

**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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SECOND 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 second declaration in further support of Plaintiffs' motion for a temporary restraining order and preliminary injunction. I respectfully direct the Court to my July 8, 2021, declaration for background information on Coalition's role as the court-appointed monitor and a summary of our shelter visits and client advocacy since clients

began moving out of commercial hotels used to create safer spaces for clients during the COVID-19 pandemic (hereinafter “density hotel” or “density hotels”) and back to congregate shelters. 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.

2. In the normal course of business, Coalition informs DHS about clients who need RAs to access DHS facilities and services but have not received assistance from case managers in submitting RA requests. The number of RA requests and RA inquiries (i.e., checking on the status of an RA a client believes has already been submitted) emailed from Coalition to DHS since the density hotel moves began has risen exponentially. Here, as in my July 8 declaration, I have provided details about a limited subset of the clients we have assisted. Coalition remains concerned about the many clients we have not met who are similarly situated to the clients we have brought to DHS’ attention but that no one is advocating for at this time.

3. On July 8, 2021, two Coalition monitors visited the Hotel X, the density hotel for the congregate Shelter C, which is operated by Care for the Homeless, in advance of the move scheduled for July 9. One of our monitors, our Disability Rights Specialist Mary Harmer, spent significant time discussing the RA request process with case managers who lacked sufficient understanding of clients’ rights and how to submit RA requests. Two case managers explained to Ms. Harmer that they believed that clients had a “cut off” date (on or about July 5) by which to request an RA or they would be moved to a congregate setting. The case managers also believed that they could not submit an RA request without having a complete set of the client’s medical documentation, including completed HIPAA and “COVID PLACEMENT REQUEST, Clinician Assessment Form (DHS-XX2284)” forms. Ms. Harmer provided a brief tutorial on the process

and explained they should immediately submit an RA request and thereafter assist the client with collecting medical documentation, if needed.

4. During the visit to Hotel X, Ms. Harmer met multiple clients who needed assistance with requesting RAs for alternative placements to a congregate shelter.
 - a. NAR, who is diagnosed with hyperthyroidism and bipolar disorder and experiences regular migraine headaches, told Ms. Harmer she wanted to request an RA for a less dense setting but no one at the shelter had discussed the availability of RAs nor the request process with her. NAR did not receive a 48-hour notice and had been told by a case manager she would return to the congregate Shelter C.
 - b. TE, who has congestive heart failure, diabetes, COPD, edema, and arthritis, uses a walker for ambulation and a heart monitor and C-PAP machine. She told Ms. Harmer she had been informed verbally she had been approved for a single-occupancy room, but she had not received a written RA determination nor a 48-hour notice indicating where she would be moved on July 9.
 - c. LS, who has COPD and asthma, requested an RA through her case manager Ms. Gates about two to three weeks ago and received a provisional approval letter but not a final RA determination letter. Although her request for a less dense setting had been provisionally approved and she submitted documentation from her health care provider, including a letter and a completed "COVID PLACEMENT REQUEST, Clinician Assessment Form (DHS-XX2284)" form, LS had been told by staff she would be going to the congregate Shelter C rather than a single- or double-occupancy hotel room. Like other clients we met, LS had not received a 48-hour transfer notice despite her move being scheduled for the following day on July 9.
 - d. NV, who uses a walker, cane, and wheelchair, told Ms. Harmer she did not receive written notice about the imminent move and had been informed verbally she would be moved to the congregate Shelter C. NV has high blood pressure and asthma, and experiences frequent stomach cramps and chest pains. NV's room at Hotel X is not an ADA-compliant room and she has had to navigate a bathroom without a roll-in shower and railings, which has been extremely difficult. She asked her case manager about placement in an ADA-compliant room and was told she could not request such accommodations. Additionally, NV's case manager told her she could not request an RA without full medical documentation.

5. After she returned to her desk following the visit to Hotel X, Ms. Harmer submitted RA status inquiries or submitted RA requests for the four clients described in the above

paragraphs, all of whom are clients of Care for the Homeless. DHS granted provisional placement RAs for the four clients after I shared Ms. Harmer's correspondence with deputy and associate commissioners and legal staff. Upon information and belief, these clients are still at the Hotel X because the July 9 move was paused due to the pending hearing in this matter.

6. Of the 38 clients included in my July 8 declaration and the 10 clients included herein, 11 reside in density hotels or congregate shelters operated by Care for the Homeless. The assistance Coalition has provided to the 11 Care for the Homeless clients demonstrates that the July 11 George Nashak declaration submitted as part of the defendants' opposition to the instant motion is not accurate in its description of the services allegedly performed by Care for the Homeless shelter staff.

