

No. _____

IN THE
Supreme Court of the United States

❧

JEREMY KELLOGG, JONATHAN HARMON,
Petitioners,

v.

JONATHAN D. NICHOLS, individually and in
his capacity as statutory licensing officer pursuant to
Penal Law 265.00(10); 400.00 *et seq.*,
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

New York conditions the exercise of the Second Amendment right on a government license. In fifty-five of its sixty-two counties, the State assigns the power to grant or deny that license to a judge acting as a designated “licensing officer”; elsewhere, to a police commissioner or sheriff.

In *Whole Woman’s Health v. Jackson*, 595 U.S. 30, 40 (2021), this Court reiterated the principle that “no case or controversy exists between a judge who adjudicates claims under a statute and a litigant who attacks the constitutionality of the statute” (cleaned up) (quoting *Pulliam v. Allen*, 466 U.S. 522, 538 n.18 (1984)). Drawing in part on its judicial-immunity precedent, the Second Circuit extended that principle to a judicial officer who administers the licensing scheme and personally denied the licenses sought, holding that Article III bars applicants’ § 1983 claims for prospective relief. This Court decided *New York State Rifle & Pistol Ass’n v. Bruen*, 597 U.S. 1 (2022), in a suit against such an officer. Six of the Second Circuit’s thirteen active judges dissented from the denial of rehearing en banc.

The question presented is:

Whether the rule that a judge who neutrally adjudicates claims under a statute is not adverse under Article III to a litigant who challenges that statute extends to a judicial officer who, in acting on license applications, personally administers the challenged regulatory scheme rather than resolving disputes between adverse parties.

PARTIES TO THE PROCEEDING

Petitioners are Jeremy Kellogg and Jonathan Harmon. Petitioners were plaintiffs in the district court and plaintiffs-appellants in the court of appeals.

Respondent is Jonathan D. Nichols, sued individually and in his capacity as statutory licensing officer pursuant to N.Y. Penal Law §§ 265.00(10) and 400.00. Respondent was the defendant in the district court and defendant-appellee in the court of appeals.

CORPORATE DISCLOSURE STATEMENT

Petitioners Jeremy Kellogg and Jonathan Harmon are individuals. No disclosure is required under Rule 29.6.

STATEMENT OF RELATED PROCEEDINGS

This case arises from the following proceedings:

- *Kellogg v. Nichols*, No. 23-8093 (2d Cir.) (judgment entered August 18, 2025; amended opinion and amended judgment entered March 5, 2026; rehearing en banc denied June 30, 2026); and
- *Kellogg v. Nichols*, No. 1:23-cv-00658-DNH-CFH (N.D.N.Y.) (decision and order granting motion to dismiss and judgment, entered November 21, 2023).

There are no other proceedings in state or federal trial or appellate courts, or in this Court, directly related to this case within the meaning of this Court's Rule 14.1(b)(iii).

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OPINIONS BELOW

The amended opinion of the court of appeals is reported at 170 F.4th 20 and reproduced at Pet. App. 1a–26a. The order of the court of appeals denying rehearing en banc, together with the opinions concurring in and dissenting from that denial, is reported at 180 F.4th 75 and reproduced at Pet. App. 27a–128a. The court of appeals’ original opinion is reported at 149 F.4th 155. The opinion of the district court is reported at 703 F. Supp. 3d 367 and reproduced at Pet. App. 131a–145a.

JURISDICTION

The court of appeals entered its amended opinion and judgment on March 5, 2026, and denied a timely petition for rehearing en banc on June 30, 2026. This petition is filed within 90 days of that denial. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The relevant constitutional and statutory provisions are reproduced at Pet. App. 153a–190a.

Section 1983 of Title 42 of the United States Code provides:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

Section 265.00(10) of the New York Penal Law provides:

“Licensing officer” means in the city of New York the police commissioner of that city; in the county of Nassau the commissioner of police of that county; in the county of Suffolk the sheriff of that county except in the towns of Babylon, Brookhaven, Huntington, Islip and

Smithtown, the commissioner of police of that county; for the purposes of section 400.01 of this chapter the superintendent of state police; and elsewhere in the state a judge or justice of a court of record having his office in the county of issuance.

STATEMENT OF THE CASE

A. Factual Background

New York makes it a crime to possess a handgun without a license. N.Y. Penal Law §§ 265.01, 265.03; *see Antonyuk v. James*, 120 F.4th 941, 974 (2d Cir. 2024). N.Y. Penal Law § 400.00 “is the exclusive statutory mechanism for the licensing of firearms in New York State.” *Id.* An applicant must apply to the “licensing officer” in his county of residence, § 400.00(3), and only that officer may issue the license: “[n]o license shall be issued or renewed pursuant to this section except by the licensing officer.” *Id.* § 400.00(1). The licensing officer must find, among other things, that the applicant is “of good moral character, which . . . shall mean having the essential character, temperament and judgement necessary to be entrusted with a weapon and to use it only in a manner that does not endanger oneself or others.” § 400.00(1)(b). An applicant for a concealed-carry license must also “meet in person with the licensing officer for an interview” and supply “such other information required by the licensing officer that is reasonably necessary.” § 400.00(1)(o), (1)(o)(v). After an investigation is conducted by the county’s “duly

constituted police authority,” the licensing officer “shall either deny the application for reasons specifically and concisely stated in writing or grant the application and issue the license applied for.” § 400.00(4-b).

Who the licensing officer is depends on where the applicant lives. In New York City and Nassau County the licensing officer is the police commissioner; in Suffolk County, the police commissioner or the sheriff. § 265.00(10). “[E]lsewhere in the state”—the remaining fifty-five counties—the licensing officer is “a judge or justice of a court of record having his office in the county of issuance.” *Id.* The statute imposes the same duties and the same standards on every licensing officer, and each has authority to revoke or cancel a license “at any time.” § 400.00(1), (4-b), (11).

Petitioners Jeremy Kellogg, a member of the Army National Guard who regularly carries a firearm in his military service, Compl. ¶¶ 73, 75 (D. Ct. Dkt. 1), and Jonathan Harmon, a licensed security guard, each applied in 2022 for a license to purchase, possess, and carry a handgun for self-defense. *Id.* ¶ 102; Pet. App. 1a, 5a. They filed their applications with the Columbia County Sheriff’s Office, whose background investigations reported that neither had ever been convicted of a crime and neither was disqualified from possessing firearms under state or federal law. Compl. ¶¶ 80, 107. The applications were assigned to Respondent Jonathan D. Nichols, a Columbia County Court Judge who is the county’s designated statutory licensing officer. Pet. App. 5a; § 265.00(10).

