

No. _____

In the
Supreme Court of the United States

YI FANG CHEN, INDIVIDUALLY AND ON
BEHALF OF HER MINOR CHILDREN M.P., MA.P., AND P.P.,

Applicant,

v.

ZOHRAN MAMDANI, IN HIS OFFICIAL CAPACITY AS MAYOR OF THE CITY OF NEW YORK;
KAMAR H. SAMUELS, IN HIS OFFICIAL CAPACITY AS CHANCELLOR OF THE NEW YORK
CITY DEPARTMENT OF EDUCATION; AND NEW YORK CITY DEPARTMENT OF EDUCATION,

Respondents,

TEENS TAKE CHARGE, DESIS RISING UP AND MOVING,
COALITION FOR ASIAN AMERICAN CHILDREN AND FAMILIES, VERONICA CARRASQUILLO,
ON BEHALF OF HER MINOR CHILD, A.C., WANG JIN HUA, ON BEHALF OF HER MINOR
CHILD, A.Z., HALIMATOU DIALLO, ON BEHALF OF HER MINOR CHILD, K.D.,
JENNIFER VELEZ, ON BEHALF OF HER MINOR CHILD G.R.,

Intervenor-Respondents.

*To the Honorable Sonia Sotomayor, Associate Justice of the Supreme Court
of the United States and Circuit Justice for the Second Circuit*

**EMERGENCY APPLICATION FOR AN
INJUNCTION PENDING APPEAL**

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PARTIES TO THE PROCEEDING

The parties to the proceeding below are as follows:

Applicant in this Court is Yi Fang Chen, individually and on behalf of her minor child, M.P.; she was the Plaintiff in the United States District Court for the Southern District of New York and the Appellant in the United States Court of Appeals for the Second Circuit.

Respondents are Zohran Mamdani, in his official capacity as Mayor of the City of New York; Kamar H. Samuels, in his official capacity as Chancellor of the New York City Department of Education; and New York City Department of Education. Respondents were Defendants in the United States District Court for the Southern District of New York and Appellees in the United States Court of Appeals for the Second Circuit.

Intervenor-Respondents are Teens Take Charge, Desis Rising Up and Moving, Coalition for Asian American Children and Families, Veronica Carrasquillo, on Behalf of her Minor Child, A.C., Wang Jin Hua, on Behalf of Her Minor Child, A.Z., Halimatou Diallo, on Behalf of her Minor Child, K.D., Jennifer Velez, on Behalf of Her Minor Child G.R.

RELATED PROCEEDINGS

The related proceedings are:

Yi Fang Chen v. Zohran Mamdani, et al., No. 1:26-cv-03355-ER (S.D.N.Y. July 21, 2026) (order denying motion for preliminary injunction)

Yi Fang Chen v. Zohran Mamdani, et al., No. 1:26-cv-03355-ER (S.D.N.Y. July 24, 2026) (order denying emergency injunction pending appeal)

Yi Fang Chen v. Zohran Mamdani, et al., No. 26-2066 (2d Cir. Sep. 8, 2026) (order denying motion for injunction pending appeal)

RULE 29.6 STATEMENT

As required by Supreme Court Rule 29.6, Yi Fang Chen is an individual, participating both individually and on behalf of her minor children M.P., Ma.P., and P.P.

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**TO THE HONORABLE SONIA SOTOMAYOR, ASSOCIATE JUSTICE
OF THE SUPREME COURT OF THE UNITED STATES AND CIRCUIT
JUSTICE FOR THE SECOND CIRCUIT:**

Pursuant to Rule 22 of this Court and the All Writs Act, 28 U.S.C. § 1651, Applicant Yi Fang Chen, individually and on behalf of her minor child, M.P., respectfully submits this emergency application for an injunction pending appeal.

INTRODUCTION

Yi Fang Chen’s son, M.P., is currently being excluded from New York City’s prestigious Stuyvesant High School because of an admissions program designed to racially balance the school’s demographics at the expense of Asian-American students. Ms. Chen unsuccessfully sought immediate relief in the district court and the Second Circuit. With the school year now in full swing, Ms. Chen’s only option to salvage her son’s freshman year of high school is emergency relief in this Court.

