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**VIA EMAIL**

Faith E. Gay, Esq.  
Lena Konanova, Esq.  
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Selendy Gay Elsberg PLLC  
1290 Avenue of the Americas  
New York, NY 10104

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

Dear Counselors:

We write regarding the State of New York's (the "State") letter dated August 15, 2023 (the "State Letter"), responding to the City of New York's (the "City") letter dated August 9, 2023 (the "City Letter"), outlining the City's requests for the State's aid in providing shelter and essential services to the unprecedented influx of migrant homeless individuals and families who have arrived in the City since April 2022 ("New Arrivals"). The City wishes to provide further information regarding the State action needed to address the ongoing influx of New Arrivals and address certain points raised in the State Letter.

The City would like to reiterate its appreciation and need for State assistance. We also appreciate the State's ongoing review of the proposals set forth in the City Letter. The State's partnership is of vital importance to the City's efforts to manage the dramatic influx of New Arrivals. The scale of the crisis, however, demands State leadership of a statewide solution.

## **I. STATE LEADERSHIP OVER THE RELOCATION OF NEW ARRIVALS**

### **a. Expedited Implementation & Expansion of MRAP Program**

The City reiterates its prior request for the expansion of the State Migrant Relocation Assistance Program (MRAP) and asks the State to set a goal of resettling 3,000 families by the end of 2023. The resettlement of 3,000 families would provide the City with some needed relief.

The City continues to work to identify MRAP-eligible families willing to resettle in counties outside New York. As of August 15, 2023, the City had identified 90 eligible families willing to relocate beyond the initial 17 families who expressed an interest in participating in MRAP referenced in the State Letter. In addition, as discussed further below, the City has continued to increase the pool of MRAP-eligible families by assisting in the preparation of over 2,000 asylum applications during the past six weeks.

Unfortunately, the State had yet to finalize certain aspects of MRAP's implementation when the City began identifying potential candidates for resettlement. For example, when the City first provided the State with a list of 272 eligible New Arrivals on June 7, 2023, the State had not yet contracted with the recruitment and outreach providers who would contact potential MRAP participants regarding the program. As of August 8, 2023, the State had contacted only 164 of the 272 individuals identified previously by the City. Similarly, the City's ability to disseminate information regarding MRAP to potential participants suffered initially from the State's delay in providing materials discussing the programs' terms and conditions approved for use in connection with outreach to potential participants. The City only received State-approved outreach materials on July 31, 2023.

The City notes that the State Office of Temporary and Disability Assistance (OTDA) appears to have accelerated efforts to resettle individuals through MRAP in recent weeks. For example, State representatives have now contacted all 272 potential participants identified initially by the City and 82 families have selected a county for resettlement and confirmed their enrollment in the program.<sup>1</sup>

To further expedite resettlement, the State should assist in the immediate placement of confirmed MRAP participants in hotels in their host county while they await more permanent housing so that participating families can enroll their children in local schools as soon as possible. The State should also provide housing providers with additional assistance in locating housing for MRAP participants. Currently, providers secure individual rental units

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<sup>1</sup> OTDA has also increased the frequency of its meetings with housing providers from once per week to twice.

matched to family sizes following a family's enrollment. This lag between enrollment and resettlement will create an increasingly significant bottleneck as enrollment rises.<sup>2</sup>

Finally, the City reiterates its request that the State permit New Arrivals who have yet to file asylum applications to participate in the program. The City suggests that the State arrange for the provision of legal services in MRAP participants' host counties to facilitate the completion of asylum applications following resettlement.<sup>3</sup>

**b. Additional Funding for the Asylum Application Help Center and Case Management**

The City requests that the State provide additional funding for the City's Asylum Application Help Center (the "Help Center"). Additional State funding for the Help Center would sustain the Help Center's rapid provision of legal services to New Arrivals and increase both the number of individuals with work authorizations and the pool of families with children eligible for resettlement through MRAP under the existing rules.

On June 25, 2023, the City received the \$10 million in State funds for the provision of legal services to New Arrivals referenced in the State Letter.<sup>4</sup> Upon receipt of these funds, the City took immediate steps to establish the Help Center to assist New Arrivals in filing asylum applications and obtaining work authorizations. The Help Center has proven very successful. In six weeks, the Help Center has prepared over 2,000 asylum applications for New Arrival families with children residing in City shelters.<sup>5</sup>

The State should help the City both maintain and expand this successful initiative. The City has expended roughly \$3 million of the initial \$10 million in State funding establishing and operating the Help Center since July of this year. Currently, the City spends an average of \$500,000 each week to operate the Help Center and anticipates exhausting the remaining \$7 million by December 2023.<sup>6</sup>

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<sup>2</sup> The State should also consider extending the one-year duration of MRAP assistance to families that achieve specific milestones.