Nichols questioned each Petitioner in person under oath in a separate hearing on his application to determine whether he possessed the “good moral character” that § 400.00(1)(b) requires. Pet. App. 5a, 19a; Compl. ¶¶ 81, 108; § 400.00(1)(o). He denied both applications in writing on that ground, finding that each lacked “the requisite maturity or responsibility” to hold a pistol license—Kellogg because of two sealed arrests and his explanation for not disclosing them, and Harmon, who Nichols acknowledged had “taken steps to change his life to be a law abiding citizen,” because of a youthful-offender adjudication. Compl. ¶¶ 89, 95, 113; Pet. App. 5a. Without the license that Nichols alone can issue, neither Petitioner may lawfully purchase, possess, or carry a handgun in New York.

B. Procedural History

Petitioners filed suit under 42 U.S.C. § 1983 alleging that Nichols’ denial of their applications, together with the statutory provisions on which the denials were based, violated their Second Amendment rights. They sought (i) declaratory and injunctive relief against Nichols in his capacity as a statutory firearm-licensing officer and (ii) nominal damages against him in his individual capacity. Petitioners specifically challenged § 400.00(1)’s “good moral character” requirement and its catchall provision, *see* § 400.00(1)(b), (1)(o)(v), and sought to enjoin the disclosure requirement of N.Y. Exec. Law § 296(16) and criminal statutes making it illegal to possess a handgun without a license. Pet. App. 5a–6a; Compl. ¶¶ 131–140.

The district court dismissed the complaint. It held that judicial immunity barred the individual-capacity claims because Nichols acted in his judicial capacity when he denied the applications; that Article III barred the official-capacity claims for declaratory relief because no case or controversy exists between a judge who adjudicates claims under a statute and a litigant who attacks the constitutionality of the statute; and that § 1983's proviso for judicial officers barred the claim for injunctive relief. Pet. App. 136a–144a.

By amended opinion, the court of appeals affirmed on different grounds as to the official-capacity claims. It first held that Petitioners' individual-capacity claim for nominal damages was barred by absolute judicial immunity. Pet. App. 7a–9a (citing *Libertarian Party of Erie County v. Cuomo*, 970 F.3d 106 (2d Cir. 2020)). Petitioners do not seek review of that holding. The court then held that Article III barred Petitioners' official-capacity claims for both declaratory and injunctive relief, without reaching the § 1983 proviso, because “there is no live case or controversy between New York state court judges serving as firearms licensing officers and litigants challenging the State's licensing scheme.” Pet. App. 13a, 23a n.11, 26a. Applying what it described as a “functional approach,” the court reasoned that Nichols “acted as a judicial officer in denying the Plaintiffs' firearms license applications” and has “no independent enforcement authority.” Pet. App. 16a. The court distinguished New York's *downstate* licensing officers—police commissioners and sheriffs—who “appear to have a role in enforcing the state statute,” while reserving

whether Article III would bar a suit against them. Pet. App. 17a, 25a.

Petitioners timely sought rehearing en banc. Following the panel's initial disposition on August 18, 2025, an active judge of the court requested a poll on whether to rehear the case en banc. Pet. App. 28a. The panel amended its opinion on March 5, 2026, and Petitioners filed an additional petition for rehearing en banc. On June 30, 2026, there being no majority favoring en banc review, the court denied both petitions. Pet. App. 29a.

Six of the court's thirteen active judges dissented from the denial. Judge Lohier and Judge Nathan each concurred in the denial by opinion. Pet. App. 30a, 44a. Judge Sullivan, joined by Chief Judge Livingston and Judges Bianco, Park, Nardini, and Menashi, dissented by opinion. Pet. App. 68a. Judge Menashi, joined by Judge Park, filed a separate dissent. Pet. App. 97a.

The result is that applicants in fifty-five of New York's sixty-two counties may not obtain prospective relief in federal court against the only official empowered to issue handgun licenses, while applicants in the remaining seven counties may. § 265.00(10); Pet. App. 68a–69a, 89a (Sullivan, J., dissenting from the denial of rehearing en banc).

REASONS FOR GRANTING THE PETITION

This case presents a fundamental question. May a State, by assigning to judges a licensing function that executive officials perform elsewhere in the State, place the officials who exercise that function beyond the reach of a federal court's power to grant

declaratory and injunctive relief? The decision below holds that it may. As Judge Nathan observed, that holding “may create a template for other state legislatures to evade judicial review by assigning administrative functions to judges.” Pet. App. 44a (Nathan, J., concurring in the denial of rehearing en banc).

The Second Circuit held that a judge designated as a firearms-licensing officer is not sufficiently adverse to the applicant he denies, Pet. App. 10a–26a, while treating the same licensing function as judicial enough to afford him absolute immunity from damages, Pet. App. 7a–9a. The first conclusion does not follow from the second, which Petitioners do not challenge here. Immunity from damages and amenability to a suit for prospective relief are different questions. Judicial immunity does not bar prospective relief against a judge even for acts taken in his judicial capacity. *Pulliam v. Allen*, 466 U.S. 522, 541–42 (1984). And in *Supreme Court of Virginia v. Consumers Union of United States, Inc.*, this Court held that the same officers were immune from suit for one function—promulgating the State Bar Code—yet were “proper defendants in a suit for declaratory and injunctive relief, just as other enforcement officers and agencies were,” for another—enforcing it. 446 U.S. 719, 734, 736 (1980). Whether an officer may be sued for prospective relief thus turns on the function he performs in relation to the challenged law, not on whether that function, or some other, is immune from damages.

Nor does the 1996 amendment to § 1983 change the analysis. That proviso limits injunctive relief against “a judicial officer for an act or omission taken

in such officer’s judicial capacity.” 42 U.S.C. § 1983. It leaves declaratory relief, which Petitioners sought, untouched; it permits an injunction where declaratory relief is unavailable; and by its terms it applies only to acts taken in a “judicial capacity,” which likewise requires a functional classification rather than reliance on judicial title. The courts of appeals that have applied the proviso read it that way. *Allen v. DeBello*, 861 F.3d 433, 440 (3d Cir. 2017); *LeClerc v. Webb*, 419 F.3d 405, 414 (5th Cir. 2005); *Moore v. Urquhart*, 899 F.3d 1094, 1104–05 (9th Cir. 2018). The panel itself declined to rest on the proviso. Pet. App. 23a.

