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

THE COUNCIL OF THE CITY OF NEW YORK,

Plaintiff-Petitioner,

For a Judgment Under Articles 30 and 78 of the Civil Practice Law and Rules,

-against-

MAYOR ERIC ADAMS, in his official capacity as Mayor of the City of New York, RANDY MASTRO, in his official capacity as First Deputy Mayor, and the NEW YORK CITY DEPARTMENT OF CORRECTION,

Defendants-Respondents.

Index No. _____/2025

MEMORANDUM OF LAW IN SUPPORT OF COMPLAINT-PETITION AND INTERIM RELIEF

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and
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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

PRELIMINARY STATEMENT

The Council of the City of New York ("Council") brings this action because unethical activity by the City's chief executive endangers the confidence that all New Yorkers have in their local government, and such trust can only be restored through accountability.

Last week, Mayor Eric Adams took the final step in a corrupt bargain that he struck back in February—a deal to exchange an official mayoral act for his personal freedom. Facing serious federal criminal charges and the prospect of prison time, in February, Mayor Adams instructed his attorney to tell the federal government that he would allow Immigration & Customs Enforcement ("ICE") onto Rikers Island if the federal government dropped the criminal charges. A week later, the Department of Justice accepted this offer and agreed to drop the charges. The appearance of corruption was so evident that multiple DOJ attorneys resigned in protest.

While a federal judge ultimately dismissed the charges against the Mayor on April 2nd, his opinion bluntly warned that "[e]verything here smacks of a bargain: dismissal of the Indictment in exchange for immigration policy concessions." The Mayor consummated that bargain six days later, when his newly-hired First Deputy Mayor Randy Mastro issued an executive order directing the City's Department of Correction ("DOC") to allow ICE onto Rikers Island. Mastro's executive order allowing ICE onto Rikers resulted from undue influence and mayoral conflicts of interest.

This is textbook political corruption: an elected leader promises to perform an official act in exchange for a personal benefit; that personal benefit is conferred on the elected leader; and the elected leader then performs the promised act. Fortunately for New Yorkers, our robust conflict-of-interest laws do not allow a public official to sell out New Yorkers for his own personal gain. Under New York law, a public officer's corrupt official acts—whether performed directly by the officer himself, or by his yes-men and underlings—are invalid. Even the appearance of corruption renders official acts invalid.

Separate and apart from the Mayor's conflict of interest, the executive order allowing ICE onto Rikers Island is invalid for another reason: the First Deputy Mayor issued the executive order without being delegated the power to do so. Because Mastro's executive order allowing ICE on Rikers is invalid—either due to the Mayor's conflicts or the lack of a proper delegation of authority—the necessary remedy is: (1) a declaration that Mastro's executive order allowing ICE onto Rikers is null and void, and (2) an injunction barring DOC from carrying out the directives in Mastro's invalid executive order.

Pending its final decision, the Court should immediately enjoin DOC's compliance with that invalid executive order to preserve the status quo and avoid irreparable harm to our fellow New Yorkers. The due process rights of New Yorkers are at grave risk if ICE is permitted onto City property. In recent months, ICE has demonstrated a shocking level of incompetence, cruelty, and contempt for the rule of law. Preserving the status quo would prevent federal agents from coming onto City property in violation of City law and trampling on the civil rights of New Yorkers.

LEGAL AND FACTUAL BACKGROUND

A. The local laws governing City agencies' cooperation with federal immigration enforcement

From 2011 to 2014, the Council passed various laws preventing City resources from being used to advance the federal government's aggressive deportation tactics. Pet. ¶¶ 11–18. These laws, building on policies advanced by Mayor Koch and later administrations, were premised on the notion that allowing federal immigration authorities[1] unfettered access to City property and information made the City less safe. *Id.* Public awareness that interactions with City officials could

[1] In this memorandum, we use "ICE" as shorthand for all federal immigration authorities, including members of the Bureau of Alcohol, Tobacco, Firearms and Explosives, the Drug Enforcement Administration, and the Federal Bureau of Investigation, who have been recently deputized to carry out civil immigration enforcement. Pet. ¶ 71.

potentially lead to deportation undermines trust in local government, and it makes people scared to go about their daily lives, take their children to school, seek education or services, or request police intervention as a domestic violence survivor. *Id.*

The federal government's immigration efforts at that time had "resulted in the deportation of countless New Yorkers who pose[d] no threat to public safety, many of whom ha[d] lived in the City for years, built families, work[ed] and pa[id] taxes." Pet., Ex. 1 at 3. Fear of deportation deterred immigrants from reporting crime to local police, thereby impeding the City's community policing efforts. *Id.*

In 2011, the Council enacted Local Law 62, which sought to ensure that the City jail system's "cooperation with ICE was limited to facilitating the detention and removal of criminals and of others who had prior immigration violations, or who posed public safety or national security threats." *Id.* at 6. Then, in 2014, the Council passed local laws that further curtailed DOC's cooperation with deportation efforts, including by limiting the situations under which DOC would honor "detainer" requests from federal immigration authorities.

