

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT
Civil Action No.

GLORIA ALCARRAZ; SORONX DE LA CRUZ;
AND DIEULA ALECTINE,

Plaintiffs,

v.

EXECUTIVE OFFICE OF HOUSING AND
LIVABLE COMMUNITIES; and EDWARD M.
AUGUSTUS, Secretary of the Executive Office of
Housing and Livable Communities, in his official
capacity,

Defendants.

COMPLAINT

Introduction

1. Just over ten days ago, Commonwealth officials announced that on November 1, 2023, Defendants will institute dramatic changes to the implementation of Massachusetts’ “Right-to-Shelter” Law, G.L. c. 23B, § 30. Without this Court’s swift intervention, those changes will deny shelter to eligible families, leaving destitute women and children out on the street.

2. The announced changes include the imposition of: a “cap” on the total number units in the emergency shelter system, a “waiting list” for shelter-eligible families who are denied placement due to the cap, and a “priority” placement system for certain “high need” families.

3. Plaintiffs, who are currently homeless and eligible for emergency shelter, bring this action for declaratory and injunctive relief to prevent Defendants from implementing those changes, which will result in the denial of desperately needed shelter.

4. Because the changes planned by Defendants are requirements of general application and future effect, they constitute regulations within the meaning of the Administrative Procedure Act (“APA”), G.L. c. 30A. However, Defendants have failed to follow the APA and provide legally required public transparency in the rollout of those changes.

5. Pursuant to Sections 2 and 3 of the APA, an agency may only begin to implement a regulation after it holds a public hearing or undertakes a notice and comment period on the substance of that regulation. *See* G.L. c. 30A, §§ 2 & 3. As Defendants have failed to complete either of those steps with regard to the announced changes, Defendants cannot lawfully implement the changes and Plaintiffs are entitled to an injunction preventing Defendants from doing so.

6. Defendants have also violated a legislative mandate in the 2024 State budget, which requires Defendants to provide the Legislature with a report justifying changes like these to the emergency shelter program ninety days before adopting them. This violation likewise entitles Plaintiffs to an injunction preventing implementation of the announced changes.

Jurisdiction

7. This Court has subject matter jurisdiction over this action pursuant to: G.L. c. 214, § 1, which grants it jurisdiction over “all cases and matters of equity cognizable under the general principles of equity jurisprudence”; and G.L. c. 231A, § 1, *et seq.*, which imbues it with the power to issue declaratory relief in appropriate cases.

Parties

8. Plaintiff Gloria Alcarraz is a resident of Massachusetts where she lives with her family, including her two adult daughters, her daughter’s husband, and her five minor grandchildren. She is currently in the middle of an eviction proceeding and is terrified of being evicted.

She and her family would have nowhere to go and their only option for housing would be to apply to the state's emergency assistance housing program, which she believes they would qualify for.

9. Plaintiff Soronx De La Cruz is a resident of Massachusetts where she lives with her two minor children. She does not have a job, any source of income, and currently does not have housing. She is scared and stressed about the safety of her children if she can't find housing. She is in the process of applying for emergency shelter through the Commonwealth's emergency assistance housing program and believes she and her family qualify for placement.

10. Plaintiff Dieula Alectine is a resident of Massachusetts. She lives with her husband and two minor children. She and her family have no source of income and they currently do not have access to any housing. She has begun the application process for shelter placement through the Commonwealth's emergency assistance housing program and believes they are eligible. That is her only remaining option for housing.

11. Defendant Executive Office of Housing and Livable Communities ("EOHLC") is the division of the Commonwealth's executive branch statutorily designated to administer the Right to Shelter Law. Its principal place of business is 100 Cambridge Street, Boston, MA 02114.

12. Defendant Edward M. Augustus is the Secretary of EOHLC and, in that role, oversees the operations of EOHLC. His principal place of business is 100 Cambridge Street, Boston, MA 02114 and he is sued in his official capacity.