The panel nonetheless carried its judicial-immunity rationale into the Article III inquiry, holding that the reasons for treating licensing decisions as judicial for immunity purposes “appl[y] equally for purposes of determining jurisdiction.” Pet. App. 14a–15a. The panel disclaimed treating its immunity precedent as “binding” on the adversity question, Pet. App. 15a n.5, but as Judge Nathan observed, it is difficult to see “how that can be true” if the same rationale “applies equally.” Pet. App. 55a n.4 (Nathan, J., concurring). In practice, the panel’s rule makes an applicant’s access to a federal forum turn on whether the licensing officer who denied him holds judicial office.

The decision below rests on a single move. It treated the question whether Nichols is a proper defendant as a question about what he *is*—a judge—rather than what he *did*—administer a licensing scheme under a statute that executive officers administer identically elsewhere in the State. This

Court and five courts of appeals focus on the function actually performed; the Second Circuit’s nominally functional test permits judicial office and its associated procedures to control the classification. Part I, *infra*. That approach is wrong. Part II, *infra*. And the error is outcome-determinative, recurring, and cleanly presented. Under the panel’s own logic, the licensing judge who was a respondent in *New York State Rifle & Pistol Ass’n v. Bruen*, 597 U.S. 1 (2022), was not a proper party, and upstate New Yorkers are left without an effective remedy. Part III, *infra*.

I. The Decision Below Conflicts With Decisions Of This Court And Five Courts Of Appeals Distinguishing Neutral Adjudication From Administrative And Enforcement Functions Performed By Judicial Officers.

Petitioners indisputably suffered a concrete injury traceable to Nichols and redressable by an order directed to him. The panel’s decision therefore turns not on ordinary standing, but on its characterization of Nichols as a neutral adjudicator rather than the official who exercised the licensing authority that caused the injury. *Whole Woman’s Health* makes that classification functional. The Texas judges were nonadverse because they merely decided disputes brought by others. *Whole Woman’s Health v. Jackson*, 595 U.S. 30, 39–40 (2021). Nichols did something different. He personally exercised the State’s licensing

authority and denied Petitioners' applications for handgun licenses.

The courts of appeals considering whether a state judge is a proper defendant in a suit for prospective relief describe the inquiry the same way. The panel itself framed “the threshold consideration” as “whether the judge is acting, under the statute at issue, in an adjudicatory capacity or as an enforcer or administrator.” Pet. App. 13a (quoting *Lindke v. Tomlinson*, 31 F.4th 487, 491 (6th Cir. 2022)). That formulation identifies the general functional inquiry, but it does not resolve the Article III question. The relevant issue is not simply whether the officer’s task can be called “adjudicatory,” but whether, in performing it, the officer acts as a neutral adjudicator or instead as the government official administering the challenged scheme. The disagreement is over what makes an officer a neutral adjudicator. The Second Circuit treated features associated with judicial office and process as sufficient to convert administration of a regulatory scheme into neutral adjudication. Because New York assigns upstate licensing authority to persons who hold judicial office and because, in the panel’s view, such a judge is “adjudicating whether the application satisfies the requirements of state law,” the panel held that Nichols “acted as a judicial officer in denying the Plaintiffs’ firearms license applications” and that he and the applicants he refused are “decidedly not parties ‘having adverse legal interests.’” Pet. App. 16a.

This Court and the Third, Fifth, Seventh, Ninth, and Eleventh Circuits have reached the issue through

different doctrinal routes, but they converge on the same antecedent inquiry: what function was the judicial officer actually performing in relation to the challenged law? Some cases speak in terms of Article III adversity, others of *Ex parte Young*'s enforcement connection, traceability and redressability, or the availability of prospective relief. 209 U.S. 123 (1908). But each distinguishes a judge neutrally resolving disputes from a judicial officer exercising administrative, enforcement, or regulatory authority. *Whole Woman's Health* itself tied the absence of adversity to function: the judges there were not adverse because they "do not enforce state laws as executive officials might; instead, they work to resolve disputes between parties." 595 U.S. at 39. *Consumers Union* addressed the other side of that line, holding that Virginia's justices were proper defendants when acting in their enforcement capacity, "just as other enforcement officers and agencies were." 446 U.S. at 736. And *Georgevich* applied the distinction directly to Article III adversity, holding that judges who administered parole power were no less proper defendants than the parole board exercising the same authority. *Georgevich v. Strauss*, 772 F.2d 1078, 1087–88 (3d Cir. 1985) (en banc), *cert. denied*, 475 U.S. 1028 (1986).

A. The Third, Fifth, Seventh, Ninth, and Eleventh Circuits look to the function performed, not the office held.

1. The Third Circuit, sitting en banc, rejected the precise argument the panel accepted. In *Georgevich*, Pennsylvania common pleas judges who administered

parole for county-sentenced prisoners contended “that there is no case or controversy, for they have no personal interest in the outcome of this litigation that is sufficiently adverse to plaintiffs’ position,” and that the Attorney General was the proper defendant. *Id.* at 1087. The court held that the argument “misconceive[d] the basis on which the present suit rests. This is not a case in which judges are sued in their judicial capacity as neutral adjudicators of disputes. Rather, the judges are sued as enforcers of the statutes, in other words as administrators of the parole power.” *Id.* Because Pennsylvania “divides the authority to make parole decisions between the sentencing judges and the Board,” the court could “find no basis for distinguishing the role of the sentencing judges from that of the Board; therefore, there is no reason why the Board, but not the judges, may be sued on a similar challenge.” *Id.* at 1088. The Third Circuit continues to apply that rule: “a judge who acts as an enforcer or administrator of a statute can be sued under Section 1983 for declaratory or . . . injunctive relief.” *Allen*, 861 F.3d at 440.

New York divides its handgun-licensing authority exactly as Pennsylvania divided its parole authority: between judges in most counties and police commissioners and sheriffs in the rest. § 265.00(10). Both sets of officers apply the same criteria, § 400.00(1), owe the same duty to “either deny the application for reasons specifically and concisely stated in writing or grant the application and issue the license,” § 400.00(4-b), and hold the same power to revoke, § 400.00(11). Under *Georgevich*, “there is no reason why the [police commissioners], but not the

judges, may be sued on a similar challenge.” 772 F.2d at 1088. The panel recognized that the downstate officers may have the requisite enforcement role, but expressly reserved whether they are proper defendants, Pet. App. 17a, 25a, while holding that the upstate judges are not. That is the conflict.

