

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ONONDAGA

In the Matter of the Application of THE COUNTY OF ONONDAGA, and KATHYRN ANDERSON, MD, PhD, MSPH, in her official capacity as Commissioner of the Onondaga County Department of Health,

Index No.

Petitioners-Plaintiffs,

**PETITION AND  
COMPLAINT**

-against-

THE CITY OF NEW YORK, ERIC ADAMS, in his capacity as Mayor of the City of New York, and MOLLY WASOW PARK, in her capacity as Commissioner of the New York City Department of Social Services and CWP SYRACUSE I LLC, d/b/a Candlewood Suites Syracuse-Airport,

Respondents-Defendants,

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

Petitioners-Plaintiffs THE COUNTY OF ONONDAGA and KATHYRN ANDERSON, MD, PhD, MSPH, in her capacity as Commissioner of the Onondaga County Department of Health, (collectively "the County") by their attorney, John A. Sickinger, Senior Deputy County Attorney, as and for its Petition and Complaint, upon information belief, alleges as follows:

**NATURE OF PROCEEDING**

1. The County brings this combined Article 78 special proceeding/action to enjoin the Respondents from establishing an unregulated homeless shelter within the County of Onondaga by transporting and/or housing of hundreds, and possibly more, individuals experiencing

homelessness, who currently reside at a temporary shelter in New York City, (the "Proposed Transfer"), to a proposed temporary shelter at the Respondent Candlewood Suites Syracuse-Airport located at 5414 South Bay Road, North Syracuse, New York, ("Candlewood").

2. Respondents-Defendants City of New York, Eric Adams, Molly Wasow Park, and the New York City Department of Social Services' (collectively the "City Respondents") decision for the Proposed Transfer exceeds their legal authority because the City Respondents only have authority to operate and create temporary shelters for adults within the five boroughs of New York City.

3. The City Respondents may not operate the Candlewood as a temporary shelter for adults, and implement the Proposed Transfer, under the purported emergency powers of Respondent-Defendant Adams pursuant to his Emergency Executive Order No. 398, issued May 5, 2023 ("EO 398").

4. Mayor Adams' enactment of EO 398 was part of a fundamentally flawed process and exceeded the scope of the Mayor's authority under Executive Order No. 224, issued October 7, 2022 ("EO 224"), as extended by subsequent orders up to and including Executive Order No. 374 issued April 5, 2023 ("EO 374"). These Executive Orders purported to suspend various laws and rules applying to the siting, construction, and operations of "Humanitarian Emergency Response and Relief Centers," or "HERRCs," and suspended various sections of the New York City Charter, the New York City Administrative Code, and the Rules of the City of New York relating thereto. It provided no legal authority for the City to act outside of its jurisdictional borders, nor could it.

5. The City's use of EO 398 to effectuate the Proposed Transfer is clearly ultra vires, as it is based upon "the arrival of thousands of individuals seeking asylum, first declared in [EO

224]," not, as New York Executive Law § 24 requires, to protect the public health in "the event of a disaster, rioting, catastrophe, or similar public emergency within the territorial limits of the [City]" and upon any "finding of the chief executive thereof that the public safety is imperiled thereby."

6. The Court should annul these determinations and enjoin the Proposed Transfer, and to the extent any transfers have already occurred, enjoin further transfers, as they exceed the Mayor's authority under the limited scope of EO 224 and violate New York Executive Law§ 24.

7. Petitioners-Plaintiffs oppose the City Respondents' illegal and misguided attempts to manage their responsibilities within their borders by transferring them onto the County, which is already handling its responsibilities to its own citizens, with no planning whatsoever and without following the rules in place for managing such issues.

8. Onondaga County was informed of the pending transfer on or about May 20, 2023. On May 21, 2023, an online news article published on Syracuse.com, entitled "NYC to send first bus of migrants to Onondaga County, town official says," indicated that the City of New York planned to make the aforementioned transfer of individuals experiencing homelessness.

9. The Proposed Transfer would, overnight, unmanageably increase the County's homeless population, with no planning, no coordination, and no funding in place to support this population in the long term, who are unlikely to be either returned to the City or other locations in the medium or short-term. The City has not provided basic information about these individuals from County officials: who are they, what is their immunization status, do they have criminal backgrounds?

10. Moreover, aside from its dramatic impact on the County's already strained social services system, the Proposed Transfer will likely create its own public health impacts by

uprooting a now stable homeless population of hundreds of homeless individuals and moving them to Onondaga County, all with no viable plan going forward.

