

**Lopez v City of New York**

2025 NY Slip Op 33927(U)

October 10, 2025

Supreme Court, New York County

Docket Number: Index No. 654663/2024

Judge: Hasa A. Kingo

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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. HASA A. KINGO **PART** **05M**

*Justice*

-----X

MARIAH LOPEZ,

Plaintiff,

- v -

CITY OF NEW YORK, NEW YORK CITY DEPARTMENT  
OF HOMELESS SERVICES, NEW YORK CITY HUMAN  
RESOURCES ADMINISTRATION,

Defendant.

-----X

**INDEX NO.** 654663/2024

**MOTION DATE** N/A

**MOTION SEQ. NO.** 003

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 003) 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 57, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 86, 87, 88, 89, 97, 113, 114, 121, 127

were read on this motion for STAY.

Plaintiff Mariah Lopez (“Plaintiff”), proceeding *pro se*, moves by Order to Show Cause (“OSC”) dated July 1, 2025, seeking a temporary restraining order (“TRO”) and other relief preventing the City of New York (the “City”) and its agencies—the New York City Department of Homeless Services (“DHS”) and the New York City Human Resources Administration (“HRA”)—from transferring self-identified transgender and gender non-conforming (“TGNC”) individuals into a newly established TGNC-designated shelter (the “Shelter”) until the City demonstrates full compliance with certain provisions of the parties’ November 23, 2021 settlement agreement (the “Settlement”), specifically Paragraphs 14 and 15.

Plaintiff requests an order (i) enjoining transfers into the Shelter, (ii) requiring the City to comply with Settlement Paragraphs 14(a) through (d) and Paragraph 15 before allowing any transfers, and (iii) granting such other and further relief as the court deems just and proper. The City opposes the application, and proffers affirmations and supporting documentation in opposition.

**BACKGROUND AND PROCEDURAL HISTORY**

The Settlement at issue resolved earlier federal litigation brought by Plaintiff against DHS and related agencies. The Settlement includes provisions intended to ensure community engagement and transparent procurement processes. Paragraph 14 outlines steps to be taken by the City to foster the creation of TGNC-affirming shelters—including solicitation of community input, assistance to potential providers, and review of qualified proposals. Paragraph 15 requires the City to take those steps “to the extent permitted by Procurement Rules and applicable law” (NYSCEF Doc No. 4, stipulation of settlement at 9-10).

Plaintiff commenced this action on September 6, 2024, and on September 27, 2024, Plaintiff moved by OSC for an order compelling the opening of a standalone TGNC-affirming shelter (NYSCEF Doc No. 2, 10). By decision and order dated December 23, 2024, this court denied the application as premature, observing that DHS was actively pursuing an open-ended procurement process (NSYCEF Doc No. 25).

Following the ruling, DHS continued its Request for Proposals (“RFP”) process and ultimately selected Destination Tomorrow, a Bronx-based organization, as the provider to operate the Shelter. DHS maintains that its actions complied with Settlement Paragraphs 14 and 15, citing steps such as the issuance of a Request for Information (“RFI”), an addendum clarifying the scope, and a widely attended listening session involving over 170 organizations and advocates.

On July 1, 2025, Plaintiff filed the present OSC seeking to halt Shelter operations (NYSCEF Doc No. 37-46, 51). The City submitted its opposition to the motion on July 3, 2025, and in support thereof included the affirmation of Vincent Pullo (“Pullo”), Agency Chief Contracting Officer (“ACCO”) of DHS who provided a detailed description of the City’s compliance efforts and documentation supporting those actions. (NYSCEF Doc No. 12, 47-50).

The Shelter has since opened. The City represents that DHS has invited Plaintiff to conduct an in-person site visit, but Plaintiff contends that DHS’s compliance was incomplete and that TGNC individuals face imminent harm absent judicial intervention.

## ARGUMENTS

Plaintiff contends that Settlement Paragraph 14 creates a series of mandatory preconditions that must be satisfied before any TGNC-affirming shelter can open. Specifically, Plaintiff asserts that DHS failed to fully solicit and consider community feedback, inadequately reviewed qualified proposals, and failed to provide pre-proposal assistance to prospective providers.

Plaintiff further alleges that Destination Tomorrow lacks the requisite experience and capacity to operate the Shelter safely and effectively, and that rushing transfers into the Shelter without demonstrated compliance creates irreparable harm to TGNC individuals based on documented historic mistreatment in the shelter system. Plaintiff also raises concerns about retaliation against potential witnesses and the need for independent oversight.

