No. 25-5487

In the

Supreme Court of The United States

JOSEPH W. WADE,
Petitioner
v.
ROBERT J. RODRIGUEZ,
in official capacity, et al.,
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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August 20, 2025 *Petitioner*

CIVIL CASE
QUESTIONS PRESENTED

1) Under 42 U.S.C. § 1983, against state officials in 'official capacity,' does Article III standing require proof that the final outcome of a 'discrete governmental decision' would be different if-not-but-for a 'race and sex conscious technical framework,' or is it sufficient to show an existence of 'differential treatment' and an 'inability to compete on equal footing' if-not-but-for a 'race and sex conscious technical framework?'

2) Does a prayer for "compensatory relief" exclude all viable remedies in law and equity under § 1983, against state officers in 'official capacity?'

LIST OF PARTIES

The Petitioner is Joseph W. Wade, Plaintiff in civil case 1:23-cv-4707-PAE-SLC (S.D.N.Y) and civil appeal No. 24-2495. (2nd Circuit)

The Respondents are officials of the New York State Department of State (NYSDOS); New York Secretary of State Robert J. Rodriguez, in his official capacity; David Ashton, in his official capacity as a revitalization specialist; Catherine Traina, in her official capacity as assistant director of the Bureau of Fiscal Management; and Laurissa Garcia, in her official capacity as a contract management specialist. Defendants in civil case 1:23-cv-4707 (S.D.N.Y) and civil appeal No. 24-2495. (2nd Circuit)

RELATED CASES

In The United States Court of Appeals for the Second Circuit:

Wade v. Rodriguez et al. No. 24-2495 (May 19, 2025, Summary Order (Dkt. 45.1)) (Affirming the ruling of the lower court on different grounds)
(see APPENDIX: A & D)

In United States District Court, The Southern District of New York:

Wade v. Rodriguez et al. No. 1:23-cv-4707-PAE-SLC (Sept 10, 2024) (Granting a Rule 12(b)(1) Dismissal)
(see APPENDIX: B & C)

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IN THE SUPREME COURT OF THE UNITED STATES PETITION FOR WRIT OF CERTIORARI

Petitioner, Joseph W. Wade, humbly prays that a writ of certiorari issue to review the judgment below.

I. OPINIONS BELOW

Cases are from federal courts;

In case No. 24-2495, The United States Court of Appeals for the Second Circuit issued a Summary Order (Dkt. 45.1) on May 19, 2025, this was electronically recorded with the Second Circuit ACMS, it appears at APPENDIX: A

In case No. 1:23-cv-4707, The Southern District Court of New York issued an Opinion and Order (ECF 92) (Appeals Dkt. 2) on September 10, 2024, this was electronically recorded with the Southern District's CM/ECF system, it appears at APPENDIX: B

II. JURISTICTION

Cases are from federal courts;

The United States Court of Appeals for the Second Circuit decided case No. 24-2495 with a dispositive Summary Order (Appeals Dkt. 45.1) on May 19, 2025, this was electronically recorded to the Second Circuits AMCS, it appears below at APPENDIX: A

A timely petition for rehearing (Dkt. 52) was filed June 4, 2025 and denied (Dkt. 56.1) by the United States Court of Appeals on June 26, 2025. Pursuant to Supreme Court Rule 13(3), Monday, Sept. 24, 2025, marks 90 days from Thursday, June 26, 2025. A copy of the order denying rehearing (Appeals Dkt. 56.1) appears at APPENDIX: D

The Jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1);

28 U.S. Code § 1254

> Courts of appeals; certiorari; certified questions; Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods: (1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;

III. CONSTITUTIONAL & STATUTORY PROVISIONS INVOLVED

See APPENDIX: E

U.S. Const. amend. V
U.S. Const. amend. XI
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28 U.S. Code § 2201 - Creation of remedy
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42 U.S. Code § 1983 - ... deprivation of rights
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NYS Executive (EXC) CHAPTER 18, ARTICLE 15
- § 291. Equality of opportunity a civil right
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- § 310. Definitions.
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- § 313-a. Diversity practices of state contractors.

N.Y. Comp. Codes R. & Regs. Tit. 5 – Department of Economic Development
- § 140.1 – Definitions
- § 141.2 - Annual State agency-specific goals
- § 142.1 - Purpose, scope and applicability
- § 142.2 - Establishing contract goals...
- § 142.3 - Diversity practices, bidding...
- § 142.4 - Utilization plans
- § 142.14 - Quantitative scoring factors ...

IV. STATEMENT OF THE CASE

1. Case Background

This case (1:23-cv-4707-PAE-SLC) (Appeal Dkt. No. 24-2495), was initially brought against the New York State Department of State Office of Planning, Development and Community Infrastructure (ECF 1) for the statewide imposition of overly broad race and sex conscious technical frameworks.

Initiating documents were submitted June 5, 2023. On June 13, 2023, an IFP was granted by The Honorable Judge Laura Taylor Swain in the Southern District of New York (ECF 5). The initial complaint sought, "money damages and 'a relief from bias'." (see ECF 1 at 10) (see Judge Cave's R&R, ECF 76 at 7)

On Aug. 1, 2023, an Order (ECF 8) by The Honorable Judge Paul A. Engelmayer construed the complaint as asserting official capacity claims against the New York Secretary of State, Robert J. Rodriguez, actionable under 42 U.S.C §1983 and allowed by the doctrine of Ex Parte Young.

On Aug 2, 2023, a summons (ECF 10) was issued to New York State Secretary of State, Robert J. Rodriguez. The receipt of which (ECF 14) was received Oct. 03, 2023. Subsequently, a Motion to Dismiss (ECF 20) and The Declaration of Cathrine Traina (ECF 22) was filed by council Alice Goldenberg, New York Assistant Attorney General, on Nov. 30, 2023. This MTD cited FRCP Rule 12 (b)(1) 'lack of standing.' (ECF 21)

In support of the MTD (ECF 21), The Declaration of Traina (ECF 22) claims the NYS DOS's authority to impose a M/WBE program is derived from N.Y. Exec. Law Art. 15-A §§ 310-318, 5 NYCRR § 142.2 and 5 NYCRR § 142.3. (ECF 22 p. 3-5)

N.Y. Exec. Law Art. 15-A §§ 310-318 does in fact broadly guide state agency action when conducting race and sex based remediation programs that are 'practical, feasible and appropriate,' 5 NYCRR § 140-145, the parallel legislative law, also delineates required Due Process.

5 NYCRR § 142.2 and § 142.3 specifically describes how race and sex conscious remediation programs can be imposed upon contracts at certain dollar amounts, if done so "in good faith" but, it is not itself justification for an imposition of race and sex conscious programs.

