

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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In the Matter of the Application of THE CITY OF NEW YORK; and
MOLLY WASOW PARK, in her official capacity as Commissioner of
the New York City Department of Social Services,

Petitioners-Plaintiffs,

v.

COUNTY OF ROCKLAND, New York; EDWIN J. DAY, in his official capacity as County Executive of Rockland County; COUNTY OF ORANGE, New York; STEVEN M. NEUHAUS, in his official capacity as County Executive of Orange County; COUNTY OF DUTCHESS, New York; WILLIAM F. X. O'NEIL, in his official capacity as Acting County Executive of Dutchess County; COUNTY OF ONONDAGA, New York; J. RYAN MCMAHON, II, in his official capacity as County Executive of Onondaga County; COUNTY OF BROOME, New York; JASON T. GARNAR, in his official capacity as County Executive of Broome County; COUNTY OF CAYUGA, New York; DAVID S. GOULD, in his official capacity as Legislature Chairman of Cayuga County; COUNTY OF CHAUTAUQUA, New York; PAUL M. WENDEL, JR., in his official capacity as County Executive of Chautauqua County; COUNTY OF CHEMUNG, New York; CHRISTOPHER J. MOSS, in his official capacity as County Executive of Chemung County; COUNTY OF CORTLAND, New York; KEVIN J. FITCH, in his official capacity as Legislature Chair of Cortland County; COUNTY OF DELAWARE, New York; TINA MOLÉ, in her official capacity as Chair of the Board of Supervisors of Delaware County; COUNTY OF FULTON, New York; SCOTT HORTON, in his official capacity as Chairman of the Board of Supervisors of Fulton County; COUNTY OF GENESEE, New York; L. MATTHEW LANDERS, in his official capacity as County Manager of Genesee County; COUNTY OF GREENE, New York; PATRICK S. LINGER, in his official capacity as Legislature Chair of Greene County; COUNTY OF HERKIMER, New York; VINCENT J. BONO, in his official capacity as Legislature Chair of Herkimer County; COUNTY OF MADISON, New York; JOHN M. BECKER, in his official capacity as Chairman of the Board of Supervisors of Madison County; COUNTY OF NIAGARA, New York; REBECCA WYDYSH, in her official capacity as Legislature Chair of Niagara County; COUNTY OF ONEIDA, New York; ANTHONY J. PICENTE, JR., in his official capacity as County Executive of Oneida County; COUNTY OF ORLEANS, New York; LYNNE M. JOHNSON, in her official capacity as Chair of the County Legislature of Orleans County; COUNTY OF OSWEGO, New York; JAMES WEATHERUP,

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in his official capacity as Legislature Chairman of Oswego County; COUNTY OF OTSEGO, New York; DAVID BLISS, in his official capacity as Chairman of the Board of Representatives of Otsego County; COUNTY OF PUTNAM, New York; KEVIN M. BYRNE, in his official capacity as County Executive of Putnam County; COUNTY OF RENSSELAER, New York; STEVEN F. MCLAUGHLIN, in his official capacity as County Executive of Rensselaer County; TOWN OF RIVERHEAD, New York; YVETTE M. AGUIAR, in her official capacity as Town Supervisor of the Town of Riverhead; COUNTY OF SARATOGA, New York; THEODORE T. KUSNIERZ, JR., in his official capacity as Chairman of the Board of Supervisors of Saratoga County; COUNTY OF SCHOHARIE, New York; WILLIAM A. FEDERICE, in his official capacity as Chairman of the Board of Supervisors of Schoharie County; COUNTY OF SCHUYLER, New York; CARL H. BLOWERS, in his official capacity as Chair of the County Legislature of Schuyler County; COUNTY OF SUFFOLK, New York; STEVEN BELLONE, in his official capacity as County Executive of Suffolk County; COUNTY OF SULLIVAN, New York; JOSHUA A. POTOSEK, in his official capacity as County Manager of Sullivan County; COUNTY OF TIOGA, New York; MARTHA C. SAUERBREY, in her official capacity as Chairwoman of the County Legislature of Tioga County; COUNTY OF WARREN, New York; KEVIN B. GERAGHTY, in his official capacity as Chairman of the Board of Supervisors of Warren County; COUNTY OF WYOMING, New York; REBECCA J. RYAN, in her official capacity as Chairwoman of the Board of Supervisors of Wyoming County; and JOHN OR JANE DOE COUNTIES and their respective JOHN OR JANE DOE COUNTY EXECUTIVES, in their official capacity,

Respondents-Defendants.

For a Judgment pursuant to Article 78 and for a Declaratory Judgment under Article 30 of the Civil Practice Law and Rules.

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Petitioners-Plaintiffs the City of New York (“New York City” or “the City”¹) and

Molly Wasow Park, in her official capacity as Commissioner of the New York City Department

¹ As used herein, “City” or “New York City” refers to the City of New York as a municipal corporation as well as a local social services district, and includes Commissioner Park in her official capacity as the commissioner of the local social services district.

of Social Services (“Commissioner Park”), by their attorney, Hon. Sylvia O. Hinds-Radix, Corporation Counsel of the City of New York, as and for their Verified Article 78 Petition and Declaratory Judgment Complaint against Respondents-Defendants (“Respondents”)², allege upon personal knowledge as to themselves and upon information and belief as to all other matters, as follows:

NATURE OF ACTION

1. The City and the State of New York are in the midst of a humanitarian crisis. Large numbers of individuals and families seeking asylum in the United States have arrived and are continuing to arrive in the City in need of temporary housing assistance. Many entered the United States at the southern border and took buses to the City, even though they have no friends or family in the area and no resources of their own. The large number of arrivals has strained the City’s capacity to provide a temporary place to stay for those who need it.

2. The crisis has already moved beyond the bounds of the City: On May 9, 2023, Governor Kathy Hochul declared a statewide emergency, recognizing the burden imposed on the entire state as it handles unprecedented numbers of asylum seekers.³ The executive order acknowledged that there is “already a large-scale humanitarian crisis and emergency,” which the Governor expected to worsen in the coming days.

² For a full list of Respondents-Defendants, *see infra* at ¶¶ 13–74. For a list of Respondents-Defendants and the emergency declarations and executive orders challenged in this action (collectively referred to herein as “EOs”), *see infra* at ¶ 111.

³ *See* N.Y. Executive Order 28 (Declaring a Disaster Emergency in the State of New York) [Hochul] (May 9, 2023) (“Statewide EO-28”), attached to the Affirmation of Joshua Rubin filed herewith (“Rubin Aff.”) as Exhibit E and available at <https://www.governor.ny.gov/executive-order/no-28-declaring-disaster-emergency-state-new-york> (last visited May 26, 2023).

3. In response to this emergency, the City has embarked on a herculean effort to provide temporary shelter to those in need who are found in its jurisdiction. By June 2, 2023, more than 72,000 asylum seekers had arrived in the City, and currently, more than 45,800 asylum seekers remain in locations provided by the City, with more arriving every day. Over the last year, the City has opened at least 127 emergency shelters run by the City's Department of Homeless Services ("DHS") and approximately 21 other locations to provide temporary shelter or respite. The number of intakes per day across the City's shelter system has surged from 200-300 to as many as 600-900 individuals. The City is constantly searching for additional locations for temporary shelter.

4. As a part of its massive response, the City has sought to utilize hotel rooms outside the City to provide temporary housing assistance for a small number of asylum seekers, with the City covering the cost of those hotels and of providing services to the individuals. This step is authorized by State law and regulation. *See infra*. Indeed, in response to the asylum seekers crisis, the New York State Office of Temporary Disability Assistance ("OTDA") (which supervises all social service districts in the State, including the City's) issued guidance specifically stating that the City is authorized to provide temporary shelter for migrants by utilizing hotel rooms in hotels outside of its borders at its own expense.

