



Testimony of

Coalition for the Homeless

and

The Legal Aid Society

on

Oversight: Resources and Services for Newly Arrived Asylum Seekers

submitted to

The New York City Council Committee on Immigration

Jacquelyn Simone
Policy Director
Coalition for the Homeless

Joshua Goldfein
Staff Attorney, Homeless Rights Project
The Legal Aid Society

September 30, 2022

The Coalition for the Homeless and The Legal Aid Society (LAS) welcome this opportunity to testify before the New York City Council's Committee on Immigration regarding resources and services for newly arrived asylum seekers.

Concerns About Congregate Settings in HERRCs

As asylum seekers continue to arrive in New York City, it is imperative that any facilities created to shelter them are safe and appropriate. When City officials first notified us of their plan to open "Humanitarian Emergency Response and Relief Centers" (HERRCs), we asked them a series of questions about how these sites will operate. We are still waiting for answers to basic questions about the process and rights of people referred to these locations.

At that time, we also expressed our grave concerns about the possibility that the City would place minor children in congregate settings. The arriving migrants are highly vulnerable because they have experienced great hardship and trauma, and most arrive without having had access to proper medical care and nutrition. Forcing these vulnerable families into congregate shelters denies them safety, opportunity, and humanity. It would subject them to the same dangers endured by homeless families decades ago, when they were forced to sleep in offices, barracks-style shelters, and even the Bronx House of Detention.

We have fought for decades against the harm that arises when families with minor children are required to sleep overnight in settings where they do not have access to their own private space. There is extensive evidence in the record of the homeless families' right to shelter litigation of this harm, and that evidence was the basis for Local Laws passed by this Council to prohibit such placements. State rules and court orders also barred congregate family shelters, and the City paid \$18 million in contempt fines for violating them. We saw again after Superstorm Sandy that children were harmed by the time, however brief, they spent in disaster shelters.

Placing homeless families with children into congregate settings would be misguided and cruel. This practice would take us back decades to a tragic time when children and their families were subjected to dangerous and inhumane conditions. The documented harms of placing families with children into congregate shelters include:

- Spread of contagious diseases and aggravation of already serious medical conditions, including asthma;
- Sexual attacks on children;
- Children being exposed to inappropriate sexual behavior and violent or threatening behavior in congregate bathrooms and sleeping rooms;
- Physical exhaustion due to inability to sleep and the overwhelming fear of being sheltered with strangers;
- Missed school due to exhaustion, illness, and inability to do homework in congregate settings;
- Missed work and public assistance appointments, leading to loss of employment and benefits;
- Inability to meet special dietary needs without cooking facilities;

- Deterioration of family life and parental authority; and
- Dramatically increased rates of depression and mental health crises, including suicide attempts and suicides.

In response to our concerns, the City has said that it does not currently plan to place children in congregate settings, but has not categorically said it will not do so in the future.

We also have concerns about access for people with disabilities at the HERRCs. At the height of the pandemic, we litigated in the *Fisher* and *Butler* cases to ensure that single adults with disabilities have equal access to the programs of the NYC Department of Homeless Services (DHS). Around the time of Superstorm Sandy, the City settled a case called *BCID v. Bloomberg* and agreed to accommodate disabilities in disaster shelters, which are temporary congregate sites set up during emergencies. From the limited information we have about HERRCs, it sounds like they will be very similar to disaster shelters, so the protections the City agreed to in the *BCID* case should apply to HERRCs as well.

The Right to Shelter

The City has assured us that services at the tent HERRC sites will be voluntary and people can come and go as they see fit, and that any asylum seekers who come to a DHS intake office will be served there in the same way as any other homeless person. These two representations seem to mean that the City does not intend to limit the right to shelter for anyone who is able to reach a DHS intake office. We remain concerned about how recent arrivals who have been brought to HERRC sites in remote parts of the City will know how to access shelter if they need it and how they will get to DHS sites.

The City has told us that they do not believe that a HERRC is a shelter and it will not be operated by DHS, so it is not subject to the regulations that apply to shelters or to the consent decrees in our litigation that established the right to shelter. However, these rules and standards are not mere technical requirements – they are derived from common sense. For example, the *Callahan* Consent Decree requires that shelter residents be provided with lockable storage. No one who is given a bed in a congregate setting will be able to sleep if they do not have a safe, secure place to store their belongings at night. The HERRC program will not be successful if people do not feel that the sites meet the basic minimum standards of the City’s municipal shelter system.