She is entitled to that relief. The case turns on one question of law applicable to both her Title VI and equal protection claims: does the City’s overhaul of admissions criteria with the intent to admit more students of certain racial groups at the expense of others—including Asian Americans like M.P.—constitute intentional discrimination? The answer to that question under this Court’s precedent is yes. Competitive “admissions are zero-sum. A benefit provided to some applicants but not to others necessarily advantages the former group at the expense of the latter.” *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181, 218-19 (2023) (*SFFA*). And the City’s own evidence establishes, without any ambiguity, that M.P. would be attending Stuyvesant today but for the challenged overhaul. Yet despite this Court’s clear guidance that this “prohibition against racial

discrimination is levelled at the thing, not the name,” *id.* at 230 (citation omitted), the courts of appeals are divided over whether a school district may deliberately alter facially neutral admissions criteria to change a school’s racial makeup without triggering strict scrutiny. *Compare Coal. for TJ v. Fairfax Cnty. Sch. Bd.*, 68 F.4th 864, 885-86 (4th Cir. 2023), *with Sargent v. Sch. Dist. of Phila.*, 165 F.4th 727, 743, 750-51 (3d Cir. 2026). This Court’s review is warranted to resolve that conflict, and its longstanding equal protection precedent makes reversal on the merits of the preliminary injunction likely.

Meanwhile, M.P.’s freshman year is slipping away. The Second Circuit has denied Ms. Chen’s requested expedited schedule, and no later ruling can restore the time he loses at Stuyvesant while that appeal proceeds. The Court should therefore preserve meaningful relief by directing the City to admit M.P. to Stuyvesant while his appeal is pending.

STATEMENT OF THE CASE

A. Specialized High Schools Background and Admissions Overhaul

New York City’s eight test-in Specialized High Schools (SHSs) are among the most academically rigorous public schools in the United States, with Stuyvesant considered the best and most selective of the group. App. 103a & n.1. Stuyvesant has produced four Nobel Laureates, as well as numerous leaders in science, law, and public life. App. 103a & n.1; *see also Chinese Am. Citizens All. of Greater N.Y. v. Adams*, 116 F.4th 161, 165 (2d Cir. 2024) (CACAGNY).

By state law, admission to the SHSs must be based “solely and exclusively” on the results of an objective examination (currently, the Specialized High School

Admissions Test or “SHSAT”). *See* N.Y. Educ. Law § 2590-g(12)(b) (1994).¹ That law, the Hecht-Calandra Act, specifies the admissions process, requiring applicants to rank their preferred schools and take the SHSAT. *Ibid.* Starting with the highest scorer, each student is offered admission to their highest-ranked SHS with an available seat, with the SHSAT score of the last student admitted to each school being that school’s “cutoff” score. *Ibid.*

The exception to this process is the “Discovery Program.” Hecht-Calandra allows the SHSs to implement a special admissions pathway for a limited number of economically disadvantaged students who just miss the regular cutoff for admission but demonstrate the potential for success at the SHSs. *See CACAGNY*, 116 F.4th at 165. However, this pathway was meant to be limited, and by law may not “in any manner interfer[e] with the academic level of these schools.” *Id.* at 166 (quoting N.Y. Educ. Law § 2590-g(12)(d) (1996)). Traditionally, the Discovery Program was small, with only about 1 to 3 percent of students being admitted through that program between 2006 and 2015. *Ibid.*

In 2017-18, Asian-American students made up a plurality at every SHS and a majority at each of the original three SHSs, including Stuyvesant. *CACAGNY*, 116 F.4th at 166. By contrast, Black and Latino students together made up only 10 percent of SHS students. *Ibid.* Mayor de Blasio and his administration deemed this outcome a “monumental injustice.” *Id.* at 167. In a 2018 op-ed, he asked “[c]an anyone

¹ This text no longer appears in the statute but has been incorporated by reference. *See* N.Y. Educ. Law § 2590-h(1)(b) (1998).

defend this? Can anyone look the parent of a Latino or black child in the eye and tell them their precious daughter or son has an equal chance to get into one of their city's best high schools?" *Ibid.* School Chancellor Richard Carranza responded to the idea that the administration wanted to discriminate against Asian-American students, saying "I just don't buy into the narrative that any one ethnic group owns admission to these schools." *Ibid.*

The de Blasio administration's solution to this "monumental injustice" was "to use the Discovery Program as a lever to admit more Black and Hispanic students." App. 155a. On June 3, 2018, the administration announced a plan that they advertised "would result in 16 percent of offers at SHSs going to Black and Latino students—up from the then-current 9 percent rate." *CACAGNY*, 116 F.4th at 167. Each SHS would now be required to set aside 20 percent of its seats for Discovery Program students, which was "a dramatic increase from the 1 percent to 3 percent of seats that were previously reserved." *Ibid.* And rather than simply considering individual economic need for Discovery Program eligibility, the City would limit participation in Discovery to students attending low-income middle schools, specifically those schools with an Economic Need Index (ENI) of 60% or higher.² *Ibid.*

² ENI is a City-devised metric ostensibly designed to measure "the economic hardship of the community the school serves." *CACAGNY*, 116 F.4th at 167 & n.3. It is the average of a school's individual students' economic need values (ENVs). Students are assigned an ENV of 1 if they are on public assistance, live in temporary housing, or come from a non-English speaking home. *Ibid.* Otherwise, "a student's ENV is the percentage, divided by 100, of families with school-age children in the student's census tract with incomes below the poverty level." *Ibid.* Each student's ENV, and by extension, each school's ENI, falls between 0.0 and 1.0 (i.e., between 0% and 100%).

