

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

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,

**NOTICE OF CROSS MOTION  
FOR JOINDER OF THE UNITED  
STATES, FOR A STAY  
PENDING DETERMINATION OF  
THIS APPLICATION &  
AFFIRMATION IN OPPOSITION**

Index No. 451368/2023  
IAS Part 11  
(Frank, J., *presiding*)

Petitioners-Plaintiffs,

-against-

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. NEUAUS, 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 MOLE, 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, 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 Declaratory Judgment under Article 30 of the Civil Practice Law and Rules

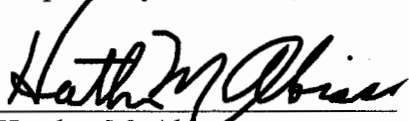
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PLEASE TAKE NOTICE that upon the annexed affirmation of HEATHER M. ABISSI, affirmed on this 20<sup>th</sup> day of June, 2023, and the accompanying exhibits, Defendants COUNTY OF PUTNAM and KEVIN M. BYRNE, in his official capacity as County Executive of Putnam County, hereby Cross-Move pursuant to CPLR §2215 for joinder, pursuant to CPLR §1001 of the United States as a necessary party to this action, and pursuant to CPLR §2201 for a Stay of Proceedings pending determination of this application.

FURTHER, Defendants COUNTY OF PUTNAM and KEVIN M. BYRNE, in his official capacity as County Executive of Putnam County, by and through Counsel, HEATHER M. ABISSI, submit this affirmation in opposition to the Verified Petition filed by Petitioner-Plaintiffs.

Dated: 6/20/2023  
Beacon, New York

Respectfully submitted,



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*Of Counsel to and for Defendants  
Putnam County &  
Kevin M. Byrne, Putnam County Executive*

TO: *All participating parties via NYSCEF*

TO: Civil Process Clerk  
United States Attorney's Office  
86 Chambers Street  
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New York, NY 10007  
*Via Registered U.S. Postal Overnight Mail*

U.S. Attorney General  
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Washington, D.C. 20530  
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Assistant Attorney General for Administration  
U.S. Department of Justice  
Justice Management Division  
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Federal Emergency Management Agency  
Office of the Chief Counsel  
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Washington, D.C. 20472

*Via Registered U.S. Postal Overnight Mail and email FEMA-ActionOffice-  
OCC@fema.dhs.gov*

SUPREME COURT OF THE STATE 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,

**AFFIRMATION IN SUPPORT OF  
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## **Relevant Background**

3. Putnam County is one of the smallest Counties geographically in the State of New York. It is home to approximately 98,000 people. Unlike many of the other Counties named in this action, Putnam County has not currently received any asylum seekers, nor have they turned any away. Likely New York County observed what Putnam County has already asserted by Executive Order, it has limited resources available to fully accommodate its own citizens in need of transitional housing and certainly does not have sufficient accommodations to house even a small subset of the thousands of asylum seekers described as arriving weekly by Petitioners. (*See Exhibit A*)

4. Putnam County agrees with its esteemed colleagues in New York County that there is, indeed, a humanitarian crisis at our border. However, government-funded human trafficking without clearly allocated humanitarian funds and housing resources simply isn't the answer. It wasn't the answer when the federal government authorized it. It wasn't the answer when Texas did it, and it remains an unviable answer as New York City attempts to do it. These are people in search of a better life, not chattel. Kicking the proverbial can down the road, or upstate, as the case may be, will not solve this humanitarian crisis. Nor can New York County truly differentiate itself by arguing that it is offering some degree of funding to assist with housing because it is actively seeking to avoid responsibility to do so by seeking to claw back the court-mandated "right to shelter," rule, which forced them to pay, and is seeking placement periods elsewhere for longer than the temporary four-month period they initially represented. (*See, Exhibit C*).

5. Instead, following this proposed intervention to its logical conclusion will result in already traumatized people finding themselves bused to isolated rural pockets of the state with limited resources, no mass transit, no ability to work or leave to obtain additional resources, in Counties without the infrastructure to care for them. They will be placed in the few transitional

housing locations available in rural counties, meaning already traumatized people and unaccompanied minors will find themselves in the same motels, hotels, and housing facilities as sex offenders, displaced perpetrators of domestic violence, people who have been evicted, are homeless, or who have mental or psychological disabilities and were displaced by the closing of New York's DDSOs, just to name a few of the people who find themselves in need of transitional housing. Instead of the promise of a new life and fresh start envisioned by so many when they come to this Country, this will be the knowing creation of an underclass, rather than humanitarian relief as this effort has been advertised.

6. While it is admirable that New York County, with its resources that vastly exceed those of any other County in New York State, has endeavored to provide for these people in grave need, the reality is that this is a failure of the federal immigration and asylum process that implicates matters of national security and if New York County cannot handle the volume, the rest of New York State definitely cannot. Putnam County cannot.

7. Pursuant to Article 1, Section 8, Clause 4, which is colloquially known as the Naturalization Clause of the United States Constitution, the federal government is vested with the exclusive power to establish a uniform Rule of Naturalization throughout the United States. The Naturalization Clause empowers the federal government with the ability to enact laws that determine who may become a citizen of the United States and to establish the requirements procedures, and conditions for granting U.S. citizenship. By so empowering the United States government in this fashion, a uniform and standardized rule of law is established, which is consistent across all states, rather than subjecting people to different standards depending on where they reside.

8. This case demonstrates that, in contravention of the Naturalization Clause of the United States Constitution, different standards are being employed state-to-state for whether housing is provided for asylum seekers awaiting determination of their applications. As exclusive jurisdiction for setting uniform rules and procedures relating to the naturalization process rests with the federal government, the United States is a necessary party to this action. Matters of procedure, policy, enforcement, and discretion related to immigration issues the United States Supreme Court recently held fall under “Executive Branch enforcement,” thus, States and certainly Counties lack authority to act and lack standing to challenge such matters. *United States et. al. v. Texas et. al.*, Slip. Op. No. 22-58 (June 23, 2023).

9. Additionally, this exclusive jurisdiction is supported by equitable considerations as well: The United States has a compelling and necessary interest in vetting, tracking, and providing for people seeking asylum in this Country so that they can ensure that children and families are not separated, to ensure that if legal action requires a person’s removal they can locate them, and to promptly notify people if their appearance is needed during any stage of the immigration or asylum process. The United States also has vast resources for both funding and housing that New York State does not. The United States should be given an opportunity to join, assist, and help guide the appropriate intervention in this matter of national import.

10. New York County’s “self-help,” efforts to simply ship and house asylum seekers in any place or County, while dictating the rules and terms by which other Counties must take them, runs afoul of the countervailing interests of the United States and stands in contravention of the United States Supreme Court’s holding in *Arizona v. United States*, 567 U.S. 387 (2012), which held that while states may have understandable frustrations with the problems caused by illegal

immigration and the failures of the immigration process, the State may not pursue policies or state laws that undermine federal law.

