDCA, accompanied by Pederson's name, Pederson further asserted that the information originated with him and that he therefore independently qualified as a whistleblower under 17 C.F.R. § 240.21F-4(b)(5).

In response, the SEC issued several Requests for Further Information (RFIs). The SEC also sought evidence of the award-sharing agreement between Pederson and Fisher, for which Pederson provided extensive evidence. The agency also conducted eight hours of investigative testimony with Pederson under the supervision of Emily Pasquinelli. The testimony included questioning Pederson about his criticism of the government's investigation of the fraud.

On May 31, 2024, the SEC issued a Final Order concluding that Pederson and Fisher did not represent

themselves as joint whistleblowers because they submitted separate tips, Fisher alone attended the October 8, 2015 interview, was subpoenaed by the SEC, and responded to the subpoena. (Pet.App.50 ¶1). In support, the SEC relied on *Johnston v. Securities and Exchange Commission*, 49 F.4th 569 (D.C. Cir. 2022) (Pet.App.47) – a case arising in a materially different factual context – to treat those factors as determinative, even though joint status turns on case-specific facts. More importantly, Fisher had never submitted a written tip concerning the fraud, either jointly or individually.

The SEC acknowledged that the email correspondence between Pederson and Fisher "could support Claimant 7's [Pederson's] view that he/she and Claimant 1 [Fisher] acted jointly." (Pet.App.49 ¶2). Yet it then concluded that, "according to Claimant 1, although they did discuss working together to obtain a whistleblower award from the Commission, this never resulted in any agreement between them." *Id*. The Final Order does not explain why Fisher's statement that he was not a joint whistleblower with Pederson—contrary to the evidence—was treated as determinative. Nor does it explain why the agency investigated the existence of a personal agreement between the claimants, contrary to its own policy, when it lacks legal authority to resolve private contract disputes.

The SEC entirely failed to address Pederson's eligibility claim under 17 C.F.R. § 240.21F-4(b)(5), based on his submissions to the NDCA, and made no determination accepting or rejecting that claim.

Together with the Final Order, the SEC produced a Supplemental Declaration by Katherine

Bromberg, which for the first time offered an explanation for Fisher's purported "valuable new information." The Declaration made clear that Fisher did not submit any new or separate tip at the October 8, 2015 interview. Fisher's purported "valuable new information" was in fact Pederson's tip, which had already been incorporated into Fisher's 2014 lawsuit against the fraudsters and was sent to the SEC by Pederson. That same analysis was also the subject of Fisher's settlement with the fraudsters and the court order requiring him to withdraw the tips.

C. Proceedings Before the Court

On June 27, 2024, Pederson filed a petition for review of the Final Order in the Eighth Circuit Court of Appeals.

On September 3, 2024, the SEC filed a certified list of the administrative record ("Certified List"). The Certified List included documents that had never been produced to Pederson when he requested the record after the preliminary determination or with the Final Order. At the same time, the Certified List omitted numerous documents, including the response submitted by Pederson's counsel to the agency's RFI. The Certified List also failed to enumerate or describe any attachments or exhibits the SEC had received from Fisher and his counsel, as required by Fed. R. App. P. 17(b)(1)(B).

In addition, for the first time, the Certified List disclosed a 2021 teleconference involving Emily Pasquinelli, Fisher, Fisher's wife, and his counsel concerning the Fisher–Pederson relationship, conducted before the agency's Preliminary

Determination, as well as numerous exhibits Fisher had provided.

On September 16, 2024, Pederson filed a motion to compel the SEC to comply with Fed. R. App. P. 17 by enumerating and describing all attachments and exhibits, noting that several exhibits—particularly those from meetings with Fisher—were labeled with numbers that did not correspond to the materials produced. Pederson also requested that the SEC comply with 17 C.F.R. § 240.21F-13(b) with respect to documents omitted from the administrative record and sought production of the report of SEC's 2021 teleconference with Fisher.

On September 23, 2024, the SEC filed a response in opposition, asserting that Fed. R. App. P. 17(b)(1)(B) does not require exhibits or attachments to be numbered or described. The agency claimed that, because it had previously provided Pederson's counsel with two emails containing all documents listed in the record, filing a revised Certified List would be a waste of agency resources.

With respect to compliance with 17 C.F.R. § 240.21F-13(b), the SEC contended that, to the extent any documents were missing, those materials were not "considered" in its decision and therefore were properly excluded from the Certified List under § 240.21F-13(b). As to the missing 2021 teleconference, the agency responded that no report existed, but claimed that the absence of a report showed that the teleconference was not considered in their determinations.

On September 27, 2024, Pederson filed a reply brief explaining that the email communications cited by the agency did not cure the defects because, absent

a complete list identifying the exhibits, it was impossible to confirm that all third-party materials had been produced. He further argued that 17 C.F.R. § 240.21F-13(b) cannot be interpreted to permit the agency to withhold documents from judicial review, citing the requirement that courts review substantial evidence "on the record considered as a whole." *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

On October 10, 2024, the Court determined that the motion would be decided by the panel.

On October 21, 2024, Pederson filed his Opening Brief, which stated that the standard of review is governed by 5 U.S.C. § 706 and raised four issues.

