SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

MORLEEN FISHER, TAMARA WILLIAMS, BJ ATHILL, RODAISHA SMITH, GARY CORBIN, COALITION FOR THE HOMELESS, on behalf of themselves and all others similarly situated ,

Petitioners,

v.

THE CITY OF NEW YORK; THE NEW YORK CITY DEPARTMENT OF SOCIAL SERVICES; STEVEN BANKS, as Commissioner of the New York City Department of Social Services; THE NEW YORK CITY DEPARTMENT OF HOMELESS SERVICES; JOSLYN CARTER, as Administrator of the New York City Department of Homeless Services,

Respondents.

Index No. 452069/2020

VERIFIED PETITION

Petitioners Morleen Fisher, Tamara Williams, BJ Athill, Rodaisha Smith, Gary Corbin, and Coalition for the Homeless, on behalf of themselves and all others similarly situated, by and through their attorneys The Legal Aid Society and Jenner & Block LLP, allege as follows:

INTRODUCTION

1. Petitioners, single adult New Yorkers who are homeless, face disproportionate health risks due to their placement in congregate settings in New York City adult shelter facilities during this once-in-a-century global pandemic. Petitioners bring this case to remedy the failures of Respondents City of New York, the New York City Department of Social Services ("DSS"), and its subdivision, the New York City Department of Homeless Services ("DHS"), to take appropriate action to temporarily provide shelter placements to single adults that are free of significant health risks during the course of the COVID-19 pandemic.

2. The COVID-19 pandemic has wrought devastation on the lives and livelihoods of people across the globe, felt particularly acutely in New York. At the time of this filing, the highly contagious, airborne SARS-CoV-2 virus that causes COVID-19 is responsible for more than 19,000 deaths, and suspected of being responsible for an additional 4,600 deaths, in New York City alone. Most public health experts anticipate that the coming months will bring a resurgence, which is already evident in certain communities throughout the City. New cases continue to be diagnosed among shelter residents.

3. People experiencing homelessness are among New York City's most vulnerable and marginalized populations, and they have been hit particularly hard amidst this crisis. At the beginning of the pandemic, in March 2020, there were over 19,000 single adults in New York City shelters run by Respondent DHS, including over 14,000 in congregate dorms, at least 3,500 in commercial hotel placements, and more than 1,400 in safe havens and stabilization beds, which are provided in both congregate and non congregate settings.[1] Because most individuals staying in DHS shelters are forced to live, eat, and sleep in close quarters with so many others during the pandemic, the age-adjusted COVID-19 mortality rate for sheltered single adults through August 2020 is 409 deaths per 100,000 people, which is 80 percent higher than the general population of New York City. The mortality rates only partially capture the destructive toll of the pandemic; many more who survive the disease face potentially long-lasting detrimental health effects as a result.

[1] Safe havens differ from traditional shelters in that they are often smaller, employ a higher ratio of social services staff and fewer law enforcement staff, exercise flexibility in their rules and better tailor service plans to meet individual needs. *See* Coalition for the Homeless, *State of the Homeless 2020* at p. 14 (Mar. 10, 2020), https://www.coalitionforthehomeless.org/wp-content/uploads/2020/03/StateofTheHomeless2020.pdf. Stabilization beds are low-threshold private rented rooms (often with shared bathrooms) for clients who have been chronically unsheltered. The City of New York, Dept. of Social Services, *The Journey Home: An Action Plan to End Long-Term Street Homelessness* at p. 8 (Sep. 17, 2020), https://www1.nyc.gov/assets/dhs/downloads/pdf/the-journey-home-2019-print-web.pdf.

4. Although medical knowledge about the way the virus spreads and solutions to slow it have been evolving over the last several months, certain effective prevention measures have been clear from the beginning of the pandemic. Almost universally, scientists, medical professionals, public officials and individuals across the country, including in New York City, have recognized that, due to the virus' ability to propagate through respiratory droplet and airborne transmission, social distancing—keeping apart from others who may have been exposed—is an essential component of minimizing risk during the COVID-19 pandemic.

5. The federal Centers for Disease Control and Prevention ("CDC") has confirmed that the virus spreads through airborne transmission: via tiny particles released from an infected person breathing or speaking. These particles can hang in the air in enclosed spaces for hours even after an infected person has left the space. In environments with inadequate air circulation, aerosol spread can cause infections among people who are more than six feet apart, even with rigorous protocols such as temperature checks, sterilization of surfaces and hand washing in place.

6. Individual Petitioners and other single adult homeless New Yorkers cannot safely socially distance while living in congregate shelters where they are required to share sleeping areas, bathrooms, dining space and other living facilities with unrelated adults. Petitioners include the following individuals:

- Petitioner Morleen Fisher is currently placed at a congregate shelter in Manhattan, where she shares a sleeping area with approximately ten unrelated individuals and a bathroom with around twenty unrelated individuals. Ms. Fisher is a smoker and has diabetes, both categorized as high-risk factors for severe illness by the CDC if she were to contract SARS-CoV-2. She has also been diagnosed with bipolar disorder and post-traumatic stress disorder ("PTSD"). When she requested a single room and private bathroom due to her inability to socially distance in her current placement, she was told that "DHS does not put crazy people in hotels." In addition to her own medical vulnerabilities, Ms. Fisher is

currently employed as an in-home aide to an elderly couple in the Upper East Side and fears spreading the virus to her clients.

- Petitioner Tamara Williams is currently placed in a congregate shelter in Manhattan, where she shares a sleeping area with about eleven unrelated individuals and a bathroom with approximately twenty unrelated individuals. Ms. Williams has a history of heart failure and has been diagnosed with Type II diabetes and chronic obstructive pulmonary disease ("COPD"), both of which are categorized as high-risk factors for severe illness for COVID-19 by the CDC if she were to contract SARS-CoV-2. She is employed part-time as a counselor for a non-profit behavioral health center. She currently works remotely.

- Petitioner BJ Athill is currently placed in a double-occupancy hotel room in downtown Manhattan, where he shares a sleeping area and bathroom with one other person. He has been diagnosed with chronic bronchial asthma (requiring him to use an electric nebulizer), which the CDC categorizes as a condition that might put him at an increased risk of severe illness from COVID-19 if he were to contract SARS-CoV-2. He is employed at a large grocery store in Manhattan, and he must take public transportation to get to and from work. He is also in a training program to become a driver for the Access-A-Ride Paratransit Service, which provides transportation for individuals who cannot otherwise use the City's subway and bus system.

- Petitioner Rodaisha Smith is currently placed in a double-occupancy hotel room in midtown Manhattan, where she shares a sleeping area and a bathroom with one other person. She does not know how her roommate spends her days outside of the hotel. Ms. Smith works at a national nonprofit organization as a Residential Direct Support Professional. Her current clients include two men living in Manhattan who would face severe health complications if they were to contract SARS-CoV-2. Ms. Smith uses the subway to get to work.

- Petitioner Gary Corbin is homeless and living unsheltered on the streets.[2] He has been diagnosed with heart disease as a result of his cancer treatment, which is categorized as a high-risk factor for severe illness for COVID-19 by the CDC if he were to contract SARS-CoV-2. He was previously placed in a double-occupancy hotel room, but his roommate's activities put him at high risk of becoming sick with COVID-19. When shelter staff refused his request for a single room, he left shelter because of his fear of getting sick. He spends approximately half the month in hotels using money from his Social Security Disability payments, but, once the money runs out each month, he sleeps on the streets.

[2] On October 22, 2020, the day of the filing of this Verified Petition, Mr. Corbin was informed that he would be placed in a single-occupancy hotel room. However, he had not received his room placement by the time this petition was filed.

7. Recognizing the clear and pressing public health emergency posed by COVID-19, the Federal Emergency Management Agency ("FEMA") authorized disaster relief funding for local governments to place individuals who are homeless into hotel rooms—left largely vacant during the pandemic—so that these individuals may safely socially distance and protect themselves and the communities in which they live from further spread of the virus.

8. Despite an abundance of vacant hotel rooms—to the point where some hotels are in danger of permanently closing—and federal funding expressly available for this exact purpose, the Respondents have taken only half-measures to protect the individual Petitioners and other single adult homeless individuals in a timely, measured, and effective manner. Failing to acknowledge the risk of aerosol transmission in congregate spaces, Respondents initially resisted moving the vast majority of single homeless adults to hotel rooms, inexplicably citing cost as a reason for keeping people in congregate shelters, despite the availability of federal reimbursement for at least 75 percent of the hotel rates.

9. When Respondents finally began to move individuals from congregate shelters into vacant hotel rooms, they presumed that mask use and six feet of distance between individuals was enough to fully protect residents and staff and therefore it would be safe to allow thousands of people to remain in congregate shelters. Relying on this outdated public health guidance, they placed many of those who moved to hotels in double-occupancy rooms, which they shared with another unrelated individual, still failing to provide appropriate shelter placements that would allow them to safely socially distance. Respondents also relied on an ill-defined and paternalistic claim that they were applying the principles of "harm reduction"—an approach to management of drug use that seeks to minimize negative outcomes—to justify relegating some single adults to continued congregate placement on the basis of exaggerated

fears of the risk of self-harm. As a result, people living in congregate shelters and double-occupancy hotel rooms continue to test positive for the virus and carry it, in their daily activities, throughout the City.

10. In an attempt to remedy their prior failure to de-densify their shelters, Respondents directed their non-profit agent shelter providers to quickly choose who among their residents would get hotel rooms and who would remain in a congregate shelter setting. Without any guidance from Respondents, the shelter providers were left to make ad-hoc and standardless assessments of need, with the result that these crucial determinations were made in an arbitrary and capricious manner without the appropriate and required assessments of their clients' individual needs.

11. Furthermore, many people living unsheltered on the streets of New York City remain there, at risk of injury or death from exposure, because they fear the health consequences of coming into shelters and being placed in a setting in which they cannot properly socially distance.

12. Under Article XVII, Section 1 of the New York Constitution, Respondents are required to provide "aid, care and support of the needy." New York courts have long interpreted this mandate to include the provision of shelter placements to individuals who are homeless that are free of serious risks to their health. In light of this fundamental right, Respondents' failure to provide safe shelter placements where the individual Petitioners and other single adult homeless New Yorkers can adequately socially distance when the means to do so are readily available is an unjustified, arbitrary, and capricious refusal to carry out a clearly established solution to a life-threatening pandemic.

13. The individual Petitioners are homeless single adults living in New York City who have been denied the option to move to a single-occupancy hotel room; they either are still living in congregate shelters, are sharing a double-occupancy hotel room with an unrelated individual, or have refused to enter shelters because of the risks associated with being housed with unrelated individuals. Several of the Petitioners have conditions that put them at high risk of death if they were to contract SARS-CoV-2. Petitioner Coalition for the Homeless brings this action pursuant to its role as the Court-appointed monitor of DHS's single adult shelter system and its mission, well-recognized by New York courts, of advocating for homeless New Yorkers who are similarly at risk, many of whom have severe barriers to self-advocacy.

