No. 26-514

In the Supreme Court of the United States

ERIC S. SMITH,

Petitioner,

v.

SECURITIES AND EXCHANGE COMMISSION, ET AL.,

Respondents.

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

BRIEF OF THE MANHATTAN INSTITUTE AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

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INTEREST OF *AMICUS CURIAE*[1]

The Manhattan Institute is a nonpartisan public policy research foundation whose mission is to develop and disseminate new ideas that foster greater economic choice and individual responsibility. To that end, the Manhattan Institute has sponsored scholarship and filed briefs supporting the security of Americans' property rights and access to judicial process to vindicate those rights. This case implicates those concerns because the erroneous decision below risks leaving the targets of agency enforcement actions with no available judicial forum in which to defend themselves against unconstitutional executive overreach.

INTRODUCTION AND SUMMARY OF ARGUMENT

As the petition explains, the courts of appeals are divided over two questions that play a central role in applying the statutory exhaustion provisions that pervade much of the federal administrative state. Correctly understood, such provisions ensure that agencies have an opportunity to decide the questions that Congress has committed to their discretion, and also conserve judicial resources by giving agencies a chance to correct their mistakes internally. An overly rigid application of exhaustion requirements, however, can also needlessly deprive citizens of core constitutional rights—even rights designed to ensure that citizens can litigate their claims in court rather than before those very same agencies (as this case well illustrates). Congress has therefore established

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[1] No counsel for any party authored this brief in whole or in part, and no entity or person, aside from *amicus curiae*, its members, or its counsel, made any monetary contribution intended to fund the preparation or submission of this brief. Counsel of record for the parties received timely notice of *amicus*'s intent to file this brief.

flexible exceptions to many statutory exhaustion provisions, under which litigants may raise arguments for the first time in court whenever "there was reasonable ground for failure to" raise them before the agency. 15 U.S.C. § 78y(c)(1).

The courts of appeals have disagreed, though, about how those exceptions operate. Some circuits recognize that such exhaustion provisions never require citizens to raise structural constitutional challenges before agencies that are ill-suited to address them. Other circuits have held that, at a minimum, it is reasonable not to raise constitutional claims that the agency has already definitively rejected. But here, the Sixth Circuit held that because it was theoretically *possible* that the Securities and Exchange Commission would reverse its recently reaffirmed position and declare its in-house adjudicatory process unconstitutional, petitioner Eric Smith was required to raise his challenges to the agency's structure before the Commission itself to preserve any chance of later asserting them in court.

That decision cries out for this Court's review. Under established precedent, a party has reasonable grounds not to raise arguments before an agency when there is "some doubt" that the agency could adequately address them, *McCarthy* v. *Madigan*, 503 U.S. 140, 147-48 (1992) (citation omitted), including because they raise "constitutional claims . . . outside the [agency's] competence," *Free Enter. Fund* v. *Pub. Co. Acct. Oversight Bd.*, 561 U.S. 477, 491 (2010). Parties also act reasonably in declining to raise arguments where the agency's rejection of them is "preordained," Pet. App. 17a, such as when the agency has already taken the public position that a given rule is "valid[] and correctly applied," *McCarthy*, 503 U.S. at 148 (citation omitted). Those common-sense principles compel the conclusion that Smith was not required to present his

Seventh Amendment and Article III claims for formulaic rejection by the Commission in order to preserve his right to judicial review.

Smith's claims "challenge[d] . . . the adequacy of the agency procedure" established by Congress. *Ibid.* Under longstanding Executive Branch guidance, the Commission was obliged to uphold those procedures if any colorable argument could be made for their constitutionality—even if the Commission believed that the better view was that the procedures were unconstitutional. *See*, *e.g.*, Att'y Gen.'s Duty to Def. and Enforce Constitutionally Objectionable Legis., 4A Op. O.L.C. 55, 56 (1980). Consistent with that guidance, the SEC had recently rejected materially identical claims and was actively opposing them in court. Indeed, just weeks before Smith sought review before the Commission, the Commission observed that it "ha[d] repeatedly rejected claims that our administrative proceedings violate the Seventh Amendment," *John Thomas Cap. Mgmt. Grp. LLC*, File No. 3-15255, 2020 WL 5291417, at *27 (Sept. 4, 2020), and it maintained that position before the Fifth Circuit and this Court in the litigation that culminated in *SEC* v. *Jarkesy*, 603 U.S. 109 (2024). Under any plausible understanding, that context provided a "reasonable ground" for Smith's choice not to press his constitutional claims before an avowedly hostile agency. 15 U.S.C. § 78y(c)(1).

