

# Exhibit I

1 SUPREME COURT OF THE STATE OF NEW YORK  
2 COUNTY OF NEW YORK - CIVIL TERM - PART 62

3 -----x  
4 In the Matter of Index No.  
5 NEW YORK TAXI WORKERS ALLIANCE; 160795/2023  
6 AMARA SANOGO; RICHARD CHOW,  
7 Petitioners,

8 For a Judgment Pursuant to Article 78  
9 of the Civil Practice Law and Rules

10 -against-

11 DAVID DO, AS COMMISSIONER AND CHAIR OF  
12 THE NEW YORK CITY TAXI & LIMOUSINE  
13 COMMISSION; THE NEW YORK CITY TAXI &  
14 LIMOUSINE COMMISSION; THE CITY OF NEW YORK  
15 Respondents.

16 -----x  
17 Oral Argument Microsoft Teams  
18 November 8, 2023

19 B E F O R E: HONORABLE J. MACHELLE SWEETING, Justice

20 A P P E A R A N C E S:

21 NEW YORK TAXI WORKERS ALLIANCE  
22 31-10 37th Avenue, Suite 300  
23 Long Island City, New York 11101  
24 BY: ZUBIN DANIEL SOLEIMANY, ESQ.  
25 BY: ALLISON J. LANGLEY, ESQ.

NEW YORK CITY LAW DEPARTMENT  
100 Church Street  
New York, New York 10007  
BY: KAREN BETH SELVIN, ESQ.  
BY: SUZY KIM, ESQ.  
BY: JESSICA LYNN KATZEN, ESQ.

Maria E. Rivera  
Senior Court Reporter

1 A P P E A R A N C E S: (Continued)

2

3 ALSO PRESENT:

4

THE NEW YORK CITY TAXI & LIMOUSINE COMMISSION  
33 Beaver Street, 22nd Floor  
New York, New York 10004  
BY: SHERRYL ELUTO, ESQ.

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8 AMANDA IKARD

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RYAN WANTTANJA

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1 THE COURT: Good afternoon to all. I am on the  
2 record. And good afternoon to all counsel. I am Machelle  
3 Sweeting, and I am the Judge presiding over this matter.

4 This matter being that of New York Taxi Workers  
5 Alliance, and other individually named petitioners, against  
6 Commissioner and Chair of the New York City Taxi & Limousine  
7 Commission, and I'll say et. al, in that there are other  
8 named respondents.

9 And you can place your appearances on the record,  
10 and include in your appearance the address of your  
11 respective law office.

12 Who's here for the petitioners?

13 MR. SOLEIMANY: Good afternoon, Your Honor.

14 I am. My name is Zubin Soleimany, appearing for  
15 all petitioners. Address is New York Taxi Workers Alliance,  
16 31-10 37th Avenue, Suite 300, Long Island City, New York  
17 11101.

18 THE COURT: Good afternoon, Mr. Soleimany.

19 Who is here on behalf of the respondents?

20 MS. SELVIN: Good afternoon, Your Honor.

21 This is Karen Selvin of the New York City Law  
22 Department. I'm appearing on behalf of all respondents.  
23 The New York City Law Department is located at 100 Church  
24 Street, New York, New York 10007.

25 THE COURT: Good afternoon, Ms. Selvin.

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1                   Now, I see, Ms. Selvin, you said that you're here  
2                   on behalf of all of the respondents. And I heard  
3                   Mr. Soleimany is here on behalf of all of the petitioners.  
4                   But I still see on my screen additional persons.

5                   So such person starting first with Allison Langley,  
6                   yes, identify yourself and the relationship to the case.

7                   MS. LANGLEY: Allison Langley for all petitioners.  
8                   Same address which I'm happy to repeat, Your Honor.

9                   THE COURT: Are you here with Mr. Soleimany?

10                  MS. LANGLEY: I am, yes.

11                  THE COURT: So my question becomes who is lead  
12                  counsel for purposes of today's appearance? Is it you,  
13                  Mr. Soleimany, or Ms. Langley?

14                  MR. SOLEIMANY: It's me, Your Honor.

15                  THE COURT: Okay. And I also see on my screen a  
16                  Jessica Katzen, K-A-T-Z-E-N. Please unmute yourself and  
17                  state your relationship to this case.

18                  MS. KATZEN: Good afternoon, Your Honor. I'm also  
19                  an Assistant Corporation Counsel, representing all  
20                  respondents. I'm here was Ms. Selvin, but Karen Selvin will  
21                  be the lead attorney for respondents today.

22                  THE COURT: You anticipated and answered what would  
23                  have been my next question. Good afternoon to you,  
24                  Ms. Katzen.

25                  All right, I see other persons on my screen by way

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1 of icons, but not by way of camera.

2 Counsel, are you familiar, Mr. Soleimany, with any  
3 of the persons who are so identified on the screen?

4 MR. SOLEIMANY: I am. I believe a couple of them  
5 are from TLC, but none of the persons will be from our side.

6 THE COURT: Then I direct my to attention to, Ms.  
7 Selvin. Do you recognize any of the persons whose icons are  
8 on my screen?

9 MS. SELVIN: I do, Your Honor. One of them is one  
10 of our colleagues here at the New York City Law Department,  
11 Amanda Ikard. And then the three other individuals are  
12 representatives of TLC.

13 THE COURT: This court, whether in person or  
14 remote, my court is open to the public, meaning even if they  
15 were members of the public who wanted to observe the  
16 proceedings, as long as they remain muted, they are able to  
17 do so. So whether persons are identified or unidentified,  
18 as long as there is no one who is disruptive to these  
19 proceedings and is not recording in any manner, that is  
20 audio, video, TikTok, all of the means and manners by which  
21 there can be recording, that is a court order. And any  
22 violation of such order is contempt of court.

23 With that, I'm ready to proceed, in that, this is  
24 an order to show cause.

25 Counsel, by way of disclosure before I continue, I

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1 must place on the record that while it may have been some  
2 years ago, specifically either year 2010 or 2011 or 2011 to  
3 2012, I had once served as an Administrative Law Judge for  
4 the Taxi & Limousine Commission. And that was for a period  
5 less than one year, but it would have been the years of  
6 either 2010 through '12.

7 And just in the fullness of transparency and  
8 disclosure, I need to hear from counsel, in that, this case  
9 does have as a named respondent the office of which I was  
10 formerly employed in the years that I've stated.

11 Is there any objection by counsel to my presiding  
12 over this order to show cause?

13 I'll start first with you, Mr. Soleimany, because  
14 it is your motion.

15 MR. SOLEIMANY: No objections, Your Honor.

16 THE COURT: Ms. Selvin?

17 MS. SELVIN: No objection, Your Honor.

18 THE COURT: Okay. With that, the order to show  
19 cause seeks the following relief:

20 One, you want to enjoin the respondents from  
21 accepting applications for new --

22 And for, Madam Reporter, their electric vehicle  
23 which you may hear counsel instead by shorthand say EV. So  
24 for purposes of the record it's electric vehicle. And FHV  
25 for-hire vehicle licenses.

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1                   Are those the acronyms that counsel may be using in  
2                   your respective arguments and papers, Mr. Soleimany?

3                   MR. SOLEIMANY: That's correct, Your Honor.

4                   THE COURT: Ms. Selvin?

5                   MS. SELVIN: Yes, Your Honor.

6                   THE COURT: I'm going to start with that part of  
7                   the relief because -- well, let me correct myself. That's  
8                   one that you're seeking. Enjoining them from issuing new  
9                   licenses, from accepting applications for new licenses, from  
10                  processing such applications, and from implementing the  
11                  reinstatement of the electronic vehicle for-hire vehicle  
12                  license exemption rule.

13                  Is that your application, Mr. Soleimany?

14                  MR. SOLEIMANY: Yes, Your Honor.

15                  THE COURT: You state in your papers that one of  
16                  the basis upon which you're seeking such relief is that  
17                  there was, one, not an opportunity to comment, and there was  
18                  no notice, meaning a public hearing concerning the comment.

19                  Is that correct?

20                  MR. SOLEIMANY: That is correct, Your Honor.

21                  THE COURT: Now, I'm going to start there, because  
22                  I read in opposition that there were hearings, that there  
23                  were hearings, there were reports.

24                  Can we start first with -- because that's a matter  
25                  of fact, whether or not it occurred or did not occur, but



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1           you all -- that's in dispute.

2                       Tell me, Mr. Soleimany, what's your position as to  
3           it?

4                       MR. SOLEIMANY: Sure. So I'm not sure if it's  
5           necessarily in dispute. But I think there might be -- there  
6           were two things going on roughly at the same time. There  
7           were two proposals or two policies that TLC implemented on  
8           October 18th that both relate to electric vehicles.

9                       One of them is what TLC has termed the Green Rise  
10           Initiative. Now, this is a rulemaking proposal that was  
11           CAPA compliant, TLC published rules ahead of time, they held  
12           hearings on it.

13                      THE COURT: One moment. I don't want to interrupt,  
14           but again I have a reporter, who we want to make sure  
15           everything you say it has a record.

16                      You said it's CAPA compliant, and by that CAPA,  
17           C-A-P-A, you meant the City Administrative Procedure Act, is  
18           that what you're referring to when you say CAPA?

19                      MR. SOLEIMANY: CAPA, City Administrative Procedure  
20           Act, correct.

21                      THE COURT: Go ahead, continue.

22                      MR. SOLEIMANY: So the Green Rise Initiative, what  
23           that rule does is, it set, it set standards by which high  
24           volume for-hire vehicle companies, so the largest sector of  
25           the for-hire vehicle market, you know, Ubers and Lyfts,

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1 would have to dispatch 100 percent of their trips to  
2 electric vehicles by 2030, with certain benchmarks in  
3 between.

4 Now, so that rule was passed through CAPA compliant  
5 rulemaking. That rule effectively requires the transition  
6 of the existing fleet of vehicles, that might be internal  
7 combustion vehicles, now to become electric vehicles by  
8 2030. So that is one process which petitioners are not  
9 challenging those rules. We are not making any complaints  
10 about CAPA with regard to the Green Rise Initiative.

11 What happened the same day those rules passed, a  
12 few hours later TLC announced that it was now going -- it  
13 was reinstating a prior rule that had been duly promulgated  
14 and had been duly repealed, but TLC was reinstating it by  
15 announcement at a press conference with zero public input,  
16 zero CAPA compliance. And that rule was to reinstate that  
17 beyond requiring transition of the existing fleet to  
18 electric vehicles, would open up an unlimited number of  
19 licenses to be issued to EV FHV fees. Now that process --

20 THE COURT: That's what you're challenging?

21 MR. SOLEIMANY: That is what we're challenging.

22 THE COURT: Okay.

23 MR. SOLEIMANY: Totally different thing. I know  
24 Mr. DiGiovanni's affidavit talks about Green Rise Initiative  
25 and comments that were submitted pursuant to that rule, but

1 at no time did TLC ever publish... we're going to reinstate  
2 59A-06(a)(2) that had this exemption. Nobody was ever on  
3 notice that was going to happen. People found out at a  
4 press conference, and it was effective immediately.

5 THE COURT: Let me hear from Ms. Selvin as to that  
6 point, because your papers in reading them say in opposition  
7 there was a hearing, and you annexed I believe transcripts  
8 or exhibits and you say there was notice. But Mr. Soleimany  
9 says, no, not as to that point, same day, but different  
10 issue. Can you address that point, then?