To further ensure that City resources would no longer be co-opted to support federal deportation agendas, the Council amended its local laws to shut down the office that ICE had maintained on Rikers Island. *See* N.Y.C. Admin. Code 9-131(h)(2) ("Federal immigration authorities shall not be permitted to maintain an office or quarters" on DOC's land "for the purpose of investigating possible violations of civil immigration law"). The law eliminating ICE's office on Rikers provided, however, that "the mayor may, by executive order, authorize federal immigration authorities to maintain an office or quarters on [DOC] land for purposes unrelated to the enforcement of civil immigration laws." *Id.*

B. The Mayor's self-serving deal with the federal government

In September 2024, a federal grand jury indicted Mayor Adams on federal charges stemming from the Mayor's alleged scheme to accept bribes and illegal campaign contributions from wealthy foreign businesspeople in exchange for preferential treatment and favors. Pet. ¶ 27. In January 2025, the Deputy Attorney General met with Mayor Adams to discuss the possibility of dismissing the charges against the Mayor. A few days later, the Mayor's attorney sent a letter to the Deputy Attorney General claiming that the pending federal charges impeded the Mayor's ability to exercise certain powers that would further the President's immigration agenda, including "re-opening the ICE office on Rikers Island." *Id.* ¶ 33.

On February 10, 2025, the Deputy Attorney General directed federal prosecutors to dismiss all charges against the Mayor without prejudice. *Id.* ¶ 34. Multiple prosecutors refused to follow the Deputy Attorney General's directive and instead resigned. *Id.* ¶¶ 36–37. Danielle Sassoon, then the Acting United States Attorney for the Southern District of New York, expressly stated that the Mayor's "offer of immigration enforcement assistance in exchange for a dismissal of his case" was an "improper exchange [that is not] consistent with the public interest" and "amounted to a *quid pro quo*." Pet. ¶ 36. Another prosecutor on the case said that the Attorney General's office was trying to use its "prosecutorial power to influence" Mayor Adams and to "induce [him] to support [the federal government's] policy objectives." *Id.* ¶ 37.

On February 13, 2025, Mayor Adams met with federal Border Czar Tom Homan and, hours later, Adams announced that he would issue an executive order to allow federal immigration authorities back onto Rikers Island. *Id.* ¶ 38. The next day, federal prosecutors moved in federal court to drop the charges against the Mayor. *Id.* ¶ 39.

Also, on February 14, 2025, Homan discussed his collaboration with the Mayor and let the cat out of the bag during an interview on FOX News with Laura Ingraham:

> [G]etting ICE officers back in Rikers is meaningful. . . I've made it clear, I want everybody. If you're an illegal alien, you get booked in Rikers Island, I don't care if it's for shoplifting, I want them. So, this is a start to deal with the worst of the worst in the beginning, but I made it clear that my plan on the whole of them, I want everybody. So, we're gonna work toward that. We agree to some other things, I'm not going to discuss on national TV, because I don't want the City Council to know what I'm doing. . . . We got a lot of words, the last meeting I had, today I came, I want action, I want a plan, and we're leaving with a partial plan, but I'll come back every week, if I have to, until we finish this plan, but it's a good first step to get back in Rikers Island, that's a game-changer.

Id. ¶ 69.

Soon thereafter, four of Mayor Adams's deputy mayors resigned over Mayor Adams's decision to cooperate with President Trump's immigration agenda in exchange for dismissal of the charges against him. *Id.* ¶ 40. On March 20th, the Mayor appointed Randy Mastro as First Deputy Mayor, filling the vacancy of one of the deputy mayors who had resigned. *Id.* ¶ 47.

C. The Mayor's "delegation" of authority to Randy Mastro to issue the executive order that Mayor Adams wanted

Four days after appointing Mastro, Mayor Adams issued Executive Order 49, which authorized the First Deputy Mayor to "[p]erform any function, power or duty of the Mayor in negotiating, executing and delivering any and all agreements, instruments and other documents necessary or desirable to effectuate any of the matters" overseen by the First Deputy Mayor or the Deputy Mayor for Public Safety, as well as any other "such duties as the Mayor may direct." *Id.* ¶ 48. The executive order also made clear that the First Deputy Mayor "[r]eport[s] directly to the Mayor." *Id.*

About a week later, the Mayor "authorized" the First Deputy Mayor to "determine, based on [his] independent assessment, whether and under what circumstances to permit federal law

enforcement authorities to have a presence on Rikers Island." *Id.* ¶ 49. Mayor Adams did not recuse himself from this assessment and determination. *Id.* ¶ 56.

