

No. 26-2066

In The United States Court Of Appeals
For The Second Circuit

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

Plaintiff – Appellant,

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,

Defendants – Appellees,

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-Defendants-Appellees.

On Appeal from the United States District Court
for the Southern District of New York

APPELLANT’S OPENING BRIEF

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STATEMENT OF JURISDICTION

The district court had original jurisdiction pursuant to 42 U.S.C. § 1983 and 28 U.S.C. §§ 1331 and 2201. Federal jurisdiction exists because Plaintiff alleges that changes to the admissions process at New York City's specialized high schools violate the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution by discriminating against Asian-American students. The court denied Chen's motion for a preliminary injunction from the bench on July 21, 2026, and entered the operative order on July 21, 2026. A-223.

This Court has appellate jurisdiction under 28 U.S.C. § 1292(a)(1), which authorizes an immediate appeal from an order refusing an injunction. Chen filed a timely notice of appeal on July 25, 2026. ECF No. 1; *see* Fed. R. App. P. 4(a)(1)(A).

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

Whether the district court improperly denied Plaintiff's motion for a preliminary injunction, including by concluding that Plaintiff had not demonstrated a likelihood of success on her Equal Protection and Title VI claims where the evidence showed that Defendants adopted the challenged admissions policy revisions at least in part to produce preferred racial outcomes.

INTRODUCTION

This appeal presents a simple question of law based on undisputed material facts: may New York City evade the prohibition on racial discrimination in public school admissions by selecting facially neutral economic criteria designed to favor some racial groups to the detriment of others? The answer, based on controlling precedent from the Supreme Court and this Court, is no. Because the district court held otherwise, this Court must reverse.

In 2018, Plaintiff-Appellant Yi Fang Chen first filed suit to challenge the new racially engineered admissions policy at New York City's prestigious specialized high schools (SHSs)—a policy specifically designed to admit fewer Asian-American students like her son. At that time, the district court dismissed her claims, deeming the threatened injury too speculative because her son was then a first grader. Now, eight years later, the harm she feared has materialized: her son was denied admission to his dream school because of that very policy. The school year has started, and now every day without judicial relief compounds the harm to Chen and her son, M.P.

M.P. *should* be attending Stuyvesant—the most selective of the SHSs. He took the competitive examination required by state law (the SHSAT) and earned a score that would have secured his admission but for the City’s restructuring of the admissions policy. That restructuring removed twenty percent of seats from the traditional competitive exam process and implemented criteria intended to “target” certain racial groups for admission to those seats, while intending to exclude students from other racial groups from that same benefit. The City proclaimed its racial goals unambiguously, declaring the prior demographics of the SHSs a “monumental injustice” that needed fixing, and publicly touting the specific racial shifts it projected from the program.

This is precisely the type of “racial balancing” that the Supreme Court held to be “patently unconstitutional” in *Students for Fair Admissions, Inc. v. President & Fellows of Harvard College*, 600 U.S. 181 (2023) (*SFFA*). As the Court recognized, competitive admissions are often zero-sum, such that treating some applicants more favorably because of their race necessarily violates the Equal Protection Clause because it disadvantages other students because of their race. And in *Chinese American Citizens Alliance of Greater New York v. Adams*, 116 F.4th 161

(2d Cir. 2024) (*CACAGNY*), this Court held that an individual Asian-American student harmed by the very policy at issue here could establish an equal protection claim if the policy was enacted with a racially discriminatory purpose.

Despite these controlling precedents, the district court denied a preliminary injunction, hewing to its own 2019 decision in the related action that predated these monumental developments in Equal Protection Clause jurisprudence. This Court should reverse and remand with instructions to grant a preliminary injunction directing the City to admit M.P. to Stuyvesant.

STATEMENT OF FACTS

I. New York’s Specialized High Schools

The SHSs are among the most academically rigorous public schools in the United States. “The two most selective SHSs [are] Stuyvesant and Bronx Science.” *CACAGNY*, 116 F.4th at 169. Stuyvesant is the most selective and has produced four Nobel Laureates and numerous leaders in science, law, and public life.¹

¹ *History of the School*, Stuyvesant High School, https://stuy.enschool.org/apps/pages/index.jsp?uREC_ID=126631&type=d&pREC_ID=251657&hideMenu=1.

To ensure these schools maintain rigorous academic standards, New York’s Hecht-Calandra Act requires admissions to be “solely and exclusively” through an objective examination, currently the Specialized High School Admissions Test (SHSAT). *See* N.Y. Educ. Law § 2590-g(12)(b) (1994).² Applicants rank their preferred schools, take the SHSAT, and starting with the highest scorer, each student is offered admission to their highest-ranked SHS with an available seat. *Id.* The SHSAT score of the last student admitted to each school is that school’s “cutoff” score.

Hecht-Calandra also authorized a “Discovery Program, for a limited number of disadvantaged students who demonstrated potential for success at the SHS, but did not obtain a qualifying score on the standardized entrance exam.” *CACAGNY*, 116 F.4th at 165. By law, the Discovery Program may not “in any manner interfer[e] with the academic level of these schools.” *Id.* (quoting N.Y. Educ. Law § 2590-g(12)(d) (1996)). “To be eligible for the Discovery Program, students must take the SHSAT, be certified as ‘disadvantaged’ and be recommended as having

² This text no longer appears in the statute but has been incorporated by reference. *See* N.Y. Educ. Law § 2590-h(1)(b) (1998).

high potential by their middle schools, and pass a summer preparatory program.” *Id.* at 166. Their SHSAT score must also be below the cutoff for every SHS. *Id.* The Discovery Program was traditionally small and left to the discretion of each SHS. *Id.* (“[B]etween 2006 and 2015, annually only approximately 1 percent to 3 percent of students admitted at the SHSs came through the Discovery Program.”).