14. Pursuant to the Americans with Disabilities Act, 42 U.S.C. § 12101 *et seq* (the "ADA"), and Section 504 of the New York Rehabilitation Act of 1973 (the "Rehabilitation Act"), Respondents must provide reasonable accommodations to individuals with disabilities. By failing to provide single-occupancy hotel rooms to homeless individuals with medical conditions that put them at high risk of death if they were to contract SARS-CoV-2, Respondents have acted in violation of the ADA and the Rehabilitation Act.

15. Respondents have also violated the constitutional rights of the Petitioners, by failing to provide individualized determinations as to their right to a single-occupancy hotel room. Instead, Respondents are operating in an arbitrary manner, leaving Petitioners and all homeless New Yorkers, including individuals at higher risk of death if they were to contract SARS-CoV-2, without notice of their right to safe shelter placements and a process by which to obtain them.

16. Respondents have also violated Petitioners' rights by segregating Petitioners with certain disabilities in congregate facilities, which pose a dangerously increased risk of contracting SARS-CoV-2.

17. In this action, Petitioners seek this Court's intervention to provide potentially life-saving relief and a clear remedy that is available to Respondents: the offer of a single-occupancy hotel room for each individual Petitioner and every single adult homeless New Yorker until public health authorities determine it is safe to return to congregate settings.

PARTIES

Morleen Fisher

18. Petitioner Morleen Fisher is currently homeless and resides in a congregate shelter in downtown Manhattan. (Fisher Aff. ¶ 1.)

19. Ms. Fisher is 55 years old, and she has been diagnosed with diabetes, PTSD, and bipolar disorder. She also experiences lung-related discomfort and shortness of breath as she is an active smoker. Her age and health conditions put her at an increased risk for severe illness from COVID-19 according to the CDC if she were to contract SARS-CoV-2. (*Id.* ¶ 3.)

20. At her shelter, Ms. Fisher shares a sleeping area with approximately ten unrelated individuals and a bathroom with approximately twenty unrelated individuals. (*Id.* ¶ 4.)

21. Ms. Fisher is currently employed part-time as an in-home aide to an elderly couple on the Upper East Side. Ms. Fisher uses public transportation to commute between her shelter placement and her place of employment. She is extremely concerned about the risk of contracting SARS-CoV-2 and inadvertently transmitting it to the couple for whom she works, given that they are also at high risk for severe COVID-19 complications. When Ms. Fisher requested access to a private room and bathroom (such as a hotel room placement) to properly

social distance, shelter staff denied her request stating, "DHS does not put crazy people in hotels." (*Id.* ¶¶ 6–9.)

Tamara Williams

22. Petitioner Tamara Williams is currently homeless and resides in a congregate shelter in downtown Manhattan. (Williams Aff. ¶ 1.)

23. She is 64 years old, and she has a history of heart failure and is diagnosed with Type II diabetes, COPD, and schizoaffective disorder. Ms. Williams has to frequently use a nebulizer to stabilize her breathing. Her age and health conditions put her at an increased risk for severe illness from COVID-19 according to the CDC if she were to contract SARS-CoV-2. (*Id.* ¶¶ 1, 3.)

24. Ms. Williams currently shares a sleeping area with about eleven unrelated individuals and a bathroom with approximately twenty unrelated individuals. (*Id.* ¶ 4.)

25. Despite her fears of contracting the virus, staff at her shelter never notified her that she could request a reasonable accommodation to be transferred to a single room. (*Id.* ¶ 7.)

26. She is employed part-time as a counselor for a non-profit behavioral health center and currently works remotely. (*Id.* ¶ 6.)

BJ Athill

27. Petitioner BJ Athill is currently homeless and resides in a hotel in downtown Manhattan. (Athill Aff. ¶ 1.)

28. He has been diagnosed with chronic bronchial asthma, which puts him at an increased risk for severe illness from COVID-19 according to the CDC if he were to contract SARS-CoV-2. He uses an electric nebulizer to manage his asthma. (*Id.* ¶ 3.)

29. He shares a bedroom and a bathroom with one unrelated individual. (*Id.* ¶ 4.)

30. Mr. Athill is currently employed at a large grocery store in downtown Manhattan. He is also enrolled in a training program to become a driver for Access-A-Ride, the New York City transportation service for people with disabilities who cannot ride public transportation. He uses public transportation to travel between his shelter placement and his job. (*Id.* ¶ 6.)

31. Despite his fears of contracting the virus, staff at Mr. Athill's shelter never notified him that he could request a reasonable accommodation to be transferred to a single room. (*Id.* ¶ 9.)

Rodaisha Smith

32. Petitioner Rodaisha Smith is currently homeless and resides in a hotel in midtown Manhattan. (Smith Aff. ¶ 1.)

33. She shares a bedroom and a bathroom with one unrelated individual. She does not know where her roommate spends her time outside of the hotel and is afraid that her roommate will expose her to SARS-CoV-2. (*Id.* ¶ 3.)

34. Ms. Smith is currently employed as a Residential Direct Support Professional at a national non-profit organization, where she works the overnight shift. Her current clients include two men who would face severe health complications if they contracted the virus that causes COVID-19. Ms. Smith is extremely concerned about the risk of contracting SARS-CoV-2 and giving it to her clients. She uses public transportation to travel between her shelter placement and her job. (*Id.* ¶¶ 4–7.)

Gary Corbin

35. Petitioner Gary Corbin is currently homeless and lives unsheltered on the streets. (Corbin Aff. ¶ 1.)

36. Mr. Corbin has a full right leg prosthesis, a result of his cancer treatment. His cancer treatment also caused him to have heart disease, which puts him at an increased risk of severe illness from COVID-19 according to the CDC if he contracts SARS-CoV-2. He also has liver damage as a result of hepatitis C, and he has been diagnosed with bi-polar II disorder, which he controls with medication. (*Id.* ¶¶ 3–4.)

37. Mr. Corbin was previously placed in a double-occupancy hotel room by DHS, but he did not feel safe remaining in the hotel room because his roommate's actions exposed him to a high level of risk of contracting SARS-CoV-2 and negatively impacted his mental health. Mr. Corbin asked the shelter staff if he could have his own hotel room as a result of his risk factors, but the staff denied his request. As a result, Mr. Corbin uses his Social Security Disability income to stay in hotel rooms until he runs out of money and has to sleep on the streets. He can usually only afford to stay in a hotel approximately half of the nights in a given month. (*Id.* ¶¶ 6–8.)

38. Mr. Corbin is too afraid to return to a shelter placement in a double-occupancy room or congregate space because of the risk to his health if he becomes ill with COVID-19. (*Id.* ¶¶ 11–12.)

Coalition for the Homeless

39. Organizational Petitioner Coalition for the Homeless (hereinafter the "Coalition") is the nation's oldest advocacy and direct service organization helping homeless men, women, and children. The Coalition, founded in 1981, assists more than 3,500 New Yorkers each day who are homeless or who are at risk of homelessness. The Coalition's advocacy protects the rights of homeless people because the Coalition serves as a plaintiff in litigation regarding the right to emergency shelter, the right to vote, and housing and services for homeless people living

with mental illness and HIV/AIDS. The Coalition operates 11 frontline direct service programs, offering vital services to homeless, at-risk, and low-income New Yorkers, including individual advocacy and case management services to over 1,000 homeless and at-risk households each month with referrals for shelter and emergency food programs and assistance with public benefits. The Coalition seeks to bring this claim as an organization on behalf of the population that is threatened by DHS's actions and inactions. The Coalition plays a unique role advocating on behalf of individuals who have severe barriers to self-advocacy in this context.

40. The Coalition brought landmark litigation on behalf of homeless men and women in *Callahan v. Carey* and *Eldredge v. Koch*, and was a plaintiff in the consolidated cases establishing a right to shelter and guaranteeing basic standards for shelters for homeless men and women. *See Callahan v. Carey*, 12 N.Y.3d 496 (2009). Pursuant to the *Callahan* consent decree, the Coalition serves as the court-appointed monitor of municipal shelters for homeless adults. *Id*. The City has also appointed the Coalition to be the monitor for the family shelter system. The Coalition was also a plaintiff in *Butler v. City of New York*, in which the City agreed to comprehensive relief to protect individuals and families including people with disabilities in the New York City shelter system. *See Butler* Stipulation of Settlement*,* 15 Civ. 03783 (S.D.N.Y) (November 7, 2017) ("*Butler* Stipulation").

41. The Coalition has expended extensive time and resources in addressing the needs of shelter residents and unsheltered homeless New Yorkers at risk of contracting COVID-19. The Coalition is directly harmed by Respondents' failure to adequately safeguard homeless New Yorkers or provide them adequate due process as described above by having to devote its own resources and staff time to correcting these failures on behalf of individual clients and groups of clients.

42. Respondent City of New York is a municipal corporation chartered under the laws of the State of New York. The City of New York receives federal funding and is subject to the provisions of the Rehabilitation Act, as well as Title II of the ADA; the New York State Human Rights Law (Executive Law § 296); and the New York City Human Rights Law (N.Y.C. Administrative Code § 8-107(4)(a)).

43. Respondent Steven Banks, as the Commissioner of DSS, is the head of an executive agency of the City of New York, which has responsibility for the operation and administration of the shelter programs for New York City residents. The DSS principal place of business and the Commissioner's business address is 150 Greenwich Street, New York, NY 10007.

44. Respondent Joslyn Carter is the Administrator of DHS, which is the sub-agency of DSS. The DHS principal place of business and the Administrator's business address is 33 Beaver Street, New York, NY 10004.

JURISDICTION AND VENUE

45. CPLR § 7804 confers jurisdiction on this Court. *See* CPLR § 7804(b) ("A proceeding under this article shall be brought in the supreme court . . . .").

46. Venue lies properly in New York County pursuant to CPLR §§ 505(a) and 506(b).

FACTS

The City of New York's Obligation to Provide Safe Shelter Placements

47. In 1938, after years of economic hardship that devastated the poorest residents of New York State, New York adopted Article XVII of the State Constitution to ensure that no New Yorker would lack for basic needs.

48. Article XVII establishes that New York State must provide for the needy, stating that "[t]he aid, care and support of the needy are public concerns and shall be provided by the state and by such of its subdivisions, and in such manner and by such means, as the legislature may from time to time determine."