2. The Fifth Circuit likewise asks whether the judicial officer is neutrally resolving a dispute or instead exercising governmental authority over the person before him. In *Bauer v. Texas*, 341 F.3d 352, 359–61 (5th Cir. 2003), a probate judge who had appointed a temporary guardian after notice and a hearing was held not adverse to the ward, because his determinations in a contested guardianship proceeding fell “within a judge’s adjudicatory capacity,” unlike the Virginia court in *Consumers Union*, which had “acted in an enforcement, rather than an adjudicatory capacity.” *Id.* at 359–61. Two years later, in *LeClerc*, the same court held that the Justices of the Louisiana Supreme Court, sued over the bar-admission rule they administer, were proper defendants: “When acting in its enforcement capacity, the Louisiana Supreme Court, and its members, are not immune from suits for declaratory or injunctive relief,” and the 1996 amendment to § 1983 “only precludes injunctive relief for suits against a judicial defendant acting in his ‘judicial capacity.’” 419 F.3d at 414 (citing *Consumers Union*). The court found standing and ripeness and decided the merits. *Id.* at 413–14. *Reule v. Jackson*, 114 F.4th 360 (5th Cir. 2024), on which the panel relied, is of a piece with *Bauer*: the judges there ruled on a vexatious litigant’s requests to file new lawsuits, an act within the

litigation process itself. *LeClerc* treated the judicial defendants' administration and enforcement of the challenged bar-admission rule as an enforcement function notwithstanding their judicial office.

3. The Seventh Circuit likewise applied function rather than judicial title in the regulation of professional licensing. In *File v. Martin*, 33 F.4th 385 (7th Cir. 2022), an attorney sued the Justices of the Wisconsin Supreme Court to enjoin enforcement of the rules conditioning a law license on bar membership and dues. The Justices argued that the injury was not traceable to them. The court disagreed, because the Wisconsin Supreme Court “promulgates and enforces the rules governing attorney licensure, bar membership, and ethics” and “is the ultimate regulatory authority for the practice of law in the state.” *Id.* at 389. The district court had treated the Justices as “adjudicators of disciplinary matters”; the Seventh Circuit called that “the wrong route” and held that “the justices have been sued in their enforcement capacity, not their legislative or judicial capacity.” *Id.* at 390 (citing *Consumers Union*, 446 U.S. at 734). It found Article III standing to sue them and held them not immune, then decided the merits. *Id.* at 389–91. The panel, by contrast, listed “attorney-licensure applications” among the “single-party applications” that a judge decides in an adjudicatory capacity. Pet. App. 14a. That conception cannot be reconciled with *LeClerc* and *File*.

4. The Ninth Circuit likewise sorts judicial defendants by capacity rather than title. In *Wolfe v. Strankman*, 392 F.3d 358 (9th Cir. 2004), overruled in

part on other grounds by *Munoz v. Superior Court of Los Angeles County*, 91 F.4th 977, 981 (9th Cir. 2024), California trial and appellate judges invoked *In re Justices* and argued that “there is no ‘case or controversy’ between them and Wolfe sufficient to support federal court jurisdiction under Article III.” 392 F.3d at 365. The court dismissed the judges sued for their rulings, but held that the Chief Justice of California, sued “in his administrative capacity as Chair of the Judicial Council,” was a proper defendant and was not immune, because § 1983 “only contemplates judicial immunity from suit for injunctive relief for acts taken in a judicial capacity.” *Id.* at 366 (citing *Consumers Union*, 446 U.S. at 736). After *Whole Woman’s Health*, the Ninth Circuit overruled *Wolfe* only “[t]o the extent” it permitted injunctions against judges acting in their judicial capacity, and it expressly declined to address *Wolfe*’s administrative-capacity holding because that “issue was not before [it].” *Munoz*, 91 F.4th at 981 & n.1.

5. The Eleventh Circuit applied *Whole Woman’s Health* to the same kind of defendant sued below—judges assigned by statute to issue carry licenses—and held them proper defendants. In *Baughcum v. Jackson*, 92 F.4th 1024 (11th Cir. 2024), applicants under twenty-one challenged Georgia’s age restriction on carry licenses, naming as defendants the county probate judges responsible for issuing them. The court held that the plaintiffs’ injuries were “fairly traceable to and redressable by an order directed to the probate judges,” because “[p]robate judges are responsible for granting and denying licenses,” and the district court could “order the probate judges to issue licenses to the

plaintiffs” if the suit succeeded. *Id.* at 1032. It rejected the judges’ contention that they act “in a judicial capacity when issuing these carry licenses.” *Id.* at 1033. Relying on the Georgia Supreme Court’s holding that “processing a weapons carry license does not involve the exercise of judicial power,” *Roberts v. Cuthpert*, 893 S.E.2d 73, 76 (Ga. 2023), the court described licensing as “a ministerial function that the legislature happened to assign to these judges,” and it invoked the state rule that “[n]ot by [a probate judge’s] title, but only by his acts, can the exact capacity in which he appears ever be known.” *Baughcum*, 92 F.4th at 1033 (quoting *Roberts*, 893 S.E.2d at 82). Georgia’s statute “offers probate judges nothing in the way of discretion,” *id.*, whereas New York’s “good moral character” standard requires the licensing officer to exercise judgment. That difference cuts against the decision below, not for it. Discretion is commonplace in executive licensing and therefore cannot, without more, transform licensing into neutral adjudication. The same “good moral character” judgment is exercised by New York’s sheriffs and police commissioners, and the more of it the statute vests in the licensing officer, the more directly the applicant’s injury is traceable to him. *See* Part II.A, *infra*.

Even the First Circuit decision from which the “no case or controversy” formulation derives recognized the distinction the panel erased. *In re Justices of the Supreme Court of Puerto Rico*, 695 F.2d 17 (1st Cir. 1982), held that the Justices were not proper defendants to a challenge to a bar-dues statute because their “only function concerning the statutes being challenged is to act as neutral adjudicators

rather than as administrators, enforcers, or advocates.” *Id.* at 21. But it declined to dismiss the Justices from claims as to which they “may occupy a special administrative position” under a statute that “would make them a proper party for purposes of ‘case or controversy.’” *Id.* at 25, 27 (citing *Consumers Union*). The panel took the first half of *In re Justices* and discarded the second.

