

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

SANDRA BUTLER; RICKY GIBSON;
O'BRIEN MORRIS; RICHARD EMMETT;
ROSELLE DIAZ; KEVIN FAISON;
SHANIQUA JACKSON; CENTER FOR
INDEPENDENCE OF THE DISABLED, NEW
YORK AND COALITION FOR THE
HOMELESS,

Case No. 15-CV-3783

Plaintiffs,
for themselves and on behalf of all others
similarly situated

- against -

CITY OF NEW YORK, THE NEW YORK
CITY DEPARTMENT OF HOMELESS
SERVICES and STEVEN BANKS, as
Commissioner of the New York City Department of
Homeless Services,

Defendants.

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DECLARATION OF DEBORAH B. DIAMANT

1. I am the director of government relations and legal affairs of Coalition for the Homeless ("Coalition"), the court-appointed monitor of the New York City Department of Homeless Services' (DHS) single adult shelter system pursuant to the consent decree in *Callahan v. Carey*, No. 42582/79, slip op. (N.Y. Sup. Ct., Aug. 26, 1981), and an institutional plaintiff in the instant matter. I make this declaration in support of Plaintiffs' motion for a temporary restraining order and preliminary injunction.

2. In my role at Coalition, I oversee the day-to-day operations of our shelter monitoring department, which is comprised of staff with extensive experience conducting

inspections of shelter facilities and performing client outreach to ensure compliance with court orders and Federal, State, and local law. I am also in regular contact with DHS' programmatic and legal staff about shelter conditions and client services, and routinely inform DHS of problems encountered by clients attempting to access DHS services. My knowledge herein is predicated on conversations with my colleagues, including staff whom I supervise, as well as my correspondence with DHS and correspondence generated by my colleagues on which I am copied.

3. Coalition regularly tracks the number of individuals who are living in the single adult shelter system, including those who are living in congregate shelters and those living in commercial hotels with which the City contracts to house certain individuals in the shelter system. In April 2020, DHS began expanding its use of commercial hotels in order to de-densify its shelter system to allow for social distancing and reduce the spread of COVID-19, pursuant to a program in which FEMA would reimburse the City for most of the hotel costs.

4. By late June 2020, DHS had moved approximately 8,700 single adults into these "de-densification" hotels. In so doing, the City reduced the population living in congregate shelters from nearly 14,000 single adults to approximately 5,500. However, many of those approximately 5,500 single adults remaining in congregate shelters also had disabilities that put them at higher risk of severe consequences from COVID-19 and there were no plans to provide hotel rooms to the remaining shelter residents at increased risk to COVID-19.

5. Coalition became aware through conversations with DHS in early 2021 that it was beginning to plan for a return from hotels used during the COVID-19 pandemic to create safer spaces for clients (hereinafter "density hotel" or "density hotels") back to congregate shelter settings. Coalition offered several recommendations to DHS on how to orchestrate the move with

the least negative impact on clients' safety. Not until May 12, 2021, did DHS provide us with an opportunity to review and comment on the initial communication DHS planned to share with clients about the impending move. A copy of the notice DHS sent to all clients to inform them of the pending moves, dated May 19, 2021, is attached as **Exhibit 1**.

6. DHS informed us on June 17, 2021, that the moves from density hotels to congregate sites would commence on or about June 22, 2021. Through our lawyers, we received a list of moves scheduled for June 22 through July 1. We immediately made a plan to visit all density hotels on the schedule in advance of their move to speak with clients about what they knew about the move (e.g., when and where they were expected to move) and whether their future shelter placement would meet their disability and/or medical access needs. We also planned to visit congregate shelters after clients moved there from the density hotels to speak with clients about whether their placement at the congregate shelter was appropriate for their access needs.

7. During our visits to density hotels and congregate shelters, we spoke with many clients who were confused about the move out process, had not spoken with case managers about how to prepare for the move, were unfamiliar with the process for requesting a reasonable accommodation of their disability or functional need ("RA"), encountered difficulty obtaining medical documentation, were improperly denied RAs for less dense settings, were transferred to congregate shelters while their RA requests were pending, were transferred without proper notice, and were unaware of how to appeal adverse decisions, in addition to being fearful to return to congregate settings while the risk of exposure to the coronavirus remains a threat in New York City.

8. We also met numerous clients who did not know where they were moving despite

their move being scheduled for the next day. We repeatedly asked DHS to tell us where and when individual clients were moving and they ignored the vast majority of our requests. When we were able to find out where our clients were moving, it often took three or more email pleas to obtain this information. DHS' failure to adequately prepare for this move out process has resulted in chaos.

Coalition Shelter Monitor Visits to Density Hotels and Congregate Shelters

9. On June 21, 2021, a Coalition shelter monitor visited Hotel M in Manhattan, the density hotel for the congregate Shelter B. The monitor spoke with about 25 clients and learned that many had disabilities and/or medical conditions that would require an RA so that they could meaningfully access DHS services. Each client with a disability and/or medical condition that our shelter monitor spoke with stated they did not have an RA in DHS' database. Most clients did not know if they would move to another hotel or to the congregate Shelter B.