11. Since the United States has not been made a party to this action, it has been deprived of an opportunity to assert its rights or remedies, whether in the form of consent to Joinder and response, or assertion of sovereign immunity and motion for dismissal. It is the federal government's constitutional right and responsibility to exercise its exclusive and significant power to regulate all policies and procedures related to the immigration process. *Id.* It is expected to do so while exercising its discretion in favor of supporting, addressing, and reaching solutions related to these issues *with the states*, as issues arise, through rational civic discourse with state government. *Id.*[emphasis added]. For all these reasons, the United States is an indispensable, necessary party to this action. This action cannot proceed without the United States, a necessary party, thus, if it does not consent to Joinder this action must be dismissed.

12. Beyond that, New York County is a co-equal member of this Empire State, along with the other 61 counties, it has concurrent, not superior, authority and jurisdiction. The premise upon which New York County seeks to impress its will upon the rest of the state, such that other Counties would be *volun-told* they are mandated to participate, when they did not volunteer, to assist in this effort, contravenes its jurisdictional authority and is itself an *ultra vires* act.

13. Nor should New York County usurp the role of the federal government in asserting and interpreting federal statutes, without according the federal government the opportunity to enforce its own rights and pursue its own remedies.

14. For the reasons set forth at length below, the United States should be given an opportunity to respond to either consent or oppose joinder, and this matter should be stayed pending a determination of this application. Irrespective of that determination, this action should

be dismissed against Defendants Putnam County and Kevin M. Byrne, County Executive of Putnam County.

### Point I

#### **The United States is a Necessary Party to this Action and Its Consent Must be Sought in Order to Proceed to Remedy, Otherwise, this Suit Cannot be Maintained.**

The immigration, asylum, housing or detention, and regulatory processes for persons of foreign citizenship who are present in this Country are undoubtedly the purview of the United States government. *See, Chamber of Commerce v. Whiting*, 563 U.S. 582 (2011). The Government of the United States has broad power over the subject of immigration and the status of asylum seekers and other people of undocumented status. *Arizona v. United States*, 567 U.S. 387, 394-95 (2012), *citing, Toll v. Moreno*, 458 U.S. 1, 10, 102 S.Ct. 2977, 73 L.Ed.2d 563 (1982); *see generally* S. Legomsky & C. Rodríguez, *Immigration and Refugee Law and Policy* 115–132 (5th ed. 2009). This authority rests, in part, on the federal government's constitutional power to "establish a uniform Rule of Naturalization," Art. I, § 8, cl. 4, and its inherent power as sovereign to control and conduct relations with foreign nations, *Id.*; *see Toll, supra*, at 10, 102 S.Ct. 2977 (*citing, United States v. Curtiss–Wright Export Corp.*, 299 U.S. 304, 318, 57 S.Ct. 216, 81 L.Ed. 255 (1936) )

The federal power to determine immigration policy is well-settled. *Id.* Immigration policy can affect trade, investment, tourism, and diplomatic relations for the entire Nation, as well as the perceptions and expectations of asylum seekers in this country who seek the full protection of its laws. *Id.*, *citing, e.g.*, Brief for United Mexican States as *Amici Curiae*; *see also Harisiades v. Shaughnessy*, 342 U.S. 580, 588–589, 72 S.Ct. 512, 96 L.Ed. 586 (1952). Perceived mistreatment of asylum seekers in the United States may lead to harmful reciprocal treatment of American

citizens abroad. See Brief for Madeleine K. Albright et al. as *Amici Curiae* 24–30. Thus, issues related to the treatment of asylum seekers in our country are matters of national security and foreign policy and are clearly within the federal government's exclusive jurisdiction. *Id.*

15. It is fundamental that foreign countries concerned about the status, safety, and security of their nationals in the United States must be able to confer and communicate on this subject with one national sovereign, not the 50 separate States. *Id.*, citing, *Chy Lung v. Freeman*, 92 U.S. 275, 279–280, 23 L.Ed. 550 (1876); see also, *The Federalist* No. 3, p. 39 (C. Rossiter ed. 2003) (J. Jay) (observing that federal power would be necessary in part because "bordering States ... under the impulse of sudden irritation, and a quick sense of apparent interest or injury" might take action that would undermine foreign relations). The United States Supreme Court has reaffirmed that "[o]ne of the most important and delicate of all international relationships ... has to do with the protection of the just rights of a country's own nationals when those nationals are in another country." *Id.*, citing, *Hines v. Davidowitz*, 312 U.S. 52, 64, 61 S.Ct. 399, 85 L.Ed. 581 (1941).

16. Through concerted efforts of Homeland Security, ICE, FEMA, and other governmental agencies people come to this Country and proceed through the immigration and/or asylum process.

17. The United States promulgated its immigration laws and regulations specifically to control and facilitate the process of entry into this country and to address issues arising therefrom. See, e.g. *Kellybee Enterprises, Inc. v. Actors Equity Ass'n*, 91 Misc.2d 455, 459 (N.Y. Civ. Ct. 1977).

18. However, the process is not infallible and the sheer volume of asylum-seekers due to humanitarian crises abroad has greatly flooded and overwhelmed the system. No state in this

Union has the power or authority to make the necessary changes to this process to intervene, nor do they have the power to authorize the federal funding necessary to vet, monitor, provide for, and house this volume of people.

19. These are powers and resources exclusive to the federal government, and only the federal government can effectively intervene in such a matters of national scope and import to our national security. *E.g. In the Matter of Aliessa v. Antonia Novello*, 96 N.Y.2d 418 (2001)(discussing federal statutes differentiation between qualified and non-qualified aliens, and the significant variance in the discretion and resources available to people depending on these classifications); *In re Application of Vargas*, 131 A.D.3d 4 (2d Dep't 2015)(discussing discretion under DACA); *People v. Valerio*, 2012 N.Y. Slip Op. 32250 (Sup. Ct. Kings Co. April 5, 2012)(discussing the Attorney General's discretion to cancel removal under IIRIRA); *In re Miscellaneous Application filed by Patricia C.*, 2016 N.Y. Slip Op. 51809(Fam. Ct. Queens Co. Dec. 23, 2016)(discussing the United States' grant of U-visas to crime victims who cooperate with the United States government in the investigation and/or prosecution of those crimes.). As such, the United States is a necessary party to this action.

20. Pursuant to CPLR §1001(a), a party is a necessary party when they are necessary to ensure that “complete relief is to be accorded between the persons who are parties to the action or who might be inequitably affected by a judgment in the action.”

21. CPLR §1001(b) directs, that in reaching a determination as to whether joinder of a party is proper, this Court shall consider: (1) whether plaintiff would have another effective remedy in the case of the action being dismissed due to non-joinder, (2) the prejudice which may accrue from non-joinder to the defendant or the person [entity] not joined, (3) whether and by whom prejudice might have been avoided or may in the future be avoided, (4) the feasibility of a

protective provision by order of the court or in the judgment, and (5) whether an effective judgment may be rendered in the absence of the person who is not joined.

22. A plaintiff's failure to join a necessary party to an action may result in dismissal of plaintiff's claims against any named defendant. *Atlantic Properties LLC. V. DiFiore*, 968 N.Y.S. 847 (Rochester City Ct. 2013), *citing*, CPLR §1003; *OppenheimerFunds, Inc. v. TD Bank, N.A.*, 2014 N.Y. Slip Op. 30379 at \*19 (Sup. Ct. N.Y. Co. Feb. 5, 2014) ("A court should dismiss a case in the absence of a person who should be joined as a necessary party"). A court may consider whether there has been a failure to join a necessary party to an action at any time and on its own initiative. *Id.*, *citing*, *City of New York v. Long Is. Airports Limousine Serv. Corp.*, 48 NY2d 142 (1999); *Town of Amherst v. Hilger*, \_\_ AD3d \_\_, 962 N.Y.S.2d 837, 843 (4th Dep't 2013).