11 MS. SELVIN: Your Honor, the affirmation that we  
12 submitted does not say that we provided notice and a hearing  
13 regarding the issuance of the EV's. We did annex copies of  
14 comments from the September 2023 hearing on the Green Rise  
15 Initiative, because during that hearing a number of  
16 stakeholders expressed interest in additional EV licenses.

17 So we were providing that information to the Court  
18 so you understood the concept that there was great demand  
19 from stakeholders to open up these type of licenses.

20 Having said that, we do detail in that affirmation,  
21 and we provided Exhibit A to that affirmation a copy of  
22 Local Law 147 of 2018. That Local Law specifically  
23 indicates in section 1 subsection E that TLC does not have  
24 to engage in rulemaking to issue additional FHV licenses.

25 And that is the provision that it is proceeding

1 under when it opened up EV licenses recently as of October  
2 18th.

3 THE COURT: So said another way, is it your  
4 contention that hearings, if you will, and comment as to  
5 opening up the number or the application process, if you  
6 will, for the EV licenses that there was no public comment  
7 or hearing that needed to take place at all?

8 MS. SELVIN: There did need to be a study conducted  
9 by TLC, which TLC did. And that is required by the Local  
10 Law. And TLC did conduct that study.

11 But again the City Council specified specifically  
12 in subsection E of section 1 of that Local Law that TLC did  
13 not need to go through CAPA to adopt any rules when it came  
14 to issuance of these additional FHV licenses. And as such,  
15 the TLC did not engage in additional rulemaking regarding  
16 this issuance.

17 THE COURT: Now, can you agree that just as in my  
18 read of your papers it resulted in this inquiry, that just  
19 by way of transparency, that if on the same day you have  
20 issues that are interrelated, that one could then believe  
21 that it either, one, required or fell under CAPA and  
22 required public comment or notice?

23 The fact that it's the same -- do you see the --  
24 I'm looking at sort of the perception of it, in light of it  
25 having happened on the same day but interrelated issues that

1           you're now parsing out and saying... no, we didn't need to  
2           give notice.

3                        It's not so artful my question, and it perhaps may  
4           be one that's rhetorical. But do you see what could be  
5           problematic as to that? But if you want to say something as  
6           to it, I'll hear you, Ms. Selvin. Go ahead.

7                        MS. SELVIN: Yes, I do understand, Your Honor. And  
8           as noted in what is now the February 2023 report which was  
9           issued in October it explained that TLC --

10                       (Experiencing technical difficulties.)

11                       THE COURT: TLC they grouped them together, is what  
12           I heard last. But repeat, Madam Reporter, can you tell me  
13           what you have last, Ms. Rivera.

14                       (Whereupon, the requested testimony was read back  
15           by the court reporter.)

16                       MS. SELVIN: Okay, I think I'll pick up. It  
17           indicates in that report that TLC was factoring in what was  
18           happening with the Green Rise Initiative into whether they  
19           were going to open up and issue more EV licenses.

20                       So I do understand, Your Honor, the point you're  
21           making. Having said that, the Local Law states very clearly  
22           that TLC does not have to do rulemaking for the issuance of  
23           licenses, additional licenses.

24                       And just to specify, the Green Rise Initiative  
25           obviously is setting forth as Mr. Soleimany said, benchmarks

1 over the next few years as to how much of the fleet of high  
2 volume FHV surfaces, those are the Uber and Lyfts of the  
3 world, need to be either electric vehicles or -- he  
4 misstated before -- they can also be wheelchair accessible  
5 vehicles.

6 Unfortunately there's no electric wheelchair  
7 accessible vehicle available in the market right now.

8 So by 2030 those high volume entities need to be  
9 100 percent either EV's or what they call WAV's, wheelchair  
10 accessible vehicles.

11 So in furtherance of that initiative, the City did  
12 take that into account when deciding to open up these  
13 additional licenses for electric vehicles, because that will  
14 help meet those benchmarks going forward.

15 Having said that, there's a lot of other  
16 intricacies involved with the Green Rise Initiative that did  
17 in fact need to be going through the rulemaking. That is  
18 not the case, though, for the issuance of the licenses.

19 THE COURT: I'm going to turn to another point.

20 MR. SOLEIMANY: Excuse me, Your Honor. Would it be  
21 possible to respond to Ms. Selvin's point about Local Law  
22 147?

23 THE COURT: I looked up and I did not see an  
24 illuminated screen, so I was going on to the next point.  
25 But, yes, Mr. Soleimany, go ahead.

1 MR. SOLEIMANY: Sure. So the structure of Local  
2 Law 147 of 2018 has two main parts. The first part of it is  
3 just the bill that the Council passed in 2018 responding to  
4 the oversaturation of for-hire vehicles, driver income,  
5 plummeting in the years preceding that, and put a 12-month  
6 pause on the new issuance of FHV licenses, that's Section 1,  
7 so Section 1(a) accomplishes that pause.

8 The Section 1(e) that Ms. Selvin referred back to  
9 relates back to Section 1(a), to that 12-month pause when  
10 the City Council was in charge of the pause. It does not  
11 create, it does not create that right going forward.

12 What happened was when the 12-month pause that was  
13 controlled by Local Law 147 and Council, when that lapsed --  
14 well, prior to its lapse actually, the second part of Local  
15 Law 147 was codified and Ad Code at 19-550; 19-550 empowered  
16 the TLC to continue the license restrictions through its own  
17 rulemaking. And TLC did that.

18 So the idea that TLC can just invoke, invoke  
19 Section 1 of Local Law 147 to take action without rulemaking  
20 is incorrect.

21 I will, just for completeness I will say that TLC  
22 does have the power to issue some licenses through its  
23 administrative power, because they wrote their rules that  
24 way in 2019 when the Council pause lapsed.

25 That's what we discussed later in our papers at

1 Section 59A-06(a)(1).

2 Now, even there they have to pick a discrete number  
3 and provide a rational basis for their choice. But before  
4 we get there what's important about the way that when the  
5 initial pause lapsed, is TLC said... if we're going to do an  
6 EV exemption, an unlimited to licensing, they felt they had  
7 to write that in their rules in 2019. They did not think we  
8 have an unlimited power to do this at the rulemaking, they  
9 wrote the wholesale exemption for EV's in 2019. Then in  
10 2021, they came back and they said, you know what, EV's are  
11 a lot more commercially available now, we need to ring this  
12 in, because this exemption could swallow the rule in terms  
13 of the controls that we have on congestion and driver  
14 income. So they went through a CAPA compliant process and  
15 duly promulgated the repeal of that rule.

16 There is nothing in the structure of the Local Law  
17 or TLC's regulatory history that would suggest that now  
18 after going through that process twice if they want to  
19 reopen that exemption, they can just do so with no CAPA  
20 process at all.

21 THE COURT: So I have two questions, then, for you,  
22 Mr. Soleimany. Is it your argument that the TLC, 1, can  
23 issue the licenses but must go through the CAPA process? Or  
24 are you arguing that the TLC can issue the licenses but  
25 there's a cap that needs to be imposed? Or, 3, TLC cannot



1 issue the licenses?

2 Those are at least the three options that I've come  
3 up with, but you may have some others. But what's your  
4 position as to those three that I just mentioned? Can they  
5 issue the licenses, what's your position?

6 MR. SOLEIMANY: TLC absolutely has the power to  
7 limit -- to issue new licenses if they follow their own  
8 rules, and if they --

9 THE COURT: So the first part is, yes, they can  
10 issue the license. Question 2, then, is it that they have  
11 to go through the CAPA process which you're saying is part  
12 of their own rule? Is that your position?

13 MR. SOLEIMANY: Maybe I can make myself clear if I  
14 say there are two paths that TLC could lawfully take here.  
15 One is if they want a wholesale exemption for a class of  
16 vehicles, they would do it the way that they have always  
17 done it since 2019, which is to go through CAPA and  
18 promulgate a rule. And that's because when you look at what  
19 CAPA says a rule is in Charter 1041, but we know that it's  
20 any universally applied non-discretionary policy. So that's  
21 a rule.

22 So if they want to say anybody with a licensing fee  
23 an electric vehicle gets a car, that's a universally  
24 applicable policy without discretion. That would be a rule.  
25 They want to reopen that exemption, they would have to go to

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1 rulemaking. And that's what they have done here, because  
2 they have tried to open up the broad rule with no  
3 discretion, here in this case they cannot, they cannot do  
4 that without CAPA compliant rulemaking.

5 As to, you know, a hypothetical if they said we  
6 think -- as they did back in March -- they said we want to  
7 issue 1,000 EV licenses. Under 59A-06(a)(1) they are  
8 allowed to issue a limited, a discrete number of licenses,  
9 that the rule says pick a number, post the number, determine  
10 a number, right, look at these factors and determine what's  
11 the right number to serve the goals of Local Law 147 and  
12 59A-06(a)(1) of keeping driver income from plummeting,  
13 holding traffic congestion in check.

14 If they can perform a rational analysis with a  
15 predicate in the data that supports licenses issuances,  
16 then, yes, they can.

17 But what they've done here, and they don't know how  
18 many licenses are coming. Is it going to be a thousand, is  
19 it going to be 10,000, is it going to be 100,000? There  
20 would be no rational way for them to consider the factors in  
21 59A-06 meaningfully and say, we know it's going to be okay,  
22 because they don't know how many licenses are coming.

23 When they put out a thousand licenses in March,  
24 they were snatched up online in a matter of minutes.  
25 They've got a wait list of 100,000 people.

1           You know, nothing in the analysis that they purport  
2           to have done in February of 2022 -- done February 2023, but  
3           just released right now in October says anything about how  
4           many licenses they expect to come on, and so they would be  
5           incapable of judging the impact which they would be required  
6           to under their own rules.

7           THE COURT: Ms. Selvin, I'm going to come back to  
8           you. But just before I forget my question, that's why I  
9           want to ask it now.

10           With that said, Mr. Soleimany, there's a prong of  
11           your application where you're opposed to the TLC even  
12           accepting applications. So part of your argument is they  
13           have no idea as to how many people may want these licenses,  
14           because they have this uncapped number, that part can be  
15           determined, what's the prohibition or what would be  
16           problematic about at least accepting the applications.

17           And I think somewhere in the papers it says what  
18           number may have been accepted already, or I think that's in  
19           your papers. But what would be the objection to -- isn't  
20           that a better practice to sort of get a feel of how many  
21           people may even be interested, that prong of your order to  
22           show cause.

23           MR. SOLEIMANY: Well, so I think, I think one way  
24           of putting it, I think that is there in the order to show  
25           cause for specificity for the equities which I will come

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1 back to. But also the notion, so a couple of times the  
2 First Department has said in cases also involving the TLC,  
3 that, if you take an action and you don't follow CAPA when  
4 you pass the rule, even if you don't call it a rule, the  
5 whole, you know, the whole rule, the policy subject to it is  
6 null and void.

7 So, you know, if it had not been for the unlawful  
8 reinstatement of the EV exemption, TLC would not be  
9 accepting applications right now. That step would preserve  
10 the status quo. So it begins with the acceptance of the  
11 applications that wouldn't otherwise be happening.

12 When it comes to the equities here, you know, part  
13 of the problem here is, unlike the last round when TLC said  
14 a thousand licenses and you could apply get a statement of  
15 interest. Right now -- people didn't need to have a car  
16 back then -- TLC is requiring people to buy a vehicle in  
17 order to apply.

18 So it's concerning at this point that with no  
19 advance notice just popping this on the industry overnight,  
20 people may be buying vehicles in order to even begin the  
21 application process. And it would be concerning if people  
22 were buying vehicles pursuant to a program that is  
23 ultimately shut down, struck down rather.