The Sixth Circuit's contrary view transforms administrative exhaustion provisions like Section 78y(c)(1) from the flexible tools of administrative efficiency that Congress intended into wooden barriers to constitutional rights that only a bureaucrat could love. This Court should grant a writ of certiorari and reverse.

ARGUMENT

A. Review Is Needed To Clarify Confusion Among The Courts Of Appeals Regarding Statutory Exceptions To Administrative Exhaustion Requirements.

This case concerns the proper interpretation of exhaustion exceptions set out in not only 15 U.S.C. § 78y(c)(1), but also numerous other statutes and related administrative regimes across the federal government.

Enacted as part of the Securities Acts Amendments of 1975, Section 78y(c)(1) generally bars parties in judicial challenges to SEC orders from relying on any argument that was not previously "urged before the Commission." 15 U.S.C. § 78y(c)(1); *see* Pub. L. No. 94-29, § 20, 89 Stat. 97, 159. The provision expressly states, however, that courts may consider newly raised arguments in such challenges whenever "there was reasonable ground" for not making the arguments to the SEC itself. 15 U.S.C. § 78y(c)(1).

In the years before and after its adoption of Section 78y(c)(1), Congress enacted materially identical "reasonable ground" exceptions in statutes governing a wide variety of administrative proceedings. Taken together, the provisions cover exhaustion requirements across a broad swath of the administrative state, spanning such diverse topics as decisions on licenses to import distilled spirits, rate-setting for natural gas and electricity, and violations related to the transportation of hazardous materials. *See*, *e.g.*, 15 U.S.C. § 80a-42(a) (SEC orders under the Investment Company Act of 1940); *id.* § 80b-13(a) (SEC orders under the Investment Advisers Act of 1940); *id.* § 687a(e) (orders of the Small Business Administration); *id.* § 717r(b) (Federal Power Commission orders under the Natural Gas Act of 1938); *id.* § 3416(a)(4) (orders of the Federal Energy Regulatory Commission);

16 U.S.C. § 825*l*(b) (orders of the Federal Power Commission under the Federal Power Act of 1920); 27 U.S.C. § 204(h) (orders of the Secretary of the Treasury regarding permits under the Federal Alcohol Administration Act of 1935); 49 U.S.C. § 1153(b)(4) (orders of the National Transportation Safety Board); *id.* § 5127(d) (orders of the Secretary of Transportation regarding the transportation of hazardous material); *id.* § 46110(d) (orders of the Secretary of Transportation, Administrator of the Transportation Security Administration, or Administrator of the Federal Aviation Administration regarding air commerce and safety).

As the petition explains (at 14-23), those pervasive "reasonable ground" exceptions, and others with similar structures, implicate two separate divisions of authority in the lower courts, both of which are relevant here.

First, the courts of appeals are split over whether parties are ever required to administratively exhaust constitutional challenges to an agency's own statutory structure, given agencies' general lack of specialized competence to address such arguments (and obvious incentives to reject them). Several courts have answered that question in the negative even in the context of the exhaustion provision governing appeals from decisions of the National Labor Relations Board ("NLRB"), which contains an "extraordinary circumstances" exception, 29 U.S.C. § 160(e), that is conspicuously narrower than Section 78y(c)(1)'s "reasonable ground" exception. In *NLRB* v. *North Mountain Foothills Apartments*, for example, the Ninth Circuit considered various constitutional challenges that had not been raised before the NLRB. 157 F.4th 1089, 1097 (9th Cir. 2025). Requiring exhaustion would be inappropriate, the court reasoned, because "[c]onstitutional questions obviously are unsuited to resolution in administrative hearing

procedures." *Ibid.* (quoting *Califano* v. *Sanders*, 430 U.S. 99, 109 (1977)); *see Advanced Disposal Servs. E., Inc.* v. *NLRB*, 820 F.3d 592, 598-601 (3d Cir. 2016) (considering argument not raised before agency that agency officials had been unconstitutionally appointed). And if an argument satisfies the more stringent, "extraordinary circumstances" standard because it raises a structural constitutional objection to agency action, it necessarily follows that there are "reasonable ground[s]" for declining to raise it before the agency, too. The Sixth Circuit disagreed, however, siding with those circuits that have found that the structural constitutional nature of a challenge constitutes neither an extraordinary circumstance nor a reasonable ground that merits an exception. Pet. App. 12a-14a; *see*, *e.g.*, *Vt. Info. Processing, Inc.* v. *NLRB*, 176 F.4th 690, 706 (D.C. Cir. 2026); *Gonnella* v. *SEC*, 954 F.3d 536, 544-45 (2d Cir. 2020).