49. The New York Court of Appeals has recognized that Article XVII created a "mandate[]" that requires New York State and its subdivisions to take action when necessary. *Tucker v. Toia*, 43 N.Y.2d 1, 7 (1977). According to the Court of Appeals, under Article XVII, "the provision for assistance to the needy is not a matter of legislative grace; rather, it is specifically mandated by our Constitution." *Id.*

50. In 1981, following a ruling of this Court in *Callahan v. Carey*, Sup. Ct. N.Y. Co. Index No. 42582/79, that Article XVII required that shelter be provided to homeless single adult men, the City entered into a consent decree that established a right to shelter. In a subsequent case, the provisions of the consent decree were held to apply with equal force to eligible, single, homeless, adult women. *Eldredge v. Koch*, 98 A.D.2d 675, 469 N.Y.S.2d 744 (1st Dep't 1983). Petitioner Coalition for the Homeless was appointed the independent monitor of the single adult shelter system by the *Callahan* court in order to confirm the City's compliance with these orders.

51. New York courts have long recognized that Article XVII provides New Yorkers with a right to shelter without placing their health at significant risk. *See Barnes v. Koch*, 518 N.Y.S.2d 539, 542–43 (Sup. Ct. 1987) (finding homeless individuals' entitlement to shelter under Article XVII "necessarily includes the right to be sheltered free of potentially significant health threats"). Indeed, "implicit in the term shelter is a requirement that individuals involved not be placed in a situation directly threatening to their health." *Id.* at 542. As such,

Respondents have a constitutional obligation to place homeless individuals in "shelter[s] that do[] not risk their health." *Id.*

52. New York courts have the authority to ensure that Respondents fulfill their constitutional responsibilities toward homeless individuals. The Court of Appeals has held that "it is the province of the Judicial branch to define, and safeguard, rights provided by the New York State Constitution, and order redress for violation of them." *Campaign for Fiscal Equity Inc. v. New York*, 100 N.Y.2d 893, 925 (2003). New York courts also have "the equitable power to enforce minimum standards of habitability" with respect to shelter conditions. *Barnes*, 518 N.Y.S.2d at 542.

53. The Fourteenth Amendment of the U.S. Constitution requires that no state shall "deprive any person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV. Homeless New Yorkers have a property interest in safe shelter placements under New York State law. The City may not deprive homeless New Yorkers of safe shelter placements without fair process, including notice and an opportunity to be heard.

54. Title II of the ADA (1) prohibits the City from discriminating against individuals with disabilities in accessing public services (either intentionally or through policies with a discriminatory impact), and (2) requires the City to provide reasonable accommodations that would allow individuals with disabilities to access such services. 42 U.S.C. §§ 12131, 12132; 28 C.F.R. § 35.130(b)(7).

55. Because this case involves fundamental rights as enshrined by the New York State Constitution, judicial review and intervention is appropriate.

The Science of the Spread of SARS-CoV-2 and Public Efforts to Halt It

56. SARS-CoV-2 is a novel coronavirus that causes the deadly disease commonly known as COVID-19. Although COVID-19 has uprooted life for New Yorkers, SARS-CoV-2 is

a global scourge that has spread to 235 countries and territories, and it has been declared a global pandemic by the World Health Organization (the "WHO").[3] SARS-CoV-2 has infected more than 36 million people worldwide, killing over a million.[4]

57. The United States has been particularly hard hit. As of October 22, 2020, the United States is first in the world both in the number of confirmed cases—over 8 million—and the number of confirmed deaths caused by the disease—over 222,000.[5] New York alone has nearly half a million confirmed cases, and by far the most deaths of any state in the country: 33,005.[6]

58. SARS-CoV-2 is highly contagious and often fatal, particularly for Black and Hispanic/Latinx New Yorkers or populations with high rates of comorbidities.[7] No vaccine or cure is yet available, despite an unprecedented global effort.

59. Increasing evidence shows that people with chronic conditions are vulnerable to more serious illness if infected with SARS-CoV-2, and that many—both with and without comorbidities—suffer a wide array of post-virus conditions affecting many organs and systems of the body. These post-virus conditions include vascular, cardiac, equilibrium, gastrointestinal, lymphatic, neurological, pulmonary, sensory, skin and other symptoms, as well as ongoing, often debilitating fatigue.[8]

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[3] World Health Organization, *WHO Coronavirus Disease (COVID-19) Dashboard*, https://covid19.who.int/ (last visited Oct. 21, 2020).
[4] *Id.*
[5] The New York Times, *Covid World Map: Tracking the Global Outbreak* (Oct. 22, 2020) https://www.nytimes.com/interactive/2020/world/coronavirus-maps.html#countries.
[6] The New York Times, *Covid in the U.S.: Latest Map and Case Count*, https://www.nytimes.com/interactive/2020/us/coronavirus-us-cases.html (last visited Oct. 21, 2020).
[7] Tiffany Ford, et al., *Race gaps in COVID-19 deaths are even bigger than they appear* (June 16, 2020), https://www.brookings.edu/blog/up-front/2020/06/16/race-gaps-in-covid-19-deaths-are-even-bigger-than-they-appear.
[8] Science Magazine, *From 'brain fog' to heart damage, COVID-19's lingering problems alarm scientists* (July 31, 2020), https://www.sciencemag.org/news/2020/07/brain-fog-heart-damage-covid-19-s-lingering-problems-alarm-scientists.

60. The CDC identifies at least the following conditions as associated with an increased risk of severe illness from the virus that causes COVID-19: cancer, kidney disease, COPD, heart failure, coronary artery disease, cardiomyopathies, immunocompromised state, organ transplant, obesity, severe obesity, sickle cell disease, smoking, and type 2 diabetes mellitus.[9]

61. COVID-19 is a new disease, and the CDC identifies at least 12 other conditions that may be associated with increased risk for severe illness, including hypertension (high blood pressure), cerebrovascular disease, cystic fibrosis, immune deficiencies, neurologic conditions, liver disease, pregnancy, being overweight, pulmonary fibrosis, thalassemia, type 1 diabetes mellitus, and asthma.[10]

62. In New York, 90.1 percent of all COVID-19 fatalities have at least one of the comorbidities referenced in Paragraphs 60 and 61, *supra*.[11]

63. The CDC has also stated that individuals' "risk of getting severely ill from COVID-19 increases as [they] get older." Eight out of ten COVID-19 deaths reported in the United States have been in adults 65 years and older.[12]

64. DHS single adult shelter residents have a higher rate of medical conditions than the general population and thus are more likely to be living with one of these conditions. New

[9] Centers for Disease Control and Prevention, *People with Certain Medical Conditions* (Oct. 6, 2020), https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fneed-extra-precautions%2Fgroups-at-higher-risk.html.
[10] *Id.*
[11] New York State Department of Health, Fatalities (Oct. 6, 2020), https://covid19tracker.health.ny.gov/views/NYS-COVID19-Tracker/NYSDOHCOVID-19Tracker-Fatalities?%3Aembed=yes&%3Atoolbar=no&%3Atabs=n.
[12] Centers for Disease Control and Prevention, *Older Adults* (Sept. 11. 2020), https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/older-adults.html.

York City Department of Health and Mental Hygiene ("DOHMH") and DHS research has shown that homeless people suffer from "higher rates of illness than in the non-homeless population."[13]

65. The virus that causes COVID-19 is highly infectious. It spreads through numerous methods, including direct, indirect (through contaminated objects or surfaces), or close contact with infected people.[14] Transmission is largely due to respiratory droplets, which are expelled by people with COVID-19 when they cough, sneeze, sing, talk, or simply breathe.[15]

66. Increasingly, medical professionals are realizing SARS-CoV-2 is also easily transmitted through aerosol or airborne transmission. In these instances, virus droplets may linger in the air for minutes or hours, infecting people who are more than six feet away (*i.e.*, even when social distancing is fully practiced).[16]

67. In early July 2020, 239 experts wrote an open letter to the WHO urging it to revise its recommendations to take into account airborne transmission.[17] The WHO now explicitly warns of ventilation indoors, noting that in "all workplaces, schools and tourist accommodations, there should be fresh, clean air."[18] "Ventilation is an important factor in preventing the virus that causes COVID-19 from spreading indoors."[19] Risk of such

[13] New York City Departments of Health and Mental Hygiene and Homeless Services, *The Health of Homeless Adults in New York City* (Dec. 2005), https://www1.nyc.gov/assets/doh/downloads/pdf/epi/epi-homeless-200512.pdf.
[14] World Health Organization, *Q&A: How is COVID-19 transmitted?* (July 9, 2020), https://www.who.int/emergencies/diseases/novel-coronavirus-2019/question-and-answers-hub/q-a-detail/q-a-how-is-covid-19-transmitted.
[15] Centers for Disease Control and Prevention, *How COVID-19 Spreads* (Oct. 5, 2020), https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/how-covid-spreads.html.
[16] *Id.*
[17] The New York Times, *239 Experts With One Big Claim: The Coronavirus Is Airborne* (July 4, 2020), https://www.nytimes.com/2020/07/04/health/239-experts-with-one-big-claim-the-coronavirus-is-airborne.html.
[18] World Health Organization, *Q&A: Ventilation and air conditioning in public spaces and buildings and COVID-19* (July 29, 2020), https://www.who.int/emergencies/diseases/novel-coronavirus-2019/question-and-answers-hub/q-a-detail/q-a-ventilation-and-air-conditioning-in-public-spaces-and-buildings-and-covid-19.
[19] *Id.*

transmission is highest in enclosed spaces with inadequate ventilation, such as the congregate shelters the City traditionally uses to house single individuals who are homeless.[20]

68. In light of the evidence of aerosol-based transmission, experts have recognized that measures such as enforcing six feet of physical distance, on their own, "would not be helpful in an indoor setting and would provide a false sense of security."[21]

69. Further, it is now well-established that asymptomatic people can transmit the virus just as much as symptomatic people. The WHO notes simply, "infected people can transmit the virus both when they have symptoms and when they don't have symptoms."[22]

70. For all these reasons, basic precautions such as social distancing and avoiding sharing enclosed, indoor settings with other unrelated individuals, where possible, are crucial to controlling the spread of the virus that causes COVID-19. Indeed, the CDC notes, "[l]imiting close face-to-face contact with others is *the best way* to reduce the spread" of SARS-CoV-2.[23] Directives from state and local officials reflect this guidance. Governor Cuomo has stated that "[m]ask wearing, social distancing and hand washing—basic as they may seem—are critical to controlling the spread of this virus."[24] Mayor Bill de Blasio has similarly stressed the

[20] Centers for Disease Control and Prevention, *SARS-CoV-2 & Potential Airborne Transmission* (Oct. 5, 2020), https://www.cdc.gov/coronavirus/2019-ncov/more/scientific-brief-sars-cov-2.html.
[21] John A. Lednicky et al., *Viable SARS-CoV-2 in the Air of a Hospital Room with COVID-19 Patients,* MedRXIV (Aug. 4, 2020), https://doi.org/10.1101/2020/08.03.20167395.
[22] World Health Organization, *Q&A: How is COVID-19 transmitted?* (July 9, 2020), https://www.who.int/emergencies/diseases/novel-coronavirus-2019/question-and-answers-hub/q-a-detail/q-a-how-is-covid-19-transmitted.
[23] Centers for Disease Control and Prevention, *Social Distancing* (July 15, 2020), https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/social-distancing.html (emphasis added).
[24] New York State, *Governor Cuomo Announces New Regulations for Bars and Restaurants to Ensure Compliance with State Social Distancing and Face Covering Orders* (July 16, 2020) https://www.governor.ny.gov/news/governor-cuomo-announces-new-regulations-bars-and-restaurants-ensure-compliance-state-social.

