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IN THE

# Supreme Court of the United States

MOTHANA MAHER HUSSEIN,

*Petitioner,*

*v.*

CONSOLIDATED EDISON, INC.,

*Respondent.*

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

## PETITION FOR A WRIT OF CERTIORARI

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## QUESTION PRESENTED

The Equal Credit Opportunity Act separately prohibits discrimination and requires notice of qualifying adverse credit action. After the district court invited a futility response, petitioner alleged that respondent imposed a deposit condition without an ECOA-compliant statement of reasons. The courts below rejected further amendment through an analysis of prohibited discrimination. The question presented is:

Whether a court may deny further leave to amend as futile based on the absence of prohibited discrimination without separately evaluating an expressly presented claim that a creditor failed to provide the adverse-action notice required by 15 U.S.C. § 1691(d) and 12 C.F.R. § 1002.9, where the proposed notice claim concerns utility deposit conditions and must be assessed under Regulation B's definitions and exclusions.

## PARTIES AND CORPORATE DISCLOSURE

Petitioner Mothana Maher Hussein was the plaintiff below and the appellant in the court of appeals. He is an individual and has no corporate disclosure under Rule 29.6.

Respondent Consolidated Edison, Inc. was the named defendant and appellee. Its stock ticker symbol is ED (New York Stock Exchange). The caption follows the caption of the judgment under review.

## RELATED PROCEEDINGS

Hussein v. Consolidated Edison, Inc., No. 1:24-cv-04480-RPK-MMH, U.S. District Court for the Eastern District of New York. Memorandum and order entered August 14, 2025; judgment entered August 18, 2025.

Hussein v. Consolidated Edison, Inc., No. 25-1996, U.S. Court of Appeals for the Second Circuit. Judgment entered May 7, 2026; rehearing denied May 28, 2026; mandate issued June 5, 2026.

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## OPINIONS AND ORDERS BELOW

The court of appeals' May 7, 2026 summary order is unpublished and nonprecedential. Pet. App. 1a–6a. Its order denying panel rehearing and rehearing en banc is reproduced at Pet. App. 19a. The district court's August 14, 2025 memorandum and order is reported at 2025 WL 2371049 and reproduced at Pet. App. 7a–15a. Judgment was entered August 18, 2025. Pet. App. 16a–17a.

## JURISDICTION

The court of appeals entered judgment on May 7, 2026, and denied petitioner's timely rehearing petition on May 28, 2026. Pet. App. 1a–6a, 19a. This Court has jurisdiction under 28 U.S.C. § 1254(1).

The Clerk's September 1, 2026 return letter identifies this case and records an August 24, 2026 postmark and August 27 receipt of the original petition. The letter returned the submission for correction of its format and directed resubmission within 60 days. Petitioner submits this corrected petition pursuant to Rule 14.5, relying on the original submission and the correction procedure described in that letter. The original August 24 postmark preceded the August 26 deadline calculated from the rehearing denial under Rule 13.3.

## STATUTORY AND REGULATORY PROVISIONS INVOLVED

The pertinent provisions are 15 U.S.C. §§ 1691(a), 1691(d), and 1691e(a); 12 C.F.R. §§ 1002.2(c), 1002.3(a), and 1002.9; and Federal Rule of Civil Pro-

cedure 15(a)(2). Their pertinent text is reproduced at Pet. App. 21a–26a.

## STATEMENT OF THE CASE

### A. The account and the proposed amendment

Petitioner used respondent's electric service for household purposes and challenged the treatment of that account, including deposit conditions and the absence of required credit disclosures. The district court had federal-question jurisdiction over the asserted federal claims under 28 U.S.C. § 1331. Its judgment dismissed the action and denied further amendment. Pet. App. 7a–17a.

The proposed second amended complaint was submitted on October 18, 2024. It combined ECOA and TILA allegations with state-law claims. Its central ECOA allegations concerned commercial misclassification and disclosure practices. The issue presented here arises more specifically from the notice theory articulated in the response the district court later invited. Pet. App. 8a–10a, 27a–37a.

