

**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 GABRIELA TORRES-LORENZOTTI

1. I am the Paralegal Casehandler for The Legal Aid Society's Homeless Rights Project. 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. My knowledge herein is predicated on direct experience representing individuals and families who are experiencing homelessness and are either seeking shelter or currently sheltered as well as from conversations with my colleagues and correspondence with DHS generated by my colleagues on which I am copied. In addition, I manage client intake from our toll-free hotline number.

2. We receive a very high volume of calls from clients in a typical week, either through our toll-free telephone hotline number or from referrals from other organizations or institutional clients. But since the density hotel moves began, we have received more calls than we could return. I am the only Paralegal Casehandler doing this work at Legal Aid and the City is moving thousands of people. It is simply not possible for me to speak to and directly represent every density hotel resident in advance of their move. In addition, while we are able to connect with a significant number of clients on a daily basis, there are many individuals who may not be connected with an advocacy organization.
3. On the morning of July 8, Legal Aid began receiving referrals for clients who were being imminently moved from a de-densification hotel in midtown back to congregate shelter. Some of these clients had pending Reasonable Accommodation (“RA”) requests and had not received a determination. Others reported they had approved reasonable accommodations but were nonetheless told that they were being transferred back to congregate shelter.
4. Even in cases where Legal Aid has raised a client’s case multiple times, clients have had to wait up to ten days to receive a new placement. Meanwhile, these clients were in shelter placements that did not accommodate them, causing harm to their physical, emotional and mental well-being.
5. Some of the clients I worked with from this site and others are described below:
 - a. AG, who is also described in my July 8, 2021 declaration, 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 *Fisher* 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 was erroneously moved to congregate shelter that did not accommodate his needs. After following up on AG's case with DHS on eight different occasions, on July 10, AG was finally transferred to a double occupancy hotel room. However, AG was, once again, given only a couple of hours to pack and not provided transportation to his new shelter placement. AG reports that when he arrived on the evening of July 10, he was offered a mattress on the floor, as the bed frame is currently broken, and was not given any sheets. *See Exhibit 1*. In addition, AG is currently placed on the fourth floor and reports that the only elevator in the building was out of service on July 10. While the elevator was serviced on July 11, it is once again out of service on July 12. The nearest train is approximately one mile from the shelter, which given AG's physical mobility impairments, takes him almost thirty minutes to walk, which is extremely challenging. As raised with DHS, AG has attended the same methadone program for treatment for approximately one year. Even though AG was transferred to the same borough as his clinic, his transportation options include up to three separate bus/train transfers, totaling over one hour.

- b. CJ is a 55-year-old woman diagnosed with major depression, generalized anxiety disorder with panic attacks, and PTSD. Given her mental health diagnoses, CJ reports that it is extremely difficult for her to share sleeping space with other individuals. CJ reports extreme paranoia and anxiety when residing with others. When CJ learned in mid-May that the return to congregate shelter was imminent, she proactively submitted a reasonable accommodation request for a single occupancy room. CJ also submitted progress notes from her Psychiatric Physician Assistant to document her psychiatric evaluation and diagnoses. However, on June 17, CJ received a determination denying her request on the basis that she "Did not submit documents for DHS to review." CJ reports that she attempted to resubmit her psychiatric evaluation to her case worker and shelter director on multiple occasions. When CJ received notice that her hotel would be moved back to congregate on July 12, CJ inquired about the status of her RA but was informed that "nothing was on file." On July 12, Legal Aid raised CJ's case with DHS, requested the status of her RA, submitted the documentation from her mental health providers, and requested a provisional grant while her RA is being determined. CJ has not yet received a determination.
- c. TW has been diagnosed with asthma, costochondritis, and requires surgery on her left knee. TW reports that she was approved for a single room as a reasonable accommodation because her medical conditions, according to the *Fisher Interim Guidelines*, are linked to increased risk of severe illness or death if she were to contract COVID-19. On July 8, TW was told that she had to go back to congregate shelter because they "didn't have another place for her to go." TW reports that the shelter director informed her she could get another transfer to a single occupancy room once she was back at her congregate site. In addition, TW reports she submitted a reasonable accommodation request for a location-based placement in Queens, as that is where her weekly physical therapy is located. Given her knee pain, it is challenging for her to commute long distances. TW reports that she has

not received a determination on the request. In the middle of transfers occurring on the morning of July 9, TW's transfer was paused by DHS.