Statement of Facts

The Right to Shelter Law and Existing Regulations

13. The Right to Shelter Law, which has been in force since 1983, states that "[s]ubject to appropriation, [EOHLC] shall administer a program of emergency housing assistance to needy families with children and pregnant woman with no other children." G.L. c. 23B, § 30.

14. The Law tasks EOHLIC with “promulgat[ing] rules and regulations to establish the levels of benefits available under the program and to ensure simplicity of administration in the best interest of needy recipients.” *Id.* It also requires the program’s benefits to include, among other things, “temporary shelter as necessary to alleviate homelessness.” G.L. c. 23B, § 30(A)(e).

15. EOHLIC has promulgated regulations governing the provision of emergency housing assistance under the Law: 760 CMR 67.01 through 67.10.¹

16. 760 CMR 67.06 outlines the eligibility requirements a family must satisfy for placement in an emergency shelter. Initially, a family “must meet the eligibility criteria specified in 760 CMR 67.00” including the general emergency assistance criteria outlined in 760 CMR 67.02. 760 CMR 67.06(1)(a).

17. If the family meets those criteria, its members must then demonstrate that they satisfy one of the following four conditions: (1) they are at risk of domestic abuse or recently fled domestic abuse; (2) they are homeless due to a natural disaster; (3) they were recently evicted through no fault of their own, including through a loss of income; or (4) they are in a housing situation with a substantial health and safety risk. 760 CMR 67.06(1)(a)(1)-(4).

18. Additionally, the family must lack “feasible alternative housing” including temporary shelter with relatives or friends. 760 CMR 67.06(1)(b).

19. 760 CMR 67.06 then states that “[a]n EA-eligible household homeless due to the lack of feasible alternative housing ... shall be approved for temporary emergency shelter.” 760 CMR 67.06(3).

¹ The regulations refer to EOHLIC’s predecessor agency, the Department of Housing Preservation and Development (“DHCD”). The Massachusetts Legislature created EOHLIC in 2023.

20. It also requires EOHLC to “make reasonable efforts to locate temporary emergency shelter that will accommodate ... the entire household” and states that an eligible household “shall be placed in an appropriate family shelter, substance abuse shelter or other [EOHLC]-approved accommodations.” 760 CMR 67.06(3)(a), (b).

21. Finally, 760 CMR 67.06 states that “[t]he EA household will be placed in an interim placement, such as ... a hotel/motel, only if appropriate Department-approved family shelter space is not available.” 760 CMR 67.06(3)(e).

22. A true and accurate copy of 760 CMR 67 is attached hereto as **Exhibit A**.

Shelter System Expansion and Funding

23. Traditional family shelters in the emergency shelter system have been at capacity in recent months due to a host of factors including the Commonwealth’s affordable housing crisis and an influx of recently-arrived migrants.

24. To compensate, EOHLC has been contracting with hotels and motels so that there are sufficient units in the shelter system to satisfy demand from eligible families.

25. The Massachusetts Legislature typically appropriates Right to Shelter funds at the beginning of each fiscal year through budgetary line items and then supplements those appropriations as necessary to cover EOHLC’s costs.

26. The Commonwealth budget for fiscal year 2024—July 1, 2023 to June 30, 2024—became law on August 9, 2023. The Legislature inserted line-item 7004-0101 into that budget, which appropriated funds for the emergency shelter system and listed a series of provisos that carry “the force of law.” *Garcia v. Dep’t of Housing & Cmty. Dev.*, 480 Mass. 736, 740 (2018).

27. One of the binding provisos in that line item states that “not less than 90 days before promulgating or amending any regulations, administrative practices or policies that would alter

eligibility for or the level of benefits under this program ... [EOHLC] shall submit a report to the house and senate committees on ways and means” justifying such changes “including ... any determination that available appropriations will be insufficient to meet projected expenses.” St. 2023, c. 28, § 2, line item 7004-0101. A true and accurate copy of the proviso language in line item 7004-0101 of the fiscal year 2024 budget is attached hereto as **Exhibit B**.