B. This Court measures Article III adversity by the function performed, not by the title of the officer performing it.

1. *In re Summers*, 325 U.S. 561 (1945), establishes that Article III turns on the “nature and effect” of the proceeding, not its formal characterization. In *Summers*, the Illinois Supreme Court denied an application for admission to the bar in an *ex parte* licensing proceeding that Illinois regarded as nonjudicial and ministerial. 325 U.S. at 565–67. This Court nevertheless found an Article III controversy. Because the state court was “the body which has authority itself by its own act to give the relief sought,” its denial of the application made the proceeding “adversary in the sense of a true case or controversy.” *Id.* at 568. “A claim of a present right to admission to the bar of a state and a denial of that right is a controversy.” *Id.* The Court therefore rejected formalism: “The form of the proceeding is not significant. It is the nature and effect which is controlling.” *Id.* at 567. *Summers* thus treats the applicant’s claim and the licensing court’s denial as themselves creating adversity; nothing in it suggests a

licensing court is a neutral adjudicator of a dispute between others.

The same reasoning applies here. New York itself treats § 400.00 as a regulatory licensing scheme, even when a judge serves as the licensing officer. *See O'Connor v. Scarpino*, 83 N.Y.2d 919, 921 (1994) (describing the statute's "regulatory purpose"). Its effect is not the resolution of a controversy between adverse parties, but the determination whether the State will confer or withhold the license on which lawful exercise of the regulated conduct depends. Nichols was the state official authorized to grant or deny Petitioners' licenses, and he denied them. Illinois called the function ministerial; New York calls its licensing scheme regulatory; neither state characterization is controlling. But both confirm that these judges are not simply resolving disputes between adverse litigants. Petitioners claim a present constitutional right to possess handguns—a right New York conditions on a license that licensing officers alone have authority to issue. Under *Summers*, that claim and Nichols' denial constitute a controversy.

2. *Consumers Union* confirms that the same officer, holding the same office, may be immune in one capacity and a proper defendant in another. The Virginia Supreme Court and its Chief Justice were immune from suit for promulgating the State Bar Code, a legislative act. 446 U.S. at 734. But because the statute gave the court "independent authority of its own to initiate proceedings against attorneys," "the Virginia Court and its members were proper defendants in a suit for declaratory and injunctive

relief, just as other enforcement officers and agencies were.” *Id.* at 736. The office was constant; only the function varied, and the function decided the question. Prosecutors, though absolutely immune from damages, “are natural targets for § 1983 injunctive suits” because they are the officials who enforce the law. *Id.* at 736–37.

3. That functional approach has deep roots. In *Ex parte Virginia*, 100 U.S. 339 (1880), a county judge argued that jury selection was a judicial act because he performed it as a judge. This Court rejected the premise: “Whether the act done by him was judicial or not is to be determined by its character, and not by the character of the agent.” *Id.* at 348. Whether the official was a judge was “of no importance”; the relevant question was the nature of the task. *Id.* A century later, *Forrester v. White*, 484 U.S. 219, 229 (1988), restated the same principle: “it was the nature of the function performed, not the identity of the actor who performed it,” that controlled. And this Court has long treated the name of the licensing body as immaterial, recognizing that a State may commit such determinations to a tribunal “whether called a court or a board of registration.” *Reetz v. Michigan*, 188 U.S. 505, 507 (1903). The panel invoked *Forrester* in its immunity analysis, Pet. App. 7a–8a, yet instead of asking whether the challenged licensing act was adjudicative, administrative, or regulatory, it gave dispositive weight to characteristics associated with Nichols’ judicial office.

4. *Whole Woman’s Health*, on which the panel principally relied, likewise drew the line by function.

The Court permitted suit against the “executive licensing official[s]” because each “may or must take enforcement actions against the petitioners” under the licensing laws they administered. 595 U.S. at 45–46. By contrast, the state-court judges and clerks were not proper defendants because they “do not enforce state laws as executive officials might; instead, they work to resolve disputes between parties.” *Id.* at 39. Officials exercising executive regulatory authority stood on one side; judges resolving disputes between adverse parties stood on the other. That is precisely the feature missing here. Nichols was not resolving a dispute between parties; he was personally exercising the State’s licensing authority over Petitioners under the same statutory scheme administered by executive licensing officials in New York City, Nassau, and Suffolk Counties. N.Y. Penal Law § 265.00(10). On *Whole Woman’s Health*’s own terms, that function is the executive officials’, not the judges’.

5. This Court itself has exercised jurisdiction over a constitutional challenge to New York’s licensing regime brought against a judicial licensing officer. In *Bruen*, one of the respondents was Justice Richard J. McNally, Jr., the New York Supreme Court justice who served as the licensing officer and denied the individual petitioners’ applications for unrestricted handgun licenses. This Court described Justice McNally as the official “who oversees the processing of licensing applications in Rensselaer County,” 597 U.S. at 16, reached the merits, and held New York’s proper-cause requirement unconstitutional. The panel answered that *Bruen* included a non-judge respondent and that “sub silentio assumptions of jurisdiction”

carry no precedential weight. Pet. App. 13a n.3. Petitioners agree that *Bruen* did not silently decide the question presented. See *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 91 (1998). The point is different. The Superintendent of the State Police, whom this Court described as the official “who oversees the enforcement of the State’s licensing laws,” 597 U.S. at 16, has no authority to issue licenses to the general public, § 265.00(10), and he did not deny the individual petitioners’ applications. Justice McNally did. Under the panel’s rule, the only respondent in *Bruen* who actually applied the proper-cause standard to the petitioners, and the only one who could issue the licenses they were denied, was not adverse to them and could not be ordered to do anything. A rule under which the licensing officer in *Bruen* was a nonparty in substance warrants this Court’s review.

II. The Decision Below Is Wrong: The Second Circuit’s “Functional” Test Makes The Judicial Office Do The Decisive Work.

The panel acknowledged that downstate licensing officers “appear to have a role in enforcing the state statute” and expressly reserved whether Article III would bar suit against a police commissioner or sheriff who denies a license. Pet. App. 17a, 25a. It did not dispute that the commissioner and the judge apply the same statute, the same criteria, and have the same duty to grant or deny. It held that the judge is nonetheless not adverse because his licensing decision is “judicial rather than administrative,” and it reached that conclusion based, in part, on the Second Circuit’s judicial-immunity precedent, reasoning that the

“rationale for recognizing such decisions as judicial rather than administrative for purposes of determining judicial immunity in *Libertarian Party* . . . applies equally for purposes of determining jurisdiction.” Pet. App. 15a (citing *Libertarian Party*, 970 F.3d at 125).