6. Throughout the pandemic, staff for Legal Aid Society's Homeless Rights Project, including myself, and Coalition for the Homeless staff met regularly with DHS and its counsel to express concerns about the move process and execution.
7. On April 30, 2021, staff from Coalition, in their role as the court-appointed shelter monitor in *Callahan*, met with DHS senior leadership to express concerns about the City's plan to return to congregate sites. Counsel for all parties in this case were present. At that meeting DHS staff discussed the revised plan for returning to congregate shelter, which DHS planned to submit to the State for approval. DHS represented that no moves could begin until the State approved the plan.
8. The timeline DHS presented at the April 30 meeting for the return to congregate sites was very different from what we have seen since the City began moving people from density hotels to congregate sites.
9. At the April 30 meeting, DHS staff stated that they hoped to begin the moves back to congregate sites in July, but that it was possible the logistics could not be worked out before August. They said that after each set of moves the agency would pause, evaluate the process, and make any necessary adjustments before the next set of moves.
10. On May 12, 2021, DHS sent Coalition a draft of a letter DHS Administrator Carter planned to send to all clients in density hotels regarding the planned return to congregate shelter. Counsel for all parties to this litigation were copied on this email. A copy is attached as **Exhibit 2**.
11. On May 13, 2021, as a follow-up to the April 30 meeting, Coalition staff sent DHS a letter outlining their concerns with the City's plan. A copy is attached as **Exhibit 3**.

Counsel for all parties to this litigation were copied on this letter. Among the points raised in the letter were:

- Clients should be provided with adequate notice of any moves and clear explanations of the assistance shelter staff can provide during the transition. These notices should be provided as soon as possible and much further in advance than standard transfer notices. Clients will need time to prepare and to collect documentation for any needed reasonable accommodation (“RAs”) applications. There must also be adequate time for clients to obtain assistance from shelter staff, including, for example, help documenting disabilities that require accommodations or accessing public assistance grants, including storage payments.
- It will be necessary to assess RA needs for all clients, not only those who are at heightened risk for contracting SARS-CoV-2 as described in the interim guidelines the City developed in response to the *Fisher* litigation, to ensure their access needs are immediately accommodated should they move to a congregate setting. This assessment will need to be broader than the assessment conducted for *Fisher*, because that assessment considers only whether clients need a single- or double-occupancy room and not what kinds of RAs they might need in a congregate setting. Staff should inform clients about the kinds of RAs congregate settings may provide, such as diabetic meals, refrigeration, kitchenette, air-conditioning, and elevator access (particularly for those who came to shelter during the pandemic and have never slept in a congregate setting and/or are dealing with Long COVID). Clients should be permitted to remain in their current placement pending any appeal of a denied RA regarding the site to which they may return or a new site.
- DHS must ensure that RAs are timely fulfilled in congregate settings, if DHS determines a client can be moved back to the parent shelter.
- DHS should expand its supply of single-occupancy rooms available as a reasonable accommodation, given the demonstrated increased need for more of them during the pandemic.
- DHS should consider a number of methods of notice to clients *in addition* to written notice, such as the use of FAQs; one-on-one, in-person meetings; and “town hall” webinars and conference calls, among other options. Coalition requested that DHS share any copies of written notices so that they could comment before they were distributed.

12. On May 16, 2021, Coalition through counsel sent DHS suggested edits to the letter provided on May 12. Counsel for all parties to this litigation were copied on this email. A copy is attached as **Exhibit 4**. The purpose of these proposed edits was to give clients better information about how to request an RA and what would be required to establish their need.

13. On June 15, 2021, after the Mayor made public statements suggesting that DHS would soon begin returning shelter residents in density hotels to congregate sites, DHS counsel again communicated to Plaintiffs' counsel that no moves could begin without a plan authorized by the State. Counsel made no representation that the plan described in April had changed nor that the moves would begin imminently.
14. Just two days later, on June 17, 2021, as discussed in my prior declaration, DHS began to distribute a notice regarding upcoming moves to clients at seven sites, including at least two that primarily serve clients with mental health diagnoses.
15. As noted in my prior declaration, my job duties include directly representing individual shelter residents with disabilities who need assistance requesting RAs. I soon began to work with many people who were confused about what was happening, receiving misinformation from shelter staff about their rights to request an RA, and whose needs were not being accommodated.
16. Plaintiffs' counsel immediately communicated to DHS the problems we were seeing with implementation of the plan to return density hotel residents to congregate sites. We did this in emails and almost daily telephone calls to review the problems we were seeing. Beginning June 28, these calls took place every work day through the filing of this motion. Counsel for all parties to this action were present for these calls. As a result, DHS repeatedly made changes to the procedures and notices they wanted shelters to use.
17. Despite the changes made in response to our feedback, we continued to hear of problems with DHS's notices, procedures, and failure to accommodate various clients. And although DHS eventually agreed to a closer review of each individual client—reviews

which continued to miss individuals who required RAs—it stated that it would not be reviewing cases for people who were already moved to congregate shelter.

18. On July 7, 2021, DHS counsel represented that in fact shelter staff were and had been meeting with clients individually throughout the move process. DHS counsel represented that these individualized interviews had been taking place some time after the first week of moves had been completed. Many of the clients I have worked with reported they had not been asked about their individual RA needs by shelter staff. In fact, many clients reported that they tried to raise a disability-related concern with staff who did not offer to submit an RA request or provided misinformation about requests that had already been approved.

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.

Gabriela Torres-Lorenzotti

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