23. Here, Joinder is appropriate and a stay should be granted pending determination because: (1) No party in this suit can have lawful remedy absent the United States being joined to this action and providing remedy through their exclusive powers; (2) Prejudice to the United States would result from the denial of this application for joinder as it would abridge the government's exclusive constitutional powers, it would contravene their compelling interests in foreign policy and in vetting, tracking, and providing for people seeking asylum so that they can ensure that children and families are not separated, and to ensure that if legal action requires a person's removal they can locate them, and to promptly notify people if their appearance is needed during any stage of the immigration or asylum process. It would leave the United States' rights, remedies, and interests unaddressed and leave the United States without remedy; (3) This prejudice could be wholly avoided by staying this matter, giving the United States government a chance to respond and convey their position, interests, and desired remedies and doing so, would not unduly prejudice any other party, (4) there is no feasible protective order that could be



fashioned to avoid this prejudice, and (5) an effective judgment cannot lawfully be crafted that would not abridge the rights of the United States government, as such joinder is proper pursuant to CPLR §1001(b).

24. This matter should be stayed pending determination of this application. The determination of whether to grant a stay, rests within the sound discretion of the Court. *See* CPLR §2201. A trial court may be more inclined to grant a stay when the rights of a party may be subject to prejudice if a stay is not issued. *See, Salerno v. Salerno*, 154 A.D.2d 430 (2d Dep't 1989). Here, indeed the rights and compelling national security interests of the United States may be prejudiced if a stay is not granted. Conversely, providing the United States an opportunity to respond is of negligible impact on the parties. Accordingly, a stay should be granted.

## **Point II**

### **Sovereign Immunity Prevents this Action Absent the Consent of the United States**

25. The United States, with a few enumerated exceptions, enjoys sovereign immunity to suit, and cannot be made a party to a suit without its consent; thus, absent that consent, if the United States is an indispensable party, the suit may not be maintained. *See, Goldstein v. Sommervell*, 170 Misc. 602 (N.Y. Sup. Ct. 1939).

26. However, there is some precedent for the joinder or intervention of the United States in civil actions. *Carrington v. Vanlinder*, 58 Misc.2d 80 (N.Y. Sup. Ct. 1968)(holding the United States could only seek remedy by joinder, intervention, or independent action). In fact, within the context of a declaratory judgment opining on the separation of powers between the countervailing interests of the state under the 10<sup>th</sup> Amendment of the United States Constitution and the federal government under principles of federalism, the U.S. Supreme Court permitted New York State to sue the United States and held, that the federal government cannot

commandeer the legislative process of the states by directly compelling them to enact and enforce a federal regulatory program. *New York v. United States*, 505 U.S. 144 (1992).

27. Because the United States is a necessary party to this action, as set forth above, unless the United States consents to participate in this action and assert its rights, interests, and remedies, sovereign immunity would serve to not only bar its participation in this action, but it would also necessitate dismissal of the entire action. *See* CPLR 1003; *Atlantic Properties LLC, supra*, 968 N.Y.S. 847; *OppenheimerFunds, Inc, supra*, 2014 N.Y. Slip Op. 30379.

### **Point III**

#### **This Action Infringes on the Sovereign Powers of Local County Governments**

28. Much like the Tenth Amendment affords state sovereignty, Article XI of the New York State Constitution confers a similar home rule to local County governments, which in §2(c)(ii)(10) includes the government, protection, order, conduct, safety, health and well-being of persons or property therein.

29. Further, Article XI §2(d) specifically enjoins one local government from adopting laws that impair the powers of any other local government. Thus, county governments enjoy their own form of sovereignty and power to protect the health, safety, and well-being of their constituents.

30. While indeed there are local laws, ordinances, and executive orders that may be preempted by federal law, Petitioners' blanket claim of preemption, as against Putnam County Defendants, simply has no merit. *See, e.g. Chamber of Commerce, supra*, 53 U.S. 582; *Lozano v. City of Hazleton*, 724 F.3d 297 (3d Cir. 2013).

31. Unlike the sanctions imposed on hiring unauthorized undocumented persons in contravention of IRCA preempted in chambers or the summary prohibition of providing housing

accommodations to “illegal aliens,” decried in *Hazleton*, the Putnam County Executive Order merely requires that any hotel or other housing facility that intends to accept asylum seekers, only do so after having first obtained a shared-services agreement between New York City and Putnam County to provide those services. *Id*; *See* Exhibit B, p. 5.

32. Requiring a contract setting forth the terms by which New York City and Putnam County would cooperate to share services for individuals to ensure their health, safety, and well-being while residing in Putnam County, falls squarely within the powers conferred on the County by the New York State Constitution, and this application by New York County serves to infringe upon the constitutional rights of the Putnam County Defendants. Article IX §2(c)(ii)(10).

33. Here, nonetheless, New York County seeks remedy from this Court in the nature of prohibition, restraining, and preventing the enforcement of the Executive Order of Kevin M. Byrne, County Executive of Putnam County. (Exhibit B).

34. It is well settled, however, that prohibition is not available to control or prevent legislative, executive, or ministerial action. *Matter of Law Offices, Capoccia v. Spitzer*, 270 A.D.2d 643, 645 (3d Dep’t 2000), *citing*, *Matter of Dondi v. Jones*, 40 N.Y.2d 8, 13; *see also*, *Godfrey v. Spano*, 57 A.D.3d 941 (2d Dep’t 2008)(granting cross-motion in favor of County Executive holding Executive Order is a valid exercise of County Executives power).

35. Nor should a *writ of prohibition* or preliminary injunction lie here, where the Putnam County executive order was narrowly tailored to ensure that asylum seekers’ needs are met. By implementing a contract requirement, Putnam County Defendants ensured clear and unambiguous roles for each County, terms for payment and provision of resources, and division of support each county would provide. Shared-services agreements of this nature are within the

proper and lawful power of the County Executive of Putnam County and do not run afoul of any state or federal law, New York County's argument to the contrary notwithstanding.

36. Further, it cannot go without mention that Petitioners are alleging a violation of Social Services Law §62 against Putnam County which requires, in pertinent part, that 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" knowing that no such persons have arrived in or been sent to Putnam County, thus, Petitioners are seeking to abridge the rights of the Putnam County Defendants on an entirely baseless premise.

#### **Point IV**

##### **New York County Lacks Standing to Assert the Rights of Asylum Seekers Prospectively**

37. No asylum seekers were placed in Putnam County, so any assertion of a violation of equal protection, Human Rights Law, and/or Title II of the Civil Rights Act against Putnam County Defendants is purely speculative. Thus, there is no justiciable matter in controversy to justify this petition, which is, in any event, meritless.