II. The 2018 Admission Policy Changes

Around 2018, then-Mayor Bill de Blasio and then-Department of Education (DOE) Chancellor Richard Carranza decided that it was problematic that the racial demographics of the SHSs differed from those of the New York City public schools as a whole—specifically, that Asian-American students were, in their view, overrepresented and Hispanic and black students underrepresented. *CACAGNY*, 116 F.4th at 166–67. On June 3, 2018, they announced a two-pronged plan to change the racial composition of the SHSs. The first prong, challenged here, was an

expansion and reorganization of the Discovery Program.³ Under that plan, “the Discovery Program no longer would be a narrow alternative admission path. Instead, each SHS would now be required to set aside 20 percent of its seats for Discovery Program students, a dramatic increase from the 1 percent to 3 percent of seats that were previously reserved.” *CACAGNY*, 116 F.4th at 167.

Critically, the plan also narrowed Discovery eligibility, limiting participation to students attending middle schools with a specific ENI. *Id.* ENI is a City-created metric designed to measure “the economic hardship of the community the school serves.” *Id.* at 167 & n.3.⁴ Under

³ Press Release, Office of the Mayor, *Mayor de Blasio and Chancellor Carranza Announce Plan to Improve Diversity at Specialized High Schools* (June 3, 2018), https://a860-gpp.nyc.gov/concern/nyc_government_publications/nc580q26h?locale=en (cited in Pl.’s Mot. for Prelim. Inj., No. 1:26-cv-03355, ECF No. 15 at 5). The second prong, which would have required legislative repeal of Hecht-Calandra and was never implemented, was to eliminate the SHSAT altogether and replace it with reserved seats for the top-ranked students at each NYC middle school. *Id.*

⁴ ENI is the average of a school’s individual students’ economic needs value (ENV). 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. *CACAGNY*, 116 F.4th at 167 & n.3. “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.” *Id.* Each student’s ENV, and by extension each school’s ENI, falls between 0.0 and 1.0 (i.e., between 0% and 100%).

the new policy, economically disadvantaged students are ineligible for Discovery if they attend a middle school with an ENI below 60%. *Id.* at 167. The restriction thus conditions eligibility not on the individual economic circumstances of the child, but on which middle school the child attends. Put differently, the new Discovery Program no longer treated economically disadvantaged students alike: it excluded otherwise eligible disadvantaged children based on the economic circumstances of other families in their school communities. As discussed below, the City selected these eligibility restrictions as a racial proxy to “target” certain racial groups for increased admissions at the expense of others.

III. Public and Private Statements Show That Defendants Designed the Changes to Achieve Racial Balancing

In *CACAGNY*, this Court highlighted a series of public statements made in 2018 by Mayor de Blasio and Chancellor Carranza establishing the race-focused purpose of the Discovery Program changes. *CACAGNY*, 116 F.4th at 166–67. They declared that “the racial demographics of the SHSs were a ‘monumental injustice’” which they “sought to address ... by overhauling the Discovery Program” in a manner “designed to increase the numbers of Black and Latino students at the SHSs.” *Id.* This included a press release “touting” that “the City’s modeling suggested that the

revised Discovery Program would result in 16 percent of offers at SHSs going to Black and Latino students—up from the then-current 9 percent rate.” *Id.* at 167. It also included Chancellor Carranza’s response to allegations that the changes “unfairly discriminated against high-achieving Asian-American students,” in which he told the media that he did not “buy into the narrative that any one ethnic group owns admission to these schools.” *Id.* Clarifying that the purpose of his plan was racial balancing, the Mayor stated that the SHSs “need to look like New York City.”⁵

Internal documents—which the City had not yet produced at the time of this Court’s 2024 *CACAGNY* decision—confirm that racial balancing was a motivating factor (if not the primary motivating factor) for the Discovery changes. For example, in an email less than a week before the policy was announced, the DOE Director of Research and Policy stated the goal was “to use the Discovery Program as a lever to admit more Black and Hispanic students.” A-55. An internal DOE slide

⁵ *Mayor De Blasio Details Plan to Diversify New York City’s Elite High Schools*, CBS New York (June 3, 2018), <https://www.cbsnews.com/newyork/news/de-blasio-diversify-elite-city-high-schools-plan/> (cited in Pl.’s Mot. for Prelim. Inj., No. 1:26-cv-03355, ECF No. 15 at 7).

deck from April 2018 identified “[i]ncreas[ing] the diversity of the Specialized High Schools” as a “guiding principle[]” for the admissions changes. A-63, 65. The City dismissed alternative race-neutral options—recommendation letters, interviews, writing assessments—because they would not “change the racial makeup” or “substantial[ly] change ... the percent of Black and Hispanic students offered seats at Specialized High Schools.” A-64. In contrast, DOE expected its Discovery expansion “to achieve more racial diversity,” with the ENI restriction in particular intended to ensure “[m]ore Black and Hispanic students would become eligible for Discovery.” A-67, 71. DOE similarly explained that the ENI restriction was critical “since it would be easier to target Black students directly for [the Discovery] Program.” A-81. DOE also acknowledged that the changes, along with its broader racial balancing goals (including the plan to eventually repeal Hecht-Calandra), would be “vociferously oppose[d]” by “Asian American leadership” and “those who would have received . . . seats in absence of change.” A-97.