Race was the driving force behind this overhaul. The New York City Department of Education (DOE) was clear that its “guiding principle[]” for the admissions overhaul was “[i]ncreas[ing] the diversity of the Specialized High Schools.” App. 163a. And behind the scenes, the City dismissed alternative options such as requiring recommendation letters, interviews, and writing assessments, because in their view these options would not “change the racial makeup” or “substantial[ly] change . . . the percentage of Black and Hispanic students offered seats at Specialized High Schools.” App. 164a. DOE specifically rejected attempts to use existing academic measures such as state math and ELA (English language arts) scores, grades, and attendance records in their admissions process because that would not meet the City’s racial balancing goals. App. 164-65a.

The City conducted internal modeling of numerous proposals, with an overriding focus on racial outcomes. Notably, DOE staff modeled the racial effects of using ENI thresholds of 40 percent, 60 percent, and 80 percent, and selected the threshold that they expected would produce the most black and Hispanic students while not running afoul of state law. DOE staff explained that limiting the Discovery Program to schools with high ENIs was critical “since it would be easier to target Black students directly for [the Discovery] program.” App. 181a. In short, it adopted the 60% ENI threshold because modeling showed it would yield a “more diverse” pool of students while the average proficiency of admitted students “barely change[d].” App. 178-79a.

DOE’s conception of “diversity” was focused on race. A chart prepared for City Hall confirms this, showing that the modeled changes were expected to substantially drop the proportion of Asian-American students eligible for the Discovery Program from 64 percent to 38 percent:

Ethnicity	Percent of students who received SHS offers through Discovery, for fall 2018 admissions [preliminary]	Model for expanded Discovery [20% of seats, 60% ENI minimum]*
Asian	64%	38%
Black	10%	22%
Hispanic	12%	31%
White	11%	7%
Other	2%	2%
Unknown	2%	N/A
*Data for students who would have been eligible to apply for Discovery in summer 2017. Does not reflect income eligibility or student interest in participating.		

App. 190a. Consistent with this racial focus, DOE staff reiterated that to achieve the City’s racial goals, Discovery expansion must come with an ENI restriction. Expansion of the size of the program alone was untenable because that “would also simultaneously increase the number of non-Black students getting an offer.” App. 180a. The City’s racial goal was always paramount.

Throughout the process, DOE implicitly acknowledged that this approach would harm other racial groups because admissions to the SHSs are zero-sum. In a “pro/con” list addressing the City’s broader racial balancing goals, DOE staff identified as a “con” that there could be “vociferous[] oppos[ition]” from Asian-American students and their families and “those who would have received those seats in absence of change.” App. 197a. And under the new criteria, “11 of 24 majority-Asian-American middle schools were rendered ineligible for the Discovery Program,” thereby excluding “Asian-American students at those 11 middle schools . . . from a

fifth of all SHS seats under the new Discovery program.” *CACAGNY*, 116 F.4th at 177.

B. M.P. Is Denied Admission to Stuyvesant

DOE modelers were ultimately wrong about the aggregate effect of the Discovery overhaul. *CACAGNY*, 116 F.4th at 168. They failed to account for “dramatic increases in the ENI across New York City in 2018” which “meant that nearly one hundred middle schools that would otherwise have been excluded from the Discovery program now met the 0.6 ENI threshold.” *Ibid.* Nevertheless, as the Second Circuit recognized, “it is undisputed that a large group of Asian-American students at certain middle schools across New York City was excluded from the revised Discovery Program under the new criteria”—particularly from Stuyvesant. *See id.* at 176; *id.* at 168 (“Under the revised Discovery Program, the number of Asian Americans receiving offers to the two most selective SHSs, Stuyvesant and Bronx Science, declined.”).

Yi Fang Chen’s son, M.P., is one of the excluded students. He took the SHSAT in 2025, and it is undisputed that he missed the cutoff for admission to Stuyvesant by only three points—scoring 558 compared to a 561 cutoff. App. 85a. Were it not for the admissions changes, he would have exceeded Stuyvesant’s cutoff score. DOE’s own projection from 2019 showed that the set-aside of 20% of seats for Discovery raised the Stuyvesant cutoff by 10 points. App. 200a. And although the district court considered DOE’s projection insufficient evidence that M.P. would have exceeded the cutoff score for this year, App. 59a, evidence subsequently provided by the City on appeal has eliminated any uncertainty. The City’s sworn declaration submitted to the

Second Circuit states that there were only 54 students who scored between 558 and 560 on the SHSAT and who ranked Stuyvesant first, whereas the admissions overhaul reserved 20% of Stuyvesant's incoming class of about 800—or approximately 160 seats—for Discovery students. App. 293a. Without the overhaul, M.P.'s score of 558 would have put him well into that group of 160 students and earned him admission to Stuyvesant.