11. Petitioners-Plaintiffs are in no way asserting that these particular individuals are problematic, but rather it is the actions of the City of New York and its reckless disregard for the rules that govern this state, as well as its poor treatment of its co-equal municipalities, that is at issue, deeply problematic, and illegal.

12. Accordingly, the City Respondents determinations to implement the Proposed Transfer, and its actual implementation, were made in excess of its lawful authority and "in violation of lawful procedure, [were] affected by an error of law [and were] arbitrary and capricious or an abuse of discretion." CPLR § 7803(3). The Court should annul these decisions and preliminarily and permanently enjoin the Proposed Transfer, and any further transfers to the extent transfers have already taken place.

13. Similarly, Candlewood should be temporarily and permanently enjoined from accepting any homeless individuals from the City Respondents under the Proposed Transfer plan, as the underlying Proposed Transfer plan is ultra vires.

### **PARTIES**

14. Petitioner-Plaintiff COUNTY OF ONONDAGA is a municipal corporation duly formed by the laws of the State of New York, with a principal office in Onondaga County, New York.

15. Petitioner-Plaintiff KATHRN ANDERSON, MD PhD, MSPH, is the Onondaga County Commissioner of Health.

16. Respondent-Defendant CITY OF NEW YORK is a municipal corporation organized and existing under the laws of the State of New York and is constituted as a social services district under Social Services Law § 61(1).

17. Respondent-Defendant Mayor ERIC ADAMS is the Mayor of the City of New York and chief executive officer of the City.

18. Respondent-Defendant MOLLY WASOW PARK is the Commissioner of the New York City Department of Social Services, which oversees the City's Department of Homeless Services and the social services district within the geographical boundaries of the City of New York.

19. Respondent-Defendant CWP SYRACUSE I LLC, d/b/a Candlewood Suites Syracuse-Airport is a foreign limited liability company and the owner of the premises, buildings, and improvements at the real property at 5414 South Bay Road, North Syracuse, New York 13212, d/b/a Candlewood Suites Syracuse-Airport.

### **JURISDICTION AND VENUE**

20. The Court has jurisdiction over this matter pursuant to CPLR § 7803(3) because Respondents-Defendants made decisions in excess of their lawful authority and "in violation of lawful procedure, ... affected by an error of law ... [and] arbitrary and capricious [and] an abuse of discretion."

21. Venue is proper in Onondaga County pursuant to CPLR § 506(b), because it is the County where Petitioners-Plaintiffs conduct business, where the real property subject to the allegations and claims alleged in the petition and complaint are located, and where the consequences of the actions of the Respondents-Defendants are taking place.

22. Petitioners-Plaintiffs have standing to bring the claims asserted here as they are representatives of the public within the geographical boundaries of the County of Onondaga directly and adversely affected by Respondents-Defendants derogation of the law resulting from the planned use of the Candlewood property as a temporary homeless shelter for adults, including impacts to health, safety, and increased social services burden the Petitioners-Plaintiffs will be required to bear by law.

23. The Petitioners-Plaintiffs are further directly injured by the Respondents-Defendants violation of Onondaga County Local Emergency Order No. 1 of 2023, which was wholly ignored by the Respondents-Defendants, and have standing to enforce its own executive orders.

### **STATUTORY BASIS FOR AUTHORITY**

24. Article XVII, § 1 of the New York State Constitution provides that "[t]he aid, care and support of the needy are public concerns and shall be provided by the state and by such of its subdivisions, and in such a manner and by such means, as the legislature may from time to time determine."

25. Social Services Law § 62 provides, subject to certain exceptions, "each public welfare district shall 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."

### **FACTS**

26. In a press release dated May 5, 2023, Respondent-Defendant Adams announced a "program to provide shelter option for asylum seekers already in care in nearby New York Counties."

27. In the press release, Adams highlighted that the program would provide up to "four months of temporary sheltering in nearby New York counties" to "single-adult men seeking asylum who are already in the city's care." The release continued that staff at "participating hotels will also connect asylum seekers with community-based organizations and faith groups to support their transition to a new city." The release described the program as providing "asylum seekers with temporary housing, access to services, and connections to local communities as they build a stable life in New York State."

28. In short, the City was clearly describing its plan to create a dedicated homeless shelter system for asylum seekers in counties outside its jurisdiction.