On April 2, 2025, the federal district court dismissed the criminal charges against the Mayor. *Id.* ¶ 41. Just six days later, Mastro delivered the outcome that the Mayor had publicly said he wanted: Mastro issued an executive order to allow federal immigration authorities back onto Rikers Island. *Id.* ¶¶ 51–53.

STANDARD OF REVIEW

Articles 30 and 78 of the CPLR give courts the power to invalidate, annul, or enjoin unlawful executive orders. *E.g.*, *Prospect v. Cohalan*, 109 A.D.2d 210, 219 (2d Dep't 1985), *aff'd*, 65 N.Y.2d 867 (1985) (affirming lower court's annulment of executive order under Article 78); *Subcontractors Trade Ass'n v. Koch*, 62 N.Y.2d 422, 425 (1984) (affirming declaratory judgment that executive order was unconstitutional). Articles 30 and 78 similarly provide courts with the necessary tools to declare that certain government conduct is unlawful and to enjoin that conduct on an interim or permanent basis. CPLR 7805, 7806.

ARGUMENT

POINT ONE: RANDY MASTRO'S EXECUTIVE ORDER DOES NOT LAWFULLY PERMIT AN ICE OFFICE ON RIKERS

Under local law, City agencies may not allow federal immigration authorities to set up offices or quarters on Rikers Island unless the Mayor has authorized such an arrangement via a valid executive order. Mastro's executive order does not satisfy that threshold legal requirement for two separate and independent reasons. First, Mastro's executive order is invalid—and thus null and void—because it is the product of a conflict of interest. Second, Mastro's order is invalid because the Mayor did not properly delegate to him the power to issue executive orders regarding ICE on Rikers.

A. Mastro's Executive Order 50 is invalid and void because it was tainted by a conflict of interest

The Mayor cut a deal to secure his personal freedom in exchange for official mayoral actions that would abet President Trump's mass deportation agenda. Such a *quid pro quo* deal, as well as the threat of future federal criminal charges create a conflict of interest that prevents the Mayor from himself issuing any executive orders about ICE on Rikers. That conflict was not cured by the Mayor's "delegation" of authority to Mastro because, as a matter of law, a delegation without a recusal fails to cure a conflict. Accordingly, Mastro's resulting executive order was tainted by the Mayor's conflict and must be annulled.

1. The Mayor has a conflict, or at least the appearance of a conflict, that prevents him from lawfully issuing Executive Order 50 himself

Under settled New York law, public officials are strictly forbidden from using their "position as a public servant" to obtain any "private or personal advantage." N.Y.C. Charter § 2604(b)(3). It is "critical" that the public "be assured that their officials are free to exercise their best judgment without any hint of self-interest or partiality." *Matter of Byer v. Town of Poestenkill*, 232 A.D.2d 851, 852–53 (3d Dep't 1996). To ensure that our public officials are acting in the public interest—rather than their own self-interest—the law forbids public officials from taking official action where there exists even the *appearance* of a conflict of interest. *Tuxedo Conservation & Taxpayers Asso. v. Town Bd. of Tuxedo*, 69 A.D.2d 320, 325 (2d Dep't 1979) ("[T]he test to be applied is not whether there is a conflict, but whether there might be.").

At least two actual or apparent conflicts rendered the Mayor unable to lawfully issue an executive order regarding ICE on Rikers. The first actual or apparent conflict is that the Mayor made a deal with the federal government under which he would allow ICE onto Rikers if the federal government dropped the criminal charges against him. The second actual or apparent conflict is that, although the 2024 indictment against the Mayor has now been dismissed, the

federal government can nevertheless bring new charges against the Mayor if he does not follow through on his promise to assist the federal government with immigration enforcement.

a) ICE office *quid pro quo* agreement

First, the Mayor's decision to allow ICE on Rikers reflects his end of the bargain to secure dismissal of the federal criminal charges against him—or, at least, it sure looks that way. The agreement between the Mayor and the federal government has been widely reported in the press. As former U.S. Attorney Danielle Sassoon explained, "Adams's attorneys repeatedly urged what amounted to a *quid pro quo* indicating that Adams would be in a position to assist the Department's [immigration] enforcement priorities only if the indictment were dismissed" Pet. ¶ 36. The federal judge who dismissed the charges against the Mayor observed that "[e]verything here smacks of a bargain." *Id.* ¶ 41. Mayor Adams's own lawyer strongly suggested, in writing, that the Mayor's power to "re-open[] the ICE office on Rikers Island" was a power that the Mayor would exercise only if the federal government dropped its prosecution of him. *Id.* ¶ 33.

