



Heyward v. The City of New York

2023 | Cited 0 times | S.D. New York | January 9, 2023

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

-----x MICHAEL HEYWARD,

Plaintiff, -v- No. 21-CV-9376-LTS CITY OF NEW YORK,

Defendant. -----x

MEMORANDUM ORDER

Michael Heyward) brings this pro se action against the City of New York , alleging that Defendant violated his constitution City residents who did not receive the COVID- participating in other activities in New York City , Facts ¶¶ 4-5.) Defendant moves for dismissal of the Complaint pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6). (Docket entry no. 24.) jurisdiction pursuant to 28 U.S.C. section 1331. The Court has reviewed submissions 1

thoroughly and, for the following reasons, Defendant s motion to dismiss is granted in its entirety. Plaintiff will, however, be granted an opportunity to file an amended complaint within 45 days from the date of this Memorandum Order.

1 Plaintiff submitted two letters setting forth his position (see docket entry nos. 20, 30), in

those letters in connection with its evaluation of the instant motion, in the spirit of liberally construing pro se submissions. See e.g., Lucas v. Commissioner of OMH, No. 21-CV-8484-LTS, 2021 WL 6066092, at *1 (S.D.N.Y. Nov. 16, 2021) (explaining pro se

BACKGROUND Plaintiff is an unvaccinated resident of New York City. (Compl., Facts ¶ 1.) In

Id., Facts ¶¶ 4-5.) in, and participation , Injuries.) He seeks (1) exclusion from the

that . . . be recognized -19. (Id., Relief.)

No. t 1.) The Key to NYC program specified without displaying proof of vaccination and identification bearing the same identifying de Blasio EEO No. 225, available at: <https://www1.nyc.gov/assets/home/downloads/pdf/executive-orders/2021/eo-225.pdf> (last (visited Jan. 9, 2023). The purposes of the program were public safety, and save the lives of



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establishments that residents frequent . . . Id.

After numerous extensions of the Key to NYC program, on March 4, 2022, Mayor Adams issued EEO No. 50, directing that the Key to NYC program would expire on March 7, 2022. Adams EEO No. 50, available at:

<https://www1.nyc.gov/assets/home/downloads/pdf/executive-orders/2022/eeo-50.pdf> (last visited Jan. 9, 2023). To support his decision, Mayor Adams reasoned that, percent of New York City adult residents and 86 percent of residents of all ages have received at

least one dose of a COVID- -19 in the City of New Id. expiration of the Key to NYC program does not prevent any entity from requiring proof of

vaccination from a patron, nor does it prevent any entity from establishing another COVID-19 prevention measure . . . Id.

, arguing are moot because the provisions of the Key to NYC program applicable to patrons expired on

are not moot, the Complaint should be dismissed for failure to state a claim upon which relief can be granted.

DISCUSSION - Campbell-Ewald Co. v. Gomez, 577 U.S. 153, 160 (2016) (quoting U.S. Const., Art. III, § 2)). vening circumstance deprives the plaintiff of a personal stake in the outcome of

Genesis Healthcare Corp. v. Symczyk, 569 U.S. 66, 71-72 (2013) (internal quotation marks and citations omitted).

Because the Key to NYC program expired on March 7, challenging that program are now moot. The Court can no longer grant the relief that Plaintiff seeks to be exempted from the rules applying to patrons under the Key to NYC program

because those rules are no longer in effect. (See Pl. Opp. at 5, 7- so chooses); see also Clementine Co. LLC v. Adams, No. 21-CV-7779, 2022 WL 4096162, at *2 (S.D.N.Y. Sept. 7, 2022), appeal filed 2022 WL 4096162 (Oct. 13, 2022) moot . . . when it is impossible for a court to grant any effectual relief whatsoever to the Indeed, several courts in this , as applied to patrons, as moot. See id. at *2-3 no longer receive effectual relief from this Court because they have already received the relief

sought they need no longer check the vaccination status of individuals who purchase tickets to Remauro v. Adams, No. 21-CV-4553-ARR- TAM, 2022 WL 1525 -specific rule [of the Key to NYC program] has expired, the claims plaintiffs bring in their capacity as patrons are Commey v. Adams,



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No. 22-CV-0018-RA, 2022 WL 3286548, at *2 (S.D.N.Y. Aug. 11, 2022) because see also *Dark Storm Indus. LLC v. Hochul*, No. 20-CV-2725, 2021 WL 4538640 (2d Cir. Oct. 5, 2021) (dismissing case as moot where plaintiffs challenged COVID-19 executive orders that were rescinded).

In his opposition, Plaintiff raises several arguments as to why his claims are not moot, none of which is, that was . . . enforced by the Defendant[.] inue checking the vaccination

reflects an obligation imposed pursuant to city mandate. Adams EEO No. 50, available at:

<https://www1.nyc.gov/assets/home/downloads/pdf/executive-orders/2022/eeo-50.pdf> (last visited Jan. 9, 2023). Because Plaintiff only sues the City of New York in this action, he cannot seek relief from individual business entities and the rules they unilaterally impose for their patrons.

