

**City of New York v County of Rockland**

2023 NY Slip Op 32550(U)

July 25, 2023

Supreme Court, New York County

Docket Number: Index No. 451368/2023

Judge: Lyle E. Frank

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This opinion is uncorrected and not selected for official publication.

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

**PRESENT: HON. LYLE E. FRANK PART 11M**

*Justice*

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THE CITY OF NEW YORK, MOLLY WASOW PARK,

Petitioner,

INDEX NO. 451368/2023

MOTION DATE 07/18/2023

MOTION SEQ. NO. 016

- v -

COUNTY OF ROCKLAND, NEW YORK, EDWIN J. DAY,  
COUNTY OF ORANGE, NEW YORK, STEVEN M.  
NEUHAUS, COUNTY OF DUTCHESS, NEW YORK,  
WILLIAM F.X. ONEIL, COUNTY OF ONONDAGA, NEW  
YORK, J RYAN MCMAHON, COUNTY OF BROOME, NEW  
YORK, JASON T. GARNAR, COUNTY OF CAYUGA, NEW  
YORK, DAVID S. GOULD, COUNTY OF CHAUTAUQUA,  
NEW YORK, PAUL M. WENDEL, COUNTY OF CHEMUNG,  
NEW YORK, CHRISTOPHER J. MOSS, COUNTY OF  
CORTLAND, NEW YORK, KEVIN J. FITCH, COUNTY OF  
DELAWARE, NEW YORK, TINA MOLE, COUNTY OF  
FULTON, NEW YORK, SCOTT HORTON, COUNTY OF  
GENESEE, NEW YORK, L MATTHEW LANDERS,  
COUNTY OF GREENE, NEW YORK, PATRICK S. LINGER,  
COUNTY OF HERKIMER, NEW YORK, VINCENT J. BONO,  
COUNTY OF MADISON, NEW YORK, JOHN M. BECKER,  
COUNTY OF NIAGARA, NEW YORK, REBECCA  
WYDYSH, COUNTY OF ONEIDA, NEW YORK, ANTHONY  
J. PICENTE, COUNTY OF ORLEANS, NEW YORK, LYNNE  
M. JOHNSON M. JOHNSON, COUNTY OF OSWEGO,  
NEW YORK, JAMES WEATHERUP, COUNTY OF  
OTSEGO, NEW YORK, DAVID BLISS, COUNTY OF  
PUTNAM, NEW YORK, KEVIN M. BYRNE, COUNTY OF  
RENSSELAER, NEW YORK, STEVEN F. MCLAUGHLIN,  
TOWN OF RIVERHEAD, NEW YORK, YVETTE M.  
AGUIAR, COUNTY OF SARATOGA, NEW YORK,  
THEODORE T. KUSNIERZ, COUNTY OF SCHOHARIE,  
NEW YORK, WILLIAM A. FEDERICE, COUNTY OF  
SCHUYLER, NEW YORK, CARL H. BLOWERS, COUNTY  
OF SUFFOLK, NEW YORK, STEVEN BELLONE, COUNTY  
OF SULLIVAN, NEW YORK, JOSHUA A. POTOSEK,  
COUNTY OF TIOGA, NEW YORK, MARTHA C.  
SAUERBREY, COUNTY OF WARREN, NEW YORK, KEVIN  
B. GERAGHTY, COUNTY OF WYOMING, NEW YORK,  
REBECCA J. RYAN, JOHN OR JANE DOE COUNTIES,  
JOHN OR JANE DOE,

**DECISION + ORDER ON  
MOTION**

Respondent.

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The following e-filed documents, listed by NYSCEF document number (Motion 016) 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 515, 516, 517, 518, 519, 520, 521, 522

were read on this motion to/for

CHANGE VENUE.