Second, the courts of appeals are likewise divided over whether the "reasonable ground" exception applies when an agency's rejection of a particular argument is preordained. The D.C. Circuit has long recognized that it is reasonable for parties to decline to advance "clearly useless" arguments before an agency, such as when the agency "has evidenced a strong stand on the issue in question and an unwillingness to reconsider the issue." *Randolph-Sheppard Vendors of America* v. *Weinberger*, 795 F.2d 90, 105-06 (D.C. Cir. 1986); *see Doe v. SEC*, 176 F.4th 32, 40 (D.C. Cir. 2026) (applying rule in context of Section 78y(c)(1)); *KPMG, LLP v. SEC*, 289 F.3d 109, 117-18 (D.C. Cir. 2002) (same). The Tenth Circuit follows the same rule, including in cases involving Section 78y(c)(1). *E.g.*, *Gilmore* v. *Weatherford*, 694 F.3d 1160, 1169 (10th Cir. 2012) ("[T]o fit within the futility exception, a plaintiff must show that resort to the administrative process would be 'clearly useless.'" (citation omitted)); *Malouf v. SEC*, 933 F.3d 1248, 1257 (10th Cir. 2019). The Sixth Circuit

here, however, held that Smith lacked reasonable grounds for declining to raise his Seventh Amendment and Article III claims before the SEC because the SEC technically "ha[d] the power" to grant relief on those claims, even though "everyone knows" that the SEC would have rejected them. Pet. App. 17a-18a.

Those square conflicts of authority, concerning a type of statutory exhaustion provision that Congress has proliferated throughout the U.S. Code, warrant this Court's review. Disagreement and confusion as to when exhaustion is required risks unintentional forfeiture of constitutional rights in some circuits and unnecessary, wasteful expense in others. In circumstances like Smith's, a narrow reading of the "reasonable ground" exception unexpectedly deprives parties of relief on valid constitutional claims even though all agree that raising the claims before the agency would have made no difference. *See*, *e.g.*, *Woodford* v. *Ngo*, 548 U.S. 81, 92 (2006) (observing that "the sanction for failing to exhaust properly" can be "preclusion of review in federal court"). Conversely, uncertainty about what exhaustion standard a court might apply in the future can also prompt regulated parties to spend considerable time and expense briefing constitutional arguments before agency decisionmakers who are sure to reject them, wasting resources and distracting from the issues that the agency is actually competent to resolve. Both of those outcomes conflict with Congress's general desire to "mak[e] . . . exhaustion requirement[s] unambiguous so that aggrieved parties . . . know precisely what administrative steps [a]re required before judicial review [is] available." *Darby* v. *Cisneros*, 509 U.S. 137, 146 (1993). This Court should accordingly grant review so that it can establish a single, clear standard for exhaustion applicable throughout the entire country.

B. The Sixth Circuit Adopted An Unduly Narrow View Of The "Reasonable Ground" Exception.

In establishing that single, uniform standard, the Court should reject the unduly narrow understanding of "reasonable ground[s]" reflected in the decision below. 15 U.S.C. § 78y(c)(1). Under the principles this Court has articulated to guide lower courts in analyzing when they must require exhaustion and when they may consider arguments newly raised during judicial review, Smith had multiple reasonable grounds for not raising his structural constitutional arguments before the Commission.

1. Congress Designs Exhaustion Requirements To Facilitate Fair And Efficient Decision-Making, Not To Trap Unwary Litigants With Pointless Box-Checking Exercises.

a. Exhaustion Is Most Appropriate Where It Will Advance Agency Authority And Judicial Efficiency.

This Court has explained that the requirement to exhaust arguments before an administrative agency serves two general purposes: (i) "protecting administrative agency authority," and (ii) "promoting judicial efficiency." *McCarthy* v. *Madigan*, 503 U.S. 140, 145 (1992); *see Woodford*, 548 U.S. at 89.