importance of social distancing, and New York City will be imposing penalties up to $15,000 for violations of mass gathering rules.[25]

71. The federal government has provided funding for state and local governments to address this unprecedented health crisis, including the now well-known Coronavirus Aid, Relief, and Economic Security (CARES) Act. Pursuant to the CARES Act, local governments may use federal funding to prevent evictions that would lead to homelessness and to cover expenses for shelter and temporary housing of homeless populations, when state public health authorities determine it is needed.[26]

72. The State's COVID-19 vaccination plan, quoting CDC guidance, includes "People experiencing homelessness/living in shelters" and "People living and working in other congregate settings" among "at risk" categories, and shelters among the expected vaccination administration sites.[27]

73. Additionally, FEMA announced that it would reimburse 75 percent of expenses for hotel rooms provided to homeless individuals, in order to prevent the spread of COVID-19 through congregate shelter.[28]

74. The CDC has also issued an Order temporarily halting certain evictions, on the basis that housing instability increases the likelihood of individuals moving into congregate

[25] Brooklyn News 12, *Mayor: Social distancing will be enforced this Memorial Day weekend* (May 22, 2020), https://brooklyn.news12.com/watch-live-mayor-gives-update-on-covid19-42163754; Jennifer Millman, *NYC Fines Up to $15K for COVID Violations in Effect; NY Hospitalizations Highest Since July 15* (Oct. 9, 2020), https://www.nbcnewyork.com/news/local/nyc-fines-of-up-to-15000-a-day-for-covid-rule-breakers-take-effect-friday/2660359/.
[26] *See* CARES Act, Pub. L. No. 116-136, 134 Stat 281 (2020); National Low Income Housing Coalition, *Housing Instability and Homelessness* (May 11, 2020), https://nlihc.org/sites/default/files/Housing-Instability-and-Homelessness_Cares-Act.pdf (describing various forms of homelessness assistance available pursuant to the CARES Act).
[27] N.Y. State Department of Health, New York State's COVID-19 Vaccination Program (October 2020), pp. 42, 86.
[28] Federal Emergency Management Agency, *FEMA Programs Helping People from Coast to Coast* (Apr. 20, 2020), https://www.fema.gov/news-release/20200727/fema-programs-helping-people-coast-coast.

settings, finding that evictions could be "detrimental to public health control measures to slow the spread of SARS-Cov-2."[29] State officials have issued a similar moratorium,[30] though experts have said it is "full of loopholes."[31]

The Threat of the COVID-19 Pandemic to Homeless New Yorkers

75. Prior to SARS-CoV-2's arrival in the United States, New York City was already grappling with record-breaking levels of homelessness.[32] Due to the ongoing shortage of affordable and accessible housing for extremely low-income individuals in New York City, the number of single homeless adults in shelters continued to break records during the early months of 2020, before SARS-CoV-2 began to ravage the City.[33]

76. In New York City, single adults are traditionally housed in congregate shelters, which means residents share sleeping dorms, bathrooms, eating areas, and recreational spaces with at least one other person but, more often, several other unrelated residents, and, in some cases, dozens. Residents can usually access social services and support on-site, and each shelter maintains a robust staff roster to provide this assistance. Due to the fluid nature of the sheltered

[29] Centers for Disease Control and Prevention, *Federal Register Notice: Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19* (Sept. 2, 2020), https://www.cdc.gov/coronavirus/2019-ncov/covid-eviction-declaration.html.
[30] New York State, *No. 202.66: Continuing Temporary Suspension and Modification of Laws Relating to the Disaster Emergency* (Sept. 29, 2020), https://www.governor.ny.gov/news/no-20266-continuing-temporary-suspension-and-modification-laws-relating-disaster-emergency.
[31] Caroline Spivack, *Governor Cuomo's 'Moratorium' on Evictions Won't Really Stop Evictions* (Sept. 30, 2020), https://ny.curbed.com/2020/9/30/21494542/nyc-eviction-moratorium-cuomo-tenants-landlords.
[32] Coalition for the Homeless, *State of the Homeless 2020* (Mar. 10, 2020), https://www.coalitionforthehomeless.org/wp-content/uploads/2020/03/StateofTheHomeless2020.pdf.
[33] The number of single adults housed in shelters has since risen higher than the January and February 2020 levels due in part to the economic and social impacts of the pandemic on an already strained social safety net. Coalition for the Homeless, *COVID-19 and Homelessness in New York City* (Jun. 9, 2020) https://www.coalitionforthehomeless.org/wp-content/uploads/2020/06/COVID19HomelessnessReportJune2020.pdf.

homeless population, a single resident living in a congregate shelter could interact with many new people each day in their living spaces, even if they did not leave the shelter.[34]

77. Further, many congregate shelters are housed in older buildings that had been previously used as armories or hospitals and can contain up to hundreds of residents under one roof; the largest shelter had as many as 851 men per night pre-pandemic. Bathroom facilities usually contain multiple showers, sinks, and toilets in one space. Meals are often distributed in a cafeteria and are either cooked on-site or brought in by a vendor. Residents sleep at least three feet apart, but, prior to COVID-19, there were as many as 60 people sleeping in one dorm.

78. Most shelters lack appropriate HVAC systems or ventilation, especially for sleeping areas and bathrooms. For example, in some shelters, it is not possible to open windows in order to circulate fresh air. Prior to the pandemic, congregate shelter spaces usually circulated air with fans, which can cause the virus to spread more easily and therefore are not safe in spaces of unrelated individuals.

79. In addition to the sheltered homeless population, there is a significant number of homeless New Yorkers who sleep outside or in public spaces, rather than assume the risks inherent in a congregate shelter setting during the pandemic. Sleeping rough exposes them to an array of other health and safety risks, but it does allow them to ensure they are not forced to share a sleeping space with an unrelated individual.

80. The connection between stable housing and good health is well-established, and research continues to show that homeless single adults exhibit poorer health outcomes and higher

[34] Over the course of City fiscal year 2019, 132,660 different homeless men, women, and children slept in the New York City municipal shelter system. Coalition for the Homeless, *Basic Facts About Homelessness: New York City* https://www.coalitionforthehomeless.org/basic-facts-about-homelessness-new-york-city/ (last visited Oct. 16, 2020).

mortality rates than the rest of the population, separate from the outcomes from the pandemic.[35] Individuals experiencing homelessness are more likely to suffer from chronic health conditions and disabilities, and they exhibit a higher incidence of mental illness and substance use and abuse.[36] These conditions may lead to homelessness, and also are exacerbated by the experience of homelessness, causing a spiral that can only be stopped with access to affordable permanent housing.

81. DHS estimates that 67 percent of single adults living in shelters have a disability that must be taken into account when making a determination about where to place the individual to ensure they have meaningful access to shelters and shelter-related services.[37]

82. Unsurprisingly, Black and Hispanic/Latinx New Yorkers are disproportionately affected by homelessness. Eighty-six percent of homeless single adults identify as Black or Hispanic, which is significantly higher than the 53 percent of New York City's population who identify as such.[38] Black and Hispanic/Latinx New Yorkers, whether housed or unhoused, are significantly more at risk of dying of coronavirus than white New Yorkers.[39]

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[35] O'Connell, JJ,MD *Premature Mortality in Homeless Populations: A Review of the Literature*. Nat'l Health Care for the Homeless Council (2005), http://sbdww.org/wp-content/uploads/2011/04/PrematureMortalityFinal.pdf; Nat'l Healthcare for the Homeless Council, *The Hard, Cold Facts About the Deaths of Homeless People* (Aug. 12, 2019) https:// nhchc.org/wp-content/uploads/2019/08/HardColdFacts.pdf.

[36] HUD Exchange, CoC Homeless Populations and Subpopulations Reports https://www.hudexchange.info/programs/coc/coc-homeless-populations-and-subpopulations-reports/ (last visited Oct. 16, 2020).

[37] Coalition for the Homeless, *State of the Homeless 2020* at p. 9 (Mar. 10, 2020), https://www.coalitionforthehomeless.org/wp-content/uploads/2020/03/StateofTheHomeless2020.pdf. The accommodations the City may offer to ensure meaningful access may include, for example, air conditioning, the ability to access certain medical equipment that is necessary for ongoing treatment and maintenance of various diagnoses, placement in a building with elevators (or without stairs), access to a refrigerator to store medication or extra time to fill out paperwork or process notices. *Butler* Stipulation, par. 43.

[38] Coalition for the Homeless, *State of the Homeless 2020* (Mar. 10, 2020), https://www.coalitionforthehomeless.org/wp-content/uploads/2020/03/StateofTheHomeless2020.pdf.

[39] New York Times, *Virus Is Twice as Deadly for Black and Latino People Than Whites in N.Y.C.* (Apr. 8, 2020, updated Jun. 26, 2020), https://www.nytimes.com/2020/04/08/nyregion/coronavirus-race-deaths.html; Common Dreams, *Race, Class, and Covid-19 in the United States* (Oct. 14, 2020), https://www.commondreams.org/views/2020/10/14/race-class-and-covid-19-united-states.

83. Congregate shelter settings, the prevalence of health risk factors among residents, and the disproportionate number of Black and Hispanic/Latinx New Yorkers who experience homelessness have led to a mortality rate that is significantly higher than the general population of New York City.[40]

84. The age-adjusted COVID-19 mortality rate through the end of August 2020 for sheltered homeless single adults was 409 deaths per 100,000 people – 80 percent higher than the general population of New York City.[41] While the most deaths due to COVID-19 occurred in April, a higher number of deaths than expected among sheltered New Yorkers continued through July, even after the hotel program was being used.[42]

85. The type of shelter setting and prevalence of risk factors among homeless people affect their exposure to SARS-CoV-2 and vulnerability to COVID-19. The age-adjusted COVID-19 mortality rate for those staying in shelters varies by sub-population and is highest among those living in congregate shelters (most single adults) and those with higher rates of disability and risk factors (adult families and single adults).[43]

86. New York City also calculates the age-adjusted COVID-19 mortality rates among racial and ethnic groups, showing the disproportionate impact that COVID-19 has had on Black and Hispanic/Latinx communities. Nearly 90 percent of single adults and family heads in shelters are Black or Hispanic/Latinx. The age-adjusted COVID-19 mortality rates through the end of August 2020 for sheltered homeless single adults and adult families in shelters surpasses those of Black and Hispanic/Latinx New Yorkers overall, and the COVID-19 age-adjusted

[40] Coalition for the Homeless, Age-Adjusted Mortality Rate for Sheltered Homeless New Yorkers https://www.coalitionforthehomeless.org/age-adjusted-mortality-rate-for-sheltered-homeless-new-yorkers/ (last visited Oct. 16, 2020).
[41] *Id.*
[42] *Id.*
[43] *Id.*

mortality rate for homeless single adults was 233 percent higher than it was for white New Yorkers overall, underscoring the vast inequities that place this group in such grave danger of death upon exposure to COVID-19.[44]

87. Between 2008 and 2018, the number of seniors over the age of 65 living in shelters has increased from four to seven percent of the total single adult shelter population.[45] Furthermore, people experiencing homelessness can exhibit physical conditions of people 15-20 years older than their actual age, so that the spread of SARS-CoV-2 among middle-aged to older shelter residents is more dangerous than for the population as a whole.[46] DHS recently provided data to Petitioner Coalition for the Homeless showing that more than half of single adults who have died from COVID-19 were in the 45-64 age group.