5. Notwithstanding this, Respondents-Defendants have sought to wall off their borders. They have tried by multiple methods to block New York City from arranging for even a small number of asylum seekers to stay in private hotels within their jurisdictions—at the City's expense—amidst a major humanitarian crisis.

6. In particular, Respondents-Defendants have declared states of emergency premised on specious claims that the prospect of a few hundred asylum seekers sheltered at the City's

expense would somehow constitute an emergency imperiling public safety. They have further issued executive orders prohibiting “foreign” municipalities and local hotels from providing temporary shelter for migrants or asylum seekers, and imposing civil and criminal penalties on them if they do so. Several counties and a town have sought and obtained restraining orders against the City and any hotel willing to do business with the City. One county even forced a hotel to close, displacing ordinary hotel guests and posting county law enforcement to monitor the location twenty-four hours a day.

7. In the current statewide emergency and humanitarian crisis, every day counts and every bit matters. The number of individuals who would be temporarily placed in any hotels in any particular Respondent’s jurisdiction is relatively small in the scheme of the crisis, and poses no cognizable harm to Respondents or their communities. But these modest steps can add up to significant strides in how the state and localities handle this crisis.

8. Respondents’ EOs burden and obstruct New York City’s lawful and reasonable efforts to address the ongoing statewide humanitarian crisis in a manner that is explicitly permitted by law and required by this statewide emergency. In issuing their EOs, Respondents-Defendants acted *ultra vires*, in excess of their jurisdiction and lawful authority, in violation of lawful procedure, and in a manner affected by an error of law that is arbitrary and capricious and an abuse of discretion. The EOs also conflict with the requirements of the New York State Social Services Law (“SSL”), the New York State Human Rights Law (Executive Law § 296), and Title II of the Civil Rights Act (42 U.S.C. § 2000a); conflict with and are therefore preempted by federal immigration law; and violate the Equal Protection Clause and the right to travel under the United States Constitution.

9. The Court should therefore declare under CPLR § 3001 that the Respondents' EOs are null and void; issue an order under CPLR § 7801 *et seq.* invalidating the Respondents' EOs as in excess of authority, affected by an error of law, arbitrary and capricious, and an abuse of discretion; and enjoin Respondents-Defendants from taking any steps pursuant to Respondents' EOs to restrict or frustrate New York City's efforts to address a declared statewide emergency in a manner explicitly permitted by State law and the Governor's Executive Order.

PARTIES & VENUE

10. Petitioner-Plaintiff the City of New York is a municipal corporation organized and existing under the laws of the State of New York. The City is also a local social services district. N.Y. Soc. Serv. Law ("SSL") §§ 56, 61(1).

11. Petitioner-Plaintiff Molly Wasow Park is the Commissioner of the New York City Department of Social Services and the representative of the City's Social Services District.

12. Venue is proper in New York County pursuant to CPLR § 506(b) because it is the County where the material events took place and where the consequences of the actions of the Respondents-Defendants are taking place. At least 30 of 62 counties in the state have issued emergency declarations and emergency executive orders; four counties (Rockland, Orange, Dutchess, and Onondaga) have filed lawsuits against the City; several towns have filed lawsuits against hotels; and one town filed a lawsuit against the City and hotels over the Memorial Day weekend. All seek to undermine the authority of the City to address the material events taking place in the City and the City's authorized actions to address those events.

13. Respondent-Defendant County of Rockland is a municipal corporation organized and existing under the laws of the State of New York.

14. Respondent-Defendant Edwin J. Day is the County Executive of Rockland County and is being sued in his official capacity.

15. Respondent-Defendant County of Orange is a municipal corporation organized and existing under the laws of the State of New York.

16. Respondent-Defendant Steven M. Neuhaus is the County Executive of Orange County and is being sued in his official capacity.

17. Respondent-Defendant County of Dutchess is a municipal corporation organized and existing under the laws of the State of New York.

18. Respondent-Defendant William F. X. O'Neil is the Acting County Executive of Dutchess County and is being sued in his official capacity.

19. Respondent-Defendant County of Onondaga is a municipal corporation organized and existing under the laws of the State of New York.

20. Respondent-Defendant J. Ryan McMahon, II is the County Executive of Onondaga County and is being sued in his official capacity.

21. Respondent-Defendant County of Broome is a municipal corporation organized and existing under the laws of the State of New York.

22. Respondent-Defendant Jason T. Garnar is the County Executive of Broome County and is being sued in his official capacity.

23. Respondent-Defendant County of Cayuga is a municipal corporation organized and existing under the laws of the State of New York.

24. Respondent-Defendant David S. Gould is the Legislature Chairman of Cayuga County and is being sued in his official capacity.

25. Respondent-Defendant County of Chautauqua is a municipal corporation organized and existing under the laws of the State of New York.

26. Respondent-Defendant Paul M. Wendel, Jr. is the County Executive of Chautauqua County and is being sued in his official capacity.

27. Respondent-Defendant County of Chemung is a municipal corporation organized and existing under the laws of the State of New York.

28. Respondent-Defendant Christopher J. Moss is the County Executive of Chemung County and is being sued in his official capacity.

29. Respondent-Defendant County of Cortland is a municipal corporation organized and existing under the laws of the State of New York.

30. Respondent-Defendant Kevin J. Fitch is the Legislature Chair of Cortland County and is being sued in his official capacity.

31. Respondent-Defendant County of Delaware is a municipal corporation organized and existing under the laws of the State of New York.

32. Respondent-Defendant Tina Molé is the Chair of the Board of Supervisors of Delaware County and is being sued in her official capacity.

33. Respondent-Defendant County of Fulton is a municipal corporation organized and existing under the laws of the State of New York.

34. Respondent-Defendant Scott Horton is the Chairman of the Board of Supervisors of Fulton County and is being sued in his official capacity.

35. Respondent-Defendant County of Genesee is a municipal corporation organized and existing under the laws of the State of New York.

36. Respondent-Defendant L. Matthew Landers is the County Manager of Genesee County and is being sued in his official capacity.

37. Respondent-Defendant County of Greene is a municipal corporation organized and existing under the laws of the State of New York.

38. Respondent-Defendant Patrick S. Linger is the Legislature Chair of Greene County and is being sued in his official capacity.

39. Respondent-Defendant County of Herkimer is a municipal corporation organized and existing under the laws of the State of New York.

40. Respondent-Defendant Vincent J. Bono is the Chairman of the Legislature of Herkimer County and is being sued in his official capacity.

41. Respondent-Defendant County of Madison is a municipal corporation organized and existing under the laws of the State of New York.

42. Respondent-Defendant John M. Becker is the Chairman of the Board of Supervisors of Madison County and is being sued in his official capacity.

43. Respondent-Defendant County of Niagara is a municipal corporation organized and existing under the laws of the State of New York.

44. Respondent-Defendant Rebecca Wydysh is the Legislature Chair of Niagara County and is being sued in her official capacity.

45. Respondent-Defendant County of Oneida is a municipal corporation organized and existing under the laws of the State of New York.

46. Respondent-Defendant Anthony J. Picente, Jr. is the County Executive of Oneida County and is being sued in his official capacity.

47. Respondent-Defendant County of Orleans is a municipal corporation organized and existing under the laws of the State of New York.

48. Respondent-Defendant Lynne M. Johnson is the Chair of the County Legislature of Orleans County and is being sued in her official capacity.

49. Respondent-Defendant County of Oswego is a municipal corporation organized and existing under the laws of the State of New York.

50. Respondent-Defendant James Weatherup is the Legislature Chairman of Oswego County and is being sued in his official capacity.

51. Respondent-Defendant County of Otsego is a municipal corporation organized and existing under the laws of the State of New York.

52. Respondent-Defendant David Bliss is the Chairman of the Board of Representatives of Otsego County and is being sued in his official capacity.