Overly broad state-actions, justified by state officers 'under the color' of state law but, not enacted within the guidance of law, remains the Petitioner's ultimate challenge at the district level.

"[R]emedial classifications warrant no different standard of review under the Constitution than the most brutal and repugnant forms of state-sponsored racism, a majority of this Court signals that ... government bodies need no longer preoccupy themselves with rectifying racial injustice." *City of Richmond v. J. A. Croson Co.,* 488 U.S. 469 (1989).

On Dec. 21, 2023, the Petitioner filed an Amended Complaint (ECF 31) related to ECF 1. Following the

guidance of Judge Paul A. Engelmayer, the First Amended Complaint (ECF 31) pursues action against New York State officials in official capacity, for the "deprivation of rights ... secured by the Constitution and laws," (42 U.S.C. §1983) citing "Equal Protection" and "Due Process" violations of the Fourteenth Amendment. The FAC (ECF 31) also discusses Fifth Amendment violations, New York State constitutional violations, New York State statutory claims, and circumstances actionable under 42 U.S.C §1985 and 42 U.S.C §1986.

Prayer for relief included assertions and requests for declaratory relief (see 28 U.S.C §2201) and compensatory relief. *see Birdsall v Coolidge 93* U.S. 64 (1876) ("compensatory" and "actual" are identical)

On Feb. 12, 2024, council Alice Goldenberg filed a new Motion to Dismiss (ECF 49), its Supporting Memorandum of Law (ECF 50) cited Rule 12(b)(1), Rule 12(b)(6) and the Eleventh Amendment.

On March 12, 2024, the Petitioner filed a Motion to Add Parties in Individual Capacity. (ECF 67). This was dismissed by an Order (ECF 73) on March 19, 2024. This Order (ECF 73) included an explicit direction from Magistrate Judge Sarah J. Cave, instructions to wait until the Motion to Dismiss (ECF 49) was resolved to request any further Leave to Amend.

On June 28, 2024, 93 days after the court was fully briefed, Magistrate Judge Sarah J. Cave filed a Report and Recommendations (ECF 76), suggesting that the

asserted claims had no standing and should be wholly dismissed with prejudice.

The Petitioner, in response, submitted a Corrected Objections and Comments, July 8, 2024 (ECF 80).

On Sept 10, 2024, the Honorable Paul A. Engelmayer, denied an instant Motion for Leave to Amend (ECF 87) and granted the Defense's MTD (ECF 49) under Rule 12(b)(1) without prejudice.

His decision was handed down in an Opinion and Order (ECF 92) (Appeal Dkt. 2). Subsequently a Clerk's Judgement was filed the same day (ECF 93) (Appellant Dkt. 3).

The Opinion and Order (ECF 92) (Appeal Dkt. 2) dismisses civil case 1:23-cv-4707-PAE-SLC under 12(b)(1), it states the only "relief (money damages) [he] seeks is backward-looking. It is limited to compensating Wade for the *past* injury he claims from the failure to be awarded the RFP contract..." (ECF 92 p. 12) (Appeal Dkt. 2 p.12)

"When Wade filed the Complaint, the Court initially construed it to assert official-capacity claims against Rodriguez seeking prospective injunctive or declaratory relief, such that these claims would not be barred by the Eleventh Amendment. But Wade's AC, today the operative complaint, seeks only monetary relief from defendants and only in their official capacities. As such, its claims are barred by the Eleventh Amendment. *See, e.g., Auguste v. Dep't of Corr.,* 424 F. Supp. 2d 363,367 (D. Conn. 2006); ... *Gutierrez v. Joy,* 502 F. Supp. 2d 352,362 (S.D.N.Y.

2007) (same)." see Opinion and Order (ECF 92 p. 13) (Appeal Dkt. 2 p.13)

A Notice of Civil Appeal (ECF 94) (Appeal Dkt.1) and a Motion for Leave to Appeal IFP (ECF 95) (Appeal Dkt. 7) was filled on Sept. 19, 2024.

The Civil Appeal was received by the Second Circuit on Sept. 19, 2024 (Appeal Dkt. 5) on behalf of Appellant, Joseph W. Wade, endorsed by The Honorable Judge Engelmayer (ECF 97) (Dkt. 5).

Case No. 24-2495, Wade v. Rodriguez, was Opened (Appeal Dkt. 5) on Sept. 24, 2024. The Appellant's Brief (Dkt. 19), was recorded on Nov. 7, 2024, it cited error of law, error of fact and abuse of discretion.

On May 16, 2025, civil appeals case No. 24-2495, conducted oral argument before The Honorable Judge Guido Calabresi, The Honorable Judge Barrington D. Parker Jr., and The Honorable Judge William J. Nardini, Panel B for The United States Court of Appeals for the Second Circuit. An audio recording at ww3.ca2.uscourts.gov/oral_arguments.

Shortly after, a Summary Order (Appeal Dkt. 45.1) was filed on May 19, 2025.

The Second Circuit Summary Order (Dkt.45.1) affirmed the lower court's judgment but, for different reasons, citing lack of 'traceability.'

"Here, the rejection of Wade's bid was not traceable to the conduct he challenged ... Wade failed to plausibly allege that the DPQ could have had a "but-for" causal impact on the final decision to reject his

proposal. *See Babb*, 589 U.S. at 413-14 (Appeal Dkt. 45.1 p. 5)

The Second Circuit did not comment on 'redressability' or any of the District Court's points, "[b]ecause we conclude that the district court properly dismissed this action for lack of jurisdiction on standing grounds, we need not reach the additional issues he raises on appeal." (Appeal Dkt. 45.1 p. 5)

It is this Summary Order (Dkt 45.1) which is now under the jurisdiction of this Court (28 U.S.C §1254(1)) and reviewable for Certiorari.

The Petitioner filed a Petition for Rehearing on June 4, 2025, (Appeal Dkt. 52) this was denied on June 26, 2025. (Appeal Dkt. 56.1)

Pursuant to Supreme Court Rule 13(3), "... if a petition for rehearing is timely filed in the lower court by any party, the time to file the petition for a writ of certiorari for all parties ... runs from the date of the denial of rehearing..." therefore the 'time to file a petition for a writ of certiorari' runs 90 days from Thursday, June 26, 2025.

Wednesday, September 24, 2025 marks 90 days from Thursday, June 26, 2025.

This Petition for Writ of Certiorari has been complied and submitted on August 20, 2025, 55 days after the Denial of a Petition for Rehearing (Appeal Dkt. 56.1) on June 26, 2025.