Many other operational questions about the new sites remain unanswered. We do not know who will be sent to the HERRCs or how they will get there. We do not know what services will be offered to single adult men and women and adult families, or even where they will sleep. We do not know how many bathrooms they will have or how the sites will accommodate people’s disabilities. We do not know what information people there will be given about their right or ability to apply for shelter if they need a place to go after their brief stay at the HERRC ends or if they choose not to stay in the HERRC. The City has committed to having written procedures in place to govern operations at the HERRCs but has not yet shared any such documents with us so that we can evaluate how they will serve our clients.

Moving Shelter Residents to Permanent Housing and Ensuring Sufficient Shelter Capacity

In response to the increasing numbers of arrivals from the southern border in DHS shelters, the City has focused on expanding shelter capacity to meet its legal obligations. But the City could place new arrivals in the existing shelter system in rooms that become available when current shelter residents move to permanent housing. This would be a win for everybody: Shelter residents who move out with housing subsidies are much less likely to return to the shelter system than people who exit the system without a subsidy, so investing in improving these programs would help New Yorkers and reduce the City's costs. At the same time, the City would free up space to serve new arrivals without having to open as many new shelters.

The City could take the following steps to increase capacity, including by moving people out:

1. *Improve housing subsidy programs.* The City currently offers multiple programs that enable shelter residents to exit shelters and move to permanent housing, including CityFHEPS, EHV, SOTA, Section 8, and public housing. The City could improve these programs so that they would be more effective, reducing the length of stay in shelters.

a. *Reform bureaucratic processes that slow down shelter exits.* City and shelter staff must process subsidy applications more quickly and ensure that minor errors no longer result in months-long delays or outright denials. Such delays make it impossible for applicants with City-funded housing subsidies to compete effectively in the rental market. Reforms should include:

- i. Completing approvals and payments for leases within 30 days;
- ii. Eliminating delays in issuing checks;
- iii. Quickly completing reviews of appropriate clearance databases;
- iv. Quickly completing reviews of tenant packets; and
- v. Quickly making checks available for pick up.

b. *Eliminate unnecessary rules.* The City must eliminate unnecessary rules, such as the 90-day wait prior to being eligible for CityFHEPS, the utility allowance deduction, and rent reasonableness rules.

c. *Combat discrimination.* The City must rebuild its source of income discrimination unit and enforce the rights of voucher holders.

d. *Expand eligibility.* The City must expand eligibility for City-funded housing subsidies to more households, especially those without an eligible immigration status or mixed-status families, focusing in the first instance on long-stayers in shelters.

e. *Improve code enforcement.* The City must improve code enforcement by ensuring that oversight agencies regularly conduct thorough inspections, and that they have the capacity and expertise needed to enforce the completion of necessary repairs.

2. *Build shelter capacity by not delaying or canceling planned shelter openings.* DHS staff work hard to develop sites for new shelters, which are necessary to ensure that shelter residents can be placed in their communities of origin where they will be able to access resources that can help them leave shelters sooner, and in order to replace older sites that cannot be made accessible to people with disabilities. Neighborhood leaders and elected officials should welcome these facilities and not seek to block them, and the City must stand firm against any opposition to ensure that sufficient capacity is built.
3. *Maximize use of current capacity by using all current, accessible parts of the system.* The City needs to use the capacity it already has in other parts of the DHS shelter system rather than limiting placements to certain beds on the basis of where people are in DHS' internal assessment process. The City should also continue to use all the accessible capacity it has access to, rather than moving out of hotels and other placements voluntarily.
4. *Accommodate disabilities.* The City must ensure that disabilities are accommodated in placements and moves, as negotiated last summer in the *Butler* litigation.
5. *Adjust the supportive housing move-out process to eliminate delays.* Many shelter residents who qualify for supportive housing are waiting for months or longer to get access to permanent housing for which they qualify.
6. *Make eviction prevention services at HomeBase more available in the community.* The City is failing to make full use of its own homelessness prevention efforts because appointments are so scarce for people in the community.

Helping Recent Arrivals Establish Basic Economic Security

The migrants we are meeting every day want to work, but not all of them have work authorization in the form of an Employment Authorization Document (EAD), which Federal law restricts to certain non-citizens depending on where they are in the immigration process. At the same time, Federal restrictions also bar many new arrivals from eligibility for government benefits that would provide a means of support while they are waiting for employment authorization. The City can take the following steps to ensure their economic security while they wait for work authorization:

1. **The City should ensure new arrivals have access to benefits that they are entitled to.** Charity should be reserved for the people who are not eligible for government help.