DOE staff modeled the racial effects of different ENI thresholds and selected the one designed to produce its desired outcome. They evaluated ENI cutoffs of 40 percent, 60 percent, and 80 percent and reported that

the 60 percent model yielded a “more diverse” pool while the average proficiency of admitted students “barely change[d].” A-79.⁶ A chart prepared for City Hall confirms that the “diversity” DOE cared about was racial diversity, and projected that under the new plan the Asian-American share of eligibility for Discovery would drop from 64 percent to 38 percent, while black and Hispanic eligibility would rise substantially:

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.		

A-90. 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. Given that Asian Americans made up roughly two-thirds of Discovery participants under the pre-2018 rules, the targeting

⁶ By contrast, using an 80% cutoff significantly lowered the projected proficiency of Discovery admittees, which Hecht-Calandra prohibits. A-79 (“in the 80% both the SHSAT and average proficiency scores drop pretty significantly”).

analysis makes the design unmistakable: the 60% ENI restriction was selected to produce a specific desired racial outcome and reduce Asian-American admission to the SHSs.

IV. Plaintiff-Appellant Yi Fang Chen and the Related CACAGNY Litigation

In 2018, Plaintiff-Appellant Yi Fang Chen, a Chinese-American immigrant, was among a group of plaintiffs who sued to enjoin the changes to the Discovery Program, alleging that the City unconstitutionally used race to reduce the number of Asian-American students like her son. In early 2019, the district court dismissed Chen for lack of standing because it considered M.P., then in first grade, too young for his injury to be imminent. *Christa McAuliffe Intermediate Sch. PTO v. de Blasio*, 364 F. Supp. 3d 253, 272 (S.D.N.Y. 2019). It also denied the remaining plaintiffs' request for a preliminary injunction. *Id.* at 284.

That case proceeded to summary judgment, which the district court granted in favor of the City because the plaintiffs had not shown that the new admissions policy caused an aggregate disparate racial impact on Asian Americans due largely to unpredicted “dramatic increases in the ENI across New York City in 2018.” *CACAGNY*, 116 F.4th at 168–69. On appeal, this Court vacated that judgment. Although the panel did not

decide whether the City had acted with discriminatory intent, it observed that racial objectives motivated the changes: (1) the “policy [was] designed to increase the numbers of Black and Latino students at the SHSs”; (2) “City officials arrived at the 0.6 ENI threshold after modeling the effects that various ENI cutoffs would have on the racial composition of students at the SHSs”; and (3) “the City’s modeling also projected that the changes to the Discovery Program would decrease the number of Asian-Americans at the SHSs.” *CACAGNY*, 116 F.4th at 166–67. The Court also emphasized that “SHS admission is a zero-sum game in that admitting more students from a particular demographic means admitting fewer from other demographics.” *Id.* at 167.

The panel’s critical legal holding was 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 is sufficient to trigger strict scrutiny. *Id.* at 165. The Court specifically rejected the City’s argument “that a reduction of the Asian-American students at ... Stuyvesant and Bronx Science, that resulted from the changes to the Discovery Program[,] could not independently satisfy the requisite discriminatory effect.” *Id.* at 178. If

discriminatory intent was shown, “an equal protection claim would arise if such discrimination resulted in certain Asian-American students being deprived of placement in their preferred high school.” *Id.*

This is precisely the case here. M.P. is an Asian-American student deprived of placement in his preferred school because of the Discovery revisions. He took the SHSAT last year as an eighth grader, listed Stuyvesant as his first choice, and learned in March 2026 that he missed the Stuyvesant cutoff by just three points, scoring 558 compared to a cutoff of 561. A-103. That gap is directly traceable to the Discovery expansion: DOE’s internal modeling from 2019 concluded that setting aside twenty percent of seats for Discovery increased the Stuyvesant cutoff score by 10 points (A-100),⁷ and data subsequently provided by the City confirms that M.P. was one of only 54 students within that three-

⁷ The last two columns of the table calculate SHSAT cutoff scores using a 20% Discovery set-aside versus the original Discovery size. Stuyvesant’s cutoff score increases 10 points, from 552 to 562.

point range who ranked Stuyvesant first⁸—far fewer than the number of seats removed from traditional SHSAT competition.

V. Denial of Chen’s Preliminary Injunction Motion

Chen filed this action shortly after M.P. received the news of his high school placement, and she promptly sought a preliminary injunction directing DOE to admit M.P. to Stuyvesant for the 2026–27 school year. Chen explained that *SFFA* and *CACAGNY*, along with the internal DOE documents produced after the district court’s 2019 preliminary-injunction ruling, required a fresh analysis of the challenged policy.