2. Introduction

It is bedrock law that "requested relief" must "redress the alleged injury." *Steel Co. v. Citizens for Better Environment*, 523 U. S. 83, 103 (1998)." quoting *Babb v. Wilkie*, 589 U.S. 399, 413 (2020)

"Persons seeking judicial relief from an Art. III court must have standing to maintain their cause of action. At a minimum... "such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends ..." *Baker v. Carr,* 369 U.S. 186, 369 U. S. 204 (1962). Under the Court's cases, this "personal stake" requirement is satisfied if the person seeking redress has suffered, or is threatened with, some "distinct and palpable injury," *Warth v. Seldin,* 422 U.S. 490, 422 U.S. 501 (1975), and if there is some causal connection between the asserted injury and the conduct being challenged, *Simon v. Eastern Kentucky Welfare Rights Org.,* 426 U.S. 26,41 (1976). *See Heckler v. Mathews,* 465 U.S. 728, 738 (1984); *Havens Realty Corp. v. Coleman,* 455 U.S. 363, 376 (1982); *Valley Forge,* 454 U.S. 472." *Allen v. Wright,* 468 U.S. 737 (1984)

"But-for causation is nevertheless important in determining the appropriate remedy... Remedies must be tailored to the injury. Plaintiffs who show that [a protected trait] was a but-for cause of differential treatment in an employment decision, but not a but-for cause of the decision itself, can still seek

injunctive or other forward-looking relief." *Babb v. Wilkie*, 589 U.S. 399, 413 (2020)

To establish standing for prospective relief, a plaintiff "must show a likelihood that he will be injured in the future." *Shain v. Ellison*, 356 F.3d 211, 215 (2d Cir. 2004) (see also *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200 (1995))

"...plaintiffs are not without a remedy if they show that [a protected trait] was a but-for cause of differential treatment ... plaintiffs can seek [] forward-looking relief. Determining what relief, if any, is appropriate in the present case is a matter for the District Court to decide in the first instance if [a plaintiff] succeeds in showing that [a statute] was violated." *Babb v. Wilkie*, 589 U.S. 399, 413 (2020)

"[A] summary judgment [dismissal] was inappropriate on [a] § 1983 damages claim, even if petitioners conclusively established that he would have been rejected under a race-neutral policy, [dismissal] is inconsistent with this Court's well-established framework for analyzing such claims. ... Of course, a plaintiff challenging an ongoing race-conscious program and seeking forward-looking relief need only show 'the inability to compete on an equal footing.'" *Texas v. Lesage*, 528 U.S. 18 (1999))

3. An Otherwise Guaranteed Contract Award Is Not Required to Establish a Causal Connection to a Concrete and Particular Injury

In Summary Order (Dkt.45.1), The Second Circuit demands that the Petitioner claim a much narrower injury-in-fact then is necessary to establish standing, "...where a plaintiff challenges a discrete governmental decision as being based on an impermissible criterion and it is undisputed that the government would have made the same decision regardless, there is no cognizable injury warranting damages relief." *Babb v. Wilkie*, 589 U.S. 399, 413 (2020) (quoting *Texas v. Lesage*, 528 U.S. 18, 21–22 (1999))." (Summary Order, Dkt. 45.1 at 4)

While this specific fact from The Second Circuit is true, it is not the poignant issue at hand. It's focus attempts to spin the substance of Babb v. Wilkie (2020) on its head, "[h]ere, the rejection of Wade's bid was not traceable...Wade failed to plausibly allege that the DPQ could have had a "but-for" causal impact on the final decision to reject his proposal. *See Babb*, 589 U.S. at 413-14." (Appeals Dkt. 45.1 p. 5)

There is a proper distinction between the separate nexuses of proximate cause and the types of injuries they accrue. Separate is the injury of 'inability to compete on equal footing' and the injury of 'loss of contract.' Here though the Petitioner makes his complaint against the former not the latter.

"When the government erects a barrier that makes it more difficult for members of one group to obtain a benefit than it is for members of another group, a member of the former group seeking to challenge the barrier need not allege that he would have obtained the benefit but for the barrier in order to establish standing. See, *e.g., Regents of Univ. of Cal.* v. *Bakke,* 438 U. S. 265. The "injury in fact" element of standing in such an equal protection case is the denial of equal treatment resulting from the imposition of the barrier-here, the inability to compete on an equal footing in the bidding process, not the ultimate inability to obtain the benefit. To establish standing, therefore, petitioner need only demonstrate that its members are able and ready to bid on contracts and that a discriminatory policy prevents them from doing so on an equal basis." *Northeastern Fla. Chapter of the Associated Gen. Contractors of America v. Jacksonville,* 508 U.S. 656 (1993)

"In *Twombly*, the complaint alleged general wrongdoing that extended over a period of years, whereas [Iqbal] alleges discrete wrongs—for instance, beatings—by lower level Government actors." *Ashcroft v. Iqbal,* 556 U.S. 662 (2009)

"[A] plaintiff challenging an ongoing race-conscious program and seeking forward-looking relief need only show "the inability to compete on an equal footing." *Texas v. Lesage,* 528 U.S. 18 (1999)

The Petitioner's FAC (ECF 31) clearly "discuss[es] how the actions, policies and customs of these officers

are actual causes of significant damage, accompanied with claims [and] descriptions of instances of proximate causes with grounds for redress and reasoning for compensatory and declaratory relief." *FAC* (ECF 31 at 31)

"A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. The plausibility standard is not akin to a "probability requirement," but it asks for more than a sheer possibility that a defendant has acted unlawfully." *Ashcroft v. Iqbal*, 556 U.S. 662 (2009)

The Petitioner's FAC (ECF 31) does show a 'reasonable inference'. that the "denial of equal treatment resulting from the imposition of [a] barrier, here, the inability to compete on an equal footing in [a] bidding process," "was a but-for cause of differential treatment." *see Northeastern Fla. Chapter of the Associated Gen. Contractors of America v. Jacksonville,* 508 U.S. 656 (1993)

On the face of the FAC is a repeated assertion; "Deprivation of Rights: 14th Amendment Due Process and Equal Protection; Officers have not maintained fair and just procedures.... These officers have mis stepped over broadly in their duties, trampling on my Constitutional Privileges dishonestly... Specifically, when creating and implementing the frameworks and tactics of MWBE remediation programs. The State agency is now responsible for... Duty of Care required

... officers have allowed the MWBE program [to] become overly broad indifferently, with no reasonable justification. [Because they are] responsible for the unlawful corrosion of these Constitutional Privileges, and outright denial of Equal Protection under the color of law, I plead for compensatory redress..." *Petitioner's FAC* (ECF 31 at 46)

"It may be difficult to define the precise formulation of the required prima facie case in a particular case before discovery has unearthed relevant facts and evidence. Consequently, the prima facie case should not be transposed into a rigid pleading standard for discrimination cases. Imposing the Second Circuit's heightened standard conflicts with Rule 8(a)'s express language, which requires simply that the complaint "give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests." Conley v. Gibson, 355 U. S. 41,47.

