

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ROCKLAND

-----X  
In the Matter of the Application of The County of Rockland,  
Edwin J. Day in his capacity as County Executive of the  
County of Rockland, Rockland County Social Services  
District, and Joan M. Silvestri in her capacity as  
Commissioner of the Rockland County Social Services  
District,

Index No.

Petitioners-Plaintiffs,

-against-

**VERIFIED PETITION  
and COMPLAINT**

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, Palisades Estates EOM  
LLC, Armoni Inn & Suites LLC d/b/a Armoni Inn &  
Suites, and Johnson Kirchner Holdings, LLC,

Respondents-Defendants,

and

New York State Office of Temporary Disability and Assistance,

Nominal Respondent-Defendant,

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 County of Rockland, Edwin J. Day in his capacity as the County  
Executive of the County of Rockland, Rockland County Social Services District, and Joan M.  
Silvestri, in her capacity as Commissioner of the Rockland County Social Services District  
("Petitioners-Plaintiffs"), by their attorneys, Thomas E. Humbach, Esq., County Attorney for the  
County of Rockland and Fina Del Principio, Esq., as the Director of Legal Services for the  
Rockland County Social Services District, of Counsel, set forth the following as and for his verified

petition and complaint, upon information and belief:

***NATURE OF THE PROCEEDING***

1. Petitioner(s)-Plaintiff(s) bring this combined Article 78 special proceeding/complaint to enjoin Respondents from moving – without any legal authority whatsoever – 340 adult men experiencing homelessness, who currently reside at a temporary shelter in New York City to a proposed temporary shelter for adults at the Armoni Inn & Suites at 329 Route 303, Orangeburg, in the County of Rockland, State of New York (the “Proposed Transfer”).

2. Respondent(s)-Defendant(s)’ decision for the Proposed Transfer exceeds their legal authority because Respondent(s)-Defendant(s) only have authority to operate a temporary shelter for adults within the five boroughs of New York City.

3. Nor may Respondent(s)-Defendant(s) operate the Armoni Inn & Suites as a temporary shelter for adults and implement the Proposed Transfer under the purported emergency powers of Respondent-Defendant Adams under Emergency Executive Order No. 398 issued May 5, 2023 (“EO 398”).

4. The enactment of EO 398 by Mayor Adams on May 5, 2023 is part of a fundamentally flawed process and exceeds the scope of Respondent Adams’ Emergency Executive Order No. 224 issued October 7, 2022 (“EO 224”) as extended by subsequent orders and most recently by Executive Order 374 issued April 5, 2023 which *inter alia* suspended various laws and rules and other procedures “to the extent that they would apply to the siting, construction and operations of the HERRCs [“Humanitarian Emergency Response and Relief Centers”], impose limitations on the amount of time permitted for the holding of public hearings, the certification of applications, the submission of recommendations, any required or necessary

voting, the taking of final actions, and the issuance of determinations” and tolling ‘any such time limitations” for the duration of the State of Emergency as well as purportedly suspending various sections of the New York City Charter, the New York City Administrative Code, and the Rules of the City of New York.

5. This use of EO 398 to effectuate the Proposed Transfer is plain subterfuge and purportedly ‘based upon the arrival of thousands of individuals and families seeking asylum, first declared in [EO 224]”, not 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 by the chief executive thereof that the public safety is imperiled thereby” as required under New York Executive Law §24.

6. The Court should annul these determinations and enjoin the Proposed Transfer because they are wholly unsupported by the limited scope of EO 224.

7. Petitioners-Plaintiffs oppose the Respondents-Defendants’ misguided attempt to exploit EO 224 by hastily moving forward with the Proposed Transfer to cover up for their public relations disasters which involve their handling of migrants seeking asylum or otherwise to various temporary shelters within the five boroughs of New York City.

8. On May 5<sup>th</sup>, the Respondent-Defendant Adams announced that Respondents-Defendants would move the 340 single-adult men from the New York City to the Armoni Inn & Suites in Rockland County.

9. Without question, the Proposed Transfer will create its own public health impacts. In addition, it would uproot a now stable homeless population of 340 single-adult men and move them to Rockland County without a viable plan going forward, which will, in effect, quadruple the homeless population in the County of Rockland thereby straining already limited resources.

10. Accordingly, Respondents' determinations to implement the Proposed Transfer were made in excess of 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.