28. On information and belief, EOHLC has not sent a report meeting the requirements of this mandate the Legislature. Indeed, a state senator recently asserted that “many legislators were very surprised that there was no advance notice of the potential changes in policy.”²

29. On August 8, 2023, Governor Healey issued an emergency declaration appealing to the federal government for funding to aid the Commonwealth in housing the influx of migrants.³

Changes to Take Effect on November 1, 2023

30. On October 16, 2023, State officials held a press conference and issued a press release detailing Defendants’ impending changes to the emergency shelter program.

31. The press release asserted that “the state’s emergency family shelter system has been expanding at an unsustainable rate to meet rising demand” and that “[t]he state will not be able to accommodate more than 7,500 families in shelter.” A true and accurate copy of that press release is attached hereto as **Exhibit C**.

² Kinga Borondy, *Central Mass. legislators frustrated over governor's handling of migrant crisis*, Telegram & Gazette, Oct. 26, 2023, <https://www.telegram.com/story/news/state/2023/10/25/federal-solution-called-for-but-massachusetts-needs-to-get-as-it-waits-for-funding-supports/71320905007/>.

³ Press Release, Governor Maura Healey & Lt. Governor Kim Driscoll, Governor Healey Declares State of Emergency, Calls for Support for Newly Arriving Migrant Families (Aug. 8, 2023), <https://www.mass.gov/news/governor-healey-declares-state-of-emergency-calls-for-support-for-newly-arriving-migrant-families>.

32. It further stated that “[b]eginning November 1, 2023, the state will no longer be able to add new shelter units. At this time, families ... with high needs, such as health and safety risks, will be prioritized for placement. Families who are not immediately connected with shelter will be placed on a waiting list.” Ex. C.

33. Governor Maura Healey also stated at the press conference, that “especially with winter approaching, we need everyone to understand that we are entering a new phase of this challenge. We can no longer guarantee shelter placement for families who are sent here. So, we are implementing new strategies to address the situation.”⁴

34. Specifically, starting November 1, 2023, Defendants intend to: (1) artificially cap the number of units in the shelter system and no longer add new units for eligible families above that cap; (2) begin placing eligible families on a waiting list rather than finding accommodations for them above the unit cap; and (3) start prioritizing families with certain yet-to-be-defined “health and safety risks” for shelter placement over other eligible families.

35. These changes will necessarily delay the provision of benefits to shelter-eligible families, such as Plaintiffs and those similarly situated, thereby denying them shelter and perpetuating the myriad harms caused by homelessness.

36. Research has consistently found strong connections between homelessness and poor mental and physical health in children. For example, children experiencing homelessness have a much higher risk of suicidality,⁵ and are more likely to experience acute illness symptoms.⁶

⁴ MassGovernor, *Governor Healey Provides update on State’s Emergency Family Shelter System*, YouTube (Oct. 16, 2023), <https://www.youtube.com/watch?v=soyFqHpGy24>.

⁵ Andrew J. Barnes et al., *Emotional Health Among Youth Experiencing Family Homelessness*, 141 *Pediatrics* (2018), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5869340/>.

⁶ L. Weinreb et al., *Determinants of health and service use patterns in homeless and low-income housed children*, 102 *Pediatrics* (1998), available at <https://pubmed.ncbi.nlm.nih.gov/9738176/>.

And the Commonwealth’s own website acknowledges the serious harms that homelessness has on adults, including high rates of “chronic medical illness.” A true and accurate copy of this webpage is attached hereto as **Exhibit D**.

37. The named plaintiffs, and those similarly situated, are homeless, destitute, and have no alternative options for housing if they are denied shelter placement. Winter is fast approaching and the denial of shelter due to Defendants’ announced changes will force Plaintiffs, and those similarly situated, to sleep on the streets, in cars, or in other dangerous and traumatic situations, subjecting them to extreme stress and severely jeopardizing their physical and mental health.