Under the First Issue, Pederson presented evidence that he and Fisher acted as joint whistleblowers and demonstrated that the Bromberg Declaration contained material errors and omissions that undermined its credibility. He argued that joint status turns on how whistleblowers represent themselves when providing information[4], not on whom the SEC chooses to interview or subpoena, which are factors entirely within the agency's control and inherently arbitrary.

Under the Second Issue, Pederson argued that the agency failed to respond to his claim of eligibility under 17 C.F.R. § 240.21F-4(b)(5) because of his submissions to NDCA.

Under his Third Issue, first, Pederson argued that he possesses a constitutionally protected property

[4] *Order Determining Award Claims*, Rel No.34-91902 (May 17, 2021)

interest. He then asserted that his due process rights were violated, alleging an appearance of bias because his claims were adjudicated by the same individuals he had asked the SEC's Office of Inspector General to investigate for agency inaction concerning the same fraud. He further pointed to the SEC's arbitrary practices and its submission of an incomplete administrative record as additional evidence of actual bias.

Under the Fourth Issue, Pederson challenged Fisher's eligibility for an award, arguing that Fisher's settlement with the perpetrators and the resulting district court order to withdraw his tips are binding and render his whistleblower submissions ineligible. He further contended that it is contrary to reason to permit Fisher to agree to withdraw his tips as part of a settlement concerning the same fraud, receive millions of dollars under that settlement, and then obtain an additional whistleblower award from the same perpetrators for the same conduct—this time based on breaching the settlement. Pederson also explained in both his Opening and Reply Briefs that the claim was not forfeited, because the SEC did not disclose the nature of Fisher's purported "valuable new information" until after issuing the Final Order, and therefore he could not have raised the issue earlier.

On December 23, 2024, the SEC filed its Consolidated Response Brief.

The SEC acknowledged that 5 U.S.C. § 706 governs the standard of review but urged the Court to apply that standard in a deferential manner, characterizing the substantial-evidence standard as requiring "more than a scintilla but less than a

preponderance." The SEC relied on Eighth Circuit precedent from other administrative law contexts.

Regarding Pederson's First Issue, the SEC largely reiterated the explanations set forth in the Final Order, repeatedly asserting that the information Fisher discussed at the October 8, 2015 meeting was credited because he was an insider, while characterizing the same information attributed to Pederson as publicly available. The SEC also urged the Court to "defer to the Commission's judgment" in crediting the staff's Supplemental Declaration.

Regarding the Second Issue—Pederson's eligibility for an award based on the SEC's receipt of his information from the NDCA under 17 C.F.R. § 240.21F-4(b)(5)—the SEC offered no response. Instead, it sidestepped the issue by asserting that, when the agency evaluated Pederson's information in 2015, the information was deemed duplicative and derived from publicly available sources.

Regarding the Third Issue, concerning due process violations, the SEC argued that the documents Pederson submitted should not be considered because they were not included in the Certified List, contending that any departure from the administrative record requires a "strong showing of bad faith." The agency further invoked a presumption of regularity and asserted that Pederson's allegations were insufficient to demonstrate bias.

Regarding the Fourth Issue, challenging Fisher's eligibility, the SEC asserted that Pederson lacked standing and that the issue was forfeited because it had not been raised earlier. Ignoring the district court order, the agency further contended that Pederson had not cited authority establishing that a

settlement requiring the withdrawal of whistleblower submissions categorically precludes an individual from receiving a whistleblower award.

On January 14, 2025, Pederson filed a Reply Brief responding to the SEC's assertions. He challenged the SEC's interpretation of 5 U.S.C. § 706 and explained why the cases cited by the agency to invoke deference are inapplicable to whistleblower award petitions. He also addressed the SEC's remaining arguments. He further clarified his standing to challenge Fisher's eligibility and reiterated that the issue was not forfeited because he could not have raised it earlier due to the SEC's withholding of information about Fisher's purportedly "valuable new information." He also noted that the SEC continued to avoid responding to his eligibility claim under 17 C.F.R. § 240.21F-4(b)(5).

D. The Eighth Circuit Opinion

The Eighth Circuit issued its opinion on August 22, 2025.

With respect to Pederson's motion to compel concerning the administrative record, the Court disregarded both parties' arguments regarding the requirements of Fed. R. App. P. 17(b)(1)(B) and concluded that the record complied because "the certified list included detailed descriptions of each document." (Pet.App.24 ¶2). The Court further found no noncompliance with 17 C.F.R. § 240.21F-13(b), reasoning that "because the Commission provided all 'documents and other materials' that the Commission relied on in 'den[ying] the whistleblower claims,' A.R. 1, the Commission satisfied its regulatory obligation."

Id. With respect to documents Pederson asserted were missing from the record, the Court determined that the SEC's exhibits submitted in response to the motion demonstrated that "the Commission emailed all such documents to Pederson." (Pet.App.24-25). The Court made no determination regarding the missing teleconference report and denied the motion.