88. The CDC recently recognized the inherent danger of congregate shelters during this time in its order on evictions, noting that "The ability of [congregate] settings to adhere to best practices, such as social distancing and other infection control measures, decreases as populations increase."[47] This danger is inherent not just for the residents but also for the staff who work in the shelters providing services and support. Quite simply, it is not possible for residents or staff to safely remain in a congregate setting during the COVID-19 pandemic. The CDC also has consistently recommended that unsheltered people in encampments be allowed to

[44] Coalition for the Homeless, Age-Adjusted Mortality Rate for Sheltered Homeless New Yorkers https://www.coalitionforthehomeless.org/age-adjusted-mortality-rate-for-sheltered-homeless-new-yorkers/ (last visited Oct. 16, 2020).
[45] Coalition for the Homeless, *State of the Homeless 2020* (Mar. 10, 2020), https://www.coalitionforthehomeless.org/wp-content/uploads/2020/03/StateofTheHomeless2020.pdf.
[46] Rebecca T. Brown, MD, MPH, et al., *Geriatric Conditions in a Population-Based Sample of Older Homeless Adults*, The Gerontologist, Volume 57, Issue 4 at 757–766 (Aug. 2017), https://doi.org/10.1093/geront/gnw011.
[47] Centers for Disease Control and Prevention, *Federal Register Notice: Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19* (Sept. 2, 2020), https://www.cdc.gov/coronavirus/2019-ncov/covid-eviction-declaration.html.

remain in place unless adequate space could be offered to them to allow for appropriate social distancing.[48]

Respondents' Arbitrary and Ad-Hoc Process in Failing to Provide Safe Shelter Placements

89. Despite Respondents' own guidance that social distancing is necessary to stem the spread of the virus, their early response to providing shelter during the pandemic was marked by inaction and inconsistency, and they arbitrarily resisted taking actions needed to provide safe shelter to homeless individuals in the City.

90. In March 2020, as the spread of SARS-CoV-2 in New York City became public and travel to the City dropped precipitously, hundreds of thousands of hotel rooms remained vacant. Hotel occupancy rates in the City fell by more than 80 percent, to just above 15 percent of rooms occupied.[49] Dozens of hotels closed permanently due to the persistent vacancies.

91. In light of the vacancies and the continued risk presented by the spread of SARS-CoV-2 to individuals living in congregate shelters, advocates across the City—including Petitioner Coalition for the Homeless—called for Respondents to move individuals living in congregate shelters into vacant hotel rooms where they could effectively social distance.

92. On March 9th, Governor Cuomo and Mayor De Blasio began recommending social distancing.[50] On March 15, 2020, DOHMH issued an alert stating that "[w]idespread community transmission of SARS-CoV-2, the virus that causes COVID-19, is occurring in New York City (NYC)," that "[a]ll New Yorkers are asked to practice social distancing, meaning that

[48] Center for Disease Control and Prevention, Interim Guidance on Unsheltered Homelessness and Coronavirus Disease 2019 (COVID-19) for Homeless Service Providers and Local Officials, https://www.cdc.gov/coronavirus/2019-ncov/community/homeless-shelters/unsheltered-homelessness.html (last visited Oct. 16, 2020).
[49] The Real Deal, *NYC Hotels See 80% Dive in Occupancy* (Apr. 1, 2020), https://therealdeal.com/2020/04/01/nyc-hotels-see-80-dive-in-occupancy/.
[50] CBS New York, *MTA Officials And More Discuss 'Social Distancing' As Means To Combat Coronavirus Spread* (Mar. 9, 2020), https://newyork.cbslocal.com/2020/03/09/coronavirus-social-distancing/.

they should stay at home to the extent possible and only leave home for essential tasks," and that "[a]ll New Yorkers should consider themselves as possibly exposed to SARS-CoV-2 and must therefore self-monitor for COVID-19 like illness—especially those who have had close contact with possible or confirmed COVID-19."[51]

93. On the same date, DOHMH issued separate COVID-19 guidance for "congregate settings," including shelters, assisted living facilities, group homes, prisons, detention centers, nursing homes, schools, and workplaces. Noting that "[u]nless initial responses are effective, outbreaks in congregate settings will take place," and that "[h]omeless shelters will have unique challenges in regard to" preventing such outbreaks, the DOHMH guidance recommended that anyone with COVID-19-like illness be "isolated in a private bedroom with private bathroom."[52]

94. On March 16, 2020, a day after the release of the DOHMH guidance, Mayor de Blasio announced that there would be 250 rooms available to New Yorkers in isolation hotels,[53] but he provided little information about the criteria by which these rooms would be allocated and to whom.

95. As of March 17, 2020, the Mayor had informed New Yorkers of the need to begin "sheltering in place" due to the risk of spreading SARS-CoV-2. But homeless single adults in New York, who number in the tens of thousands, primarily live in congregate shelters, and thus lack the ability to shelter while also following the City's guidance to social distance.

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[51] New York City DOHMH, *Health Alert #6* (Mar. 15, 2020), https://www1.nyc.gov/assets/doh/downloads/pdf/han/alert/2020/covid-19-03152020.pdf.
[52] New York City DOHMH, *Coronavirus Disease (COVID-19) Guidance for Congregate Settings* (Mar. 15, 2020), https://static1.squarespace.com/static/562a3197e4b0493d4ffd3105/t/5e6fbe63aecb6364dfb669d0/1584381543457/UPDATEDguidance-for-congregate-settings-covid19.pdf.
[53] Isolation hotels offer people who may have COVID-19 or COVID-like-illness an opportunity to socially distance from other people with whom they live. They are distinct from quarantine hotels, where people suspected of having been exposed to the virus may be mandated by public health authorities to quarantine and "de-densification" hotels, discussed below.

96. On March 20, 2020, Governor Cuomo issued New York's first "stay at home" order, which was termed a "pause" and required all non-essential businesses to close statewide a few days later.[54]

97. On March 25, 2020, the Commissioner of DOHMH issued an official public health order stating that providing shelter placements to "individuals in congregate settings will further the spread of [COVID-19], endangering populations that are particularly susceptible to COVID-19 infection."[55] The Commissioner directed City agencies responsible for providing shelter placements to "locate, secure, operate, and make available non-congregate sheltering to any person needing to be isolated or quarantined in order to prevent the spread of COVID-19."[56]

98. Respondents failed to heed the Commissioner's order in a timely and consistent manner. Individuals in shelters who tested positive for or were exposed to SARS-CoV-2 were frequently denied isolation placements and told to remain in congregate shelter. Other SARS-CoV-2-positive individuals were denied isolation placements because they had not received DHS services in the prior 12 months. In some cases, hospitals advised that no access to isolation placements was possible for patients with mild COVID-19-like symptoms for whom no test would be performed due to testing limits in place at the time.

99. On March 26, 2020, undersigned counsel The Legal Aid Society wrote a letter to the City chronicling the chaotic situation in shelters, noting that there were people sick or recovering from COVID-19 living in congregate shelters and exposing others. In the letter, The Legal Aid Society stated that "[i]n the face of the unprecedented challenges posed by the

[54] State of New York, Office of the Governor, *Governor Cuomo Signs the 'New York State on PAUSE' Executive Order* (Mar. 20, 2020) https://www.governor.ny.gov/news/governor-cuomo-signs-new-york-state-pause-executive-order.
[55] Affirmation of Joshua Goldfein ("Goldfein Affirm.") Ex. 1 (Order of the Commissioner of Health and Mental Hygiene of the City of New York for the Provision of Non-Congregate Shelters, dated March 25, 2020).
[56] *Id*.

COVID-19 pandemic in New York City, it is now clear that the only way for the City to meet its [legal] obligations . . . and its basic responsibilities to protect the health and safety of New Yorkers is to immediately provide hotel placements to everyone who needs one."[57]

100. In April, as New York City became the worldwide epicenter of the COVID-19 pandemic, Respondents entered into a contract with the Hotel Association of New York to provide hotel rooms to homeless individuals living in congregate shelters.[58] On April 11, 2020, Respondents first began moving greater numbers of homeless individuals into vacant hotel rooms.

101. The Mayor stated that Respondents would be prioritizing "seniors," "anyone with symptoms of COVID-19 or who tested positive," and "anybody in shelters where it's been difficult to achieve social distancing." In fact, the last category would include anyone in shelters. Social distancing, as is now universally understood, is not possible in congregate shelters, where hundreds of people share sleeping, bathing, eating, and recreational space.

102. In the first phase of their hotel program, Respondents focused their efforts on moving individuals who were at least 70 years old and some of the individuals in the most densely packed shelters, but they refused to move individuals who shelter staff did not think could live independently. In all, the City moved only 2,500 of the over 13,000 single adults in DHS shelters who were not already placed in commercial hotels, leaving thousands still living in shelters where it was "difficult to achieve social distancing."[59]

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[57] Goldfein Affirm. Ex. 2 (Letter from Legal Aid Society dated March 26, 2020).
[58] New York Daily News, Coronavirus, *NYC hotels 'lining up' to take homeless during coronavirus crisis: advocate* (Apr. 30, 2020), https://www.nydailynews.com/coronavirus/ny-coronavirus-hotels-homeless-subway-20200430-gbad6ot5gfg47akgf2luihj2mi-story.html; *see also* New York One, Homelessness, *Exclusive: Close to 20 Percent of NYC Hotels are Housing the Homeless* (Jun. 25, 2020), https://www.ny1.com/nyc/all-boroughs/homelessness/2020/06/25/close-to-20-percent-of-nyc-hotels-are-housing-the-homeless.
[59] At the start of the pandemic, approximately 3,500 single adults were already living in commercial hotel placements because the City lacked adequate space in the regular shelter system to accommodate them.

103. Petitioner Coalition for the Homeless and the Speaker of the New York City Council, along with other advocacy and community organizations, urged the Mayor and DHS to move all homeless individuals out of congregate shelters and offer single-occupancy hotel rooms to them and to unsheltered New Yorkers in order to reduce their risk of contracting SARS-CoV-2.