**A. The City of New York Establishes an Illegal Homeless Shelter in Onondaga County**

29. Though not identified in that press release, on May 5, 2023, County officials subsequently became aware that the City planned to create such a temporary homeless shelter at Respondent Candlewood, with the proposed bussing of migrants, which is within the geographical boundaries of the County of Onondaga. The City Respondents purpose in doing so was to expressly increase New York City homeless shelter capacity.

30. On May 18, 2023, Onondaga County Executive J. Ryan McMahon II issued Local Emergency Order No. 1 of 2023 (the "Executive Order"), under his authority pursuant to Onondaga County Charter and New York Executive Law, which stated inter alia, "all hotels, motels and/or any facilities allowing short term rentals do not accept said migrants and/or asylum seekers for housing within Onondaga County."

31. The Executive Order noted that the County had learned the City, contrary to its published statements, intended to send hundreds of migrants to its illegal temporary homeless

shelter in Onondaga County, that the care of these individuals would only be temporarily funded by the City, that, at the conclusion of that funding period, would be unlikely to leave Onondaga County and become a County responsibility, and that potentially thousands of homeless individuals being transported to Onondaga County would imperil public health and safety not only for the migrants and/or asylum seekers, but also the general public.

32. Upon information and belief, the City has contractual arrangements to fill the Candlewood with hundreds of homeless individuals, and in furtherance of this objective, upon information and belief, Respondent CWP Syracuse I LLC d/b/a Candlewood Suites Syracuse-Airport intends to and/or has converted itself completely from a hotel to a temporary homeless shelter, in derogation of the zoning regulations for the area in which it is located.

33. Upon information and belief, the County expects to the City to house hundreds of homeless individuals in the hotel, now homeless shelter, with likely additional locations of which the County is presently unaware.

34. Presently, the County serves a homeless population of approximately 350 individuals, including families and single adults.

35. The City's Transfer Proposal provides funding for only four months and does not support this population indefinitely into the future. Thus, at the conclusion of the four-month funding period, it is reasonably expected these hundreds (perhaps thousands) of homeless will become a County of Onondaga responsibility, for which the County lacks the resources to support and far exceeds its present demands and infrastructure.

36. The City has not provided for basic information about the individuals to be housed in the Candlewood, including names, dates of birth, legal status, immunization status, and criminal background.



37. Upon information and belief, the City and/or its contractual shelter operators are arranging for bussing to take the homeless individuals into Onondaga County communities, all without any information as to whether these individuals constitute a public safety or public health risk.

38. Upon information and belief, the City Respondents have hired shelter operators to run the shelter and hired shelter staff, mirroring in all but-name a homeless shelter.

39. Upon information and belief, the City Respondents have or intend to secure all hotel rooms at the Candlewood, and limit occupancy to only homeless individuals, evincing the operation of a homeless shelter as it is defined under the definitions and regulations applicable thereto. Upon information and belief, current residents of the Candlewood are being evicted to make room for the persons bussed in from New York City.

40. Upon information and belief, the City Respondents will be providing case management, laundry services, and three meals per day at the Candlewood, none of which is consistent with a hotel stay of a guest, at no cost. This is not an "emergency use hotel" but a temporary homeless shelter.

41. In conducting themselves as aforementioned, Respondents-Defendants are seeking to establish, and have established, a shelter outside the scope of Article 2-A of the Social Services Law and New York State Office of Temporary Disability and Assistance licensure requirements, which includes plan submission, notice requirements, and certifications under 18 NYCRR Parts 352, 491, and 900. These requirements cannot be waived by the City via executive order, and certainly not in areas outside the jurisdiction of the City or its Mayor.

42. The Respondents-Defendants have established a temporary homeless shelter without the approval or licensure of the New York State Office of Temporary Disability and Assistance.

**B. The Court Should Enter a Preliminary Injunction While the Proceeding is Pending**

43. The purpose of a preliminary injunction is to maintain the status quo until a decision can be reached on the merits of a case. Three factors govern the issuance of a preliminary injunction: (i) a likelihood of success on the merits, (ii) the prospect of irreparable injury in the absence of an injunction; and (iii) a balance of equities in the movant's favor. See CPLR § 6301.

44. First, for each of the reasons set forth herein, Petitioners have established a likelihood of success on the merits.

45. Second, Petitioners establish irreparable harm because, absent a preliminary injunction, the Proposed Transfer would have profound, and irreversible, effects on the residents of Onondaga County.