53. Respondent-Defendant County of Putnam is a municipal corporation organized and existing under the laws of the State of New York.

54. Respondent-Defendant Kevin M. Byrne is the County Executive of Putnam County and is being sued in his official capacity.

55. Respondent-Defendant County of Rensselaer is a municipal corporation organized and existing under the laws of the State of New York.

56. Respondent-Defendant Steven F. McLaughlin is the County Executive of Rensselaer County and is being sued in his official capacity.

57. Respondent-Defendant Town of Riverhead is a municipal corporation organized and existing under the laws of the State of New York.

58. Respondent-Defendant Yvette M. Aguiar is the Town Supervisor of the Town of Riverhead and is being sued in her official capacity.

59. Respondent-Defendant County of Saratoga is a municipal corporation organized and existing under the laws of the State of New York.

60. Respondent-Defendant Theodore T. Kusnierz, Jr. is the Chairman of the Board of Supervisors of Saratoga County and is being sued in his official capacity.

61. Respondent-Defendant County of Schoharie is a municipal corporation organized and existing under the laws of the State of New York.

62. Respondent-Defendant William A. Federice is the Chairman of the Board of Supervisors of Schoharie County and is being sued in his official capacity.

63. Respondent-Defendant County of Schuyler is a municipal corporation organized and existing under the laws of the State of New York.

64. Respondent-Defendant Carl H. Blowers is the Chair of the County Legislature of Schuyler County and is being sued in his official capacity.

65. Respondent-Defendant County of Suffolk is a municipal corporation organized and existing under the laws of the State of New York.

66. Respondent-Defendant Steven Bellone is the County Executive of Suffolk County and is being sued in his official capacity.

67. Respondent-Defendant County of Sullivan is a municipal corporation organized and existing under the laws of the State of New York.

68. Respondent-Defendant Joshua A. Potosek is the County Manager of Sullivan County and is being sued in his official capacity.

69. Respondent-Defendant County of Tioga is a municipal corporation organized and existing under the laws of the State of New York.

70. Respondent-Defendant Martha C. Sauerbrey is the Chairwoman of the County Legislature of Tioga County and is being sued in her official capacity.

71. Respondent-Defendant County of Warren is a municipal corporation organized and existing under the laws of the State of New York.

72. Respondent-Defendant Kevin B. Geraghty is the Chairman of the Board of Supervisors of Warren County and is being sued in his official capacity.

73. Respondent-Defendant County of Wyoming is a municipal corporation organized and existing under the laws of the State of New York.

74. Respondent-Defendant Rebecca J. Ryan is the Chairwoman of the Board of Supervisors of Wyoming County and is being sued in her official capacity.

FACTS

A. The City's Efforts to Address the Statewide Humanitarian Emergency and Provide Temporary Shelter and Services to More Than 60,000 Asylum Seekers

75. The City has been responding to an extraordinary humanitarian crisis. Beginning in Spring 2022, the State of Texas and City of El Paso began chartering busses of asylum seekers to various major cities including New York City. The asylum seekers arrived at the Port Authority Bus Terminal at unpredictable hours, in need of basic services and shelter, often without prior notice to the City. Asylum seekers also entered the City through other means. New York City worked with various community groups to provide these arriving asylum seekers with basic supplies and information regarding temporary shelter and other services.

76. Many of the tens of thousands of asylum seekers who arrived in New York City within the last year entered the City's shelters. By October of 2022, more than 17,000 asylum seekers had entered the City's DHS shelter system. By June 2, 2023, more than 72,000 asylum seekers had arrived in the City. Currently more than 45,800 asylum seekers remain in locations provided by the City, with more arriving every day. *See* Affidavit of Molly Schaeffer, dated June 2, 2023 ("Schaeffer Aff.") ¶¶ 6-7.

77. This rapid influx has deeply taxed the City's DHS shelter system. By October 5, 2022, the City had opened 42 DHS shelters in response to this influx of asylum seekers, and the DHS shelter system was nearing its highest-ever recorded population of over 61,000 individuals.

78. Therefore, in October 2022, Mayor Eric Adams issued N.Y.C. Emergency Executive Order 224 (Oct. 7, 2022) ("NYC EEO 224") (Rubin Aff. Ex. D) declaring that the City was in a state of emergency and providing for the City to establish and operate temporary Humanitarian Emergency Response and Relief Centers ("HERRCs") to provide temporary shelter as well as immediate respite, food, medical care, case work services, and other services to arriving asylum seekers. *See* NYC EEO 224 at 2.

79. Nonetheless, the influx of asylum seekers has continued. As of June 2, 2023, the City's shelter system housed over 81,145 individuals—20,000 more than the highest ever recorded population of over 61,000 individuals. Between April of 2022 and April of 2023, the daily average overall population receiving service in DHS shelters and HERRCs grew over 87% from approximately 45,374 to approximately 84,993. *See* Schaeffer Aff. ¶ 10.

80. The flow of asylum seekers to New York City had previously peaked in early January 2023, with 3,100 asylum seekers entering the shelter system in a single seven-day period. In early May 2023, however, the flow of asylum seekers reached a new peak with 5,600 entering

in a single seven-day period. The number of intakes across the City’s shelter system surged from 200-300 to 600-900 individuals per day. *See* Schaeffer Aff. ¶ 11.

81. This flow continues unabated with 6,600 new intakes within the two weeks ending May 29, 2023 (Schaeffer Aff. ¶ 11), and there is no reason to believe it will subside. Indeed, COVID-19-related limitations on migration have recently been lifted. Pursuant to sections 362 and 365 of the Public Health Services Act (42 U.S.C. §§ 362, 365) and the implementing regulation at 32 C.F.R. § 71.40, the Director of the United States Center for Disease Control (“CDC”) issued the *Public Health Reassessment and Order Suspending the Right to Introduce Certain persons from Countries Where a Quarantinable Communicable Disease Exists* (the “Title 42 Order”) in March 2020. The Title 42 Order allowed border authorities to halt the entry of certain migrants to protect against the spread of COVID-19. However, the Title 42 Order expired on May 11, 2023.

82. The unprecedented increase in people seeking temporary shelter has required the City to expend a tremendous amount of resources and posed insuperable difficulties in locating sufficient space to place everyone and provide necessary services and supports.

B. The City’s Actions to Locate Individuals Temporarily in Communities Beyond New York City

83. Despite the City’s remarkable efforts to accommodate vast numbers of asylum seekers over the last year, the City’s capacity to meet the needs of new arrivals is now being strained to the breaking point, with every new arrival of buses posing a new shelter challenge.

84. Recognizing that the humanitarian crisis is a statewide concern, Governor Hochul declared a “State Disaster Emergency” effective May 9, 2023 through June 8, 2023. *See* N.Y. Executive Order 28 (Declaring a Disaster Emergency in the State of New York) [Hochul] (May 9, 2023) (“Statewide EO-28”) (Rubin Aff. Ex. E). Governor Hochul specifically noted that “the City of New York, alone, is currently providing temporary housing for 36,738 migrants from the

southern border, a number that has increased by 12,279 individuals since January 2023; and by an additional 1,578 individuals in just the last week” and that the City of New York and other local governments within the State “lack[ed] the infrastructure, facilities, and resources necessary to meet the immediate humanitarian demand to house and meet other basic needs of the large numbers of migrant arrivals.” *Id.*

85. Governor Hochul recognized that hotels would be needed to provide temporary housing for arriving asylum seekers, and for that reason suspended various provisions of New York law as follows:

to the extent necessary to temporarily prevent the creation of a landlord tenant relationship between any individual assisting with the response to the state of emergency or any individual in need of shelter or housing because of the circumstances that led to the state of emergency, and any individual or entity, including but not limited to any hotel owner ... or any other person or entity who provides temporary housing for a period of thirty days or more solely for purposes of assisting in the response to the state of emergency.