38. To have standing to assert such violations, a necessary predicate is that the person bringing that claim can show an "injury in fact," to their legal interests. *See*, CPLR §3211(a)(3); *Town of Verona v. Cuomo*, 998 N.Y.S.2d 670 (Sup. Ct. Albany Co. 2014); *Holden v. Zucker*, 2021 N.Y. Slip Op. 31890, 11 (Sup. Ct. Bronx Co. 2021) ("The doctrine of standing is an element of the larger question of justiciability and is designed to ensure that a party seeking relief has a sufficiently cognizable stake in the outcome so as to present a court with a dispute that is capable of judicial resolution . . . . The most critical requirement of standing, and the one arguably implicated in this case, is the presence of 'injury in fact—an actual legal stake in the matter being

adjudicated.”). A plaintiff who has no standing in an action is subject to a jurisdictional dismissal since (1) courts only have jurisdiction over controversies that involve the plaintiff, (2) a plaintiff found to lack standing is not involved in a controversy, and (3) the courts are, therefore, divested of jurisdiction over the case. *Deutsche Bank National Trust Co. v. Abbate*, 2009 N.Y. Slip Op. 52154, 4 (Sup. Ct. Richmond Co. 2009)

39. Petitioners’ action against the Putnam County Defendants on this score is completely frivolous. There are no parties whose rights have been infringed by the Putnam County Defendants. Even if there were, the rights belong to the people seeking asylum, not the Petitioners. *Id.* at 13 (“To qualify as an injury-in-fact, and thus confer standing, an injury must be “personally suffered” by the petitioner. *See Murray v. Empire Ins. Co.*, 175 A.D.2d 693, 695 (1st Dep’t 1991).”)

40. In the absence of any injured party, there is simply no claim that a violation of equal protection, Human Rights Law, and/or Title II of the Civil Rights Act can be asserted.

#### Point V

#### **Petitioners Have not Established Entitlement to the Drastic Remedy of Preliminary Injunctive Relief Against the Putnam County Defendants**

41. Preliminary injunctive relief is a drastic remedy that is not and should not be routinely or cavalierly granted. *Holden, supra*, 2021 N.Y. Slip Op. 31890, 12, *citing, Koultukis v. Phillips*, 285 A.D.2d 433, 435 (1<sup>st</sup> Dep’t 2001). Petitioners are only entitled to injunctive relief if they can show: (1) probability of success on the merits, (2) danger of irreparable injury in the absence of an injunction, and (3) a balance of equities in their favor. *Id., citing Aetna Ins. Co. v. Capasso*, 75 N.Y.2d 860, 862 (1990). Further, this extraordinary should only be granted if a clear right to relief under the law and undisputed facts has been shown in the moving papers. *Id., citing, Koultukis, supra*, 285 A.D.2d 433.

42. Despite Petitioners' optimistic assertions, for all the foregoing reasons set forth in Points I-IV above, there is a negligible probability of success on the merits against the Putnam County Defendants. The action likely should be dismissed for nonjoinder of the United States and must be dismissed if the United States does not consent to this action. This action also unlawfully infringes on the sovereign powers of local county governments. Additionally, Petitioners lack standing to assert violations of equal protection, Human Rights Law, and/or Title II of the Civil Rights Act as they are not themselves an injured party. As such, Petitioners cannot establish the first prong of entitlement to injunctive relief.

43. There is no danger of irreparable injury at all in the absence of an injunction against Putnam County. Under the terms of the Putnam County Executive Order, if New York County wished to place people seeking asylum in Putnam County it need only contact Putnam County, determine that there is a facility and sufficient resources available, and if both parties agree, enter into a shared-services agreement setting forth the terms of shared responsibility and care between the counties for the people being placed in Putnam County. Further, since no asylum-seekers have been placed in Putnam County or prevented from placement in Putnam County, to date, any argued injury would be pure speculation. For these reasons, Petitioners cannot satisfy the second prong of entitlement to injunctive relief.

44. When considering the balancing of the equities, the parties most impacted by the granting of a preliminary injunction are the defendant counties. Putnam County and County Executive Kevin M. Byrne acted in earnest to apprise their constituents and the rest of the state of the reality of Putnam County's housing shortage and limited resources. Despite these shortcomings, the Putnam County Defendants, nonetheless, ensured that to the extent that they were able to assist New York County, they would do so, as long as a written shared-responsibility

agreement assured both parties that the people in need would truly have all the care and resources they require, and because the agreement is obtained in advance of placement it will avoid any potential for undue hardship or exhaustion of Putnam County resources necessary to serve its residents. In light of the already fair and balanced position that the Putnam County Defendants have taken, the equities surely favor Putnam County on this score. *See, e.g., Urban Archaeology v. Dencorp*, 12 A.D.3d 96 (1<sup>st</sup> Dep't 2004). Thus, Petitioners cannot satisfy the third and final prong of entitlement to injunctive relief.

45. Beyond that, due to the cumulative weight of these deficiencies, Petitioners simply have not established a *prima facie* case for any of their causes of action, and instead attempt to mislead this Court arguing that on the one hand for their purposes this is indeed a “humanitarian crisis of statewide concern,” [Verified Petition, p. 14 ¶84], just not for Defendants’ purposes under the Executive Law, where Petitioners speciously claim that Defendants “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.” Verified Petition, p. 33, ¶137-138. Doublespeak of this nature has no place in a Court of law. Indeed, human beings that the United States and New York City governmental authorities have seen fit to traffic around the Country and across the state without any guarantee of long-term funding, housing, or infrastructure to support them is indeed an emergency, and a disastrous and catastrophic failure of government, and would indeed implicate Executive Law §24. *See, e.g. Generoso v. Adams*, 74 Misc. 3d 760 (Sup. Ct. Kings Co. 2022).

46. For these reasons, Petitioners’ application for a preliminary injunction should be denied.

## Point VI

### **Petitioner has not Established a Right to the Extraordinary Remedy of Prohibition pursuant to CPLR Article 78**

47. In the instant matter, Petitioners' pleadings are deficient for any form of relief under CPLR Article 78, and certainly not sufficient to establish entitlement to a *writ of prohibition*. Prohibition will only lie where there has been action clearly in excess of authorized powers. *Matter for Dentes v. Friedlander*, 167 A.D.2d 757 (3d Dep't 1990).

48. The extraordinary writ of prohibition is restricted first by statute to addressing whether a body or officer proceeded, is proceeding, or is threatening to proceed either without or in excess of its jurisdiction or in excess of its authorized powers in a proceeding over which it has jurisdiction. *Levine v. McDonald*, 2014 N.Y. Slip Op. 30649, 4-5 (Sup. Ct. Albany Co. 2014), citing, CPLR 7803(2); *Matter of Town of Huntington v New York State Div. of Human Rights*, 82 N.Y.2d 783, 786 (1993); *Matter of Holtzman v. Goldman*, 71 N.Y.2d 564, 569 (1988); *Matter of Niagara Frontier Transp. Authority v. Nevins*, 295 AD2d 887, 887 (4th Dep't 2002). Petitions for a writ of prohibition are further restricted by precedent to very limited instances when the respondent is acting in a judicial or quasi-judicial capacity. *Id.*, citing, *Matter of Garner v New York State Dept., of Correctional Services*, 10 N.Y.3d 358, 361 (2008); *Matter of McGinley v. Hynes*, 51 NY2d 116 (1980).