The panel then synthesized a new six-factor framework for determining whether a judicial officer is sufficiently adjudicative—and therefore insufficiently adverse—for Article III purposes. No single precedent supplied that test. And although the panel called its inquiry functional, five of its six factors ask about the officer or the surrounding institutional structure—whether he may initiate proceedings or enforce orders, whether he participated in enacting the statute, whether he has a personal or institutional stake, and whether the scheme provides judicial safeguards. Pet. App. 15a–16a. Only one asks whether the challenged act is administrative rather than adjudicative, which is the only question that actually bears on the function performed. The panel’s holding rests on two moves, neither of which this Court’s precedent supports.

A. Deciding a license application does not make the licensing officer a neutral adjudicator.

First, the panel broadened “adjudicatory capacity” beyond its ordinary meaning. It acknowledged that a judge “[m]ost obviously” acts in an adjudicatory capacity when he “resolves disputes between adverse parties,” but held that a judge also does so “in various

non-adversarial contexts” whenever he “decides whether single-party applications satisfy relevant legal requirements”—citing warrant applications, wiretap applications, and attorney-licensure applications—and placed firearm licensing in that category. Pet. App. 14a (citing *D.C. Court of Appeals v. Feldman*, 460 U.S. 462, 479 (1983)). But warrant and wiretap applications are adjudicatory because they arise in the course of adversarial proceedings. Although only one party is present when they issue, they “place in legal jeopardy the legal interests of an absent party who one day may appear to oppose the applicant.” Pet. App. 58a (Nathan, J., concurring). An application for a license to engage in some activity out in the world—“like buying a firearm, getting married, or hosting a parade”—is different in kind. There the official “represents only the state’s interest in considering the applications,” and “no present or potential adversary’s conflicting legal interests are at play: it is regulator v. applicant.” *Id.* at 59a. Nor does *Feldman* supply the rule the panel needed. *Feldman* held that attorney-licensure proceedings were “judicial” for purposes of determining which federal court may review them; it did not purport to define Article III adversity. Firearm licensing is ancillary to no adversarial proceeding. It is regulator v. applicant.

The panel’s approach also collapses discretion into adjudication. It contrasted firearm licensing with a clerk’s issuance of marriage licenses—“an operational, non-discretionary function”—and concluded that “[t]he latter is ministerial; the former is not.” Pet. App. 19a. But the distinction between ministerial and discretionary administration does not answer the

Article III question. Discretion does not transform administration into adjudication. Executive and administrative officials routinely exercise substantial discretion, make factual findings, and determine eligibility without becoming neutral adjudicators. This Court has said as much of New York’s own licensing statute. It distinguished shall-issue regimes, which operate “without granting licensing officials discretion to deny licenses based on a perceived lack of need or suitability,” from New York’s, *Bruen*, 597 U.S. at 13, and described proper-cause standards “like New York’s” as requiring the “appraisal of facts, the exercise of judgment, and the formation of an opinion,” *id.* at 38 n.9 (quoting *Cantwell v. Connecticut*, 310 U.S. 296, 305 (1940)).

Similarly, a judge’s discretionary personnel decisions are not judicial acts; a judge making them “cannot meaningfully be distinguished from . . . any other Executive Branch official who is responsible for making such employment decisions.” *Forrester*, 484 U.S. at 229. A prosecutor weighs facts, applies legal standards, and makes judgment calls in deciding whether to charge, yet prosecutors are “natural targets for § 1983 injunctive suits.” *Consumers Union*, 446 U.S. at 736–37. The licensing body in *Summers* made the most judgment-laden determination a licensing officer can make—an applicant’s character and fitness—yet its denial “is a controversy.” 325 U.S. at 568. And when a federal agency grants or denies a license, the applicant’s challenge is “maintained against the licensing agency itself.” Pet. App. 62a (Nathan, J., concurring). The relevant question, then, is not whether the officer weighs facts and applies

legal standards. It is whether he resolves a dispute between adverse parties or instead administers governmental policy to decide whether the applicant will receive a license. Nichols did the latter. That New York gives him more discretion than Georgia gives its probate judges, *see Baughcum*, 92 F.4th at 1033, makes him more the administrator of the State’s licensing policy, not less.

B. Judicial-immunity doctrine does not define Article III adversity.

Second, the panel imported its judicial-immunity characterization into Article III. No decision of this Court has ever done so, and the two doctrines have different origins. Judicial immunity descends from the English courts’ protection of the finality of the judicial record, and it rests today on the concern that if a judge were “compelled to answer in a civil action for his judicial acts,” “his office [would] be degraded and his usefulness destroyed.” *Bradley v. Fisher*, 80 U.S. (13 Wall.) 335, 348–49 (1871); *see Forrester*, 484 U.S. at 225; *Pulliam*, 466 U.S. at 529–31. Article III’s adversity requirement serves a different end. It confines the federal courts to “actual controversies arising between adverse litigants” in part as a rejection of the English practice of advisory opinions. Pet. App. 50a–51a (Nathan, J., concurring). Judge Nathan observed that this Court has “ample cases available to define ‘judicial function,’” yet “has not relied on any of them in crafting the Article III adversity requirement.” *Id.* at 64a. Indeed, “analogies to other ‘judicial function’ tests are notably absent

from the Article III adversity cases—until this one.”
Id. at 63a n.8.

Judge Nathan would have adopted a narrower rule than the panel did. She agreed that “under Article III, a neutral judge adjudicating an adversarial case involving conflicting legal interests is not adverse to a litigant aggrieved by the judge’s decisions in the case,” but wrote that she “would go no further—no multi-factor balancing tests, no ‘judicial function’ inquiries.” *Id.* at 47a–48a. A judge “recruited by a state statutory scheme to decide applications that do not concern the concrete legal interests of another party,” she explained, “is not operating the ‘machinery’ of the state court, but instead serving as an administrative official amenable under Article III to suit by an aggrieved applicant.” *Id.* at 60a. She also observed that “[m]any of these factors will weigh against Article III jurisdiction in purely administrative cases.” *Id.* at 65a. An executive licensing official also does not initiate proceedings, does not punish anyone for failing to hold a license, and played no role in enacting the licensing scheme. *Id.* The panel’s test thus “may often tilt the scale against judicial review when the defendant is a state judge.” *Id.* A legislature’s choice to assign the licensing task to a judge should not “put a thumb on the scale against open courthouse doors and judicial review.” *Id.* at 66a. What distinguishes the commissioner from the judge, in the panel’s analysis, is the office. And the immunity precedent on which the panel drew could not answer the Article III question, because the immunity inquiry treats as immaterial “whether the proceeding was adversary or ex parte,” *Libertarian Party*, 970 F.3d at 123 (citing *Stump v.*

Sparkman, 435 U.S. 349, 363 & n.12 (1978)), whereas Article III adversity asks whether the judge is neutrally resolving a dispute between parties with conflicting legal interests, present or potential, or is instead the government official exercising the challenged authority.