46. Onondaga County's limited shelter resources are already strained. The County simply cannot absorb hundreds, if not thousands, of individuals in need of housing, public services, and medical care, which would greatly increase the current homeless population it is presently supporting.

47. Under present regulation and administrative guidance from OTDA, a social services district has the responsibility to (1) find appropriate placements for homeless individuals and families, notwithstanding whether another district is fiscally responsible and (2) if an individual leaves the out-of-district placement, the placing district is only responsible for approximately the first two months of a new permanent placement. This means, if any of the

individuals placed by New York City leave the City's illegal shelter system, they will become a County responsibility.

48. The Petitioners-Plaintiffs reasonably believe that after the proposed four-month period, the homeless individuals housed in Onondaga County will not leave the County, and the City will be under no obligation to continue to support these individuals who are no longer "their problem."

49. Moreover, it is reasonably likely such individuals will naturally leave the placement and not return, instead opting to live in the community without restriction. Thus, this population will likely become a County responsibility for years, if not permanently.

50. Furthermore, the Candlewood lacks the infrastructure to support a permanent, resident homeless population in need of comprehensive social services, particularly once the City's temporary support is inevitably withdrawn.

51. Accordingly, in failing to follow application regulations and appropriate procedures, the Respondents-Defendants will cause irreparable harm to the Petitioners-Plaintiffs, both as residents and the residents that they represent, serve, and support in their official capacity.

52. Finally, a balancing of the equities favors granting preliminary injunctive relief to Petitioners-Plaintiffs.

53. It would be inequitable, if not unconscionable, to allow the Proposed Transfer to go forward, or continue to go forward beyond where it already has, where an ultimate decision adverse to the Respondents-Defendants on the merits would force the further dislocation of the homeless individuals placed illegally in the County.

54. Moreover, the prejudice to Petitioners-Plaintiffs in allowing the Proposed Transfer would be significant, likely permanently impacting both County government and communities within the County and would render any ultimate relief in their favor ineffectual.

**AS AND FOR A FIRST CAUSE OF ACTION**

**Respondents have Exceeded the Scope of their Legal Authority - Proposed Transfer**

55. Petitioners-Plaintiffs repeat and re-alleged the previous paragraphs as if set forth fully herein.

56. Respondents-Defendants cannot operate The Candlewood as a temporary shelter for adults outside the geographical boundaries of the City.

57. As the proposed transfer and shelter is also in clear violation of Onondaga County Local Emergency Order Number 1 of 2023, and the Respondents-Defendants lack any authority to override a co-equal municipal directive, it is acting outside the scope of any cognizable legal authority.

58. Respondents-Defendants efforts to implement the Proposed Transfer is in excess of any legal authority.

59. Accordingly, the Court should annul and enjoin Respondents-Defendants' determination to (i) open the Candlewood, and/or all other known, and unknown, locations, as temporary homeless shelters outside the City of New York and (ii) implement the Proposed Transfer.

**AS AND FOR A SECOND CAUSE OF ACTION**

**Respondents have Exceeded the Scope of their Legal Authority - Enactment of EO 398**

60. Petitioners-Plaintiffs repeat and re-alleged the previous paragraphs as if set forth fully herein.

61. Respondents-Defendants efforts to (i) open The Candlewood as a temporary shelter for adults and (ii) implement the Proposed Transfer are in excess of any legal authority.

62. Respondents-Defendants have exceeded the scope of NYC EO 224 by the opening of a temporary shelter for adults in the County of Onondaga.

63. Respondents-Defendants have no legal authority to circumvent the executive orders of Onondaga County.

64. NYC EO 224 and NYC EO 398 do not provide the City any authority to do anything outside the City of New York.

65. Respondents-Defendants use of NYC EO 398 extending NYC EO 224 to circumvent the City Charter exceeds Respondents-Defendants' legal authority and is improper as a matter of law.

66. Accordingly, the Court should annul and enjoin Respondents-Defendants' determination to (i) open the Candlewood, and/or all other known, and unknown, locations, as temporary homeless shelters outside the City of New York and (ii) implement the Proposed Transfer.