The school year started on September 10, with M.P. relegated to attending his second-choice school, Brooklyn Tech. App. 204a. Because of the City's racially motivated admissions overhaul, every day without relief M.P. misses the opportunity to attend the first-choice school he would otherwise be attending.

C. Procedural History

Ms. Chen first sued the City in December 2018, when M.P. was a first grader, alongside three organizations and two other individual plaintiffs. They sought a preliminary injunction to stop the City's Discovery overhaul from ever going into effect, but the district court denied the motion. *Christa McAuliffe Intermediate Sch. PTO, Inc. v. de Blasio*, 364 F. Supp. 3d 253 (S.D.N.Y. 2019). The district court also dismissed Ms. Chen from the case, finding that her alleged harm was too speculative because her son was then only in first grade. *Id.* at 272.

Three years later, the district court granted summary judgment to the City Defendants, finding that the lack of evidence of an aggregate decrease in Asian-American students in the SHSs following implementation of the Discovery Program rendered the remaining plaintiffs' claims untenable. *Christa McAuliffe Intermediate Sch. PTO, Inc. v. de Blasio*, 627 F. Supp. 3d 253 (S.D.N.Y. 2022). One of the

organizational plaintiffs appealed, and the Second Circuit vacated the district court's grant of summary judgment, finding that aggregate disparate impact is not a required element of an equal protection claim; if discriminatory intent is proven, a negative effect on *individual* Asian-American applicants would trigger strict scrutiny. *CACAGNY*, 116 F.4th at 179. Following remand, the City has further delayed resolution of that case by filing a motion challenging the organization's standing. That motion is still pending in the district court. *See* Def.'s Mem. of Law in Supp. of Mot. to Dismiss Pl., *Christa McAuliffe Intermediate Sch. PTO, Inc. v. de Blasio*, No. 18-cv-11657-ER, ECF No. 215 (S.D.N.Y. July 1, 2026).

Ms. Chen is a member of the organizational plaintiff, but with that case stalled, she had little choice but to file her own case when her son was denied admission to Stuyvesant in March of this year. She brought her own lawsuit against the City on April 23, 2026, and immediately sought preliminary relief requiring the City to admit M.P. to Stuyvesant. The district court denied Ms. Chen's motion for a preliminary injunction from the bench. The court acknowledged that "diversity was a guiding principle of the changes to the Discovery Program, that an aim was to admit black and Hispanic students, and that the Department of Education modeled several potential changes to the Economic Need Index to understand the impact on racial demographics." App. 54a. But it held that evidence to be insufficient to show discriminatory intent, dismissing the argument that discriminatory intent could arise from "a facially neutral policy seeking to improve racial diversity." App. 55a. Because it did not find discriminatory intent, the district court applied rational basis

review rather than strict scrutiny and denied the motion for a preliminary injunction. App. 57a.

Ms. Chen immediately appealed the denial of the preliminary injunction to the Second Circuit and filed an emergency motion for injunction pending appeal after the district court denied that same relief. On September 8, a panel of the Second Circuit denied that motion, stating that “complicated disputes of fact and law” prevented the court from resolving it in an emergency posture. App. 1a. Following denial of her emergency motion, the Second Circuit denied Ms. Chen’s request for an expedited appellate schedule that would see briefing completed by October 30, 2026, and instead set a schedule extending briefing through December 4. Mot. Order, *Chen v. Mamdani*, No. 26-2066 (2d Cir. Sept. 15, 2026), ECF No. 56.1.

With M.P.’s freshman year ongoing and no other avenue for immediate relief, Ms. Chen seeks an emergency injunction in this Court requiring his admission to Stuyvesant while the appeal is pending in the Second Circuit.

REASONS FOR GRANTING THE APPLICATION

Ms. Chen is entitled to emergency injunctive relief pending appellate review. To obtain this relief, Ms. Chen must clearly show that her claim is likely to succeed on the merits, that she will suffer irreparable harm without relief, and that the relief “would not harm the public interest.” *Roman Catholic Diocese of Brooklyn v. Cuomo*, 592 U.S. 14, 16 (2020). Likelihood of success entails “a ‘significant possibility’ that the Court would [grant certiorari] and reverse.” *Am. Trucking Ass’ns, Inc. v. Gray*, 483 U.S. 1306, 1308 (1987) (Blackmun, J.); *see also Wheaton Coll. v. Burwell*, 134

S.Ct. 2806, 2807 (2014) (noting a circuit split as a factor weighing in favor of granting an injunction).