The Sullivan dissent made the same point from the other direction. The “panel’s wooden conception of adversity” means “a resident of the Bronx may sue the official responsible for denying his handgun-license application while a resident of neighboring Westchester County may not,” Pet. App. 89a (Sullivan, J., dissenting), although the two officials perform the same function under the same statute.

C. The panel’s remaining grounds do not support its holding.

The panel’s “wrong target” ground fares no better. Because Nichols has “no independent enforcement authority or role in criminal prosecutions,” the panel held that, “to the extent that the Plaintiffs seek to enjoin Judge Nichols from enforcing” the Penal Law’s possession offenses, “they chose the wrong target.” Pet. App. 16a. That answers only the criminal-enforcement portion of Petitioners’ prayer for relief. It says nothing about their challenges to the licensing requirements— §§ 400.00(1)(b), (1)(o)(v)—under which Nichols denied their applications. *Georgevich* rejected the same move. The judges there argued that they had no interest adverse to the plaintiffs and that the Attorney General was the proper defendant; the Third Circuit answered that they were sued “as administrators of the parole

power” and were proper defendants for that reason. 772 F.2d at 1087. The question is not whether Nichols can arrest or prosecute. It is whether he is the official whose exercise of the State’s licensing power injured Petitioners and who can redress that injury. As to that power, he is the only one.

Nor does Nichols lack an “institutional interest in defending New York’s firearms licensing scheme.” Pet. App. 26a. New York law assigns him exactly that role. An applicant who challenges a licensing denial in state court proceeds against the licensing judge as respondent, N.Y. C.P.L.R. §§ 506(b)(1), 7801, and the Attorney General defends both his determination and application of the statute. Respondent himself has been that party. *Seymour v. Nichols*, 21 A.D.3d 1234, 1234–35, 801 N.Y.S.2d 426, 427 (3d Dep’t 2005). As Judge Menashi observed, “[i]f parties are adverse in state court, they are adverse in federal court too.” Pet. App. 127a (Menashi, J., dissenting from the denial of rehearing en banc).

The Second Circuit’s own precedent exposes the instability of the panel’s approach. In *Antonyuk*, decided while this case was pending, the court held that a plaintiff’s injury from New York’s disclosure requirements was traceable to the defendants’ “enforcement” of those provisions, including their refusal to process applications omitting the required information. 120 F.4th at 977; *id.* at 978 (“And an injunction against considering ‘good moral character’ would redress Sloane’s injury”). One of those defendants was Matthew J. Doran, the Onondaga County Court judge who serves as that county’s

licensing officer, sued in that official capacity. *Id.* at 951, 958, 977–78; *see* Pet. App. 74a (Sullivan, J., dissenting). Ten months later, *Kellogg* characterized the same category of official as having “no independent enforcement authority.” Pet. App. 16a. *Antonyuk* looked to the injury-causing function; *Kellogg* allowed the officer’s judicial status and associated procedures to control the classification of that function. New York law confirms that a judicial licensing officer is not acting as a court adjudicating a case. A firearms-license determination by a County Court judge is not reviewed by direct appeal, but through an Article 78 proceeding, because the judge acts in an “administrative capacity as the firearms licensing officer.” *Matter of Guthmann*, 237 A.D.3d 1548, 1548 (4th Dep’t 2025) (quoting *Matter of Shuler*, 67 A.D.3d 1020, 1020 (2d Dep’t 2009)). Petitioners do not contend that New York’s characterization controls Article III. But the panel relied on Article 78 review as a “traditional judicial safeguard[]” supporting its conclusion that Nichols acted judicially. Pet. App. 19a. That gets the procedure backwards. Article 78 is necessary precisely because the licensing denial is *not* a court judgment subject to appeal. The availability of Article 78 therefore undermines, rather than supports, the panel’s premise that Nichols was acting as a neutral adjudicator.

III. The Question Is Outcome-Determinative And Recurring, The Decision Below Leaves Upstate New Yorkers Without An Effective Remedy, And This Case Is A Suitable Vehicle.

A. The choice between the two rules is outcome-determinative and recurring, and the division is entrenched.

Under the functional approach reflected in *Summers*, *Consumers Union*, *Georgevich*, *LeClerc*, *File*, *Wolfe*, and *Baughcum*, Petitioners' official-capacity claims against Nichols present an Article III controversy because he personally exercised the governmental authority that caused their injury. Under the decision below, by contrast, applicants in the fifty-five New York counties where judges serve as licensing officers cannot obtain prospective relief against the only official authorized to issue their licenses. §§ 265.00(10), 400.00(4-b).

The panel called its decision "narrow" and said that "[t]he functional approach necessarily contemplates a case-by-case analysis." Pet. App. 23a. But the function at issue here does not vary from case to case. It is fixed by statute. Section 265.00(10) makes a judge the licensing officer in every county outside New York City, Nassau, and Suffolk, and § 400.00 gives every one of them the same eligibility criteria, the same duty to grant or deny in writing, § 400.00(4-b), and the same power to revoke, § 400.00(11). Every

consideration on which the panel relied—no authority to initiate enforcement, no role in setting the criteria, a non-ministerial function, and Article 78 review—is a feature of that statutory design, not of this record, Pet. App. 16a–23a, and none can come out differently for the next applicant or the next county. As Judge Sullivan explained, “nothing in the panel’s Article III analysis plausibly turns on these nuances”; “the panel’s holding is as broad as it is clear.” Pet. App. 95a (Sullivan, J., dissenting). A rule that rests entirely on a statutory assignment reaches wherever the statute does: every applicant denied a license by every licensing officer in fifty-five counties.