10. Our monitor spoke with multiple clients at Hotel M, and I informed DHS of the clients' needs via email on June 21. As of July 8, 2021, DHS has not acknowledged receipt of my June 21 email. Brief descriptions of some of those clients and their medical conditions that indicate their need for beds in less dense settings are listed below. As of June 21, only two of the following clients (RB and RT) knew where they would be moving on June 23, which was back to the congregate shelter:

- a. AA is a smoker and has type 2 diabetes.
- b. RB is a smoker and diagnosed with bipolar disorder and schizophrenia. He informed us that he would be moving to the congregate shelter despite requiring placement in a less dense setting.
- c. Client in room 308: This client is pre-diabetic and severely

immunocompromised. He has severe heart disease and smokes.

- d. Client in room 310: This client has lupus, Raynaud's syndrome, hypothyroidism, and chronic kidney disease. He is a smoker and diagnosed with schizophrenia.
- e. Client in room 410: This client is older than 65 and is a smoker.
- f. Client in room 714: This client is a smoker with type 2 diabetes.
- g. DM is 65 years old, severely immunocompromised and has severe heart disease, chronic kidney disease, and type 2 diabetes. He is also a smoker.
- h. RT reported that he has metastatic cancer and an unspecified mental health diagnosis. He informed us that he was told he would be moving to the congregate shelter despite needing a placement in a less dense setting.

11. On June 21, 2021, a Coalition shelter monitor visited Hotel D in Manhattan, the density hotel for the congregate Shelter C. The clients she spoke with were aware of a move of all clients out of the hotel scheduled for three days later on June 24, 2021. Although some clients the shelter monitor spoke with had requested RAs, several clients were not familiar with the RA request process and that they could ask for a shelter placement that met their disability and medical access needs. The shelter monitor explained the process to them and encouraged them to speak with their case managers as soon as possible.

12. On June 21, I highlighted via email for DHS the shelter placement needs for five of the clients our monitor spoke with during the visit and asked DHS to confirm for me where each client would be moving on June 24, including those who had not yet requested an RA because they were not familiar with it until they spoke with the Coalition. As of July 8, 2021, DHS has not acknowledged receipt of my June 21 email describing the needs of the following

clients:

- a. TJ, who is 62 years old, is diabetic, requires air conditioning, and has been diagnosed with depression. She informed our monitor that she would speak with her case manager to request an RA.
- b. ML had a provisional grant for a single-occupancy room and was told to provide medical documentation by June 20th. ML was hospitalized between June 12th and June 17th because of head trauma she experienced during a seizure. Her face was still bruised when our monitor met with her. I requested that ML be provided additional time to provide documents supporting her request for an RA for a single-occupancy room.
- c. PM has PTSD and an anxiety disorder. She has extreme nightmares due to her trauma and is afraid people in a congregate shelter may harm her. She informed our monitor that she would speak with her case manager to request an RA.
- d. MT has PTSD and is afraid to go to a congregate shelter. She reported that her case manager told her not to request an RA because she would not qualify. Our monitor advised her to speak with her case manager again.

13. Another shelter monitor visited Hotel C in Manhattan, the density hotel for the congregate Shelter D, over the course of two days (June 21-22, 2021) in order to speak with the large number of clients with disabilities and medical conditions about the RA process. Clients were aware of the move, scheduled for June 25, 2021, and they believed they would be moving to the congregate Shelter D. Clients with RAs for less dense settings had not been told they would be moved to a different location.

14. During Coalition's visits to Hotel C, we discovered that when DHS assessed clients for RAs prior to their moves back to a congregate setting that the assessment was limited to only risk factors for serious complications or death from COVID-19, rather than for all of a client's disability or medical conditions access needs. For example, DHS' assessment tool did not consider a client's mobility disabilities, their mental health conditions, or their need for air conditioning due to heat sensitivities caused by psychotropic medications.

15. At Hotel C, our monitor spoke with several clients who did not know when they would move on June 25, the status of their RAs, and/or still needed to request an RA. DHS did acknowledge receipt of my June 22 email describing the needs of the following clients but never sent a substantive response that included where each client would move:

- a. LA told our monitor that she required surgery but was unable to schedule it until she could confirm she would have a single-occupancy room to support her recovery.
- b. DB had already requested an RA for a less dense shelter placement due to cognitive support needs related to neurological illness. She had not received a determination letter and did not know where she would move. She also required placement near her sister, who assists her in managing her medications.
- c. RD is hard of hearing, over 65 years of age, uses a cane for ambulation, and needs access to an ADA-compliant bathroom. She had already submitted medical documentation to her case worker before the moves were announced, but she told the monitor that she did not think she had an RA on file. She also requires storage of food items/special diet due to a

heart condition and high cholesterol. I asked DHS to confirm whether she has an RA on file and, if not, that she be given an opportunity to request an RA before the move. DHS did not respond to my questions.

- d. VE was under the impression, due to improper messaging by shelter staff, that she needed to obtain new documentation from her doctor about her heart condition in order to request an RA for a single-occupancy room. She already had documentation in her possession that we encouraged her to submit to her case manager.
- e. AH, who is not vaccinated, had already requested an RA for her mental health needs before she met our monitor. Her RA had allegedly been denied, but she had not received a determination letter and information about how to appeal. More information about her efforts to obtain a placement that accommodates her needs is included below at paragraph 70.
- f. TK speaks Mandinka and Wolof. She had not received information about the move in her preferred language. She wanted to request an RA for a less dense setting due to her age and not being vaccinated.
- g. LM was recently diagnosed with Crohn's disease and is in the process of finding appropriate treatment for this autoimmune disease. She told us that she had not been informed about how to request an RA by shelter staff.
- h. CP had already requested an RA before she met our monitor, but she had concerns about whether she properly disclosed information about her disability and medical needs. I asked DHS to direct shelter staff to reach

out to her to assist her so that her RA is not denied before she can provide supportive documentation. DHS has not acknowledged my request.

- i. ER, who is over 65, has congestive heart failure, diabetes, and high blood pressure. In addition to requiring a single-occupancy room because of her age and health conditions, she also needs an accessible bathroom with a shower chair.
- j. PS, who is not vaccinated, told our monitor she would request an RA for a less dense setting due to having multiple strokes and taking anti-clotting medication.
- k. BS has asthma and requires a specialty diet and microwave/fridge to prepare and store food.

16. Despite providing via email on June 21 and June 22 descriptions of the needs of our clients at Hotels M, C and D, DHS has still not responded, as of July 8, 2021, to my request to inform me of where each client would move and the type of placement they would be assigned.

17. A Coalition monitor also visited Hotel N in Manhattan, the density hotel for the congregate Shelter E, on June 21, the day before clients were scheduled to move out. Staff mentioned that dozens of requests for RAs were still pending. They said they were perplexed by the hurried pace at which the move out process was taking place.

18. During the morning of June 22, 2021, a Coalition monitor visited Hotel O in Manhattan, the density hotel for the congregate Shelter F. Clients were already being moved out of the hotel when we arrived. Our monitor spoke with several clients who did not know how to request an RA.

19. During a June 24th visit to the congregate Shelter B, a Coalition monitor learned from staff that some clients with pending RAs for less dense settings had been moved back to the congregate shelter.

20. On June 25, Coalition monitors met several clients who had RA requests pending in advance of their June 29 move out of Hotel F in Manhattan, the density hotel for the congregate Shelter G. One such client, EH, was told he would be returned to congregate shelter even though he had submitted medical documentation to his case manager supporting a single-occupancy room placement. His case is described in more detail in Paragraphs 56–59 *infra*.

21. A Coalition monitor visited Hotel P in Manhattan, the density hotel for the congregate Shelter H and the congregate Shelter I, on June 25 in advance of the move scheduled for June 28. During his visit the monitor met a client assigned to Shelter I who stated that he had developed mobility issues during the pandemic and could no longer use the stairs at Shelter I if he were required to return there. Our monitor also met two clients assigned to Shelter I who had entered the shelter system during the pandemic and had never been inside Shelter I. They both had mobility disabilities and required RAs for a barrier free placement since they cannot use stairs. As of June 25, the last weekday before their scheduled move, these clients had not yet been able to meet with a case manager to discuss their access needs and expected to move to Shelter I, an inaccessible shelter.

22. Our monitor also met clients at Hotel P who were assigned to Shelter H and did not know where they would move on June 28. Two clients our monitor spoke with had RA requests pending for less dense settings, but each client expected they would move to Shelter H since they had not received determination letters nor heard from staff about their shelter assignment.

23. On June 28, a Coalition monitor visited Hotel E, the density hotel for the congregate Shelter J, which was scheduled to move the following day on June 29. Our monitor spoke with the program director who said he was reviewing clients' cases with the director of social services. However, this review did not include actually speaking with clients. Our monitor found that most clients he spoke with during his visit did not know how to request an RA and most said they found their case managers unhelpful. Some did not know who was their assigned case manager.

24. During Coalition's visit on June 28 to Hotel Q in Manhattan, the density hotel for the congregate Shelter K and the congregate Shelter L, our monitor spoke with multiple clients and explained how to request an RA. They said they wanted to do so, but they could not because their case managers were not on site. Our monitor referred them to our Crisis Intervention program for assistance.

25. A Coalition monitor visited the congregate Shelter D on June 28 following the commencement of moves from Hotel C. During the visit, our monitor learned that several clients had been inappropriately moved to the congregate setting despite having clearly articulated needs to remain in a less dense setting. For example, a client with severe respiratory illness and who uses an oxygen machine at all times was moved to the Shelter D. Another client's RA request was verbally denied for lack of medical documentation, despite submitting documentation from her health care provider to her case manager. None of the clients we spoke with had received a 48-hour transfer notice. Clients who had been denied RAs had not received determination letters nor information about how to appeal.

26. During Coalition's visit to the congregate Shelter M on June 29 following several clients' return from Hotel G in Manhattan, our monitor learned that the air conditioning

was not working. For several clients with disabilities requiring climate control, the frustration of staying in a hotel with appropriate room temperatures each season and then moving to a congregate shelter without working air conditioning was significant. Clients who otherwise did not require RAs may now need to submit RA requests for air conditioning moving forward.

27. A Coalition monitor visited Hotel H in Manhattan, the density hotel for the congregate Shelter N, on June 29 in advance of clients' moves scheduled for July 1. While there, our monitor learned that at least three clients had been referred to Coalition's Crisis Intervention hotline by shelter staff because shelter staff believed that DHS had improperly denied their RA requests.

28. During our June 30 visit to the congregate Shelter G following the move from Hotel F on June 29, Coalition monitors met several clients who had been improperly moved back to a congregate setting despite having received DHS' "RA transfer addendum" notices that stated, "You currently have an approved reasonable accommodation for a single or double room. You will not be going back to congregate shelter at this time, but we will transfer you to a different location where your accommodation can be met." A copy of the notice is attached as **Exhibit 2**. I shared the names of eight clients with DHS who had been improperly moved to congregate Shelter G despite having approved RAs and asked for an update on each client by the close of business. As of July 8, 2021, DHS has not responded to my request.

29. Witnessing the daily chaos of the density hotel moves and lacking confidence in DHS to correct the situation for these clients at Shelter G before a long holiday weekend, Coalition case managers requested RAs for five clients so as not to further delay their transfer to appropriate placements should DHS come back and claim that the clients had been provided the RA transfer notices in error. The only reason we did not request RAs for the remaining clients is

because we could not contact them—two of the three other clients do not have phones. Our inability to get in touch with these clients to offer our assistance with RAs, which DHS is required to do, underscores the need for DHS to speak with every client about their access needs before transferring any additional clients to congregate shelters.

30. A Coalition monitor visited Hotel R in Manhattan, the density hotel for the congregate Shelters O and P, on July 4, two days before clients were scheduled to move back to the congregate shelters on July 6. Clients informed us that they had not received notices that indicated to where they would move on July 6. Many clients, including those with disabilities, expected to be moved to a congregate shelter. The monitor spoke with staff who believed that most clients would move to another hotel or to the limited stock of single- or double-occupancy rooms at Shelter O. Additionally, a notice posted throughout the hotel that began “We are in the process of beginning Phase 1 of relocating all residents back to their respective shelters beginning week of July 5th 2021[.]” was silent on the availability of RAs.

31. I emailed DHS at 10:22 a.m. on July 5 with the names of seven clients and asked to be told where the clients would move the following day. Two of the clients are older than 65 (one is 78, the other is 72); one has a heart murmur, high blood pressure, and hypertension; and another has a mobility disability. The 72-year-old client told our monitor that he had not yet met his case manager despite residing at the hotel since May 28. Two clients told our monitor that they submitted documentation to their case managers in support of their RA requests but had not yet received determination letters. One client has asthma and sleep apnea. The other client, who cannot climb stairs, has high blood pressure, asthma, and arthritis. He is also diagnosed with bipolar disorder and paranoid schizophrenia and is prescribed a number of medications that make him susceptible to the heat and that DHS recognizes as a reason why a client may need an RA

for air conditioning.

32. When by 4:10 p.m. DHS had not responded to my 10:22 a.m. email, I sent another email asking that my question be answered. At 5:17 p.m., I received a response that stated, “We are working on placements for these clients and will update you ASAP.” After four hours passed with no update, I asked again that my question be answered at 9:17 p.m. Still without an answer, I added DHS Administrator Joslyn Carter to the email thread at 10:35 p.m. At 7:04 a.m. the following day, July 6, Administrator Carter wrote, “will follow up and get back to you shortly.” However, as of July 8, 2021, DHS still has not informed me as to where the seven clients I identified are to be transferred.

33. On July 5, a Coalition monitor visited Hotel S in Queens, the density hotel for the congregate Shelter Q, a men’s shelter. Clients assigned to Hotel S were scheduled to move back to the congregate shelter on July 6. Our monitor spoke with two clients at Hotel S who requested RAs by speaking to staff but did not know if their RAs were actually submitted and pending. One client is on blood thinners and is diagnosed with bipolar disorder, paranoid schizophrenia, and claustrophobia. He reported to our monitor that he does not currently take medication to manage his mental health needs. The other client has asthma, and takes three medications to manage it, and was recently hospitalized for multiple days following an asthma attack. Staff were not available over the weekend to assist the clients in advance of the move and answer questions about the status of their RA requests.

34. I wrote DHS at 6:30 a.m. on July 6, before the moves commenced, and asked them to confirm that the clients would not be moved until decisions were made on their RA requests. I also requested that DHS direct shelter staff to immediately submit the RA requests if staff had failed to do so. DHS acknowledged receipt of my email at 6:47 a.m. and did not

provide a substantive response until 1:20 a.m. on July 7. DHS did not address my questions about whether the clients' RA requests had already been submitted by staff, and instead said that the client with asthma was granted a provisional RA for a double-occupancy room. DHS said there was no reason not to move the other client out of the hotel and back to the congregate Shelter Q.

35. On July 6, a Coalition monitor visited Hotel T in Brooklyn, the density hotel for the congregate Shelter R. Clients assigned to Hotel T were scheduled to move back to the congregate shelter on July 7. During our visit we observed a July 5 memorandum posted throughout the hotel that reminded clients they would be leaving on July 7. The memorandum stated, "This is again another correspondence to make you aware after WEDNESDAY JULY 7th please report to [Street Address], WOODHAVEN, NY 11421." However, the congregate Shelter R is located in Brooklyn.

36. Our monitor met several clients at Hotel T who reported already having an RA in DHS' database for a single- or double-occupancy room. Yet none of them had received a notice that they would be moving to another single- or double-occupancy room. The evening of July 6, Coalition's Disability Rights Specialist Mary Harmer wrote to the DHS Office of Disability Affairs to confirm that five of the clients we met at the [REDACTED] have approved, provisional, or pending RAs and that they would not be moved back to a congregate setting. I then shared Ms. Harmer's emails with DHS deputy, associate, and assistant commissioners and legal staff. As of the night of July 6, 2021, DHS had responded to only three of the five emails Ms. Harmer sent, and had granted only three provisional RAs (one single-occupancy room RA and two double-occupancy room RAs). Before 9 a.m. on July 7, four of the five clients informed Ms. Harmer via telephone that they were being moved back to the congregate Shelter R. I contacted DHS and

asked them to confirm that the four clients would be moved to hotel placements that met their access needs rather than a congregate setting. DHS responded that the four clients would be moved to hotels. During this exchange, we learned that the remaining two clients without provisional RAs as of the night of July 6 had finally been granted provisional RAs (one single-occupancy room RA and one double-occupancy room RA).

37. However, despite DHS having just confirmed that these clients had provisional RAs and would be moved to hotels, two of the clients called Ms. Harmer after 1 p.m. on July 7 to let her know that they had been moved to the congregate Shelter R. Both clients had been assigned beds in dorms with between seven and nine other clients. I immediately asked DHS to explain how these clients became assigned to a congregate shelter and to confirm when they would be moved to appropriate placements. At 2:04 p.m., DHS replied, “I am following up with the Program Admin and will circle back.” Within an hour, the clients had informed Ms. Harmer that they were being moved to hotel rooms. Nonetheless, as of the night of July 7, DHS has yet to follow up with me.

Individual Client Advocacy

38. Because so many of the people we met in the density hotels and congregate shelters were not receiving adequate assistance from shelter staff, Coalition scrambled to submit dozens of RA requests since the density hotel moves began on June 22, 2021. The following paragraphs include a sampling of the RA requests filed by Coalition staff as well as inquiries sent to DHS about RA requests that clients believed were already pending.

39. **NH:** Coalition met with NH in our offices on June 28th and reviewed the RA transfer addendum notice he received from shelter staff indicating he would be moved from Hotel F into another single- or double-occupancy hotel room. He reported to Coalition’s Senior

Director of Crisis Services Lindsey Davis that he has diabetes and incontinence issues, and had recently been hospitalized in a coma. NH had trouble reading the notice, so Ms. Davis read it to him. NH believed he was being sent to a nursing home, so Ms. Davis contacted DHS for an update on NH's pending move from Hotel F.

40. During the evening of June 30, Coalition monitors met NH at the congregate Shelter G, where he had been transferred instead of a single- or double-occupancy room as per the notice he received stated he would be.

41. Ms. Davis wrote to DHS during the morning of July 1 and requested that NH be moved to a hotel room due to his serious medical needs and cognitive disabilities. She also requested that DHS staff request an RA for NH and assist him in connecting with his medical providers. DHS acknowledged receipt of NH's request.

42. With no further communication received from DHS by 5 p.m. on July 1, Coalition's Deputy Executive Director for Policy Shelly Nortz added DHS Administrator Joslyn Carter to the email thread and requested that NH be granted a provisional RA and moved to a hotel room because of his serious medical needs. DHS thereafter confirmed that he would be moved from the congregate Shelter G to a hotel.

43. **IM:** Like several other clients we met since the density hotel moves began, IM, a client placed at Hotel U, the density hotel for the congregate Shelter S, was under the impression that his RA request had been pending for a month before learning on June 30 that his case manager never submitted it. IM has diabetes, hypertension, and gastrointestinal issues that caused him to be hospitalized recently on two occasions. The cause of IM's gastrointestinal issues has yet to be diagnosed, but it is suspected that he may have a compromised immune system. A nurse visits him daily to check his blood pressure.

44. During the morning of July 1, Ms. Davis wrote to DHS and requested confirmation of IM's RA request and that he would not be moved to a congregate setting pending a determination. DHS responded a day later, the same day that moves were scheduled to commence at Hotel U, and asked if Coalition had copies of the letters IM submitted to the case manager. DHS said they would also reach out to the shelter and attempt to obtain documentation via that more direct route. Finally, at about 6 p.m. on July 2, DHS confirmed that IM would not be transferred until a decision had been made on his pending RA request.

45. **PM:** A Coalition monitor met PM at Hotel N, the density hotel for the congregate Shelter E, the night of June 21. Our monitor observed that PM uses a wheelchair. Despite PM's mobility disability, he was transferred from Hotel N to Hotel V, which does not have ADA-compliant bathrooms. PM reported to Coalition's Crisis Intervention staff that shelter staff did not discuss his non-COVID-19-related access needs with him before his move. On June 23rd, Coalition requested an RA for PM for an accessible shelter placement, which shelter staff neglected to consider despite his obvious and apparent need for one.

46. **AS:** We have worked with AS for several years. Presumably, he is also well known to DHS. In February 2021, DHS granted AS's RA request for a single-occupancy room due to his multiple diagnoses, including bipolar disorder, PTSD, and panic disorder with agoraphobia. However, on June 23, AS received a notice dated June 14, 2021, indicating that his RA had only been granted provisionally and that he had a deadline of June 24—just one day—to again provide paperwork supporting this previously granted RA. The notice indicated that if AS did not meet this deadline he would move to the congregate Shelter N. Shortly thereafter, AS received a generic RA transfer addendum notice, which did not include his name, that stated he had an approved RA and should ignore the first notice he received. Attached as **Exhibit 3** is a

photograph of this notice. AS, who has severe mental health needs, including a panic disorder, became very confused and concerned about his shelter placement. Ms. Davis sent the two notices to DHS to express concern about the lack of care taken with respect to AS.

47. AS received yet another notice on June 30 indicating his bed assignment at the congregate Shelter N. He shared a photograph with his case manager via text message and she responded that his RA had been rescinded and that he would move from Hotel H to Shelter N imminently. Attached as **Exhibit 4** is the photograph taken by AS. Ms. Davis wrote DHS again to remind them about AS's approved RA for a single-occupancy room and to request information about where he would ultimately be transferred. Ms. Davis further reminded DHS that an RA can only be rescinded with clinical evidence that a condition has resolved itself, which Ms. Davis indicated had not occurred for AS.

48. DHS acknowledged AS's RA for a single-occupancy room at about 6:30 p.m. on June 30 and stated that staff would follow up with details about where AS would move the next day at noon. At 9:20 p.m., Coalition asked for an update about where AS would move.

49. At 9:09 a.m. on July 1, Coalition again asked for an update about where AS would move and escalated the request to DHS Administrator Carter, who then confirmed that AS would move to a placement that met his access needs. Administrator Carter stated she would provide an update later.

50. When an update had not been provided to Coalition by 2:38 p.m., Coalition again asked for information about AS's move, which was supposed to have taken place at noon. Thereafter, DHS responded with the location of AS's new shelter placement and stated that he arrived at it by 2:15 p.m.

51. The night of July 1, Coalition learned from AS that he actually traveled on his

own by cab to Shelter N at noon. It was not until he arrived at Shelter N did he learn the address of his new hotel placement.

52. **DB:** Coalition Disability Rights Specialist Mary Harmer requested an RA for DB on June 25 following DB's transfer from Hotel C to the congregate Shelter D after the RA request she made while still at Hotel C was denied due to lack of documentation. However, DB did provide her case manager, Ms. Cruz, with a letter from her doctor in advance of her move. Ms. Harmer spoke with Ms. Cruz on June 28th and learned that Ms. Cruz gave the paperwork to her supervisor, who apparently did not submit it to DHS' Customized Assistance Services ("CAS") unit for review, in advance of DB's move from Hotel C to Shelter D.

53. On June 28, I escalated to DHS' Office of Legal Affairs the RA request that Ms. Harmer filed and requested that DB's RA request for a single-occupancy hotel room with an en suite bathroom be provisionally granted while medical documentation was located. DB, who has multiple sclerosis, must be in very close proximity to a bathroom due to incontinence from muscle degradation. DHS provisionally approved the RA request on June 29 and I asked DHS to let me know when and where DB would be transferred.

54. By July 1, neither DB nor myself had received additional information about where DB would be transferred. I escalated the request to DHS Administrator Carter, who helped identify an appropriate placement for DB to move to on the morning of July 2.

55. At nearly 11 a.m. on July 2, DB had not heard from shelter staff about when her move would take place. I again asked DHS to provide an update. Eventually transportation arrived for DB, but we learned at nearly 4 p.m. that she had been dropped off at a hotel in the Bronx rather than her assigned hotel placement in Manhattan. DB then waited about two-and-a-half hours for another vehicle to pick her up and drive her to her correct placement where she

finally arrived during the evening.

56. **EH:** Coalition monitors met EH on June 25 while performing outreach at Hotel F. EH, who has diabetes and pancreatic insufficiency, which he manages with medication administered several times daily, explained that he had provided medical documentation of his conditions to his case manager but was uncertain if an RA request was pending for him. The shelter's deputy program director told our monitors that she would reach out to EH about his RA. On June 25, Ms. Harmer contacted the DHS Office of Disability Affairs and learned that an RA had never been requested for EH.

57. EH contacted Ms. Harmer on June 28, a day before his move to the congregate Shelter G was scheduled, to explain that shelter staff had not reached out to him about his RA needs. Ms. Harmer then immediately requested an RA for a single-occupancy hotel room on EH's behalf, which included photographs of his medication.

58. EH received a notice at about 8 p.m. on June 29 advising him that he would be moving to the congregate Shelter G on June 30. I wrote to DHS' Office of Legal Affairs and asked them to intervene and stop the move since EH's RA request was pending. Ultimately, EH was moved to Shelter G on June 30 despite providing documentation to DHS through shelter staff and Coalition that demonstrates his need for a single-occupancy hotel room.

59. Eventually, DHS provisionally approved EH's RA on June 29. After two requests about when and where EH would move, DHS identified a placement for him in a hotel on June 30.

60. **EK:** EK, whose medical history includes chronic bronchitis, COPD, asthma, bronchial asthma, and obesity, uses an oxygen machine and was transferred from the Mansfield density hotel to the congregate Shelter D on June 25 despite requesting an RA more than 48

hours in advance of the scheduled move. Before the move, EK received a verbal denial of her RA request. However, she never received a determination letter with information about how to appeal the decision. Ms. Harmer spoke with EK's case manager and learned that the case manager never received a determination letter to provide to EK.

61. On June 28, Ms. Harmer asked the Office of Disability Affairs to provide a determination letter for the RA requested by shelter staff. I then escalated Ms. Harmer's request to the Office of Legal Affairs, who agreed to look into EK's case. On June 29, DHS approved a single room placement for EK for the duration of the pandemic.

62. **GJ:** Despite his obvious and apparent disabilities, GJ was moved to the congregate Shelter G where Coalition monitors met him the evening of June 30. Through his home health aide, Ms. Davis learned about GJ's recent multiple heart attacks and strokes and kidney disease. His back had also been broken in three places, resulting in a lengthy hospitalization. GJ moved from the hospital to Shelter G and his medical documentation was either lost or misplaced during transport. Ms. Davis requested that GJ be granted a provisional RA and provided assistance in gathering any medical documentation needed to further support his RA request for a single-occupancy hotel room. DHS thereafter confirmed that he would be accommodated in a single-occupancy hotel room.

63. **SM:** Although he had received an RA transfer addendum notice indicating he would be moved from Hotel F into another single- or double-occupancy hotel room, SM was transferred back to the congregate Shelter G where Coalition monitors met him on June 30. SM has emphysema, thyroid cancer, and skin cancer, and uses a wheelchair. Ms. Davis wrote to DHS on July 1 and requested that SM be granted a provisional RA for a single-occupancy hotel room due to his compromised immunity. DHS responded that SM had been approved for a single

room.

64. **CJ:** Ms. Davis contacted DHS on CJ's behalf on June 24, the day before Hotel D was scheduled to close and CJ would be moved to the congregate Shelter C. CJ had already submitted the COVID Placement Request Clinician Assessment form and a letter from her doctor about her neurological disorder that causes seizures and hypersensitivity to noise on June 21, yet she continued to wait for a decision the day before her scheduled move. DHS reported that shelter staff claimed that they had not received any documentation from CJ in support of an RA as of June 22. During the evening of June 24, DHS stated that CJ had a "provisional single room" and shelter staff would assist CJ in completing a HIPAA form and another Clinician Assessment form. CJ then moved from Hotel D to a hotel in the Bronx and has remained in a single-occupancy room there since it was provisionally granted as an RA. On July 7, her RA for a single-occupancy room for the duration of the pandemic was finally approved.

65. **WB:** WB received an RA transfer addendum notice indicating he would be moved from Hotel F into another single- or double-occupancy hotel room. Nonetheless, WB, who recently had a stroke, has high blood pressure, and was scheduled to undergo a diagnostic colonoscopy for suspected cancer on July 7, moved back to the congregate Shelter G. WB reported to Coalition that he provided medical documentation to his case manager, Ms. Duncan, and did not receive copies. On July 1, Ms. Davis contacted DHS and requested that WB be accommodated in a single-occupancy room until his July 7 colonoscopy when he would be able to obtain another set of medical documentation from his health care provider. As of July 8, 2021, DHS has not responded to Ms. Davis, and WB remains in an inappropriate congregate shelter placement.

66. **EG:** Like other clients we met at Shelter G who had been transferred from Hotel

F, EG had received an RA transfer addendum notice indicating he would be moved into another single- or double-occupancy hotel room. EG informed Coalition that his RA request for a single room was approved on June 27 due to his multiple medication conditions, which include diabetes that is treated with insulin; a hernia for which he will undergo surgery; high cholesterol; hypertension; and thyroid and pancreas disorders. Ms. Davis asked DHS to confirm EG's RA and explain how he came to be moved to a congregate setting. As of July 8, 2021, DHS has not responded to Ms. Davis, and EG remains in an inappropriate congregate shelter placement.

67. **HZ:** Despite HZ's obvious and apparent mobility disability—she uses a manual wheelchair—she was transferred from Hotel C to congregate Shelter D, which is located on a hill with a significant slope that HZ cannot safely navigate. For example, she is unable to maintain a safe speed going downhill when exiting the facility. HZ reports not receiving assistance from shelter staff in requesting an RA. Further, she was denied access to a Mandarin interpreter when speaking with a case manager about her access needs. She also had Chinese medicine taken away from her when she arrived at Shelter D, presumably because shelter staff were not familiar with it. Upon information and belief, the medicine still has not been returned to HZ.

68. Ms. Harmer submitted an RA request on HZ's behalf on June 29. On July 1, HZ informed Ms. Harmer that she was being transferred but did not know to where. I asked DHS to confirm that HZ would finally be transferred to a hotel placement. HZ moved to a less dense setting on July 2.

69. **IW:** On June 28, a Coalition monitor met IW at Hotel Q. They discussed how to request an RA. IW said he wanted to request an RA because of his PTSD and need for a less dense setting but was unable to do so because case management staff were not present at the shelter. He was referred to Coalition's Crisis Intervention program, which requested an RA on

his behalf during the period of case management staff's absence from the hotel. As of July 8, 2021, DHS has still not responded to Coalition about IW's RA request.

70. AH: Ms. Harmer met AH at Hotel C on June 21 and learned that an RA request for AH had been verbally denied without service of a determination letter and information on how to appeal the decision. In response to Ms. Harmer's query, the Office of Disability Affairs said that no RA request was found in DHS' databases. On June 23, Ms. Harmer then requested an RA for a single-occupancy room for AH, who has generalized anxiety disorder that is exacerbated by loud noises and crowded group settings. On June 24, AH informed Ms. Harmer that she was told she is moving and, rather than receiving a 48-hour transfer notice, she received an address on a sticky note. AH eventually received a transfer notice but only because she again requested it from shelter staff. Ultimately, AH's request for a single-occupancy room was denied and she was granted a placement in a double-occupancy room.

71. BW: BW, whose primary language is Polish, informed Coalition that she felt that shelter staff at Hotel C, the density hotel for the congregate Shelter D, were not effectively discussing her access needs with her because of a language barrier, in violation of Local Law 30, which requires DHS to provide interpretation and translation services in Polish, among other languages. BW, who has kidney disease, asthma, a heart condition, and osteoarthritis, received a determination letter in English that denied her RA request for a double-occupancy room. BW does not read English. Coalition's Crisis Intervention program staff are providing services to BW.

72. AW: AW contacted Coalition for assistance after he was moved to the congregate Shelter S despite requesting an RA for a single-occupancy room in advance of the move. AW, who reports being diagnosed with hypertension, diabetes, and an enlarged prostate, has not been

able to schedule appointments with his doctors in order to obtain supporting documentation of his need for a single-occupancy room. On July 2, Ms. Davis asked DHS to confirm if an RA request was pending and to grant AW a provisional RA while he meets with doctors. On July 3, DHS approved AW for a double-occupancy room at Shelter S, which requires him to use congregate bathroom and cafeteria facilities.

73. **SH:** SH contacted Coalition on July 6 after she was moved from Hotel C to the congregate Shelter T on June 25. SH's neurologist wrote in a June 29, 2021, letter that SH has an autoimmune disease (fibromyalgia), brain stem encephalomyelitis, and chronic musculoskeletal pain, and requires a single-occupancy room on the ground floor or access to an elevator since she cannot use stairs or ambulate for significant periods. SH also recently had heart surgery and suffers regular, tiny strokes. She recalls speaking with her case manager around June 10 about her need for an RA, but she believes her case manager did not actually submit the request for an RA. She believes she was told before her June 25 move that her request for an RA had been denied even though her need for one is obvious and apparent. She did not receive a determination letter denying an RA. DHS provisionally granted SH an RA for a single-occupancy room following advocacy by Coalition. However, since SH also has viral pneumonia, she was transferred on July 6 to the DHS isolation hotel where limited nursing services are available.

74. SH informed Coalition on July 7 that DHS was moving her back to the congregate Shelter T from the isolation hotel after just one night. Coalition staff immediately contacted DHS to prevent SH's return to a congregate setting. DHS identified a single-occupancy room in Hotel W, another density hotel that DHS said would close next week, and asked Coalition to direct SH there. Coalition staff asked DHS to locate a more permanent hotel placement for SH since the

July 7 move represented SH's third move since June 25.

75. Before DHS could respond, Coalition learned that SH was traveling in a van back to the congregate Shelter T. Ms. Nortz then added Administrator Carter to the email thread and requested an immediate end to repetitive moving of SH from one facility to another. DHS responded that an RA for a single-occupancy room had been provisionally approved. Before DHS staff could identify a new hotel placement for SH, Coalition learned that SH had been transported to the congregate Shelter U, which has been closed to clients for the majority of the pandemic, instead of the congregate Shelter T. As a result of the unnecessary move, which began about 1 p.m. and did not conclude until sometime after 5 p.m., SH missed two medical appointments, further adding to her distress. Ultimately, SH returned to the isolation hotel where she had spent the night of July 6 and learned she would be moved, yet again, to her provisional hotel placement on July 8.

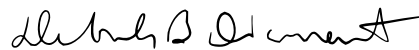
76. **CM:** CM contacted Coalition on July 6 after being transferred from Hotel F to the congregate Shelter G. CM, who has limited mobility due to pins and rods inserted in his spine, has sleep apnea and uses oxygen. Like other clients transferred from Hotel F to Shelter G since the week of June 28, CM had been assured by shelter staff that he had an approved RA for a single-occupancy room. Shelter staff later told him his RA had been rescinded and that he had been removed from a list of clients who would be transferred to other hotels. [REDACTED] has not received any notices regarding the rescission of his RA. As of July 8, 2021, DHS has not responded to Coalition's request that CM be accommodated in a less dense setting, and CM remains in an inappropriate congregate setting.

77. Since the density hotel moves began, Coalition has spoken with numerous clients who are understandably anxious about the moves and their safety. The lack of one-on-one

communication about the moves and clients' reasonable accommodation needs with appropriate advance notice has made this process, which DHS is required to conduct in consultation with clients, especially difficult for our clients. DHS has shown that it cannot safely accommodate clients until DHS takes the time necessary to adequately screen each client, including those who have already returned to congregate shelters and those who have never left.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on July 8, 2021.



Deborah B. Diamant, Esq.