Ms. Chen satisfies each of these requirements.

First. The circuits are divided on whether a school district's implementation of admission criteria designed to increase enrollment of members of certain racial groups constitutes intentional discrimination against members of disfavored groups. In the Fourth Circuit's telling, racial discrimination requires racial *animus* against the disfavored groups, or at least an expressed intent to disadvantage them. But the Third Circuit recognizes that because admissions are zero-sum, implementing a racial proxy designed to benefit some groups necessarily operates at the expense of others, establishing discriminatory intent. Only the latter view comports with this Court's equal-protection precedent. Because New York City indisputably overhauled the criteria for admission to the SHSs to achieve a racial purpose, the Court is likely to grant certiorari in this case and reverse the denial of the preliminary injunction.

Second. Ms. Chen suffers irreparable harm each day her son is denied admission to Stuyvesant. High school lasts just four years. Without an injunction now, M.P. will likely have lost at least one of those years at his first-choice school (and one of the best high schools in the country). No amount of damages can compensate for a year lost due to racial discrimination.

Third. An injunction would not be against the public interest. The government has no legitimate interest in enforcing an unconstitutional policy. And it is undisputed that the City would not face a meaningful administrative burden were it

required to admit M.P. to Stuyvesant. The speculative possibility that others may subsequently seek admission does not justify denying M.P. necessary relief to remedy an irreparable constitutional injury.

I. This Court Is Likely to Grant Certiorari and Reverse the Denial of the Preliminary Injunction

Most importantly, relief is warranted because Ms. Chen is correct on the merits of a question that warrants this Court’s review. This case does not involve a series of “complicated disputes of fact and law.” App. 1a. It is instead quite simple. The record leaves no doubt that New York City overhauled the criteria for admission to the SHSs, at least in part, in an effort to rebalance the racial demographics within its zero-sum admissions system. This is evident from both the public statements “touting” the City’s targeted shift in racial demographics, *CACAGNY*, 116 F.4th at 166-67, and from internal documents clarifying that the City sought “to use the Discovery program as a lever to admit more Black and Hispanic students.” App. 155a. That leaves only an important question of law. If Ms. Chen is correct that New York City’s professed intent to gerrymander the criteria to admit more students from favored racial groups constitutes intentional racial discrimination against students from disfavored groups, she will prevail. Because she *is* correct, she is entitled to relief while the appeal proceeds.

A. The Third and Fourth Circuits Apply Contradictory Definitions of Discriminatory Intent in K-12 Admissions

The circuit split here is quite simple. Challengers in two recent cases argued that school districts intentionally discriminated against Asian-American students by implementing geographic proxies designed to make it easier for black and Hispanic

students to gain entry into selective high schools. The Fourth Circuit, without the benefit of this Court’s decision in *SFFA*, held this to be an insufficient showing of discriminatory intent. *Coal. for TJ*, 68 F.4th at 885-86, *cert. denied*, 146 S.Ct. 541 (mem.). The Third Circuit disagreed. *Sargent*, 165 F.4th at 743, 750-51.

The crux of the split is the courts’ contrasting understanding of zero-sum admissions. In the analogous higher-education context, this Court has acknowledged that “admissions are zero-sum. A benefit provided to some applicants but not to others necessarily advantages the former group at the expense of the latter.” *SFFA*, 600 U.S. at 218-19. Consistent with this recognition, none of this Court’s modern school admissions or contracting cases involved policies explicitly intended to hurt or disadvantage members of a particular racial group. On the contrary, the Court has often emphasized that the same constitutional standards apply even to so-called “benign” racial discrimination. *See Grutter v. Bollinger*, 539 U.S. 306, 326 (2003); *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469, 500 (1989).

Applying these principles to facially race-neutral criteria alleged to be infected with discriminatory intent, the Third and Fourth Circuits diverged. In the Third Circuit, a finding that a geographic proxy was enacted “to change the racial makeup of the four most selective [high] schools” is sufficient to trigger strict scrutiny because “[a]ltering the schools’ racial makeup would increase the representation of Black and Hispanic students while decreasing white and Asian students’ representation in a zero-sum admissions game.” *Sargent*, 165 F.4th at 743. By contrast, the Fourth Circuit thought that “[a]n Equal Protection plaintiff alleging purposeful racial

discrimination must show at least some specific intent to target a certain racial group and to inflict adverse effects upon that group.” *Coal. for TJ*, 68 F.4th at 886; *but see id.* at 894 (Rushing, J., dissenting) (finding discriminatory intent because “the Board adopted the Policy with an impermissible purpose of racially balancing TJ to reduce Asian student enrollment”).