24 THE COURT: I'll put a pin on that because that's  
25 another argument on the equities and the irreparable harm,

1 which is why you're seeking an injunction, so I'll get to  
2 that part next.

3 But, Ms. Selvin, I had you on pause fore  
4 Mr. Soleimany gave his rationale which is that the TLC can  
5 issue a discrete number of licenses, which is what they've  
6 done before, but this is not the case he argues. Instead  
7 you want to have unlimited number, no cap, no indication.  
8 And because of that, you must go through the CAPA rulemaking  
9 process.

10 Can you address those points that he's made or his  
11 argument?

12 MS. SELVIN: Sure. I'll just note, you know,  
13 Mr. Soleimany I think is mischaracterizing what's in the  
14 Local Law. And I think the plain language of Section E  
15 makes it clear for the Court.

16 He is correct that Section A, 1-A of the Local Law  
17 addresses the 12-month initial pause. That was a limited  
18 pause. The only -- if I recall correctly, the only licenses  
19 people could get during that initial 12-month period were  
20 for wheelchair accessible vehicles. So no other licenses  
21 were being issued. So TLC did not have authority to  
22 promulgate rules during that time period to somehow override  
23 that 12-month pause that was dictated by the City Council.

24 Now, in Section E, though, it goes on to say  
25 notwithstanding subdivision A of the section. So they're

1 saying putting that aside, Your Honor, they then say the  
2 Taxi & Limousine Commission may issue any number of new  
3 for-hire vehicle licenses upon a determination by the  
4 Commission that issuing such number of new for-hire vehicle  
5 licenses would increase the availability of for-hire  
6 services in different geographic areas of the City, where  
7 such services are needed, and where such licenses would not  
8 substantially contribute to traffic congestion.

9 And, and this is the key part. It specifically  
10 says, Judge, and the promulgation of rules pursuant to  
11 Chapter 45 of the New York City Charter -- that is the City  
12 Administrative Procedure Act -- shall not be required for  
13 any action taken by the Commission pursuant to the  
14 subdivision.

15 So I'm not sure how much more clear the City  
16 Council could have been in saying that TLC does not have to  
17 do rulemaking for issuing new FHV licenses.

18 The fact that they have in the past done some in  
19 this arena does not override the plain language of the Local  
20 Law.

21 And I'll just say, you know, in their papers they  
22 reference the fact that in its September 2022 report the TLC  
23 recommended and ended up issuing a limited amount, 1,000 EV  
24 licenses. And that they did rulemaking associated with  
25 that.

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1           As we explained in our affirmation we submitted to  
2           the Court, that rulemaking was done because they had to  
3           establish TLC applicant eligibility rules for who was going  
4           to get priority for those limited amount of licenses.

5           The fact is the current TLC position is that  
6           they've now opened it up. It is unlimited. Keep in mind,  
7           though, Judge, they do study this every six months. So as  
8           quickly as they open the spigot, they can close the spigot  
9           if it turns out they study and they decide that there are  
10          adverse effects happening from these new vehicles on the  
11          road.

12          Having said that, and as we explained in our  
13          affirmation, and I can get into this a little more, Judge,  
14          we do think the professed harm that the petitioners are  
15          alleging is highly speculative.

16          As we explained in our affirmation, and actually I  
17          got the new numbers right before I got on this call, Judge,  
18          from TLC. If you're interested in hearing them.

19          The vast majority of the applications coming in are  
20          from individual TLC licensed drivers. These are individuals  
21          who are already leasing vehicles.

22          So what's happening, as TLC can tell, is that a lot  
23          of people are deciding to become owner/operators, which is  
24          good, it's going to probably reduce down their monthly cost  
25          and get them out of predatory licensing agreements.

## Proceedings

23

1                   We do not think at this point it's adding an  
2                   excessive amount of vehicles to the road. Why? Because  
3                   there's a pool of drivers, right, Judge? Everyone who  
4                   drives one of these vehicles has to be licensed by TLC.

5                   If they are driving one car, they can't be driving  
6                   another car at the same time.

7                   So what we think is happening is that over 90  
8                   percent of these applicants so far, Your Honor, are people  
9                   moving from the predatory leases into owning their own  
10                  vehicles.

11                  And at this point we are not foreseeing a heavy  
12                  increase in new vehicles. Now, will there be new vehicles  
13                  on the road? Of course. But as is set forth in the  
14                  February 2023 report, TLC as well as DOT looks into traffic  
15                  congestion. They look into all these factors they are  
16                  required to look into under the Local Law.

17                  And they've determined right now that there is very  
18                  little risk of excessive congestion happening courtesy of  
19                  these new EV licenses. We think actually people are  
20                  changing out one vehicle for another vehicle.

21                  As for Mr. Soleimany's argument regarding the rule  
22                  and whether the City is operating ultra vires, I think  
23                  that's more of a form over substance argument. He keeps  
24                  inserting, and he did this in his papers and he's done it  
25                  again during this oral argument saying that the rules sets



1       forth it needs to be a discreet number. The word discreet  
2       is nowhere in that rule, Judge. That's being inserted by  
3       the petitioners. It just says they need to set forth a  
4       number. In this case the number right now is there's no  
5       cap. It's unlimited.

6                I mean under that argument which, you know, I would  
7       argue again is more of a form over substance argument, it  
8       would seem that petitioners would not have an objection if  
9       TLC came out today and said, fine, I'm going to issue a  
10      million new EV licenses. Instead of saying unlimited.

11              You know, again, that seems more of a form over  
12      substance argument, and I would argue isn't a basis for  
13      enjoining this program.

14              Finally, I will just note, and I do think this  
15      factors heavily into the balance of the equities argument  
16      and Mr. Soleimany referred to this.

17              THE COURT: Well, he hasn't finished his argument.  
18      I interrupted Mr. Soleimany as he was about to go into the  
19      points of equity. And because I'm hearing from you now on  
20      your argument, I am going to come back, and then I'll come  
21      back to you again.

22              Okay, so go ahead, finish.

23              MS. SELVIN: You know, he mentioned the fact that  
24      people are having to purchase vehicles when they are  
25      applying for these licenses. That is correct. They need to

1 be attaching a VIN number for a vehicle to their  
2 application.

3 So we do now have quite a few people who have  
4 either purchased an electric vehicle or have put a down  
5 payment or a deposit down, which is probably nonrefundable,  
6 in anticipation of getting these licenses. And I do think  
7 that does weigh on the balance of the equities argument in  
8 favor of the respondents, because you're talking about  
9 people who have made a significant financial investment in  
10 these licenses.

11 And you know, if you were to shut off the  
12 applications or the City being able to license these people,  
13 it would be a significant -- it would be significant harm to  
14 those individuals.

15 And I will just note, again, a lot of these people  
16 are individually licensed TLC drivers. I wouldn't doubt  
17 that some of them are members of NYTWA, and they're wanting  
18 to become owner/operators.

19 And if the Court were to issue this injunction, you  
20 would not be maintaining the status quo, Your Honor, you  
21 would be altering the status quo.

22 This has been open for three weeks. And again I  
23 have the new numbers. I can give everyone the new numbers  
24 that TLC gave me right before I got on this call.

25 THE COURT: What are those numbers?

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1 MS. SELVIN: Yes. The new numbers are as of today  
2 total applications is 1,746, of those 1,645 are individuals.  
3 So those are individually TLC licensed drivers.

4 TLC has licensed as of today 36 of these vehicles;  
5 28 are pending inspection, meaning they've made it pretty  
6 much all the way through the process, and just the vehicle  
7 needs to be physically inspected.

8 I did want to note also, Judge, and I think this  
9 factors into the validity of NYTWA's argument. There's no  
10 cap on wheelchair accessible vehicles. I'm not quite clear  
11 why they're challenging the issuance of EV licenses, but  
12 then in the next breath they're not challenging wheelchair  
13 accessible vehicles.

14 But as of today through this year TLC has licensed  
15 2,586 wheelchair accessible vehicles with 99 licenses just  
16 this past month in October.

17 So we already have a lot -- thousands of new  
18 vehicles on the road this year that are WAV's that NYTWA and  
19 the petitioners are not challenging, but they're challenging  
20 people of being able to get out of their predatory leases  
21 and buy an electric vehicle. And I'm not sure of the  
22 reasoning for that. But maybe Mr. Soleimany can explain  
23 that.

24 THE COURT: Okay. Well, that's the number of  
25 questions why, the why is not worn out on the record. Just

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1 for purposes of -- I'm looking at your papers. This is in  
2 the affirmation NYSCEF document number 46, page 9 is the one  
3 where you've updated the numbers --

4 MS. SELVIN: Correct.

5 THE COURT: -- as to the applications, okay.

6 All right, I'm now ready to hear from you,  
7 Mr. Soleimany, as to the arguments for equity. What I've  
8 heard and read is, one, if it's -- and I'll use the term but  
9 no one has used it -- prejudicial in any way. It would be  
10 prejudicial to those, that is the granting of an injunction,  
11 it would be prejudicial to those who may have already  
12 invested in a vehicle or paid the down payment which is  
13 nonrefundable, and so the scale of equity would tip in their  
14 favor.

15 And I also heard and mentioned in their papers, you  
16 talk about reducing the income of current drivers.

17 And Ms. Selvin indicates that by way of those who  
18 have applied, that at least 1,645 people, not only are they  
19 individuals, meaning individual new applicants, but they are  
20 people who are already TLC licensed drivers.

21 And I also heard that part of the eligibility  
22 requirement is that if they are current TLC licensed  
23 drivers, they can't also now come in under the new EV  
24 driver, so it's not a situation where you have sort of  
25 double licensing, if you will, if that's the right term for

1 it. But is that fair -- but before you answer that, let me  
2 make sure.

3 Is that fair to say, did I hear you correctly, Ms.  
4 Selvin? In other words, if someone has a TLC license  
5 already and is driving whatever vehicle they have, one of  
6 the existing vehicles, they are no longer driving that  
7 vehicle because one of the terms and the conditions if  
8 they're accepted, part of the application process is they  
9 will no longer drive the other vehicle. Is that correct?

10 MS. SELVIN: That's not part of the terms and  
11 conditions, Your Honor. That was more just a common sense  
12 argument that you can't be in two places at once.

13 So if you're driving your own vehicle, you can't be  
14 driving at the same time someone else's vehicle that you're  
15 licensing. So what it appears is that --

16 THE COURT: Couldn't you then lease your vehicle,  
17 though?

18 MS. SELVIN: Well, the individual operators are  
19 representing that they're going to be driving their own  
20 vehicles, Your Honor. They are not corporations. A lot of  
21 the licensing companies are actually corporations. So these  
22 are people coming in representing they are going to be  
23 owner/operators.

24 THE COURT: But is that part of the criteria? That  
25 maybe... I'm a Davidson College honor code person, so if you

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1 say you took the exam, teacher and all believes you... but  
2 is that part of the process?

3 Could someone hypothetically, if you will, have  
4 their older vehicle, apply for and qualify and get this new  
5 vehicle and lease the old one out to someone?

6 MS. SELVIN: Well, I believe they are limited. And  
7 I can check on this, Your Honor, with TLC or actually  
8 probably Mr. Soleimany knows this. I believe if you're  
9 becoming an owner/operator, you're limited to one vehicle.

10 THE COURT: Okay, okay.

11 MS. SELVIN: But the corporate entities are the  
12 ones who are leasing out.

13 THE COURT: Okay. And currently that's not where  
14 you're getting the bulk of your applications?

15 MS. SELVIN: Right. I mean over 90 percent are  
16 individuals. As of today only 101 of the applications are  
17 from corporations of the total 1,746.