As to the first purpose, exhaustion protects administrative agency authority by ensuring that "agencies, not the courts, [will] have primary responsibility for the programs that Congress has charged them to administer." *McCarthy*, 503 U.S. at 145. As a result, requiring parties to exhaust arguments before administrative tribunals is especially appropriate "when the action under review involves exercise of the agency's discretionary power or when the agency proceedings in

question allow the agency to apply its special expertise." *Ibid.*

With respect to the second purpose, exhaustion promotes judicial efficiency by ensuring that agencies capable of addressing errors in their own proceedings are given an opportunity to do so before judicial proceedings commence. *See ibid.* ("When an agency has the opportunity to correct its own errors, a judicial controversy may well be mooted . . . ."); *see also Woodford*, 548 U.S. at 89 ("In some cases, claims are settled at the administrative level, and in others, the proceedings before the agency convince the losing party not to pursue the matter in federal court.").

When deciding whether exhaustion is required in an individual case, courts must therefore strike a balance, on the particular facts, between those two "institutional interests favoring exhaustion" and the individual interest in "access to a federal judicial forum." *McCarthy*, 503 U.S. at 146.

b. This Court Recognizes Exceptions To Exhaustion Requirements Where Agency Relief Would Be Inadequate.

In addition to considering the general purposes of exhaustion described above, courts must also consider whether a given case falls into one of several "broad sets of circumstances" that "weigh heavily against requiring administrative exhaustion." *McCarthy*, 503 U.S. at 146-47. Those circumstances include various situations in which, for different reasons, the "administrative remedy may be inadequate." *Id.* at 147-48; *see Ross* v. *Blake*, 578 U.S. 632, 642 (2016) (requiring exhaustion only where an agency had "procedures that are capable of use to obtain some relief for the action complained of" (internal quotation marks omitted)). Requiring parties to seek administrative remedies prior to judicial ones serves no purpose where an

agency cannot adequately respond to a litigant's complaint. In such cases, exhaustion is a "vain exercise," and it does not "'protec[t] administrative agency authority' or 'promot[e] judicial efficiency.'" *Carr* v. *Saul*, 593 U.S. 83, 93 (2021) (quoting *McCarthy*, 503 U.S. at 145).

Although an administrative remedy may be inadequate for several reasons, two are most relevant here.

First, an administrative remedy may be inadequate "because of some doubt as to whether the agency was empowered to grant effective relief." *McCarthy*, 503 U.S. at 147 (citation omitted). The most obvious doubt occurs where an agency simply "lack[s] authority to grant the type of relief requested." *Id.* at 148. But agencies may be unable to grant effective relief for additional reasons, including where they "lack[] institutional competence to resolve the particular type of issue presented." *Id.* at 147-48. Ordinarily, agencies lack such competence to address "the constitutionality of a statute." *Id.* at 148. In addition, the effectiveness of agency relief may be doubtful because "the challenge is to the adequacy of the agency procedure itself." *Ibid.* In such cases, "the question of the adequacy of the administrative remedy . . . [is] for all practical purposes identical with the merits of [the plaintiff's] lawsuit." *Ibid.* (quoting *Barry* v. *Barchi*, 443 U.S. 55, 63 n.10 (1979)).

Second, an administrative remedy may be inadequate if the agency has "predetermined the issue before it." *Ibid.*; *see Ross*, 578 U.S. at 643 (declining to require exhaustion where adjudicators are "unwilling to provide any relief"). In *McCarthy*, this Court explained that where a party (in the Court's example, a state attorney general) has taken the position that certain rules were "valid[] and correctly applied," requiring exhaustion through that same party "would be to demand a futile act."

503 U.S. at 148 (quoting *Houghton* v. *Shafer*, 392 U.S. 639, 640 (1968) (per curiam)).

In such circumstances, parties cannot seek effective relief in administrative forums, and so exhaustion requirements produce only inefficient, duplicative litigation while imposing genuine harm on litigants foreclosed from raising new, meritorious arguments in court. Accordingly, those circumstances "weigh heavily against requiring administrative exhaustion." *Id.* at 146.