The instant action arises out of petitioners', The City of New York and Molly Wasow Park, in her official capacity as Commissioner of the New York City Department of Social Services (collectively "the City") challenge to respondents' Executive Orders with respect to petitioners' attempt to relocate migrants to the respective counties and towns<sup>1</sup>. Respondents County of Dutchess, New York, and William F.X. O'Neil, in his official capacity as Acting County Executive of Dutchess County; County of Broome, New York, and Jason T. Garnar, in his official capacity as County Executive of Broome County; County of Cayuga, New York, and David S. Gould, in his official capacity as Legislature Chairman of Cayuga County; County of Chautauqua, New York, and Paul M. Wendel, JR. in his official capacity as County Executive of Chautauqua County; County of Chemung, New York, and Christopher J. Moss, in his official capacity as County Executive of Chemung County; County of Delaware, New York, and Tina Molé, in her official capacity as Chair of the Board of Supervisors of Delaware County; County of Fulton, New York, and Scott Horton, in his official capacity as Chairman of the Board of Supervisors of Fulton County; County of Genesee, New York, and L. Matthew Landers, in his official capacity as County Manager of Genesee County; County of Greene, New York, and Patrick S. Linger, in his official capacity as Legislature Chair of Greene County; County of Herkimer, New York, and Vincent J. Bono, in his official capacity as Legislature chair of Herkimer County; County of Orleans, New York, and Lynn M. Johnson, in her official capacity

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<sup>1</sup> There are multiple motions to sever, change venue and dismiss. For the sake of clarity, the Court will address each application separately and individual decisions and orders will be issued.

as Chair of the County Legislature of Orleans County; County of Otsego, New York, and David Bliss, in his official capacity as Chairman of the Board of Representatives of Otsego County; County of Rensselaer, New York, and Steven F. McLaughlin, in his official capacity as County Executive of Rensselaer County; County of Schoharie, New York, and William A. Federice, in his official capacity as Chairman of the Board of Supervisors of Schoharie County; County of Sullivan, New York, and Joshua A. Potosek, in his official capacity as County Manager of Sullivan County; County of Tioga, New York, and Martha C. Sauerbrey, in her official capacity as Chairwoman of the County Legislature of Tioga County; County of Wyoming, New York, and Rebecca J. Ryan, in her official capacity as Chairwoman of the Board of Supervisors of Wyoming County, move to sever and change venue. The City opposes the instant motion and cross-motion. There are 17 county respondents-movants, the Court will address similarly situated respondents in turn<sup>2</sup>.

*Expired Executive/Emergency Orders*

It is undisputed that the respondent counties Broome, Cayuga, Chautauqua, Chemung, Herkimer, Orleans, Otsego and Sullivan have Executive or Emergency Orders that expired prior to the filing of the underlying action. As the petition filed in this instant matter seeks to enjoin and nullify EOs that prohibit the City from housing migrants within its borders and it is undisputed here, that no such EO is valid in the respondent counties of Broome, Cayuga, Chautauqua, Chemung, Herkimer, Orleans, Otsego and Sullivan, the Court finds that there is no justiciable controversy. Accordingly, the petition is dismissed as against these respondent counties only.

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<sup>2</sup> Although the notice of motion to sever and change venue was filed under motion sequence 016, the Court referenced documents filed under motion sequence 001, the opposition and cross-motion of the underlying petition filed by the respondents. Those documents have been listed above.

Venue

The remaining moving respondents contend that pursuant to CPLR § 504 and CPLR § 506(b) the instant action must be severed and transferred to their respective counties absent compelling circumstances. In opposition, the City contends that it will serve judicial economy and convenience for itself to maintain the action in New York County. In support of its contention that venue is appropriate in this Court, is the repeated assertion that the material events giving rise to the instant litigation occurred and is occurring in New York County.

The Court does not find the City's arguments persuasive. First, the material events giving rise to the litigation is not the influx of migrants arriving in New York City, the material events that give rise to this instant litigation are the issuance and enforcement of the Executive Orders issued by respondents. Moreover, the Court finds that the City has failed to establish any compelling circumstances as to warrant that venue remain in New York County in violation of the applicable statutes that mandate the judicial proceeding or action against a county to be in said county or in the "judicial district where the respondent made the determination complained of." CPLR §§ 504, 506(b). Accordingly, it is hereby

ORDERED that the petition is dismissed as against County of Broome, New York, and Jason T. Garnar, in his official capacity as County Executive of Broome County; County of Cayuga, New York, and David S. Gould, in his official capacity as Legislature Chairman of Cayuga County; County of Chautauqua, New York, and Paul M. Wendel, JR. in his official capacity as County Executive of Chautauqua County; County of Chemung, New York, and Christopher J. Moss, in his official capacity as County Executive of Chemung County; County of Herkimer, New York, and Vincent J. Bono, in his official capacity as Legislature chair of Herkimer County; County of Orleans, New York, and Lynn M. Johnson, in her official capacity

as Chair of the County Legislature of Orleans County; County of Otsego, New York, and David Bliss, in his official capacity as Chairman of the Board of Representatives of Otsego County; County of Sullivan, New York, and Joshua A. Potossek, in his official capacity as County Manager of Sullivan County; and it is further