Under Federal Rule of Civil Procedure 8(a)(2), a pleading must contain a "short and plain statement of the claim showing that the pleader is entitled to relief." "As the Court held in Twombly, 550 U.S. 544, the pleading standard Rule 8 announces does not require "detailed factual allegations," but it demands more than [the] unadorned." *Ashcroft v. Iqbal,* 556 U.S. 662 (2009)

In this mater, the Petitioner is named in a Pro se 'individual capacity.' The nexus of the Petitioner's proximate cause is not how a 'discrete governmental decision' rejected a company proposal, but instead,

how the introduction of 'qualitative' or 'race and sex conscious' technical point schemes grade the 'racial qualities' and 'sex compositions' of a company's personnel, and how these race and sex conscious grading schemes effect the 'equal footing' of individuals, business relationships and employment considerations. see *City of Richmond v. J. A. Croson Co.,* 488 U.S. 469 (1989) also *see Northeastern Fla. Chapter, Associated Gen. Contractors of America v. Jacksonville,* 508 U. S. 656, 666 (1993)

Early in this case it was shown that "[the Petitioner] may bring suit for prospective injunctive relief against an individual state official ..., *see Ex Parte Young,* 209 U.S. 123 (1908) (holding that state officials are not immune under the Eleventh Amendment from official-capacity claims seeking prospective injunctive or declaratory relief)" *see Judge Paul A. Engelmayer,* Order (ECF 8)

"...Congress took care to arm the courts with full equitable powers. For it is the historic purpose of equity to "secur[e] complete justice," *Brown v. Swann,* 10 Pet. 497, 35 U.S. 503 (1836); *see also Porter v. Warner Holding Co.,* 328 U.S. 395, 328 U.S. 397-398 (1946). "[W]here federally protected rights have been invaded; it has been the rule from the beginning that courts will be alert to adjust their remedies so as to grant the necessary relief." *Bell v. Hood,* 327 U.S. 678, 327 U. S. 684 (1946). *Albemarle Paper Co. v. Moody,* 422 U.S. 405 (1975) But, the Second Circuit's Standards assert differently.

Additionally, the Second Circuit argues, "the Amended Complaint did not allege that Wade was aware of the DPQ prior to making subcontracting decisions or that he discriminated against any group due to the existence of the questionnaire. *See, e.g., Chevron Corp. v. Donziger*, 833 F.3d 74, 121 (2d Cir. 2016)" (Appeals Dkt. 45.1 p. 5)

An important distinction exits here too. Specific relationships to third parties are required to establish separate 'causal connections.' To say that the Petitioner was not 'caused to knowingly discriminate' by an overly broad M/WBE program because, of a 'lack of knowledge' of the program, you must also say there is a strong plausibility that other actors were 'caused to knowingly discriminate' because of 'knowledge of the program.'

"In *Norwood v. Harrison,* 413 U.S. 455 (1973), we noted that "a state may not induce, encourage or promote private persons to accomplish what it is constitutionally forbidden to accomplish.'" quoting *Allen v. Wright,* 468 U.S. 737 (1984)

There exists a 'person' who enacts, or who is manipulated to act by, the state imposed discriminatory policies. While these individuals can be peers, or other business owners, usually they are town or local representatives. Also considered 'state-actors,' they are persuaded by state funding to 'knowingly' engage in unconstitutional 'state-action.' It is safe to assume these individuals are much more likely, if not

required to have 'awareness' of these policies prior to implementing them in the general public.

As pointed out in *United States v. United States Gypsum Co.*, 438 U.S. 422, 445 (1978), a 'person' who causes a particular result is said to act 'purposefully' if `he consciously desires that result, whatever the likelihood of that result happening from his conduct,' while he is said to act 'knowingly' if he is aware `that the result is practically certain to follow from his conduct, whatever his desire may be as to that result.' *United States v. Bailey*, 444 U.S. 394, 404 (1980)

"[As law] concerns 'personnel actions.' ... its meaning is easy to understand ... broadly ... a 'personnel action' include[s] ... decisions such as appointment, promotion, work assignment, compensation, and performance reviews...That interpretation is consistent with the term's meaning in general usage... [P]ersonnel actions must be made "free from" discrimination. The phrase "free from" means "untainted" or "[clear] of (something which is regarded as objectionable)."[1] ("[n]ot affected or restricted by a given condition or circumstance"); ... (defining "free" as "exempt or released from something specified that controls, restrains, burdens, etc."). Thus ... a personnel action must be made "untainted" by discrimination..., and the addition of the term "any" ("free from *any* discrimination based on age") drives

[1]Webster's Third New International Dictionary 905 (def. 4(a)(2)) (1976); ...

the point home. And as for "discrimination," we assume that it carries its 'normal definition,' which is 'differential treatment." *Jackson* v. *Birmingham Bd. of Ed.*, 544 U.S. 167, 174 (2005).

"This is an *a fortiori* case. There is no mere risk that [New York State] will repeat its allegedly wrongful conduct; it has already done so .... The gravamen of petitioner's complaint is that [he is] disadvantaged in [his] efforts to obtain [] contracts." *Northeastern Fla. Chapter of the Associated Gen. Contractors of America v. Jacksonville*, 508 U.S. 656 (1993)

Over the course of this case, the Petitioner has continued to bid for public contracts funded with state monies, each utilized some version of a state-imposed M/WBE technical framework, (see Petitioner's *Petition for Rehearing* (Appeal Dkt. 52 at 32)) May any concern about the plaintiff's 'awareness' of New York's policies be resolved in harmony with its onset.

To the extent the Second Circuit is concerned with the temporal nature of 'awareness' and the legal significance of 'being aware' of certain policy, this concern advances a significant theme of worth.

Exposure to M/WBE policies of the New York State can and does affect a decisionmaker's future liability.