- a. *Offer benefits screening to new arrivals.* The City should offer recent arrivals benefits eligibility screening and assistance applying for benefits. Eligibility for Cash Assistance, SNAP, and Medicaid benefits is dependent on the new arrivals' immigration status. While not all new arrivals are eligible for benefits under current Federal and State law, many of them are, and need to be advised of their eligibility in order to take the next step of applying and obtaining benefits. For instance:

- Federal benefits eligibility: Persons who are paroled for more than a year, and who have been granted asylum, are eligible for Federal benefits, including federally funded Cash Assistance, SNAP, and Medicaid.

- State-funded Cash Assistance and health insurance: Many more non-citizens are eligible for State-funded Cash Assistance and health insurance, including persons who have been paroled for less than a year, persons granted Temporary Protected Status, persons who have been granted deferred action, and persons who have applied for asylum and who have an Employment Authorization Document.
- State-funded Medicaid: Many more people who have commenced the process of obtaining an immigration benefit are eligible for State-funded Medicaid.

b. *Offer new arrivals benefits enrollment assistance.* Beyond screening for eligibility, new arrivals should be offered assistance enrolling for benefits. Assistance enrolling is necessary so that the recent arrivals do not face the barriers that other non-citizen clients have often faced when going into a Benefits Access Center alone, such as flat-out diversion, being asked if they have a Social Security Number, or being asked whether they are already a lawful permanent resident.

c. *Implement additional measures to ensure better access to benefits for new arrivals.*

- *Re-train client-facing Human Resources Administration (HRA) staff on basic immigrant eligibility rules and policies.* HRA has policies in place that prohibit front-line workers from giving advisory opinions about eligibility to new arrivals who are seeking to apply for benefits. Staff must be trained on these policies, and the policies must be enforced to ensure that new arrivals who appear at Benefits Access Centers do not get diverted from filing applications.
- *Implement fixes to address HRA delays in timely processing applications, including increasing HRA staffing.* The City is facing a staffing shortage at HRA, which, along with policies that should be reformed, compounds the agency's difficulties in timely processing applications and keeping client cases open. These problems affect clients regardless of immigration status, and these problems must be addressed to ensure that all clients are able to get the assistance they need from the agency in a timely way.
- *Give people help with verification needed to prove eligibility for benefits.* Rules require applicants for HRA benefits to have certain documents that will be hard for many new arrivals to produce. The City has a legal duty to assist with verification, including accepting self-attestation and, where necessary, assisting with securing needed documentation.
- *Ensure recent arrivals are provided the opportunity to be counseled on common concerns presented by non-citizens that could otherwise serve as barriers to applying for the help they need.* The two primary concerns likely to come from this population are public charge (President Biden just issued a new rule, but people still fear the old rule) and the confidentiality of client information. Counsel on these rules must be provided in connection with screening and enrollment assistance for benefits.

2. The City must make services available to recent arrivals in a number of different ways. There is no one-size-fits-all approach to serving the new arrivals. The City must make services available in various ways to ensure all who are eligible for assistance receive it. We offer some suggestions:

- *Issue comprehensive materials on eligibility and enrollment.* HRA should continue to train shelter providers on benefits eligibility, but they should ensure that their materials are comprehensive and that providers know how to connect residents with benefits eligibility review and assistance.
- *Set-up out-stationed workers.* The City should set up stand-alone sources of assistance on benefits screening. While shelters build their capacity to help clients with benefits, HRA can also locate “out-stationed workers” in or near shelters where people can go to determine benefits eligibility and get assistance filing their applications, rather than sending people to already overwhelmed Benefits Access Center staff.
- *Adequately staff “Welcome Centers.”* Ensure Welcome Centers offer all of these services, including out-stationed HRA workers who screen for benefits eligibility and assist with applications, and that there are also NYS Department of Health staff who can help with State-funded health insurance enrollment.

3. The City should provide DSS the staff it needs to support the recent arrivals and all New Yorkers. The agency is short-staffed. It is critical to ensure that DSS has the staff it needs, even on an emergency or temporary basis.

4. The City should advocate for sensible State and Federal reforms. The City should advocate for State and Federal emergency actions and policies that would alleviate some of the pressure the City is experiencing with respect to serving recent arrivals.

State reforms: The City should ask the Office of Temporary and Disability Assistance (OTDA) and the Department of Health (DOH) to make more non-citizens eligible for Cash Assistance and Medicaid. Currently, DOH considers many more non-citizens to be “Permanently Residing Under Color of Law” (PRUCOL) and eligible for Medicaid than those categories of non-citizens that OTDA considers PRUCOL and eligible for Cash Assistance. For example, asylum applicants are eligible for Medicaid but not Cash Assistance (unless they have an Employment Authorization Document). U-Visa and Special Immigrant Juvenile Status applicants are eligible for Medicaid, but not Cash Assistance. OTDA has the discretion to expand eligibility.