The City, DHS, and HRA (collectively identified as “Defendants”) argue that the Settlement does not require all steps in Paragraph 14 to be completed before opening a TGNC-affirming shelter. Rather, the provisions are meant to facilitate and expedite such openings within the limits of procurement law.

Defendants further maintain that DHS complied with all applicable procedures, including conducting an RFI and addendum, hosting a citywide listening session, and reviewing multiple proposals before selecting a provider through a lawful RFP process.

Defendants argue that Plaintiff lacks standing to challenge the award of a public contract as a non-bidder, that the issues raised are non-justiciable, and that Plaintiff has not established the

elements required for injunctive relief: (1) likelihood of success on the merits, (2) irreparable harm, and (3) a balance of equities in her favor.

## DISCUSSION

A preliminary injunction or TRO is an extraordinary remedy. To prevail, a movant must show (1) a likelihood of success on the merits, (2) irreparable harm in the absence of relief, and (3) that the balance of equities tips in her favor (*Doe v Axelrod*, 73 NY2d 748 [1988]). Conclusory assertions and speculative harms are insufficient (*id.*).

### I. Likelihood of Success on the Merits

To ascertain Plaintiff's likelihood of success on the merits, the court begins with the text of the Settlement. Paragraph 14 outlines the City's obligations to advance the establishment of TGNC-affirming shelters, including encouraging proposal submissions and providing community engagement and technical support (NYSCEF Doc No. 4, stipulation of settlement at 9-10). Paragraph 15 explicitly qualifies these duties by stating that they must be performed "to the extent permitted by Procurement Rules and applicable law." (*id.* at 10). This language makes clear that the provisions are facilitative, not preclusive. The Settlement seeks to facilitate, not impede, the creation of TGNC-affirming shelters. The court therefore concludes that compliance with Paragraph 14 is not a condition precedent to opening a shelter. Rather, it is an ongoing obligation that coexists with the City's procurement discretion.

Next, the record contains credible evidence—through the Pullo affirmation and exhibits—demonstrating that DHS engaged in extensive outreach (NYSCEF Doc No. 12, 47-50). The City conducted a listening session with over 170 organizations, issued an RFI and follow-up addenda, and evaluated multiple proposals before awarding a contract to Destination Tomorrow. Plaintiff's disagreement with the quality or outcome of that process does not establish a breach of contract (*see Noise in Attic Productions, Inc. v London Records*, 10 AD3d 303 [1st Dept 2004]). Indeed, fundamental principles of contract law recognize that performance need not be flawless, but merely substantial—especially in contexts involving the exercise of administrative discretion (*Oppenheimer & Co., Inc. v Oppenheim, Appel, Dixon & Co.*, 86 NY2d 685 [1995])

Additionally, this court's prior December 23, 2024, decision found no breach and allowed DHS to proceed toward compliance (*Holloway v Cha Cha Laundry, Inc.*, 97 AD2d 385 [1st Dept 1983]). That determination, while not preclusive, informs the analysis here. The City's subsequent steps appear consistent with the prior ruling and the Settlement framework.

As such, based on this record, Plaintiff has not demonstrated a clear likelihood of success on the merits of her breach of contract claim. The court acknowledges Plaintiff's legitimate concerns but must adhere to settled principles limiting judicial interference in administrative decisions (*Flacke v Onondaga Landfill Sys., Inc.*, 69 NY2d 355, 363 [1987] ["Moreover, where, as here, the judgment of the agency involves factual evaluations in the area of the agency's expertise and is supported by the record, such judgment must be accorded great weight and judicial deference"]).

## II. Irreparable Harm

The second prong, irreparable harm, requires a showing that injury is imminent and cannot be remedied by later relief. While Plaintiff's allegations regarding mistreatment of TGNC individuals are deeply concerning, she has not provided specific evidence that imminent, non-compensable harm will occur if the Shelter continues operating.

Moreover, Defendants have demonstrated that DHS has implemented TGNC competency training, non-discrimination policies, and monitoring mechanisms. The court credits these steps as mitigating risk pending fuller review.