86. Further, the Governor anticipated that, upon the May 11, 2023 expiration of the Title 42 Order, “there will be a surge of migration into the United States resulting in the imminent arrival of . . . several thousand additional people seeking shelter each week” and “the arrival of increased numbers of migrants seeking shelter in the City and State of New York is expected to exacerbate an already large-scale humanitarian crisis and create a disaster emergency to which local governments are unable to adequately respond.” *Id.*

87. In order to handle the anticipated surge, the City—rapidly running out of feasible locations, even after overseeing months of historic expansion of the City’s capacity to provide temporary shelter to asylum seekers—announced to the press and notified various elected officials in communities outside of the City that the City would make temporary arrangements outside its borders to house a small number of individuals at hotels and other available sites in those

communities. The City would fully cover the costs of placing the individuals at hotels and providing social services and security at these locations.

88. To assist in locating temporary placements outside the City, the City engaged Rapid Reliable Testing NY LLC (hereinafter “DocGo”) to arrange for, among other things, hotels interested in providing temporary accommodations for asylum seekers. DocGo also agreed to provide medical, social, transportation, and related services.

89. Pursuant to these contractual arrangements, DocGo identified several hotels outside of the City that could provide temporary shelter for asylum seekers, including without limitation the Armoni Hotel and Suites (in the Town of Orangetown in Rockland County); the Crossroads Hotel and the Ramada by Wyndham Inn (both in the Town of Newburgh in Orange County); the Candlewood Suites Syracuse-Airport (in North Syracuse in Onondaga County); and the Surestay Plus by Best Western Albany Airport (in the Town of Colonie in Albany County).

90. On May 4, 2023, Mayor Eric Adams emailed a letter addressed to “Mayors, County Executives, and Municipal Leaders” describing the City’s efforts to address the sudden influx of asylum-seekers and asking for their assistance:

New York City is proud of our compassionate response to this sudden influx of newcomers. We quickly mobilized to provide shelter, food, health care, education, and other critical services. However, as the surge of asylum-seekers has continued unabated, it has strained our already stressed shelter system, social services infrastructure, and other resources to the breaking point. As a global destination, we expect to continue receiving asylum-seekers from afar. In just one year, the number of people in our care has doubled. We have already seen more than 60,000 asylum-seekers come through our shelters since last year, and we are still receiving 200-500 asylum-seekers daily into our care.

We need your help.

New York City cannot continue to provide for the immediate needs of tens of thousands of asylum-seekers currently in our care, let alone for the thousands more expected to arrive after pandemic

restrictions expire on May 11, 2023. We are asking for your cities and towns to share this responsibility of providing shelter to asylum seekers who have already arrived in NYC and to those expected to arrive in NYC in the coming months. Please reach out to our team at AsylumSeekerSupport@cityhall.nyc.gov if you can support them in this way.

C. Respondents-Defendants Issue Improper Emergency Orders to Thwart the City's Response to the Statewide Humanitarian Emergency

91. In response to New York City's efforts to lawfully address the statewide humanitarian emergency, Respondents-Defendants have acted to close their borders. To ensure that no hotels in any Respondent's jurisdiction dared to provide lodging to a small number of "migrants and asylum seekers," Respondents-Defendants, purporting to act pursuant to New York Executive Law § 24, hastily declared states of emergency and issued unlawful executive orders, seeking to impose criminal liability and civil penalties on the City and any hotels willing to work with the City to provide temporary shelter for arriving asylum seekers. One county even used emergency authority to shut down a hotel (based on specious claims that it was no longer operating as a "hotel") and cause the forced evacuation of a significant number of pre-existing hotel guests.

I. Rockland County Declares a State of Emergency and Files a Lawsuit

92. Rockland County was the first to declare a state of emergency. On May 6, 2023, before any asylum seekers had arrived in Rockland County, Rockland County Executive Day declared a local state of emergency ("Rockland ED") and issued an emergency order ("Rockland Order")⁴ prohibiting foreign municipalities and local hotels from contracting to provide housing or accommodations for migrants without obtaining a special license from the County.

⁴ The Rockland ED and Rockland Order are attached hereto as Exhibit A.

93. As justification for declaring a state of emergency, the Rockland ED cited a fear that “the volume of migrants and asylum seekers that New York City intends to send over” would “spike the number of people in need of government services at all levels of government ... with no aid from . . . the sanctuary city that instigate[d] this issue” and the possibility that “migrants or asylum seekers” might not “leave the County after New York City ceases to pay for the housing and any services they are presently receiving.”⁵

94. All of these supposed justifications in the Rockland ED are counterfactual and utterly speculative. The number of asylum seekers headed to Rockland County from the City was small; New York City was retaining financial responsibility for these individuals; and there was no reason to believe that the asylum seekers would become a burden on Rockland County.

95. The Rockland Order prohibits any “municipality” from “mak[ing] contracts with persons, businesses, or entities doing business within the County to transport migrants or asylum seekers to locations in the County, or to house persons at locations in the County for any length of time without the express written permission of the County Executive.” It also prohibits any “hotel, motel, or owner of a multiple dwelling in Rockland County” from “contract[ing] or otherwise engag[ing] in business with any other municipality other than the County of Rockland (an ‘external municipality’) for the purpose of providing housing or accommodations for migrants or asylum seekers without a license granted by the County.”

⁵ Supporting his executive order, County Executive Day, without any basis, said of the asylum seekers: “[W]e have child rapists, we have criminals, we have MS-13[.]” Jesse O’Neill & Jorge Fitz-Gibbon, *Rockland County exec warns cops are “deployed” if NYC tries to bus migrants there*, N.Y. Post (May 7, 2023), <https://nypost.com/2023/05/07/rockland-county-exec-warns-cops-are-deployed-if-nyc-tries-to-bus-migrants-there/> (last visited May 22, 2023).

96. The Rockland Order provides for both criminal and civil liability for anyone who violates its provisions, making them subject to “those penalties prescribed by NYS Executive Law § 24(5)”⁶ as well as “a civil penalty . . . of not more than \$2,000 per migrant/asylum seeker housed by the foreign municipality or other violator” per day.

97. The Rockland Order directs the Sheriff to enforce these provisions by (*inter alia*) “mak[ing] limited stops to notify persons suspected of transporting migrants or asylum seekers into the County . . . and to similarly, notify the owners and operators of facilities suspected of housing any migrants or asylum seekers, or seeking or entering agreements with external municipalities, without the license required by this Emergency Order.”

98. Rockland County moved quickly to enforce the Rockland Order. On May 9, 2023, Rockland County moved by order to show cause for a temporary restraining order, preliminary injunction, and permanent injunction preventing the City and a hotel from providing temporary housing assistance for asylum seekers *See Verified Petition and Complaint, County of Rockland, New York et al. v. the City of New York, et al.*, Index No. 032065/2023 (Sup. Ct. Rockland County May 9, 2023), Rubin Aff. Ex. A (“Rockland County Lawsuit”). A temporary restraining order was issued two days later. *See Order to Show Cause with Temporary Restraints*, NYSCEF Doc. No. 24, *County of Rockland, New York et al. v. the City of New York, et al.*, Index No. 032065/2023 (Sup. Ct. Rockland County May 11, 2023), Rubin Aff. Ex. K.

99. Also on May 9, Rockland County issued a closure notice to Armoni Inn & Suites denying its annual application for temporary residence permit and ordering it to cease operations.⁷

⁶ Executive Law § 24(5) provides that “[a]ny person who knowingly violates any local emergency order of a chief executive promulgated pursuant to this section is guilty of a class B misdemeanor.”