18 THE COURT: All right, Mr. Soleimany, I'm now on to  
19 equity. I'll hear from you.

20 MR. SOLEIMANY: Sure. I would like to respond to a  
21 couple of points first. Do you mind if I come back or if I  
22 state them now before I forget?

23 THE COURT: You can go ahead in any order, because  
24 now it's my turn, I have my pen, because I didn't want to  
25 forget what I wanted to ask. So I'm on to you, go ahead.

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1 MR. SOLEIMANY: I appreciate it, Your Honor.

2 So I do want to respond to Ms. Selvin's point about  
3 why petitioners haven't challenged the exemption for WAV's.  
4 And I think, well, that's very simple, because it's a duly  
5 promulgated rule under CAPA that TLC properly adopted after  
6 notice and common rulemaking. So I'm not quite sure what  
7 kind of challenge we could make in our Article 78 to that by  
8 contrast to the EV exemption that was announced at the press  
9 conference.

10 I do think in terms of impact of those WAV's, I  
11 think Ms. Selvin's data bears that out. I think as we say  
12 it took 11 months to get 2,500 wheelchair accessible  
13 vehicles, which we use the term WAV -- forgive me if I  
14 didn't explain -- took 11 months to get 2,500 of those.

15 Ms. Selvin says it took, what, two and a half weeks  
16 to get 1,700 electric vehicles. We know from this, we know  
17 in the 100,000 person wait list that these applications are  
18 going to overwhelm and flood the industry. And this goes to  
19 the irreparable harm. This goes to the equities.

20 You know, this isn't an experiment, like this isn't  
21 a pilot program. We've seen what happens when TLC had --  
22 you know, when the law is structured this way. When this  
23 oversaturation happened from 2014 to 2018, I think 85  
24 percent of the drivers were making under the minimum wage,  
25 40 percent of them qualified for public assistance, you

1 know, in like an 18-month period nine drivers took their  
2 lives. I mean, there are very serious implications to what  
3 happens when government advocates its role here. And this  
4 is not just me saying this.

5 When speaker of the City Council passed Local Law  
6 147, this is what he did. He invoked the drivers who had  
7 lost their lives. It's in the legislative history as the  
8 animating principle that the economic justice that counsel  
9 was going to pursue was going to on the one hand pursue  
10 driver pay rules and on the other hand limit licenses to  
11 stop oversaturation, and that those two would work together.  
12 And the way that they're structured have to work together.

13 You know, right now it's been three weeks with  
14 people buying cars and you're at 1,700 plates. In our  
15 papers we explain that in an example where it's just 7,000  
16 plates come online, you're looking at a driver losing  
17 take-home pay of 14 percent a year, \$4,000 a year, for  
18 80,000 drivers is hundreds of millions of dollars a year,  
19 millions of dollars a week, and those harms, those loss  
20 of -- that lost income cannot be recovered in an Article 78  
21 action, cannot be recovered in any other action against the  
22 City, and that damage is irreparable.

23 And this affects everybody, whether drivers who own  
24 their own cars right now, all 80,000 current drivers, or  
25 drivers who are currently leasing they will still be working



1 under conditions of oversaturation.

2 You know, Ms. Selvin is talking about owners  
3 leasing charges. Petitioner, Taxi Workers Alliance, has  
4 repeatedly and formally asked TLC to promulgate rules  
5 regulating the charges of leasing of for-hire vehicles, of  
6 getting rid of onerous charges. They do it for yellow cabs.  
7 You can only pay so much for a yellow Toyota Camry every  
8 week. They've refused after repeated entreaties and  
9 petitions for rulemaking to do the same for the for-hire  
10 vehicle side of the sector.

11 So to blow up the cap and allow tens of thousands  
12 of vehicles to flood the street because some drivers have  
13 been paying onerous leasing costs it's like tearing down  
14 your house because the roof leaks, you know, patch the leak.

15 But we're not -- I mean, we're not here to debate  
16 discretionary policy, right? We're here on a  
17 straightforward CAPA issue.

18 So on the equity, I mean just the impact on drivers  
19 is going to be huge. We see that these cars are coming on  
20 quickly, and beyond this there's also the environmental harm  
21 here too.

22 EV's of course have no tailpipe emissions. But as  
23 Charles Komanoff notes in his affidavit the energy grid in  
24 New York is mostly fossil fuel, and it's actually dirtier  
25 than it was a few years ago before Indian Point Nuclear

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1 Plant closed down. There are still increased carbon  
2 emissions from adding more cars, rather than converting the  
3 fleet.

4 Another reason we know this is because when the TLC  
5 passed the repeal of the EV exemption in 2021, they said it  
6 themselves. They said adding more cars even if they're EV's  
7 then it causes more carbon emissions. A better way is to  
8 transition the fleet, the existing fleet into EV's which is  
9 what they did, and now they're taking that point back.

10 You know, when we get to -- when we're looking at  
11 the power that TLC has to do this, whether it's through  
12 rulemaking or not, even under 59A-06 they have to take a  
13 look at these factors of congestion and income and  
14 emissions.

15 And you know, what we're seeing right now is  
16 actually compared to when the CAPA is in place, there are  
17 less trips now per active driver than there were even before  
18 the pandemic. The number hasn't even recovered, but TLC  
19 wants to put more cars out there. Traffic congestion is  
20 still at 2019 levels.

21 And I think, you know, nothing -- the dynamic here  
22 hasn't changed since in the February '23 report, the dynamic  
23 of all these factors that TLC has to consider hasn't changed  
24 since September 2022 when acting Commissioner Ryan Wanttanja  
25 wrote in a TLC press release, the existing for-hire vehicle

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1 fleet already exceeds passenger demand, and putting more  
2 non-accessible cars on the road will only add congestion to  
3 our streets and undermine driver pay while providing no  
4 benefit to passengers.

5 So even with the discretion engaged in this  
6 rulemaking with those dynamics identical to the way they  
7 were as they wanted them in 2022, there's no possible basis  
8 that as TLC identified to put these cars out there.

9 On the point of what cars will be out there and  
10 more cars on the street, I do want to note that, right, an  
11 individual operator who would get a license, yes, of course  
12 they can, and they do just lease their cars out. That's a  
13 net gain.

14 Also the corporations, the lease of FHV's, if a  
15 currently driver goes to get their own plate, yes, they will  
16 just put -- they will just put those cars out there, and  
17 there will be an additional net gain in cars.

18 And nothing here, of course, will be stopping, you  
19 know, a company like for example Revel getting more cars and  
20 putting more drivers out on the streets.

21 So that -- and to the equities on the point about  
22 the drivers and their -- and who TLC requires to have a  
23 vehicle before they apply. I would just note the applicable  
24 standard, I'm looking at the balancing of the equities is  
25 the relative harm to each party. The party here are City

1 respondents and the harm to them is a delay in their  
2 procedure and getting this out.

3 You know, we are raising this point because we are  
4 concerned that by TLC moving as quickly as they did in the  
5 public interest, we are concerned about what would happen to  
6 these people who, you know, if TLC had been more  
7 deliberative about this, if they had not moved so hastily,  
8 if they had moved with public input and followed CAPA, there  
9 would have been time to address this before anybody had  
10 gotten themselves in that position, but they've been put in  
11 that position by TLC's failure to follow the CAPA.

12 MS. SELVIN: Your Honor, may I respond to what  
13 Mr. Soleimany has said? You're on mute, Judge. Just want  
14 to make sure you're saying yes.

15 THE COURT: I am.

16 MS. SELVIN: Just a few things. First of all, you  
17 know, in making these arguments, the petitioners ignore the  
18 fact that TLC does do a study of all these factors every six  
19 months. And their latest report dated February 2023 noted  
20 the reasoning for why they think this is an appropriate time  
21 to open up the EV licenses.

22 First of all, just as a basic premise. You know,  
23 Mr. Soleimany noting the first deputy commissioner's  
24 comments from early 2022, which was based on, you know, data  
25 from 2021 during the heart of the pandemic and why TLC was

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1 not issuing new licenses, I think is, you know, out-of-date  
2 information. Obviously times have changed. And as the  
3 February 2023 report noted, rides have rebounded to close to  
4 pre-pandemic levels.

5 Are they almost fully there yet? No. But they're  
6 going in that direction. And that was noted in the report.

7 They also noted, they looked at driver incomes.  
8 Driver earnings for the most part have recovered from before  
9 the pandemic. So they looked at driver earnings. They  
10 looked at rental cost of FHV's, the leasing, the leasing  
11 cost which remain very, very high. They looked at the level  
12 of trip growth since last reported in each borough. They  
13 noted that the wait times remained fairly stable. They did  
14 note the interest in the thousand EV licenses that were  
15 offered in March of 2023.

16 I think Mr. Soleimany keeps misstating. It wasn't  
17 a wait list of 100,000 people. I think it was 10,000  
18 people.

19 Correct? I thought you had in your papers it was  
20 10,000.

21 MR. SOLEIMANY: No.

22 MS. SELVIN: But having said that, Judge, we saw  
23 this when the pause went into effect in 2018. There's an  
24 element of gold rush mentality when people think the  
25 licensing is going to be cut off. They all run to get in

1           their applications quickly because they want to get approved  
2           before the spigot is shut off.

3                       Having said that, as is noted in the February 2023  
4           report, a significant amount of these licensed FHV's are  
5           inactive. They note in the February 2023 report, they  
6           looked at, you know, January, January of that year, and it  
7           was over 20,000 I believe it was, were inactive, weren't  
8           being used. They also looked at a six-month time period,  
9           and it was over 10,000 of the licenses were inactive and not  
10          being used.

11                      So you have a lot of times people running to get  
12          these licenses when they think the spigot is going to be cut  
13          off. And then they actually end up not using the license.  
14          And they've been seeing this as set forth in the report  
15          that, you know, since the pause, right, there was a great  
16          rush right before that pause for everyone to get in and get  
17          licenses. That, as people are coming up for renewals, some  
18          of them are not renewing, so the numbers are going down.

19                      You also have people who are even renewing who are  
20          not using their vehicles for for-hire activity.

21                      So TLC has been looking at all these factors. And  
22          they also note, and as the petitioners are aware, there are  
23          other mechanisms now in place, many of which just came on in  
24          the last few years that will help control traffic  
25          congestion.

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1                   TLC has passed minimum pay rates for those high  
2                   volume services like Uber and Lyft. Not to get too into the  
3                   weed on that topic, Judge, but basically, you know, if they  
4                   operate very inefficiently, Uber, they have to pay more  
5                   often. So it's in their interest not to put a ton of cars  
6                   on the road just circling over and over.

7                   We also know, and it's been in the news a lot  
8                   lately congestion fees are being imposed, right, so that's  
9                   restricting the amount of cars that are probably going to be  
10                  coming into especially the central business district in  
11                  Manhattan.

12                  So there are a number of other factors that are now  
13                  playing in that will alleviate some of the initial concerns  
14                  that were voiced back in 2018.

15                  Also, I'll just note, you know, Mr. Soleimany  
16                  mentioned, you know, the general environmental concerns.  
17                  That does not give these petitioners standing. You know,  
18                  making a climate argument and saying we don't think this is  
19                  going to be good for the climate and we think actually  
20                  electric vehicles might make something worse, I'm not sure I  
21                  agree with that. But that doesn't give these specific  
22                  petitioners standing.

23                  And I think that is a preliminary issue that the  
24                  Court needs to address. Because as is noted in their  
25                  petitions, all of their professed harms are speculative,

1           they are.

2                       Even Mr. Soleimany acknowledged, he doesn't know  
3           what's going to happen, how many licenses or what the impact  
4           could be, yet he's asking this Court to issue an injunction  
5           basically and stop it.