Second, Plaintiff argues that future COVID-19 outbreaks may result in the [A]

2 of a challenged practice does not deprive a federal court of its *Friends of the Earth, Inc. v. Laidlaw Environ. Servs. (TOC), Inc.*, 528 U.S. 167, 189 (2000) (internal quotation marks and citation omitted). demonstrate that (1) there is no reasonable expectation that the alleged violation will recur and

(2) interim relief or events have completely and irrevocably eradicated the effects of the alleged *Mhany Mgmt., Inc. v. Cnty. of Nassau*, 819 F.3d 581, 603 (2d Cir. 2016) (quoting *Granite State Outdoor Advert., Inc v. Town of Orange* defendant satisfies its burden where it shows that the possibility of recurrence is merely

Dark Storm Indus., 2021 WL 4538640, at *1 (citation omitted). Here, the City

2 The City construes for matters

(citation omitted). duration too short to be fully litigated prior to its cessation or expiration, and (2) there [is] a reasonable expectation that the same complaining party [will] be subjected to the same *Van Wie v. Pataki*, 267 F.3d 109, 114 (2d Cir. 2001)(internal quotation marks and citation omitted). The Court believes that the voluntary cessation exception is more appropriate for consideration argument that the City terminated the program prior to resolution of this case but may choose to reinstitute it based on future conditions. That said, however, based on that the goals of the Key to NYC program have largely been met, a his argument that future implementation of the program is likely, the Court concludes that neither exception to mootness applies. See, e.g., *Remauro*, 2022 WL 1525482, at *4 could do is not enough to satisfy

levels have increased, as 99% of City residents aged 18-24 have received at least one dose of a COVID-19 vaccine, and only 3% of the adult population in the City remains unvaccinated, and severe illness resulting from COVID-19 has decreased. (Id.) The Court also recognizes that approximately



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ten mandate as to patrons, and the City has not reimposed such mandate despite the ongoing existence of COVID-19 infections. See City of New York, Coronavirus (COVID-19) Vaccine Mandates, available at <https://portal.311.nyc.gov/article/?kanumber=KA-03448> (last visited Jan. 9, 2023). Therefore, based support for his assertion that the same restrictions are likely to be imposed in the near term, the

Court concludes that the City has met its burden of showing that reinstatement of the Key to NYC program is merely speculative at this juncture. See *Dark Storm Indus.*, 2021 WL 4538640,

moot) (internal quotation marks and citation omitted); *Clementine Co.*, 2022 WL 4096162, at *3

the change in administration and a continual reduction in COVID-19 rates in the City, the Court agrees that Defendants have shown that there is no reasonable expectation that the mandate will ; *Boston Bit Labs, Inc. v. Baker*, 11 F.4th 3, at *10 (1 st

Cir. Aug. 26, 2021)

wh Opp. at 2.) As the City points out, however, Plaintiff has not alleged any facts in his Complaint

with regard to employment mandates imposed by the City. This argument, therefore, is wholly - *Alaska Electrical Pension Fund v. Bank of Am. Corp.*, 306 F. Supp. 3d 610, 625 (S.D.N.Y. 2018); *Fellows v. CitiMortgage, Inc.*, 710 F. Supp. 2d 385, 407 n.33 (S.D.N.Y. 2010) (same).

program are moot, 3

regarding failure to state a claim.

CONCLUSION For the reasons discussed above, s motion to dismiss the Complaint is granted in its entirety pursuant to Federal Rule of Civil Procedure 12(b)(1). pro se status and his reference in his opposition submission to possible employment issues raised by City policies and his unvaccinated status, the Court hereby grants Plaintiff permission to file an amended complaint setting forth any such claim, including factual allegations sufficient to demonstrate that he can state a cause of action upon which relief can be granted. Any amended complaint will supersede the original complaint in its entirety and therefore must include all allegations the Plaintiff wishes the Court to consider in connection with the new claim(s). The amended complaint must be filed with the Court

3 To the extent Plaintiff seeks the following relief

recognized as a -19 (see Compl., Relief), the Court concludes that Plaintiff has failed to present a justiciable claim or detached from the instant controversy against the City of New York as there is nothing to show that City in connection with any specific controversy.



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within 45 days of the date of this Memorandum Order. 4

Chambers will mail an Amended Complaint form to Plaintiff with a copy of this Memorandum Order.

This Memorandum Order resolves docket entry no. 24. The Clerk of Court is respectfully directed to hold this case open for 45 days n amended complaint.

SO ORDERED. Dated: January 9, 2023

New York, New York

/s/ Laura Taylor Swain_____ LAURA TAYLOR SWAIN Chief United States District Judge

Mailed to: Michael Heyward 409 East 64 th

Street Apt. 4D New York, NY 10065

4 Plaintiff may wish to contact the N , an

organization that provides free legal advice to self-represented parties in this Court. Chambers will mail a flyer from NYLAG to Plaintiff with a copy of this Memorandum Order.