2. Requiring Exhaustion Here Would Undermine, Rather Than Facilitate, Fair And Efficient Decision-Making.

Under the principles discussed above, Smith had "reasonable ground[s]" for declining to present his constitutional arguments to the SEC, and he should not have been required to exhaust those arguments before raising them in an Article III court. The Sixth Circuit therefore erred in refusing to consider Smith's constitutional arguments.

a. Presenting Smith's structural constitutional challenges to the SEC would not have advanced any purpose ordinarily served by exhaustion. As noted, exhaustion ordinarily advances agency authority by ensuring that "agencies, not the courts, . . . have primary responsibility for the programs that Congress has charged them to administer." *McCarthy*, 503 U.S. at 145. But that reasoning presupposes that a question is assigned to the agency in the first place. Here, although the SEC may be assigned questions regarding securities law, there is no showing that Congress intended the SEC *also* to take primary responsibility for assessing the constitutionality of the SEC's own agency proceedings. *See Califano*, 430 U.S. at 109 ("Constitutional questions obviously are unsuited to resolution in administrative hearing procedures.").

Requiring that the SEC first address structural constitutional challenges does not advance the SEC's authority over the federal securities laws, either. Smith's claims turned here on whether the SEC violated the Seventh Amendment by proceeding against him in its own administrative tribunal, outside of Article III and without a jury. Whether the SEC proceeded against Smith in violation of the Constitution has nothing to do with the substance of any securities claim and requires no specialized agency knowledge. It neither "involves exercise of the [SEC's] discretionary power" nor requires "the [SEC] to apply its special expertise." *McCarthy*, 503 U.S. at 145. Instead, there is at least "some doubt as to whether the agency was empowered to grant effective relief," *id.* at 147 (citation omitted), because "constitutional claims" such as these lie "outside the [SEC's] competence and expertise," *Free Enter. Fund* v. *Pub. Co. Acct. Oversight Bd.*, 561 U.S. 477, 491 (2010).[2]

The SEC's decision on those claims, moreover, was "predetermined." *McCarthy*, 503 U.S. at 148. To start, longstanding Executive Branch policy requires executive officials to accord federal statutes an almost insurmountable presumption of constitutionality (except in circumstances, not present here, where a statute purports to infringe on executive power). The Office of

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[2] This Court has also noted that exhaustion may promote judicial efficiency where the agency's evaluation of an argument "may produce a useful record for subsequent judicial consideration, especially in a complex or technical factual context." *McCarthy*, 503 U.S. at 145. That consideration, too, does not apply to structural constitutional challenges like Smith's, which do not turn on the specific facts of any particular enforcement action brought by the SEC but rather on the legal relationship between SEC procedures and constitutional structure. It is not clear what "record" the SEC here would have produced regarding Smith's arguments, besides an unreasoned order simply rejecting them.

Legal Counsel has observed that it is not "the prerogative of the Executive . . . to exercise free and independent judgment on constitutional questions presented by Acts of Congress." Att'y Gen.'s Duty to Def. and Enforce Constitutionally Objectionable Legis., 4A Op. O.L.C. 55, 59 (1980). And this Court has likewise recognized the "grave challenges to the separation of powers" that would result were the Executive Branch "to nullify Congress' enactment solely on its own initiative and without any determination from the Court." *United States* v. *Windsor*, 570 U.S. 744, 762 (2013). "[E]xecutive officers" therefore do not follow "a policy of ignoring or attacking Acts of Congress whenever they believe[] them to be in conflict with the provisions of the Constitution." Constitutionally Objectionable Legis., 4A Op. O.L.C. at 56. Instead, the Executive Branch has long professed a "duty to defend an act of Congress whenever a reasonable argument can be made in its support, even if the Attorney General and the lawyers examining the case conclude that the argument may ultimately be unsuccessful in the courts." Att'y Gen.'s Duty to Def. Constitutionality of Statutes, 5 Op. O.L.C. 25, 25-26 (1981). Accordingly, even if members of the Commission subjectively believed that Smith's Seventh Amendment and Article III claims had merit, they were "duty"-bound to reject those claims if they concluded that any colorable argument could be offered for the constitutionality of the SEC's statutory structure.