Although the Mayor claimed there was no *quid pro quo* to help the federal government if it helped him with his criminal case, Pet., Ex. 4 at 1, federal officials admitted to having an immigration-enforcement agreement with him precisely at the same moment that the charges were dropped. After the federal government moved to dismiss its criminal case against the Mayor, the federal Border Czar Homan sat for a joint TV interview with Mayor Adams, in which Homan explicitly reminded the Mayor that he needed to hold up his side of the deal: "If he doesn't come through," Homan explained, "I'll be back in New York City, and we won't be sitting on the couch. I'll be in his office, up his butt, saying, 'Where the hell is the agreement we came to?'" Pet. ¶ 39.

It makes no difference whether the Mayor's federal criminal case is pending or, instead, newly dismissed. The *quid pro quo* agreement does not evaporate after *one* side has honored its half of the bargain. Rather, that is exactly when the other half of the bargain comes due. Conflict-

of-interest laws do not care whether the *quid* comes before the *quo* or after it. A public official cannot use his position for personal gain at any time; the exact sequence of the undue influence and the compromised official act is beside the point. *Cf. United States v. Valle*, 538 F.3d 341, 347 (5th Cir. 2008) (an official violates federal anti-bribery laws by agreeing to accept a payment "to induce or influence him in an official act" *even if* the official "has no intention of actually fulfilling his end of the bargain"), *cert. denied*, 556 U.S. 1154 (2009); *accord United States v. Orenuga*, 430 F.3d 1158 (D.C. Cir. 2005). What matters is not whether the charges were dropped before the executive order was signed; what matters is that one was promised in exchange for the other.

b) Threat of future federal prosecution

The Mayor's second actual or apparent conflict is that he still faces a clear threat of criminal prosecution by the federal government. President Trump could lift that threat with the stroke of a pen by pardoning the Mayor—something the President has done many hundreds of times, but not for Mayor Adams.[2] The President's refusal to pardon the Mayor, as well as DOJ's prior effort to have the charges against the Mayor dismissed *without* prejudice, means the federal government is leaving the door open to pursue criminal charges against the Mayor in the future.

Such future charges are far from hypothetical. Former federal prosecutors believe they have probable cause to indict Mayor Adams for other crimes, including obstruction of justice. Pet. ¶ 29. For that reason, the federal government still has considerable leverage over Mayor Adams personally, in the form of potential *new* charges against him.

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[2] *See, e.g.*, Alan Feur, *Justice Dept. Takes Broad View of Trump's Jan. 6 Pardons*, N.Y. TIMES (Feb. 25, 2025), https://www.nytimes.com/2025/02/25/us/politics/justice-department-jan-6-pardons.html; *Granting Pardons and Commutation of Sentences for Certain Offenses Relating to the Events at or Near the United States Capitol on January 6, 2021*, WHITE HOUSE (Jan. 20, 2025), https://www.whitehouse.gov/presidential-actions/2025/01/granting-pardons-and-commutation-of-sentences-for-certain-offenses-relating-to-the-events-at-or-near-the-united-states-capitol-on-january-6-2021/.

Either of these conflicts—his *quid pro quo* agreement or the specter of future federal prosecution—prevents the Mayor from directly issuing a valid executive order about ICE on Rikers. At minimum, there exists the *appearance* of a conflict. The Mayor has admitted that if he himself issued an executive order about ICE on Rikers, people would have perceived "some bias in [his] determination." Pet. ¶ 50. Several DOJ officials were so convinced that there was a *quid pro quo* agreement that they sacrificed their government careers instead of having to participate in the unethical act. *Id.* ¶¶ 36–37.

To the extent the Mayor somehow raises a triable issue as to the existence or appearance of a conflict (which, really, he cannot do), the Council requests expedited discovery into that question, including discovery into discussions between the Mayor, Border Czar Homan, and/or the White House regarding (1) the opening of an ICE office on Rikers; and (2) their plans to circumvent the City's sanctuary laws and the Council.

