Commissioner of the N.Y. City Dept. of Social Servs. v Buckeye Coach LLC
2024 NY Slip Op 32594(U)
July 29, 2024
Supreme Court, New York County
Docket Number: Index No. 150122/2024
Judge: Mary V. Rosado

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

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

Justice

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THE COMMISSIONER OF THE NEW YORK CITY DEPARTMENT OF SOCIAL SERVICES,

Plaintiff,

- v -

BUCKEYE COACH LLC,CARDUAN TOURS LLC,CLASSIC ELEGANCE COACHES LLC,COASTAL CREW CHANGE COMPANY LLC,EJECUTIVO ENTERPRISES INC.,EL PASO UNITED CHARTERS LLC,GARCIA AND GARCIA ENTERPRISES INC.,JY CHARTER BUS INC.,LILY'S BUS LINES INC.,MAYO TOURS, INC.,NORTENO EXPRESS LLC,ROADRUNNER CHARTERS INC, SOUTHWEST CREW CHANGE COMPANY LLC,TRANSPORTES REGIOMONTANOS INC.,VLP CHARTER LLC,WINDSTAR LINES INC.,WYNNE TRANSPORTATION LLC,

Defendant.

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INDEX NO. 150122/2024

MOTION DATE 03/22/2024

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 3, 4, 5, 6, 7, 8, 12, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 79, 81, 86, 92, 105

were read on this motion to/for PREL INJUNCTION/TEMP REST ORDR.

Upon the foregoing documents, and after oral argument, which took place on May 2, 2024, where Steven Banks, Esq. appeared for the Plaintiff the Commissioner of the New York City Department of Social Services ("Plaintiff" or "the Commissioner"), Andrew Myers, Esq. appeared for all Defendants except Roadrunner Charters Inc., Robert J. Hantman, Esq. appeared for Defendant Roadrunner Charters Inc., and Beth Haroules, Esq. appeared for amici curiae New York Civil Liberties Union and American Civil Liberties Union ("ACLU") Texas, the Plaintiff's motion for a preliminary injunction is denied.

I. Background

For centuries, New York City has served as a welcoming community for immigrants from around the world. New York City is likewise a pioneer in the United States for establishing the right to shelter (*see, e.g. Callahan v Carey,* 12 NY3d 496 [2009]; *McCain v Koch*, 70 NY2d 109 [1987]; *Mixon v Grinker*, 157 Misc2d 68 [Sup. Ct. NY Co. 1993]).

In recent years an influx of individuals have sought refuge in the United States. Many of these individuals have moved to New York. Some who have arrived in New York have relied on New York City's recognized right to shelter to avoid sleeping on the streets. This has led to a large increase in the population residing in New York City's shelters and has placed a strain on New York City's resources. Never in New York City's history has its tradition of welcoming immigrants and pioneering the right to shelter intersected in the way it has leading up to this lawsuit.

Some immigrants who arrive in New York City have been provided transportation via bus by the numerous Defendants. The Governor of Texas, Greg Abbott, has paid Defendants to move numerous individuals from Texas to New York City. Mr. Abbott has made several public comments that he is doing so to draw attention to the Federal Government's immigration policy. Plaintiff alleges that as of January 2024, Defendants have transported approximately 33,600 individuals from Texas to New York City (NYSCEF Doc. 1 at ¶ 37). Plaintiff estimates that the costs of providing shelter to these individuals is no less than $708,000,000 (*id.* at ¶ 38).

To recoup costs associated with the influx of immigrants and to enjoin Defendants from transporting more individuals from Texas to New York, the Commissioner is asking this Court to enforce New York Social Services Law § 149. That law provides "[a]ny person who knowingly brings or causes to be brought a needy person from out of state into this state for the purpose of

making him a public charge . . . shall be obligated to convey such person out of state or support him at his own expense."[1]

Defendants oppose the Commissioner's request for injunctive relief and argue that Social Services Law § 149 is unconstitutional. Defendants assert the United States Supreme Court has already ruled a nearly identical California law as unconstitutional in *Edwards v California*, 314 U.S. 160 (1941). In reply, Plaintiff argues that Defendants have launched a facial challenge to the constitutionality of § 149 which is insufficient to strike down the legislation. They argue that any impact on interstate commerce is merely incidental. Plaintiff attempts to distinguish the facts of this case from *Edwards* by arguing that New York's law only prohibits individuals from transporting indigent folks in "bad faith."