ORDERED that the Clerk is directed to enter judgment in favor of the immediately preceding named respondents; and it is further

ORDERED that the motion for a change of venue and to sever is granted and venue of this action as against respondents, County of Dutchess, New York, and William F.X. O'Neil, in his official capacity as Acting County Executive of Dutchess County, is changed from this Court to the Supreme Court, County of Dutchess; and it is further

ORDERED that the motion for a change of venue and to sever is granted and venue of this action as against respondents, County of Delaware, New York, and Tina Molé, in her official capacity as Chair of the Board of Supervisors of Delaware County, is changed from this Court to the Supreme Court, County of Delaware; and it is further

ORDERED that the motion for a change of venue and to sever is granted and venue of this action as against respondents, County of Fulton, New York, and Scott Horton, in his official capacity as Chairman of the Board of Supervisors of Fulton County, is changed from this Court to the Supreme Court, County of Fulton; and it is further

ORDERED that the motion for a change of venue and to sever is granted and venue of this action as against respondents, County of Genesee, New York, and L. Matthew Landers, in his official capacity as County Manager of Genesee County, is changed from this Court to the Supreme Court, County of Genesee; and it is further

ORDERED that the motion for a change of venue and to sever is granted and venue of this action as against respondents, County of Greene, New York, and Patrick S. Linger, in his official capacity as Legislature Chair of Greene County, is changed from this Court to the Supreme Court, County of Greene; and it is further

ORDERED that the motion for a change of venue and to sever is granted and venue of this action as against respondents, County of Rensselaer, New York, and Steven F. McLaughlin, in his official capacity as County Executive of Rensselaer County, is changed from this Court to the Supreme Court, County of Rensselaer; and it is further

ORDERED that the motion for a change of venue and to sever is granted and venue of this action as against respondents, County of Schoharie, New York, and William A. Federice, in his official capacity as Chairman of the Board of Supervisors of Schoharie County, is changed from this Court to the Supreme Court, County of Schoharie; and it is further

ORDERED that the motion for a change of venue and to sever is granted and venue of this action as against respondents, County of Tioga, New York, and Martha C. Sauerbrey, in her official capacity as Chairwoman of the County Legislature of Tioga County, is changed from this Court to the Supreme Court, County of Tioga; and it is further

ORDERED that the motion for a change of venue and to sever is granted and venue of this action as against respondents, County of Wyoming, New York, and Rebecca J. Ryan, in her official capacity as Chairwoman of the Board of Supervisors of Wyoming County, is changed from this Court to the Supreme Court, County of Wyoming; and it is further

ORDERED that the action is severed and continued against the remaining respondents; and it is further

ORDERED that the caption be amended to reflect the severance and dismissal and that all future papers filed with the court bear the amended caption; and it is further

ORDERED that counsels for the moving parties shall serve a copy of this order with notice of entry upon the Clerk of the Court (60 Centre Street, Room 141B) and the Clerk of the General Clerk's Office (60 Centre Street, Room 119), who are directed to mark the court's records to reflect the change in the caption herein; and it is further

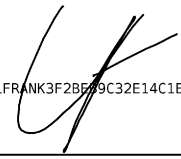
ORDERED that the Clerk of this Court shall transfer the file in this action to the Clerk of the Supreme Court, Counties of Dutchess, Delaware, Fulton, Genesee, Greene, Rensselaer, Schoharie, Tioga and Wyoming and shall mark his records to reflect such transfer; and it is further

ORDERED that, within 30 days from entry of this order, counsel for movant shall serve a copy of this order with notice of entry upon the Clerk of this Court, shall pay the appropriate transfer fee, if any, and shall contact the staff of the Clerk of this Court and cooperate in effectuating the transfer; and it is further

ORDERED that the Clerk of the Court shall coordinate the transfer of the file in this action with the Clerk of the Supreme Court, Dutchess County, Delaware County, Fulton County, Genesee County, Greene County, Rensselaer County, Schoharie County, Tioga County and Wyoming County, so as to ensure an efficient transfer and minimize insofar as practical the reproduction of documents, including with regard to any documents that may be in digital format; and it is further

ORDERED that such service upon the Clerk of the Court and the Clerk of the General Clerk's Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website at the address [www.nycourts.gov/supctmanh](http://www.nycourts.gov/supctmanh)).

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7/25/2023

DATE

LYLE E. FRANK, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE