

SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: HON. MARY V. ROSADO **PART** **33M**

Justice

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THE COUNCIL OF THE CITY OF NEW YORK,

Plaintiff-Petitioner,

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

INDEX NO. 154909/2025

MOTION DATE 04/15/2025

MOTION SEQ. NO. 001

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,

FINAL DECISION + ORDER ON MOTION

Defendants-Respondents.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 1 through 92
were read on this motion to/for INJUNCTION/RESTRAINING ORDER.

Upon the foregoing documents, and after hearings which took place on April 25, 2025 and June 3, 2025, Petitioner the Council of the City of New York's ("Petitioner") Amended Petition seeking a permanent injunction enjoining Defendants-Respondents Mayor Eric Adams ("Mayor Adams"), First Deputy Mayor Randy Mastro ("First Deputy Mayor Mastro"), and the New York City Department of Correction ("Department of Correction") (collectively "Defendants-Respondents") from taking any steps to facilitate the presence of federal law enforcement personnel on any property controlled by Department of Correction, including the signing of any Memoranda of Understanding with the federal government regarding federal law enforcement presence or operations on Department of Correction property, and for a judgment declaring Executive Order No. 50 illegal, null, and void, is granted to the extent that Executive Order No. 50 is annulled. The remainder of the Petition is denied as academic.

I. Background

By Decision and Order of this Court dated June 12, 2025, Petitioner was granted its request for a preliminary injunction enjoining Respondents from taking any steps to effectuate Executive Order No. 50 (*see* NYSCEF Doc. 89). The Court found that Plaintiff-Petitioner showed a likelihood of success of demonstrating the process through which Executive Order No. 50 was issued was impermissibly tainted with the appearance of Mayor Adams's conflict of interest in violation of New York City Charter § 2604(b)(3). Respondents sought leave to appeal this Court's order granting Petitioner a preliminary injunction, and the First Department denied Respondents' application via Order dated July 1, 2025, and entered on July 10, 2025. Based on the record before the Court, including the various admissions in Respondents' Answer, the Court grants the Petition to the extent that Executive Order No. 50 is declared illegal and a nullity. Because Executive Order No. 50 is null, there is no need to address the remaining contentions, including whether Plaintiff-Petitioner is entitled to a permanent injunction.

II. Discussion

The Court rejects Respondents' argument that this hybrid Article 78 and declaratory judgment proceeding is an improper procedure to invalidate Executive Order No. 50 (*see generally Titan Concrete, Inc. v Town of Kent*, 202 AD3d 972 [2d Dept 2022]). Turning to the merits, the application of well-established law to the facts of this case yields one conclusion: Executive Order No. 50 is null and void. "Public policy forbids the sustaining of a municipal action [by] a member of the municipal governing body.... which directly or immediately affects him individually" and in such a case the government action must be declared null and void (*Baker v Marley*, 8 NY2d 365, 367 [1960]). The test is "not whether there is a conflict, but whether there might be" (*Titan*

Concrete, Inc. v Town of Kent, 202 AD3d 972, 975 [2d Dept 2022] quoting *Matter of Tuxedo Conservation & Taxpayers Ass'n. v Town Bd. of Tuxedo*, 69 AD2d 320 [2d Dept 1979]).

Respondents are governed by the New York City Charter, which at § 2604(b)(3) provides “[n]o public servant shall use or attempt to use his or her position as a public servant to obtain any...privilege or other private or personal advantage, direct or indirect, for the public servant or any person or firm associated with the public servant.” Respondents “must avoid even the appearance of impropriety” and where a public official questions whether a potential conflict exists, “he must recuse himself entirely from the matter in question unless he procures an advisory opinion from a local ethics board that concludes otherwise” (Op. Atty. Gen. [Inf.] No. 2000-22; Op. Att. Gen. [Inf.] No. 98-38). Recusal requires the avoidance of taking any action with respect to the matter in which the public official may be conflicted (Op. Atty. Gen [Inf.] No. 99-21). A public official cannot cleanse a conflict of interest by merely delegating to a subordinate (*Holtzman v Oliensis*, 91 NY2d 488, 499 [1998]). The law requires full recusal, not limited or belated abstention from certain portions of decision making on an issue where the appearance of a conflict exists (*Titan Concrete, supra* at 974).