These represent divergent readings of this Court’s decision in *Personnel Administrator of Massachusetts v. Feeney*, 442 U.S. 256 (1979). *Feeney* held that a decisionmaker acts with discriminatory intent when it enacts a policy “at least in part ‘because of,’ not merely ‘in spite of,’ its adverse effects upon an identifiable group.” *Id.* at 279. The Fourth Circuit in *Coalition for TJ* held that intent to benefit some groups with the knowledge that this would disadvantage others “is, under *Feeney*, wholly insufficient from which to infer [discriminatory] intent.” 68 F.4th at 886. But the Third Circuit in *Sargent* took the zero-sum nature of admissions into account in applying *Feeney*, understanding that a decisionmaker cannot intend to benefit one group in a zero-sum process without intending to burden others. *See* 165 F.4th at 741-43.³

³ This same split has played out among district courts. Long before *Sargent*, two district courts within the Fourth Circuit (including the court the Fourth Circuit reversed in *Coalition for TJ*) adopted the Third Circuit’s view that intent to racially balance the student body of a competitive K-12 school in a zero-sum environment is discriminatory intent. *See Ass’n for Education Fairness v. Montgomery Cnty. Bd. of Educ.*, 560 F. Supp. 3d 929, 953 (D. Md. 2021) (“The Complaint also makes plausible that the County acted with a discriminatory motive in that it set out to increase and (by necessity) decrease the representation of certain racial groups in the middle school magnet programs to align with districtwide enrollment data.”); *Coal. for TJ v. Fairfax Cnty. Sch. Bd.*, No. 1:21-cv-296, 2022 WL 579809, at *10 (E.D. Va. Feb. 25, 2022) (“[T]he Board’s policy was designed to increase Black and Hispanic enrollment,

This conflict is irreconcilable. The same facts that win an equal-protection case in the Third Circuit lose in the Fourth. The Second Circuit has yet to choose sides, although it has rejected the Fourth Circuit’s requirement that challengers must demonstrate aggregate disparate impact to prevail, *CACAGNY*, 116 F.4th at 173, and the Third Circuit explicitly endorsed the *CACAGNY* decision in reaching its decision in *Sargent*, 165 F.4th at 749. This Court is likely to grant certiorari to resolve the conflict. And this case, which involves that precise set of facts with a concrete injury to a specific applicant, is an effective vehicle to do so.

B. Ms. Chen’s Position Is Correct

On the merits, Ms. Chen and the Third Circuit are correct. The government can unconstitutionally discriminate based on race even without a specific expressed intent to harm members of the groups it disfavors. That is the lesson of the last five decades of this Court’s equal-protection precedent.

Before and during the civil-rights movement, this Court dealt primarily with “classifications burdening groups that have suffered discrimination in our society.” *Adarand Constructors v. Peña*, 515 U.S. 200, 218 (1995). Beginning about fifty years ago, however, it faced the “question whether race-based governmental action designed to *benefit* such groups should also be subject to ‘the most rigid scrutiny.’” *Ibid.* (quoting *Regents of Univ. of Cal. v. Bakke*, 438 U.S. 265, 291 (1978) (controlling

which would, by necessity, decrease the representation of Asian-Americans at TJ. . . . Therefore, strict scrutiny applies.”) (citations omitted). Other district courts took the opposing view. *See, e.g., Christa McAuliffe*, 364 F. Supp. 3d at 278-79; *Bos. Parent Coal. for Acad. Excellence Corp. v. Sch. Comm. of City of Bos.*, No. 21-10330, 2021 WL 4489840, at *15 (D. Mass. Oct. 1, 2021).

opinion of Powell, J.)). Since then, the Court has considered a variety of racial classifications in admissions and government contracting. Not one of these programs was specifically intended to *harm* a particular group. Instead, governments justify racial classifications as a measure to help previously harmed groups or promote racial diversity. *See, e.g., SFFA*, 600 U.S. at 218 (“Respondents nonetheless contend that an individual’s race is never a negative factor in their admissions program”); *Grutter*, 539 U.S. at 315-16 (explaining the University of Michigan Law School’s diversity rationale for using race as a plus factor in admission); *Croson*, 488 U.S. at 478 (“The Plan declared that it was ‘remedial’ in nature, and enacted for the purpose of promoting wider participation by minority business enterprises in the construction of public projects.”) (internal quotation marks omitted). And in this context, the Court long ago rejected the argument that the lack of animus or hatred behind these policies exempts them from strict scrutiny. *See Adarand*, 515 U.S. at 218-30 (disavowing cases that had given some credence to such an exemption).

