



**THE CITY OF NEW YORK
LAW DEPARTMENT**

100 CHURCH STREET
NEW YORK, NY 10007

HON. SYLVIA O. HINDS-RADIX
Corporation Counsel

DANIEL R. PEREZ
Phone: (212) 356-0877
Fax: (212) 356-1148
danipere@law.nyc.gov
(not for service)

October 3, 2023

VIA EMAIL

Honorable Erika Edwards
New York Supreme Court Justice
New York County Supreme Court Civil Term
60 Centre Street
New York, NY 10007

Re: Callahan v. Carey, Index No. 42582/1979

Your Honor:

On behalf of Defendant City of New York (the “City”) and in accordance with the requirements of the post-judgment order entered in the above-referenced matter dated October 15, 1984, the City respectfully seeks leave to move for a modification of the August 26, 1981 Final Judgment on Consent in the above-referenced matter (the “Consent Judgment”) pursuant to paragraph 19 of the Consent Judgment. Specifically, as detailed below, the Consent Judgment should be modified or temporarily suspended so as to not distinguish the City from New York State’s other 57 counties during the period of the present crisis. The City is not seeking to terminate the Consent Judgment; we seek only the immediate relief that present circumstances demand. New York City has done more than any other city in the last 18 months to meet this national humanitarian crisis. The Judgment’s onerous terms are demonstrably ill-suited to present circumstances and restrain the City at a time when flexibility to deal with the emergency is paramount. The Consent Judgment – entered over 40 years ago under far different circumstances – has become outmoded and cumbersome in the face of the present migrant crisis.

The City’s motion will seek to modify paragraph 19 of the Consent Judgment to provide for the suspension of the obligations imposed by the Consent Judgment for the duration of certain states of emergency defined in Section III, *infra*. This proposed modification will return the City to the same legal footing as the rest of the State while it and others deal with this crisis; it

will permit the City to conduct shelter-eligibility screenings subject to the requirements of State law; and it will afford the City flexibility to continue addressing the crisis in a humane and practical manner.¹

I. BACKGROUND AND DEVELOPMENTS SINCE THE FILING OF THE CITY'S MAY 23, 2023 LETTER

The City initially sought permission to move for relief in May. In the months following that initial request, the City has conferred with the Legal Aid and the State, and has participated in a series of in camera discussions with Justice Edwards. While those discussions have been productive, and while the City continues to collaborate with both the State and Legal Aid, present circumstances require the City to seek permission to file a motion for the urgent relief detailed herein.

Moreover, the circumstances of this emergency have worsened appreciably just since May. The City's May 23 and July 17, 2023 letters provided an overview of the unprecedented and extraordinarily complex challenges posed by the historic and enormous influx of individuals into the City's care over the past eighteen months. This influx has increased the population within the City's care from approximately 45,000 on April 1, 2022, to over 116,700 on October 1, 2023, a 159% increase.

Since May 21, 2023, two days before the City's initial May 23 request for leave to seek a modification of the Consent Judgment:

- Approximately 50,600 migrants have sought shelter in the City, for a total of more than 122,700 from April 1, 2022 to date;
- The City has opened 61 additional sites; and
- Expenditures associated with the crisis have increased by \$1.1 billion.

The explosive pace of new entrants into the City's care shows no sign of abating. Rather, the recent reports of overwhelmed ports of entry along the southern border portend the potential intensification of the present crisis. Indeed, this past week, the State of Texas has resumed sending multiple buses to the City each day and, thus far has been unwilling to respond to the City's requests for information about specific numbers of buses that are en route, the timing of their anticipated arrival, and the family composition of the people on the buses. This makes advance planning for new arrivals nearly impossible for City personnel.

¹ The City reserves the right to seek all appropriate forms of temporary relief, in addition to the specific proposal outlined here.

The historic, sustained and indeterminate expansion of the City shelter population has subjected the City to enormous strain. The cost of the City's relief efforts, totaling \$2.1 billion as of September 1, 2023, has corroded the City's finances significantly with all agencies subject to mandatory spending cuts that may reach 15% by April 2024. The City is approaching the limit of available and appropriate housing sites in the City, as well as the limit of its ability to operate those sites. Beyond the financial and operational implications, this crisis has also drained the City's personnel capacity to handle other pressing problems facing New Yorkers, as significant numbers of City personnel from many City agencies are devoted to addressing the needs of the shelter population.

Certainly, the *Callahan* Consent Judgment never intended the City to build and finance an endless supply of accommodations necessary to keep pace with the sudden influx of tens of thousands of migrants seeking shelter. The City's earnest efforts to house migrants has met fierce resistance from residents and officials throughout the State and, increasingly, within the City itself. The ongoing crisis has resulted in litigation between the City and the majority of upstate counties where a small percentage of new arrivals have been sent as well as suits against the City brought by City residents, borough officials and members of the City's U.S. congressional delegation. Finally, the months since May 2023 have witnessed escalating instances of violent resistance to the establishment of new shelter sites within the City.

The City also has no reason to expect that the federal government will take any actions to place the City on a sustainable trajectory anytime in the near future.² While the City appreciates the increased State engagement and partnership during recent weeks, the State's resettlement program has yet to result in an appreciable reduction in the City census.³

Moreover, even if the resettlement program rapidly expands, there is still an urgent need to place the City on equal footing with all of the other social service districts in the State by suspending all provisions of the Consent Judgment that impose requirements beyond those already imposed by State law. The City requires immediate relief with respect to the most intractable aspect of the present crisis—the global perception that the Consent Judgment extends a blanket right to obtain City-provided shelter to the world at large. As long as the Consent Judgment continues to provide obligations beyond those which exist in the rest of the State, this perception will continue.