The Administrative Procedure Act

38. The APA outlines procedures that state agencies, like EOHLC, must follow when adopting new “regulations” as that term is defined in the statute.

39. Its purpose is to “establish a set of minimum standards of fair procedure below which no agency should be allowed to fall and to create uniformity in agency proceedings.” *Carey v. Comm’r of Corr.*, 479 Mass. 369, 371 (2018) (internal citations and quotations omitted).

40. A “regulation” under the APA “includes the whole or any part of every rule, regulation, standard or other requirement of general application and future effect, including the amendment or repeal thereof, adopted by an agency to implement or interpret the law enforced or administered by it.” G.L. c. 30A, § 1(5).

41. That definition excludes “regulations concerning only the internal management ... of the adopting agency ... and not substantially affecting the rights of or the procedures available to the public or that portion of the public affected by the agency's activities.” G.L. c. 30A, § 1(5)(b).

42. An agency must provide notice to the public prior to adopting a regulation as defined in the statute. *See* G.L. c. 30A, §§ 2-3. The exact procedural requirements depend on the situation, but must take the form of either a public hearing or a notice and comment period. *See id.*

43. To date, EOHLC has not noticed or held a public hearing on the changes to its administration of the emergency housing assistance program, or provided for a formal notice and comment period on those changes.

Class Allegations

44. Pursuant to Mass. R. Civ. P. 23, Plaintiffs assert claims for declaratory and injunctive relief on behalf of a class of similarly situated individuals. Plaintiffs seek to represent the following class: all persons seeking, and eligible for, emergency shelter placement under the Commonwealth's emergency housing assistance program.

45. *Numerosity:* This class is so numerous that joinder of all members is impracticable. Currently, approximately thirty-to-forty families are being placed in shelter *each day*, and there are many more who are eligible to apply. Joinder is impracticable because the putative class is inherently transitory due to being unhoused. Moreover, the class size is likely to increase as Defendants project that more shelter-eligible families will seek housing in the coming months.

46. *Commonality:* The relief sought is common to all putative members of the class in that all members seek relief from Defendants' implementation of changes to the emergency housing assistance program that will affect shelter placement benefits.

47. There are common questions of law and fact including, but not limited to: whether Defendants' actions regarding the announced changes to the emergency housing assistance program—the cap on the number of units in the shelter system, the waiting list for eligible families, and the accompanying priority system—have violated the APA; and whether Defendants' actions

regarding those changes violated the legislative mandate in budget line item 7004-0101, which requires EOHLC to submit a report to the Legislature ninety days before promulgating a regulation altering the level of benefits under the emergency housing assistance program.

48. *Typicality*: Named Plaintiffs' claims are typical of the class in that they arise out of the same course of conduct, namely Defendants' adoption of changes to the administration of the emergency housing assistance program without following legal requirements.

49. *Adequacy*: Named Plaintiffs will fairly and adequately protect the interests of class members, in that all share an interest in shelter placement under the emergency housing assistance program as well as in adequate notice of regulatory changes under the law. Named Plaintiffs' counsel are experienced in class action litigation and will adequately represent the class.

50. Additionally, pursuant to Mass. R. Civ. P. 23(b), the common questions of law predominate over any questions affecting individual members. Specifically, the predominant question in this case is whether Defendants' announced changes to the emergency housing assistance program violate legal notice requirements under Commonwealth law. A class action is also superior to other methods for fair and efficient adjudication of this matter. There is no realistic alternative for members of the putative class to bring their claims. As unhoused people, members of the putative class are unlikely to retain counsel or file a claim *pro se*.