II. Discussion

A. Standard

A preliminary injunction is an extraordinary provisional remedy requiring a special showing, including a likelihood of ultimate success on the merits, irreparable injury if the preliminary injunction is withheld, and a balance of the equities tipping in favor of the moving party (*Second on Second Café, Inc. v Hing Sing Trading, Inc.*, 66 AD3d 255 [1st Dept 2009]). The Court must exercise great caution and only grant an injunction upon the clearest evidence (*Spectrum Stamford, LLC v 400 Atlantic Title, LLC*, 162 AD3d 615 [1st Dept 2018] quoting *Xerox Corp v Neises*, 31 AD2d 195 [1st Dept 1968]).

B. Merits

Social Services Law § 149, which seeks to discourage indigent individuals from being transported into New York, can be characterized as a "pauper statute." The title of § 149 is "Penalty

[1] The Commissioner has indicated that the Defendants have stopped bussing individuals to New York. However she stills seek to enforce § 149 to be indemnified for expenses incurred in sheltering the allegedly bussed individuals.

for Bringing a Needy Person into the State". The statute makes it a misdemeanor for anyone who knowingly brings a "needy person" to New York "for the purpose of making him a public charge" (*see also Framer v McCarthy*, 205 Misc 921, 923 [Sup. Ct., NY Co. 1954]). It was enacted to prevent "paupers" from moving to New York.[2] Its earliest iteration was passed into law in New York in 1817 (*Thomas v Ross & Shaw*, 8 Wend 672, 674 [Sup. Ct. 1832]).

This Court has found no reported precedent, nor has any party cited to any case, where Social Services Law § 149 has been enforced since the United States Supreme Court ruled an essentially identical California statute unconstitutional in *Edwards v California*, 314 US 160 (1941). The Court finds that it cannot grant the Commissioner's request for injunctive relief as the merits of her claim are dubious at best given myriad constitutional concerns.

As held by the United States Supreme Court, "it is settled beyond question that the transportation of persons is 'commerce'" within the meaning of the Interstate Commerce Clause (*Edwards v California*, 314 US 160, 172 [1941]).[3] Application of the Interstate Commerce Clause does not depend on whether the transportation of individuals is commercial in character (*Heart of Atlanta Motel, Inc. v U.S.*, 379 US 241 [1964]).

The Court finds the instant case indistinguishable from *Edwards*. As held by the United States Supreme Court:

> "[T]he grant (the commerce clause) established the immunity of interstate commerce from the control of the states respecting all those subjects embraced within the grant which are of such a nature as to demand that, if regulated at all, their regulation must be prescribed by a single authority." (*Edwards v California*, 314 US 160, 176 [1941] quoting *Milk Control Board v Eisenberg Farm Products*, 306 US 346 [1939]).

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[2] *See* Raymond A. Mohl, *History from the Bottom Up: A study of the Poor in Preindustrial New York City, 1784-1830*, Histoire Sociale – Social History vol 2, 1969 pp. 86-104.

[3] *See also* U.S. Const. Art. 1 § 8 ("[Congress shall have Power]....to regulate commerce with foreign Nations, and among the several States, and with the Indian Tribes;...".)

In *Edwards*, an individual ("Mr. Edwards") brought his brother in-law, a resident of Texas, to California (*Edwards, supra* at 170). Mr. Edwards knew his brother was an indigent person. The California Statute provided that "[e]very person....that brings or assists in bringing into the State any indigent person...knowing him to be an indigent person, is guilty of a misdemeanor." (*Edwards* at 171). The United States Supreme Court held this statute unconstitutional and found that the transportation of indigent persons from State to State clearly falls within the class of subjects within which the scope of Congressional power is designed to deal (*Edwards, supra* at 176).

This Court is bound by the United States Supreme Court's interpretation of the Federal Constitution (*People v Kin Kan*, 78 NY2d 54, 59-60[1991]). The statute which the Commissioner seeks to enforce makes it a crime to knowingly transport indigent individuals to the State of New York and requires individuals to indemnify New York for the costs of caring for those indigent individuals. Just as in *Edwards*, this is a plain attempt to regulate the transportation of indigent persons from State to State in violation of the Interstate Commerce Clause. The Commissioner's argument that enforcement of § 149 does not burden interstate commerce contradicts the Commissioner's own statements, where she admits that the Defendants stopped transporting individuals as a result of the threat of enforcement.