2. Because the Mayor is conflicted and his "delegation" to Mastro does not cure that conflict, Mastro's executive order must be annulled

When a public official performs an official act to benefit himself—or even if it *appears* that he has acted in such a manner—the remedy is that the official act must be annulled. *E.g.*, *Zagoreos v. Conklin*, 109 A.D.2d 281, 288 (2d Dep't 1985) (decisions of Town Board and Zoning Board of Appeals were "correctly set aside due to an improper conflict of interest"); *Matter of Titan Concrete, Inc. v. Town of Kent*, 202 A.D.3d 972, 974 (2d Dep't 2022) (enactment of local law was properly invalidated because the self-interested Town Supervisor failed to recuse herself from discussions of the proposed law before its enactment). Such government action, improperly performed under the cloud of a conflict of interest, is deemed a "nullity." *Id.*

By the same token, a government action that was *influenced* by a conflict of interest must be annulled even if the parties who ultimately executed that action were not themselves conflicted.

Id. Any other result would mean that a conflicted official could "cure" a conflict by simply asking a subordinate to finalize the decision for him. The law is neither so naive nor so toothless; it cannot be so easily circumvented.

Titan Concrete makes clear that annulment of Mastro's executive order is the only permissible outcome here. That case involved a concrete plant located next to the Town Supervisor's homeowners' association. *Matter of Titan Concrete Inc. v. Town of Kent*, 63 Misc. 3d 564, 567 (Sup. Ct. Putnam Cnty. 2019), *aff'd*, 202 A.D.3d 972. The Town Supervisor had a personal interest in the matter, so she abstained from voting on a proposed amendment to the Town's zoning rules that would have outlawed concrete plants. *Id.* at 567–68. But she did not recuse herself from discussions and deliberations regarding that proposed amendment. *Id.* After the proposed amendment passed, the concrete plant sued to have the amendment's passage annulled because the vote on the amendment was "tainted" by the Town Supervisor's failure to recuse herself from legislative discussions and deliberations. *Id.* at 572. The lower court agreed that the legislative process was tainted by the Town Supervisor's failure to "completely recuse herself" from the deliberative process, resulting in the passage of an "invalid" local law that was a "nullity" due to the conflicted official's failure to recuse herself. *Id.* at 575. The Appellate Division agreed and affirmed for the same reasons. 202 A.D.3d at 974–75. Where a public official separates herself from the final step of the decision-making process but fails to recuse herself from the matter more broadly, the resulting official action is void, and a nullity, because it is impermissibly tainted by the un-recused official's conflict of interest. *See id.*

Here, the Mayor's attempt to delegate authority to Mastro, without recusing himself, is insufficient to cure the conflict or appearance of conflict. To abate a conflict, the conflicted official must *recuse* himself from the matter. *Id.* at 974; N.Y.C. Corp. Op. 4-90, 1990 WL 709114 (1990)

(a conflict will "remain" unless conflicted officials undertake full recusal from the matter, including their full removal from "any involvement in the voting and deliberations" and from "any consideration by members of [the officials'] respective offices of the issues presented"); 1995 N.Y. Op. Att'y Gen. 2, 1995 WL 112012 (1995) (recusal is necessary because "participation in deliberations has the potential to influence other board members who will exercise a vote with respect to the matter in question"); 1999 N.Y. Op. Att'y Gen. 1052, 1999 WL 626048 (1999) (conflicted official must recuse themselves, which means avoiding "taking any actions with respect to that matter").

The New York Attorney General has been unambiguous about what is required here: "where a public official is uncertain about whether he should undertake a particular action due to an actual or potential conflict, he must recuse himself *entirely* from the matter in question unless he procures an advisory opinion from a local ethics board that concludes otherwise." 2002 Ops Att'y Gen. No. 2002-8, 2002 WL 437994 (2002) (emphasis added). Mere delegation still leaves the conflicted official in charge and involved in the process whenever he wants. *See id.* It does not insulate the decision-making process from the conflict. *See id.* Because the Mayor has explicitly refused to recuse himself from this matter, Pet. ¶ 56, the resulting order issued by his subordinate is null and void because it is tainted by the Mayor's conflict.[3]

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[3] Other states apply the same rule. *See, e.g.*, *Meixell v. Borough Council of Hellertown*, 370 Pa. 420, 88 A.2d 594 (Pa.1952) (votes cast by councilmembers who had a conflict of interest were a "nullity"); *Methodist Healthcare-Jackson Hosp. v. Jackson-Madison Cnty. Gen. Hosp.*, 129 S.W.3d 57, 73 (Tenn. Ct. App 2003) (where health commissioner had a disqualifying conflict of interest and failed to recuse himself from vote or proceedings, his participation in the proceedings rendered the resulting decision and award "null and void") ; *Vickers v. Coffee Cnty.*, 255 Ga. 659 (Ga. 1986) (contract was invalid because commissioner with a conflict of interest had attended meeting about contract and voted on it); *Delta Elec. Constr. Co. v. San Antonio*, 437 S.W. 2d 602 (Tex. App. 1969) (contract was "null and void" due to public official's conflict of interest); *Anderson City. v. Preston*, 427 S.C. 529 (S.C. 2019) (county council's action was "null and void" because of the conflicts of interest of two members who participated in the vote).