The record includes a July 24, 2023 bill demanding a $405 deposit and identifying $894.03 as overdue. Pet. App. 51a–52a. That evidence matters to the default or delinquency exclusion discussed below. Petitioner does not ask this Court to assume that the bill establishes a credit action on an account that was current, or to decide the correctness of the balance in the first instance.

The record also contains a deferred-payment agreement and documents concerning service applications and deposit policies. Pet. App. 53a–55a, 59a–

61a. In his invited response, petitioner described service supplied before payment and a July 31, 2025 call concerning identification or a deposit as conditions of service. Pet. App. 29a–31a, 41a–50a. The later call is evidence of the practices alleged in the response; it does not by itself establish the reason for the earlier deposit demand.

### B. The district court invited and received a notice proffer

On July 28, 2025, the district court directed petitioner to explain why amendment to assert ECOA and TILA claims would not be futile. Pet. App. 18a. Petitioner responded on August 11, 2025, expressly requesting consideration of his explanation and, alternatively, leave to file a further amended complaint. E.D.N.Y. ECF No. 56 at 1, PageID 714; Pet. App. 27a–29a.

The response identified the absence of an "ECOA-compliant statement of reasons" in connection with an allegedly unfavorable credit condition. ECF No. 56 at 3, PageID 716; Pet. App. 31a–33a. It invoked Rule 15 and sought an opportunity to state the proposed claim through amendment. Pet. App. 33a–37a. This was a request for evaluation of an asserted notice duty, even though the response also advanced discrimination, retaliation, and other theories.

The response's assertion that a July 1 PSC complaint preceded a July 7 demand by six days is not relied upon in this petition. The July 24 bill and the August 16, 2023 field notice are distinct documents. Pet. App. 51a–52a; E.D.N.Y. ECF No. 32, PageID

586. The requested review concerns the independent notice theory, not a finding of retaliatory timing.

### C. The decisions below and presentation on appeal

The district court acknowledged the invited response. Pet. App. 9a–10a. It nevertheless explained the proposed ECOA claim's futility by the absence of facts showing that the alleged misclassification rested on a protected attribute or activity. Pet. App. 12a–13a. It denied further leave because the filed versions gave no indication that a valid claim could be stated. Pet. App. 13a–15a. It did not separately explain whether the notice allegations could support an amendment under § 1691(d) and § 1002.9.

The court of appeals affirmed. It treated challenges to dismissal of the operative complaint and the state-law claims as abandoned, leaving the denial of further amendment for review. Pet. App. 3a–4a. Its ECOA discussion addressed whether petitioner plausibly alleged prohibited discrimination. Pet. App. 4a–6a. This petition accordingly challenges the futility determination as applied to the proposed notice claim; it does not seek to revive abandoned claims.

The independent notice theory was expressly presented in the court-stamped reply brief. That brief identified § 1002.9, distinguished federal credit-process duties from a rate challenge, and requested remand or leave to amend. Second Circuit Dkt. 50.1, filed Oct. 31, 2025, at 3–5, 7–9. The rehearing petition likewise argued that the panel had overlooked the notice theory and requested a focused amendment. Second Circuit Dkt. 64.2, filed May 8, 2026, at

3–7, 11–12. Rehearing was denied May 28, 2026. Pet. App. 19a.

## REASONS FOR GRANTING THE PETITION

### I. The notice duty requires an analysis distinct from prohibited discrimination

Section 1691(a) prohibits discrimination on specified grounds. Section 1691(d) separately provides notice rights when a creditor takes qualifying adverse action. Section 1691e(a) authorizes relief for failure to comply with any requirement imposed by the subchapter, subject to the applicable elements and remedies. The text does not make a violation of § 1691(a) a prerequisite to enforcing § 1691(d).