But of course, the government can also discriminate through facially race-neutral means. Laws “are subject to strict scrutiny under the Equal Protection Clause not just when they contain express racial classifications, but also when, though race neutral on their face, they are motivated by a racial purpose or object.” *Miller v. Johnson*, 515 U.S. 900, 913 (1995). The inquiry into discriminatory intent laid out in *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252, 266-68 (1977), exists to ensure that the government cannot simply employ a facially neutral racial proxy to evade the strict scrutiny that comes with racial

discrimination. The racial purpose triggers strict scrutiny just as the racial classification does. If governments discriminating *overtly* to pursue even a remedial goal must satisfy strict scrutiny, the same is true for those doing so *covertly* through a facially race-neutral proxy. What matters is racial *discrimination* in government decision making, not racial *animus*. See *Louisiana v. Callais*, 146 S.Ct. 1131, 1146 (2026) (“[I]f race played a role in a decision made by a government actor, strict scrutiny applie[s].”) (citing *SFFA* and *Arlington Heights*).

In this case, New York City sought to admit more black and Hispanic students to the SHSs, so it changed the admissions criteria in ways designed disproportionately to benefit them. The City went so far as to exclude economically disadvantaged students from the Discovery Program for attending the wrong middle schools. In doing this for a racial purpose, the City necessarily intended to make it *more difficult* for Asian Americans to get in. As this Court, the Third Circuit, and other courts confronted with overt and covert racial preferences have correctly understood, there is no way around that in the world of zero-sum admissions.

The City’s overt discussion of racial balancing—both publicly and in its internal documents—reinforces this point. Asian-American students were the only group achieving substantially more seats at the SHSs than the group’s share of public-school students. And this Court could not have been clearer that programs designed to allocate seats to bring a school’s racial makeup into line with that of the broader population—i.e., “racial balancing”—are “patently unconstitutional.” *SFFA*, 600 U.S. at 223.

A finding in Ms. Chen’s favor would not mean that any attempt by a school district to increase diversity or affect a school’s racial makeup necessarily triggers strict scrutiny. *But cf. Coal. for TJ*, 68 F.4th at 881 (arguing that striking down a facially neutral racial balancing plan “would simply turn the previous status quo into an immutable quota, thereby opening a new policy that might impact a public institution’s racial demographics—even if by wholly neutral means—to a constitutional attack”). There are many things a school district could do that might aim to produce a more racially diverse student body but do not actually discriminate against any student. For example, in *Coalition for TJ*, the challenged admissions overhaul included elimination of the \$100 application fee. *Id.* at 874. Even assuming this was intended to increase the number of black and Hispanic students at TJ, there is no plausible argument that making an application free to all discriminates against anyone. Such universal reforms are a far cry from what Ms. Chen and challengers in similar cases oppose: the selection of a particular admissions criterion “to achieve racial proportionality,” with geographic or other restrictive criteria used as “a proxy for race.” *Sargent*, 165 F. 4th at 743.

Requiring a showing of racial hatred, animus, or a specific intent to disadvantage a racial group to prove intentional discrimination would sanction an end-run around the Constitution’s guarantee of equality under the law. As this Court’s precedents demonstrate, a school district need not engage in outright animus to discriminate based on race. Ms. Chen is correct, and this Court is likely to reverse the denial of the motion for a preliminary injunction.

II. Ms. Chen Suffers Irreparable Harm Each Day Without an Injunction

Attending Stuyvesant is a dream for thousands of New York eighth graders each year. Even among the outstanding group of SHSs, Stuyvesant stands out. It is the most selective and the most desired of that selective and desired group. *See CACAGNY*, 116 F.4th at 169 (noting that Stuyvesant and Bronx Science are “the two most selective SHSs”).

M.P. was denied admission to Stuyvesant because he was three points short of the cutoff. Absent the City’s racially-motivated overhaul of the admissions process, M.P.’s SHSAT score would have been good enough to get in. Ms. Chen has made a strong showing that the City’s racial discrimination is the reason he is not currently a freshman at Stuyvesant.