With respect to Pederson's First Issue, the Court did not address Pederson's argument challenging the SEC's inherently arbitrary actions of awarding another whistleblower simply because it chose to interview and subpoena him rather than his jointly-submitting partner. The Court held that Pederson "raises only factual disputes," (brackets omitted) (Pet.App.16 ¶2), with the SEC's determination. It concluded that the SEC's decision was supported by substantial evidence because "Fisher attended the October 2015 meeting alone," and "the Commission only subpoenaed Fisher, and only Fisher responded with helpful information." *Id*, ¶3. The Court also stated that "the Commission's final order makes clear that Fisher orally provided helpful information at the October 2015 meeting and then provided helpful documents in response to the subpoena." (Pet.App.17-18).

Regarding Pederson's Second Issue—his claim of whistleblower status based on submissions to the NDCA—the SEC had neither accepted nor denied the claim. However, the Court stated Commission "received tips from Fisher and others about this scheme prior to Pederson's first tip." (Pet.App.19 ¶3). The Court then, without addressing the absence of any determination by the SEC, supplied its own factual

determination, based on an email not included in the Certified List. It stated that:

> The information that Pederson shared with the NDCA does not entitle him to an award. The rule requires that "the information satisf[y] the definition of original information." 17 C.F.R. § 240.21F-4(b)(5). In his email to the NDCA, Pederson explicitly said that he provided "no new factual information in the complaint that ha[d] not previously been provided to law enforcement authorities." Pederson's App. at 117. Instead, he emailed NDCA because the "filing of the complaint may change the dynamic of FrostZone in the civil litigation context and perhaps in other contexts as well." Id. We conclude that Pederson did not provide original information to the NDCA.

(Pet.App.20 ¶ 2)

Regarding the Third Issue, which alleges a violation of due process, the Court rejected the claim on the grounds that Pederson "failed to provide meaningful argument" that he had a constitutionally protected interest at stake (Pet.App.22 ¶1). The Court acknowledged that Pederson asserted that "[t]hose who invest years of effort and risk their careers to investigate violations or disclose valuable information enter into a contract with the government in response to the statutory offer outlined in Section 922 of the Dodd-Frank Act." (Pet.App.21 ¶4). Nevertheless, the Court stated:

> Pederson provides one paragraph of argument on this point. He does not cite a single case nor provide any standards for determining when a party has a constitutionally protected property interest. He asserts no authority to support his argument that all whistleblowers enter into a contract with the Commission. He only broadly cites the Act.

(Pet.App.22 ¶1)

The Court therefore disregarded Pederson's due process claims entirely.

Regarding Pederson's Fourth Issue, the Court deems his challenge to Fisher's eligibility forfeited because "Pederson acknowledged that the Commission granted Fisher's application based on "the new valuable information" and Pederson was aware of "Fisher's settlement that led Fisher to '[w]ithdr[a]w his complaints to the [Commission].'" Therefore, Pederson "had all the information that he needed to raise the issue below but did not." (Pet.App.23 ¶2).

On October 5, 2025, Pederson requested rehearing. On October 31, 2025, Pederson's Petition for rehearing was denied.

REASONS FOR GRANTING THE PETITION

1. THE COURT'S DECISION TO DEEM THE PETITIONER'S STANDARD OF REVIEW ARGUMENT WAIVED CONTRADICTS LEGAL PRINCIPLES AND OTHER CIRCUITS' HOLDINGS

A. Petitioner's Argument Concerning the Applicable Standard of Review

Both parties agreed that judicial review of SEC orders denying whistleblower award claims, is governed by 5 U.S.C. § 706, as Pederson cited in his Opening Brief.

In its Response Brief, the SEC cited Eighth Circuit decisions—*Bussen Quarries, Inc. v. Acosta*, 895 F.3d 1039 (8th Cir. 2018) (reviewing Mine Safety and Health Administration enforcement actions concerning mine safety protections); and *Northshore Mining Co. v. Secretary of Labor*, 46 F.4th 718 (8th Cir. 2022)(reviewing a Federal Mine Safety and Health Review Commission determination concerning mine safety protections)—and urged the Court to adopt a deferential approach by interpreting the "substantial evidence" standard as requiring "no more than a scintilla of evidence."

In his Reply, Pederson argued that the deferential approach the SEC urged, were inapplicable to his petition, because:

First, the text of 5 U.S.C. § 706 does not itself mandate deference. Any deference therefore arises from judicial interpretation of the statute, particularly through the requirement that agency decisions be supported by "substantial evidence."

Second, because the Constitution is "the supreme law of the land," *Marbury v. Madison*, 5 U.S. 137, 179 (1803), and it guarantees due process rights against the power of government, any doctrine of deference that constrains judicial review must be understood as exceptional. Such deference therefore must be applied narrowly and invoked only where it is fully consistent with established precedent and its underlying rationale.

Third, as this Court has explained, judicial deference developed as a practical response to the "rapid expansion of the administrative process that took place during the New Deal era", when "Court often treated agency determinations of fact as binding on the courts, provided that there was evidence to support the findings." *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 370 (2024) (internal citations omitted). That deference was implemented through the interpretation of "substantial evidence" as meaning "more than a mere scintilla." *Consolidated Edison Co. v. NLRB*, 305 U.S. 197, 229 (1938). That interpretation is deferential precisely because it departs from both the literal meaning and ordinary understanding of the word "substantial," which denotes evidence that is "Considerable in importance, value, degree, or extent". *See "Substantial",* THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE (5th ed. 2025).