On July 21, 2026, following oral argument, the district court denied the preliminary injunction motion from the bench, largely reiterating its conclusions from the 2019 litigation. The court held that Chen had not established discriminatory intent because she did not show that the Discovery revisions were adopted “because of their effects on Asian-American students.” A-214–15 (Tr. 50:21–51:3). The court distinguished *SFFA* because the admissions policies at issue in that case explicitly used

⁸ The City supplied these figures in opposing Chen’s emergency motion before this Court, discussed below. *See* Decl. of Lianna Wright ¶¶ 3–4, ECF No. 30.1, Ex. F. Although the declaration was not before the district court, this Court may nevertheless consider these undisputed figures supplied by the City itself.

race, whereas the Discovery revisions are facially race neutral. A-216–17 (Tr. 52:22–53:6). The court distinguished *CACAGNY* by saying this Court had not squarely addressed whether *SFFA* altered the analysis of facially neutral selective-school admissions policies, instead relying on *Boston Parent Coalition for Academic Excellence Corp. v. School Committee for the City of Boston*, 89 F.4th 46 (1st Cir. 2023). A-217 (Tr. 53:7–19) (“[T]he First Circuit found no reason to conclude that *Students for Fair Admissions* changed the law governing the constitutionality of facially neutral valid secondary education admissions policies under equal protection principles.”). The district court acknowledged *CACAGNY*’s holding that an individual applicant may establish discriminatory impact even without aggregate harm to the racial group, but nevertheless concluded that M.P.’s individualized injury could not satisfy that standard because Chen had not established discriminatory intent. A-217–18 (Tr. 53:24–54:13).

Having declined to apply strict scrutiny, the court applied rational-basis review to the policy and concluded that the Discovery expansion was rationally related to the legitimate interests of fostering diversity and expanding educational opportunity for economically disadvantaged

students. A-218–19 (Tr. 54:14–55:3). Because the district court was applying a “heightened legal standard” applicable to “mandatory” (rather than prohibitory) injunctions, it found that Chen had not demonstrated a *clear or substantial likelihood* of success. A-212–13, 219 (Tr. 48:15–49:7; 55:4–13).

The court next concluded that Chen had not shown irreparable harm because she had not demonstrated likely success on her constitutional claims. A-219–20 (Tr. 55:14–56:1). The court separately concluded there was insufficient evidence that M.P. would have been admitted to Stuyvesant absent the Discovery revisions, notwithstanding DOE’s own modeling showing that the 20-percent reservation increased Stuyvesant’s cutoff by ten points. A-220 (Tr. 56:2–10).

Finally, the district court held that the equities and public interest disfavored granting the preliminary injunction. Although it recognized that admitting one additional student would impose little administrative burden, it credited the City’s argument that relief could encourage similar litigation and interfere with orderly administration of SHS admissions. A-220–21 (Tr. 56:11–57:5).

VI. Chen’s Emergency Motions to this Court and the Supreme Court

Chen promptly filed a notice of appeal, along with an emergency motion for an injunction pending appeal seeking M.P.’s admission before the start of the school year. A-8. A motions panel held oral argument on the emergency motion on September 8, two days before the start of the school year, and denied the motion later that day. It did not address the merits of this appeal, instead denying the motion due to “the heightened showing” required for an emergency motion. ECF No. 51. Chen has also filed an emergency motion for an injunction pending this appeal before the Supreme Court. Appl. for Inj. Pending Appeal, No. 26A407 (U.S. docketed Sept. 25, 2026).

STANDARD OF REVIEW

A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest. Where, as here, the government is a party to the suit, the final two factors merge.

New York v. U.S. Dep’t of Homeland Sec., 969 F.3d 42, 58–59 (2d Cir. 2020) (citation modified).

This Court reviews the denial of a preliminary injunction for abuse of discretion, reviewing legal conclusions de novo and factual findings for

clear error. *See Havens v. James*, 76 F.4th 103, 122–23 (2d Cir. 2023). A district court abuses its discretion when it has “(1) based its ruling on an erroneous view of the law, (2) made a clearly erroneous assessment of the evidence, or (3) rendered a decision that cannot be located within the range of permissible decisions.” *Id.* (quoting *Warren v. Pataki*, 823 F.3d 125, 137 (2d Cir. 2016)).

SUMMARY OF ARGUMENT

The district court abused its discretion by reaching incorrect legal conclusions about the merits of Chen’s equal protection claim—errors that infected its analysis of irreparable harm and the equitable factors. As set forth below, Chen satisfies each requirement for a preliminary injunction.

Likelihood of success on the merits. Chen has demonstrated a clear likelihood of success on her Equal Protection and Title VI claims under *SFFA* and *CACAGNY*. Facial neutrality does not shield admissions criteria from strict scrutiny when they are deliberately selected to distribute benefits and burdens based on race. As *SFFA* explained, “the prohibition against racial discrimination is levelled at the thing, not the name.” 600 U.S. at 230 (citation modified). And *CACAGNY*

establishes that the City's policy must undergo strict scrutiny—a burden the City concedes it cannot satisfy—if enacted with racially discriminatory intent and resulting in an Asian-American student losing a spot at his preferred SHS. The district court nevertheless relied on a First Circuit decision—one that the Third Circuit has recognized is irreconcilable with this Court's *CACAGNY* decision in *Sargent v. School District of Philadelphia*, 165 F.4th 727 (3d Cir. 2026). There, the court synthesized Supreme Court precedent with *CACAGNY*, and applied those principles to the realities of zero-sum admissions, correctly finding that a City cannot avoid strict scrutiny by giving its racial preferences an economic label.

Irreparable harm. M.P.'s injury is concrete and compounds every day. A later judgment cannot restore the educational experiences he is losing while excluded from his freshman year at Stuyvesant, and attending a second-choice school does not remedy that loss. The district court's contrary conclusion rested on its professed uncertainty about whether M.P. would have been admitted but for the Discovery overhaul. But the City has subsequently supplied the evidence needed to resolve that uncertainty: only 53 other students scored within the same three-

point range as M.P. and ranked Stuyvesant first—far fewer than the approximately 160 seats that were reserved for the expanded Discovery Program. Without that shift, M.P.’s score would have earned him a place at Stuyvesant.