6                       While TLC, and in conjunction I note, Judge, they  
7           do it with DOT too regarding the congestion part of their  
8           study. They're looking at this every six months, and  
9           they're looking at all these factors. And they are the  
10          expert agency. And the City Council knows they are the  
11          expert agency, which is why they gave TLC authority to  
12          study, to look at this at least annually and issue licenses  
13          without going through rulemaking.

14                      In this case TLC believes it makes sense to open up  
15          EV licenses right now. Again, they are going to study this  
16          in a few months. And if they see adverse consequences of  
17          what's happened, they can turn off the spigot as soon as  
18          they turned it on.

19                      But we do not believe that the petitioners have  
20          shown that they will suffer irreparable injury. We do  
21          believe for the reasons I set forth before that the balance  
22          of the equities weigh in favor of the respondents.

23                      As Mr. Soleimany knows, the balance of the equities  
24          deals with the public interest. So the interest of all  
25          those other drivers and individuals who have purchased



1 vehicles anticipating they are getting these licenses are  
2 directly in play I would say, Your Honor.

3 And as I just noted, I think the February 2023  
4 report sets forth very clearly that this was not arbitrary  
5 and capricious. I note that petitioners are not contesting  
6 any of the factual information set forth in that report.  
7 They're just saying make the leap that there are going to be  
8 more cars on the road and this is going to hurt us.

9 And while I appreciate Mr. Soleimany's comments  
10 about the WAV's, the bottom line is over 2,500 new vehicles  
11 have come onto the market this past year that are WAV's. So  
12 if their main concern is that it was an increase in vehicles  
13 was going to adversely impact the current set of owners and  
14 licensees, then I'm not sure why they weren't challenging,  
15 you know, the WAV unlimited.

16 You could challenge the WAV unlimited, whether it's  
17 by rule or by law. If you don't think it's justified, you  
18 can file a lawsuit. And they haven't done that.

19 So for all these reasons, Judge, we would --

20 THE COURT: You muted yourself before I heard for  
21 all these reasons, Judge...

22 MS. SELVIN: I would urge you to deny the TRO.

23 THE COURT: I do have a question, that is, the  
24 argument is -- you stated on the record what your  
25 perspective positions are. But if at this rate if you're

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1 receiving 1,645 applications every three weeks, my  
2 underlying question is whether or not there is an  
3 application date, even if there's not a cap on the number,  
4 is there a date by which whoever is interested must apply?

5 MS. SELVIN: No, Your Honor. But what I will say  
6 also is this, and I think we should all keep this in mind.  
7 The petitioners went to the press about this lawsuit, so  
8 it's out there that they're trying to turn off the spigot.

9 THE COURT: Well, I'm going to interrupt you  
10 because that's not my question. And my rulings are not in  
11 any way influenced by -- and by the way, I have not read  
12 anything about this issue, so let me just make it clear.  
13 But my question which you've answered is that there's no  
14 application deadline date.

15 MS. SELVIN: That is correct. Judge, I was just  
16 noting that fact because I think the pace --

17 THE COURT: Ms. Selvin, and at this rate in the  
18 three weeks there has been 1,000 -- I'll use the total --  
19 1,746 applicants. The point that you were going to make was  
20 that, Judge, that should not be the sort of variable or  
21 calculation I should consider, because you believe there may  
22 be some outside influences just for purposes of that  
23 calculation of causing the applications numbers to go up to  
24 make a point?

25 MS. SELVIN: Right.

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1 THE COURT: Okay.

2 MS. SELVIN: I think, I think the rate is going to  
3 not -- it's been very high right now, because I think there  
4 are people out there who think the Court may close the  
5 spigot. I don't anticipate this rate of applications  
6 continuing at this level was my point.

7 THE COURT: But in the absence of a deadline and  
8 unless you all have some secret powers that I'm not aware  
9 of, I know I don't have a crystal ball and can predict what  
10 or whether another 1,746 will apply in the next three weeks  
11 going forward, more or less, I don't know.

12 But hypothetically, if it continued at that rate or  
13 had increased, if the argument that you made, which is that  
14 because the applicants must invest and that it would be  
15 prejudicial, if you will, because they have already applied  
16 that may lead to some other litigation if you had been  
17 denied, because it's told once you apply it's non-refundable  
18 assuming, they meet all the criteria they can then get their  
19 vehicle. It can't be retroactively then I'm sure you can't,  
20 so the harm of the investment will already have taken place.

21 So is the TLC saying -- or respondents, I should  
22 say -- saying that even if they continued at this rate,  
23 there's nothing problematic?

24 Is there not some number that you have in mind that  
25 would be consistent with the reports and consistent with not

1 contributing to traffic congestion, contributing to meeting  
2 the need of increasing services, is there some number that  
3 you either don't want to exceed?

4 MS. SELVIN: Your Honor, they would be studying  
5 this every six months, so they would see what number is out  
6 there, and they would be assessing all the variables they're  
7 required to study.

8 So depending on what the circumstances are when  
9 they conduct that study, they would look to see if there's  
10 been a large increase in the number of vehicles and there's  
11 been adverse effects on the categories of information  
12 they're supposed to study.

13 THE COURT: Now, you mentioned the February 2023  
14 report, and you also said that there will be a study again  
15 in a few months, is it six months from February which would  
16 have been August or is it -- when is the next six-month  
17 study period, if you will?

18 MS. SELVIN: Your Honor, I can find that out for  
19 you and let the Court know. If you'll give me a second, I  
20 can probably email someone. But they do it every six  
21 months, so I can check with TLC.

22 MR. SOLEIMANY: Your Honor, just to correct a point  
23 that's relevant right now. Ms. Selvin keeps talking about a  
24 six-month review. It's not six months. The TLC changed  
25 their rules this past year to change the six-month review to

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1 a 12-month review. So there will not be a review in six  
2 months.

3 THE COURT: Let's see if she can verify that and if  
4 it is --

5 MS. SELVIN: Mr. Soleimany is correct, Your Honor.  
6 I just verified. They just switched it to annual, which is  
7 what the Local Law requires.

8 THE COURT: And if it is annual, is the next study  
9 February of 2024?

10 MS. SELVIN: I believe so, Your Honor, but I can  
11 verify that as well. So that would be in a little over  
12 three months. Let me just verify that for you, Judge.

13 MR. SOLEIMANY: And you know on this point, Your  
14 Honor, I think it bears noting that this -- the so-called  
15 February 2023 report was not published until October 18th  
16 when the announcement was made. So we don't really know  
17 when we might expect the next 12 month --

18 MS. SELVIN: Judge, they have confirmed that it  
19 will be February 2024 is the next study.

20 THE COURT: Who's confirmed?

21 MS. SELVIN: Your Honor, I'm in touch with the  
22 general counsel of TLC who just quickly emailed me that  
23 date.

24 THE COURT: Does anyone wish to be heard further  
25 then, in light of what has now been argued and stated on the

1 record?

2 MR. SOLEIMANY: If I may just make a couple quick  
3 points, Your Honor, if that's all right.

4 THE COURT: Go ahead.

5 MR. SOLEIMANY: I do, just for the sake of clarity  
6 here, want to reiterate the structure of Local Law 147. I  
7 believe that section of the law that is not codified in the  
8 Ad Code is set to take care of that initial 12-month period.  
9 And you can, you know, it's inherent in the structure that  
10 the responsibility for maintaining the count or choosing to  
11 lift the cap is then passed on to TLC at that point.

12 Because if it were still true, if it were still  
13 true that the factors, the limited factors enumerated in 1-E  
14 were still controlling, then 59A-06(a) (1) which has a much  
15 more extensive list of factors and explains the process  
16 would kind of be a nullity. There would be no point in  
17 having TLC put those regulations down if it didn't have to  
18 follow them.

19 If there were still an overriding section of a  
20 non-lapsed Local Law 147(1) (a), so just in terms of  
21 statutory structure in relationship to regulations that just  
22 wouldn't make sense.

23 I would note in terms of the equities and the  
24 rules, the driver pay rules that Ms. Selvin mentioned. So  
25 the driver pay rules, they do not set a minimum rate of pay

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1 per hour. They set a minimum rate of pay per trip, and if  
2 trips go down, then you're not making as much money.

3 She did say that the utilization rate, you know, is  
4 designed such that if drivers spend less of each hour  
5 working the rates would change. She didn't mention that TLC  
6 just hollowed out this rule last year when they created a  
7 five percent buffer zone, where that utilization rate which  
8 was the baseline was 58 percent can go down by 5 percent,  
9 meaning the drivers work time can go down by roughly 9  
10 percent without those rates adjusting.

11 Given the expenses in this industry, a 9 percent  
12 decrease in gross pay is roughly a 13.8 decrease in  
13 take-home pay.

14 Further, it's on the record at the last TLC hearing  
15 in March that Uber for one said, well, if that happens, if  
16 we even get close to drivers hitting that threshold where  
17 the rates would change, we'll just start logging drivers out  
18 of the app, so they wouldn't be getting that compensation  
19 anyways.

20 So you know, there's no safety net here for what  
21 happens when drivers get less trips.

22 On the congestion point. The congestion fees that  
23 MTA has been contemplating and the current congestion fee  
24 that exists, they're contemplating a per trip surcharge to  
25 be paid by the customer. So it's not a per vehicle charge

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1 that would disincentivize drivers from putting on cars or  
2 those cars hitting the road. There's no way in which that  
3 would, you know, it might disincentivize people from, from  
4 taking rides in certain areas. But the cars are still going  
5 to be there, and that's still where the bulk of the work is.

6 I would note as to the first congestion charge and  
7 the pay rules, the idea that -- I think the position that  
8 TLC is taking, well, these are new things that make it safe  
9 to do this now. The congestion surcharge and the pay rules  
10 were in effect since 2019. You know, and this just goes to  
11 the point that nothing about the overall dynamic of work per  
12 driver, the regulatory framework has changed since 2022 when  
13 the acting commissioner of NYTWA said the only thing that  
14 would come if we do this is decrease driver income and more  
15 congestion.

16 THE COURT: I do have another question. How long  
17 is the process from the time someone applies to the  
18 processing and the issuance? It may vary depending on  
19 documents and the individual who's applying, but give me a  
20 sense of how much time are we talking about, someone who has  
21 applied today theoretically can be processed and approved.

22 MS. SELVIN: Your Honor, I can just let you know,  
23 obviously the first gentleman who was licensed I think was  
24 able to be licensed in a couple of weeks. You know, besides  
25 the paperwork and the City having to, you know, verify all



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1 your information, you actually have to physically go get  
2 your car inspected, so getting an appointment for the  
3 inspection can vary things.

4 Obviously now there are, you know, are a lot of  
5 applications, there's going to be a longer wait time than  
6 the people who came on, you know, who were the first ones in  
7 on October 18th.

8 But again if you want I can check with TLC, see if  
9 they have an estimate of going forward how long people  
10 will take.

11 Again, between the numbers we gave you on Monday  
12 and today, Judge, the number today is that 36 vehicles are  
13 licensed. So since Monday, I can't remember what number we  
14 gave you for that in the affirmation, that many cars have  
15 gotten the license.

16 THE COURT: One other question. Why not in light  
17 of the arguments that were made here whether you agree, and  
18 in this case I know you disagree as to what the law requires  
19 specifically as to whether or not there's a CAPA process or  
20 not, I heard all of the arguments as to that.

21 But what harm would there be, in that, I believe  
22 you both agree also that the respondent could on its own  
23 without going through the CAPA process set a number and say  
24 here's the number of licenses we're going to issue full  
25 stop. Why not do that?