<sup>3</sup> Moreover, the City notes recent changes implemented by federal immigration authorities appear to have allayed the State's concern that resettling individuals would delay the issuance of work authorizations. The Executive Office for Immigration Review, which operates the federal immigration court system, recently changed its practices so that when an applicant files a motion to change venue, the asylum applicant's work authorization clock is no longer paused. Therefore, an asylum seeker will suffer no legal harm to their work authorization application if relocated.

<sup>4</sup> The City provided the State with an initial proposal for the \$10 million in State legal-services funding on April 20, 2023. The City's April 2023 proposal included the items the State agreed to fund in June 2023.

<sup>5</sup> The City suggests that the State place MRAP outreach representatives at the Help Center to facilitate the immediate enrollment of eligible families in the program.

<sup>6</sup> The City has also worked to expand access to immigration-related legal services unilaterally in response to the present crisis. In addition to the \$67 million in annual funding for immigration-related legal services the City makes

The City seeks to both maintain and expand the capacity of the Help Center with the objective of preparing asylum applications for 25,000 New Arrivals by December 2023. To achieve this objective, the City requests an additional \$33 million to expand the Help Center's hours of operation and establish satellite sites throughout the City.

Finally, we appreciate that on Monday the State announced a \$20 million allocation to the City for case management. This number, however, is not sufficient to enable effective and sustained case management. The \$20 million allocation will cover the City's cost to provide seven months of case management for less than half of the City's shelter population. In order to cover twice-monthly case management services for every client in the City's system, an allocation of \$57 million is needed.

**c. State Preemption of Local Efforts to Stymie Resettlement Outside the City**

The City also wishes to reiterate the importance of issuing a State Executive Order to preempt attempts by certain localities to stymie the City's efforts to place New Arrivals in accommodations outside the City through local executive orders or litigation.

When the City began placing New Arrivals in upstate hotels (at the City's expense) the City informed local officials of the City's plans in advance. Certain upstate counties have proven willing to assist the City during the present crisis. For example, the City continues to work very closely with officials in Erie, Monroe and Albany counties to coordinate the arrival and placement of New Arrivals and the City sincerely appreciates these localities' assistance and cooperation.<sup>7</sup>

The City's ability to coordinate the placement of New Arrivals in other localities, however, has been undercut by local officials' flat refusal to permit the accommodation of New Arrivals in hotels within their jurisdictions. For example, when the City notified local officials of plans to place New Arrivals in hotels located in Dutchess, Onondaga and Orange Counties, these localities responded immediately by commencing litigation to prevent these placements. Numerous localities have also issued local executive orders in an effort to prevent the City from sheltering New Arrivals in local hotels—at the City's expense.

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available to all immigrant New Yorkers, the City has allocated \$5 million to expand citywide access to legal information and assistance by funding legal-service initiatives and *pro se* (self-help) immigration assistance clinics, including through partnerships with the City University of New York (CUNY) and community-based organizations, increase the capacity of the City's free hotline for immigration-related legal assistance (Action NYC) and provide additional online resources.

<sup>7</sup> The City notes that the return of 23 individuals transported to Rochester by bus on August 7, 2023, resulted from a miscommunication among City personnel, not a lack of communication with local officials in Rochester. The City began meeting with the local County Executive, the head of social services and the Western New York Coalition weeks before it began transporting New Arrivals to Rochester and has continued incorporating feedback received from officials in Rochester subsequently.

The State has the power to compel upstate localities to assist in addressing the present crisis and coordinate efforts with the City rather than continue their discriminatory interference with the City's attempt to provide New Arrivals with shelter and essentials services.<sup>8</sup> In fact, as the State may recall, in May 2023, the City asked for specific language to be included in an Executive Order from the Governor that would prohibit other jurisdictions from interfering with the City's efforts to provide for New Arrivals in locations outside of the City.

**d. Establishment of State Administered Shelter Sites**

The City also reiterates its prior request for the State to administer relief sites upstate. The State should begin by assuming responsibility for the sites the City has established already in upstate counties.