49. Thus, to meet even the minimum requirements, petitioners seeking a *writ of prohibition* have the burden of demonstrating that: (1) a body or officer is acting in a judicial or quasi-judicial capacity, (2) the body or officer is proceeding or threatening to proceed in excess of its jurisdiction, and (3) petitioner has a clear legal right to the relief requested. *Id.*, citing, *Matter of Garner v New York State Dept., of Correctional Services*, 10 NY3d 358, 361 (2008).



50. All told, Petitioner failed to make any showing at all except to reference their showing for a preliminary injunction and summarily claim they are entitled to relief based on their pleaded causes of action, which inexplicably reference §7801 the “Nature of Proceeding,” section rather than identifying a *writ* sought, and pleading the elements necessary for relief. However, reading this in context and noting their references to purported actions alleged to have been in excess of authority, the Putnam County Defendants have construed Petitioners’ request for remedy pursuant to Article 78 to sound in prohibition, and because it cannot establish and did not plead any of the required elements, this claim fails.

#### **Point VII**

#### **As Putnam County has no Concurrent Lawsuit Filed, the Putnam County Defendants Defer to Counties Justiciable Standing to Address the Issue of Consolidation**

51. The Putnam County Defendants defer to Counties with justiciable standing to address the issue of Consolidation.

### Conclusion

For all the foregoing reasons, a stay pursuant to CPLR §2201 should be granted pending the determination of Putnam County Defendants' Cross-Motion for Joinder of the United States, the Cross-Motion should be granted and the Verified Petition pending against Putnam County and Kevin M. Byrne, County Executive of Putnam County should be dismissed. And this Court should grant any other such relief that it believes just and proper.

Dated: 6/26/2023

Beacon, New York

Respectfully submitted,



Heather M. Abissi  
ABISSI LAW PLLC  
6 Eliza Street  
c/o The Beahive  
Beacon, NY 12508  
[heather@abissilaw.com](mailto:heather@abissilaw.com)  
847-372-7726 (cell)

*Of Counsel to and for Defendants  
Putnam County &  
Kevin M. Byrne, Putnam County Executive*

TO: *All participating parties via NYSCEF*

TO: Civil Process Clerk  
United States Attorney's Office  
86 Chambers Street  
3<sup>rd</sup> Floor  
New York, NY 10007  
*Via Registered U.S. Postal Overnight Mail*

U.S. Attorney General  
950 Pennsylvania Avenue, NW  
Washington, D.C. 20530  
*Via Registered U.S. Postal Overnight Mail*

Assistant Attorney General for Administration  
U.S. Department of Justice  
Justice Management Division  
950 Pennsylvania Avenue, NW  
Room 1111  
Washington, D.C. 20530  
*Via Registered U.S. Postal Overnight Mail*

U.S. Department of Homeland Security  
Office of General Counsel  
2707 Martin Luther King Jr. Avenue SE  
Washington, D.C. 20528-0485  
*Via Registered U.S. Postal Overnight Mail and email [OGC@hq.dhs.gov](mailto:OGC@hq.dhs.gov)*

U.S. Customs and Border Protection  
Office of the Chief Counsel  
1300 Pennsylvania Avenue  
Suite 4.4-B  
Washington, D.C. 20229  
*Via Registered U.S. Postal Overnight Mail and email [CBP-Service-Intake@cbp.dhs.gov](mailto:CBP-Service-Intake@cbp.dhs.gov)*

United States Immigration & Customs Enforcement  
Office of the Principal Legal Advisor  
500 12<sup>th</sup> Street SW  
Mail Stop 5900  
Washington D.C. 20536-5900

Federal Emergency Management Agency  
Office of the Chief Counsel  
500 C Street SW  
Washington, D.C. 20472  
*Via Registered U.S. Postal Overnight Mail and email [FEMA-ActionOffice-OCC@fema.dhs.gov](mailto:FEMA-ActionOffice-OCC@fema.dhs.gov)*

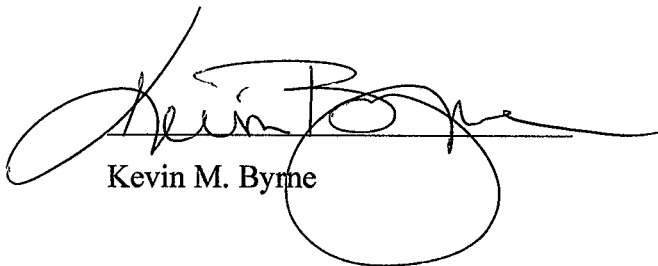
**VERIFICATION**

I, **KEVIN M. BYRNE**, County Executive of Putnam County, being duly sworn, depose and say the following under penalty of perjury:

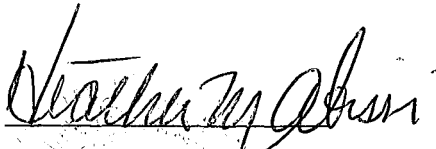
I, in my Official Capacity as the County Executive of Putnam County, am a Defendant in the instant action, and am additionally, through Counsel, making a Cross-Motion before this Court. I have read the Notice of Motion, accompanying affirmation, Exhibit A, the Affidavit of Michael Piazza, and Exhibit B, the Putnam County Executive Order at issue, Exhibit C, the Affidavit of Shawn Rogan, and am fully familiar with their contents. The motion and affirmation of Heather M. Abissi, and accompanying Exhibits being filed with this Honorable Court, are also my application to this Court.

I further verify that all the facts provided therein are true and accurate to the best of my knowledge, except for those alleged upon information and belief, which I believe to be true.

Date: 6/26/23

  
Kevin M. Byrne

Sworn to before me this  
26<sup>th</sup> Day of June, 2023

  
Notary Public

**HEATHER M. ABISSI**  
Notary Public - State of New York  
No. 02AB6404425  
Qualified in Dutchess County  
My Commission Expires Feb. 18, 2024

# **EXHIBIT A**

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

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,

**AFFIDAVIT**

Index No. 451368/2023  
(Frank, J., *presiding*)

Petitioners-Plaintiffs,

-against-

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. NEUAUS, 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 MOLE, 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, 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  
Declaratory Judgment under Article 30 of the Civil  
Practice Law and Rules

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STATE OF NEW YORK )

SS: )

COUNTY OF NEW YORK )

**AFFIDAVIT OF MICHAEL PIAZZA**

MICHAEL PIAZZA, being duly sworn, deposes and says the following under penalty of perjury:

1. I am Michael Piazza, Commissioner of the Putnam County Departments of Mental Health, Social Services, and Youth Bureau.
2. I am familiar with the facts of the above-captioned case and submit this affidavit in support of the Cross-Motion being brought by the Putnam County Defendants, and in Opposition to Petitioner-Plaintiffs Verified Article 78 Petition, Article 30 Application for Declaratory Judgment, and request for a preliminary injunction.
3. As part of the responsibilities of my position I am tasked with overseeing the emergency housing process for anyone in need of emergency transitional housing through the Department of Social Services.
4. There are other agencies and/or not-for-profits which are also responsible for assisting with emergency and /or transitional housing that are not within the jurisdiction of the Department of Social Services.
5. As such, there is a shortage of available emergency housing options in Putnam County.