Public interest and equities. The district court acknowledged that admitting a single student—the only preliminary relief Chen seeks—“may not be a large administrative burden for the city.” It nevertheless credited the City’s concern that an injunction for M.P. might create “opportunities for widespread similar litigation.” But the possibility that others may seek to enforce their constitutional rights is no reason to withhold relief, as that same argument could defeat an injunction in virtually any constitutional challenge to a widely administered program. And, in any event, any students seeking admission for this year would almost certainly be too late to be entitled to relief.

ARGUMENT

I. Chen Is Likely to Succeed on the Merits

When a facially race-neutral policy is adopted with discriminatory purpose and produces a discriminatory effect, strict scrutiny applies. *Vill.*

of *Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 264–66 (1977). Racial discrimination need not be the government’s sole or even dominant purpose. It is enough that it was a “motivating factor in the decision.” *Id.* at 265–66. Or, as the Supreme Court bluntly put it during its most recent term, “if race played a role in a decision made by a government actor, strict scrutiny applie[s].” *Louisiana v. Callais*, 146 S. Ct. 1131, 1146 (2026) (citing *SFFA* and *Arlington Heights*).

Much of the relevant *Arlington Heights* analysis is not in dispute. This Court has already ruled that the “discriminatory effect” requirement of *Arlington Heights* is satisfied for “Asian-American students being deprived of placement in their preferred high school under the new criteria.” *CACAGNY*, 116 F.4th at 178. M.P. is just such a student. And the City conceded that it would not be able to satisfy strict scrutiny if it applies here. There is also no dispute as to whether the City was motivated (at least in part) by racial goals, as this Court has catalogued a list of public statements “touting” those goals, and the City’s internal documents confirm its racial focus. Thus, the only remaining legal question as to likelihood of success is whether those racial goals constitute a discriminatory racial purpose under *Arlington Heights*.

The answer is yes. The City deliberately designed the Discovery revisions to favor some racial groups at the expense of others in a zero-sum admissions process. Under *CACAGNY*, *SFFA*, and the other recent equal protection decisions discussed below, that is intentional discrimination.

A. The City Intentionally Discriminated by Choosing Discovery Criteria to Favor Some Racial Groups at the Expense of Others

The District Court acknowledged that “diversity” (i.e., desire to reengineer the racial demographics at the SHSs) “was a guiding principle of the changes to the Discovery Program.” A-215 (Tr. 51:13–21). Nevertheless, it reaffirmed its own 2019 decision from the *CACAGNY* case, concluding that because the City’s revised policy was “facially neutral” and sought to “improve racial diversity,” it did not “carr[y] with it a discriminatory intent.” A-216 (Tr. 52:4–8).

The lynchpin of the district court’s *Arlington Heights* analysis was its holding that “the plaintiff has not met the burden to demonstrate that the Discovery Program changes were enacted because of their effects on Asian-American students.” A-215 (Tr. 51:1–3). That standard derives from *Massachusetts v. Feeney*, 442 U.S. 256 (1979), which involved a

challenge to a hiring preference for veterans that disproportionately benefitted men. *Feeney* concluded that the incidental adverse impact on women did not suffice to establish a discriminatory purpose against women, which required proof that the policy was adopted “at least in part ‘because of,’ not merely ‘in spite of,’ its adverse effects upon an identifiable group.” *Id.* at 279.

But *Feeney* would have been very different if Massachusetts had publicly announced that it wanted to favor men, internally modeled different ways to achieve that goal, and then selected veteran status as the best means of doing so. Veteran status would then have been the means of intentional discrimination against women. Here, City officials announced racial goals, modeled the racial effects of different ENI cutoffs—including reductions in Asian-American eligibility for Discovery—and selected the cutoff “because of,” not merely “in spite of,” those projected effects. And because 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. This Court made the same point in *CACAGNY*: “SHS admission is a zero-sum game in that admitting more students from a particular

demographic means admitting fewer from other demographics.” 116 F.4th at 167; *see also id.* (“The City’s modeling also projected that the changes to the Discovery Program would decrease the number of Asian Americans at the SHSs.”).

Implicit in the district court’s ruling is that for Chen to succeed, she has to show actual animus against Asian-American students, or at least an expressed desire to harm that population. But that is not the law. The Supreme Court has long recognized that the same constitutional standards apply even to so-called “benign” racial discrimination. *See, e.g., Grutter v. Bollinger*, 539 U.S. 306, 326 (2003). And this is eminently clear from *SFFA* itself, which recognized that the admissions programs at issue there were likely “well intentioned and implemented in good faith”—yet were still “patently unconstitutional” even without a finding of animus against Asian-American students. 600 U.S. at 213, 223 (quotation omitted).