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1                   In other words, set a deadline by which  
2                   applications will be received or set a number in light of  
3                   what you're getting thus far, why is that not an option, or  
4                   is it?

5                   MS. SELVIN: Well, certainly it was an option,  
6                   Judge, because in March 2023, TLC just offered 1,000. They  
7                   decided at that point just to do a thousand. Based on the  
8                   current study, Judge, they feel like a cap of that level is  
9                   not required right now. They think they could open it up  
10                  based on the circumstances on the roads right now and the  
11                  results of their study.

12                  So you know, and they did do, right, they did do a  
13                  little baby step, they did the thousand, and they saw the  
14                  tremendous amount of unmet demand. So to the extent that  
15                  they believe, based on their study that the City can sustain  
16                  some of these additional EV licenses, this is also a  
17                  wonderful opportunity for a lot of people to become their  
18                  own bosses.

19                  So I don't think right now TLC sees a reason to be  
20                  capping that number at that level. Again having said that,  
21                  they will be studying it in February.

22                  THE COURT: But here's the thing, why not -- if not  
23                  a thousand because based on the study a thousand wasn't  
24                  enough, so you double it, and you say 2,000 or 3,000, you  
25                  come up with some number because could not TLC find itself

1 in another predicament, which is if the unlimited universe  
2 of eligible applicants, interested applicants were to apply  
3 and there is no cap and everyone who applies is eligible,  
4 you then have by the time you've done the study, the study  
5 may come back and say there's not now an oversaturation,  
6 what do you do then? Hypothetical.

7 MS. SELVIN: No, I appreciate what you're saying,  
8 Judge.

9 I do think, though, obviously TLC keeps an eye on  
10 roads in the meantime, even before their study. So  
11 obviously I believe if they saw anything that was extremely  
12 problematic, they could act before the study.

13 But keep in mind when they gave that limited amount  
14 of 1,000 in March of 2023, they had to determine eligibility  
15 criteria, right? So they had to give priority -- they ended  
16 up giving priority to certain people over other people with  
17 the unlimited, everyone has an equal chance to apply. And  
18 that's the advantage of the unlimited opening right now, is  
19 that anyone can apply. If you put a small cap on, they're  
20 going to have to decide who gets priority, because there is  
21 demand.

22 THE COURT: But just the converse, you have no cap.  
23 It almost becomes -- and this happens in life, in other  
24 industries, I should say. If assume not everyone who  
25 applies is going to be eligible, so you kind of internally

1 calculate that if 500 apply only 100 will be eligible with  
2 trial, there's the presumption not everyone is going to ask  
3 for a trial, so let me put 200 cases on the calendar. Well,  
4 guess what, one of all 200 on your calendar decided they  
5 wanted a trial.

6 But what if all 500 who apply they find out they  
7 are eligible and make the demand that they then want the  
8 license because the response that TLC does have, which you  
9 both agree, the discretion, if you will, to raise a number,  
10 set a number, lower a number, why not set a number, set a --  
11 you could set a number today and say that number is only  
12 good for the next week, see what comes in. Then you can set  
13 another number the following week, see what comes in. And  
14 then come February you have a study and you can look at the  
15 numbers and say either we need more or less, if you have  
16 that discretion. So why not that option?

17 MS. SELVIN: Well, TLC needs a basis for imposing a  
18 cap, though, Judge, it needs a reason, or else that's the  
19 next lawsuit.

20 So you know, they have to have some -- if they are  
21 going to limit the amount and they are going to limit the  
22 eligibility, they have to have a basis for doing so or else,  
23 again, that will be the next lawsuit from someone else.

24 THE COURT: Let me just interrupt you just right  
25 there. If not a cap because of the concerns, why not a

1 deadline? In other words, whoever applies by X date, then  
2 that gives you some readiness --

3 MS. SELVIN: I would think that a deadline, Judge,  
4 a deadline thing would actually have to go through  
5 rulemaking. I could check with TLC. But again the Local  
6 Law makes it very clear that the issuance of the licenses  
7 you do not have to go through CAPA.

8 So to the extent that they're limiting, to the  
9 extent that they are putting deadlines to present, extent  
10 they're putting in a cap that does -- and TLC has done that  
11 in the past, that would have to go through rulemaking and  
12 whole rulemaking process, that involves 30 days, at least 30  
13 days notice and promulgation, right? And then a public  
14 hearing, and then after the hearing, most likely at least 30  
15 days until you promulgate the rule. At this point we are  
16 already up to the February 2024 study, Judge, even if they  
17 did that tomorrow.

18 THE COURT: Anything further on this record?

19 MR. SOLEIMANY: If I may, Your Honor, I would just  
20 say just to make sure that petitioners' position is coming  
21 across clearly. I mean obviously it's our position that  
22 this is a rule, that notwithstanding respondents'  
23 interpretation of Local Law 147 requires CAPA rulemaking as  
24 they had done both times in the past.

25 I think pursuant to 59A-06(a) (1), TLC still has to

1 follow its own rules. It still has to follow the mandate  
2 from 59A-06(a)(1) that they pick a number. And you know as  
3 to what that number is, the number at least has to be  
4 rational and the data has to support it.

5 And right, right now, you know, what they may or  
6 may not do in the future, right now I can say currently,  
7 especially with the information about 2,500 new WAV's which  
8 was not in the February 2023 report, especially with that  
9 number, the data does not support an issuance of EV  
10 licenses. But if it were to in any case they would have to  
11 pick a number.

12 This notion to just say unlimited is a concept. It  
13 is not a number. They have not even complied with their own  
14 rules in that respect.

15 And that will be it for me please, Judge. Forgive  
16 me.

17 THE COURT: Counsel, I have heard all of your  
18 respective arguments, and I have read them in short time and  
19 that I received them just today for our argument, as to that  
20 part of the application that is to enjoin the respondents  
21 from accepting applications, that part is denied.

22 As to that part of the application enjoining the  
23 respondents from processing the applications, that is the  
24 applications that they have already received which is 1,746,  
25 we can go ahead and process those applications.

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1           You can continue to accept applications. And you  
2           can issue licenses for those 1,746, assuming that they meet  
3           all the other criteria, the inspections, if you will.

4           But as to going forward it remains unclear to me,  
5           in that, the new study is not until February. So the  
6           question really becomes from this point going forward --  
7           because I understand, Mr. Soleimany, your application speaks  
8           to even those who have already applied, your argument is in  
9           essence... they should be a nullity, they should be denied  
10          because it did not go through the CAPA process... if I heard  
11          you correctly.

12          But your other argument, if you will, is going  
13          forward, which is why you're seeking a temporary restraining  
14          order. But -- and you're seeking it on the basis that the  
15          law itself, meaning the TLC doesn't have the right to even  
16          have accepted the ones that they have and they therefore  
17          can't issue the licenses for the ones that they already  
18          have, from my read of the papers, I disagree with you on  
19          that point.

20          What I do find telling, though, on this record is  
21          that part where we started, which is while the argument is  
22          that the TLC or respondents had this CAPA Green Rise  
23          Initiative, and I'm going to describe it as a hearing, the  
24          fact that it was on the same day, and from what I've heard  
25          it did address some of the issues that are addressed here,

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1 it would lead one to believe that it was therefore required.

2 And we have the sanctity of one on your respective  
3 papers writing the arguments now, but that is troublesome to  
4 me, that that has been the practice in the past, at least up  
5 until 2019, and that one believed that it was being done or  
6 was addressed or should have been addressed, but that would  
7 have been the same practice that would have been followed.

8 So I say all of that to say, as to that -- I don't  
9 know if it's the first, but the remaining, I should say,  
10 prong of your application still thinking about that, which  
11 is going forward, can you continue to accept applications,  
12 especially before February when there's the new study, which  
13 you both agree a study has to happen, it's really  
14 respondents will be enjoined from processing any new ones,  
15 that is going forward.

16 You can process the existing, you can do all of --  
17 you can continue to accept, because I do think even when it  
18 comes to February you're going to have to have some body of  
19 numbers, otherwise, you'll be in the same position over  
20 again to figure out what's the interest, is there a whole  
21 bunch of people on a waiting list, not on a waiting list.

22 But those applications going forward cannot yet be  
23 processed.

24 So I'm granting at least that part, Mr. Soleimany.

25 MS. SELVIN: Judge, can I just --



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1 THE COURT: Yes.

2 MS. SELVIN: -- a practical concern just while we  
3 have been on this call more applications have come in, so  
4 the numbers I gave you have probably, I'm guessing are  
5 probably even out of date. Can we put a certain like a set  
6 time, whether it's 5 p.m. today or 5 p.m. tomorrow, where  
7 they'll stop processing? Because I don't want to -- again,  
8 I'm sure some have come in while we have been on this call.

9 THE COURT: I've heard you, and what I'm thinking  
10 is because the application process itself, say, I set of  
11 time of 5 p.m., but someone has already completed their  
12 application, done all of the application and now from what I  
13 understood part of the application process required a  
14 financial investment, if you will, by the applicant that's  
15 nonrefundable.

16 Did I hear that, Mr. Soleimany and Ms. Selvin,  
17 correctly?

18 MS. SELVIN: I believe so. That's my general  
19 understanding that even if people have not outright  
20 purchased their vehicles, they put deposits down, because  
21 they actually have to give the VIN number for the car,  
22 Judge, when they're submitting their application.

23 So my general understanding is those could be  
24 non-refundable deposits. But if Mr. Soleimany knows  
25 something different than me, you know, I welcome him

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1 speaking to that.

2 MR. SOLEIMANY: Is Your Honor asking about the  
3 application fee paid to TLC, or other costs that potential  
4 licensees might incur along the way of getting a vehicle?

5 THE COURT: My understanding, that the inquiry  
6 that's before the Court now is setting a time deadline, if  
7 you will, because the order is going to be framed such that  
8 your application for processing new applications I'm  
9 granting and denying in part, there has to be a time frame,  
10 otherwise, respondents can run afoul of the order because  
11 they will continue processing and accepting past a certain  
12 date and time. So I'm seeking to frame --

13 I lost Mr. -- hold on -- Soleimany. There you are,  
14 you're back.

15 -- so in setting that time frame to say, for  
16 instance, 5 o'clock today, but someone in anticipation of  
17 applying has already gone out and paid the fee -- I don't  
18 know if still requires a money order, I'm not sure how  
19 that's done. So I don't have the fullness on this record as  
20 to what the application process is.

21 But I heard that it requires some pre-financial  
22 investment by way of the vehicle and other fees, so I'm  
23 trying to get an understanding of fact in setting what would  
24 be a reasonable time that can be complied with.

25 Unmute yourself, Mr. Soleimany.

1 MR. SOLEIMANY: Excuse me.

2 I think what Ms. Selvin and I have been saying is  
3 that because there's a difference in the way that TLC did  
4 this process with the unlimited applications and the way  
5 they did it back in March when they did a thousand. And  
6 forgive me if I'm getting the details wrong, but in March  
7 there was a statement of interest. You did not have to have  
8 a vehicle in order to get the go-ahead, the green light to  
9 go through the process back in March. You do have to have a  
10 vehicle now under the current process.

11 So I would just say, you know, I can't speak to and  
12 I'm not sure if TLC would know anything about anybody until  
13 they have submitted an application to TLC, we may not have  
14 that information.

15 I would just note as to the point Your Honor raises  
16 about what input should we get about, you know, what  
17 interest there is in order to gauge what the impact would be  
18 until February, to me it would still be problematic to use  
19 applications as they're currently formed, as the method of  
20 collecting that data, because it would still rely on people  
21 purchasing a vehicle to make that application and just to  
22 get that data point.