Therefore, it is not a wild prerogative to demand policy documents and technical frameworks, "survive a daunting two-step examination known in our cases as "strict scrutiny." *Adarand Constructors, Inc. v.*

Peña, 515 U. S. 200, 227 (1995). Under [this] standard we ask, first, whether the racial classification is used to "further compelling governmental interests." *Grutter v. Bollinger*, 539 U. S. 306, 326 (2003). Second, if so, we ask whether the government's use of race is "narrowly tailored"—meaning "necessary"—to achieve that interest. *Fisher v. University of Tex. at Austin*, 570 U. S. 297, 311– 312 (2013) (Fisher I)" *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College*, 600 U.S. ___ (2023)

The very existence of "[c]lassifications based on race carry a danger of stigmatic harm. Unless they are strictly reserved for remedial settings, they may in fact promote notions of racial inferiority and lead to a politics of racial hostility. See *University of California Regents v. Bakke,* 438 U.S., at 298, 98 S.Ct., at 2752 (opinion of Powell, J.) ("[P]referential programs may only reinforce common stereotypes holding that certain groups are unable to achieve success without special protection based on a factor having no relation to individual worth"). We thus reaffirm the view expressed by the plurality in *Wygant* that the standard of review under the Equal Protection Clause is not dependent on the race of those burdened or benefited by a particular classification. *Wygant,* 476 U.S., at 279-280, 106 S.Ct., at 1849-1850; *id.,* at 285-286, 106 S.Ct., at 1852-1853 (O'CONNOR, J., concurring in part and concurring in judgment). See also *San Antonio Independent School Dist. v. Rodriguez,* 411 U.S. 1, 105, 93 S. Ct. 1278, 1333, 36 L.

Ed. 2d 16 (1973)" *Richmond v. J. A. Croson Co.*, 488 U. S. 469, 493 (1989) (plurality opinion)

Lastly, the Second Circuit believes that for some claims, "such "generalized grievances about the conduct of Government" are not generally sufficient to confer standing. *Schlesinger v. Reservists Comm. to Stop the War*, 418 U.S. 208, 217 (1974)." (Appeals Dkt. 45.1 p. 5)

The 'traceability' standard of *Lujan, Twombley* and *Iqbal* remain good law "... a causal relationship between the injury and the challenged conduct, by which we mean that the injury "fairly can be traced to the challenged action of the defendant," and has not resulted "from the independent action of some third party not before the court," *Simon* v. *Eastern Kentucky Welfare Rights Organization,* 426 U. S. 26, 41-42 (1976); see *Lujan* v. *Defenders of Wildlife,* 504 U. S. 555, 560 (1992); see *Northeastern Fla. Chapter of the Associated Gen. Contractors of America v. Jacksonville,* 508 U.S. 656 (1993); see *Ashcroft v. Iqbal,* 556 U.S. 662 (2009); see *Twombly*, 550 U. S. 544

The Petitioner has shown with 'direct traceability' 'that [a protected trait] was a but-for cause of differential treatment.' A personal substantive and procedural constitutional 'injury-in-fact'. *See Petitioner's FAC* (ECF 31 at 18-25)

At the minimum, there is an "importance to organized society that procedural due process be observed, *see Boddie v. Connecticut,* 401 U.S. 371

(1971); *Anti-Fascist Committee v. McGrath,* 341 U.S. at 171-172

Without Due Process, the NYS DOS unlawfully "operates to the disadvantage of some suspect class or impinges upon a fundamental right explicitly or implicitly protected by the Constitution, [it] thereby require[s] strict judicial scrutiny. If not, the [NYS DOS] scheme must still be examined to determine whether it rationally furthers some legitimate, articulated state purpose, and therefore does not constitute an invidious discrimination in violation of the Equal Protection Clause of the Fourteenth Amendment." *San Antonio Independent School District v. Rodriguez,* 411 U.S. 1 (1973)

"A plaintiff challenging an ongoing race-conscious program and seeking forward-looking relief need only show "the inability to compete on an equal footing." *Northeastern Fla. Chapter, Associated Gen. Contractors of America* v. *Jacksonville,* 508 U. S. 656, 666. (quoting *Texas v. Lesage*, 528 U.S. 18 (1999))

"if they show that [a protected trait] was a but-for cause of differential treatment in an employment decision ..., plaintiffs can seek ... forward-looking relief ... in the first instance [a plaintiff] succeeds in showing that [a statue] was violated." *Babb v. Wilkie*, 589 U.S. 399, 413 (2020)

4. The Petitioner has Articulated a Deprivation of Due Process and Equal Protection Rights which are Redressable by Requested Relief

In contrast to the Second Circuit's Summary Judgment (Dkt. 45.1), it is not incumbent upon the Petitioner to prove the otherwise guaranteed award of a 'discrete governmental decision' if not but-for 'differential treatment.'

Instead, only that a 'constitutionally protected trait' was a but-for cause of 'differential treatment.' see *Babb v. Wilkie*, 589 U.S. 399, 413 (2020)

Here, the Petitioner, would not have a been 'deprived of Fourteenth Amendment Due Process and Equal Protection rights' 'if-not-but-for' overly broad 'state-action.' This being, the erroneous publication, inaccurate proliferation and unconstitutional use of race and sex conscious programs, which has 'subjected' [the Petitioner] to a 'deprivation of right' 'on the basis' of his race and sex, 'causing' 'the inability to compete on an equal footing.'

State-actions have also, 'caused' a 'taint' to the personal and personnel actions of third parties, further 'causing' others to 'depriv[e] [the Petitioner] of [] rights, privileges, or immunities secured by the Constitution and laws.' (see 42 U.S.C. §1983)

Additionally, the Petitioner has made clear, not only of his intentions to "bid, in the relatively near future, on another Government contract," *Adarand*

Constructors, Inc. v. Peña, 515 U.S. 200 (1995) but, shows he has continued to do so during the duration of these proceedings, (See Petitioner's *Petition for Rehearing* (Dkt. 52 at 32) enduring a continual and patterned deprivation of rights.

The Petitioner frequently contends with the same, 'concrete and particularized' 'deprivation' of 'Due Process' and 'Equal Protection' rights, 'directly causing' an 'inability to compete on equal footing' because of technical grades distributed 'on the basis' of race and sex. A 'deprivation,' which is 'directly traceable' to a 'state-actor', via specific bid solicitations on record, but also, a flood of official state publications and overly broad agency actions.

"Currently and ceaselessly contradicting Constitutional Liberties [and civil Property], officers remain in noncompliance with Due Process as protected by the Fifth and Fourteenth Amendments ...For this I pray to the court for adjudication in regards to the defendants' actions, and ask for certification of any just damages." *Petitioner FAC* (ECF 31) at 10.

The Petitioner has also itemized certain 'deprivations' actionable under Title 42 U.S.C. § 1983, describing only ongoing and rolling causes of action. *See Petitioner FAC* (ECF 31 at 18-21.)