The particular facts surrounding the Mayor's "delegation" to Mastro further confirm the extent to which the Mayor's own conflict influenced the executive order. The Mayor made his desired outcome regarding ICE on Rikers known to the world well before hiring Mastro. *Id.* ¶¶ 31–39. He established a reputation for forcing out officials who failed to give him what he wanted. *Id.* ¶ 59. He asked Mastro, within days of his appointment, to look specifically into issuing an executive order about ICE on Rikers. *Id.* ¶ 49. Then, mere days later, Mastro issued an executive order allowing ICE onto Rikers—something no mayor had done for more than ten years. *Id.* ¶¶ 51–52. And because the Mayor never recused himself from the matter, nothing limited the Mayor's ability to directly or indirectly influence Mastro's "assessment" of the situation—including by telling Mastro whom to speak to or not speak to at DOC about the issue, urging Mastro to reach a particular outcome, or reminding Mastro of the Mayor's power to unilaterally fire his deputies at any time.

In sum, Mastro was in no way insulated from the Mayor's influence—or, therefore, his conflict of interest—when Mastro issued his executive order. Nor were the DOC officials who Mastro spoke to about the matter. Mastro was well aware of the Mayor's desired outcome, and also aware of the Mayor's power—and proclivity—to fire uncooperative subordinates. *See City and Cnty. of S.F. v. Cobra Sols., Inc.*, 38 Cal. 4th 839, 853-854 (Cal. 2006) (because "[t]he power to review, hire, and fire is a potent one[,]" public officials who serve "directly under" the heads of government offices "cannot be entirely insulated from [their bosses'] decisions, nor can they be freed from real or perceived concerns as to what their boss wants"). And the fact that it took Mastro mere days to arrive at the very conclusion the Mayor wanted—reflecting a sharp departure from more than ten years of mayors' contrary decisions—only compounds the appearance of

impropriety. *See People v. Keith Adams*, 20 N.Y.3d 608, 613 (2013) (prosecutor's departure from prior practices evinced a conflict of interest requiring recusal).

B. Apart from any conflicts, Mastro's executive order is invalid because the Mayor never delegated the "specified" duty to Mastro, as the City Charter requires

Regardless of the Mayor's conflict of interest, Mastro's executive order is invalid because the Mayor never actually delegated to Mastro the particular power at issue here, *i.e.*, the power to issue executive orders about ICE on Rikers. The City Charter authorizes mayors to delegate certain "specified functions, powers and duties" to their deputy mayors. N.Y.C. Charter § 8(f). Absent such a delegation, a deputy mayor cannot carry out a power vested in the mayor. *See id.* Here, the Mayor never delegated to Mastro the specified power to issue executive orders regarding ICE on Rikers, or to issue executive orders at all.

In his executive order, Mastro appears to claim that the Mayor delegated this power to him in "Sections 2(m) and 2(p) of Executive Order No. 49, signed March 24, 2025." Pet., Ex. 10 at 2. But Mastro is incorrect. The sections he cites say nothing about authorizing Mastro to issue executive orders. Rather, Section 2(m) authorizes Mastro to "[p]erform any function, power or duty of the Mayor" in "negotiating, executing and delivering any and all agreements, instruments and other documents necessary or desirable to effectuate" various matters, programs, projects and activities. This is not a delegation of a "specified functions, powers and duties" to issue executive orders, for two reasons.

First, an authorization for a deputy mayor to "perform *any* function, power or duty of the Mayor" with respect to certain subject areas is not a delegation of "*specified* functions, powers and duties." Rather, it simply gives deputies permission to do things; it delegates no duties to them.

Second, the authorization for Mastro to engage in "negotiating, executing and delivering any and all agreements, instruments and other documents" does not encompass executive orders, which fall outside the plain meaning of "agreements, instruments and other documents."