Federal reforms: The City should also seek the following changes to existing policies and procedures from the Federal government:

- a. *Issuing a rule that would give asylum applicants the opportunity to achieve economic security by making them immediately eligible for employment authorization, without having to wait.* The Department of Homeland Security

should make asylees eligible for an EAD immediately, by amending 8 C.F.R. §§ 208.7 and 274a.12(c)(8) to remove the 150-day and 180-day waiting periods.

- i. EAD is needed to work.* An EAD enables asylum applicants to work to support themselves while they are waiting for a determination on their claim for asylum and to start building a secure future in the U.S.
 - ii. EAD is needed to access State assistance in New York.* In New York, an EAD makes an asylum applicant eligible for Cash Assistance, which can help families stabilize. Families will also become eligible for certain housing subsidies that are proven to prevent and end homelessness.
 - iii. EAD should not be subject to the asylum clock.* The asylum “clock” must be eliminated. Enabling asylum applicants to obtain EADs immediately would mean doing away with the asylum EAD clock. Under current rules, asylum applicants must wait 150 days before they can file for an EAD, and they cannot be issued an EAD until a minimum of 180 days have passed. Some applicants are required to wait even longer because a continuance of the applicant’s immigration court case, even to obtain counsel or for other necessary reasons, stops the clock, sometimes adding months to the time they must wait to obtain an EAD.
- c. The Department of Homeland Security should direct Immigration and Customs Enforcement (ICE) to refrain from seeking removal of the new arrivals.* Currently, ICE is routinely seeking removal for the new arrivals. Many have claims to asylum and/or other immigration benefits, and seeking removal is unnecessary and expensive for all. The Department of Homeland Security could allow these new arrivals to seek asylum affirmatively before the USCIS Asylum Office, rather than defensively before the Immigration Court.
 - d. The Federal government must make a multi-year investment in funding for legal counsel.* As long as new arrivals are coming to New York and are subject to removal proceedings, which take years to resolve in the courts, legal organizations need increased funding to meet the demand for services. The demand will continue for the next few years, as thousands of the new arrivals, all or most of whom will need counsel, will be in removal proceedings. This investment would acknowledge that meeting the need for increased legal services capacity requires the hiring and training of new attorneys and advocates, which takes time.
 - e. Customs and Border Protection (CBP) and/or ICE must discontinue the use of false addresses on noncitizens’ immigration paperwork.* Immigration officials at the southern border, whether CBP, ICE, or both, must immediately discontinue the practice of listing false addresses on noncitizens’ immigration paperwork. False addresses will lead to noncitizens failing to receive notice of

their hearings, with resultant removal orders entered against them in their absence.

Conclusion

We thank the Immigration Committee for the opportunity to testify on this important topic, and for the Council's dedication to ensuring that newly arrived asylum seekers have access to appropriate resources and services.

About The Legal Aid Society and Coalition for the Homeless

The Legal Aid Society: The Legal Aid Society (LAS), the nation's oldest and largest not-for-profit legal services organization, is more than a law firm for clients who cannot afford to pay for counsel. It is an indispensable component of the legal, social, and economic fabric of New York City – passionately advocating for low-income individuals and families across a variety of civil, criminal, and juvenile rights matters, while also fighting for legal reform. This dedication to justice for all New Yorkers continues during the COVID-19 pandemic.

The Legal Aid Society has performed this role in City, State, and federal courts since 1876. It does so by capitalizing on the diverse expertise, experience, and capabilities of more than 2,000 attorneys, social workers, paralegals, and support and administrative staff. Through a network of borough, neighborhood, and courthouse offices in 26 locations in New York City, LAS provides comprehensive legal services in all five boroughs of New York City for clients who cannot afford to pay for private counsel.

LAS's legal program operates three major practices — Civil, Criminal, and Juvenile Rights — and receives volunteer help from law firms, corporate law departments and expert consultants that is coordinated by LAS's Pro Bono program. With its annual caseload of more than 300,000 legal matters, The Legal Aid Society takes on more cases for more clients than any other legal services organization in the United States. And it brings a depth and breadth of perspective that is unmatched in the legal profession.

The Legal Aid Society's unique value is an ability to go beyond any one case to create more equitable outcomes for individuals and broader, more powerful systemic change for society as a whole. In addition to the annual caseload of 300,000 individual cases and legal matters, LAS's law reform representation for clients benefits more than 1.7 million low-income families and individuals in New York City and the landmark rulings in many of these cases have a State-wide and national impact.