Facial neutrality does not change the analysis. *CACAGNY* held that the City’s facially neutral Discovery revisions would trigger strict scrutiny if motivated by discriminatory intent and producing a discriminatory effect. *Id.* at 171. As *SFFA* explained, “[w]hat cannot be

done directly cannot be done indirectly. The Constitution deals with substance, not shadows.” 600 U.S. at 230 (citation modified). That is the very point of *Arlington Heights*, which commands courts to review circumstantial and direct evidence of the kind submitted here to determine whether “race played a role in a decision made by a government actor.” *Callais*, 146 S. Ct. at 1146 (citing *Arlington Heights*, 429 U.S. at 265–66).⁹

⁹ District courts in this Circuit have applied these precedents, recognizing the significant restraints they place on race-based decision-making. In *Herrera v. New York City Department of Education*, the court cited *SFFA* in holding that strikingly similar statements by Mayor de Blasio and Chancellor Carranza to those made here—including general expressions about achieving “equity” and having officials “look like New York City”—could support a finding of unlawful race-based decisionmaking. No. 1:21-CV-7555-MKV, 2024 WL 245960, at *1–2, *7–8 (S.D.N.Y. Jan. 23, 2024).

Likewise, *American Council of Learned Societies v. National Endowment for the Humanities* applied *Callais* to enjoin grant terminations based on race-based search terms, explaining that “[w]hen the government uses race to create a classification for purposes of official action, the government must satisfy strict scrutiny.” No. 25-CV-3657-CM, 2026 WL 1256545, at *55, *57 (S.D.N.Y. May 7, 2026). There, as here, race-based decisionmaking would fail even rational basis review, as “these factors are *so seldom relevant to the achievement of any legitimate state interest* that laws grounded in such considerations are deemed to reflect *prejudice and antipathy*—a view that those in the burdened class are not as worthy or deserving as others.” *Id.* at *58 (cleaned up).

The Third Circuit’s recent decision in *Sargent* is the only appellate decision synthesizing *Arlington Heights*, *Feeney*, *SFFA*, and *CACAGNY*. It gives effect to all four by applying the discriminatory-intent requirement to the realities of zero-sum high school admissions. There, Philadelphia argued that newly implemented geographic preferences for its competitive exam schools were race neutral and applied equally to every student. 165 F.4th at 742. But the court held that the relevant question was not whether the policy was facially race neutral, but whether “the antecedent decision to implement the Admissions Policy” was made for a discriminatory purpose. *Id.* at 746–47. Reversing a grant of summary judgment for the city, the court emphasized that selective-school admissions are a “zero-sum game in which the admission of one student means the rejection of another.” *Id.* at 746. As such, evidence that officials implemented the new policy to “alter the racial composition of the student body” or “achieve racial proportionality” supported a finding of discriminatory purpose. *Id.* at 742–43. *Sargent* rejected the First Circuit’s contrary analysis in *Boston Parent Coalition*, calling this Court’s individualized-harm framework in *CACAGNY* the “sounder approach.” *Id.* at 748–50.

Sargent's analysis applies here. DOE did not adopt facially neutral economic or geographic criteria and discover that they had racial effects. Indeed, as this Court already observed in *CACAGNY*, the city touted its racial purpose, modeled different ENI thresholds according to the racial outcomes they would produce, and selected a threshold projected to eliminate Discovery eligibility for students at nearly half of the majority Asian-American middle schools. *CACAGNY*, 116 F.4th at 166–67, 177. DOE officials also internally described the revisions as a “lever to admit more Black and Hispanic students” and explained that the ENI restriction would make it easier to “target Black students directly” for Discovery. A-55, 81. The City’s 60% ENI threshold may have been facially economic, but the record shows that it was selected and used as a proxy to achieve a desired racial result. This Court has affirmed findings of racial motivation on far less evidence. *See, e.g., MHANY Mgmt., Inc. v. Cnty. of Nassau*, 819 F.3d 581, 608–11 (2d Cir. 2016) (agreeing there was discriminatory intent where record contained only “code words” about neighborhood “character” without direct racial statements). Chen is thus likely to succeed on her claim that the City’s revised policy violates the Equal Protection Clause.

B. The Authorities Relied on by the District Court Are Outdated, Distinguishable, and Irreconcilable with *SFFA* and *CACAGNY*

On the issue of intent, the district court cited *Hayden v. County of Nassau*, 180 F.3d 42 (2d Cir. 1999), for the proposition that the government may use racial preferences to remedy past discrimination “even in the absence of specific and identified discrimination.” A-216 (Tr. 52:9–15). But *SFFA* foreclosed that reasoning, specifying that any remedial use of race must be limited to “specific, identified instances of past discrimination that violated the Constitution or a statute.” 600 U.S. at 207. While *SFFA* forecloses reliance on *Hayden* for that specific point, the case nevertheless provides a helpful example of racially mindful steps a government may be able to take without running afoul of the Equal Protection Clause. In *Hayden*, Nassau County redesigned its police entrance exam in part to address concerns about racial demographics and discrimination. 180 F.3d at 46–47. The new exam was then administered identically to all candidates. *Id.* at 48. Here, by contrast, Defendants created a set-aside aided by a racial proxy, reducing the seats available through the SHSAT alone while categorically excluding students at racially targeted middle schools from the alternative pathway.

The district court’s reliance on *Jana-Rock Construction v. New York State Department of Economic Development*, 438 F.3d 195 (2d Cir. 2006), is similarly inapposite. A-216 (Tr. 52:16–21). There, the plaintiffs challenged the underinclusiveness of an affirmative-action definition but conceded the validity of the state’s remedial program as a whole. 438 F.3d at 200–01. Here, Chen does not concede the validity of the City’s revised admissions policy—that is the core of her challenge. And to the extent *Jana-Rock’s* suggestion that a plaintiff must show a separate “intent to harm” an excluded group survives *SFFA*, *id.* at 211, Chen has shown it here: in a zero-sum admissions system, the City’s deliberate effort to increase admissions for some racial groups necessarily intended to reduce admissions for others, and its own modeling showed that Asian-American students would lose seats. *See SFFA*, 600 U.S. at 218–19.

