



Civil Practice, Law Reform Unit
199 Water Street
New York, NY 10038

Tel: (212) 577-3414
jgoldfein@legal-aid.org

www.legalaidnyc.org

Alan Levine
President

Twyla Carter
Attorney-in-Chief
Chief Executive Officer

Adriene L. Holder
Attorney-in-Charge
Civil Practice

Judith A. Goldiner
Attorney-in-Charge
Law Reform Unit

May 25, 2023

Via email

Honorable Erika W. Edwards
Supreme Court New York County
Part 10
60 Centre Street
New York, NY 10007

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

Letter in opposition to City Defendants' application for modification of provision of Final Judgment on Consent

Dear Justice Edwards,

We write in reply to the City Defendants' May 23, 2023 letter requesting permission from the Court to move for relief from, and modification of, the Final Judgment on Consent in this matter, dated August 26, 1981 ("the Judgment"). If the City Defendants proceed to file the motion they describe in their letter, after review of the claims made therein, Plaintiffs may be required to make a cross-motion for relief, including but not limited to enforcement of the Judgment. In any case, if and when the City Defendants file such a motion, a schedule for responsive papers and motions, if any, will need to be set, taking into account the potential need for discovery pursuant to ¶ 11 of the Judgment, including possible depositions of City affiants and others.

New York City has had the distinction of providing a right to shelter for single homeless individuals for over forty years, saving countless lives that would have been lost without the provision of safe shelter. Rather than propose a narrowly tailored request to temporarily modify particular standards in the Judgment that they believe are inhibiting their ability to respond to the recent influx of migrants into New York City, City Defendants have proposed to eviscerate its bedrock legal protections and make it completely unenforceable. Doing so would relegate vulnerable people, longtime New Yorkers and recent migrants alike, to sleeping in public and unsafe spaces: on sidewalks, in parks, in the transit system, or returning to homes with people who have harmed them.

While City Defendants suggest that the recent influx of migrants and asylum-seekers justifies turning away people from shelter and relegating them to the streets in violation of the City's long-standing legal obligation and commitment to provide shelter, mass homelessness in New York City is not a recent phenomenon, nor is it the result of the recent influx of migrants. In

fact, in the past four decades, the City has met its legal obligations under the Judgment, regardless of sharp increases in demand.¹

In seeking to modify the Judgment, City Defendants are using a temporary situation to undermine a right that people in need have relied upon for decades. City Defendants' proposed modifications to the Judgment would eliminate the City's obligation of the past 40 years to mobilize the resources necessary to shelter New Yorkers in need; it would only obligate the City to provide shelter when there are adequate "resources and capacity," which City Defendants could then assert they are unable to allocate at any time. When the Judgment was first negotiated, City Defendants did not have adequate capacity in the existing shelter system to shelter all Class Members, but they created that capacity, and they have continued to do so for over 40 years, regardless of the level of demand. It is undisputed that thousands of recent migrants have sought shelter in New York City in the past year, but, as they have since 1981, City Defendants have been able to meet the need, largely by utilizing existing hotel capacity in the city, capacity that continues to exist.²

The shelter population is dynamic: every day, people without any other place to go come to shelter intake, but every day, people also move out of the system to permanent housing or other destinations. City Defendants have abdicated their responsibility to help people leave shelter, resulting in an increase in the overall number of people in need of assistance. Since Plaintiffs became aware of City Defendants' concerns about the influx of recent migrants, Plaintiffs have provided common-sense practical recommendations that the City could implement to increase the vacancy rate by helping New Yorkers already in shelter move out. These recommendations include reforms to the City's housing subsidy program, expanding the understaffed City offices charged with combatting discrimination against people attempting to use those subsidies, reducing delays and filling staff vacancies to process rental packages for clients in shelter who have found apartments, following through on plans to build shelter capacity regardless of NIMBY protestors, training shelter staff to screen for benefits eligibility for non-citizens in shelter, dedicating additional funding for legal services for applicants for asylum, utilizing nearly \$2 million in funding the State Defendants set aside for households facing homelessness regardless of their immigration status, and conducting more robust case management for recent arrivals who may have access to support systems outside of the shelter system. Plaintiffs have repeatedly met with City Defendants to discuss these recommendations and to provide technical guidance on implementation. City Defendants have not disputed that these changes would significantly increase shelter capacity. Indeed, City Defendants now report to us that they have begun to implement many of these recommendations and that they are seeing results from them. In recent days, the City's Department of Homeless Services shelter census has begun to decline.

Fully implementing these recommendations would dramatically increase capacity in City Defendants' shelter systems, eliminating City Defendants' purported basis for modifying a consent decree that has been relied upon by homeless New Yorkers for over four decades. We

¹ See "Facts about Homelessness," available at <https://www.coalitionforthehomeless.org/facts-about-homelessness/> (demonstrating multiple sharp increases in clients sheltered in City-funded shelters since the Judgment was issued).

² See <https://www.nytimes.com/2023/05/22/nyregion/hotel-nyc-migrants.html>.

will continue to provide technical expertise to City Defendants on these issues and will advocate alongside the City Defendants to the State Defendants and Federal governments for increased resources and rule changes that would assist New York City in meeting the demand for shelter services.

The *Callahan* decree came too late to save the life of plaintiff Robert Callahan, who died on the street. As we have noted in response to prior attempts to undermine the Judgment, there is always a risk of grave harm to vulnerable human beings if the Judgment is modified in the manner City Defendants now propose. Contrary to City Defendants' claims, the City does, in fact, have both resources and alternatives that it should deploy to address the homelessness crisis in New York City. For the reasons outlined above, we strongly oppose City Defendants' request to modify the Judgment, relieving them of their legal obligation to provide life-saving shelter and relegating homeless New Yorkers to the streets. Rather than proceed with a motion, we believe it would be helpful for the parties to meet and confer in an effort to avert the need for this litigation.

Very truly yours,

/s/
Joshua Goldfein
The Legal Aid Society
Attorney for Plaintiffs

Cc Judith Goldiner
Adriene Holder
Ed Josephson
Kathryn Kliff
Stephanie Rudolph
Lilia Toson
The Legal Aid Society
Attorneys for Plaintiffs

Jonathan Pines
Assistant Corporation Counsel
Attorney for City Defendants

Jennifer Levy
First Deputy Attorney General
Office of the New York State Attorney General
Attorney for State Defendants