

October 18, 2023

Via email

Honorable Gerald Lebovits
New York State Supreme Court Justice
Supreme Court New York County
60 Centre Street
New York, New York 10007

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

Letter in opposition to the State Defendants' support of the City Defendants' application for leave to seek relief from, and modification of, provisions of the Final Judgment on Consent

Dear Justice Lebovits:

We write in response to the State Defendants' October 11, 2023 letter to the Court ("State's Letter"). The State's Letter endorses the City Defendants' proposed modification of the Final Judgment by Consent in this matter ("Judgment"), which would threaten the lives of thousands of vulnerable New Yorkers. The City and State base their proposal on a claim that meeting their mutual obligations under the Judgment and Article XVII of the New York State Constitution is too burdensome.

Their proposed solution – to indefinitely suspend every operative provision of the Judgment – is not narrowly tailored to meet the current situation and would eviscerate the right to shelter in New York City. It would lead to mass street homelessness on a scale that our city has not seen since the Great Depression.

For months, the City Defendants have clearly articulated to the State Defendants the resources they need from the State to comply with the Judgment. But the State has offered too little too late and has impeded the City's ability to comply with the Judgment. The modification the State Defendants support would put both new arrivals and long-term New Yorkers at risk of bodily harm and death caused by exposure to the elements just as winter approaches. The tools to prevent such a dire outcome are readily available to the City and State Defendants but have not been fully utilized.

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1. The State has failed to provide resources the City identified as necessary to meet the crisis.

As detailed in Plaintiffs' October 11, 2023 letter to the Court ("Plaintiffs' Letter"), the City Defendants have repeatedly and explicitly set forth the specific material resources (including funding) they require to meet their obligation under the Judgment to provide a bed to each person who would otherwise have nowhere to shelter from the elements. Plaintiffs renew their request for Court-supervised mediation so that the parties can continue the process initiated by Justice Edwards. She previously suggested an item-by-item review of the measures the City Defendants identified as necessary to provide shelter or an explanation by the State Defendants as to why such resources cannot be provided. The State's historic pattern of cost-shifting its own obligations to the City cannot serve as the basis for an effort to gut the Judgment that has protected every New Yorker from exposure to the elements for over four decades.

Not only has the State failed to provide the City with the resources the City Defendants say they need, but the State has failed to meet its prior commitments expeditiously. For example, the Defendant Governor set forth a specific set of measures that the State planned to take in accordance with the State's traditional responsibility for resettling new arrivals in communities around the State. The State's program, known as the Migrant Relocation Assistance Program ("MRAP"), places families outside the five boroughs, consistent with the Governor's efforts to relocate families to locations with labor shortages and declining school enrollment. The State's MRAP would stabilize families and connect willing workers with employers in need of workers. As noted in the City Defendants' October 3, 2023 Letter, as of that date, only five families had been relocated from City shelters with MRAP. The State Defendants cannot claim the proposed modification to the Judgment is necessary when the State has failed to make any significant effort to implement the State's own proposed remedy.

Moreover, the State has explicitly refused to let the City use State or federal properties outside of the five boroughs for shelters, including properties that the Biden Administration has made available to shelter new arrivals.¹

2. The State has failed to exercise its authority over local governments to help address the crisis.

Due to inaction by the State, the City Defendants have also been stymied in their efforts to temporarily shelter new arrivals in communities outside New York City. The City Defendants' efforts have been blocked by local measures the Governor has rightly called "bigoted policies based on fear and intimidation."² Despite the acknowledged bigotry of these local measures, the State has refused to act to override them, as the State is authorized to do through an

¹ Such federal properties include Camp Smith and Stewart International Airport, both of which are located close to New York City.

² Tim Balk, *Hochul should force NY towns to take migrants, advocates' letter says*, New York Daily News (Aug. 14, 2023), <https://www.nydailynews.com/2023/08/14/hochul-should-force-ny-towns-to-take-migrants-advocates-letter-says>).

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Executive Order. By failing to override these measures, the State has impeded the City's ability to access shelter capacity that would help it meet its obligations under the Judgment.