The State is better placed than the City to establish and manage sites outside the City due to its ability to surmount local interference and the amount of potentially relevant information regarding upstate localities it obtains in the normal course. For example, the New York State Department of Education (NYSED) possesses information regarding the capacities of school districts in receiving counties that would allow it to better prepare for the integration of incoming children.

The State may also facilitate county-level coordination by providing the City with additional information relating to, *inter alia*, the capacities of school districts in receiving counties. For example, NYSED has begun providing the City with information on upstate school districts' English Language Learning capacity.

**II. ADDITIONAL STATE SUPPORT FOR THE CITY SHELTER SYSTEM**

**a. Supplementary State Reimbursement of City Outlays**

The City hopes the State will grant the City's pending request for the State to absorb 67% of the amounts expended by the City to house, feed, provide medical care, legal service and all other supports to the New Arrivals. While the City appreciates the \$1.5 billion in State funding detailed in the State Letter, the City has already stated repeatedly that the City's projected New Arrival-related expenses exceed \$12 billion. Accordingly, the City reiterates its request for the State to shoulder two-thirds of the costs associated with the influx of New Arrivals.

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<sup>8</sup> The City also disagrees with the assertion in the State Letter that the City failed to inform the State of two incidents involving the police outside sites run by the City upstate. In the first instance, the City learned of the incident from a member of the Governor's staff. Accordingly, City personnel understood State officials were already aware of the issue. In the second instance, the City notified OTDA of the incident via email.

The City also wishes to note that it submitted its first claim for State reimbursement promptly on August 1, 2023, after protracted negotiations with the State regarding the reimbursement procedure. Going forward, the City will submit reimbursement requests on a monthly basis.<sup>9</sup>

Relatedly, the City reiterates its request that the State also reduce the City's share of New Arrival-related costs by suspending the provisions of the State Social Services Law and State Education Law that require the City to absorb the education and shelter-related costs associated with New Arrivals relocated to upstate counties.

#### **b. Additional Sites for City-Run Congregate Facilities and Other Shelters**

As the State knows, the City is currently managing and operating 201 emergency sites established since April 2022 as well as the Asylum Seeker Operation Command Center (the "Command Center").<sup>10</sup> These emergency sites include four congregate Humanitarian Emergency Response and Relief Centers (HERRCs), including the Creedmoor Psychiatric Facility,<sup>11</sup> as well as 15 other congregate sites. The City began establishing congregate sites to address the influx of New Arrivals in October 2022 and few, if any, sites suitable for large congregate settings within the City remain unused.<sup>12</sup>

The City appreciates the State's identification of proposed shelter sites within the City listed in the State Letter (the "State-Proposed Sites"). As noted in the State Letter, the City declined to utilize certain State-Proposed Sites owing to a range of operational and safety concerns presented by these locations. The City has reiterated its concerns regarding the feasibility of establishing shelters on certain State-Proposed Sites in Appendix A to this letter. The City notes that all of the sites mentioned in the State letter are located within the City of New York, yet the rapid influx of New Arrivals is a statewide issue that requires a statewide response. Thus, the City contends that the State must make available sites for the establishment

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<sup>9</sup> The City notes that it has made significant efforts to ensure the proper use of State funds, including ensuring compliance with due diligence and supporting documentation requirements for State reimbursement imposed by State regulations and guidance. The City has also been working to provide additional documentation requested by OTDA in connection with the City's August 1, 2023 claim for reimbursement.

<sup>10</sup> Various State agency personnel, as well as members of Governor Hochul's Operations and Intergovernmental Affairs teams have visited the Command Center since it opened in May 2023.

<sup>11</sup> The City notes that, the day after the State first proposed the use of Creedmoor on May 3, 2023, City personnel conducted an inspection of Creedmoor on May 4, 2023, and requested quotes for goods and services relating to the establishment of the site within the following week. The City further notes that the State did not agree, despite repeated requests, to provide funding for certain goods and services relating to the administration of the Creedmoor site until July 14, 2023.

<sup>12</sup> The State had not offered the use of certain State-Proposed Sites to the City prior to the submission of the State Letter, including the gymnasiums at Medgar Evers College in Brooklyn, York College in Queens, and the Borough of Manhattan Community College in Manhattan. The City is very interested in exploring the potential conversion of these three gymnasiums into emergency sites. The State also offered the City the use of Pier 7 in Brooklyn for the first time in the State Letter and the City is assessing the potential suitability of this site.

of congregate facilities throughout the State. In particular, the City requests the use of the sites listed in Appendix B to this letter.