This practical approach, however, never represented a sharp departure from earlier legal understanding, which reflects that courts have long given weight to agency judgments when addressing matters within an agency's primary functions and core duties. *See Interstate Commerce Comm'n v. Union Pac. R.R. Co.*, 222 U.S. 541, 548 (1912) (holding that when the Interstate Commerce Commission determines railroad rates—a function involving "so many and such vast public interests"—courts will not reexamine the facts beyond determining whether substantial evidence supports the order). Later cases reaffirmed this same rationale in applying a deferential approach, *see Consolidated Edison Co. v. NLRB*, 305 U.S. 197 (1938); *FTC v. Cement Institute*, 333 U.S. 683 (1948); *Universal Camera Corp. v. NLRB*, 340 U.S. 474 (1951) (in each of these cases, the agency resolved matters arising squarely within its primary functions, involving parties subject to the agency's regulatory authority, and courts deferred based on the understanding that the agency possessed greater expertise than the judiciary to resolve those issues).

This rationale is well described in *Skidmore v. Swift & Co.*, 323 U.S. 134, 139 (1944):

> There is no statutory provision as to what, if any, deference courts should pay to the Administrator's conclusions . . . . They are not, of course, conclusive, even in the cases with which they directly deal, much less in those to which they apply only by analogy. They do not constitute an interpretation of the Act or a standard for judging factual situations which binds a district court's processes, as an

> authoritative pronouncement of a higher court might do. But the Administrator's policies are made in pursuance of official duty, based upon more specialized experience and broader investigations and information than is likely to come to a judge in a particular case.

Based on this review, Pederson concluded that the application of any deferential approach in judicial review of an agency's factual conclusions has historically required two conditions: (1) the matter falls within the agency's primary duties and functions, the performance of which is necessary to the existence of its administration, and (2) there is a presumption that the agency, acting in pursuance of its primary duties, possesses greater expertise and broader experience in addressing such matters than the judiciary.

Pederson then identified three critical distinctions between his petition and other petitions seeking review of administrative agency decisions:

First, in addressing whistleblower claims, the SEC is not performing its primary functions of market oversight or enforcement of the securities laws. Rather, its role is adjudicatory and involves factual determinations that do not require the specialized expertise associated with securities regulation. The evaluation of whistleblower award claims turns on factual determinations—such as when, how, and by whom the helpful information was submitted—that do not require agency expertise beyond that possessed by courts. At this point, no securities regulation is at issue, and because the covered action has already been filed and succeeded, there is no specialized agency

judgment needed to evaluate the information. Indeed, because Section 21F was designed to incentivize expert whistleblowers to provide analysis that exceeds the agency's own expertise, an inherent tension exists in the judicial resolution of these disputes between whistleblowers seeking awards based on their expert analysis and an agency inclined to attribute the outcome to its own internal work and expertise.

Second, there is no evidence that Congress intended courts to defer to the SEC's determinations merely because the agency exercises discretion. To the contrary, Congress's decision to vest the courts of appeals with authority to review the SEC's determinations reflects the need for independent judicial oversight. That oversight is especially critical because the Office of the Whistleblower both initially receives and evaluates tips and later adjudicates whistleblower claims and responds to the requests for reconsideration. This structure leaves the courts of appeals as the only neutral third party capable of reviewing the SEC's determinations of whistleblower claims. These claims, in essence, allege that the government has taken and used a whistleblower's analysis (work product) to collect monetary sanctions without compensation. Any impediment to this sole avenue of judicial review may deprive whistleblowers of a meaningful due process hearing.

Though Pederson concluded that no deference applies to his petition, the Eighth Circuit panel addressed Pederson's argument only in a footnote, stating that "[b]ecause Pederson did not raise his challenge to the standards of review in his opening brief, his argument is waived." (Pet.App.14 n.1). The Court then cited *Biestek v. Berryhill*, 587 U.S. 97

(2019), and *Bussen Quarries, Inc. v. Acosta*, 895 F.3d 1039 (8th Cir. 2018), to apply a deferential standard. (Pet.App.14). In both those cases, however, the agencies were resolving issues squarely within their statutory authority and areas of specialized expertise.

B. The Standard of Review Cannot Be Waived, and the Eighth Circuit's Departure from That Principle—and the Resulting Circuit Split—Warrants Supreme Court Review

An argument concerning the standard of review cannot be waived for three reasons:

First, precedent from other circuits—and from the Eighth Circuit itself—demonstrates that arguments concerning the standard of review are not waivable. The Eighth Circuit's sudden departure from precedent in Pederson's case has now created a split among the circuits.

It is well established that arguments concerning the applicable standard of review cannot be waived. As the Seventh Circuit explained, "[t]he courts, not the parties, determine the standard of review, and therefore, it cannot be waived." *Worth v. Tyer*, 276 F.3d 249, 262 n.4 (7th Cir. 2001) (citing *Vizcaino v. Microsoft Corp.*, 120 F.3d 1006, 1022 n.4 (9th Cir. 1997) (en banc) (O'Scannlain, J., concurring in part and dissenting in part)). The Sixth Circuit has similarly held that "[s]uch a determination remains for this court to make for itself." *K & T Enters., Inc. v. Zurich Ins. Co.*, 97 F.3d 171, 175 (6th Cir. 1996).