"[T]he elements and prerequisites for recovery of damages appropriate to compensate injuries caused by the deprivation of one constitutional right are not necessarily appropriate to compensate injuries caused

by the deprivation of another. As we have said..., these issues must be considered with reference to the nature of the interests protected by the particular constitutional right in question" *Carey,* 435 U.S. at 264-65, 98 S. Ct. at 1053.

The 'close' nature of these 'injuries-in-fact,' the deprivation of 'personal rights', surpasses the 'concrete and particular' standard of *Spokeo, Inc. v. Robins (2016). see FAC* Pp. 25-27 (ECF 31) (Due Process failures); *FAC* Pp. 31-48 (ECF 31) (Equal Footing)

More pertinent to this Court's review though, the second prong of *Lujan (1992)* 'traceability,' is also satisfied. see *The Declaration of Cathrine Traina* (ECF 22); see Petitioner's *Petition for Rehearing* (Appeals Dkt. 52 at 32); see *FAC* (ECF 31)

"[H]e may bring suit for prospective injunctive relief against an individual state official ..., *see Ex Parte Young,* 209 U.S. 123 (1908) (holding that state officials are not immune under the Eleventh Amendment from official-capacity claims seeking prospective injunctive or declaratory relief)" *see Order (ECF 8), Judge Paul A. Engelmayer*

"A complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.∴ [F]actual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged ..." *Ashcroft v. Iqbal,* 556 U.S. 662 (2009)

The Petitioner's injuries-in-fact are real, actual, concrete, particular and directly traceable to the adverse actions of NYS officials.

Lastly, the ability for requested declaratory relief (28 U.S.C § 2201) and compensatory relief *(Edelman v. Jordan,* 415 U.S. 651 (1974)) to redress asserted injuries, in law and equity, clearly fulfills the 'redressability' prong of standing.

"[A]ny Court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such." 28 USC § 2201 "Specific performance is a contractual remedy in which a court orders a party to fulfill their obligations as closely as possible to what was promised in the contract, rather than simply paying damages for failing to do so. (definition of "specific performance,"[2])

Therefore, the Petitioner holds Article III standing.

5. Equitable Redressability

The Second Circuit misapplies the substantive precedent of *Babb v. Wilkie* (2020), in regards to 'traceability.' This remains the main contention of this petition but, "[b]ecause [Panel B of the Second Circuit]

[2] law.cornell.edu/wex/specificperformance

conclude[d] that the district court properly dismissed this action for lack of jurisdiction on standing grounds, [they did] not reach the additional issues [the Petitioner] raises on appeal." (Appeal Dkt. 45.1)

Since "redressability' remains a consideration for Certiorari, it will be briefly discussed.

The Opinion and Order (ECF 92) (Dkt. 2) of the District Court misapplies the 'redressability' standards of Ex Parte Young (1908) and Edelman v. Jordan (1974).

"A court may dismiss a complaint only if it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations." *Hishon v. King & Spalding*, 467 U.S. 69, 73 (1984)

"... A State shall not be immune under the Eleventh Amendment of the Constitution of the United States from suit in Federal court for a violation of ... *title VI of the Civil Rights Act of 1964* [42 U.S.C. 2000d et seq.], or the provisions of any other Federal statute prohibiting discrimination by recipients of Federal financial assistance ... In a suit against a State for a violation of a statute referred to [herein], remedies (including remedies both at law and in equity) are available for such a violation to the same extent as such remedies are available for such a violation in the suit against any public or private entity other than a State." *42 U.S.C. 2000d-7*

'[J]udicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution," (ARTICLE III sec II) this "Court [has] the power to

grant remedies other than monetary damages. These remedies include injunctions, writs, or specific performance among others." (definition; "court of equity" [3])

The District Court's Order (Dkt.2) claims "the operative complaint, seeks only monetary relief from defendants and only in their official capacities." (ECF 92 p.13) (Appeal Dkt. 2 p.13)

The Petitioner maintains this is erroneous, "For the deprivation inflected upon me ... I claim civil injury, harm and damage, and pray for declaratory and compensatory relief ... Similarly [he states], descriptions of instances of proximate causes with grounds for redress and reasoning for compensatory and declaratory relief." (ECF 31 at 21)

Technical pleading standards are clear, FRCP Rule 8(d)(2) and 8(d)(3) are explicit. Pleadings are 'separate' and 'severable,' "regardless of consistency."

The term 'compensatory relief' includes certain allowable 'equitable relief.' "It is firmly established that a district court's subject-matter jurisdiction is not defeated by the absence of a valid (as opposed to arguable) cause of action, see, e. g., *Bell v. Hood*, 327 U. S. 678, 682. Subject-matter jurisdiction exists if the right to recover will be sustained under one reading of the Constitution and laws and defeated under another, id., at 685, unless the claim clearly appears to be immaterial, wholly insubstantial and frivolous, or otherwise so devoid of merit as not to involve a

[3] law.cornell.edu/wex/court_of_equity

federal controversy, see, e. g., *Oneida Indian Nation of N. Y v. County of Oneida,* 414 U. S. 661, 666." *Steel Co. v. Citizens for Better Environment,* 523 U.S. 83 (1998)

'Compensatory equitable restitution' is separate and distinct from 'compensatory damages.' See *TransUnion LLC v. Ramirez,* 594 U.S. ___ (2021)

That being said, "[s]ince [the] decision in *Carey v. Piphus,* 435 U. S. 247 (1978), several of the Courts of Appeals have concluded that damages awards based on the abstract value of constitutional rights are proper, at least as long as the right in question is substantive. *E.g., Bell v. Little Axe Independent School Dist. No. 70,* 66 F.2d 1391 (CA10 1985); *Herrera v. Valentine,* 653 F.2d 1220, 1227-1229 (CA8 1981), *Konczak v. Tyrrell,* 603 F.2d 13, 17 (CA7 1979) (dicta), *cert. denied,* 444 U.S. 1016 (1980). *See also* Love, Damages: A Remedy for the Violation of Constitutional Rights, 67 Calif.L.Rev. 1242 (1979)." *Memphis Comm. Sch. Dist. v. Stachura, 477* U.S. 299 (1986)

"In *Goldberg v. Kelly,* 397 U.S. 254 (1970), the fiscal consequences to state treasuries [] were the necessary result of compliance with decrees which by their terms were prospective in nature... shape[ing] their official conduct to the mandate of the Court's decrees...Such an ancillary effect on the state treasury is a permissible and often an inevitable consequence of the principle announced in *Ex Parte*

Young, supra." Edelman v. Jordan, 415 U.S. 651 (1974).