104. Respondents strenuously resisted these efforts, citing the cost as a primary impediment to moving people to hotels, despite the federal government's reimbursement of at least 75 percent of the cost of providing safe shelter placements for these individuals.[60] Respondents also continued to disrupt and dislodge unsheltered people sleeping rough in New York City, despite CDC guidance recommending that they be permitted to shelter in place.[61]

105. At the same time that Respondents refused to move all homeless individuals into hotel rooms, Respondents directed all other New Yorkers to socially distance. For example, on April 18, 2020, the Mayor urged all New Yorkers to remain socially distant and to report on others who failed to socially distance, requesting that people send in photographs to "help make sure that people are kept apart and that's going to stop the disease from spreading and that's going to save lives."[62]

[60] *See* Council of City of NY Committee on General Welfare Int. No. 1927, A Local Law in relation to requiring private rooms for adults experiencing homelessness (Aug. 20, 2020).
[61] CDC, *Interim Guidance on Unsheltered Homelessness and Coronavirus Disease 2019 (COVID-19) for Homeless Service Providers and Local Officials* (Aug. 6, 2020), https://www.cdc.gov/coronavirus/2019-ncov/community/homeless-shelters/unsheltered-homelessness.html; Matt Troutman, *NYC Forces Homeless Off Streets Despite Coronavirus Shelter Fears* (Mar. 30, 2020), Patch, https://patch.com/new-york/prospectheights/nyc-forces-homeless-streets-despite-coronavirus-shelter-fears.
[62] Mary Kay Ling, et al., *De Blasio Urges New Yorkers to Snitch on Social Distance Rule Breakers* (Apr. 18, 2020), N.Y. Post, https://nypost.com/2020/04/18/de-blasio-urges-new-yorkers-to-snitch-on-social-distance-rule-breakers/.

106. By the end of April 2020, 94 of the City's roughly 100 congregate shelters had reported at least one positive COVID-19 case.[63]

107. On April 29, 2020, the Mayor announced that he would move 1,000 people out of congregate shelters and into double-occupancy hotel rooms each week. Double-occupancy rooms do not allow unrelated individuals to safely socially distance.

108. Respondents did not meet even this goal. In late May 2020, nearly 8,000 single adults remained in congregate shelters.

109. Respondents continued to resist moving all of these individuals into single-occupancy hotel rooms, with their rationale shifting from cost to the stated objection that hotels did not offer the services needed for a significant portion of the homeless population. Neither of these reasons are supported by the facts. FEMA had already agreed to fund at least 75 percent of the cost of the hotel rooms, and many shelter residents do not require additional services. For those that do, clinics and service providers across the City are able to operate at hotels and provide necessary services to shelter residents, including the same case management and social services provided in congregate sites.

110. Not only did Respondents fail to provide all single adults with single-occupancy rooms, but clients who have been moved to single rooms are often sent back to congregate sites as punishment for minor infractions of shelter rules, such as smoking cigarettes and loitering in the general vicinity of the hotels, without any regard for the risks to their health in doing so.

111. As of July 2020, Respondents had moved approximately 8,700 single adults to de-densification hotels and left approximately 5,500 single adults in congregate shelter settings. On

[63] Akash Mehta, *Mayor Bill De Blasio Says New York City Can't Afford Hotel Rooms For the Homeless – But FEMA Could Actually Foot The Bill* (May 1, 2020), The Intercept, https://theintercept.com/2020/05/01/coronavirus-new-york-city-homeless-fema/.

August 12, 2020, undersigned counsel The Legal Aid Society again wrote to Respondents requesting that all single homeless adults be offered a single-occupancy hotel room.[64] But, upon information and belief, the number of single adults in congregate shelter has remained at roughly 5,500 as of the date of this filing.

112. Thousands of homeless New Yorkers remain in congregate shelters or double-occupancy hotel rooms, putting them at greater risk of contracting or spreading SARS-CoV-2. Individuals in double-occupancy rooms must share bathrooms, eat in the same enclosed space, and sleep without masks on with adults unrelated to them, among other activities that could lead to exposure.[65]

113. Further, shelter residents have observed widespread failure by congregate shelter staff to adequately and appropriately use personal protective equipment, resulting in heightened risk of exposure for those who do not have their own living space. Unsheltered New Yorkers who are aware of these facts have chosen to remain on the streets rather than risk exposing themselves to the virus in New York City shelters.

114. At present, there are still a large number of vacant hotel rooms available in New York City. As of September 2020, the hotel occupancy rate across the City was approximately 38 percent.[66]

115. Respondent DSS has stated that, in determining whether to place individuals in a single-occupancy room, it cannot make its own determination of what is safe, and it must follow federal, state, and local health guidance.

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[64] Goldfein Affirm. Ex. 3 (Letter from Legal Aid Society dated August 12, 2020).
[65] There are also a small number of individuals who have been placed in triple-occupancy hotel rooms. All of Petitioners' arguments and allegations with respect to individuals' placement in double-occupancy rooms applies equally to those in triple-occupancy rooms.
[66] Jimmy Vielkind, *New York City Hotels Fear Raft of Closures Due to Coronavirus* (Sept. 16, 2020), Wall Street Journal, https://www.wsj.com/articles/new-york-city-hotels-fear-raft-of-closures-due-to-coronavirus-11600257600.

116. The federal, state, and local guidance is clear that adequate social distancing is a critical component of stemming the spread of the virus and saving lives. DHS is aware of the recent CDC guidance, referenced above, describing the aerosol transmission of SARS-CoV-2 and the risks of any form of congregate shelters. Despite this knowledge and awareness, DHS has refused to alter its approach to conform to CDC guidance.

117. Respondent DSS has left purported "problem clients" in congregate settings, who it claims are at higher risk of suicide and/or drug overdose or have higher levels of psychiatric needs, and thus are purportedly better served in semi-private rooms or congregate settings.

118. Further, even if these determinations were proper, there is no scientific basis for this determination or for privileging these criteria over the risks of COVID-19. However, DHS has not conducted the analysis necessary to assess the individual needs of the more than 5,000 individuals remaining in congregate shelter.

119. While Respondent DSS has stated that it is undertaking a case-by-case analysis to determine who should be placed in a single-occupancy room, that is not supported by the facts. In fact, DSS is not conducting these case-by-case analyses to provide single-occupancy rooms to those most at risk. Many individuals in congregate shelters and double-occupancy rooms, including the individual Petitioners, are older than 65 or have medical conditions identified by the CDC as placing them at greater risk of severe consequences from COVID-19. These individuals have not received any kind of formal or considered determination as to their need to be placed in single-occupancy hotel rooms.

120. Because Respondents have failed to conduct these analyses and have not appropriately assessed the risks to those in congregate shelters as they committed and are obligated to do, there are significant numbers of individuals, including the individual Petitioners,

who fall into high-risk categories for COVID-19 who are currently in congregate shelters or double-occupancy hotel rooms.

121. In any event, Respondents need not undertake a case-by-case analysis because all homeless New Yorkers should be offered the option to stay in single-occupancy hotel rooms to effectively socially distance and keep themselves safe during the course of the pandemic. Given the widespread availability of vacant hotel rooms and the risks presented by COVID-19 even to healthy individuals, single-occupancy rooms should be made available for each individual who is currently in a congregate shelter or a double-occupancy room, and for those who have declined to enter congregate shelters or a double-occupancy room due to the risks posed by exposure to SARS-CoV-2.

122. Respondents have failed to implement a comprehensive program for the protection of homeless individuals. Rather than relying on the input of public health experts in making their decisions, Respondents' actions have been ad-hoc and arbitrary and have contravened public health guidance.

123. More recently, rather than moving more homeless individuals into single-occupancy hotel rooms or conducting individual analyses regarding such individuals' need for single-occupancy hotel rooms, Respondents have suggested that they may soon begin moving people out of hotel rooms and back into congregate shelters.[67]

124. Last month, after residents of Manhattan's Upper West Side objected to the presence of de-densification hotels for single adults in their neighborhood, Mayor de Blasio announced a plan to move the residents of one of these sites, the Lucerne Hotel, to another

[67] *See* Amanda Luz Henning Santiago, *NYC's Plan to Move Homeless People Back into Shelters* (Aug. 18, 2020), City & State New York, https://www.cityandstateny.com/articles/policy/housing/nycs-plan-move-homeless-people-back-shelters.html.

Manhattan shelter serving families, many of whom included someone living with a disability. The Mayor's plan would have displaced these families around the City to make room for the men from the Lucerne.

125. The Mayor also announced a plan to move residents of a second de-densification hotel for single adults in Long Island City to a family shelter in Brooklyn, again displacing these families just as school was about to start. Neither of these moves were consistent with the City's policies and were contrary to guidance offered by the City's own public health officials. The Mayor subsequently abandoned the plan for three of the sites but still plans to move the men at the Lucerne, subject to pending litigation.

126. The risk of a resurgence in COVID-19 cases in New York City remains high, and it will remain high for months while no vaccine is widely available. Cases continue to rise across the United States, and New York City has begun to experience upticks in COVID-19 cases in various parts of the City, including recent reports of positive coronavirus tests of people in shelter.

127. As the weather becomes colder, more homeless individuals will need to access shelters. The failure to move individuals in congregate shelters and double-occupancy rooms into single-occupancy rooms prior to the winter and offer single-occupancy hotel room placements to people who may yet come into the shelter system will increase the spread of SARS-CoV-2 and put Petitioners and the New York City homeless population at grave risk of harm, as well as hinder efforts to stem the spread of the virus in the City at large.

CLASS ALLEGATIONS

128. The Petitioners bring this class action pursuant to Article 9 of the New York Civil Practice Law and Rules on behalf of all single adults in New York City who are entitled to shelter safe from significant health risks, who have not received a placement in a single-

occupancy room (collectively, the "Right to Shelter Class"), as well as the following two sub-classes:

a. all members of the Right to Shelter Class who are at heightened risk of severe illness or death from the virus that causes COVID-19 by virtue of either (or both) their age or medical conditions as identified by the CDC ("Heightened Risk Class"); and

b. all members of the Right to Shelter Class who have a disability within the meaning of the ADA, the Rehabilitation Act, the New York State Human Rights Law, or the New York City Human Rights Law ("Disability Class").

129. The classes are so numerous that joinder of all members is impractical. There are currently more than 17,191 estimated members of the Right to Shelter Class, and the two subclasses—the Heightened Risk Class and the Disability Class—number in the thousands.