23 It would be concerning to me if Your Honor is going  
24 to enjoin the further issuance of the licenses that TLC  
25 would still say, hey, it's open, you can still submit, but

1       you've got to buy a car first. I think, you know, we might  
2       disagree on a lot, but I think Ms. Selvin and I would  
3       probably agree on the equities that we would want to avoid a  
4       situation wherein there's that potential for confusion going  
5       forward after the 1,746 licensees.

6               THE COURT: Right, that's why we're having this  
7       conversation now because that's a concern that I have as  
8       well. How do you propose that become reconciled other than  
9       just granting either of you what you want?

10              MS. SELVIN: Judge, if you give me two minutes, I'm  
11       checking with my clients. You know, I tend to agree with  
12       Mr. Soleimany about the concern about cutting them off at  
13       the processing part, instead of at the application part  
14       because they could take a financial hit, to be blunt. So  
15       let me, if you'll give me just a minute, I'm just checking  
16       with my client seeing if we're okay.

17              Obviously we oppose it all, Judge, but if where  
18       you're going is instead of at the processing maybe at the  
19       application stage that might just procedurally be easier.

20              Having said that, I do think we have to give people  
21       a little time, but I'll just forewarn everyone just because  
22       practically for TLC to stop accepting applications, there's  
23       going to be a gold rush, there's going to be a run then in  
24       the next, you know, hour or it's 24 hours where people are  
25       going to be running to get their applications in. So

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1 everyone probably should just be ready for that.

2 But again if you can just give me a minute, Judge,  
3 to consult with my clients. I just want to see practically  
4 how they accept the applications, whether this makes sense.

5 MR. SOLEIMANY: Your Honor, while we are waiting  
6 for Ms. Selvin, I'm not sure if you wanted to hear from  
7 petitioners on this question as to the cutoff point.

8 THE COURT: I'm listening.

9 MR. SOLEIMANY: I think if the animating principle  
10 here is, you know, in the interim avoiding harm to people  
11 who have purchased a vehicle sort of based on these  
12 representations by TLC that they can go forward. I'm open  
13 to hear what Ms. Selvin has to say, but perhaps it could be  
14 if, you know, somebody has proof of purchase by today and  
15 then, you know, if TLC can properly inform licensees in the  
16 public of the Court's decision to ensure that, you know,  
17 that folks would have notice of that, I think that could be  
18 a decent way to establish a cutoff.

19 But I apologize now that Ms. Selvin, I'm realizing,  
20 I see her on the phone and she didn't hear what I said.

21 MS. SELVIN: Judge, thanks.

22 THE COURT: Ms. Selvin, go ahead.

23 But, Mr. Soleimany, also if you can repeat back.  
24 If not, I have my very confident but becoming wary, we've  
25 been on this record, our court reporter who can read back.

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1                   We did not realize you had one ear to the phone,  
2                   maybe you did not hear what was said. Do you need --

3                   MS. SELVIN: I did not.

4                   THE COURT: Okay. Madam Reporter or Mr. Soleimany,  
5                   let's have it read back.

6                   Madam Reporter, can you read back what  
7                   Mr. Soleimany just said? It should be the entirety of his  
8                   statement. Thank you.

9                   (Whereupon, the requested testimony was read back  
10                  by the court reporter.)

11                  THE COURT: Ms. Selvin.

12                  MS. SELVIN: Your Honor, I was briefly talking to  
13                  my clients while this was being proposed by Mr. Soleimany.

14                  Just as a practical note, Judge, my clients do  
15                  agree it would be easier to do the cutoff at the accepting  
16                  of the applications versus the processing.

17                  Technology-wise, though, Judge, they do have to do  
18                  stuff to their website which can take up to 24 hours. So  
19                  they said they can probably cut off the applications on the  
20                  TLC website by tomorrow at 4 p.m., so they wouldn't be  
21                  accepting applications after that.

22                  Certainly they can use their bullhorn. I would  
23                  certainly think NYTWA can use its bullhorn to let people  
24                  know.

25                  I think maybe coupled with the proposal by

1 Mr. Soleimany of people coming in with their receipt  
2 basically showing that they put a down payment or they  
3 purchased, I think that would be sufficient for my clients.

4 But practically 4 p.m. tomorrow is probably the  
5 earliest they can cut it off.

6 THE COURT: I've heard you both as to the cutoff  
7 time 4 p.m. would be less than 24 hours from now because  
8 it's 4:27.

9 Before I make a ruling as to that, I also want to  
10 know, Ms. Selvin, are there any veterans as part of this  
11 process or is there a separate process for veterans?

12 MS. SELVIN: Judge, I believe these EV licenses  
13 were open to everyone, including veterans. I don't believe  
14 there was a carve out for veterans.

15 THE COURT: I am mindful of -- Mr. Soleimany, you  
16 could address this if it's contrary to this Court's  
17 understanding. But as to veterans, a number of them may be  
18 seeking such licenses or already have such licenses, and I  
19 don't know if there's a cutout for them. And it being  
20 Veterans Day on Friday, I am mindful of that, so the window  
21 of time would be greater than 24 hours. And in light of, 1,  
22 there having to be notice given, 2, technology being  
23 implemented, the period will be extended to Friday.

24 Mr. Soleimany, was there something you wanted to  
25 say?

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1 MR. SOLEIMANY: I'm sorry, you know, the audio  
2 broke up there for a second, Your Honor.

3 I'm not sure if I heard -- I don't think I heard  
4 all of the last sentence.

5 THE COURT: Tell me what you heard last.

6 MR. SOLEIMANY: Extending till Friday would be the  
7 cutoff.

8 THE COURT: Yes.

9 MR. SOLEIMANY: And can I ask a clarifying question  
10 about actions. Are you asking whether TLC policy makes  
11 special provisions for U.S. military veterans; is that  
12 correct?

13 THE COURT: That's what I was asking.

14 MR. SOLEIMANY: My understanding, no, it does not.

15 THE COURT: Okay.

16 MS. SELVIN: Your Honor, I confirmed that there's  
17 no carve out for veterans. As a practical note, though,  
18 Judge, TLC is closed on Friday.

19 THE COURT: Oh.

20 MS. SELVIN: Right, it's a holiday. Our office is  
21 closed too. I don't know if you're closed too. So just  
22 practically they could be accepting applications through  
23 Friday. So it would either have to be Thursday or Monday.

24 THE COURT: Monday.

25 Does anyone wish to be heard first before I make a



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1 ruling as to Monday?

2 MR. SOLEIMANY: I would be concerned about Monday  
3 cutoff, Your Honor. I think allowing the entire weekend  
4 would lead to the type of gold rush situation that Ms.  
5 Selvin said there would be concerns about. I think that --  
6 I don't think that's a short enough period.

7 I mean, if we are -- if there would be an  
8 application -- if the concern is when the software remained  
9 open to submit an application, as opposed to buying a car, I  
10 think if the cutoff for purchase would still be the time  
11 that we are talking about, you know, and it's -- but then,  
12 but then the application would be -- that would be a  
13 different, that would be a different story.

14 But if the purchase cutoff is extended through the  
15 weekend and TLC announces it to everybody, I absolutely  
16 anticipate a gold rush that would, you know, overshadow a  
17 lot of the purpose of the injunction.

18 THE COURT: Okay, maybe I missed something. I  
19 thought that in order to apply you had to have had -- you  
20 had to have purchased the vehicle. So you would apply with  
21 your proof. So if your application cutoff is Monday, you  
22 would have -- you would have had your proof already.

23 So unless I'm missing something, it wouldn't be a  
24 rush for people to now go and try to buy a vehicle.

25 MR. SOLEIMANY: My understanding is that right now

1 if TLC announces tomorrow morning that the application  
2 cutoff would be Monday at 5 o'clock, people who have not yet  
3 bought a vehicle could go out and purchase those vehicles  
4 and then apply on Monday. And unless there's a -- unless we  
5 set a purchase cutoff date, so that we really tailor this to  
6 preventing harm to people who have already bought, you know,  
7 allowing purchases over the weekend would really cancel out  
8 a lot of the effects of the injunction.

9 THE COURT: So it would be the purchase cutoff date  
10 of tomorrow, but the application date of Monday, is that  
11 plausible?

12 MS. SELVIN: Judge, I just checked with my clients,  
13 that would be practically hard for us. That would be them  
14 having to pull out applications to look at the purchase  
15 dates of the vehicles. It would be burdensome. It would be  
16 helpful to have them aligned.

17 MR. SOLEIMANY: You know, my sense, Your Honor, and  
18 Karen, correct me if you think this is wrong, is that if  
19 there were, say, a 5 p.m. or you know any time on Thursday  
20 cutoff, I anticipate this news would move rather quickly.

21 MS. SELVIN: I would think so. I would think that  
22 the --

23 MR. SOLEIMANY: The whole --

24 MS. SELVIN: -- whole organization and word is  
25 going to get out pretty quickly. I know obviously again the

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1 press is following this case, not courtesy of us, Judge, the  
2 petitioners. I think word is going to get out, so I think  
3 there's probably even going to be a gold rush tomorrow,  
4 tonight and tomorrow where people are going to run out  
5 because it's being cutoff.

6 That was part of the charm of the unlimited, Judge,  
7 is that you didn't have the massive wait list we thought  
8 like you did with the thousand a few months ago.

9 So I think either way, to be blunt even, I think  
10 there's going to be a gold rush whether it's till tomorrow  
11 or to Monday.

12 Practically, would it be easier now to do it for  
13 Monday, because obviously time is dragging out today and --

14 THE COURT: And Friday is a holiday.

15 MS. SELVIN: And Friday is a holiday so --

16 THE COURT: Can you accept on a Friday?

17 MS. SELVIN: I think probably -- I could check on  
18 this, Judge. But if it's on the web I think people can  
19 submit. But it's not going to be looked at or processed  
20 because people aren't working. It'll probably be accepted.

21 MR. SOLEIMANY: I think that would be -- wouldn't  
22 have a problem.

23 MS. SELVIN: Turn off, yeah, website, but there  
24 would be no one looking at it on Friday and Saturday or  
25 Sunday obviously.

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1           MR. SOLEIMANY: Really just our hope would be to  
2           avoid a situation where people hearing of this feel that  
3           they have a new opportunity where I think what Ms. Selvin is  
4           proposing about Friday would probably be all right.

5           THE COURT: But for court purposes I'm not going to  
6           issue an order with a holiday deadline. It is a holiday.  
7           So rather people -- I don't know what their means of access  
8           is, but that means of access, whether it's accessing a  
9           library for purposes of uploading their application it's now  
10          closed. So I'm giving you time, but not time.

11          These are just practical considerations that I'm  
12          taking into account is giving people adequate notice. And  
13          if there is a cutoff time, make it a real cutoff time that  
14          someone can reasonably comply with in light of the fact that  
15          it is a holiday.

16          So with that, I am more inclined at 4:35 p.m. on  
17          the Wednesday of a holiday on Friday with counsel once  
18          closing this record having other commitments to do,  
19          including submitting a proposed order, so that you have it,  
20          looking more toward a Monday, rather than a Thursday or  
21          Friday date.

22          Unless someone has some compelling reason to the  
23          contrary, I'm thinking Monday gives sufficient notice, which  
24          you all said will go out for those who have notice and now  
25          want to apply, it gives them that Friday -- I mean tomorrow

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1 to get it in, because Friday is the holiday and limited  
2 access, with Monday -- I could even give you an earlier time  
3 then on Monday in consideration, Mr. Soleimany, of your  
4 concerns it could be at 1 p.m. on Monday, you know, I can do  
5 that as well by way of equities, if you will.