⁷ Office of the County Executive of Rockland County, Notice to Close – Operation Without a Permit (May 9, 2023), available at <https://perma.cc/7CDG-P59G> (captured May 12, 2023);

The closure notice expressly cited the Rockland Order and demanded, as a condition for renewing any permit, that the hotel produce “copies of any and all records with the City of New York regarding the proposed shelter and/or housing or accommodations for migrants or asylum seekers including, but not limited to, any executed contract with the City of New York.” The subsequent closure displaced ordinary hotel guests. Rockland County also posted county law enforcement to monitor the location twenty-four hours a day.

100. The closure notice remained in effect until June 1, 2023, when the Supreme Court for Rockland County issued a TRO requiring that the hotel “be permitted to operate, subject to the existing temporary restraining orders...of this Court.” Order to Show Cause, NYSCEF Doc. No. 72, *County of Rockland, New York et al. v. City of New York, et al.*, Index No. 032065/2023 (Sup. Ct. Rockland County June 1, 2023) (emphasis in original).

101. The Town of Orangetown (located in Rockland County) quickly followed Rockland County’s example. On May 9, 2023, the Town of Orangetown sought (and soon received) a temporary restraining order against the hotel operator. Although it was clear that New York City was seeking to utilize hotels rooms to provide *only short-term temporary* shelter in response to this statewide emergency, Orangetown sought a TRO enjoining the hotel from (among other things) operating “as a shelter for non-transient guests, unless and until such use is approved by the Town of Orangetown and any other required governmental authority.” Order to Show Cause with Temporary Restraining Order, NYSCEF Doc. No. 24, *Town of Orangetown, New York v. Armoni Inn & Suites, LLC*, Index No. 032048/2023 (Sup. Ct. Rockland County May 9, 2023).

https://content.govdelivery.com/attachments/NYROCKLANDCO/2023/05/10/file_attachments/2494414/Armoni%20Hotel%20letter%20050923.docx.pdf.

102. In its complaint, Orangetown cited the Rockland Order and made clear that it issued a violation notice and commenced litigation against the hotel *solely* in response to reports that the hotel (through an arrangement with the City) intended to provide rooms to asylum seekers. See Complaint ¶¶ 21-39, *Town of Orangetown, New York v. Armoni Inn & Suites, LLC*, No. 032048/2023 (Sup. Ct. Rockland County May 9, 2023). Citing pictures showing that the hotel may have been switching mattresses in hotel rooms and receiving deliveries (typical activities for a hotel), Orangetown claimed that the hotel was violating zoning law because it was no longer operating as a “hotel.”⁸

II. Orange County Declares a State of Emergency and Files a Lawsuit

103. On May 8, 2023, Orange County followed Rockland County’s lead, declaring a state of emergency “in Relation to Transportation of Migrant and Asylum Seekers to Orange County” and ordering “that all hotels, motels and/or any facilities allowing short term rentals do not accept said migrants and/or asylum seekers for housing within Orange County.” Ex. B (the “Orange County EO”) at 2. The Orange County EO did not identify a disaster or emergency; it simply stated that New York City would send hundreds of asylum seekers who might not leave the County; that Orange County is not capable of receiving and sustaining this “volume” of people

⁸ Evidencing the pretextual nature of the alleged zoning violations, Orangetown Supervisor Teresa Kenny stated publicly that the Town instructed its inspectors to raid the Hotel due to fears that “immigrants are criminals” who might kill someone. Appearing on Fox News, Ms. Kenny said: “Our concern is public safety. We don’t know if there have been background checks on these people. Anyone who’s been around a long time knows we had a very sad incident where someone was killed by an immigrant. **I’m not saying I think all immigrants are criminals – it just takes one[.]**” Emma James, *NY GOP lawmaker threatens to grab NYC Mayor Eric Adams by the THROAT over plans to send 300 migrants to his county, as neighboring lawmaker says Adams ‘ambushed’ her too*, Daily Mail (May 8, 2023), <https://www.dailymail.co.uk/news/article-12060163/NY-Republicans-blast-NYC-Mayor-Eric-Adams-ambush-plan-house-migrant-surge-towns.html> (emphasis added).

who (according to Orange County) will need government services; that “there is no legal basis to provide adequate services to these migrants or asylum seekers by the County’s Department of Social Services because of their age and immigration status”; and that there might be “potential civil disobedience and protesting” on this issue. Although it was clear that New York City was seeking to utilize hotel rooms to provide only short-term temporary shelter in response to this statewide emergency, the Orange County EO further stated that “local zoning codes do not allow use of temporary residence hotels or other temporary residence facilities for use as long term residential housing and therefore New York City’s transportation of migrants and asylum seekers to Orange County for that purpose is illegal.”

104. Like Rockland County, Orange County and its localities have also taken other steps to close their borders. Orange County and the Town of Newburgh commenced three separate lawsuits in Orange County Supreme Court seeking injunctive relief not merely to prohibit New York City or any hotels or service providers from transporting or temporarily housing asylum seekers, but also seeking mandatory injunctive relief to forcibly remove and ship any asylum seekers already present in local hotels back to New York City. *See County of Orange et al. v. City of New York, et al.*, No. EF003109-2023 (Sup. Ct. Orange County May 12, 2023) (“Orange County Lawsuit”), Rubin Aff. Ex. F; *County of Orange v. Crossroads Hotel, et al.*, No. EF003107-2023 (Sup. Ct. Orange County May 12, 2023); *Town of Newburgh, New York v. Crossroads Hotel, et al.*, No. EF003105-2023 (Sup. Ct. Orange County May 12, 2023)⁹.

⁹ The lawsuits against the Crossroads Hotel were removed to federal court on May 22, 2023. *Town of Newburgh, New York v. Crossroads Hotel et al.*, No. 1:23-cv-04212 (S.D.N.Y. filed May 21, 2023); *County of Orange v. Crossroads Hotel et al.*, No. 7:23-cv-04213 (S.D.N.Y. filed May 21, 2023).

105. On May 17, 2023, in the Orange County Lawsuit, the Supreme Court for Orange County issued temporary restraining orders that, *inter alia*, enjoined the City from “transport[ing] any further migrants and/or asylum seekers to Orange County.” Amended Order to Show Cause with Temporary Restraints at 3, NYSCEF 28, *County of Orange*, No. EF003109-2023 (Sup. Ct. Orange County May 17, 2023), Rubin Aff. Ex. L.¹⁰

III. Dutchess County Declares a State of Emergency and Files a Lawsuit

106. On May 18, 2023, Dutchess County declared a local state of emergency and issued an executive order that, while using different language than the Rockland Order and Orange County EO,¹¹ sought the same end: to prevent the City from utilizing hotel space in the county to temporarily house asylum seekers. *See* Ex. C.

107. The next day (May 19, 2023), Dutchess County followed in the other counties’ footsteps and brought a lawsuit against the City as well as certain hotels in Dutchess County (the “Dutchess County Lawsuit”). *See* Verified Petition and Complaint, NYSCEF 4, *County of Dutchess et al. v. City of New York, et al.*, No. 2023-51697 (Sup. Ct. Dutchess County May 19, 2023), Rubin Aff. Ex. G. The Dutchess County Lawsuit, in all material respects, contained the same allegations against the City and State defendants as the Rockland and Orange County

¹⁰ On June 6, 2023, in a lawsuit brought by a putative class of migrants, a federal court preliminarily enjoined the Rockland Order and Orange County EO on the grounds that they violated the Equal Protection Clause and the right to interstate travel under the Due Process Clause of the United States Constitution, Title II of the Civil Rights Act of 1964, and 42 U.S.C. § 1981. The court specifically found that the Rockland Order and Orange County EO expressly classified persons based on national origin and alienage, were issued for discriminatory purposes, and were not narrowly tailored to address any legitimate concerns. *See* Rubin Aff. Ex. Q at 32–38.