**c. Further Assistance for Existing City Shelters**

**i. Expand Rent Supplement & Cash Assistance Programs**

The City notes that the State Letter did not respond to the City’s request that the State expand, increase and/or streamline rent supplement and cash assistance programs, including:

- The State Family Homelessness and Eviction Prevention Supplement (FHEPS);<sup>13</sup>
- The City Fighting Homelessness and Eviction Prevention Supplement (CityFHEPS);<sup>14</sup>
- Supplemental Nutrition Assistance Program
- Cash Assistance; and
- Shelter Allowances.<sup>15</sup>

Additional State support for these programs would assist the City in helping current shelter residents find more permanent housing and increase vacancies within City shelters.

**i. Regulatory Waivers**

Finally, the City wishes to reiterate its request, set forth in the City Letter, for the waiver of the certain OTDA regulations so that the City can maximize housing capacity at existing and newly opened Department of Social Services (DSS) sites.

The City also wishes to express its disagreement with the suggestion, set forth in the State Letter, that the City has failed to seek such waivers in a timely fashion. The City DSS has engaged actively with OTDA since the start of this crisis in April 2022. DSS has submitted numerous requests for waivers and other exceptions to policy intended to increase vacancies within City shelters beginning in 2022.

Moreover, the assertion in the State Letter that the City failed to submit requests for regulatory relief prior to the issuance Executive Order No. 28 on May 9, 2023, is incorrect (the “Executive Order”). The City sent OTDA a list of requested regulatory waivers on May 1,

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<sup>13</sup> As stated in the City Letter, the City requests that State eliminate the City’s share of the costs of the FHEPS program.

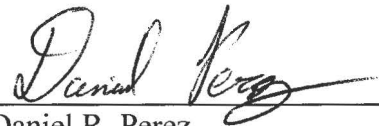
<sup>14</sup> The City also reiterates its request that the State permit the use of CityFHEPS supplements to secure housing located outside the City.

<sup>15</sup> The City also reiterates its request for the State to reduce the level of Public Assistance Recoupments.

2023, prior to the issuance of the Executive Order. The City then sent a further updated list of requests on May 12, 2023, following the issuance of the Executive Order.

The City appreciates the State's ongoing review of the proposals set forth in the City Letter and appreciates the State's attention to the points raised above.

Sincerely,

A handwritten signature in black ink, appearing to read "Daniel R. Perez", written over a horizontal line.

Daniel R. Perez  
Assistant Corporation Counsel



## APPENDIX A

- **The Roberto Clemente State Park gymnasium in the Bronx:**
  - The building is under active construction.
  - The building has a single door limiting egress.
  - The building is also located in a flood zone and the gymnasium experienced flash flooding on two occasions during the summer of 2022.
  - The offered space (6,700 sq. ft.) would only accommodate 60-80 individuals. The City considers it financially inefficient to establish respite sites in spaces incapable of accommodating 300 or more beds.
  
- **The Riverbank State Park gymnasium and amphitheater in Manhattan:**
  - The potential use of the facility to house New Arrivals has provoked very strong community opposition due to the variety of community activities and programming conducted at the facilities. Community members opposed to the use of the facilities as a respite site expressed their opposition when City personnel visited the site to assess its suitability.
  - The site also space does not feature air conditioning or functioning bathrooms (the bathroom facilities are currently under construction).
  - The weight constraints resulting from location of the facilities on top of the former North River Wastewater Treatment Plant would complicate the installation of the additional amenities necessary to accommodate New Arrivals at this site.
  
- **The Brooklyn Cruise Terminal in Brooklyn:**
  - The City wishes to avoid re-establishing a site at the Brooklyn Cruise Terminal due to concerns it may interfere with the cruise industry's severe contraction during the COVID-19 pandemic.<sup>16</sup>
  
- **The Manhattan Cruise Terminal (Manhattan Piers 88, 90 & 94)**
  - **Piers 88 & 90.** Piers 88 and 90 experience extensive commercial use. As noted above, the City does not wish to hamper the post-pandemic recovery of the cruise industry.
  - **Pier 94.** A long-negotiated lease for Pier 94 will soon close.
    - The City approached the future lessees to propose the temporary use of the site to accommodate New Arrivals, however, the future lessees

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<sup>16</sup> The City notes that the State has not yet provided the City with \$6 million in reimbursement union-related costs associated with the City's initial use of the Brooklyn Cruise Terminal as a shelter site.

declined the proposal due to the need to commence begin construction on the site.