And the other provision that Mastro relies on, 2(p) of Executive Order No. 49, does not delegate anything at all. Rather, it provides only that Mastro should "[p]erform such other duties as the Mayor may direct." That is not a delegation of "specified functions, powers and duties," but rather an open-ended directive that falls outside the Mayor's delegation authority under the Charter. The Mayor's failure to delegate is particularly notable given the nature of the power in question—issuing an executive order. We have diligently searched decades of executive orders and found none signed by anyone but the mayor or acting mayor.[4] Because the Mayor did not delegate to Mastro the specified power to issue executive orders about ICE on Rikers—or executive orders at all—Mastro lacked lawful authority to issue his executive order. The executive order is invalid for that reason, separate from any conflicts.

POINT TWO: PRELIMINARY INJUNCTIVE RELIEF IS NECESSARY TO PREVENT IRREPARABLE HARM

Immediate interim relief that stops DOC from moving forward with allowing ICE on Rikers is essential because, without it, "immediate and irreparable injury, loss or damage will result." CPLR 6301; *see, e.g.*, *Caspi v. Madison 79 Assocs., Inc.*, 85 A.D.2d 583, 583 (1st Dep't 1981) (imposing temporary restraining order where, absent such relief, the litigant faced "the risk of forfeiture" of a proprietary lease). Here, the Council meets all three elements for a preliminary injunction and temporary restraining order: "likelihood of success on the merits, irreparable injury

[4] We located a single order signed by the acting mayor during the height of the COVID pandemic. And that single executive order simply extended by five-days a prior executive order issued by the Mayor. Executive Order No. 223, https://www.nyc.gov/office-of-the-mayor/news/223-001/emergency-executive-order-223.

and a balancing of the equities in their favor." *Pantel v. Workmen's Circle/Arbetter Ring Branch 281*, 289 A.D.2d 917, 918 (3d Dep't 2001) (affirming continuation of temporary restraining order).

1. The Council is likely to prevail on the merits. As explained above, Mastro's executive order is invalid both because it is tainted by the Mayor's conflict of interest and fails to comply with the City Charter.

2. "Immediate and irreparable injury, loss or damage will result" absent a temporary restraining order and preliminary injunction. CPLR 6301. ICE's entry onto Rikers will create an immediate and substantial risk of the wrongful removal and deportation of many of our fellow New Yorkers. Such removals and deportations will often entail life-threatening conditions—in an El Salvadorian prison, for example, or in the very country from which an asylum-seeker has fled to escape violent persecution. Indiscriminate removals harm more than just those who are deported, as immigrant New Yorkers account for roughly 38% of our City's total population and often have a U.S. citizen spouse or child. And once ICE gets started, courts and City officials will be largely powerless to stop these harms from cascading. The impacts will not be confined to Rikers: enabling ICE to pursue its aggressive immigration on Rikers will irreparably erode the trust between local government and the New York residents that it serves.

After ICE and other federal agents are on Rikers, New Yorkers will be removed and deported from the jail in large numbers and in a reckless, lawless, or even erroneous manner. Pet. ¶¶ 73–74. Border Czar Homan has made it "clear"; he "wants everybody…booked on Rikers island," even for "shoplifting." *Id.* ¶ 69. The Trump Administration boasts that it is "launch[ing] the largest deportation program . . . in the history of America," and its extreme methods match its rhetoric. *Id.* ¶ 70. For example, the administration has used highly suspect "gang" affiliation evidence—such as tattoos or "high-end street wear"—to (often mistakenly) identify people for

removal from the country without due process. *Id.* Additionally, ICE routinely arrests immigrants who simply happen to be in the vicinity of their intended target, despite lacking a warrant or even probable cause with respect to those "collateral" arrestees. *Id.* ¶ 74.

To date, courts have been largely unsuccessful in preventing the harms wrought by the Trump Administration's indiscriminate, careless, and lawless deportation efforts. Just last month, the administration mistakenly deported Kilmar Abrego Garcia, a Maryland husband and father who has legally lived and worked in the United States for years. *Id.* ¶ 73. When a federal court ordered the government to rectify its grievous mistake, the government "made no meaningful effort to comply." *Id.* The Administration flatly ignored a federal judge's order to turn back planes transporting hundreds of immigrants to a notorious prison in El Salvador. *Id.* Justice Sotomayor recently observed that in furtherance of its aggressive deportation efforts the Trump Administration has repeatedly engaged in "noncompliance" with court orders, "ignored its obligations to the rule of law," and has posed an "extraordinary threat to the rule of law." *Id.*

Like courts, City officials will be unable to constrain ICE's deportation onslaught once the federal agency has made itself at home on Rikers. Numerous experts have noted that ICE is able to carry out its civil deportation agenda on Rikers without any active assistance from DOC officials. *Id.* ¶ 71. And once ICE agents are embedded with DOC staff on the island, many DOC staff members will cooperate with ICE's civil deportation efforts in violation of our local laws, either intentionally or unwittingly—as has happened in the past. *Id.* ¶ 72.