¹¹ The Dutchess County EO prohibits local hotels from “using or operating... as an emergency shelter, homeless shelter, rooming house, or other long-term overnight shelter,” but neither mentions “migrants and/or asylum seekers” nor expressly prohibits any “municipality” from taking any action. Ex. C.

Lawsuits. *Id.* ¶¶ 67-85. Dutchess County likewise sought a preliminary injunction and temporary restraining order preventing the City from contracting with hotels to house asylum-seekers in the region. A temporary restraining order was granted on May 23, 2023. *See* Order to Show Cause with Temporary Restraints, NYSCEF 30, *County of Dutchess et al. v. City of New York, et al.*, No. 2023-51697, No. 2023-51697 (Sup. Ct. Dutchess County May 23, 2023), Rubin Aff. Ex. M.

IV. Onondaga County Declares a State of Emergency and Files a Lawsuit

108. On May 18, 2023, Onondaga County declared a state of emergency and issued an executive order, seeking the same relief as Rockland, Orange, and Dutchess County. *See* Ex. D. On May 22, 2023, Onondaga County filed a lawsuit against the City and a certain hotel in Syracuse, New York. *See* Petition and Complaint, NYSCEF 1, *County of Onondaga et al. v. City of New York, et al.*, No. 005214/2023 (Sup. Ct. Onondaga County May 22, 2023), Rubin Aff. Ex. H. The Onondaga County Lawsuit contains the same causes of action as the Rockland, Orange, and Dutchess County Lawsuits and (aside from some municipality-specific facts) does not differ from those lawsuits in any material way. *See* Amended Petition and Complaint ¶¶ 54-72, NYSCEF 16, *County of Onondaga et al. v. City of New York, et al.*, No. 005214/2023 (Sup. Ct. Onondaga County May 24, 2023), Rubin Aff. Ex. I. Onondaga also sought and obtained a temporary restraining order. *See* Order to Show Cause with Temporary Restraint, NYSCEF 14, *County of Onondaga et al.*, No. 005214/2023 (Sup. Ct. Onondaga County May 23, 2023), Rubin Aff. Ex. N.

V. Town of Colonie Lawsuit

109. On May 27, 2023, the Town of Colonie (located in Albany County) filed a lawsuit against the City. *See* Verified Petition and Complaint, NYSCEF 2, *Town of Colonie et al. v. City of New York et al.*, No. 904641/2023 (Sup. Ct. Albany County May 27, 2023) (the “Town of

Colonie Lawsuit”), Rubin Aff. Ex. J.¹² It also named as respondents-defendants the City of Albany, the Mayor of Albany, and a hotel in Albany County slated to house asylum-seekers traveling from New York City. The Town of Colonie Lawsuit seeks the same relief as the Rockland, Orange, Dutchess, and Onondaga County Lawsuits (including a temporary restraining order) and contains substantially similar allegations. *Id.* ¶¶ 22–46. The Town of Colonie also sought and obtained a temporary restraining order. *See* Order to Show Cause with Temporary Restraining Order, NYSCEF 13, *Town of Colonie et al. v. City of New York et al.*, No. 904641/2023 (Sup. Ct. Albany County May 30, 2023), Rubin Aff. Ex. O.

VI. The Remaining Respondents Issue EOs

110. Overall, since the May 6, 2023 Rockland Order, more than 30 localities have followed Rockland County’s example and declared states of emergency and issued emergency orders, most of which were substantially similar to the Rockland Order in every relevant aspect.

111. The following table shows the emergency declarations and emergency executive orders that Respondents-Defendants have issued as of May 24, 2023, all of which seek, without a legitimate basis, to prevent the City from utilizing commercial hotel space to provide temporary housing in their communities and from transporting asylum seekers¹³:

¹² The Town of Colonie is not a Respondent-Defendant. However, the City is seeking to consolidate the Town of Colonie Lawsuit with the instant lawsuit. *See* the accompanying proposed Order to Show Cause; Affirmation of Doris F. Bernhardt, dated June 7, 2023; and Memorandum of Law.

¹³ In addition, the Counties of Allegany, Cattaraugus, Columbia, St. Lawrence and Yates have issued emergency declarations based on the possibility that the City may seek to utilize commercial hotels in their communities to provide temporary housing assistance to asylum seekers. To date, these jurisdictions have not issued executive orders implementing their declarations.

Exhibit	Municipality	Date Issued	Emergency Issued By
A	Rockland County	May 6	County Executive Edwin J. Day
B	Orange County	May 8	County Executive Steven M. Neuhaus
C	Dutchess County	May 18	Acting County Executive William F. X. O'Neil
D	Onondaga County	May 18	County Executive J. Ryan McMahon, II
E	Broome County	May 11	County Executive Jason T. Garnar
F	Cayuga County	May 19	Legislature Chairman David S. Gould
G	Chautauqua County	May 18	County Executive Paul M. Wendel, Jr.
H	Chemung County	May 10	County Executive Christopher J. Moss
I	Cortland County	May 12	Legislature Chair Kevin J. Fitch
J	Delaware County	May 24	Chairwoman of the Board of Supervisors Tina Molé
K	Fulton County	May 19	Chairman of the Board of Supervisors Scott Horton
L	Genesee County	May 17	County Manager L. Matthew Landers
M	Greene County	May 17	Legislature Chair Patrick S. Linger
N	Herkimer County	May 12	Legislature Chair Vincent J. Bono
O	Madison County	May 19	Chairman of the Board of Supervisors John M. Becker
P	Niagara County	May 18	Legislature Chair Rebecca Wydysh
Q	Oneida County	May 11	County Executive Anthony J. Picente, Jr.
R	Orleans County	May 17	Chair of the County Legislature Lynne M. Johnson
S	Oswego County	May 15	Legislature Chairman James Weatherup
T	Otsego County	May 16	Chairman of the Board of Representatives David Bliss
U	Putnam County	May 22	County Executive Kevin M. Byrne
V	Rensselaer County	May 9	County Executive Steven F. McLaughlin
W	Riverhead Town	May 16	Town Supervisor Yvette M. Aguiar
X	Saratoga County	May 19	Chairman of the Board of Supervisors Theodore T. Kusnierz, Jr.
Y	Schoharie County	May 19	Chairman of the Board of Supervisors William A. Federice
Z	Schuyler County	May 11	Chair of the County Legislature Carl H. Blowers
AA	Suffolk County	May 26	County Executive Steven Bellone
BB	Sullivan County	May 18	County Manager Joshua A. Potosek
CC	Tioga County	May 11	Chairwoman of the County Legislature Martha C. Sauerbrey
DD	Warren County	May 23	Chairman of the Board of Supervisors Kevin B. Geraghty
EE	Wyoming County	May 18	Chairwoman of the Board of Supervisors Rebecca J. Ryan

112. Notably, the majority of Respondents' EOs simply copy the Rockland Order, often verbatim. For example, the EOs issued by the counties of Broome, Cayuga, Chautauqua, Chemung, Cortland, Fulton, Genesee, Greene, Herkimer, Niagara, Onondaga, Orleans, Otsego, Rensselaer, Rockland, Schoharie, Schuyler, Tioga, and Wyoming¹⁴ all contain a section titled "Prohibition of foreign municipal programs that burden the County" that:

- a) Explicitly prohibits any "municipality" from making contracts with local hotels or persons to transport migrants or asylum seekers without a prior license from the county;
- b) Prohibits any local hotel from contracting with any "external municipality" to provide housing or accommodations for migrants or asylum seekers without a prior license from the county;
- c) Sets forth substantially similar criteria for when a license may be granted by the County Executive or other county official, often including a "performance bond. . . in the amount of \$2,000 per migrant or asylum seeker"; and
- d) Imposes civil and criminal penalties on anyone who violates its provisions.