The division is entrenched, and only this Court can resolve it. The panel acknowledged *Georgevich* and distinguished it. Pet. App. 18a–19a n.8. Six active judges would have reheard the case en banc. Judge Nathan, applying the Circuit’s “high standard for rehearing en banc,” concurred, but “was inclined to conclude that the panel has gone further than necessary in crafting its Article III adversity requirement,” that it “may have missed an opportunity in this case to clarify the operation of Article III’s adversity requirement in a new context,” and that “[w]ere this case the only method for plaintiffs to challenge the New York statutes at issue, getting the question right would be of exceptional importance.” Pet. App. 44a–45a, 66a–67a (Nathan, J., concurring). As to the licensing officer, it is the only method. *See* Part III.B, *infra*. The court of appeals has now published six opinions and three distinct Article III tests for the same defendant: the panel’s six factors, Judge Nathan’s conflicting-interests rule, and the

dissents' functional-equivalence rule. Whether or not that division met the Second Circuit's standard for rehearing, it is the kind of division this Court exists to resolve.

B. The decision below leaves upstate New Yorkers without an effective remedy and undermines this Court's Second Amendment jurisprudence.

The panel suggested that an upstate applicant may still challenge a denial in a state Article 78 proceeding, Pet. App. 20a, or sue law-enforcement officials to enjoin his arrest for unlicensed possession, Pet. App. 24a & n.13. Neither alternative supplies federal relief against the challenged licensing requirements. Upstate, those requirements are applied by one official: “[n]o license shall be issued or renewed . . . except by the licensing officer,” N.Y. Penal Law § 400.00(1), and no dealer may deliver a handgun to a buyer who does not produce one, *id.* § 400.00(12). An injunction against police and prosecutors leaves those requirements in force. As Judge Sullivan explained, such an injunction “would do nothing to prevent the only upstate officials with the authority to make licensing decisions from continuing to rely on the challenged requirement (or any other unconstitutional basis, such as an applicant’s race) in denying license applications,” and a would-be purchaser “who walks into an upstate New York gun store with a stack of negative injunctions, but no handgun license, will in all likelihood leave disappointed.” Pet. App. 92a–94a (Sullivan, J., dissenting). The Third Circuit rejected the same substitution in *Georgevich*: the Attorney

General was not the proper defendant because he “has no authority to require the judges to hold a hearing on parole, so that a decree against him would be totally ineffective.” 772 F.2d at 1089. Judge Lohier, concurring in the denial of rehearing, reasoned that Petitioners “chose the wrong target” and that Article 78 review and suits against executive officials remain open. Pet. App. 34a, 36a–37a (Lohier, J., concurring in the denial of rehearing en banc). But neither route yields relief that binds Nichols, and § 400.00(1) makes him the only official who can issue Petitioners a license.

The state-court alternative is no answer either. Congress enacted § 1983 to “guarantee[] a federal forum for claims of unconstitutional treatment at the hands of state officials,” *Knick v. Township of Scott*, 588 U.S. 180, 185 (2019) (internal quotation marks omitted), and the availability of a state remedy has never been a reason to close the federal one. *Monroe v. Pape*, 365 U.S. 167, 183 (1961). Judge Nathan wrote that she “share[s] many of Judge Sullivan’s reactions to the outcome in this case,” that she was “concerned that access to federal court review of New York’s firearms licensing scheme, if available at all, may now depend on whether a prospective plaintiff lives upstate or downstate,” and that if applicants “have no forum to bring their legal challenges to state laws, en banc consideration may be warranted.” Pet. App. 44a–45a (Nathan, J., concurring). But her “expectation that the Article III adversity determination will not affect the constitutional rights of the plaintiffs in this case,” *id.* at 46a, cannot be squared with the statute. Without relief that binds the licensing officer, Petitioners

remain subject, on any reapplication, to the very criteria they challenge.

The stakes for this Court’s Second Amendment jurisprudence are direct. *Bruen* itself was a suit against an upstate licensing judge—Justice McNally—and this Court held that the “proper cause” standard he applied violated the Second Amendment. 597 U.S. at 15–16, 71. The Second Circuit has likewise resolved the merits of Second Amendment challenges brought against upstate licensing judges. *Antonyuk*, 120 F.4th at 976–77, 1002–04 (Onondaga County Court Judge Doran); *Libertarian Party*, 970 F.3d at 117, 122–125 (Justice Boller and Judge Kehoe); *Kachalsky v. County of Westchester*, 701 F.3d 81, 84 (2d Cir. 2012) (Judge Cacace and three Supreme Court Justices). Under the decision below, none of those courts had jurisdiction over the claims against the licensing judges, and every upstate licensing officer is now free to deny licenses on an “appraisal of facts, the exercise of judgment, and the formation of an opinion,” *Bruen*, 597 U.S. at 38 n.9 (internal quotation marks omitted), without answering to a federal court for it. A rule that shields from federal review the officials who applied the standard *Bruen* struck down warrants this Court’s attention.

C. This case is a suitable vehicle.

The question is purely legal and was outcome-determinative. The complaint was dismissed on the pleadings, so there is no factual dispute; the panel treated Nichols as “the judge who adjudicated [Petitioners’] eligibility for licenses,” Pet. App. 24a n.12, and did not dispute that his denials injured them.

The question was pressed and passed upon in both courts below and was the subject of two en banc petitions and six separate opinions. And because Petitioners do not seek review of the panel’s immunity holding, the Court can decide the Article III question without disturbing the Second Circuit’s immunity precedent.

The panel added, in a footnote, that Petitioners “failed to request any prospective relief in the form of requiring Judge Nichols to issue a license” and instead sought a declaration that the licensing criteria are unconstitutional. Pet. App. 24a n.12. That reservation does not narrow the holding or complicate the vehicle. The panel held that adversity was lacking “equally” as to the claim for declaratory relief, Pet. App. 23a, and it did so “because rulings on firearms licenses are judicial decisions,” Pet. App. 26a, a rationale that would bar a request for issuance just as surely. A declaration that N.Y. Penal Law §§ 400.00(1)(b), (1)(o)(v), and N.Y. Exec. Law § 296(16) are unconstitutional is relief that operates on the officer who applies those provisions; it “remov[es] the allegedly unconstitutional barrier” between the applicant and the license, *Gutierrez v. Saenz*, 606 U.S. 305, 319 (2025), and any renewed application in Columbia County would be decided by Nichols under whatever criteria survive. The form of relief ultimately awarded, moreover, is not confined to the demand. Fed. R. Civ. P. 54(c). As Judge Sullivan observed, “[p]resenting a narrower challenge, seeking additional forms of relief, or naming an additional defendant would do nothing to alter the panel’s conclusion that upstate judges act as neutral and

impartial arbiters when considering handgun-license applications.” Pet. App. 95a (Sullivan, J., dissenting).

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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