11. Upon information and belief, Respondent-Defendants Adams contacted Teresa M. Kenny, the Supervisor of the Town of Orangetown, to inform her that the Proposed Transfer will take place during the week of Monday, May 8<sup>th</sup>, if not sooner. Therefore, Petitioners seek a temporary restraining order to stay the Proposed Transfer and maintain the status quo until their application for a preliminary injunction can be heard by this Court.

12. To be clear, Petitioners are not saying that this particular group of 340 men currently to be transferred to the Armoni Inn & Suites are problematic. It is the City of New York *itself* that is the problem.

13. On May 6, 2023, Petitioner-Plaintiff, County Executive Day, declared a State of Emergency and issued Emergency Order No. 1 in response to the Proposed Transfer by the Respondents-Defendants arising from their program to rapidly increase the number of migrants in the geographical boundaries of the County of Rockland to unsustainable levels pursuant to his authority under New York State Executive Law §24.

***PARTIES***  
**A. Petitioners**

14. Petitioner-Plaintiff, The County of Rockland, is a municipal corporation duly formed by the laws of the state of New York with a principal office in Rockland County, New York.

15. Plaintiff-Petitioner, Rockland County Social Services District, is the social

services district in the County of Rockland constituted by Social Services Law §61(2).

16. Petitioner-Plaintiff, Edwin J. Day, is the chief administrative officer for the County of Rockland in accordance with Rockland County Charter Law §C3.02(s).

17. Petitioner-Plaintiff, Joan M. Silvestri, is the Rockland County Commissioner of the Rockland County Social Services District as defined under Social Services Law §2(8) and (10), who has authority to give the public assistance and care for the administration of which a county social services district is responsible.

#### **B. Respondents**

18. Respondent City of New York (the "City") is a municipal corporation organized and existing under the laws of the State of New York and is constituted as the social services district under Social Services Law §61(1).

19. Respondent Mayor Carl Adams is the Mayor of the City of New York, the chief executive of the City.

20. Respondent New York City Department of Homeless Services is a mayoral agency of the City responsible for enforcing and administering provisions of the City Charter and the Administrative Code as they apply to the provision of services for the homeless.

21. Respondent Commissioner Molly Wasow Park is the Commissioner of the New York City Department of Social Services which oversees the New York City Department of Homeless Services in the geographical boundaries of the City.

22. Respondent Palisades Estates EOM LLC is a domestic limited liability company and is the holder of a leasehold interest in ground lease to the buildings and improvements at the real property at 329 Route 303, Orangeburg, New York.

23. Respondent Armoni Inn & Suites LLC d/b/a Armoni Inn & Suites is a domestic

limited liability company and is the operator of a hotel on the real property at 329 Route 303, Orangeburg, New York.

24. Respondent Johnson Kirchner Holdings, LLC is a domestic limited liability company and is the last record owner of the real property at 329 Route 303, Orangeburg, New York.

25. Nominal Respondent-Defendant New York State Office of Temporary Disability and Assistance is the state agency responsible for oversight of shelters in the state as defined under Social Services Law §2(23).

#### *JURISDICTION AND VENUE*

26. The Court has jurisdiction over this matter pursuant to CPLR § 7803(3) because Respondents 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.”

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

28. 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 Rockland directly and adversely affected by Respondents-Defendants’ derogation of the law resulting from the planned use of the Armoni Inn & Suites as a temporary homeless shelter for adults as contemplated by the Proposed Transfer.

29. More specifically, Petitioners-Plaintiff and the members of the public which they

represent will be harmed by the considerable risk to health and safety resulting from the unnecessary, unregulated, rushed, and premature Proposed Transfer.

***STATUTORY BASIS FOR AUTHORITY***

30. 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.

31. 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.”

32. Petitioner-Plaintiff, County Executive Day, is the chief administrative officer of the County of Rockland in accordance with Rockland County Charter.

33. Petitioner-Plaintiff, Commissioner Silvestri, is the public welfare official for the County of Rockland responsible for the administration of the public assistance or care granted or applied for and is empowered to bring proceedings in a court of competent jurisdiction (1) to compel any person liable by law for support to contribute to the support of any person cared for at public expense, or person liable to become so dependent; (2) to recover penalties, forfeitures and prosecute any bonds, undertakings and recognizances; and (3) defend in any court all matters relating to the support of persons at public expense in accordance with Social Services Law §102.

***FACTS***

34. 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.”