The Eighth Circuit has recognized the same principle. In *United States v. Perrin*, 926 F.3d 1044,

1046 (8th Cir. 2019), the court stated that "such a determination remains for this court to make for itself." (Internal citations omitted).

Second, Pederson's petition challenges the interpretation and application of the rule governing the standard of review under existing case law. Treating his argument regarding the standard of review as waived would conflict with the Court's obligation to apply proper controlling precedent. Because a deferential approach derives from judicial doctrine rather than from 5 U.S.C. § 706 itself, the Court must independently determine whether the cited case law properly applies to the circumstances of this case. When the SEC claimed deference based on case law, Pederson showed they were distinguishable, and determining whether such authority applies is a core judicial function the Court must perform independently.

Third, the Court's adjudicative function—applying the rule of law to the case before it—requires the Court first to identify and apply the correct standard of review, which defines the proper legal framework for decision making. A court cannot proceed down an incorrect and unavailable legal path simply because the parties failed to frame the issue properly, particularly where the standard of review is not itself a claim belonging to either party. Accordingly, the Court's obligation to apply the correct law in resolving a petition cannot be displaced by waiver, because it undermines the Court's adjudicative role.

2. THE COURT'S SUBSTITUTION OF ITS OWN DETERMINATION FOR THE SEC'S MISSING DETERMINATION EXCEEDED ITS SCOPE OF REVIEW UNDER 5 U.S.C. § 706 AND THIS COURT'S PRECEDENT

A. The SEC's Failure to Make a Required Determination and the Eighth Circuit's Assumption of Decisional Authority

The SEC's preliminary determination, denying Pederson's award, claims:

> [E]nforcement staff responsible for the Covered Action received information from Claimant 7 during the investigation, Enforcement staff already had an ongoing investigation and had identified the fraudulent scheme and actors prior to Claimant 7's submissions of information. Claimant 7's information was duplicative of information Enforcement staff on the Covered Action had obtained prior to receiving information from Claimant 7.

The SEC deemed Pederson's non-public fraud information—concerning the perpetrators and the scheme—duplicative and therefore not useful. But since Pederson had sent his tips to other authorities including NDCA in 2014, he would be eligible for an

award under 17 C.F.R. § 240.21F-4(b)(5), if the agency had already received his information through another channel.

When the SEC provided the Bromberg Declaration as the sole basis for its Preliminary Determination, Pederson's understanding was confirmed. Bromberg acknowledged that the SEC had received information from the NDCA associated with Pederson's name. She further stated that when the agency evaluated Pederson's information in 2015, "[i]n his initial submission, Pederson provided some information related to events . . . but this information and analysis were not helpful . . . because it was already known to the staff."

In his request for reconsideration, Pederson raised this issue and requested further investigation pursuant to 17 C.F.R. § 240.21F-4(b)(5).

When the SEC issued its Final Order (Pet.App.45-50), however, it made no determination—indeed, not even a single denial—regarding Pederson's eligibility under 17 C.F.R. § 240.21F-4(b)(5).

In that same Final Order, with respect to two other claimants, the SEC stated: "The Covered Action investigation was opened in February 2015 based on an Exams referral, and not because of information provided by Claimants 3 and 4. Nor was the Exams referral based on Claimants 3 and 4's information." (Pet.App.42 ¶2). The agency conspicuously failed to provide any comparable response with respect to Pederson (claimant 7).

Pederson therefore raised this as his Second Issue in his petition to the Court. The SEC again did not respond to that claim, even in its Consolidated Response Brief. Instead, ignoring Pederson's clear

question, the agency repeated unrelated assertions that, when his information was evaluated in 2015, a portion of it was based on publicly available sources—without acknowledging that the Dodd-Frank Whistleblower Program expressly encourages submissions based on such information—and that the non-public parts were duplicative.

The Eighth Circuit nevertheless denied Pederson's Second Issue. The Court first stated that "[t]he record supports the Commission's conclusion. It received tips from Fisher and others about this scheme prior to Pederson's first tip." (Pet.App.19 ¶3). That statement is factually incorrect and unsupported by the record. Fisher never submitted any tip concerning the pump-and-dump scheme, and the record identifies no other claimant who submitted such information. Had such a claimant existed, that individual, not Fisher, should have been recognized as a whistleblower.

The Court then, with no agency determination to review regarding Pederson's claim under 17 C.F.R. § 240.21F-4(b)(5), proceeded to supply its own decision, stating that:

> The information that Pederson shared with the NDCA does not entitle him to an award. The rule requires that "the information satisf[y] the definition of original information." 17 C.F.R. § 240.21F-4(b)(5). In his email to the NDCA, Pederson explicitly said that he provided "no new factual information in the complaint that ha[d] not previously been provided to law enforcement authorities." Pederson's App. at 117.

> Instead, he emailed NDCA because the "filing of the complaint may change the dynamic of FrostZone in the civil litigation context and perhaps in other contexts as well." *Id*. We conclude that Pederson did not provide original information to the NDCA.

(Pet.App.20-21).