**AS AND FOR A THIRD CAUSE OF ACTION**

**The City Respondents were Arbitrary and Capricious in its Decision-Making**

67. Petitioners-Plaintiffs repeat and re-alleged the previous paragraphs as if set forth fully herein.

68. Respondents-Defendants efforts to (i) open the Candlewood as a temporary shelter for adults and (ii) implement the Proposed Transfer were made in violation of lawful procedure, affected by an error of law, and arbitrary and capricious and an abuse of discretion.

69. Respondents-Defendants did not follow any deliberative, evidence-based process in reaching the above-referenced determinations.

70. Indeed, Respondents-Defendants expressly acted opaquely in willful violation of the zoning laws and executive orders of another co-equal government, with no notice or deliberation at all.

71. Respondents-Defendants gave no consideration whatsoever on the impact to the community, the legal framework of their actions, or the capacity of the County of Onondaga to absorb the City's homeless population.

72. By rushing to move hundreds of homeless to Onondaga County, Respondents-Defendants are creating a new public health and safety crisis in Onondaga County.

73. Accordingly, the Court should annul and enjoin Respondents-Defendants' determination to (i) open the Candlewood, and/or all other known, and unknown, locations, as temporary homeless shelters outside the City of New York and (ii) implement the Proposed Transfer.

**AS AND FOR A FOURTH CAUSE OF ACTION**

**Declaratory Relief**

74. Petitioners-Plaintiffs repeat and re-alleged the previous paragraphs as if set forth fully herein.

75. Petitioners-Plaintiffs seek a declaratory judgment to specify and determine the rights and duties of the parties.

76. Pursuant to CPLR §3001, Plaintiffs-Petitioners seek a declaratory judgment to specify and determine the right and duties of the parties, including, but not limited to, that (1) the Respondents-Defendants Proposed Transfer was ultra vires, that (2) the Respondents-Defendants are subject to local zoning and Onondaga County Local Emergency Order Number 1 of 2023; and (3) that the Respondents-Defendants are required to obtain licensure and registration through the New York State Office of Temporary Disability and Assistance before opening a temporary homeless shelter.

77. Pursuant to CPLR § 3001, a judicial declaration is necessary and appropriate at this time in order that each of the parties may know their respective rights and duties and act accordingly.

**AS AND FOR FIFTH CAUSE OF ACTION**

**Permanent Injunctive Relief**

78. Petitioners-Plaintiffs repeat and re-alleged the previous paragraphs as if set forth fully herein.

79. Based upon the foregoing, the balancing of the equities is in favor of Petitioners-Plaintiffs and they have no adequate remedy at law.

80. Unless Respondents-Defendants are permanently restrained from causing serious and irreparable injury, which includes injury to government, permanent injury to the community, and injuries to individuals and families, both in and outside the Respondents' illegal shelter system.

81. For the same reasons outlined above in support of the Petitioners-Plaintiffs application for a preliminary injunction, the same reasons and repeated and re-alleged as if set forth fully herein, and which fully support permanent injunctive relief.

82. Pursuant to CPLR § 6301 et seq., a permanent injunction is sought to restrain Respondents-Defendants.

**WHEREFORE**, Petitioners-Plaintiffs respectfully demands judgment as follows:

- a. Declaring that Respondents-Defendants are acting without lawful authority, in violation of lawful procedure, in violation of Onondaga County Local Emergency Order Number 1 of 2023 (as extended), making determinations affected by errors of law, acting arbitrarily and capriciously and abusing their discretion in determining to (i) open the Candlewood, and/or all other known, and unknown, locations in Onondaga County as a temporary homeless shelter outside the City of New York and (ii) implement the Proposed Transfer of potentially hundreds of New York City homeless individuals to Onondaga County;
- b. Annuling Respondents-Defendants determinations to (i) open the Candlewood, and/or all other known, and unknown, locations, as temporary homeless shelters outside the City of New York and (ii) implement the Proposed Transfer of potentially hundreds of New York City homeless to Onondaga County;
- c. Temporarily restraining, and preliminarily and permanently enjoining Respondents-Defendants from (i) opening the Candlewood, and/or all other known,



- and unknown, locations, as temporary homeless shelters in Onondaga County, and
- (ii) implementing the Proposed Transfer of potentially hundreds of New York City homeless to Onondaga County;
- d. Pursuant to CPLR § 3001 declaring the rights and other legal relations of the parties;
- e. Awarding Petitioners-Plaintiffs their costs and disbursements; and
- f. For such other and further relief as this Court deems just and proper.

Dated: May 22, 2023  
Syracuse, New York



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