7. On July 8, 2021, a Coalition social worker, Lauren May, learned that her client MB, who has asthma, coronary artery disease, COPD, a mobility disability, and a history of catatonic depression for which he is in treatment at Coalition, had been abruptly moved without notice from the Hotel R in Manhattan and driven on a bus for approximately five hours before he was dropped off at a hotel near JFK airport in Queens. MB's laptop and phone charger were stolen during the move, which resulted in him not having a regular method to contact Ms. May.

8. Ms. May contacted DHS on July 9 and requested information about MB's new placement and whether it accommodated his access needs. She also requested that efforts be made to move him closer to his medical providers in Manhattan so there is no disruption in MB's care. Ms. May shared that MB had already suffered a dramatic decline in his mental health due to the move. Coalition's Senior Director of Crisis Services Lindsey Davis escalated MB's case to DHS' Office of Disability Affairs and legal staff on July 9 via email. As of July 12, Ms. Davis has not received a response to her email.

9. On July 9, 2021, a Coalition shelter monitor arrived at the Hotel Y in Queens, the density hotel for the congregate Shelter V, at about 10 a.m. to observe the move already in progress. He observed clients sitting on a school bus in front of the hotel and entered the hotel to find a lobby full of clear plastic garbage bags with clients' belongings in them. He noted that no staff members were watching the bags, which anyone could untie and access because of the lack of security. At about 10:30 a.m., a case manager handed our monitor a sticky note with five client names and CARES identification numbers handwritten on it. The case manager explained that these five clients had already been moved to the congregate Shelter V earlier that day without being screened or offered assistance with requesting RAs. The case manager admitted not receiving guidance from his supervisors about how to handle RA requests. Our monitor then traveled to the congregate Shelter V to find the clients listed on the sticky note.

10. At Shelter V, our monitor met two of the five clients listed on the sticky note in addition to another client, PM, who had been improperly moved to the congregate shelter after a case manager told him his RA request had been denied. Like so many clients we have met in the past few weeks, PM did not receive a written determination explaining why his RA request was denied and how to appeal the adverse decision. Later that day, Ms. Davis wrote to DHS on behalf of PM and asked that the denial of his RA request be explained and that he be moved to an appropriate, non-congregate setting due to his diagnoses of pulmonary hypertension and cardiomyopathy. PM, who worked in lower Manhattan during 9/11, has only one lung and it functions at only 61 percent. The two clients our monitor met whose names were listed on the sticky note, LB (weakened immune system, agoraphobia/depressive crowd disorder) and DW (multiple sclerosis, uses a walker to ambulate), have been referred to our Crisis Intervention program for assistance with the RA request process. Once again, Coalition is stepping in to

perform tasks DHS is required to complete. As of July 12, DHS has not responded to Ms. Davis' July 9 emailed regarding an appropriate placement for PM.

11. Also on July 9, 2021, Ms. Harmer visited the congregate Shelter R, looking for clients with access needs that require placement in a single- or double-occupancy room. There she met KA, who has sickle cell disease, one of the COVID-19 heightened risk factors, and had provided a doctor's letter to her case manager about two weeks ago while she was assigned to the Hotel T, the density hotel for the congregate Shelter R. KA's experience is not unique and we have met several clients moved from density hotels to congregate shelters despite having pending RA requests. Ms. Harmer called me on July 9 and asked me to submit an RA for KA in an attempt to get her moved out of congregate shelter and back to a less dense setting as soon as possible and, ideally, before the weekend. I submitted another RA request for KA on July 9, and escalated it to DHS legal staff. As of July 12, I have not received a response.

12. Among other clients, Ms. Harmer also spoke with GF during her July 9 visit to the congregate Shelter R. Ms. Harmer had met GF during her visit to the Hotel T on July 6, and learned that GF had not been provided any information about the RA request process despite her multiple medical needs. GF has kidney and gallbladder issues, high blood pressure, and a hernia on her lower back. She is unable to navigate stairs, requires a special diet, and must sleep upright due to pooling uric acid.

13. Despite recent amendments to the process, we continue to learn from our site visits and through our Crisis Intervention hotline that clients are continuing to be moved without proper notice and without adequate screening of their access needs, which has resulted in placements that do not take into consideration their disabilities and/or medical conditions. DHS continues to show that it cannot properly accomplish the moves from density hotels back to

congregate shelters at their current pace.

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 12, 2021.

A handwritten signature in black ink, appearing to read "Deborah B. Diamant". The signature is written in a cursive style with a horizontal line underneath it.

Deborah B. Diamant, Esq.