The United States Supreme Court's rationale in *Edwards* is well founded. If States began enforcing provisions like § 149, there would be an undoubtedly chilling effect on people's ability to move across state borders. Movement would be dependent on economic status in violation of the United States Constitution. This is why it has been the law, since at least the 1940s, that interstate commerce involving the transportation of individuals across state lines is considered within the class of subjects which Congress has the exclusive power to deal.

Moreover, Federal Commerce Power includes the right to protect individuals from violations of their civil rights to engage in free movement in interstate commerce (*U.S. v Guest*, 383 US 745, 759 [1966]). Congress has made it a crime for any two or more persons to threaten, intimidate, or oppress any person in any state from the free exercise of any right or privilege secured by the Constitution of the United States (18 USC § 241).

While the right to interstate travel is not explicitly mentioned in the United States Constitution, the United States Supreme Court has stated that the drafters of the Constitution have considered it to be such a fundamental and basic right that it need not be reduced to writing (*Page v Cuomo*, 478 F Supp3d 355 [NDNY 2020]). State law implicates the constitutional right to travel when it (a) deters such travel; (b) when impeding travel is its primary objective, or (c) when it uses any classification which serves to penalize exercise of the right to travel (*Attorney General of New York v Soto-Lopez*, 476 US 898 [1986]). Therefore, based on this rubric, enforcement of Social Services Law § 149 conflicts with 18 USC § 241 as it threatens individuals from facilitating the transportation of individuals across state lines based on their economic status.

The Commissioner's attempt to save § 149 by arguing it survives a facial constitutional challenge is unavailing. The Commissioner ignores the United States Supreme Court's holding that there exist strict constitutional limitations upon state power to interfere with the interstate transportation of persons, and this limitation is not subject to an exception simply because those persons being transported are considered "paupers" or "indigent" (*Edwards, supra* at 177; *see also Heart of Atlanta Motel, Inc. v US*, 379 US 241, 279 [the right of persons to move freely from State to State occupies a more protected position in our constitutional system than does the movement of cattle, fruit, steel, and coal across State lines] [Douglass, J. concurring]). The Commissioner's interest in saving money provides no justification for its decision to seek enforcement of a statute

that criminalizes individuals who facilitate the free exercise of the constitutional right to travel across state lines (*Saenz v Roe*, 526 US 489 [1999]; *see also Aptheker v Secretary of State*, 378 US 500 [1964]).

As stated by Justice Cardozo "the peoples of the several states must sink or swim together, and that in the long run prosperity and salvation are in union and not division." (*Baldwin v Sellig*, 294 US 511, 523 [1935]). Simply put, the United States Constitution prohibits states from implementing chilling and punitive measures, such as those found in § 149, to discourage individuals from moving from State to State. The mass migration of people within the country, which the Commissioner seeks to chill or prevent, is an issue reserved by the Constitution for Congress, lest the United States fall to a regime of balkanization with each state setting forth a patchwork of inconsistent criteria for crossing state lines.

Because the Court finds that the Commissioner has failed to set forth clear and convincing evidence that she will likely succeed on the merits, the Court need not analyze the other elements of injunctive relief. A showing of probability on success of the merits is a requirement to obtain injunctive relief (*Aetna Ins. Co. v Capasso*, 75 NY2d 860 [1990]). That requirement has not been met here. Therefore, the motion for injunctive relief is denied.

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Accordingly, it is hereby,

ORDERED that the Commissioner of the New York City Department of Social Services motion seeking a preliminary injunction is denied in its entirety; and it is further

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

This constitutes the Decision and Order of the Court.

7/29/2024
DATE

Mary V Rosado JSC
HON. MARY V. ROSADO, J.S.C.

CHECK ONE:		CASE DISPOSED		X	NON-FINAL DISPOSITION		
		GRANTED	x DENIED		GRANTED IN PART		OTHER
APPLICATION:		SETTLE ORDER			SUBMIT ORDER		
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN			FIDUCIARY APPOINTMENT		REFERENCE