130. There are questions of law and fact that are common to the class that predominate over questions affecting only individual members, including but not limited to the following:

a. whether Respondents refused to provide single-occupancy rooms that would allow single homeless individuals who are living or will live in congregate shelters and double-occupancy hotel rooms to safely socially distance during the COVID-19 pandemic, and whether such refusal is arbitrary and capricious and contrary to law;

b. whether Respondents failed to provide adequate processes through which heightened-risk New Yorkers' would receive individualized determinations about their right to a single-occupancy hotel room, and whether such failure violates procedural due process rights; and

c. whether Respondents refused to provide single-occupancy hotel rooms to single homeless adults with medical conditions identified by the CDC, and whether such refusal is discriminatory under the ADA and the Rehabilitation Act.

131. The claims of the class representatives are typical of the claims of the class members, and, by pursuing their own interest, the class representatives will advance the interests of the absent class members.

132. The class representatives will fairly and adequately protect the interests of the class. Since each class member wishes to have the option to be sheltered in a single-occupancy room, there are no conflicts of interest between the class representatives and the absent class members, and the class representatives will vigorously prosecute this action on behalf of the classes.

133. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. The class members do not have the means to pursue individual actions against the Respondents.

134. Additionally, the prosecution of separate actions by the class members would create a risk of inconsistent or varying adjudications, and would unduly burden the courts.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

Claims Against All Respondents by All Petitioners for Arbitrary and Capricious Action (Failure to Offer Single-Room Placements, on Behalf of the Right to Shelter Class)

135. Petitioners repeat and re-allege the allegations of paragraphs 1 through 134 as if set forth in their entirety here.

136. CPLR § 7803 permits the Court to review and rescind a determination by a public body that is affected by an error of law or arbitrary and capricious.

137. Pursuant to Article XVII, Section 1 of the New York Constitution, Respondents are required to provide safe shelter placements to homeless New Yorkers.

138. Respondents have issued directives requiring social distancing during the COVID-19 pandemic and have recognized the corresponding risk to individuals who live in congregate shelters with unrelated individuals and are therefore unable to practice social distancing.

139. Despite these recognized risks and the availability of vacant hotel rooms, Respondents have refused to offer single-occupancy hotel rooms to Petitioners and the class of all single adults living in congregate shelters or double-occupancy hotel rooms or single adults who will enter the shelter system prior to scientific guidance stating it is safe to return to congregate shelters.[68]

140. Due to Respondents' refusal to do so, Petitioners and the Right to Shelter Class are at imminent risk of contracting SARS-CoV-2 and dire health consequences.

141. For this reason, Respondents' failure to provide single-occupancy hotel rooms to all homeless New Yorkers during the COVID-19 pandemic is arbitrary and capricious and affected by an error of law.

SECOND CAUSE OF ACTION

Claims Against All Respondents by Heightened Risk Petitioners for Arbitrary and Capricious Action (Failure to Offer Single-Room Placements, on behalf of the Heightened Risk Class)

142. Petitioners repeat and re-allege the allegations of paragraphs 1 through 141 as if set forth in their entirety here.

[68] On the eve of filing this Petition, Respondents offered Petitioner Corbin a single room on the night of October 22, 2020.

143. CPLR § 7803 permits the Court to review and rescind a determination by a public body that is affected by an error of law or arbitrary and capricious.

144. Pursuant to Article XVII, Section 1 of the New York Constitution, Respondents are required to provide safe shelter placements to homeless New Yorkers.

145. Respondents have issued directives requiring social distancing during the COVID-19 pandemic, recognizing the serious health risks to all New Yorkers.

146. Pursuant to CDC guidance, individuals with certain conditions are at increased risk of severe illness from the virus that causes COVID-19, as set forth in Paragraphs 60 and 61, *supra*.

147. Despite these recognized risks and the availability of vacant hotel rooms, Respondents have refused to offer single-occupancy hotel rooms to the Heightened Risk Class.

148. Due to Respondents' refusal to do so, the Heightened Risk Class is at imminent risk of contracting SARS-CoV-2 and dire health consequences.

149. For this reason, Respondents' failure to provide single-occupancy hotel rooms to all homeless New Yorkers with heightened risk conditions during the COVID-19 pandemic is arbitrary and capricious and affected by an error of law.

THIRD CAUSE OF ACTION

Claims Against All Respondents by Heightened Risk Petitioners for Arbitrary and Capricious Action (Failure to Offer Adequate Process, on Behalf of the Heightened Risk Class)

150. Petitioners repeat and re-allege the allegations of paragraphs 1 through 134 as if set forth in their entirety here.

151. CPLR § 7803 permits the Court to review and rescind a determination by a public body that is affected by an error of law or is arbitrary and capricious.

152. Pursuant to Article XVII, Section 1 of the New York Constitution, Respondents are required to provide safe shelter placements to homeless New Yorkers.

153. Respondents have issued directives requiring social distancing during the COVID-19 pandemic, recognizing the serious health risks to all New Yorkers.

154. Pursuant to CDC guidance, individuals with certain conditions are at increased risk of severe illness from the virus that causes COVID-19, as set forth in Paragraphs 60 and 61, *supra*.

155. Respondent DHS committed to making individualized determinations to ensure the safety of homeless New Yorkers at heightened risk of severe illness and death by providing them single-occupancy hotel rooms.

156. Respondents and their agents have not made those individualized determinations for the individual Petitioners and the Heightened Risk Class.

157. For this reason, Respondents' failure to provide individualized determinations as to the entitlement to single-occupancy hotel rooms to all homeless New Yorkers with heightened risk conditions during the COVID-19 pandemic is arbitrary and capricious and affected by an error of law.

FOURTH CAUSE OF ACTION

Claims Against Respondents for Violations of the Due Process Clause of the United States Constitution (Failure to Offer Adequate Process, on Behalf of the Right to Shelter Class)

158. Petitioners repeat and re-allege the allegations of paragraphs 1 through 134 and 151 through 157 as if set forth in their entirety here.

159. Petitioners and the classes have a protected property interest in their right to safe shelter placements.

160. Petitioners and the classes have a protected liberty interest in their right to be safe from significant risks to their health.

161. Respondents' failure to provide or require their agents to provide individualized determinations, adequate notice, or an opportunity to be heard as to Petitioners' and the classes' entitlement to single-occupancy hotel rooms was in violation of Petitioners' right to due process of law as protected under the Fourteenth Amendment of the United States Constitution.

FIFTH CAUSE OF ACTION

Claims Against Respondents for Violations of the Due Process Clause of the New York State Constitution (Failure to Offer Adequate Process, on Behalf of the Right to Shelter Class)

162. Petitioners repeat and re-allege the allegations of paragraphs 1 through 134 and 151 through 161 as if set forth in their entirety here.

163. Petitioners and the classes have a protected property interest in their right to safe shelter placements.

164. Petitioners and the classes have a protected liberty interest in their right to be safe from significant risks to their health.

165. Respondents' failure to provide or require their agents to provide individualized determinations, adequate notice, or opportunity to be heard as to Petitioners' and the classes' entitlement to single-occupancy hotel rooms was in violation of Petitioners' right to due process of law as protected under Article I § 6 of the New York State Constitution.

SIXTH CAUSE OF ACTION

Claims Against Respondents for Violations of the Americans with Disabilities Act (On Behalf of the Disability Class)

166. Petitioners repeat and re-allege the allegations of paragraphs 1 through 134 as if set forth in their entirety here.

A. Discrimination Claims

167. Title II of the ADA prohibits discrimination against individuals with disabilities accessing public services: "[N]o qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." 42 U.S.C. § 12132.

168. The ADA further requires public entities to make reasonable modifications to public services programs to avoid discrimination on the basis of disability: "A public entity shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity." 28 C.R.F. § 35.130(b)(7).

169. Respondents are "public entities" within the meaning of the ADA, 42 U.S.C. § 12131(1), and its implementing regulations, 28 C.F.R. 35.104.

170. Petitioners with medical conditions identified by the CDC are qualified individuals with disabilities. *See* 42 U.S.C. § 12131(2); 28 C.F.R. § 35.104; 28 C.F.R. § 35.108. The identified medical conditions place these Petitioners at increased risk of severe illness or death from COVID-19.

171. Respondents discriminated and continue to discriminate against Petitioners and the Disability Class in violation of 42 U.S.C. § 12132 and its implementing regulations, 28 C.F.R. § 35.130, in the following ways:

a. By failing to provide reasonable modifications necessary for them to obtain safe shelter placements in the form of single-occupancy rooms in violation of 28 C.F.R. § 35.130(b)(7);

b. By failing to provide the Disability Class with temporary shelter placements and other DHS program benefits in a manner that is as effective in affording equal opportunity to obtain the same result, gain the same benefit and reach the same level of achievement as that provided to others, in violation of 28 C.F.R. § 35.130(b)(1)(ii) & (iii); and

c. By using methods of administration that subject Petitioners to discrimination in violation of 28 C.F.R. § 35.130(b)(1)(ii)–(iii).

B. Notice Claim

172. Respondents violated the ADA by failing to inform the Petitioners and the Disability Class of their rights under the ADA and the manner in which they may seek reasonable modification of Respondents' policies and by failing to accommodate their disabilities in the process of placing them in congregate shelters and double-occupancy hotel rooms in violation of 28 C.F.R. § 35.106.

SEVENTH CAUSE OF ACTION

Claims Against Respondents for Violations of the Rehabilitation Act (On Behalf of the Disability Class)

173. Petitioners repeat and re-allege the allegations of paragraphs 1 through 134 and 167 through 172 as if set forth in their entirety here.

A. Discrimination Claims

174. Respondents are "recipient[s]" of "federal financial assistance," as defined by Section 504 of the Rehabilitation Act of 1973 and by implementing regulations promulgated by the U.S. Department of Justice and the U.S. Department of Health and Human Services, thereby

rendering the Respondents subject to Section 504. 29 U.S.C. § 794(b)(1); 28 C.F.R. § 41.3(d)–(e); 45 C.F.R. § 84.3(f)–(h).

175. The administration by Respondents of the temporary shelter program, which is funded in part with federal financial assistance, constitutes "programs or activities" subject to Section 504 of the Rehabilitation Act of 1973. 29 U.S.C. § 794(b)(1).

176. Petitioners with medical conditions identified by the CDC have at least one "disability," as that term is used in Section 504 of the Rehabilitation Act. Like the ADA, Section 504 defines a disability as a physical or mental impairment that substantially limits one or more of the major life activities. 29 U.S.C. § 705(9)(B) & (20)(B).

177. Petitioners with medical conditions identified by the CDC are considered "handicapped person[s]," as that term is defined in regulations implementing Section 504. Section 504 regulations define a handicap as a physical or mental impairment that substantially limits one or more of the major life activities of such individual. 28 C.F.R. § 41.31(a) and 45 C.F.R. § 84.3(j), (l).

178. Petitioners with medical conditions identified by the CDC meet the essential eligibility requirements for the receipt of temporary shelter services and therefore are considered "qualified handicapped person[s]," as that term is defined in regulations implementing Section 504. 28 C.F.R. § 41.32 and 45 C.F.R. § 84.3(1).