² On September 20, 2023, the federal government announced that it was redesignating Venezuela for Temporary Protected Status. While the City acknowledges that this will provide a path to work authorization and stability for Venezuelans, it will do nothing to abate the flow of thousands of new arrivals entering the City each week from other parts of the globe.

³ As of October 3, 2023, five families have been resettled through the State's Migrant Resettlement Assistance Program.

The present circumstances provide no reason to expect that the crisis will either abate or that continued negotiations will provide the City with the necessary relief. Accordingly, the City requests leave to move for a modification of the Consent Judgment in accordance with its terms. *See* Consent Judgment ¶ 19.

II. CHANGED CIRCUMSTANCES RENDER THE CONSENT JUDGMENT AN OUTMODED AND CUMBERSOME FRAMEWORK FOR ADDRESSING THE PRESENT CRISIS.

The striking change in circumstances confronting the City illustrates the problematic nature of the Consent Judgment. In times of crisis like this one, governments must act nimbly to meet immediate and unexpected needs while balancing their inherently limited resources. Never in the forty-two years since entry of the Consent Judgment has the City's social services network been so strained by forces originating entirely outside this City and largely outside the United States.

As currently written, the Consent Judgment prevents the City and the State from deploying the regulatory flexibility needed to adapt to the evolving nature of this emergency. In the years since entry of the Final Judgment, the Legislature and the State Office of Temporary and Disability Assistance (OTDA) have enacted a highly reticulated regulatory scheme to provide care, including temporary housing assistance, to those defined therein as needy. But as the Consent Judgment enters its fifth decade, the City is left to operate not under the provisions of that comprehensive legislative and regulatory scheme but rather under the terms of a 40-year old mandate that bypasses it entirely. This status quo cannot continue during this crisis.

The State Legislature has established, through the enactment and amendment of the Social Services Law and related legislation, a broad set of assistance requirements and eligibility criteria. *See, e.g.*, Soc. Serv. L. §§ 122, 131-a, 158, 169, 254, 349. Associated regulations and policy details are adopted by OTDA, as well as by local social services districts, to comprise the statewide system of aid. *See, e.g., id.* §§ 20(3), 62(1), 131(1); 18 N.Y.C.R.R. §§ 349.3, 350.3, 351.8(c)(4), 352.1, 352.5, 352.8, 352.35. The social services statutory and regulatory scheme specifically provides administrative tools that enable OTDA to amend its own directives, waive its own regulations or issue new emergency regulations in response to challenges facing social services districts. State Admin. Proc. Act § 202(6); 18 N.Y.C.R.R. §§ 300.9(c), 413.6, 491.3(c)(5), 491.4(c)(2).

The City is not arguing that the Consent Judgment was improper or deficient when entered four decades ago. Rather, the passage of 42 years, together with the acute recent events that have almost tripled the census in eighteen months, highlight that it now stands as an obstacle to affording flexibility during a crisis. In the rest of New York State, the method of providing shelter is implemented through the system – devised by legislative acts and regulatory guidance, coupled with emergency actions as needed by State and local officials. In New York City, however,

the Consent Judgment constrains this flexibility as well as the kind of aid that may reasonably be provided given financial and operational constraints. In particular, changes in the City remain subject to argument by particular parties in a perpetual litigation context that supplants the regulatory framework.

Paragraph 19 of the Consent Judgment provides the safety valve to modify or even terminate the Consent Judgment. In *Callahan v. Carey*, 12 N.Y.3d 496, 502-503 (2009), the City made arguments questioning the continued expansive application of a provision of the Final Judgment after (at that time) 27 years. While the Court of Appeals found the arguments to “carry force,” it stated that “to the extent that the City defendants consider the consent decree to be outmoded and cumbersome, they may always seek to modify or terminate it as provided for by paragraph 19.” Fourteen more years have passed, an unforeseen international crisis has intervened, and flexible solutions to that crisis that may be available elsewhere in the State are unavailable in the State’s largest social services district. The time for significant modification to the Final Judgment, as anticipated by the Court of Appeals in 2009 and sought in the amendment proposed in this letter, has arrived.

III. THE PROPOSED MODIFICATION OF PARAGRAPH 19 OF THE CONSENT JUDGMENT.

As detailed above, the present crisis with its endless and continuous activity has rendered the Consent Judgment “outmoded and cumbersome” and has unnecessarily deprived policymakers of much needed flexibility. Accordingly, the City requests leave to seek a modification of the Consent Judgment and a consequent suspension of the shelter obligations imposed by the Consent Judgment during the duration of the crisis. Specifically, the City seeks to insert the following provision into the Consent Judgment:

The City shall be relieved of any obligation to comply with the requirements of Paragraphs 1-18 of this Judgment during any period where the following conditions are met:

1. The Governor or Mayor has declared a state of emergency under Executive Law § 28 or § 24, respectively; and
2. For any period of at least two weeks during or immediately preceding such state of emergency, the daily number of single adults seeking shelter is at least 50% greater than the daily number of single adults seeking shelter before the declared state of emergency, averaged over the most recent two-year period and excluding any times during which a state of emergency related to housing was in effect.

The proposed modification of the Consent Judgment and resulting temporary suspension of the Consent Judgment’s obligations will not relieve the City of the significant shelter

requirements under State law. The City will simply have the same obligations as all other jurisdictions throughout New York State. And the City will have significantly more flexibility in its response to the present crisis.

For the foregoing reasons, the City respectfully requests leave to move for the modification of the Consent Judgment set forth above.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Daniel R. Perez", is written over a horizontal line.

Daniel R. Perez
Assistant Corporation Counsel