## III. Balance of Equities and Separation of Powers

Finally, courts are cautioned against substituting judicial judgment for executive discretion in programmatic or procurement decisions (*Klostermann v Cuomo*, 61 NY2d 525 [1984]; *Jones v Beame*, 45 NY2d 402 [1978]). Ordering a halt to operations at a newly opened TGNC-affirming shelter would risk disrupting essential services to vulnerable populations.

Additionally, given the evidence of substantial compliance and good faith by Defendants, the balance of equities favors allowing operations to proceed while the court addresses Plaintiff's concerns through oversight measures.

Finally, Plaintiff, as a non-bidder, appears to lack standing to challenge the award of a public contract. The Court of Appeals in *Matter of Transactive Corp. v New York State Dept. of Social Servs.* (92 NY2d 579 [1998]) held that only an actual or prospective bidder may seek judicial review of a procurement award. Plaintiff's broader concerns about policy implementation, while compelling, do not confer standing to annul the City's procurement decision.

For the reasons set forth above, the court finds that: (i) Plaintiff has not demonstrated a likelihood of success on the merits; (ii) Plaintiff has not established irreparable harm; (iii) the balance of equities favors Defendants; and (iv) Plaintiff appears to lack standing to challenge the Shelter's vendor selection process.

Accordingly, Plaintiff's motion for a temporary restraining order and related relief is denied. Additionally, the court finds that this ruling obviates the need for further consideration of the subpoenas submitted pursuant to NYSCEF Doc No. 56 and filed under NYSCEF Doc No. 66 through 82. The court notes that the dates specified in those subpoenas have elapsed.

However, to the extent applicable, the parties are not precluded from fully briefing and raising any remaining arguments they wish to assert in connection with Defendants' Motion Sequence 008. The court will address that motion separately upon submission and full briefing, consistent with ordinary motion practice.

## IV. Observations and Pragmatic Roadmap Forward

Finally, while Plaintiff's motion is denied, the court does not dismiss the gravity of the issues raised therein. The record reflects genuine and credible concerns about the safety, dignity, and wellbeing of TGNC individuals in the shelter system. These concerns merit continued oversight and constructive engagement.

To that end, and in the spirit of ensuring transparency and accountability, the court directs the following pragmatic steps:

**1. Site Visit**

Within thirty (30) days, Defendants shall provide Plaintiff two mutually agreeable dates for an in-person site visit of the Shelter, accompanied by access to non-privileged records demonstrating staff training, zero-tolerance policies, and complaint mechanisms.

**2. Interim Safeguards Report**

Within fourteen (14) days, Defendants shall file a sworn affirmation identifying specific safeguards in place—TGNC competency training, private-room allocation, medical privacy, and complaint escalation procedures.

**3. Witness Protection Protocols**

Within fourteen (14) days, Defendants shall submit policies ensuring that no retaliation or adverse actions are taken against witnesses or participants in this litigation.

These measures balance the need to safeguard vulnerable individuals while respecting the City's lawful discretion.

Accordingly, it is hereby

ORDERED that Plaintiff's motion for a temporary restraining order and related relief is denied; and it is further

ORDERED that, in light of the foregoing determination denying Plaintiff's motion for injunctive relief, this decision and order renders moot the need for further consideration of the subpoenas filed under NYSCEF as Document Numbers 66 through 82, and the court notes that the return dates specified therein have since elapsed; and it is further

ORDERED that, notwithstanding the foregoing, the parties shall not be precluded from fully briefing and presenting any remaining arguments they wish to advance in connection with Defendants' Motion Sequence 008, and to obtain additional relief, including an order enjoining Plaintiff from harassing, video recording, or photographing any individuals present at DHS shelters during Plaintiff's visits or site inspections; and it is further

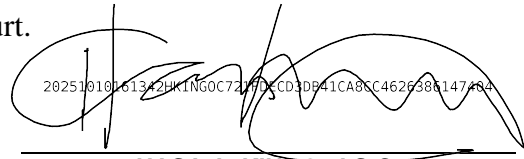
ORDERED that Motion Sequence 008 shall be addressed separately by the court, upon submission and full briefing due on October 31, 2025, in accordance with the court’s ordinary motion practice; and it is further

ORDERED that the parties are directed to comply with the provisions and timelines set forth in Section IV of this decision and order; and it is further

ORDERED that counsel for Defendants shall serve a copy of this order with notice of entry upon the Clerk of the Court and the Clerk of the General Clerk’s Office; 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).

This constitutes the decision and order of the court.



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HASA A. KINGO, J.S.C.

10/10/2025

DATE

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