By the time Smith arrived before the agency, moreover, the Commission had already announced its position on the constitutional questions in unmistakable terms. Smith sought SEC review on October 19, 2020 from the adverse FINRA decision reached in its disciplinary proceeding against him. *See* Pet. App. 36a. Mere weeks before, the SEC had explicitly rejected the argument that its in-house proceedings violated the Seventh Amendment. *See John Thomas Cap. Mgmt. Grp. LLC*,

File No. 3-15255, 2020 WL 5291417, at *27 (Sept. 4, 2020). That decision made clear that the Commission's position was longstanding, firmly held, and would not be modified. *Ibid.* As the Commission explained, "[w]e have repeatedly rejected claims that our administrative proceedings violate the Seventh Amendment," and "we again reject the argument that our administrative proceedings violate the Seventh Amendment." *Ibid.* And the SEC continued to assert that position during subsequent judicial review, including in litigation before this Court. Brief for the Petitioner at 17-33, *SEC* v. *Jarkesy*, 603 U.S. 109 (2024) (No. 22-859). Indeed, even *after* this Court rejected the SEC's position in *Jarkesy*, the Commission has continued to defend the constitutionality of its jury-free adjudicatory procedures—including in its post-*Jarkesy* briefing before the Sixth Circuit in this very case. *See* SEC C.A. Br. 47-57; *see also* Pet. App. 23a. There was thus no doubt whatsoever that if Smith raised his Seventh Amendment argument, the Commission would reject it.

Finally, this case also falls into the category of controversies where agencies cannot grant effective relief because "the challenge is to the adequacy of the agency procedure itself." *McCarthy*, 503 U.S. at 148. Where such a challenge is correct on the merits, conducting the agency adjudication *itself* injures the respondent, as he is thereby unconstitutionally "subject[ed] to an illegitimate proceeding, led by an illegitimate decisionmaker." *Axon Enter. Inc.* v. *FTC*, 598 U.S. 175, 191 (2023). And a rule that the challenger must voluntarily participate in unconstitutional proceedings in order to preserve his challenge to those very proceedings would raise serious constitutional questions in its own right: If Congress cannot constitutionally require the challenger to submit to proceedings before the "illegitimate decisionmaker" in the first place, *ibid.*, then it is far from clear that it can condition the challenger's ability to obtain judicial review

on what arguments he does or does not raise during them, *see Koontz* v. *St. Johns River Water Mgmt. Dist.*, 570 U.S. 595, 604 (2013) (describing the "overarching principle, known as the unconstitutional conditions doctrine, that vindicates the Constitution's enumerated rights by preventing the government from coercing people into giving them up").

b. The Sixth Circuit's contrary reasoning is unpersuasive.

First, the court of appeals concluded that because the Commission has sometimes addressed constitutional arguments raised by regulated parties, it must necessarily be competent to grant the constitutional relief that Smith requested. Pet. App. 12a-13a. Merely pointing to a string of cases in which the Commission had *rejected* constitutional challenges to its authority, *ibid.*, however, does not establish that the Commission was competent to *grant* the relief Smith seeks—let alone eliminate any "doubt" on that score, *McCarthy*, 503 U.S. at 147 (citation omitted).

Second, the court of appeals held that even though a denial of Smith's claim was "preordained" as a practical matter, raising it with the agency was not "futile" because the agency could theoretically "provide the relief requested." Pet. App. 17a. Section 78y(c)(1) does not ask, however, whether relief is impossible; it asks only whether there was a "reasonable ground" for not seeking relief from the agency. 15 U.S.C. § 78y(c)(1). That standard is notably different from the standard Congress has adopted in other statutes that require exhaustion except in "extraordinary circumstances." *See*, *e.g.*, 5 U.S.C. § 7123(c); 12 U.S.C. § 1735f-15(e); 29 U.S.C. § 160(e); *id.* § 660(a); 30 U.S.C. § 816(a)(1); 31 U.S.C. § 3805(d); 42 U.S.C. § 1320a-7a(e); *id.* § 1320a-8(d)(1); *id.* § 3537a(c). And this Court's "usual presumption [is] that 'differences

in language like this convey differences in meaning.'" *Ysleta Del Sur Pueblo* v. *Texas*, 596 U.S. 685, 698 (2022) (citation omitted). Yet the Sixth Circuit effectively eliminated any distinction between Section 78y(c)(1) and those more demanding provisions, reading the "reasonable ground" exception to require a showing of legal impossibility that could only be met in an extraordinary case. For that reason, too, its decision should be set aside.

CONCLUSION

The petition for a writ of certiorari should be granted.

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