

**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 GABRIELA TORRES-LORENZOTTI

1. I am the Paralegal Casehandler for The Legal Aid Society's Homeless Rights Project. I provide direct representation to individuals and families who are experiencing homelessness and are either seeking shelter or currently sheltered. In addition, I manage client intake from our toll-free hotline number. I make this declaration in support of Plaintiffs' motion for a preliminary injunction, temporary restraining order, and enforcement of the Stipulation of Settlement.
2. In my time at The Legal Aid Society, I have personally worked with hundreds of individual clients, many of whom have a disability-related access or functional need that

requires a specialized shelter placement. I receive requests from clients who affirmatively contact the Homeless Rights Project and via direct referrals through community-based organizations to assist and represent clients through the New York City Department of Homeless Services’ (“DHS”) Reasonable Accommodation (“RA”) process. This representation includes conducting outreach to professionals who provide documentation to support the client’s request, submitting reasonable accommodation requests on behalf of clients to ensure they are in a placement that accommodates their needs, and advocating on behalf of clients who have been wrongfully denied access to such an accommodation.

3. During the COVID-19 pandemic, my work assisting homeless New Yorkers with disabilities has included helping clients who have been diagnosed with medical conditions that are linked to an increased risk of severe illness or death if they were to contract the virus that causes COVID-19 to access less dense shelter settings in order minimize their risk of exposure to SARS-CoV-2. For these clients, DHS adopted its *Interim Guidelines for placing clients in single or double rooms during the COVID-19 Emergency* (“*Interim Guidelines*”). See **Exhibit 1**. The conditions listed in these guidelines were derived from the U.S. Centers for Disease Control and Prevention’s “People with Certain Medical Conditions” guidance (“CDC guidance”).¹
4. In mid-May 2021, many clients who I had represented through the COVID-19 RA process received a communication from the Administrator of DHS, Joslyn Carter. This communication alerted clients to upcoming moves back to congregate shelter. See **Exhibit 2**. These clients expressed feelings of fear and anxiety around the increased risk of

¹ Centers for Disease Control and Prevention, *People with Certain Medical Conditions* (May 13, 2021), <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html>

exposure as a result of moving back to congregate shelter, and the implications for their health. Consistent with information we had received from DHS, I informed clients with an approved COVID-19 RA that they would not be moved back to congregate imminently.

5. In early June, DHS began to distribute a notice to clients who had received provisional accommodations from DHS that they had to submit documentation to support their need for accommodations within 10 days. *See Exhibit 3.* These requests alternatively asked clients to sign a HIPAA release form permitting their care providers to release medical information about them to DHS.
6. Accompanying this notice DHS provided a form entitled “COVID PLACEMENT REQUEST, Clinician Assessment Form (DHS-XX2284)” which asks the client’s treatment provider, if the client is seeking a reasonable accommodation pursuant to the Interim Guidelines related to COVID-19, to document the client’s disability. *See Exhibit 4.*
7. Some of my clients received an initial notice letter dated June 17, 2021, indicating they were scheduled to move on June 25, 2021. This notice was sent to clients in at least seven shelters, including two which primarily serve individuals living with mental health diagnoses. *See Exhibit 5.*
8. On June 21, 2021, DHS provided to the Coalition for the Homeless through legal counsel with three revised notices to clients regarding moves from de-densification hotels that it intended to use going forward. The first revised notice was directed toward individuals with reasonable accommodations who had received the June 17 notice. *See Exhibit 6.* The second revised notice was a copy of the first revised notice and was apparently intended for clients who did not receive the initial notice letter. *See Exhibit 7.*

The third revised notice was not addressed to any individual and generally informed clients of DHS' plans to end the use of commercial hotels. *See Exhibit 8.*

9. Even after preparing the revised notices, DHS continued to use the Initial Notice Letter to advise clients that their density hotel will be closing.
10. As illustrated below, clients with approved RAs due to their health risks were given false information, repeatedly asked for additional and duplicative documentation, and served transfer notices that erroneously indicated they would be transferred back to congregate shelter. Some clients received less than the 48-hour notice required before moves began happening, and others received no notice at all. Some clients whose needs had been accommodated during the pandemic were moved to congregate sites that did not meet their needs. These moves, and the lack of information provided to clients during this process, instilled fear, anxiety, and in some cases, forced clients to leave the shelter system entirely due to their health concerns if they were to return to a congregate site.
11. In addition, as moves began happening over the last two weeks, I have worked with many individuals who may qualify for an RA that would require a single or double occupancy hotel placement based on disabilities due to medical or mental health diagnoses. Most of these clients did not have knowledge of the RA process before connecting with an advocate, were not able to contact their medical or mental health providers in time to submit a request, or believed they had submitted a request through the shelter but did not receive a determination.
12. In addition, I continue to encounter, and represent, clients who currently reside in congregate shelter and have a medical condition that is linked to increased risk of severe

illness or death if they were to contract the virus that causes COVID-19 that have not been screened by DHS.