179. Respondents discriminated and continue to discriminate against Petitioners and the Disability Class in violation of 29 U.S.C. § 794(a) and its implementing regulations, 28 C.F.R. § 41.51 and 45 C.F.R. § 84.4, in the following ways:

a. By failing to provide reasonable modifications necessary for Petitioners and the Disability Class to participate in the temporary shelter program in the form of single-occupancy rooms in violation of 29 U.S.C. § 794(a);

b. By failing (i) to afford Petitioners and the Disability Class such benefits and services as are offered to individuals without disabilities in a manner that is equal to others; and (ii) to provide them with benefits in a manner that is as effective in affording equal opportunity to obtain the same result, gain the same benefit, and reach the same level of achievement as that provided to others in violation of 28 C.F.R. § 41.51(b)(1)(ii)–(iii); 45 C.F.R. §§ 84.4(b)(2) and 84.4(b)(1)(ii)–(iii); and

c. By using methods of administration that subject the Petitioners to discrimination in violation of 28 C.F.R. §§ 41.51(b)(3)(i)–(ii) and 45 C.F.R. § 84.4(b)(4)(i)–(ii).

180. With respect to each kind of discrimination described in paragraphs 179(a)–(c) above, Respondents discriminated or continue to discriminate against Petitioners and the Disability Class because of their disabilities.

B. Notice Claim

181. Respondents violated Section 504 of the Rehabilitation Act by failing to inform Petitioners and the Disability Class of their rights under the Rehabilitation Act and the manner in which they may seek a reasonable modification of Respondents' policies and by failing to accommodate their disabilities in the process of placing them in temporary shelter in violation of 28 C.F.R. § 39.111 and 45 C.F.R. § 84.8(a).

EIGHTH CAUSE OF ACTION

Claims Against Respondents for Violations of § 296.2(a) of the New York State Human Rights Law
(On Behalf of the Disability Class)

182. Petitioners repeat and re-allege the allegations of paragraphs 1 through 134 and 167 through 181 as if set forth in their entirety here.

183. The shelter program administered by Respondents is a public accommodation. N.Y. Exec. Law § 292(9).

184. Petitioners with medical conditions identified by the CDC are people with a disability within the meaning of N.Y. Exec. Law § 292(21).

185. Respondents subjected and continue to subject Petitioners and the Disability Class to discrimination in their civil rights on the basis of their disabilities by placing Petitioners and the Disability Class in shelter settings that subject them to increased risk of mortality from COVID-19, and adopting policies, procedures, and methods of administration that have a disparate impact on disabled persons in violation of the State Human Rights Law. N.Y. Exec. Law § 296.2(a).

NINTH CAUSE OF ACTION

Claims Against Respondents for Violations of the New York State Department of Social Services Regulations
(On Behalf of the Disability Class)

186. Petitioners repeat and re-allege the allegations of paragraphs 1 through 134 and 167 through 185 as if set forth in their entirety here.

187. Respondents discriminated and continue to discriminate against Petitioners and the Disability Class in violation of 18 N.Y.C.R.R. § 303.1 in the following ways:

a. By establishing policies and practices which have the effect of discriminating against Petitioners and the Disability Class on the basis of a handicap or disability in violation of 18 N.Y.C.R.R. § 303.1(a);

b. By denying Petitioners and the Disability Class an aid, care, service, or other benefit and privilege on the basis of a handicap in violation of 18 N.Y.C.R.R. § 303.1(b)(1); and

c. By restricting Petitioners and the Disability Class in the enjoyment of an advantage or privilege enjoyed by others receiving aid, care, services, and other benefits or privileges on the basis of their handicaps in violation of 18 N.Y.C.R.R. § 303.1(b)(4).

TENTH CAUSE OF ACTION

Claims Against Respondents for Violations of the New York City Human Rights Law (On Behalf of the Disability Class)

188. Petitioners repeat and re-allege the allegations of paragraphs 1 through 134 and 167 through 187 as if set forth in their entirety here.

189. Respondents are each a "person" subject to N.Y.C. Administrative Code § 8-107(4)(a).

190. Petitioners with medical conditions identified by the CDC have a disability within the meaning of N.Y.C. Administrative Code § 8-102(16).

191. Respondents discriminated and continue to discriminate against Petitioners and the Disability Class in violation of N.Y.C. Administrative Code § 8-107(4)(a) by refusing, withholding from, or denying Petitioners and the Disability Class accommodations, advantages, facilities, or privileges because of their disabilities, and by engaging in practices that have the effect of discriminating against them.

NO PRIOR APPLICATION

192. No prior application for this or any similar relief has been made in any court.

TRIAL DEMAND

193. Petitioners demand an evidentiary hearing on all causes of action so triable.

PRAYER FOR RELIEF

WHEREFORE, for all the foregoing reasons, Petitioners respectfully request that the Petition be granted and that this Court:

(A) Certify this action as a class action pursuant to CPLR § 902;

(B) Issue an order pursuant to Article 78 requiring Respondents to offer a single-occupancy hotel room to each individual Petitioner and the Right to Shelter Class for the duration of the COVID-19 pandemic;

(C) Issue an order pursuant to Article 78 of the CPLR requiring Respondents to offer a single-occupancy hotel room to each individual Petitioner and the Heightened Risk Class for the duration of the COVID-19 pandemic;

(D) Issue an order pursuant to the ADA, the Rehabilitation Act, the New York Human Rights Law, and the New York City Human Rights Law requiring Respondents to offer a single-occupancy hotel room to each individual Petitioner and the Disability Class for the duration of the COVID-19 pandemic;

(E) Issue an order requiring Respondents to develop policies and procedures to ensure that Petitioners, the Right to Shelter Class, the Heightened Risk Class, and the Disability Class are informed of their rights to safe shelter placements;

(F) Issue an order requiring Respondents to develop policies and procedures to ensure that Petitioners, the Right to Shelter Class, the Heightened Risk Class, and the Disability Class will have individualized determinations made regarding their entitlement to single-occupancy hotel rooms until public health officials have determined that it is safe for people to share congregate shelter living and sleeping spaces, including notice and an opportunity to be heard;

(G) Declare and adjudge, pursuant to CPLR § 3001, that Respondents' actions, policies, practices, omissions, and conditions described above are arbitrary and capricious and contrary to law in violation of Article 78 of the CPLR, and in violation of the rights of Petitioners under the ADA, the Rehabilitation Act, the Due Process Clause of the United States and New York State Constitutions, the New York State Human Rights Law, the New York State Social Services Law and its implementing regulations, and the New York City Human Rights Law;

(H) Award Petitioners reasonable attorneys' fees, as provided by the New York State Equal Access to Justice Act and as provided by CPLR § 909;

(I) Award costs and disbursements; and

(J) Grant such other and further relief as the Court may deem just and proper.

Dated: New York, New York
October 22, 2020

/s/ Joshua Goldfein

Judith Goldiner
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Attorneys for Petitioners

VERIFICATION

STATE OF NEW YORK)
ss.:
COUNTY OF NEW YORK)

MARLENE FISHER, being duly sworn, deposes and says:

I am a petitioner in the above-captioned action. I have reviewed the petition and know the contents to be true to my own knowledge, except to those matters alleged on information and belief, and, as to those matters, I believe them to be true.

Dated: New York, New York
October 22, 2020

Marleen Fisher
MARLENE FISHER

Sworn to and subscribed before me
this 22nd day of October, 2020

Notary Public

JOSHUA E. GOLDFEIN
Notary Public, State of New York
No. 02GO5022820
Qualified in New York County
Commission Expires Jan. 18, 2022

VERIFICATION

STATE OF NEW YORK)
ss.:
COUNTY OF NEW YORK)

TAMARA WILLIAMS, being duly sworn, deposes and says:

I am a petitioner in the above-captioned action. I have reviewed the petition and know the contents to be true to my own knowledge, except to those matters alleged on information and belief, and, as to those matters, I believe them to be true.

Dated: New York, New York
October 22, 2020

TAMARA WILLIAMS

Sworn to and subscribed before me
this 27 day of October, 2020

Notary Public

JOSHUA E. GOLDFEIN
Notary Public, State of New York
No. 02GO5022820
Qualified in New York County
Commission Expires Jan. 18, 1956 2022

VERIFICATION

STATE OF NEW YORK)
ss.:
COUNTY OF NEW YORK)

BJ ATHILL, being duly sworn, deposes and says:

I am a petitioner in the above-captioned action. I have reviewed the petition and know the contents to be true to my own knowledge, except to those matters alleged on information and belief, and, as to those matters, I believe them to be true.

Dated: New York, New York
October 22, 2020

BJ ATHILL

Sworn to and subscribed before me
this 22nd day of October, 2020

Notary Public

JOSHUA E. GOLDFEIN
Notary Public, State of New York
No. 02GO5022820
Qualified in New York County
Commission Expires Jan. 18, 1996 2022

VERIFICATION

STATE OF NEW YORK)
ss.:
COUNTY OF NEW YORK)

RODAISHA SMITH, being duly sworn, deposes and says:

I am a petitioner in the above-captioned action. I have reviewed the petition and know the contents to be true to my own knowledge, except to those matters alleged on information and belief, and, as to those matters, I believe them to be true.

Dated: New York, New York
October 22, 2020

R. Smith
RODAISHA SMITH

Sworn to and subscribed before me
this 23 day of October, 2020

Notary Public

JOSHUA E. GOLDFEIN
Notary Public, State of New York
No. 02GO5022820
Qualified in New York County
Commission Expires Jan. 18, 2022

VERIFICATION

STATE OF NEW YORK)
ss.:
COUNTY OF NEW YORK)

GARY CORBIN, being duly sworn, deposes and says:

I am a petitioner in the above-captioned action. I have reviewed the petition and know the contents to be true to my own knowledge, except to those matters alleged on information and belief, and, as to those matters, I believe them to be true.

Dated: New York, New York
October 22, 2020

GARY CORBIN

Sworn to and subscribed before me
this 22nd day of October, 2020

Notary Public

JOSHUA E. GOLDFEIN
Notary Public, State of New York
No. 02GO5022820
Qualified in New York County
Commission Expires Jan. 18, ~~1996~~ 2021

VERIFICATION

STATE OF NEW YORK)
ss.:
COUNTY OF NEW YORK)

DAVID GIFFEN, being duly sworn, deposes and says:

I am the Executive Director of Coalition for the Homeless, a petitioner in the above-captioned action. I have reviewed the petition and know the contents to be true to my own knowledge, except to those matters alleged on information and belief, and, as to those matters, I believe them to be true.

Dated: New York, New York
October 22, 2020

David Giffen

Sworn to and subscribed before me
this 22 day of October, 2020

Notary Public

JOSHUA E. GOLDFEIN
Notary Public, State of New York
No. 02GO5022820
Qualified in New York County
Commission Expires Jan. 18, ~~1956~~ 2022

Pursuant to
Executive order 202.7