The Legal Aid Society is uniquely positioned to speak on issues of law and policy as they relate to homeless New Yorkers. The Legal Aid Society is counsel to the Coalition for the Homeless and for homeless women and men in the *Callahan* and *Eldredge* cases. The Legal Aid Society is also counsel in the *McCain/Boston* litigation in which a final judgment requires the provision of lawful shelter to homeless families. LAS, in collaboration with Patterson Belknap Webb & Tyler, LLC, filed *C.W. v. City of New York*, a federal class action lawsuit on behalf of runaway

and homeless youth in New York City. Legal Aid, along with institutional plaintiffs Coalition for the Homeless and Center for Independence of the Disabled-NY (CIDNY), settled *Butler v. City of New York* on behalf of all disabled New Yorkers experiencing homelessness. Also, during the pandemic, The Legal Aid Society along with Coalition for the Homeless continued to support homeless New Yorkers through litigation, including *E.G. v. City of New York*, Federal class action litigation initiated to ensure WiFi access for students in DHS and HRA shelters, as well as *Fisher v. City of New York*, a lawsuit filed in New York State Supreme Court to ensure homeless single adults gain access to private hotel rooms instead of congregate shelters during the pandemic.

Coalition for the Homeless: Coalition for the Homeless, founded in 1981, is a not-for-profit advocacy and direct services organization that assists more than 3,500 homeless and at-risk New Yorkers each day. The Coalition advocates for proven, cost-effective solutions to address the crisis of modern homelessness, which is now in its fifth decade. The Coalition also protects the rights of homeless people through litigation involving the right to emergency shelter, the right to vote, the right to reasonable accommodations for those with disabilities, and life-saving housing and services for homeless people living with mental illnesses and HIV/AIDS.

The Coalition operates 11 direct-services programs that offer vital services to homeless, at-risk, and low-income New Yorkers. These programs also demonstrate effective, long-term, scalable solutions and include: Permanent housing for formerly homeless families and individuals living with HIV/AIDS; job-training for homeless and low-income women; and permanent housing for formerly homeless families and individuals. Our summer sleep-away camp and after-school program help hundreds of homeless children each year. The Coalition's mobile soup kitchen, which usually distributes 800 to 1,000 nutritious hot meals each night to homeless and hungry New Yorkers on the streets of Manhattan and the Bronx, had to increase our meal production and distribution by as much as 40 percent and has distributed PPE and emergency supplies during the COVID-19 pandemic. Finally, our Crisis Services Department assists more than 1,000 homeless and at-risk households each month with eviction prevention, individual advocacy, referrals for shelter and emergency food programs, and assistance with public benefits as well as basic necessities such as diapers, formula, work uniforms, and money for medications and groceries. In response to the pandemic, we are operating a special Crisis Hotline (1-888-358-2384) for homeless individuals who need immediate help finding shelter or meeting other critical needs.

The Coalition was founded in concert with landmark right-to-shelter litigation filed on behalf of homeless men and women (*Callahan v. Carey* and *Eldredge v. Koch*) and remains a plaintiff in these now consolidated cases. In 1981, the City and State entered into a consent decree in *Callahan* through which they agreed: "The City defendants shall provide shelter and board to each homeless man who applies for it provided that (a) the man meets the need standard to qualify for the home relief program established in New York State; or (b) the man by reason of physical, mental or social dysfunction is in need of temporary shelter." The *Eldredge* case extended this legal requirement to homeless single women. The *Callahan* consent decree and the *Eldredge* case also guarantee basic standards for shelters for homeless men and women. Pursuant to the decree, the Coalition serves as court-appointed monitor of municipal shelters for homeless single adults, and the City has also authorized the Coalition to monitor other facilities serving homeless families. In 2017, the Coalition, fellow institutional plaintiff Center for Independence

of the Disabled – New York, and homeless New Yorkers with disabilities were represented by The Legal Aid Society and pro-bono counsel White & Case in the settlement of *Butler v. City of New York*, which is designed to ensure that the right to shelter includes accessible accommodations for those with disabilities, consistent with Federal, State, and local laws. During the pandemic, the Coalition has worked with The Legal Aid Society to support homeless New Yorkers, including through the *E.G. v. City of New York* Federal class action litigation initiated to ensure WiFi access for students in DHS and HRA shelters, as well as *Fisher v. City of New York*, a lawsuit filed in New York State Supreme Court to ensure homeless single adults gain access to private hotel rooms instead of congregate shelters during the pandemic.