6. There are exactly 185 Rooms available in Putnam County, which are divided across 6 motels/hotels:

- a) Bel Aire Motor Lodge – 1574 Route 22, Brewster, NY 12508
- b) Henry Van Motel – 40 Sodom Road, Brewster, NY 10509
- c) Comfort Inn – 7-11 Peach Law Road, Brewster, NY 10509
- d) Heidi's Inn – 1270 NY-22, Brewster, NY 10509
- e) Country Side Motel – 3577 Route 9, Cold Spring, NY 10516
- f) Budget Motor Inn – 215 US-6, Mahopac, NY 10541

7. Unfortunately, there is no unified electronic reporting system in Putnam County wherein the various agencies, not-for-profits, and/or departments can share reporting information for where individuals are housed.

8. There are also people with low incomes who reside in these motels as a form of affordable housing, which are realities that bear on housing availability, but I do not have statistics to provide this Court with an accounting of how many such persons there are. And there are persons who use the motel while in transit.

9. As a result, I can only comment on vacancies at the time of my staff's calls to inquire between June 11<sup>th</sup>, 2023, and on June 25<sup>th</sup>, 2023, and as to the people the Department of Social Services currently has housed.

10. As of June 25<sup>th</sup>, 2023, of the 185 motel rooms available in the County 80% were occupied. Meaning a total availability of 40 empty rooms.

11. Currently, the Department of Social Services has one (1) sex offender on probation supervision placed in this transitional housing and three (3) evicted, now homeless, people.

12. Despite what may facially appear to be comparatively low numbers of transitional need, there are only 40 out of 185 total rooms vacant.

13. This demonstrates how many of the other categories of people in transitional housing, whether self-paid by low-income County residents, private agencies, or not-for-profits. Private businesses that house transient workers, and regular travelers or any other purposes that individuals and families are making use of these facilities.

14. Upon information and belief, the source of which is my knowledge of the asylum seeker placement issue and my reports to County Government, it is due to this housing and resources shortage that the Putnam County Executive Orders (Annexed as Exhibit B) sought to ensure the responsible acquisition of social services to asylum seekers or other people of transitional immigration status in this Country, by requiring clear, continuous, and ultimately written communication between Putnam County and New York County (or any other County seeking such placement in Putnam).

15. This ensures first, that there is confirmed housing available.

16. Second, the two Counties would review all of the services the individuals require to ensure that Putnam County had the necessary resources.

17. Finally, the Counties would reach a shared services agreement ensuring unequivocal clarity as to which County was providing which services, and which County would cover each expense.

18. Shared services agreements of this nature prevent gaps in services through oversights, avoid controversy between Counties, and ensure that asylum seekers already dealing with the trauma of moving through the challenging process of seeking asylum have a smooth transition to their new temporary housing where they feel safe, welcome, and have their needs provided for.

19. To date, to my knowledge, New York County has attempted to place such asylum seekers in Putnam County without going through official channels. This information was reported to the Department of Social Services by the motel/ hotel owner who reported to the Department that he had refused the request. At no time was the County of Putnam notified of this request by New York County.

20. Nor, to date, has Putnam County ever outright refused placement of any asylum seeker in their County.

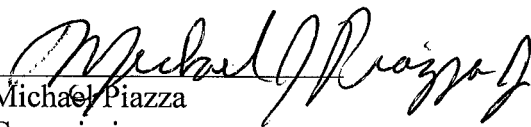
21. Nor has Putnam ever refused services to any such asylum seekers at any time to date.

22. Should this Court have additional questions upon reading this affidavit, I stand ready to assist this Court in any and all respects to ensure that this Court has the information it requires to reach a decision in this matter.

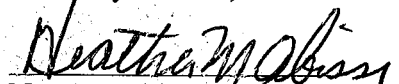
23. Should this Court need to reach me, my business contact information is as follows:

- a. Michael Piazza  
Commissioner  
Putnam County Departments of  
Mental Health,  
Social Services, &  
Youth Bureau  
110 Old Route 6  
Carmel, NY 10512  
845-808-1500 x45201  
[Michael.PiazzaJr@dfa.state.ny.us](mailto:Michael.PiazzaJr@dfa.state.ny.us)

Date: 6/26/23

  
Michael Piazza  
Commissioner

Sworn to before me this  
26<sup>th</sup> Day of June, 2023

  
Notary Public

**WEATHER M. ABISSI**  
Notary Public - State of New York  
No. 02466404425  
Qualified in Dutchess County  
My Commission Expires Feb. 18, 2024

# **EXHIBIT B**



PUTNAM COUNTY EXECUTIVE | KEVIN M. BYRNE

## PUTNAM COUNTY STATE OF EMERGENCY DECLARATION

&

## CORRESPONDING EXECUTIVE ORDERS INCLUDING DECLARATION OF PUTNAM COUNTY AS A RULE OF LAW COUNTY

**WHEREAS**, there is currently a national immigration crisis at the border between the United States and Mexico in that unprecedented and overwhelming numbers of migrants and/or asylum seekers are now or will be crossing over the open border of the United States; and

**WHEREAS**, the federal government has failed, refused or neglected to anticipate and satisfactorily react to the exigent and emergent circumstances, resulting in thousands of undocumented migrants and/or asylum seekers crossing the border of the United States; and

**WHEREAS**, due to the failure of the federal government to provide the resources required to enforce our nation's laws, the Governor of Texas, Greg Abbott, has relocated thousands of migrants and/or asylum seekers crossing the Texas border to New York City.

**WHEREAS**, the Mayor of New York City, Eric Adams has in similar fashion appeared to have now sent the same migrants and/or asylum seekers to counties throughout the greater Hudson Valley area as well as upstate New York; and

**WHEREAS**, the City of New York has long declared itself a 'sanctuary city', and has thereby condoned the shielding of certain criminal undocumented or illegal migrants from Immigration Customs Enforcement (ICE) in order to delay or prevent deportation proceedings, but in doing so has also failed and refused to adequately address the

needs of such lawful migrants and/or asylum seekers transferred to New York City, even though New York City was appropriated \$1 billion in the recently passed New York State budget, and has instead transferred, in part, said duties and responsibilities to neighboring counties, including Rockland and Orange Counties, which upon information and belief may expand to additional counties, including Putnam County; and

**WHEREAS**, the City of New York is advertising and printing brochures for migrants and/or asylum seekers promoting long-term housing solutions in the Hudson Valley for at least four months, and which is believed will be longer, if not permanent; and

**WHEREAS**, according to the promotional brochures provided by New York City, that migrants and/or asylum seekers shall in addition to shelter also receive medical care, food, laundry and other necessities, only initially and possibly partially to be funded by the City of New York with no explanation of where such funding will come from thereafter; and

**WHEREAS**, Mayor Adams has already represented to officials of neighboring counties, specifically Orange and Rockland Counties, that a limited number of adult male migrant and/or asylum seekers will be transported to their counties. However, they have since learned that the Adams' administration has also sought to house additional hundreds of migrants and/or asylum seekers at additional locations without notifying or conferring with county officials and as a result they can no longer rely on the representations of New York City officials; and