That distinction serves a practical function. A notice identifies the credit decision and provides its specific reasons or a compliant means to obtain them. An applicant may need that information to understand or contest the decision without yet knowing whether it was discriminatory. Requiring a plausible discrimination claim before considering the notice duty would invert that sequence.

Regulation B implements the separate duty. For adverse action on an existing account, § 1002.9(a)(1)(iii) specifies a notification deadline. Section 1002.9(a)(2) specifies the written notice's contents and permits either reasons with the notice or a disclosure of the right to request them. Section 1002.9(b)(2) requires specificity when reasons are furnished. The absence of unsolicited reasons alone is therefore not necessarily a violation: the inquiry

includes whether the creditor supplied the alternative notice the regulation permits.

Schlegel v. Wells Fargo Bank, NA, 720 F.3d 1204, 1209–11 (9th Cir. 2013), illustrates the distinction. The Ninth Circuit allowed an ECOA notice claim based on allegations that the bank revoked a loan modification without the required notice. Its analysis asked whether a qualifying adverse action and notice failure were plausibly alleged. The case concerned mortgage acceleration and alleged compliance with a modification, not utility arrears. It supplies persuasive support for the independent duty; petitioner does not claim that it establishes a square circuit conflict on these facts.

Neither opinion below expressly announces that every notice claim requires a discriminatory comparator. The error petitioner identifies is narrower: after receiving a specific notice proffer, the courts treated the absence of prohibited discrimination as sufficient to reject further ECOA amendment, without a separate assessment of the proposed notice claim. Pet. App. 4a–6a, 9a–10a, 12a–15a, 31a–33a. Review is warranted to ensure that the futility inquiry applies the elements of the duty actually invoked.

## II. Regulation B specifically addresses utility credit

Regulation B does not leave utility coverage to inference from an account's internal label. Section 1002.3(a) expressly addresses regulated public-utility credit. Its official interpretation explains that a utility extending service before payment is a creditor and that deposit terms are subject to the prohibition on

discrimination. 12 C.F.R. pt. 1002, Supp. I, cmt. 3(a)-2. Separately, the regulation's listed utility exceptions concern marital-status information and record retention; they do not include § 1002.9.

The proposed allegations of service before payment, deposit conditions, and deferred-payment arrangements therefore called for consideration under the provisions governing utility credit. Pet. App. 29a–31a, 53a–55a. Petitioner need not establish TILA coverage merely to obtain that Regulation B analysis. The two statutes and their implementing regulations have different coverage provisions.

Coverage does not itself prove a notice violation. A deposit may be lawful, and a utility may take collection action falling outside Regulation B's definition of adverse action. The pertinent question is whether the particular credit decision alleged triggers § 1002.9. Treating the notice theory as a discrimination theory bypasses that inquiry rather than answering it.

## III. The default exclusion must be addressed on its own terms

Petitioner acknowledges the substantial issue presented by § 1002.2(c)(2)(ii), which excludes action connected with default or delinquency on the account. Paragraph (c)(3) gives that exclusion priority over the affirmative definition. The overdue balance printed on the July 24, 2023 bill prevents treating that bill alone as proof of a notice-triggering action. Pet. App. 51a–52a.

The official interpretation distinguishes current default from action based on past delinquency. 12

C.F.R. pt. 1002, Supp. I, cmt. 2(c)(2)(ii)-2. The distinction requires attention to the particular decision, its timing, and the account status relevant to it. A new condition imposed in evaluating requested credit and collection of an already delinquent balance are not interchangeable events merely because each involves a deposit.

Other limitations also matter. Section 1002.2(c)(1)(i) addresses an accepted or used counteroffer; paragraph (c)(1)(ii) limits the existing-account-change definition where a change affects all or substantially all accounts in a class; paragraph (c)(2)(i) excludes an expressly agreed change. Petitioner does not ask the Court to hold that every deposit request, payment arrangement, or general utility policy is adverse action.