This was not only an improper substitute for the agency's missing determination, but it was also based on an email that was not included in the agency's Certified List. More importantly, it reflected a misapprehension of both the record and the governing rule. The Court relied on a single sentence from Pederson's email to the NDCA and treated it as a basis for denying the originality of his information. To the contrary, Pederson's statement that there was "no new factual information in the complaint that ha[d] not previously been provided to law enforcement authorities" is accurate but does not undermine his claim, because he had already disclosed the same information to multiple authorities, including the SEC, as early as 2013.

B. BY SUBSTITUTING ITS OWN DETERMINATION FOR A MISSING SEC DETERMINATION, THE COURT EXCEEDED ITS AUTHORITY UNDER 5 U.S.C. § 706 AND VIOLATED THIS COURT'S PRECEDENT

Under 5 U.S.C. § 706, in reviewing Pederson's petition, the Court had only one option with respect to factual determinations: it could "hold unlawful and set

aside agency action, findings, and conclusions" that fall within one of the statute's enumerated deficiencies including when a determination is "arbitrary" or "short of statutory right".

This Court's precedent has also made clear that:

> If an order is valid only as a determination of policy or judgment which the agency alone is authorized to make and which it has not made, a judicial judgment cannot be made to do service for an administrative judgment. For purposes of affirming no less than reversing its orders, an appellate court cannot intrude upon the domain which Congress has exclusively entrusted to an administrative agency.

SEC v. Chenery Corp., 318 U.S. 80, 88 (1943).

Here, however, not only was there no agency determination at all, but the email Pederson sent to the NDCA—on which the Court relied—was not even listed in the Certified List. That email was excluded from the administrative record. The Court nevertheless both decided the issue and supplied the grounds for that decision, based on evidence the agency itself had not produced for judicial review. In fact, this illustrates a second problem with the Court's assumption of decisional authority in reviewing administrative decisions.

Judicial review is limited to an administrative record that reflects only the bases for decisions the agency made—not determinations it failed to make. That problem is especially acute here. In responding to Pederson's motion to compel, the SEC asserted that

it produced only those materials it "considered in denying Pederson's claims" while withholding other portions of the administrative record. The Court accepted that interpretation—as discussed in the next section—stating that "the Commission satisfied its obligation because it provided all materials it relied on in 'den[ying] the whistleblower claims.'" (Pet.App.24 ¶2) The resulting contradiction is unavoidable. If the record before the Court reflects only the materials the agency considered in denying the whistleblower claims, and the agency made no determination—indeed, not even a denial—of Pederson's claim of eligibility under 17 C.F.R. § 240.21F-4(b)(5), then the Court had no basis to decide that issue on the agency's behalf.

3. THE COURT'S ACCEPTANCE OF THE AGENCY'S INTERPRETATION OF 17 C.F.R. § 240.21F-13—PERMITTING THE AGENCY TO WITHHOLD DOCUMENTS FROM THE ADMINISTRATIVE RECORD SUBJECT TO JUDICIAL REVIEW—IS CONTRARY TO THIS COURT'S PRECEDENT

A. Petitioner's Argument, Agency Interpretation of the Rule and the Court's Opinion

17 C.F.R. § 240.21F-13(b) states that "[t]he record on appeal shall consist of the Final Order, any materials that were considered by the Commission in issuing the Final Order, and any materials that were

part of the claims process leading from the Notice of Covered Action to the Final Order. . . ."

The Certified List of the administrative record that the SEC filed in this petition contained numerous deficiencies. Most notably, it omitted significant materials, including Pederson's supplemental tips, as well as a response submitted by Pederson's counsel to the agency's Request for Further Information. At the same time, the Certified List referenced documents relating to a 2021 teleconference between Fisher, his wife, his counsel, and the SEC's Emily Pasquinelli, along with numerous related exhibits that had never been produced to Pederson in 2022 when he requested the record. Despite referencing that teleconference, the Certified List did not include any report or transcript memorializing the meeting.

When Pederson filed a motion to compel the SEC's compliance with 17 C.F.R. §240.21F-13(b), he specifically challenged these omissions and requested production of the complete administrative record.

On September 23, 2024, the SEC filed a response in opposition. With respect to the missing documents, the SEC contended in a footnote that:

> After filing the motion at issue here, Pederson's counsel has continued to email Commission counsel with questions and requests regarding the record in this case, including inquiring as to why an August 4, 2023 document was not included in the certified list. Documents not on the certified list were not "considered by the Commission in

> issuing the [f]inal [o]rder[.]" 17 C.F.R. § 240.21F-13(b).

The agency relied on the same rationale with respect to the 2021 teleconference and the exhibits missing from the record it provided to Pederson in 2022. Citing *Kilgour v. SEC*, 942 F.3d 113 (2d Cir. 2019)—an unrelated case involving a whistleblower's request for another claimant's tip—and 17 C.F.R. § 240.21F-12(a), which governs the materials the agency may rely on in making a determination, the agency asserted that it was required to produce only those materials that "formed the basis of the . . . Staff's preliminary determination."

With respect to the missing report of that teleconference, the agency further asserted that "[n]o transcript or report memorializing what occurred during the meeting was created, which means that, by definition, the Commission did not consider such a transcript or report in issuing the final order."