113. Of the others, several have slightly different wording but still expressly prohibit any "municipality" from contracting with local hotels to provide housing or accommodations to

¹⁴ Petitioners-Plaintiffs have not seen the emergency orders from Delaware County or Oswego County, but they appear to contain a substantially similar section. *See* Ex. J (*Daily Star* article stating that Delaware County's emergency order is the "same one passed by Otsego and Schoharie counties" and "prohibits other municipalities from signing contracts with businesses . . . to transport or house migrants or asylum seekers to locations in the county unless prior permission is given"); Ex. S (press release from Oswego County stating that "Emergency Order 2023-01 temporarily bans municipalities, businesses and other entities in Oswego County from contracting with outside entities for, or engaging in, the transport or housing of migrants or asylum seekers without written permission from Chairman Weatherup").

migrants or asylum seekers and/or prohibit local hotels from contracting with any “external municipality” to provide housing for migrants or asylum seekers without a prior license.¹⁵ In addition, the EOs issued by Putnam County and the Town of Riverhead follow Orange County’s lead: they explicitly reference migrants and asylum seekers in New York City and then require that all local hotels “do not accept said migrants and/or asylum seekers”. *See* Exs. B, U, W.

114. Regardless of any variations in how they are drafted, all of Respondents’ EOs do more than prevent and obstruct the City from utilizing vacant hotel space in Respondents’ communities to provide temporary housing assistance—they also deter hotels that might otherwise work with the City or DocGo from providing such assistance. As discussed *supra*, Rockland County forced the closure of a local hotel that agreed to provide temporary housing for asylum seekers. In a federal lawsuit, the hotel, DocGo, and several other hotels have alleged that certain Respondents-Defendants “targeted and retaliated” against hotels agreeing to provide rooms for asylum seekers in order to “intimidate” any other hotels that might be inclined to do so. *See*

¹⁵ For example, Sullivan County’s emergency order has a slightly different title (“Prohibition that burdens the County of Sullivan”) but still prohibits any “municipality” from contracting with “entities within the County of Sullivan to house social services clients from another county for any length of time without the express consent of the County Manager.” *See* Ex. BB. Madison County’s emergency order uses a different section title (“Temporary Prohibition of External Municipal Programs which burden the government of Madison County”) but still prohibits local hotels from contracting with any “external municipality” to provide housing or accommodations for migrants or asylum seekers without a prior license. *See* Ex. O.

Similarly, the emergency orders issued by Oneida, Saratoga, and Warren County prohibit any local “person” from agreeing or contracting “with any municipality to transport to or within the County . . . any Migrant” without prior approval. *See* Exs. Q, X, DD.

Petitioners-Plaintiffs have not seen the emergency order from Suffolk County, but media reports state that it contains a substantially similar section prohibiting hotels from contracting with any other municipality to house asylum seekers without a prior license. *See* Ex. AA.

Amended Complaint ¶ 2, *Palisades Estates EOM et al. v. County of Rockland et al.*, No. 7:23-cv-04215 (S.D.N.Y. May 22, 2023), ECF No. 32.

STATUTORY & REGULATORY FRAMEWORK

115. The New York State Office of Temporary Disability Assistance is charged with the supervision of the local social services districts in administering public assistance programs by establishing rules, regulations, and policies. *See* SSL § 20, 34. The New York City Department of Social Services is a social services district for the City, under the supervision of OTDA. Rubin Aff. Ex. P (Affirmation of Ann Marie Scalia) ¶ 6.

116. The Social Services Law requires social services districts to be “responsible for the assistance and care of any person who resides or is found in its territory and who is in need of public assistance and care which he is unable to provide for himself.” SSL § 62(1). The SSL recognizes that a district may at times need to provide services in locations “outside of its territory.” *See* SSL §§ 62(1), 62(5)(b).

117. State regulations and guidance permit local districts to use hotels on a temporary basis to provide temporary housing assistance. 18 NYCRR §§ 352.3(e), 491.2(f) and 900.2(e); OTDA 06-ADM-07 Revised, issued on May 31, 2006 (Rubin Aff. Ex. B, and available at <https://otda.ny.gov/policy/directives/2006/ADM/06-ADM-07.pdf>). Hotels do not become “shelters” simply because rooms in the hotel are being used for temporary housing assistance. 18 NYCRR §§ 352.3(e), 491.2(f), 900.2(e).

118. OTDA 06-ADM-07 provides that districts “must make every possible effort” to place homeless individuals or families within their own districts, but it acknowledges that “it is sometimes necessary for local districts to place homeless individuals/families outside of their district,” such as when “the district has exhausted all available resources, such as shelters,

missions, motels, etc., within its own district” and other districts “have more shelters, hotels or other temporary housing facilities available.” Rubin Aff. Ex. B at 4. Where temporary housing assistance is provided outside of the district, “the placing district continues to be fiscally responsible for the needs of such person/family.” *Id.* A district that is “fiscally responsible” is generally responsible for ongoing public assistance and care.

119. OTDA has issued specific guidance to address the statewide crisis resulting from the enormous numbers of asylum seekers arriving in New York City and State and needing temporary housing assistance. On May 10, 2023, OTDA released an “FAQ” entitled “FAQ-Sheltering of Migrants,” confirming authority for the City to provide temporary housing assistance by utilizing hotel rooms in locations outside of the City. The FAQ further confirmed that when commercial hotels are being used to provide temporary housing assistance, they are not functioning as “a shelter for adults, a small-capacity shelter, or a shelter for adult families,” but are simply being used “on a temporary basis to shelter migrants.” The ODTA FAQ also reiterated that “[i]f a district must place a **homeless individual or family in another district, the placing district continues to be fiscally responsible for the needs of such household.**” (emphasis in original). Rubin Aff. Ex. C at 1.

120. In utilizing hotel rooms in other counties, the City was acting as it is authorized to do under the Social Services Law to address this statewide emergency and humanitarian crisis.

FIRST CAUSE OF ACTION
(Under CPLR §§ 3001 and 7801 et seq.
Conflict with the Social Services Law During a Statewide Disaster Emergency)

121. Petitioners-Plaintiffs repeat and reallege the allegations set forth above as if fully set forth herein.

122. As described above, the City has been responding to an emergency situation involving the arrival of and the provision of temporary shelter to tens of thousands of asylum seekers for over a year. By June 2, 2023, more than 72,000 asylum seekers had arrived in the City, and currently, more than 45,800 asylum seekers remain in locations provided by the City, with more arriving every day.

123. On May 9, 2023, Governor Hochul recognized this emergency by issuing Statewide EO-28, which recognized that there was an “already large-scale humanitarian crisis in the City and State of New York,” and that “the arrival of increased numbers of migrants seeking shelter in the City and State of New York is expected to exacerbate” this crisis.

124. After providing temporary shelter for massive numbers of asylum seekers over the last year, the City’s ability to provide shelter is strained to the limit. To ensure an adequate response to the expected influx of additional asylum seekers, the City sought to utilize a small number of vacant rooms in hotels located outside the City to provide temporary shelter for asylum seekers. This is permitted and authorized under the Social Services Law, regulations and guidance, and by policy specific to this statewide emergency. *See* SSL §§ 62 & 62(5)(b); 18 NYCRR §§ 352.3(e), 491.2(f), 900.2(e); OTDA 06-ADM-07; OTDA FAQ.

125. While the City has undertaken a herculean response to this statewide emergency by providing temporary shelter to tens of thousands of asylum seekers, Respondents are closing their borders to them.

126. Respondents’ EOs obstruct, burden, and prevent the City from doing what it is specifically permitted and authorized to do pursuant to state law and flout state policy specific to this statewide emergency.

127. As such, in issuing the EOs, Respondents-Defendants have proceeded without or in excess of authority, and Respondents' EOs are affected by an error of law and are arbitrary and capricious and an abuse of discretion.