Finally, the district court erred in relying on the First Circuit’s decision in *Boston Parent Coalition*, as that case applied a framework rejected by this Court in *CACAGNY*. The First Circuit concluded that a challenged school admissions policy lacked a discriminatory effect because Asian-American students remained overrepresented among admitted students compared to the eligible school-age population. 89

F.4th at 57–59. *CACAGNY*, by contrast, held that a plaintiff need not demonstrate aggregate harm to a racial group and may instead establish discriminatory effect by showing that “any individual has been negatively affected or harmed by that discriminatory law or policy based on race.” 116 F.4th at 173. The Third Circuit in *Sargent* recognized this conflict, concluding that this Court adopted a “sounder approach” than the First Circuit. 165 F.4th at 748–50. As *Sargent* explained, courts may not excuse intentional racial discrimination merely because the disadvantaged racial group remains, in the court’s view, “sufficiently successful.” *Id.* at 749.

C. Chen Is Likely to Succeed on the Merits of Her Title VI Claim

Title VI of the Civil Rights Act of 1964 provides that “[n]o person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.” 42 U.S.C. § 2000d. It creates a private right of action for intentional discrimination by recipients of federal funds, such as the DOE. *See Alexander v. Sandoval*, 532 U.S. 275, 279–80 (2001).

The district court recognized that Chen’s “Title VI claim rises and falls with the same intentional discrimination analysis.” A-219 (Tr. 55:4–6); *see also Tolbert v. Queens Coll.*, 242 F.3d 58, 69–70 (2d Cir. 2001) (a Title VI plaintiff alleging intentional discrimination must show that discrimination was a “substantial” or “motivating” factor in the challenged decision). As such, a finding by this Court that Chen is likely to succeed on the merits of her equal protection claim likewise requires a finding that she is likely to succeed on her Title VI claim.

D. The District Court Erred in Relying on the Distinction Between Mandatory and Prohibitory Injunctions

The district court classified the requested injunction as “mandatory” rather than “prohibitory” and therefore required Chen to demonstrate a “clear or substantial likelihood of success on the merits,” rather than an ordinary likelihood of success. A-212–13 (Tr. 48:15–49:4). But Chen seeks only to prohibit the City from applying the Discovery revisions she first challenged eight years ago to her son, thereby restoring the parties to “the last actual, peaceable uncontested status which preceded the pending controversy.” *Mastrio v. Sebelius*, 768 F.3d 116, 120

(2d Cir. 2014) (quotation omitted). Accordingly, no higher standard is required.¹⁰

In any event, Chen satisfies the heightened standard. As explained above, the Supreme Court has ruled that when race plays a role in a decision made by a government actor, strict scrutiny applies. And in *CACAGNY*, this Court held that an individual Asian-American student harmed by this very policy could establish an equal protection claim upon proof of discriminatory intent. 116 F.4th at 178. Here, City decisionmakers publicly announced their racial goals and selected restrictive admissions criteria to achieve them. The City’s own data confirms that M.P. would have been admitted but for the revisions, and the City concedes that the policy cannot survive strict scrutiny. If this record does not establish a “clear showing” of entitlement to relief, it is difficult to imagine what record ever could.

¹⁰ Whether the relief is characterized as mandatory or prohibitory is “more semantic than substantive.” *N. Am. Soccer League, LLC v. U.S. Soccer Fed’n, Inc.*, 883 F.3d 32, 36 n.4 (2d Cir. 2018) (citation modified); *see also Meisels v. Meisels*, 630 F. Supp. 3d 400, 406 n.7 (E.D.N.Y. 2022) (“The Second Circuit has questioned whether the distinction between mandatory and prohibitory injunctions makes sense.”).

II. M.P. Will Be Irreparably Harmed Without Relief

A. The Ongoing Loss of M.P.’s Freshman Year at Stuyvesant Is Irreparable

The district court largely tied its irreparable harm analysis to the likelihood of success on the merits, holding that “[a]bsent that showing, plaintiff has failed to demonstrate irreparable harm.” A-219–20 (Tr. 55:23–56:1). Should this Court conclude Chen is likely to succeed on the merits, it should necessarily find irreparable harm. *See Brewer v. W. Irondequoit Cent. Sch. Dist.*, 212 F.3d 738, 744 (2d Cir. 2000) (adopting a *per se* irreparable injury standard for an equal protection violation in a school admissions case).

The harm here is also irreparable in the most concrete sense. The school year has already begun, and each day M.P. is excluded from Stuyvesant represents another day of lost coursework, instruction, extracurricular opportunities, and relationships that cannot be restored with a later judgment. This is true even though he has started attending a different SHS, Brooklyn Tech. In this circumstance, courts should decline “to judge the comparative merits” of two schools, recognizing instead that “educational experiences” are inherently “unique,” and that the loss of the chance to enroll in one’s preferred school is irreparable

because final resolution of a case can take “years to come.” *Foulke v. Foulke*, 896 F. Supp. 158, 160–61 (S.D.N.Y. 1995). That approach would be consistent with this Court’s prior finding of irreparable harm in the school admissions context even where a student would still otherwise be attending a good public school. *Brewer*, 212 F.3d at 745.¹¹