The factual record in this matter is clear and, given Respondents’ numerous admissions in their Answer, is also undisputed as to all material facts. On January 31, 2025, as Mayor Adams was being criminally prosecuted by the Department of Justice, he and his criminal defense attorneys met Deputy Attorney General Emil Bove to discuss the impact of Mayor Adams’ criminal prosecution on his ability to cooperate with “the federal government on important issues of immigration enforcement” (NYSCEF Doc. 73 at ¶ 31). The Acting United States Attorney for the Southern District of New York, who attended the January 31, 2025, meeting, wrote “Adams’ attorneys repeatedly urged what amounted to a *quid pro quo*, indicating that Adams would be in a

position to assist with [immigration] enforcement priorities only if the indictment were dismissed” (NYSCEF Doc. 4 at p. 3 n.1).

Days later on February 3, 2025, Mayor Adams’ criminal defense attorney wrote to Mr. Bove warning Mayor Adams’ criminal prosecution will “become increasingly problematic as the Trump administration seeks to aggressively enforce immigration laws and remove undocumented immigrants....[T]he federal government cannot possibly rely on Mayor Adams to be a fully effective partner in all situations in ongoing public-safety missions while he is under federal indictment...” (NYSCEF Doc. 5). Mayor Adams’ attorneys argued the Mayor’s “abilities to exercise his powers have also been complicated by his indictment” including his powers to “prevent[] the Office of the Corporation Counsel from litigating challenges to immigration enforcement, prevent[] appointed city employees from taking public stances against enforcement efforts, [and to] re-open[] the ICE office on Rikers Island....” On February 10, 2025, Mr. Bove directed federal prosecutors to dismiss without prejudice the pending criminal charges against Mayor Adams (NYSCEF Doc. 73 at ¶ 34).

On February 13, 2025, just after meeting President Donald J. Trump’s “Border Czar”,¹ Thomas Homan (“Mr. Homan”), Mayor Adams announced he would issue an executive order allowing federal immigration authorities on Rikers Island (NYSCEF Doc. 73 at ¶ 38). One day later, on February 14, 2025, Mr. Homan appeared alongside Mayor Adams on Fox & Friends, where he stated if Mayor Adams did not deliver “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 b__ __, saying, ‘Where the hell is the agreement we came to?’” (NYSCEF Doc. 73 at ¶ 39). That same day, the Department of Justice filed a motion to dismiss all pending criminal charges against Mayor Adams, without prejudice.

¹ Mr. Homan’s actual title is White House Executive Associate Director of Enforcement and Removal Operations.

On March 20, 2025, First Deputy Mayor Mastro was appointed by Mayor Adams (NYSCEF Doc. 73 at ¶ 47). On March 24, 2025, Mayor Adams issued Executive Order No. 49, which delegated certain powers to the First Deputy Mayor and stated the First Deputy Mayor Mastro shall “[r]eport directly to the Mayor.” (NYSCEF Doc. 10 at §2[a]).

On April 2, 2025, United District Judge Dale Ho dismissed the criminal charges with prejudice, writing “[e]verything here smacks of a bargain: dismissal of the [i]ndictment in exchange for immigration policy concessions” (*United States v Adams*, — F.Supp.3d —, 2025 WL 978572 at *2 [SDNY 2025]). Judge Ho further wrote the suggestion “that public officials may receive special dispensation if they are compliant with the incumbent administration’s policy priorities...is fundamentally incompatible with the basic promise of equal justice under law” (*id.*). Ultimately, Judge Ho found that he “cannot force the Department of Justice to prosecute a defendant” and did not have the authority “to appoint an independent prosecutor” which precluded him from denying the Department of Justice’s motion to dismiss (*id.* at *2). Six days later, on April 8, 2025, First Deputy Mayor Mastro issued Executive Order No. 50, which authorized the Department of Correction to enter a Memorandum of Understanding with federal law enforcement agencies allowing them to maintain office space on Department of Correction property, specifically Rikers Island (NYSCEF Doc. 11).