"... The award in this case, held that it was permissible because it was in the form of "equitable restitution" instead of damages" *TransUnion LLC v. Ramirez,* 594 U.S. ___ (2021) Even a simple accounting for 'accrual of harm,' is "a federal court conclusion that ... would "amount to a significant increase in the likelihood" that [a plaintiff] "would obtain relief that directly redresses the injury suffered." *Utah v. Evans,* 536 U. S. 452, 464.

There exists 'actual relief' of prospective nature, which, in order to 'compensate' a deprivation of rights 'equitably,' may require expenditure of state monies.

Even this Court's ruling in Babb v. Wilkie (2020) does not ban compensatory damages outright, "If an applicant incurs costs to prepare for the discriminatorily administered [] test, a damages award compensating for such out-of-pocket expenses could restore the applicant to the "position tha[t] he or she would have enjoyed absent discrimination." (Justice Sotomayor concurring) *Babb v. Wilkie*, 589 U.S. 399, 413 (2020) *see also TransUnion LLC v. Ramirez,* 594 U.S. ___ (2021)

In closing, the following are specific examples of possible 'equitable restitution' which could ... resemble [] more closely [a] monetary award against the State itself, *Ford Motor Co. v. Department of Treasury," Edelman v. Jordan*, 415 U.S. 651 (1974), but yet, they are prospective equitable relief;

- Specific Performance
  A judicial decree can demand all future official state documents comply with state laws on its face.
- Constructive Trust
  A judicial decree can demand the creation of a group of individuals or a pool of monies dedicated to the continued maintenance of compliance.
- Accounting
  A judicial decree can establish discovery to determine the distinctions and accrual of injuries.
- Rescission
  A judicial decree can revoke or stay overly broad policies temporarily or indefinitely.
- Rectification
  A judicial decree can demand any pending solicitation, contract or grant be amended to comply with lawful standards.
- Subrogation
  A judicial decree can certify the right to sue
- Restitution
  A judicial decree can establish a procedural or substantive status quo
- Right to an Effective Remedy
  A judicial decree can declare a plaintiff rights or deprivation thereof.

V. REASONS FOR GRANTING WRIT

1. Rule 10: Considerations Governing Review on Certiorari

a. A United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter; ... or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power;

Here the Second Circuit splits from the Ninth Circuit and Eight Circuit;

"In *Reynaga Hernandez v. Skinner*, 969 F.3d 930, 941-42 (9th Cir. 2020), the Ninth Circuit discussed, for the first time, the minimum level of involvement needed for § 1983 liability under the integral-participant doctrine. An actor may be deemed to have caused a constitutional violation under the "integral-participant doctrine," "only if (1) the defendant knew about and acquiesced in the constitutionally defective conduct as part of a common plan with those whose conduct constituted the violation, or (2) the defendant set in motion a series of acts by others which the defendant knew or reasonably should have known would cause others to inflict the constitutional

injury." *Peck v. Montoya*, 51 F.4th 877, 891 (9th Cir. 2022);

"Nominal damages must be awarded if the plaintiff proves that his or her constitutional rights have been violated. *see Cummings v. Connell*, 402 F.3d 936, 942-46 (9th Cir. 2005); *Schneider v. County of San Diego*, 285 F.3d 784, 794-95 (9th Cir. 2002); *Trevino v. Gates*, 99 F.3d 911, 922 (9th Cir. 1996); *Wilks v. Reyes*, 5 F.3d 412, 416 (9th Cir. 1993); *Draper v. Coombs*, 792 F.2d 915, 921-22 (9th Cir. 1986). See also *Guy v. City of San Diego*, 608 F.3d 582, 587 (9th Cir. 2010); *Mahach-Watkins v. Depee*, 593 F.3d 1054, 1059 (9th Cir. 2010); *Carey v. Piphus*, 435 U.S. 247, 266- 67 (1978)

Presumed damages are appropriate when there is a great likelihood of injury coupled with great difficulty in proving damages." Trevino v. Gates, 99 F.3d 911, 921 (9th Cir. 1996) (citing *Carey v. Piphus*, 435 U.S. 247, 263 (1978))." *Section 1983 Outline: United States Court of Appeals for the Ninth Circuit Office of Staff Attorneys by: Kent Brintnall*

"In order to fully vindicate the challenged guarantees and deter future conduct that threaten their practical significance, full compensation is necessary. To secure complete satisfaction, damage awards must take account of the intrinsic dimension that envelopes each substantive constitutional right. This concept is not a novel one. For example, the federal courts have traditionally compensated the intangible constitutional loss that results when a party's voting rights are infringed. See generally *Lane*

v. Wilson, 307 U.S. 268, 59 S. Ct. 872, 83 L. Ed. 1281 (1939); *Nixon v. Condon*, 286 U.S. 73 (1932); *Nixon v. Herndon*, 273 U.S. 536, 47 S. Ct. 446, 71 L. Ed. 759 (1927); *Wayne v. Venable*, 260 F. 64 (8th Cir. 1919). "*Joann Yellow Bird v. Clifford Valentine* 653 F.2d 1220 (8th Cir. 1981)

(c) A United States court of appeals has decided an important question of federal law ... that conflicts with relevant decisions of this Court.

The Second Circuit misapplies *Babb v. Wilke* (2020) and *Texas v. Lesage*, 528 U.S. 18 (1999)

The phrase "free from" means "untainted," and "any" underscores that phrase's scope. As for "discrimination," its "normal definition" is "differential treatment." *Jackson* v. *Birmingham Bd. of Ed.*, 544 U.S. 167, 174. And "[i]n common talk, the phrase 'based on' indicates a but-for causal relationship," *Safeco Ins. Co. of America* v. *Burr*, 551 U.S. 47, 63, thus indicating that [a protected trait] must be a but-for cause of the discrimination alleged. The remaining phrase—"shall be made"—denotes a duty, emphasizing the importance of avoiding the taint. Pp. 4–5.... Thus, [a protected trait] must be a but-for cause of discrimination but not the personnel action itself. Second, "free from any discrimination" is an adverbial phrase that modifies the verb "made" and describes how a personnel action must be "made," namely, in a way that is not tainted by differential treatment based on [a protected trait]. Thus, the

straightforward meaning of [] terms is that the statute does not require proof that an employment decision would have turned out differently if [a protected trait] not been taken into account. Instead, if [a protected trait] is a factor in an employment decision, the statute has been violated." *Babb v. Wilkie,* 589 U.S. ___ (2020) "a plaintiff challenging an ongoing race-conscious program and seeking forward-looking relief need only show "the inability to compete on an equal footing." *Texas v. Lesage,* 528 U.S. 18 (1999)

Although unrelated in reasoning, The Second Circuit's Summary Judgment (Dkt. 45.1) reaffirms the District Court's view that the term 'compensatory relief' excludes the equitable redress allowed under Ex Parte Young.