“The denial of [Ms. Chen’s and M.P.’s] constitutional rights during the potentially protracted appellate process constitutes irreparable harm.” *Mirabelli v. Bonta*, 607 U.S. 492, 497 (2026) (citing *Roman Catholic Diocese*, 592 U.S. at 19).⁴ While the case remains pending below, M.P. is missing out on the experience of

⁴ Lower courts have repeatedly recognized that denial of admission to a preferred school constitutes irreparable harm. *See Brewer v. W. Irondequoit Cent. Sch. Dist.*, 212 F.3d 738, 744 (2d Cir. 2000) (finding irreparable harm from an alleged equal-protection violation even though the student could remain in a good public school); *Wessmann v. Gittens*, 160 F.3d 790, 809 (1st Cir. 1998) (ordering admission of student to Boston Latin “without delay” despite attending an alternative prestigious school); *McLaughlin v. Bos. Sch. Comm.*, 938 F. Supp. 1001, 1011-12 & n.13 (D. Mass. 1996) (ordering admission despite “a fine education at a comparable school” because delay would cost the student time learning faculty expectations, forming relationships with classmates and teachers, and experiencing the school’s unique atmosphere); *Foulke v. Foulke*, 896 F. Supp. 158, 160-61 (S.D.N.Y. 1995) (loss of the opportunity to attend a preferred school is irreparable because different schools offer unique educational experiences that damages cannot replace).

attending Stuyvesant, something he can never get back. Even though Ms. Chen sought emergency relief below and sought to expedite the appeal of her preliminary injunction motion, the appeal will not be fully briefed—let alone argued and decided—until December 4, 2026. And if the Second Circuit does not reverse the district court’s denial of Ms. Chen’s preliminary injunction motion, proceeding along the normal course would almost certainly mean the loss of M.P.’s freshman year. Even if such a decision follows quickly from the close of briefing, Ms. Chen would have to seek emergency relief in this Court again to preserve any part of M.P.’s first year of high school.

No amount of damages can compensate Ms. Chen for the continuing loss of her son’s freshman year at one of the best schools in the United States. The value of attending Stuyvesant lies not in the diploma alone, but in the coursework, teachers, peer cohort, extracurricular opportunities, and relationships built over the course of the four-year experience. While Brooklyn Tech is a very good school, it is not M.P.’s first choice. A backup option does not obviate the irreparable harm of being kept out of one’s first choice. *See Roman Catholic Diocese*, 592 U.S. at 19 (remote viewing of religious services was no substitute for live attendance). Relief from this Court is necessary to vindicate Ms. Chen’s and M.P.’s constitutional rights while the case proceeds below.

III. Enforcing M.P.’s Constitutional Rights Is Not Against the Public Interest

Because Ms. Chen has made a strong showing that she and her son will suffer irreparable harm absent relief from the City’s racially motivated admissions criteria,

an injunction is in the public interest. *See Mahmoud v. Taylor*, 606 U.S. 522, 569 (2025) (“in light of the strong showing” of unconstitutionality “and the lack of a compelling interest supporting the Board’s policies, an injunction is both equitable and in the public interest”).⁵ Further, the City has conceded (and the district court agreed) that admitting M.P. to Stuyvesant will not cause any substantial administrative burden. App. 59a, 244a. If Ms. Chen is correct on the merits, no public interest justifies keeping M.P. out of Stuyvesant.

Below, the City relied entirely on the speculative possibility that if M.P. were admitted to Stuyvesant, other students in his situation would then seek similar relief. But it is far from certain that anyone who seeks an injunction for the first time at this stage would obtain the same result as Ms. Chen, who diligently sued to protect her son’s rights at the earliest possible time. *Cf. Benisek v. Lamone*, 585 U.S. 155, 159 (2018) (“A party requesting a preliminary injunction must generally show reasonable diligence.”). And more importantly, speculation that others may seek to vindicate their constitutional rights cannot justify the denial of M.P.’s constitutional rights. Because Ms. Chen has made a strong showing that M.P. is currently suffering

⁵ Most of the circuits agree that “enforcement of an unconstitutional law is always contrary to the public interest.” *Karem v. Trump*, 960 F.3d 656, 668 (D.C. Cir. 2020) (quoting *Gordon v. Holder*, 721 F.3d 638, 653 (D.C. Cir. 2013)); *see, e.g., Honeyfund.com v. Governor*, 94 F.4th 1272, 1283 (11th Cir. 2024); *Newsom ex rel. Newsom v. Albemarle Cnty. Sch. Bd.*, 354 F.3d 249, 261 (4th Cir. 2003); *N.Y. Progress & Prot. PAC v. Walsh*, 733 F.3d 483, 488 (2d Cir. 2013); *K.A. ex rel. Ayers v. Pocono Mtn. Sch. Dist.*, 710 F.3d 99, 114 (3d Cir. 2013); *Déjà vu of Nashville, Inc. v. Metro. Gov’t of Nashville & Davidson Cnty.*, 274 F.3d 377, 400 (6th Cir. 2001).

irreparable harm as a result of the City's unconstitutional admissions policy, she is entitled to emergency injunctive relief.

CONCLUSION

For the foregoing reasons, Applicant respectfully requests that the Court grant this application and direct Respondents to admit M.P. to Stuyvesant High School pending resolution of Ms. Chen's appeal in the Second Circuit.

Dated: September 21, 2026.

Respectfully submitted,

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