Count I

Violation of Administrative Procedure Act (G.L. c. 30A, *et seq.*)

51. Plaintiffs incorporate by reference all allegations stated above.

52. The changes announced on October 16, 2023, to EOHLC's implementation of the emergency housing assistance program constitute "regulations" as defined in Section 1 of the APA. G.L. c. 30A, § 1.

53. Those major changes, as specified in paragraph 34 above, represent a material deviation from EOHLC’s prior implementation of the program and amount to “a standard or other requirement of general application and future effect.” *Id.*

54. The changes will also dramatically alter the rights and procedures available to the public under the program—delaying the provision of shelter benefits to indigent, shelter-eligible families and perpetuating the harms caused by homelessness.

55. As a result, EOHLC is statutorily required to provide either a public hearing or notice and comment period as prescribed by Sections 2 and 3 of the APA before adopting or otherwise administering those changes. G.L. c. 30A, §§ 2-3.

56. Because EOHLC failed to comply with those APA procedural requirements the announced changes are invalid and EOHLC cannot legally implement them.

57. Plaintiffs, on behalf of themselves and those similarly situated, seek a declaration to that effect and an injunction preventing Defendants from implementing those changes.

Count II

Violation of Statutory Budget Line Item 7004-0101 (St. 2023, c. 28, § 2)

58. Plaintiffs incorporate by reference all allegations stated above.

59. Line-item 7004-0101 in the fiscal year 2024 budget includes a proviso requiring EOHLC to submit a report to the Legislature ninety days before promulgating a regulation that would “alter eligibility for or the level of benefits under” the emergency housing assistance program, including any finding of insufficient funding. St. 2023, c. 28, § 2, line item 7004-0101.

60. On information and belief, EOHLC has not submitted a report meeting the requirements of this mandate to the Legislature regarding the announced changes to the emergency housing assistance program, which are specified in paragraph 34 above.

61. Because those changes alter the level of benefits under that program—by, among other things, capping the number of families that can be placed in shelter—the line-item proviso required EOHLC to submit a report justifying them.

62. EOHLC's failure to submit such a report thus violates the line item. As line item budget provisos carry the "force of law," the changes are invalid and cannot be legally implemented. *Garcia*, 480 Mass. at 740.

63. Plaintiffs, on behalf of themselves and those similarly situated, seek a declaration to that effect and an injunction preventing Defendants from implementing those changes.

Prayer for Relief

Wherefore Plaintiffs respectfully request that the Court grant the following relief:

1. Declaratory Relief.

a. Declare that Defendants have violated the APA with regard to the announced changes—the cap on the number of units in the shelter system, the waiting list for eligible families, and the accompanying priority system—and that those changes are, therefore, void and without legal force or effect; and

b. Declare that Defendants have violated line item 7004-0101 with regard to the announced changes—the cap on the number of units in the shelter system, the waiting list for eligible families, and the accompanying priority system—and that those changes are, therefore, void and without legal force or effect.

2. Injunctive Relief.

a. Grant a temporary restraining order and preliminary injunction:

i. Enjoining and restraining Defendants, their agents, employees, attorneys, and all persons in active concert with them from implementing or enforcing the

announced changes—the cap on the number of units in the shelter system, the waiting list for eligible families, and the accompanying priority system—unless and until Defendants comply with the requirements of the APA; and

- ii. Enjoining and restraining Defendants, their agents, employees, attorneys, and all persons in active concert with them from implementing or enforcing the announced changes—the cap on the number of units in the shelter system, the waiting list for eligible families, and the accompanying priority system—unless and until Defendants comply with the requirements of line item 7004-0101.

3. Other Relief

- a. Waive the security requirement in connection with the issuance of injunctive relief under Mass. R. Civ. P. 65(c) on account of Plaintiffs’ indigence;
- b. Award the costs of this action including reasonable attorney’s fees; and
- c. Grant such other and further relief as the Court deems just and proper.

Dated: October 27, 2023

Respectfully submitted,

/s/ Jacob M. Love

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