3. The State Defendants support a proposed modification that would decimate the right to shelter.

The State Defendants allege that the City Defendants' proposed modification to limit shelter entry to those eligible under State Office of Temporary and Disability Assistance ("OTDA") regulations is a "measured and appropriate modification" of the Judgment. State's Letter, p. 2. The State Defendants fail to acknowledge that, under State OTDA rules, shelter entry is limited to those individuals eligible for ongoing public assistance. 9 NYCRR 352.35; OTDA Admin. Directive 16-ADM-11. These regulations have never been applied in New York City.

The implementation of these eligibility standards in New York City would have disastrous consequences. Thousands of long-time New Yorkers with no eligibility for public assistance would, presumably, be expelled from shelter or barred from entering shelter. They would have no recourse other than the streets. These New Yorkers include: low-wage workers, unemployed workers receiving Unemployment Insurance benefits, individuals with disabilities with federal Supplemental Security Income and Social Security Disability benefits, and New Yorkers whose immigration status renders them ineligible for public benefits.

Moreover, such an eligibility standard would eliminate the explicit requirement in the Judgment mandating the provision of shelter to individuals who are experiencing homelessness "by reason of physical, mental or social dysfunction." Judgment, ¶1. That requirement protects individuals who lack the capacity to navigate the complex bureaucratic public assistance eligibility process. If the City implemented the proposed public assistance-based eligibility standards, many such individuals who do qualify for public assistance would fail to submit or complete the proper paperwork to actually obtain shelter benefits.

4. The State Defendants' failure to ensure that the City Defendants comply with timely processing of public assistance applications demonstrates the dangers of conditioning shelter eligibility in New York City on public assistance eligibility.

As discussed above, conditioning shelter eligibility in New York City on eligibility for public assistance, as supported by the State Defendants, would automatically exclude tens of thousands of current residents from shelter. It would also require the City Defendants to assess the public assistance eligibility of each one of thousands of shelter residents and new applicants at a time when the City is woefully failing to cope with its existing public assistance caseload. Under State law, the State Defendants have the obligation to supervise the City Defendants in their administration of these programs, but they have clearly failed to do so.

The Legal Aid Society is currently litigating three class action cases seeking remedies for the City's systemic dysfunction and delay in processing public benefits. *Forest v. City of New York*, 23-cv-743 (SDNY), seeks to eliminate a 30,000-case backlog in processing of federal Supplemental Nutrition Assistance Program ("SNAP") applications and recertifications; *Agel v. City*

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of New York, 450926/2023 (Sup. Ct NY Co.), challenges the City's failure to timely renew public assistance-based City housing subsidies, exposing thousands of families to eviction; and in *Reynolds v. Giuliani*, 98-cv-8877 (SDNY), the City has recently fallen abysmally short of compliance with a longstanding injunction mandating prompt provision of emergency SNAP benefits to applicants who have nothing to eat and no funds to purchase food.

Despite having ample notice of these systemic failures, the State itself failed to take action to compel City compliance with federal and State law, leaving the duty of enforcement to Plaintiffs' counsel. It is disingenuous for the State Defendants to now endorse a City plan that would greatly increase the demands on the already overwhelmed City public assistance agency that the State Defendants have failed to properly supervise.

Conclusion

As discussed in Plaintiffs' letter to the Court on October 11, 2023, the assumption that people are coming to New York City because there is a right to shelter is baseless and unproven. Meanwhile, the State has failed to take common-sense steps that would alleviate the strain on the City's shelter system.

For the reasons discussed above and in Plaintiffs' prior Letter, Plaintiffs respectfully renew their request that the Court attempt to mediate this matter. In the absence of any resolution through Court-supervised mediation, Plaintiffs respectfully request sufficient opportunity to develop the record, including obtaining information pursuant to ¶11 of the Judgment. Such information is necessary to respond to the City Defendants' extraordinary request to undo a fundamental long-standing protection in New York City, which has saved countless lives. Such information will also be required in order to seek necessary relief against the State Defendants.

Respectfully submitted,

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