13. Even in cases where Legal Aid has advocated on behalf of a client and raised their case directly with DHS, those same clients continue to receive erroneous information from shelter staff, experience significant delays in receiving a determination on their reasonable accommodation request(s), and reside in a placement that does not appropriately accommodate their disability-related needs.

14. Based on data received from DHS, it appears that between June 22 and July 6, 2021, DHS moved approximately 1364 shelter residents from de-densification hotels, 1040 of which were assigned to congregate shelters.

15. I am personally aware of and have recently worked with the following clients:

- a) JSB is a 46-year-old man who has been diagnosed with COPD, asthma, hyperlipidemia, and a Vitamin D deficiency; he also regularly uses a nebulizer to stabilize his breathing. JSB also has a metal rod in his leg and uses a cane to ambulate. In addition, he reports he has been diagnosed with rheumatoid arthritis in his hands and legs, which increases the difficulty he has ambulating. JSB resided in a single occupancy hotel room in a density hotel until June 22, 2021, when he was transferred to a congregate site despite his medical conditions that according to the *Interim Guidelines*, are linked to an increased risk of severe illness or death if he were to contract the virus that causes COVID-19. On June 24, when Plaintiff Coalition for the Homeless brought his case to the attention of DHS and supplied medical documentation of his needs, DHS responded that it had asked him for documentation of his RA on June 10 and had no record of a response but would submit a new RA request. JSB reports that he made repeated attempts to secure medical documentation during the ten-day period, but his primary care physician had limited availability. On June 27, DHS granted JSB an RA for a single room, but identified a unit with a congregate bathroom. JSB's current unit does not accommodate his disability-related needs. Currently, the shared bathrooms are located on the other side of the building from where JSB's room is located, and it is extremely challenging for him to get to the bathroom due to this mobility impairment. In addition, JSB reports that there is no AC outside of his room. Given the heat, his COPD and asthma are greatly exacerbated by having to leave his room to use the bathroom in an environment that is not air conditioned. Despite the apparent nature of these disabilities and symptoms, DHS has denied JSB a transfer to a unit that accommodates him until additional medical

documentation is acquired. JSB does not feel safe in his current unit and has not spent the night in shelter since he was transferred.

- b) AG is a 57-year-old man who has been diagnosed with asthma, is an active smoker, and has several hernias as a result of a serious accident last year. According to the *Interim Guidelines*, these conditions are linked to an increased risk of severe illness or death if he were to contract the virus that causes COVID-19. In addition, AG wears two knee braces and uses a cane, as he suffers from extreme pain in his knees when ambulating. AG reports that he requires a knee replacement in both knees. AG resided in a single occupancy hotel room since July 2020. On June 26, 2021, AG was informed by shelter staff that he had to, “pack up and leave.” AG was then given the address of a congregate shelter placement. AG was not served a 48-hour transfer notice; he was only given “a few hours.” When AG communicated to shelter staff that he is diagnosed with asthma and provided a copy of a letter from his doctor documenting his diagnosis, he was not offered a reasonable accommodation request form or provided with a provisional placement. In addition, AG was not provided transportation or assistance with his belongings to the congregate site, despite his mobility impairments and multiple hernias, which make it challenging for him to transport heavy belongings. When AG returned to collect the rest of his belongings on Monday, shelter staff could not locate them. On July 1, 2021, Legal Aid informed DHS that AG’s congregate placement does not accommodate his needs. According to the *Interim Guidelines*, AG’s diagnosis of asthma and his status as a current smoker would make him eligible for placement in a double occupancy room. Due to AG’s mobility impairment, he reports he requires an accommodation on the first floor or in a unit with a functioning elevator. When AG was transferred to the congregate site on June 26, the elevator was out of service. As of July 6, the elevator is still out of service despite bringing the issue to the attention of DHS multiple times. AG is currently placed on the second floor and getting up and down the stairs to access his bed is extremely painful and difficult given his mobility impairment and multiple hernias. As of July 6, 2021, Legal Aid has raised AG’s case with DHS on four separate occasions, and AG has not been offered an alternate placement to accommodate his needs.

- c) TJB is a 52-year-old woman who, in March 2021, was street homeless due to her fear of contracting COVID-19 as a result of returning to a congregate shelter placement. Legal Aid assisted TJB in submitting a request for a double occupancy room because, according to the *Interim Guidelines*, her status as a current smoker is linked to increased risk of severe illness or death if she were to contract the virus that causes COVID-19. On March 19, 2021, the request was approved and TJB was placed in a double occupancy room. Despite having an approved COVID-19 RA, on June 17, 2021, TJB was served a transfer notice indicating she would be moved back to congregate shelter on June 25. *See Exhibit 5.* When TJB reported to shelter staff that she had an approved COVID-19 RA, shelter staff informed her she “had no choice” but to move. On June 22, Legal Aid raised this case with DHS and, receiving no answer, raised it again with DHS two days later. In the morning on June 25, clients from TJB’s hotel were all moved back to congregate

shelter. Due to fear of contracting COVID-19 if she were to return to the congregate site, TJB left shelter. After Legal Aid raised the case with DHS a third time, DHS finally identified a new double-occupancy unit for TJB.

- d) JB is a 51-year-old woman who has been diagnosed with unspecified bipolar disorder, anxiety and depression. JB has also been diagnosed with hypertension and is a current smoker, which, according to the *Interim Guidelines*, are conditions linked to an increased risk for severe illness or death if she were to contract the virus that causes COVID-19. JB was not screened for these conditions when she entered shelter in March 2021 and was placed in congregate shelter in Manhattan in mid-April, where she currently shares a room with six other women. On June 25, JB was approved for a COVID-19 double occupancy room due to her medical conditions and placement in Queens to accommodate her mental health needs and access to her providers. As of July 7, 2021, and after repeated attempts to bring JB's case to DHS' attention, JB remains in a congregate setting in Manhattan, which does not accommodate her needs based on her approved RAs.
- e) MF is a 56-year-old woman who has been diagnosed with Type II diabetes. In addition, MF experiences lung-related discomfort and shortness of breath due to being an active smoker. In October 2020, MF was approved for and transferred to a single occupancy room in Manhattan as a reasonable accommodation due to these conditions which, as per the *Interim Guidelines*, are linked to an increased risk for severe illness or death if she were to contract the virus that causes COVID-19. On June 7, 2021, despite having an approved RA, MF was asked to have her physician fill out a "COVID Placement Request" form. *See Exhibit 4.* When MF expressed to shelter staff that she already had an approved COVID-19 RA, she reports staff told her, "It does not matter." When Legal Aid raised MF's case with DHS, they acknowledged MF had been asked for additional information in error. On June 22, 2021, MF was served a transfer notice to move to a single occupancy hotel room in Queens. After arrival to her new placement, on June 29, shelter staff once again asked MF for additional medical documentation. Shelter staff informed MF that if she did not produce medical documentation to prove her medical diagnoses, she would be "sent back to congregate shelter." Upon raising this case, again, with DHS, they again acknowledged the shelter site had asked for additional documentation in error and confirmed MF had an approved COVID-19 RA for a single occupancy room.
- f) GC is a 63-year-old man who was approved for a single room in November 2020 based on his medical conditions that, according to the *Interim Guidelines*, are linked to an increased risk of severe illness or death if he were to contract COVID-19. GC's treatment and subsequent cure from cancer involved chemotherapy that led to numerous post-amputation complications, which include heart failure. GC also has liver damage from Hepatitis C, which has been treated. Despite an approved COVID-19 RA, on June 23, 2021, at 10:30pm, GC received a notice stating he would be transferred that night. *See*

Exhibit 9. He was verbally informed by shelter staff that he would be transferred back to congregate shelter. The next day, DHS informed GC that he would be transferred to a single occupancy hotel room in Manhattan. On June 25, GC was transferred to a single occupancy room. On June 29, the new site served GC a new transfer notice, once again erroneously indicating that GC would be transferred back to congregate shelter. *See Exhibit 10.* Upon intervention by Legal Aid, DHS confirmed the transfer notice was, again, served in error.

- g) NS is a 60-year-old woman who has been diagnosed with anxiety and depression, which are exacerbated following an assault by her roommate in congregate shelter in February 2020. The assault resulted in severe eye trauma and hospitalization. In early June 2021, NS submitted an RA request for a single occupancy room due to her mental health diagnoses. NS never received a determination. Instead, on June 17, 2021, NS received a transfer notice indicating she would be moved back to congregate shelter a week later. On June 21, Legal Aid submitted an RA request on NS's behalf. Notwithstanding the pending RA request, on the evening of June 23, DHS informed Legal Aid that NS "has been approved for return to congregate." On June 24, at 10:36am, NS was forced to board the bus to the congregate shelter despite having submitted an RA request and not having received DHS's determination of the request. Legal Aid did not receive a determination for NS' reasonable accommodation request until NS had already left the hotel for congregate shelter. A copy of NS's determination indicated that her request had been denied because the "Documentation lacks sufficient evidence that the client has functional limitations or needs related to their condition(s) that would be helped through the provision of this accommodation." As detailed in a letter submitted to DHS by her physician, "returning to the shelter will result in serious physical and mental complications" and "Patient is extremely anxious about having to share a room with another person. A private room is medically necessary to stabilize the mental health of the patient as well as aide in her treatment. The lack of a private room could potentially harm the patient's condition by increasing her symptoms, such as depression, high levels of anxiety, lack of sleep, fear, as well as hallucinations." The doctor also notes that, "These symptoms have decreased since she has been living in a single occupant hotel room." DHS also denied NS's request to provisionally remain in a single occupancy room while appealing the denial.

- h) AC is a 50-year-old man who suffers from chronic severe asthma and uses a nebulizer twice or three times a week. According to the *Interim Guidelines*, AC's condition might be at increased risk of severe illness if he were to contract the virus that causes COVID-19, which would make him eligible for placement in a double-occupancy room. AC reports he requires a room with air conditioning because heat severely exacerbates his difficulty breathing. He is diagnosed with bipolar disorder and suffers from severe depression and was receiving services from a psychiatrist daily prior to the pandemic but is not currently in treatment. AC reports he requires a single-room placement because of his severe anxiety as a result of his mental health needs. His mobility is limited as a result

of two hip replacements and pelvic surgery. He cannot climb stairs and has difficulty standing. Shelter staff at the density hotel did not screen him for any RA needs before he was transferred. DHS moved him to a congregate setting, but following our advocacy agreed to provisionally place him in a single room. Legal Aid is assisting AC collect documentation to support his provisional accommodation.

- i) JJ is a 60-year-old woman who suffers from osteonecrosis, edema, anemia, DVT, low blood pressure, anxiety, and she recently had a hip replacement. JJ uses a walker to ambulate and receives weekly physical therapy. In addition, she uses a commode and is partially incontinent. On March 29, 2021, JJ was approved for multiple reasonable accommodations due to her extensive medical needs including: an ongoing single room, a wheelchair accessible unit, handicap handlebars in the bathroom, commode, and a room close to the elevator, if applicable. Legal Aid first brought JJ's case to DHS' attention in April 2021, to ensure her disability-related needs were accommodated during a shelter transfer. As a result, JJ was placed in a single occupancy hotel room. In addition, JJ was provisionally granted access to her home health aide in shelter and subsequently submitted all appropriate documentation to support her request. On June 28, 2021, JJ was prohibited from allowing her home health aide to enter her shelter unit. On June 30, Legal Aid asked DHS to confirm the status of the provisional request. On July 2, 2021, JJ received verbal notice from shelter staff informing her she would be transferred on July 3. When JJ asked where she was being transferred, and if her new unit will accommodate her needs, the staff member informed her he "wasn't at liberty to say." Due to JJ's documented and apparent physical mobility issues, it is not possible for her to pack overnight. When JJ expressed this to shelter staff, she reports they informed her that if she didn't pack, "DHS would come and pack it for her tomorrow." On July 2, Legal Aid raised JJ's case with DHS to pause the transfer until JJ received sufficient notice, to allow her home health aide access to the shelter unit, and to ensure JJ's new shelter placement properly accommodated her needs. DHS confirmed JJ would not be moved until, "after the holiday weekend" but did not confirm where JJ would be transferred or if the new placement would accommodate her approved reasonable accommodations. The next day, on July 3, JJ reports that shelter staff informed her she had to pack her belongings and that she was going to be transferred back to congregate shelter in a borough that JJ cannot reside in due to imminent safety concerns. As a result of Legal Aid intervention, DHS responded ensuring the transfer would be paused until July 6 at the earliest and granting access to JJ's home health aide.

- j) MS is a 56-year-old man who has been diagnosed with Type II diabetes and borderline high blood pressure. MS also has seven coronary stents in his heart due to a history of heart failure. Legal Aid advocated on behalf of MS in November 2020 to secure approval of a single room as a reasonable accommodation because MS' medical conditions, according to the *Interim Guidelines*, are linked to increased risk for severe illness or death if he were to contract COVID-19. On November 18, 2020, MS was placed in a single occupancy hotel unit to accommodate his needs. On June 29, 2021, DHS informed

Legal Aid that they were aware MS had an approved RA for a COVID-19 single room. On July 2, MS was served a notice indicating he would be transferred back to congregate shelter on July 8. When MS informed shelter staff that he had an approved RA on file, staff informed him that, “he was not approved for an RA” and that “nothing was submitted on his behalf.” In addition, on July 3, MS was served the “COVID Placement Request Form” and a blank HIPAA. MS was told that if he didn’t fill out the form by July 8, he would be sent back to congregate shelter. Legal Aid raised MS’ case three additional times. Finally, on July 6, MS was transferred to another single occupancy room that accommodates his needs.

- k) VW is a 78-year-old man who has a chronic heart condition. VW’s age and medical conditions, according to the *Interim Guidelines*, are linked to increased risk of severe illness or death if he were to contract the virus that causes COVID-19. In addition, VW has a mobility impairment in his right foot and has difficulty ambulating. VW has not received an individualized notice of his transfer. In early July 2021, VW reports the shelter posted a general sign that states, “We are in the process of relocating all residents back to their respective shelters beginning week of July 5th, 2021. Please ensure you have met with your housing specialist regarding housing, discard any items not allowed...You can speak to anyone on the 1st floor to receive further information.” *See Exhibit 11.* VW reports that this sign was not made available in any other language. On July 6, VW received verbal notice he would be transferred on July 9 to a single occupancy hotel room but was not given the specific location of his placement.
- l) JO is a 31-year-old woman who currently resides in a single occupancy room in a density hotel. JO has been diagnosed with bipolar disorder, generalized anxiety disorder, major depressive disorder, and post-traumatic stress disorder. As a result of her mental health diagnoses, she reports she requires continued placement in a single occupancy room. JO also has a mobility impairment and has a prosthesis for her lower leg. In addition, JO is diagnosed with moderate asthma, which according to the *Interim Guidelines*, at a minimum, would make her eligible for placement in a double occupancy room. JO has multiple approved reasonable accommodations for a wheelchair accessible unit, and placement in the Bronx or Manhattan to be physically close to her medical providers. On June 30, 2021, Legal Aid submitted two RAs on JO’s behalf: one for a single occupancy room based on her mental health diagnoses and another for a COVID-19 double occupancy room. As of July 7, DHS has not responded to confirm receipt of the request or to provide a determination. Legal Aid has followed up on the original request on two additional occasions.
- m) EM is a 32-year old man who suffers from PTSD that he reports leaves him unable to share sleeping space with others. Prior to the pandemic, EM was placed in a congregate site. After shelter staff moved him to a congregate setting, he was hospitalized due to suicidal thoughts. Upon his release, the hospital gave him a letter explaining that he required a single room because he could not be around

others. His RA for a single occupancy room was approved, and he was moved to a de-densification hotel in mid-September 2020. However, late June 2021, he was notified that the de-densification hotel would be closing in early July. EM's case worker told him he would have to resubmit his accommodation request and that it was unlikely that he would get a single-occupancy room despite his documented mental health and hospitalization history. EM contacted LAS, extremely concerned about being unable to remain in a single room, despite his prior approval. On June 23, Legal Aid raised EM's case with DHS to inquire whether EM's approved accommodation request was on file and, if not, to request a provisional RA for EM to give him time to regather the necessary medical documents. As a result of Legal Aid intervention, on June 28, DHS responded that EM's single room request had been approved in January. As of July 7, EM has not received any additional information as to where or when he will be transferred.

16. On June 22, 2021, five days after first learning of DHS's plans to move residents to congregate shelters, The Legal Aid Society sent a formal notice to Defendants informing them of the violations under the *Butler Stipulation*. *See Exhibit 12*. Earlier on April 30, 2021, The Legal Aid Society met with DHS to discuss and relay concerns about DHS's proposal to submit a plan for returning residents to congregate shelter. On May 18, 2021, DHS submitted a revised plan to New York State authorities for approval but refused to give The Legal Aid Society an opportunity to review the plan.

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.

Gabriela Torres-Lorenzotti

Gabriela Torres-Lorenzotti