35. As stated in the press release,

New York’s shelter capacity continues to rise to the highest level in recorded history, New York City Mayor Eric Adams today announced a new program to provide up to four months of temporary sheltering in nearby New York counties, outside of New York City, to single-adult men seeking asylum who are already in the city’s care. The program will launch with two hotels located in Orange Lake and Orangeburg, with the potential to expand, and will provide asylum seekers with shelter for up to four months as well as the same city-funded services available at Humanitarian Emergency Relief and Response Centers. Staff at participating hotels will also connect asylum seekers with community-based organizations and faith groups to support their transition to a new city. With the number of asylum seekers arriving in New York City rapidly accelerating ahead of Title 42’s lifting next week, and what is expected to be an even larger influx after May 11, the hotels in Orange Lake and Orangeburg will free up additional space in New York City for the hundreds of asylum seekers continuing to arrive in the five boroughs every day. Since last spring, over 60,800 asylum seekers have come through New York City and been offered a place to stay and over 37,500 asylum seekers are currently in the city’s care.

In addition to notifying New York state of these plans already, the mayors and county executives of both Orange Lake and Orangeburg, as well as other local leaders, have been notified of these plans. Mayor Adams also, today, continued to call for the state and federal governments to provide support to manage this crisis, including financial assistance, a national decompression strategy, expedited work authorization, real immigration reform, and more.

“Despite calling on the federal government for a national decompression strategy since last year, and for a decompression strategy across the state, New York City has been left without the necessary support to manage this crisis. With a vacuum of leadership, we are



now being forced to undertake our own decompression strategy,” said **Mayor Adams**. “This new, voluntary program will provide asylum seekers with temporary housing, access to services, and connections to local communities as they build a stable life in New York state. New York City continues to step up and handle this crisis, and this new program is an extension of our compassionate response, but these actions do not mean we still don’t need urgent action, including a national decompression strategy, financial resources, expedited work authorization, and real immigration reform from Congress.”

“As we continue to call on additional support from the state and federal government, we are simultaneously finding ways to meet this increasing need,” said **Deputy Mayor for Health and Human Services Anne Williams-Isom**. “This new program provides additional housing options in neighboring counties for asylum seekers arriving in New York City. This is an issue we must all work together to address, as we have a shared responsibility in managing the influx of over 60,000 asylum seekers arriving to our city.”

“For the past year, we have been asking the federal government for support as we respond to this humanitarian crisis,” said **Mayor’s Office of Immigrant Affairs Commissioner Manuel Castro**. “As asylum seekers continue to arrive to New York City seeking refuge, the city is continuing to respond and this program will provide a pathway for asylum seekers to access temporary housing, as they build their lives in the United States.”

“Mayor Adams and the city of New York are doing everything possible to offer dignity and respect to our newest neighbors as they seek asylum,” said **New York City Department of Housing Preservation and Development Commissioner Adolfo Carrión Jr.** “Through this program, the city is giving people options and providing compassionate support as they transition to a new life here including access to community-based organizations and faith groups. We will continue to support these efforts to help those who come to our country and arrive in our city seeking refuge.”

Beginning this week, the city will conduct outreach to asylum seekers already living in shelters and humanitarian relief centers as it looks to open the initial cohort of hotels in Orange Lake and Orangeburg in the coming weeks. Transfers to these two cities will be voluntary. The city will provide transportation from New York City to the hotels for asylum seekers who decide to participate.

Since this humanitarian crisis began, New York City has — largely on its own — taken fast and urgent action, managing the arrival of a rapidly increasing number of buses across New York City with virtually no coordination from states sending them — opening 122 hotels as emergency shelters and eight currently operating humanitarian relief centers already, standing up a navigation center to connect asylum seekers with critical resources, enrolling children in public schools through Project Open Arms, and more.

**A. Respondents are Illegally Converting Armoni Inn & Suites to a Temporary Shelter**

36. In furtherance of the program announced by the press release dated May 5, 2023, Respondents-Defendants plan to move 340 single-adult men seeking asylum to two hotels, one of which is within the geographical boundaries of the County of Rockland to respond to the continual rise in New York City's shelter capacity.

37. Respondents-Defendants are relying upon their own Executive Orders, New York City- exclusive right to shelter laws, consent orders decrees, and MOU's with New York City Health and Human Services.

38. Under these purported authorities, they are seeking to establish a shelter outside the scope of Article 2-A of the Social Services Law and NYS OTDA requirements of application process, including plan submission, notice requirements and all necessary certifications under 18 NYCRR Parts 352, 491 and 900.