Pederson filed a Reply Brief stating that "[t]he Commission seems to believe it only needs to provide parts of the record it considered favorably in its decision." He then cited *Motor Vehicle Mfrs. Ass'n v. State Farm Mutual Automobile Ins. Co.*, 463 U.S. 29 (1983), in which this Court held that "the agency must examine the relevant data" and that "a court must consider whether the decision was based on consideration of the relevant factors," *Id.* at 43, and concluded that such review is impossible unless the agency presents the entire record. Pederson further explained in his Reply Brief that "[t]he term 'considered' in 17 C.F.R. § 240.21F-13(b) implies that the Commission reviews all relevant facts," and emphasized that this understanding is reinforced by

the "presumption of regularity, honesty, and trust in the SEC's competence." That presumption, he argued, "necessarily implies that the agency considers the entirety of the record—not that it may disregard information and then exclude it from judicial review."

When this dispute reached the Court, the Eighth Circuit concluded that:

> This list also satisfied the Commission's regulations which say that "[t]he record on appeal shall consist of the Final Order, any materials that were considered by the Commission in issuing the Final Order, and any materials that were part of the claims process leading from the Notice of Covered Action to the Final Order." 17 C.F.R. § 240.21F-13(b). Because the Commission provided all "documents and other materials" that the Commission relied on in "den[ying] the whistleblower claims," A.R. 1, the Commission satisfied its regulatory obligation.

(Pet.App.24 ¶2)

B. The Court's Interpretation of 17 C.F.R. § 240.21F-13, Permitting the Agency to Exclude Documents from Judicial Review, is Contrary to This Court's Precedent, and Warrants Supreme Court Review

The SEC's interpretation of 17 C.F.R. § 240.21F-13, and the Court's acceptance of that

interpretation, are Contrary to this Court's own precedent because:

First, Congress, through 15 U.S.C. § 78u-6(f), authorized judicial review of SEC whistleblower determinations under 5 U.S.C. § 706. In authorizing such review, Congress imposed no additional limitations or special definitions restricting the application of § 706. This Court, in its landmark decision in *Universal Camera Corp. v. NLRB*, 340 U.S. 474, 487–88 (1951), construed the requirements of review under the Administrative Procedure Act in conjunction with the Labor Management Relations Act in a comparable context. There, the Court held that:

> It would be mischievous wordplaying to find that the scope of review under the Taft-Hartley Act is any different from that under the Administrative Procedure Act . . . we hold that the standard of proof . . . is the same as that to be exacted by courts reviewing every administrative action subject to the Administrative Procedure Act. Whether or not it was ever permissible for courts to determine the substantiality of evidence supporting a Labor Board decision merely on the basis of evidence which in and of itself justified it, without taking into account contradictory evidence or evidence from which conflicting inferences could be drawn, the new legislation definitively precludes such a theory of review and bars its practice. The substantiality of evidence must take into account whatever in the record fairly detracts

> from its weight. This is clearly the significance of the requirement . . . that courts consider the whole record.

Seizing on the word "considered" in Exchange Act Rule 21F-13 to permit the SEC to disclose only those portions of the record it claims to have relied upon, while withholding contrary or detracting evidence, would constitute the same "mischievous wordplaying" condemned by this Court.

Second, the foregoing rationale recognizes that any interpretation allowing an agency to exclude documents on the ground that they were not "considered" is itself arbitrary. "Arbitrary" means "based on or subject to individual judgment or preference."[5] If an agency chooses to "consider" only part of the record while disregarding the rest, its action is necessarily arbitrary and must be set aside—not insulated from review by excluding the neglected portions of the record.

4. THE COURT'S DISREGARD OF ALL OF PETITIONER'S FACTUAL AND LEGAL ARGUMENTS DEPRIVED HIM OF A MEANINGFUL HEARING AND VIOLATED HIS RIGHT TO DUE PROCESS

A. The Court Denied Pederson's Petition Without Addressing Pederson's Arguments or the Record

[5] *THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE* (5th ed. 2025)

In the preceding sections, Pederson demonsterated how the Court—through waiver or by substituting its own determination for that of the agency—denied his claims. This section examines additional portions of the Court's opinion, showing that the Court's disregard of Pederson's arguments was consistent and complete. It therefore cannot be dismissed as a mere misapprehension of a few facts or an inadvertent failure to address a handful of arguments.

The Record. In his Motion to Compel, Pederson also sought compliance with Fed. R. App. P. 17(b)(1)(B) on the ground that the Certified List neither enumerated nor described the listed attachments and exhibits, which caused difficulties in identifying exhibits provided by Fisher. The SEC disputed any noncompliance, asserting that Rule 17 does not require the enumeration or description of attachments, and characterized Pederson's request as a waste of agency resources. The Court nevertheless concluded that the Certified List contained "detailed descriptions of each document" (Pet.App.24 ¶2) and therefore found no violation of Rule 17. This conclusion not only contradicts the record but also foreclosed meaningful consideration of Pederson's argument. If the Court accepted the SEC's position that Rule 17 does not require the enumeration or description of exhibits and attachments, it was required to resolve that issue as a matter of legal interpretation. Instead, by characterizing compliance as a factual determination, the Court left Pederson without any answer to his claims.