Mayor Adams explicitly stated he did not recuse himself from issuing Executive Order No. 50. Juliet Papa, a reporter with 1010 WINS asked Mayor Adams “why he recused himself” to which Mayor Adams responded “I did not recuse myself. People play around with terminologies. I delegated. I’m the mayor” (*see* NYSCEF Doc. 85 – Transcript of Mayor Adams’ Live Interview on 1010 WINS dated April 9, 2025).

The Court need not reach whether there actually was a conflict of interest because the timeline of public statements and the ongoing criminal prosecution so clearly demonstrate an impermissible appearance of a conflict of interest. The appearance of this conflict and Mayor Adams' failure to recuse himself fully tainted the entire process by which Executive Order No. 50 was issued, making it null and void pursuant to New York City Charter § 2604(b)(3) and Court of Appeals precedent (*see Holtzman v Oliensis*, 91 NY2d 488, 499 [1998]; *Baker v Marley*, 8 NY2d 365, 367 [1960]). The argument that the conflict was cleansed by delegating to First Deputy Mayor Mastro is farcical. First Deputy Mayor Mastro is not independent of Mayor Adams and he was appointed and delegated the specific task of issuing Executive Order No. 50 after Mayor Adams made it publicly known his desired outcome (*see also Kirschner v KPMG LLP*, 15 NY3d 446, 465 [2010] ["Agency law presumes imputation..."]). Executive Order No. 49, which purportedly gave First Deputy Mayor Mastro the ability to issue Executive Order No. 50, explicitly states that First Deputy Mayor Mastro "[r]eport[s] directly to the Mayor" (NYSCEF Doc. 10 at §2[a]).

Respondents' argument that if First Deputy Mayor Mastro cannot issue Executive Order No. 50 then nobody in the administration can lacks both merit and imagination. Mayor Adams and First Deputy Mayor Mastro should have sought guidance from the New York City Conflict of Interest Board as to how to proceed, which there is no record of here (*see Op. Atty. Gen. [Inf.] No. 2000-22; Op. Att. Gen. [Inf.] No. 98-38*). Moreover, given the appearance of Mayor Adams' conflict of interest, he could have appointed theoretically an independent, impartial, and insulated official to determine the propriety of issuing an executive order akin to Executive Order No. 50. Instead, the appearance of his own conflict was imputed to his direct deputy, First Deputy Mayor Mastro, who is not independent and serves at the Mayor's pleasure. Thus, given the undisputed facts of the case at bar, the Court grants the Petition to the extent it seeks a declaration that

Executive Order No. 50 is null and void. Because Executive Order No. 50 is annulled, any discussion as to a permanent injunction prohibiting Respondents from effectuating Executive Order No. 50, which this Court declares illegal and a nullity, is moot.²

Accordingly, it is hereby,

ORDERED that the Petition is granted to the extent that Executive Order No. 50 is declared null and void, and the remainder of the Petition is denied as academic; and it is further

ORDERED, ADJUDGED and DECREED that Executive Order No. 50 signed by First Deputy Mayor Mastro on April 8, 2025, is declared invalid and a nullity, and the Clerk is directed to enter judgment; accordingly, and it is further

ORDERED that within ten days of entry, counsel for Petitioner shall serve a copy of this Decision and Order, with notice of entry, on all parties via NYSCEF.

This constitutes the Decision, Order, and Judgment of the Court.

<u>9/8/2025</u> DATE					<u>Mary V Rosado JSC</u> HON. MARY V. ROSADO, J.S.C.
CHECK ONE: APPLICATION: CHECK IF APPROPRIATE:	<input checked="" type="checkbox"/> CASE DISPOSED <input type="checkbox"/> GRANTED <input type="checkbox"/> SETTLE ORDER <input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> DENIED 	<input type="checkbox"/> NON-FINAL DISPOSITION <input checked="" type="checkbox"/> GRANTED IN PART <input type="checkbox"/> SUBMIT ORDER <input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> OTHER <input type="checkbox"/> REFERENCE	

² The Court reiterates that nothing contained in this Decision and Order herein prohibits New York City from cooperating with the federal government in deportation proceedings for undocumented individuals who are covered by judicial warrants and orders signed by federal or immigration judges (*see also* N.Y.C. Admin. Code § 14-154).