39. Any claim that Respondents-Defendants will be operating an emergency use hotel is merely a subterfuge. The Respondents-Defendants may call it an emergency use hotel,

although any attempt to set aside their obligations to comply with all regulations for the certification and operation of a homeless shelter. By the Respondents-Defendants' own admission, they are mirroring the operation of a homeless shelter by hiring a shelter operator and staff. Further, the Respondents-Defendants are providing security, establishing rules for guest conduct and curfews, and regulating other behavior.

40. Moreover, Respondents-Defendants will be providing case management, laundry services, and three meals a day, all of which is not consistent with a hotel stay of a guest at no cost. However, it is consistent with the operation of a homeless shelter.

41. In addition, Respondents-Defendants have secured all hotel rooms at the exclusion of all others and are limiting occupancy to only single-adult men evincing the operation of a homeless shelter under the definitions and regulations without legal authority and without the required approval from the New York State Office of Temporary Disability and Assistance.

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

42. 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. CPLR § 6301.

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

44. *Second*, Petitioners establish irreparable harm because if preliminary injunctive relief is not granted the Proposed Transfer would have profound effects on residents in the

County of Rockland.

45. Petitioners-Respondents have already recognized an increase in the homeless population. The Proposed Transfer and moving 340 homeless men to the Armoni Inn & Suites in the County of Rockland would compound the already-increased homeless population and put a strain on the County and the Social Services District that is very densely populated with two colleges, a senior citizens residence, and a high school.

46. Petitioners-Plaintiff are concerned that the inherent problems experienced in New York City will be replicated in the County of Rockland. Rightly so, Petitioners-Plaintiffs are concerned about the safety of their families and neighbors in the area of the Armoni Inn & Suites in light of the lack of planning, community engagement and the arbitrary nature of the decision.

47. In failing to follow appropriate procedures, Respondents-Defendants have caused irreparable harm to the Petitioners-Plaintiffs, as residents and the residents that they represent in their official capacity.

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

49. It would be inequitable, if not unconscionable, to allow the Proposed Transfer to go forward where an ultimate decision adverse to the Respondents-Defendants on the merits would force the 340 men to move yet again after this proposed four-month period.

50. The prejudice on Petitioners-Plaintiffs in allowing the Proposed Transfer, however, would be significant and would render the ultimate relief in this action ineffectual.

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

**(CPLR § 7803(3) – Respondents Have Exceeded the Scope of their Legal Authority  
(The Proposed Transfer of the Homeless is outside the geographical boundaries of the City of New York)**

51. Petitioners repeat and re-allege the previous paragraphs as if set forth fully herein.

52. Respondents cannot operate the Armoni Inn & Suites as a temporary shelter for adults outside the geographical boundaries of the City.

53. Respondents efforts to implement the Proposed Transfer is in excess of any legal authority.

54. Accordingly, the Court should annul and enjoin Respondents' determination to (i) open the Armoni Inn & Suite as a temporary homeless shelter and (ii) implement the Proposed Transfer.

**AS AND FOR A SECOND CAUSE OF ACTION**  
**(CPLR § 7803(3) – Respondents Have Exceeded the Scope of their Legal Authority**  
**(Enactment of EO 398)**

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

56. Respondents efforts to (i) open the Armoni Inn & Suite as a temporary homeless shelter for adults and (ii) implement the Proposed Transfer are in excess of any legal authority.

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

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

59. Accordingly, the Court should annul and enjoin Respondents-Defendants' determination to (i) open the Armoni Inn & Suite as a temporary homeless shelter for adults and (ii) implement the Proposed Transfer.

**AS AND FOR A THIRD CAUSE OF ACTION**  
**(CPLR § 7803(3) – Arbitrary and Capricious Decision Making)**

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

61. Respondents efforts to (i) open the Armoni Inn & Suite as a temporary homeless

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.

62. Respondents-Defendants did not follow any deliberative, evidence-based process in reaching these determinations.

63. *First*, Respondents are creating a new public health and safety crisis in the County of Rockland by rushing to move 340 single-adult men to a start-up temporary shelter in another county.

64. Accordingly, the Court should annul and enjoin Respondents' determination to (i) open the Armoni Inn & Suite as a temporary homeless shelter for adults and (ii) implement the Proposed Transfer.