128. Petitioners-Plaintiffs therefore are entitled to an order invalidating the EOs and declaring them null and void; a declaratory order; and an order permanently enjoining the EOs.

SECOND CAUSE OF ACTION
(Under CPLR §§ 3001 and 7801 et seq.
Conflict with State Human Rights Law and 42 U.S.C. § 2000a)

129. Petitioners-Plaintiffs repeat and reallege the allegations set forth above as if fully set forth herein.

130. Respondents' EOs prohibit the lawful provision of public accommodations to persons because of their "national origin, citizenship, or immigration status." New York State Human Rights Law prohibits, *inter alia*, discrimination by any place of public accommodation against any person because of their "national origin, citizenship, or immigration status." N.Y. Exec. Law § 296(2)(a).

131. Similarly, under Title II of the Civil Rights Act, "[a]ll persons shall be entitled to the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation ... without discrimination or segregation on the ground of race, color, religion, or national origin." 42 U.S.C. § 2000a(a).

132. There is no basis for Respondents' EOs to mandate discrimination on account of national origin, citizenship, or immigration status.

133. In issuing Respondents' EOs, Respondents-Defendants have proceeded without or in excess of authority, and Respondents' EOs are affected by an error of law, arbitrary and capricious, and an abuse of discretion.

134. Petitioners-Plaintiffs therefore are entitled to an order invalidating the EOs and declaring them null and void; a declaratory order; and an order permanently enjoining the EOs.

THIRD CAUSE OF ACTION
(Under CPLR §§ 3001 and 7801 *et seq.*
Not Authorized by N.Y. Exec. Law § 24(1) or Any Other Provision of Law)

135. Petitioners-Plaintiffs repeat and reallege the allegations set forth above as if fully set forth herein.

136. Respondents-Defendants acted in excess of authority in promulgating local emergency orders that impaired the City's rights, in the absence of an actual emergency in the Respondents' jurisdictions.

137. Each of the Respondents' EOs were issued pursuant to New York Executive Law § 24, which only applies "in the event of *a disaster, rioting, catastrophe, or similar public emergency... or . . . reasonable apprehension of immediate danger thereof*" and requires "*a finding by the chief executive thereof that the public safety is imperiled.*" N.Y. Exec. Law § 24(1) (emphasis added). The chief executives may then "promulgate local emergency orders to protect life and property or to bring the emergency situation under control."

138. Respondents' EOs were issued without any rational basis to believe that any kind of disaster, catastrophe or true emergency was taking place or about to take place in the relevant jurisdictions. The prospect of a few hundred asylum seekers being located temporarily in a hotel willing to take them—with the City retaining fiscal responsibility, paying for lodging, and providing transportation, meals, and social services—cannot reasonably be described as a "public emergency," much less a public emergency that imperils public safety.

139. Furthermore, Executive Law § 24 does not authorize Respondents-Defendants to infringe upon the lawful authority of other municipalities in New York State (such as the City) to

address a Statewide Disaster Emergency or to address actual emergencies—duly declared under Executive Law § 24—in those municipalities. *See* Statewide EO-28.

140. In issuing Respondents' EOs, Respondents-Defendants have proceeded without or in excess of authority, and Respondents' EOs are affected by an error of law, arbitrary and capricious, and an abuse of discretion.

141. Petitioners-Plaintiffs therefore are entitled to an order invalidating the EOs and declaring them null and void; a declaratory order; and an order permanently enjoining the EOs.

FOURTH CAUSE OF ACTION
(Under CPLR §§ 3001 and 7801 *et seq.*
Preempted by Federal Law)

142. Petitioners-Plaintiffs repeat and reallege the allegations set forth above as if fully set forth herein.

143. The Respondents' EOs impose barriers and/or prohibitions on temporary shelter or housing for asylum seekers and seek to prevent asylum seekers from living, residing, staying, or being present in Respondents' communities.

144. The EOs unlawfully attempt to regulate the residence of noncitizens solely based on their immigration status and impose civil and criminal penalties for those who provide or agree to provide temporary housing assistance to asylum seekers. Therefore, the EOs are preempted by federal law, insofar as federal law does not permit the unilateral imposition of residency restrictions upon noncitizens by local governments.

145. Petitioners-Plaintiffs therefore are entitled to a Declaratory Judgment that the Respondents' EOs conflict with and are pre-empted by federal law and regulation; an order invalidating the EOs and declaring them null and void; and an order permanently enjoining the Respondents' EOs.

FIFTH CAUSE OF ACTION
(Under CPLR §§ 3001 and 7801 *et seq.*
Violation of the U.S. Constitution)

146. Petitioners-Plaintiffs repeat and reallege the allegations set forth above as if fully set forth herein.

147. Respondents' EOs are unconstitutional under the U.S. Constitution because they seek to impede asylum seekers' right to travel and stay in hotels in Respondents' communities, in violation of the fundamental right to travel within a state and because they impermissibly classify individuals based on their national origin and/or alienage status.

148. Petitioners-Plaintiffs therefore are entitled to a Declaratory Judgment that the Respondents' EOs are in violation of federal constitutional rights; an order invalidating Respondents' EOs and declaring them null and void; and an order permanently enjoining the Respondents' EOs.


WHEREFORE, Petitioners-Plaintiffs demand judgment against each and every of the Respondents-Defendants as follows:

- a) On the First Cause of Action, a Judgment declaring that the Respondents' EOs are null and void, enjoining Respondents' EOs pending the determination of this action, and permanently enjoining the Respondents' EOs;
- b) On the Second Cause of Action, a Judgment declaring that the Respondents' EOs are null and void, enjoining the Respondents' EOs pending the determination of this action, and permanently enjoining the Respondents' EOs;
- c) On the Third Cause of Action, a Judgment declaring that the Respondents' EOs are null and void, enjoining the Respondents' EOs pending the determination of this action, and permanently enjoining the Respondents' EOs;
- d) On the Fourth Cause of Action, a Judgment declaring that the Respondents' EOs are null and void, enjoining the Respondents' EOs pending the determination of this action, and permanently enjoining the Respondents' EOs;

- e) On the Fifth Cause of Action, a Judgment declaring that the Respondents' EOs are null and void, enjoining the Respondents' EOs pending the determination of this action, and permanently enjoining the Respondents' EOs;
- f) An award to Petitioners-Plaintiffs for their costs and attorneys' fees in this action; and
- g) Such other and further relief as this Court may deem just and proper.

Dated: New York, New York
June 6, 2023

HON. SYLVIA O. HINDS-RADIX
Corporation Counsel of the
City of New York
Attorney for Petitioners-Plaintiffs
100 Church Street, Rm. 20-100
New York, New York 10007
(212) 356-2296

By: 
Doris F. Bernhardt
Assistant Corporation Counsel

VERIFICATION

STATE OF NEW YORK)
 : SS.:
 COUNTY OF NEW YORK)

Doris F. Bernhardt, being duly sworn, says that she is an Assistant Corporation Counsel in the office of the Honorable Sylvia O. Hinds-Radix, Corporation Counsel of the City of New York; that the City of New York is the Petitioner-Plaintiff in the within action; that the allegations in the Petition and Complaint as to Petitioners-Plaintiffs are true to her knowledge; that the matters alleged therein upon information and belief, she believes to be true; and that the basis of this knowledge is the books and records of the Petitioners-Plaintiffs and/or statements made to her by officers or employees thereof. This verification is not made by Petitioners-Plaintiffs because the Petitioner-Plaintiff is a municipal corporation.

Doris Bernhardt

Sworn to before me this
 7th day of June, 2023

Eli H. Jacobson
 NOTARY PUBLIC
 ELI HILLIARD JACOBSON
 Notary Public, State of New York
 No. 01JA6320037
 Qualified in New York County
 Commission Expires Feb. 23, 2027