6 Is that something?

7 MR. SOLEIMANY: I think, I mean I think that in  
8 light of your concerns, Your Honor, I think that could work.

9 I do just want to clarify our position is that the  
10 application deadline is less important than what sort of  
11 purchase cutoff. Are we proposing that it would be a  
12 unified deadline?

13 Because application deadline if it's Monday or  
14 Thursday is not so important. But are we saying that as of  
15 an order coming from this Court, you know, what will the  
16 purchase deadline policy be?

17 THE COURT: From what I've gathered that imposes  
18 more of a challenge. So it's your application, period,  
19 because the application requires that you have a vehicle.  
20 So if you haven't purchased one by Monday or the time of the  
21 deadline, then you're not applying, because you haven't  
22 purchased the vehicle.

23 If you go out on Saturday and purchase a vehicle  
24 and submit on Monday, then you can be considered.

25 MR. SOLEIMANY: Right. I mean I don't know if Ms.

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1 Selvin has a position on this, but I think the extra step,  
2 it creates an extra step and somebody has to review that  
3 document. I don't know if that's particularly burdensome,  
4 but I think that that balances against the potential for a  
5 three-day weekend for creating sort of a gold rush  
6 situation, I think balancing those two issues I think having  
7 TLC just review the date of the purchase contract would be a  
8 fair requirement.

9 MS. SELVIN: I think that is too burdensome, Judge.

10 And also just as a practical note for the people  
11 who are applying, I think giving them the one deadline as  
12 you know this is when your application is due, they know  
13 they have to have a VIN number associated with the  
14 application to even by the time they get in their  
15 application, they'll know that's my deadline to purchase the  
16 vehicle.

17 So I did check with my clients, Judge, they could  
18 do an earlier time on Monday, if that's the middle ground  
19 for you of 1 p.m.

20 THE COURT: I can even do earlier, 9 a.m., 9 a.m.  
21 Monday. It's electronic. It cuts off anything after 9  
22 a.m., that way it addresses the whole weekend concerns. All  
23 of that's addressed. You have to have it in by 9 a.m., that  
24 way again Friday is a holiday, unless someone is going out  
25 on a Saturday or a Sunday, the window time -- I'm not --

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1 from my lens the anticipated purchase, vehicle purchase I  
2 don't see. But this is your field and you know,  
3 Mr. Soleimany, Ms. Selvin, what's expected.

4 But if the application requires that you have a  
5 vehicle and the application deadline is Monday at 9 a.m., I  
6 don't anticipate what you all have described as this gold  
7 rush to now purchase a vehicle.

8 But we will know that on Monday at 9 a.m.

9 Go ahead, Counsel.

10 MS. SELVIN: My clients said they could do 9 a.m.  
11 on Monday.

12 THE COURT: Okay. Counsel, do you wish, in light  
13 of the order I can have you all back here, and you can tell  
14 me what the numbers are for 9 a.m. on Monday, either it's  
15 materialized and there's this gold rush and now you have to  
16 be heard further or the numbers weren't, so I can do that as  
17 well.

18 MS. SELVIN: Judge, if it would be easier I can get  
19 the updated numbers probably a little after 9 a.m. on  
20 Monday, and I can send an email to the Court as well as  
21 copying counsel with the latest numbers so everyone can see  
22 what happened over the weekend.

23 THE COURT: Okay, Mr. Soleimany?

24 MR. SOLEIMANY: I mean I think that makes sense.  
25 So just to clarify where we're headed from here, in terms of

1 an order, would you be anticipating that counsel jointly  
2 prepare something with the Court's perimeters or how would  
3 you like us to proceed?

4 THE COURT: You said it right there, that would be  
5 perfect, which is that -- and that way I'll make sure we are  
6 all on one accord as to what the deadline is, 9 a.m. on  
7 Monday the 13th. And I can hear counsel as early as I have  
8 Tuesday -- I don't know what it takes by way of your  
9 processing, but I have Tuesday or Wednesday, 14th or 15th,  
10 and then you can be heard further if necessary.

11 MS. SELVIN: Well, Judge, we'll need a set forth  
12 also a briefing schedule on the underlying petition.

13 THE COURT: That's why the 14th or the 15th.

14 MS. SELVIN: Should we work that out maybe now  
15 while we are on the call?

16 THE COURT: Counsel, you can work that out as to  
17 the briefing schedule, as long as for your argument, any  
18 further argument I can hear you on the 14th or the 15th.

19 Counsel, yes, you are going to need to pick your  
20 time now before me because I'm starting I think a trial now  
21 on Monday. I'm not sure it's a jury trial so --

22 MS. SELVIN: Judge, just to clarify, is that an  
23 argument on the preliminary injunction or -- because you're  
24 going to issue a limited TRO today, it sounds like.

25 THE COURT: Yes.



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1 MS. SELVIN: So would this be if people want  
2 additional argument on the PI and then we'll work out a  
3 briefing schedule on the underlying merits?

4 THE COURT: Two things. One, the order for today  
5 based on the numbers that you receive Monday at 9 a.m., you  
6 are reserving, preserving your right to be heard.

7 MS. SELVIN: Okay.

8 THE COURT: So if you wish to be heard further.  
9 Mr. Soleimany may say this is exactly what I was  
10 anticipating, the 50,000 applicants. Who knows? Ms. Selvin  
11 may say, see I told you.

12 I'm preserving your right to be heard further as to  
13 that point based on the numbers, that's why we set the time  
14 frame, okay.

15 You're also setting a briefing schedule for the  
16 underlying -- I didn't see anything other than the order to  
17 show cause. You have the underlying petition itself, but I  
18 didn't see anything else.

19 MR. SOLEIMANY: That's correct. There was an order  
20 to show cause, there was an application for a TRO and  
21 preliminary injunction.

22 THE COURT: Right. I didn't see a briefing  
23 schedule for anything else, Ms. Selvin.

24 MS. SELVIN: No, but they did file a petition,  
25 correct? So the City would be responding to the underlying

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1 petition on the final merits of the case, Judge. So I  
2 presume you would want a verified answer from us, and a memo  
3 of law and all that, yeah?

4 THE COURT: Yes.

5 MS. SELVIN: Yeah, so that's what I'm referring to  
6 for the briefing schedule.

7 THE COURT: Right, that's between you and counsel.  
8 You don't need to be heard on that, unless there's some  
9 other --

10 MS. SELVIN: Unless you want argument on when  
11 that's fully submitted, Judge. Obviously to the extent  
12 there is at least a limited TRO imposed, we will probably be  
13 looking for an expedited schedule. So I can work that out  
14 with Mr. Soleimany.

15 THE COURT: You all do that as to the dates. But  
16 as to if you wish to be heard further as to what transpires  
17 by Monday, I can hear you as early as Tuesday or Wednesday.  
18 And I may probably have Thursday also.

19 MR. SOLEIMANY: Please forgive me if I'm missing  
20 something, Your Honor. But just in terms of being heard on  
21 whatever developments happen with the licensing, is this  
22 within the context of a continuation of the TRO or is this  
23 in the context of a preliminary injunction?

24 THE COURT: Both.

25 MR. SOLEIMANY: Okay. And we are not establishing

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1 a briefing schedule for a preliminary injunction or do you  
2 wish us to do that as well?

3 THE COURT: That can be done with counsel.

4 MR. SOLEIMANY: All right.

5 THE COURT: Just put the answer all of that.

6 MS. SELVIN: I anticipate we could probably do it  
7 consolidated. If we get an expedited schedule, we'll  
8 address the PI motion in our underlying papers. Instead of  
9 doing another two sets of papers, we'll probably just do one  
10 consolidated. But we can discuss that obviously.

11 MR. SOLEIMANY: Yeah, we can talk.

12 MS. SELVIN: Offline.

13 THE COURT: So if counsel wishes to be heard  
14 further, you have Tuesday or Wednesday. If not, you may be  
15 so exhausted from today you don't want to see me again,  
16 that's a possibility as well. But let me know, because my  
17 time will go once I get on trial.

18 MR. SOLEIMANY: And when would you -- presumably  
19 we'd want -- would you like us to reserve a time now?

20 MS. SELVIN: That would be my suggestion, since  
21 assuming that we should pick a time on Tuesday, and then if  
22 we don't need it, we will let the Court know.

23 MR. SOLEIMANY: That sounds great.

24 MS. SELVIN: And obviously on Monday I can send the  
25 email. Judge, you'll just have to let me know where you

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1 want me to send that email with the new numbers. I have  
2 your law secretary's email address, but if you want it sent  
3 elsewhere --

4 THE COURT: Yes, send it directly to my court  
5 attorney, Ms. BB Liu.

6 And, Counsel, you can indicate whether or not you  
7 need your time or don't need your time. But I'll reserve it  
8 if you want it. If not, it's vacated.

9 You want 11 o'clock on Tuesday, 11 o'clock on  
10 Wednesday?

11 MS. SELVIN: 11 o'clock on Tuesday is fine for me,  
12 Your Honor.

13 MR. SOLEIMANY: 11 o'clock on Tuesday sounds great,  
14 yeah.

15 THE COURT: Okay. If you don't need it, when you  
16 send your letter with the numbers, you can say you and --  
17 and make sure you share it with Mr. Soleimany. You may say  
18 the Tuesday date you no longer need, or if you wish to be  
19 heard further, I will hear you. Okay.

20 MS. SELVIN: Judge, would that be a Teams  
21 appearance again or in person on Tuesday?

22 THE COURT: Yes.

23 MS. SELVIN: Teams, okay.

24 THE COURT: And, Counsel, I will tell you, this is  
25 all subject to -- if my trial -- I'm blocking the time off,

1 so you won't have the luxury of the time that you would have  
2 had today if I'm on trial.

3 All right, you can get the proposed order to me.  
4 Ordinarily I prepare them all myself. But given the hour  
5 and counsel is volunteering I will receive it meaning by way  
6 of my court attorney, and I will have it to you if you get  
7 it to me before my court attorney leaves for today, it will  
8 be tonight. But I'll forward it late at night as well. So  
9 as soon as you get it to me, I will make sure and review it.  
10 Okay.

11 MS. SELVIN: Okay, Judge, thank you.

12 THE COURT: The record closed, Ms. Selvin, anything  
13 further?

14 MS. SELVIN: Nothing further, Your Honor, thank  
15 you.

16 THE COURT: The record closed on your behalf,  
17 Mr. Soleimany, or is there something further?

18 MR. SOLEIMANY: Just before we get it to you, would  
19 it be possible to take a moment to confirm the perimeters or  
20 the order that you want us to fill in the details of, just  
21 so we don't submit anything that doesn't comply with the  
22 basic outline that you would like?

23 THE COURT: Well, that's why I have the two of you  
24 doing it on consent.

25 MR. SOLEIMANY: That works too.

1 THE COURT: Consistent with what was stated on the  
 2 record, Ms. Maria Rivera is the court reporter, stenographer  
 3 who has been taking down everything today. If you need her  
 4 contact.

5 Ms. Rivera, do you mind saying your contact because  
 6 your fingers are typing and doing all those great things,  
 7 what is your contact?

8 (Whereupon, there is a discussion held off the  
 9 record.)

10 THE COURT: I'll await the proposed order. Thank  
 11 you all.

12 \* \* \* \* \*

13 Certified to be a true and accurate transcript of  
 14 the stenographic minutes taken within.

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**MARIA E RIVERA**

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Maria E. Rivera  
 Senior Court Reporter

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