The First Circuit likewise recognized irreparable harm arising from the denial of admission to one’s preferred school when it directed admission of a student to the prestigious Boston Latin School “without delay” once discrimination in the admissions process had been established. *Wessmann v. Gittens*, 160 F.3d 790, 809 (1st Cir. 1998) (student who “ha[d] spent elsewhere the first year and some months of what normally would be a four-year matriculation [did] not have the luxury of time that a remand would entail”). And *McLaughlin v. Boston School Committee* granted a preliminary injunction for a student to attend Boston Latin School despite the student’s receipt of “a fine education at a comparable school,” recognizing the importance of learning the faculty’s expectations, developing study habits, and forming

¹¹ Even if a comparison were required, it would favor Chen, as this Court has already recognized that Stuyvesant is the more selective school. *CACAGNY*, 116 F.4th at 169.

relationships with classmates and teachers. 938 F. Supp. 1001, 1011–12 & n.13 (D. Mass. 1996). These cases support the common-sense proposition that exclusion from one’s preferred school causes harm that even an excellent alternative cannot erase, and that cannot be remedied with later monetary damages.

B. The Harm to M.P. Was Not Remote or Speculative

The district court also erroneously held that M.P.’s injury is “remote or speculative” because there was “insufficient evidence ... to determine whether or not he, in fact, would have met” the Stuyvesant cutoff absent the admissions changes. A-220 (Tr. 56:2–10). But the record before the district court pointed decidedly in the opposite direction: M.P. scored only three points below that cutoff, and DOE’s own 2019 internal analysis concluded that the Discovery revisions raised the Stuyvesant cutoff by ten points. A-10, 100.

The district court disregarded that evidence and instead accepted the City’s professed uncertainty at oral argument about whether M.P.

would have been admitted without the challenged revisions, even though the City had not disputed that point in its briefing.¹²

In any event, to the extent there was any uncertainty before the district court, that uncertainty has been resolved in Chen’s favor by evidence the City submitted in opposition to her emergency motion before this Court. Based on its analysis of internal records, the City conceded that only 54 students—including M.P.—scored within three points of Stuyvesant’s cutoff and ranked Stuyvesant first. Decl. of Lianna Wright ¶¶ 3–4, ECF No. 30.1, Ex. F. Those 54 students are far fewer than the number of seats that the admissions changes shifted from regular admission to the expanded Discovery Program.¹³ Without that shift, M.P.’s score would have earned him admission to Stuyvesant.

¹² This too, was error, as this Court rightly places the burden on “the party with easier access to relevant information” to avoid requiring the other party to prove a negative. *Nat’l Commc’ns Ass’n v. AT&T Corp.*, 238 F.3d 124, 130–31 (2d Cir. 2001).

¹³ The revised Discovery Program reserves 20% of Stuyvesant’s incoming class of around 800 students—approximately 160 seats. A-150. By contrast, Stuyvesant only offered admission to 23 students through Discovery in 2018, before the expansion took effect. A-42. The expansion thus shifted around 137 seats from regular admission to Discovery—more than twice the 54 students identified above.

III. The Balance of Equities and the Public Interest Favor an Injunction

“The government does not have an interest in the enforcement of an unconstitutional law.” *N.Y. Progress & Prot. PAC v. Walsh*, 733 F.3d 483, 488 (2d Cir. 2013) (quotation omitted). Thus, if Chen is likely to succeed on the merits of her claims, the public interest favors a preliminary injunction.

Chen also seeks an exceptionally narrow remedy: admission to Stuyvesant for one student, without displacing anyone else. Both the district court and the City have acknowledged that admitting M.P. alone would not create a large administrative burden. A-220 (Tr. 56:19–20); City Opp. to Mot. for Inj. Pending Appeal, ECF No. 30.1 at 23. That limited burden cannot outweigh the loss of M.P.’s educational opportunities.

The district court instead credited the possibility that relief might create “opportunities for widespread similar litigation.” A-220 (Tr. 56:19–24). But the possibility that others may seek to enforce their constitutional rights is no reason to withhold relief from the plaintiff before the Court, as the same argument could defeat an injunction in virtually any constitutional challenge to a widely administered program.

And any students seeking an injunction for this school year would almost certainly be too late, as “lack of diligence, standing alone, may ... preclude the granting of preliminary injunctive relief.” *Majorica, S.A. v. R.H. Macy & Co.*, 762 F.2d 7, 8 (2d Cir. 1985).

Nor would admitting M.P. unfairly “leapfrog” other students who missed the cutoff. The admission of an individual plaintiff is the well-established remedy for exclusion based on discriminatory admissions policies. *See, e.g., Regents of Univ. of Cal. v. Bakke*, 438 U.S. 265, 271–72, 320 (1978). And this Court has directly rejected other similar arguments—including concerns that a preliminary injunction would “free[] only” the plaintiff—recognizing that such concerns are not “sufficiently particularized to outweigh the irreparable harm that stems” from a constitutional violation. *N.Y. Progress*, 733 F.3d at 488–89.

CONCLUSION

This Court should reverse and remand with instructions to immediately enter a preliminary injunction directing the City to admit M.P. to Stuyvesant High School. The Court should direct that its mandate issue forthwith pursuant to Federal Rule of Appellate Procedure 41(b).

DATED: September 25, 2026.

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CERTIFICATE OF COMPLIANCE

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DATED: September 25, 2026.

/s/ Dean McGee
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CERTIFICATE OF SERVICE

I hereby certify that on September 25, 2026, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Second Circuit by using the appellate CM/ECF system.

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