**WHEREAS**, there is no reason to believe these migrants and/or asylum seekers will leave the County of placement after New York City ceases to pay for the housing and any other necessary services they are presently receiving in and from New York City, or that many thousands more migrants and/or asylum seekers that follow will not be similarly transported to Putnam County as they have been to neighboring jurisdictions; and

**WHEREAS**, Putnam County is already a diverse County that serves people of many backgrounds, cultures and identities; and

**WHEREAS**, there is a justifiable and reasonable apprehension of immediate danger of public emergency of potentially thousands of persons being transported to Putnam County and that Putnam County will then be responsible for the public safety and sustenance of these persons and all others effected in Putnam County;

**WHEREAS**, there are significant concerns regarding migrant and /or asylum seekers not being properly screened or vaccinated against communicable diseases, including but not limited to tuberculosis, in New York City prior to transport to Putnam County and neighboring jurisdictions which presents additional Public Health concern; and

**WHEREAS**, Putnam County, unlike the City of New York, is unable to rely on a full-time career municipal emergency services system, nor does it have the financial resources to support such a system, and continues to rely predominantly on volunteer fire and ambulance agencies which an influx of unaccounted migrants would almost certainly stress beyond existing capabilities; and

**WHEREAS**, the County of Putnam has received no information or assurances of proper vetting through background checks or commitments by the federal government that these individuals will be regularly observed; and

**WHEREAS**, it is also reasonably anticipated that New York City hereafter will transport additional migrants to Putnam County, whose presence likely will exponentially spike the number of people in need of government services at all levels of government in the County; and

**WHEREAS**, there is no legal basis to provide adequate services to these migrants or asylum seekers by the County's Department of Social Services due to their age, immigration status and other factors; and

**WHEREAS**, the County of Putnam anticipates potential demonstrations on this issue both for and against the transportation of migrants/asylum seekers to Putnam which may result in overburdening the taxing of law enforcement resources; and

**WHEREAS**, local zoning codes do not allow use of temporary residence hotels or other temporary residence facilities for use as long-term residential housing or homeless shelters and therefore New York City's transportation of migrants and/or asylum seekers to Putnam County for that purpose is illegal and in violation of local laws; and

**WHEREAS**, through enforcement of local zoning codes, said migrants and/or asylum seekers will face refusal, or eviction from these unlawful residences and short-term residential facilities, resulting in large scale homelessness for these migrants and/or asylum seekers which will only serve to exacerbate the existing problems brought on by this failure to anticipate their future needs and tax County resources; and

**WHEREAS**, with limited temporary housing shelter beds in Putnam County to begin with, all temporary housing shelter beds in Putnam County are currently at or close to maximum capacity and cannot accommodate additional homeless individuals much less in the volume that is anticipated as a result of the City of New York's transferring its duties in this regard to Putnam County; and

**WHEREAS**, providing temporary housing shelter beds by utilizing the limited number of hotels currently located in Putnam County, in addition to creating the potential for building and fire-safety violations, is in contravention of New York Public Health Law and the Putnam County Sanitary Code; and

**WHEREAS**, the US Centers for Disease Control and Prevention previously issued a public health order aimed to stop the spread of COVID-19 known as Title 42 which allowed authorities to swiftly expel migrants at United States land borders and have them returned to their respective home countries; and

**WHEREAS**, Title 42, which federal officials have relied on in order to manage a spiraling and exacerbating situation at the border, expired on May 11, 2023; and

**WHEREAS**, lifting Title 42 is anticipated to spur a significant increase in the number of migrants attempting to cross into the United States; and

**WHEREAS**, without Title 42 in place, federal immigration authorities will return to outdated protocols at a time wherein there is expected to be unprecedented mass migration that impacts the United States borders; and

**WHEREAS**, that due to the above circumstances, I find reasonable apprehension of immediate danger thereof in that public safety is jeopardized thereby, for not only the migrants and/or asylum seekers, but also to the many affected residents of Putnam County and their families; and

**WHEREAS**, the County of Putnam and its various municipalities impacted by the decision of Mayor Adams must be reimbursed by New York City for any expenses incurred as a result of New York City's program to move migrants and/or asylum seekers to Putnam County; and

**WHEREAS**, New York City has no shared service agreement with Putnam County to provide additional housing for the migrants and/or asylum seekers being transported at Mayor Adams' direction; and

**WHEREAS**, there have already been declared state of emergencies in nearby and overlapping jurisdictions including the state of New York by Governor Hochul (effective May 9, 2023), Rockland County by County Executive Ed Day (effective May 6, 2023), and Orange County by County Executive Steve Neuhaus (effective May 9, 2023), Dutchess County by County Executive William F.X. O'Neil (effective May 19, 2023) as well as new emergency local legislation enacted within the Town of Fishkill as authorized by Supervisor Ozzy Albra (effective May 12, 2023); and

**WHEREAS**, many of the aforementioned concerns enumerated in this declaration were already shared directly with Mayor Adams in written correspondence from the Putnam County Executive dated May 11, 2023.

**THEREFORE**, I, Kevin M. Byrne, as Chief Executive Officer of the County of Putnam, New York hereby exercise the authority granted to me under New York State Executive Law, Chapter 18, Article 2-B, §24 to preserve the public safety, and to make available and provide for all required assistance which is vital to the security, well-being, and health of the citizens of this county by declaring a State of Emergency.



**RESOLVED**, I declare, in order to protect life and property, or to bring the emergency situation under control, and to ensure compliance with New York Public Health Law and Putnam County Sanitary Code, a State of Emergency in the County of Putnam and make the following **ORDERS**:

**EXECUTIVE ORDER 1**

**THEREFORE**, I, Kevin M. Byrne, as Chief Executive Officer of the County of Putnam, New York hereby exercise the authority granted to me under New York State Executive Law, Chapter 18, Article 2-B, §24 to preserve the public safety, and I direct that all hotels, motels and/or any facilities allowing short-term rentals do not accept said migrants and/or asylum seekers for housing in what would effectively be homeless shelters within Putnam County absent a proper shared services agreement between New York City and Putnam County to provide said services.

**I FURTHER FIND** that this State of Emergency and Executive Order does not in any way impact travel or County employees or County operations, is not weather related, and does not suspend County operations. This Executive Order and all portions thereof shall take effect immediately, be filed and published as required by law, and individually expire as required by law. This local state of Emergency shall be effective as of May 22, 2023 and shall remain in effect for thirty (30) days and may be extended at that time.

**EXECUTIVE ORDER 2**

**THEREFORE**, I, Kevin M. Byrne, as Chief Executive Officer of the County of Putnam, New York, may use any and all facilities, equipment, supplies, personnel and other resources – including but not limited to town, and village law enforcement, building code enforcement officers, fire departments, public health inspectors and zoning code enforcement personnel – in order to effectuate the County Executive's Executive Order declaring a State of Emergency and any Emergency Order attendant thereto, and to take whatever steps are necessary in order to protect life, property and public infrastructure, to enforce State and County and local codes, laws and regulations, and to provide such emergency assistance as deemed necessary.