Lujan clarifies that at the pleading stage, the Petitioner is required to "adduce facts" that "permit redressability," but "the nature and extent" of these facts must only be "averred (at the summary stage)," while later "proven (at the trial stage)." Lujan, 504 U. S., at 560

"At the pleading stage, general factual allegations of injury resulting from the defendant's conduct may suffice, for on a motion to dismiss we "presum[e] that general allegations embrace those specific facts that are necessary to support the claim." *National Wildlife Federation, supra,* at 889... When the suit is one challenging the legality of government action or inaction, the nature and extent of facts that must be averred (at the summary judgment stage) but proved

(at the trial stage) in order to establish standing depends considerably upon whether the plaintiff is himself an object of the action (or forgone action) at issue (*Lujan v. Defenders of Wildlife*, 504 U.S. 561 (1992) ... one or more of the essential elements of standing "depends on the unfettered choices made by independent actors not before the courts and whose exercise of broad and legitimate discretion the courts cannot presume either to control or to predict," *ASARCO Inc.* v. *Kadish,* 490 U.S. 605, 615 (1989) (opinion of KENNEDY, J.);

"We hold only that, for the purpose of Article III standing, nominal damages provide the necessary redress for a completed violation of a legal right." Because, "every violation [of a right] imports damage," *Webb*, 29 F. Cas., at 509, nominal damages can redress [] injury even if he cannot or chooses not to quantify that harm in economic terms." Uzuegbunam v. Preczewski, 592 U.S. ___ (2021)

2. National Importance

"A central purpose of the Fourteenth Amendment is to further the national goal of equal opportunity for all our citizens. In order to achieve that goal we must learn from our past mistakes, but I believe the Constitution requires us to evaluate our policy decisions—including those that govern the relationships among different racial and ethnic groups—primarily by studying their probable impact on the

future." *City of Richmond v. J. A. Croson Co., 488 U.S. 469* (1989)

"Eliminating racial discrimination means eliminating all of it. And the Equal Protection Clause, we have accordingly held, applies "without regard to any differences of race, of color, or of nationality"—it is "universal in [its] application." *Yick Wo*, 118 U.S., at 369. For "[t]he guarantee of equal protection cannot mean one thing when applied to one individual and something else when applied to a person of another color." *Regents of Univ. of Cal.* v. *Bakke*, 438 U.S. 265, 289–290 (1978) (opinion of Powell, J.). "If both are not accorded the same protection, then it is not equal." *Id.*, at 290.

... Any exception to the Constitution's demand for equal protection must survive a daunting two-step examination known in our cases as "strict scrutiny." *Adarand Constructors, Inc.* v. *Peña*, 515 U.S. 200, 227 (1995). Under that standard we ask, first, whether the racial classification is used to "further compelling governmental interests." *Grutter* v. *Bollinger*, 539 U.S. 306, 326 (2003). Second, if so, we ask whether the government's use of race is "narrowly tailored"—meaning "necessary"—to achieve that interest. *Fisher* v. *University of Tex. at Austin*, 570 U.S. 297, 311–312 (2013) (*Fisher I*)." *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College,* 600 U.S. ___ (2023)

VI. CONCLUSION

This Court should grant certiorari.

The relevant dispositive decision in Summary Order (Dkt 45.1) is unaligned with this Court's precedent in *Babb v. Wilkie*, 589 U.S. ___ (2020), as well as incongruent with; *Northeastern Fla. Chapter of the Associated Gen. Contractors of America v. Jacksonville*, 508 U.S. 656 (1993), *Texas v. Lesage*, 528 U.S. 18 (1999); *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200 (1995); *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College*, 600 U.S. ___ (2023), *Village of Arlington Heights v. Metropolitan Housing Dev. Corp.*, 429 U.S. 252 (1977), *Carey v. Piphus*, 435 U.S. 247 (1978); *Hishon v. King & Spalding*, 467 U. S. 69, 73 (1984), *City of Richmond v. J. A. Croson Co.*, 488 U.S. 469 (1989); Uzuegbunam v. Preczewski, 592 U.S. ___ (2021); *Regents of Univ. of Cal.* v. *Bakke*, 438 U. S. 265 (1978) and *TransUnion LLC v. Ramirez, 594 U.S. ___ (2021).*

Specifically, the Second Circuit misapplies the 'traceability' elements of *Babb v Wilke* (2020) (see *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992), as it pertains to the Petitioner's §1983 claim. Instead of proving discrimination caused a 'loss of contract,' "a plaintiff challenging an ongoing race-conscious program and seeking forward-looking relief need only show "the inability to compete on an equal footing." *see Northeastern Fla. Chapter, Associated Gen. Contractors of America* v. *Jacksonville*, 508 U. S. 656,

666. (1993); *Texas v. Lesage*, 528 U.S. 18 (1999); *City of Richmond v. J. A. Croson Co.,* 488 U.S. 469 (1989); *Jackson* v. *Birmingham Bd. of Ed.*, 544 U.S. 167, 174 (2005)

"[Plaintiffs ... if they show that [a protected trait] was a but-for cause of differential treatment, ... plaintiffs can seek [] forward-looking relief. Determining what relief, if any, is appropriate... [is discerned] in the first instance if [the Petitioner] succeeds in showing that [a law] was violated. *Babb v. Wilkie*, 589 U.S. ___ (2020)

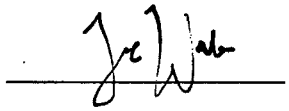
"A court may dismiss a complaint only if it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations." *Conley v. Gibson,* 355 U.S. 45-46 (1957) (see also *Hishon v. King & Spalding*, 467 U. S. 69, 73 (1984))

VII: PRAYER FOR RELIEF

The Petitioner, Joseph W. Wade, reverentially requests the Court bestow the following relief ;

1. **Grant Certiorari**,
2. **Vacate** and **Reverse** Summary Order (Dkt. 45.1) from the Second Circuit,
3. **Remand** this case back to the Second Circuit with an **Order** to
   - **(a) Vacate** and **Reverse** the District Court's Opinion and Order (ECF 92) and Clerk's Judgment (ECF 93) and
   - **(b) Remand** this case back to the Southern District of New York with an **Order** to
     - (i) **Grant** the Petitioner **Leave to Amend** his complaint.

Respectfully Submitted
August 20, 2025



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