Faced with this reality, Mastro cannot seriously pretend that the City will be able to cabin federal agents' work to only criminal investigations, as his executive order seems to envision. The City lacks the legal or practical means to actually enforce any such a limitation on the conduct of federal agents. *Id.* ¶¶ 71–72.

And the impact of ICE's presence on Rikers will be felt far beyond the island itself. Families and children of many people held at Rikers will be afraid to visit or call their loved ones due to the threat of immigration consequences. *Id.* ¶ 11. This will deprive incarcerated people of essential support systems, and will deprive children and spouses of their ability to maintain crucial bonds with their loved ones.

Furthermore, the installation of ICE on Rikers will significantly and irreparably harm New Yorkers' trust in local enforcement personnel—reversing years of progress on that front. The erosion of that public trust is indisputably an irreparable harm warranting preliminary injunctive relief. *See, e.g.*, *J.B. v. Onondaga Cty.*, 401 F. Supp. 3d 320, 345 (N.D.N.Y. 2019) (granting preliminary injunction where, among other things, government's policy "threatens to undermine public confidence in New York's criminal justice system"); *New York v. Dep't of Just.*, 343 F. Supp. 3d 213, 243 (S.D.N.Y. 2018) (the loss of "trust between immigrant communities and local government, which would discourage individuals from reporting crimes, cooperating with investigations, and obtaining medical services," constituted irreparable harm), *rev'd on other grounds*, *New York v. Dep't of Just.*, 951 F.3d 84, 92 (2d Cir. 2020).

A core purpose of the City's sanctuary laws is to assure New Yorkers that they do not risk life-altering immigration-related consequences simply by contacting local law enforcement to report crime. Pet. ¶ 11. When that promise is kept, New Yorkers feel comfortable—or, at least, not terrified—to reach out to law enforcement when help is needed. *Id.* While the system is far from perfect, there is a general understanding that contacting local law enforcement isn't likely to yield the horrendous fate now faced by people like Kilmar Abrego Garcia, the law-abiding Maryland man "mistakenly" removed to an El Salvador prison by federal officials. Inviting ICE onto Rikers—and doing so *now*, in the midst of a barrage of headlines about the horrendous harms

inflicted by ICE nearly every day—sends a clear message to New Yorkers: if you reach out to local law enforcement, you risk a run-in with ICE as well. This erosion of trust will make all of us less safe. And that depleted trust will be difficult, if not impossible, to restore.

3. The equities also tip in the Council's favor. If the Court appropriately grants preliminary injunctive relief preserving the status quo, the federal government would not be able pursue its mass deportation agenda on Rikers Island. But the federal government would remain free to pursue its mass deportation agenda outside of Rikers. New Yorkers awaiting trial at Rikers would continue to await their trials there. The City would still be able to partner with the federal government on criminal investigations, as it always has. Preliminary injunctive relief would thus have a miniscule overall impact on ICE's nationwide immigration enforcement efforts or on criminal enforcement cooperation between the federal government and City law enforcement.

At the same time, an order immediately enjoining DOC from allowing ICE onto Rikers would avert a cascading set of acute and irreparable harms to New Yorkers, from due process violations to wrongful deportations to the destruction of public trust in local law enforcement. Because neither the courts nor City officials have adequate tools to prevent the harms that will inevitably result if ICE installs its mass deportation machinery on Rikers Island, this Court should halt those harms before they start. It can readily do so, thereby saving countless New Yorkers from immediate and immense harm, by issuing a temporary restraining order and preliminary injunction barring DOC from following the directives in Executive Order 50.

CONCLUSION

The day before the Department of Justice announced that they would be moving to drop the charges against the Mayor, the Mayor and Border Czar Homan appeared jointly on Fox News. Mr. Homan explained that "[g]etting onto Rikers Island [is] step one." Pet. ¶ 69. And he and Mayor

Adams were working on other ideas to circumvent the City's sanctuary laws but did not want to publicly discuss it "because the City Council will be putting roadblocks up on us." *Id.*

The Council seeks relief in this action because "roadblocks" to illegal harmful conduct are necessary to uphold the rule of law. The Court should grant the complaint-petition, declare Mastro's executive order invalid, and enjoin DOC from following that illegal executive order. The Court should also grant a temporary restraining order and preliminary injunction halting the implementation of the executive order pending the final adjudication of this proceeding.

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Respectfully submitted,

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/s/
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