**AS AND FOR A FOURTH CAUSE OF ACTION**  
**(CPLR § 3001 – Declaratory Relief)**

65. Petitioners repeat and re-allege the previous paragraphs as if set forth fully herein.

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

67. Pursuant to Civil Practice Law and Rules §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 A FIFTH CAUSE OF ACTION**  
**(CPLR 6301 et seq-Permanent Injunction)**

68. Petitioners repeat and re-allege the previous paragraphs as if set forth fully herein.

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

70. Unless Respondents-Defendants are permanently restrained from serious and

irreparable injury, which include individuals and/or families, including young children.

71. Pursuant to Civil Practice Law and Rules §6301 et seq., a permanent injunction is sought to restrain Respondents-Defendants.

**WHEREFORE**, Petitioners respectfully request that this Court issue a judgment:

A. Declaring that Respondents are acting without lawful authority, in violation of lawful procedure, making determinations affected by errors of law, acting arbitrarily and capriciously and abusing their discretion in determining to (i) open the Armoni Inn & Suite as a temporary homeless shelter for adults and (ii) transfer the 340 single-adult men currently residing in the City of New York to the proposed temporary homeless shelter in Orangeburg, New York;

B. Annuling Respondents determinations to (i) open the Armoni Inn & Suite as a temporary homeless shelter for adults and (ii) transfer the 340 single-adult men currently residing in the City of New York to the proposed temporary homeless shelter in Orangeburg, New York;

C. Temporarily restraining, and preliminarily and permanently enjoining Respondents from (i) opening the Armoni Inn & Suite as a temporary homeless shelter for adults and (ii) transfer the 340 single-adult men currently residing in the City of New York to the proposed temporary homeless shelter in Orangeburg, New York;

D. Pursuant to Civil Practice Law and Rules §3001 declaring the rights and other legal relations of the parties

E. Awarding Petitioners-Plaintiffs their costs and disbursements of this proceeding; and

F. Granting Petitioners-Plaintiffs any other further relief as this Court may deem just and proper.

Dated: May 9, 2023  
New City, New York

Yours, etc.

**OFFICE OF THE COUNTY ATTORNEY  
COUNTY OF ROCKLAND**

THOMAS E. HUMBACH

**THOMAS E. HUMBACH  
COUNTY ATTORNEY**

11 New Hempstead Road  
New City, New York 10956  
(845) 638-5180



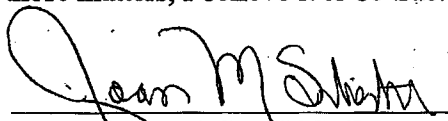
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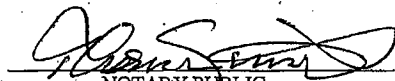
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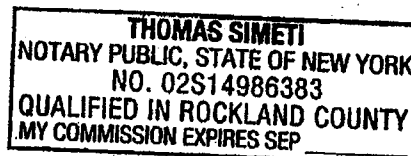
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JOAN M. SILVESTRI, being duly sworn, deposes and states that: I am one of the Petitioners-Plaintiffs in the within action; I have read the foregoing **Petition/Complaint** and know the contents thereof; the same is true to my knowledge, except as to the matters therein stated to be alleged on information and belief, as to those matters, I believe it to be true.

  
JOAN M. SILVESTRI

Sworn to before me this 9<sup>th</sup>  
day of May 2023

  
NOTARY PUBLIC



**MUNICIPAL VERIFICATION**

THOMAS E. HUMBACH, an attorney duly admitted to the practice of law in the State of New York hereby affirms the following to be true under the penalties of perjury pursuant to CPLR § 2106:

1. I am the County Attorney for the County of Rockland, and I am the attorney for Petitioners-Plaintiffs.

2. I have read the foregoing Petition-Complaint, and it is true to deponent's knowledge, except as to the matters stated therein to be upon information and belief, and as to those matters, I believe them to be true. The basis for my belief as to the truth of such matters includes my review of the files and records maintained by, as well as interviews with the employees of, Petitioners-Plaintiffs.

3. I make this Verification pursuant to CPLR § 3020(d)(2) upon the grounds that Petitioners-Plaintiffs are a governmental subdivision of the State of New York and public officers thereof and I am acquainted with the facts of this case.

Dated the 9th day of May 2023  
in New City, New York

/s/ Thomas E. Humbach  
THOMAS E. HUMBACH, ESQ.