With respect to Pederson's claim that he lacked access to certain exhibits because the Certified List did

not enumerate them and the exhibits' labels showed missing materials, the Court nevertheless concluded, "the Commission filed an exhibit showing that when Pederson told the Commission that he did not have access to some documents in the record, the Commission emailed all such documents to Pederson." (Pet.App.24-25) The Court did not explain how an image of an email from the SEC to Pederson's counsel could establish that all documents—particularly those never identified or enumerated—had been produced. This forecloses any meaningful legal argument.

Pederson's First Issue. In addressing Pederson's claim to be a joint whistleblower, the Court did not respond to his challenge to the SEC's arbitrary practice of determining joint status based on whom the agency chose to interview or subpoena, nor did it address whether the SEC's investigation of the parties' personal agreement was legally permissible. Instead, the Court combined a set of irrelevant and contradictory statements from both sides and, when it reached the central issue—that Fisher never submitted an independent tip but relied on Pederson's—the Court supplied a new ground for the agency's denial. It stated that "[t]he Commission's final order makes clear that Fisher orally provided helpful information at the October 2015 meeting and then provided helpful documents in response to the subpoena." (Pet.App.17–18). That conclusion cannot be inferred from the Final Order. A whistleblower tip must be submitted in writing, and responses to a subpoena are not voluntary and therefore cannot constitute such a tip.

Pederson's Third Issue. At the outset of his due process claim, Pederson argued that:

> The SEC's failure to adequately address stock market fraud gave rise to the Whistleblower program, which serves as a reward system incentivizing individuals to provide information or expertise beyond the SEC's capabilities. Those who invest years of effort and risk their careers to investigate violations or disclose valuable information enter into a contract with the government in response to the statutory offer outlined in Section 922 of the Dodd-Frank Act. This contractual understanding is supported by the government's promise to share a portion of the monetary sanctions collected as a result of uncovering fraudulent schemes (15 U.S.C. § 78u-6). Disputes concerning these rights are protected by due process.

Pederson's claim, however, was rejected in its entirety by the Court, which held that Pederson's discussion of his protected property interest consisted of only "one paragraph" and cited "not a single case nor provide[d] any standards for determining when a party has a constitutionally protected property interest." (Pet.App.22).

However, Pederson identified a valid statutory offer. Even if the Court rejected his contractual framing, that did not eliminate due-process protections. The Court nevertheless precluded the argument without explaining under what standard Pederson's one-paragraph discussion, grounded in the statutory framework, was insufficient to establish his due-process right.

Pederson's Fourth Issue: The Court provided a truncated and incomplete description of Pederson's challenge to Fisher's eligibility, and declared the claim forfeited. The record shows that Pederson did not know the content of Fisher's purportedly "valuable new information" until after the Final Order. Pederson cited that fact to explain why he could not have raised his claim against Fisher's eligibility earlier. The Court, however, claimed that Pederson "did have information about Fisher's award-winning submission, and this basis did not change between the preliminary determination and the final order." (Pet.App.23 ¶2). The Court's statement therefore ignores Pederson's legal argument by mischaracterizing the record.

The foregoing establishes a pattern by which the Court disregarded Pederson's factual and legal arguments.

B. The Court's Failure to Meaningfully Consider Petitioner's Factual and Legal Arguments Violated Due Process and Warrants Supreme Court Review

As is well established, "procedural due process extend[s] well beyond actual ownership of real estate, chattels, or money." *Bd. of Regents v. Roth*, 408 U.S. 564, 571-72 (1972). Due process encompasses claims arising from "existing rules or understandings that stem from an independent source such as state law—rules or understandings that secure certain benefits and that support claims of entitlement to those benefits." *Id.* at 577. "It is a purpose of the ancient institution of property to protect those claims upon which people rely in their daily lives, reliance that

must not be arbitrarily undermined. It is a purpose of the constitutional right to a hearing to provide an opportunity for a person to vindicate those claims." *Id*.

Section 21F of the Exchange Act establishes a statutory program under which whistleblowers may submit information and, if the statutory conditions are met, may receive an award. That framework creates a legitimate claim of entitlement to a fair determination under the governing rules, sufficient to implicate procedural due process at both the administrative and judicial levels.

As this Court has explained, "[t]he fundamental requisite of due process of law is the opportunity to be heard." *Grannis v. Ordean*, 234 U.S. 385, 394 (1914) (internal citations omitted). The Court has also identified two central purposes of procedural due process: "the prevention of unjustified or mistaken deprivations and the promotion of participation and dialogue by affected individuals in the decision-making process." *Marshall v. Jerrico*, Inc., 446 U.S. 238, 242 (1980). Those purposes are not satisfied when a court's opinion shows that it failed to consider the substance of arguments that could affect the outcome of the judgment. In Pederson's petition, a close review of the Court's handling of his case shows that he was denied a meaningful hearing—either through the preclusion of his arguments by waiver and forfeiture or through the resolution of his legal claims by means of incorrect statements presented as factual determinations, even beyond the agency's stated grounds and the record. Pederson was thus denied any meaningful "participation and dialogue" capable of preventing an "unjustified deprivation" of his rights.

This case warrants this Court's attention to reaffirm that due process requires more than a nominal opportunity to be heard—it requires that a party be effectively heard.

CONCLUSION

For these reasons, Petitioner respectfully requests that this Court grant the petition for a writ of certiorari.

Respectfully submitted,

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