**I FURTHER FIND** that this State of Emergency and Executive Order does not in any way impact travel or County employees or County operations, is not weather related, and does not suspend County operations. This Executive Order and all portions thereof shall take effect immediately, be filed and published as required by law, and individually expire as required by law. This local state of Emergency shall be effective as of May 22, 2023 and shall remain in effect for thirty (30) days and may be extended at that time.

### **EXECUTIVE ORDER 3**

**WHEREAS**, the federal government under the provisions of the Immigration and Nationality Act as codified in the United States Code (U.S.C.) is responsible for the establishment and enforcement of the laws of the United States of America as they pertain to legal immigration; and

**WHEREAS**, the authority for enforcement of the Immigration and Nationality Act and the U.S.C. is vested with the federal government, and it is the responsibility of all levels of government to fully support the federal government in the exercise of its obligations under the law pertaining to immigration; and

**WHEREAS**, the level of immigration enforcement by the federal government has been inadequate in preventing millions of persons from illegally entering the United States without complying with the laws of our nation; and

**WHEREAS**, Putnam County will continue to work with the County Sheriff's Department and Immigration Customs Enforcement (ICE) to properly identify arrested felons and gang-associated members who are suspected violators of federal immigration laws; and,

**WHEREAS**, Putnam County continues to support our nation's governing document, the United States Constitution, in its current form including, but not limited to, the 4<sup>th</sup>, 5<sup>th</sup>, and 14<sup>th</sup> Amendments as they pertain to an individual's right to privacy and due process, and thereby continues to support fair, equal, and just application of the law free of discrimination; and

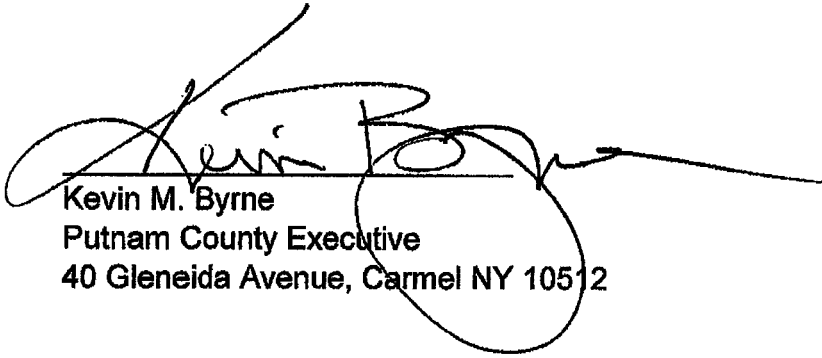
**THEREFORE**, County Executive Kevin M. Byrne, on behalf of the County of Putnam, does:

1. hereby pledge support of federal immigration enforcement efforts within the scope of local authority in accordance with the county charter, state, and US Constitutions.
2. hereby declare that Putnam County is not a sanctuary county and is in fact a county committed to upholding the rule of law, including our nation's immigration laws, as a Rule of Law County.
3. hereby declare that Putnam County will remain dedicated with its personnel, policies, and resources to support adherence of the rule of law as applied to immigration enforcement for the greater good of all citizens and residents of Putnam County.

**I FURTHER FIND** that this State of Emergency and Executive Order does not in any way impact travel or County employees or County operations, is not weather related, and does not suspend County operations. This Executive Order and all portions

thereof shall take effect immediately, be filed and published as required by law, and individually expire as required by law. This local state of Emergency shall be effective as of May 22, 2023 and shall remain in effect for thirty (30) days and may be extended at that time.

DATED: 5/22/23



Kevin M. Byrne  
Putnam County Executive  
40 Gleneida Avenue, Carmel NY 10512

# **EXHIBIT C**

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

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,

**AFFIDAVIT**

Index No. 451368/2023

(Frank, J., *presiding*)

Petitioners-Plaintiffs,

-against-

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. NEUAUS, 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 MOLE, 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, 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  
Declaratory Judgment under Article 30 of the Civil  
Practice Law and Rules

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STATE OF NEW YORK )

SS: )

COUNTY OF NEW YORK )

**AFFIDAVIT OF SHAWN ROGAN**

SHAWN ROGAN, being duly sworn, deposes and says the following under penalty of  
perjury:

1. I am Shawn Rogan, the Director of Environmental Health Services at the Putnam County  
Department of Health.

2. I have worked for the Department of Health in various capacities for a total of  
approximately 27 years with Director of Environmental Health Services being my current role  
and title.

3. I am familiar with the facts of the above-captioned case and submit this affidavit in  
support of the Cross-Motion being brought by the Putnam County Defendants, and in Opposition  
to Petitioner-Plaintiffs Verified Article 78 Petition, Article 30 Application for Declaratory  
Judgment, and request for a preliminary injunction.

4. One of the many functions of my role is participation in the Putnam County Temporary  
Residence Program, which requires me to be in communication with Hotels/Motels within the  
community for the purpose of ensuring compliance with New York State Sanitary Code.

5. On or about May 15, 2023, the County Executive for Putnam County drafted a letter to  
the hotels/motels in our community, identifying me as a contact, and asking that they please

contact me should they be contacted by anyone from NYC seeking temporary housing because due to Putnam County's limited resources, any such plans would require a shared services agreement.

6. Indeed, one such hotel/motel notified that they had been contacted by a third-party business that represented that they were calling on behalf of NYC, and that they were seeking to rent/acquire the entirety of the hotel/motel for a contract period of between 6 months to 5 years at a rate of \$130 dollars per night per room.

7. The hotel/motel explained that they were already almost at capacity and were not interested in this proposition.

8. Putnam County was never contacted regarding this proposition.

9. To date, Putnam County has not received any formal request for placement of any asylum seekers in our County, nor has Putnam County denied or prevented any such request.

10. During my time at the Health Department, and specifically in my current role, I have had personal occasion to observe the lengths to which Putnam County goes to ensure that facilities maintain healthy and sanitary living conditions for patrons.

11. Putnam County's ability to continue doing that depends on measures consistent with responsible government, such as shared services agreements with any other County that wishes to place people seeking asylum in our County.

12. By doing so, both Counties ensure that their roles, responsibilities, and contributions are clearly defined, that all of the people being placed are accounted for, and have all of their needs provided for.

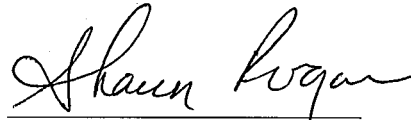
13. Should this Court need to reach me, my business contact information is as follows:

- a. Shawn Rogan  
Director of Environmental Health Services

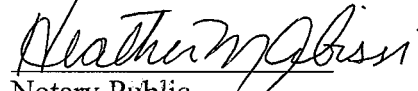


Putnam County Department of Health  
1 Geneva Road  
Brewster, NY 10509  
(845) 808-1390  
[Shawn.Rogan@putnamcountyny.gov](mailto:Shawn.Rogan@putnamcountyny.gov)

Date: 6/26/2023

  
Shawn Rogan  
Director

Sworn to before me this  
26<sup>th</sup> Day of June, 2023

  
Notary Public

**HEATHER M. ABISSI**  
Notary Public - State of New York  
No. 02AB6404425  
Qualified in Dutchess County  
My Commission Expires Feb. 18, 2024