Instead, petitioner seeks review of the refusal to permit a focused notice amendment under the correct legal framework. A pleading would need supported facts identifying the credit decision, explaining why the governing exclusion does not defeat the claim, and alleging the absence of either permissible form of notice. The invited response pointed to credit conditions and missing reasons; its adequacy should have been evaluated as a notice proposal. Pet. App. 27a–37a.

If the record permits only an excluded collection action, or no qualifying credit decision can plausibly be alleged, the independent notice theory may fail. Petitioner does not ask this Court to resolve disputed arrears or infer a current account contrary to the documents. The requested remand would leave those questions for application of the correct standard, ra-

ther than establish liability from the absence of reasons alone.

## IV. The invited response warranted consideration under Rule 15

Rule 15(a)(2) directs that leave should be freely given when justice so requires. Foman v. Davis, 371 U.S. 178, 182 (1962), recognizes futility and repeated failure to cure as legitimate grounds for denial, while requiring a justifying basis for refusal. Petitioner does not claim an unlimited right to amend or an exemption from plausible pleading.

The procedural setting nevertheless matters. The district court specifically invited petitioner to explain why the federal theories were not futile. Pet. App. 18a. His response identified a notice omission and requested further amendment if a formal pleading was necessary. Pet. App. 27a–29a, 31a–37a. The denial then returned to the absence of discriminatory treatment without explaining whether the separately described notice claim could be stated. Pet. App. 12a–15a.

The request is thus for application of Rule 15 to the strongest supported notice theory actually presented, not for substitution of a new factual narrative on certiorari. The stamped appellate reply and rehearing petition expressly renewed that distinction. Second Circuit Dkts. 50.1 at 3–5, 7–9; 64.2 at 3–7, 11–12. Those submissions reinforce that the notice issue was brought to the appellate court's attention before final disposition of rehearing.

A remand would permit consideration of the notice allegations, the regulatory exclusions, and any re-

maining procedural obstacles together. It would not require acceptance of every allegation or legal characterization in the earlier filings, nor dictate that the proposed claim ultimately succeed.

## V. The question concerns enforcement of a distinct federal duty

The importance of the question extends to the enforcement structure Congress selected. The notice requirement operates before an applicant can necessarily identify an unlawful motive. In utility credit, the regulation expressly retains that protection while recognizing limited exceptions. A futility analysis that stops at discrimination can prevent consideration of the distinct notice right.

Petitioner recognizes that the decision is nonprecedential and that Rule 10 does not ordinarily provide review merely to correct an asserted misapplication of a properly stated rule. He seeks review because the treatment of the invited proffer leaves a distinct statutory duty unaddressed in deciding whether any further ECOA amendment could proceed. The requested review is limited to that relationship between the substantive notice right and the amendment standard.

No decision on tariff rates is requested. The proposed remand would address whether petitioner can state a federal notice claim without changing an approved rate or securing preferential pricing. Respondent's filed-rate and primary-jurisdiction defenses remain subject to analysis in light of the particular claim and remedy. Calling a claim procedural does not automatically defeat those defenses;

neither does invoking a tariff answer whether a distinct federal notice obligation applies.

This petition does not seek review of the separate TILA, state-law, or retaliation theories. That focus permits the Court to address the notice issue without resolving the asserted APR omissions, a refund entitlement, or the disputed sequence previously offered to support retaliatory motive. The relief sought is vacatur of the affirmance insofar as it foreclosed further amendment of the ECOA notice claim, followed by reconsideration under the proper statutory and regulatory framework.

## CONCLUSION

The petition for a writ of certiorari should be granted. The Court should vacate the judgment insofar as it affirms the denial of further leave to amend the ECOA adverse-action-notice claim and remand for consideration of that proposed claim under 15 U.S.C. § 1691(d), Regulation B, and Rule 15(a)(2).

Respectfully submitted,



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