- Pier 94 has not been used for anchorage in decades and the present depths surrounding the pier are inadequate for most vessels. The dredging necessary to establish sufficient depth surrounding the pier would require 12 to 18 months to permit and implement.

- **Pier 7 in Brooklyn**

- The City is investigating this property as the State had not proposed it prior to the submission of the State Letter.
- This Port Authority property is under a long-term warehouse and distribution lease to Manhattan Beer.
- In addition, the docking areas on the north and south sides of the pier are administered by the Port Authority as “public berths” meaning that vessels can anchor at these berths for a fee.

- **The Aqueduct Racetrack (the “Aqueduct”) in Queens**

- The City declined the use of the Aqueduct because the City would only be permitted use of the facility through September 7, 2023.
- Moreover, the City requested the use of additional space in the Aqueduct parking lot to secure adequate room for the erection of a tent of a sufficient size, however, the City’s request was denied.<sup>17</sup>

- **The Harlem Armory in Manhattan**

- New York State Division of Military and Naval Affairs (DMNA) informed City personnel that this site does not satisfy State Fire Code requirement for lodging.
- DMNA also informed City representatives that the site does not feature air-conditioning, poses asbestos and pest concerns, as well as wastewater limitations. DMNA also noted the difficulties in securing the site physically.
- DMNA also noted the certain security concerns implicated by the use of the armory to accommodate New Arrivals and indicated that it cannot co-locate DMNA personnel with New Arrivals.

- **The Marcy Avenue Armory in Brooklyn**

- DNMA informed City personnel that this site does not satisfy State Fire Code requirement for lodging.

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<sup>17</sup> The City also requested, but did not receive, permission to use interior spaces within the Aqueduct.

- DMNA also informed City representatives that the site does not feature air-conditioning, poses asbestos and pest concerns, as well as wastewater limitations. DMNA also noted the difficulties in securing the site physically.
- DMNA also noted the certain security concerns implicated by the use of the armory to accommodate New Arrivals and indicated that it cannot co-locate DMNA personnel with New Arrivals.
- **The Brooklyn Armory Terminal in Brooklyn**
  - The City declined to use this site after concluding that most of the site's warehouse space is unsuitable for the accommodation of New Arrivals. Many spaces within the site are also occupied by tenants.
- **The Ella McQueen Reception Center in Brooklyn**
  - The space offered could only accommodate 43 individuals. As discussed above, the City considers it inefficient to establish congregate sites in locations that cannot accommodate 300 or more beds.
  - In addition, the site lacks a functioning freight elevator and the cooling tower has been out of service since January 2019.

## APPENDIX B

- **City Tech, Gymnasiums**  
300 Jay Street, Brooklyn
- **Meyers (Wards Island)**  
1 Wards Island / 600 E 125th St, Manhattan
- **Rockland State Psychiatric Center**  
140 Old Orangeburg Rd, Orangeburg
- **Pilgrim Psychiatric Facility (Long Island)**  
998 Crooked Hill Rd, Brentwood
- **Kings Park Psychiatric Center**  
Nissequogue River State Park,  
799 St. Johnland Road, Kings Park
- **Buffalo State Hospital**  
400 Forest Ave, Buffalo
- **Stratton Air National Guard Base**  
1 Air National Guard Rd, Scotia
- **Stewart Air National Guard Base**  
1 Maguire Way, Newburgh
- **Francis S. Babreski Air Nat. Guard Base**  
Moen St, Westhampton Beach
- **National Guard Camp Smith**  
11 Bear Mountain Bridge Road, Cortlandt
- **Bernard Fineson Villas**  
80-45 Winchester Boulevard, Queens
- **Staten Island Armory**  
321 Manor Road, Staten Island
- **Javits Center, Event Space**  
655 W. 34 St, Manhattan
- **Aqueduct Racetrack, 2nd Floor Event Space**  
11000 Rockaway Blvd, Queens

- **Gun Hill Depot, Transportation Facility**  
1910 Bartow Ave, Bronx
- **DHSES Warehouse**  
87 Cargo Plaza, Queens
- **Beach Psychiatric Center**  
777 Seaview Avenue, Staten Island
- **John F. Kennedy International Airport, Hanger 29**
- **Flushing Airport**  
Linden Pl, Queens
- **2050 Bartow Avenue, Bronx**
- **Additional State Military Facilities**
- **Vacant Upstate NYS Department of Corrections Facilities**
- **SUNY Dormitories**
- **Large Open Spaces Capable of Accommodating Large Tent Structures**