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August 15, 2023

Via E-mail

Hon. Sylvia O. Hinds-Radix
Corporation Counsel
New York City Law Department
100 Church St.
New York, NY 10007

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

Hon. Sylvia O. Hinds-Radix,

Our firm is counsel for Kathy Hochul, Governor of the State of New York (the "State"), and Barbara Guinn, Acting Commissioner of the New York State Office of Temporary and Disability Assistance. I write in response to the letter of the City of New York (the "City") dated August 9, 2023 (the "City Proposal"), sent pursuant to the Court's August 4, 2023 Order in the above-referenced matter. *See* NYSCEF No. 7.

As you know, New York faces a serious crisis due to the arrival in the City of over 100,000 migrants who need shelter, sustenance, and services. The City has provided humanitarian assistance, shelter, and care to the arriving migrants in an effort to comply with its obligations under the *Callahan* post-judgment Order dated August 26, 1981 (the "Consent Decree").¹

The State has been a vital partner to the City since the beginning of this challenge. The current migrant crisis dates back to Spring 2022, when the City began experiencing an uptick in shelter intake, and Summer 2022, when buses from Texas began to arrive at the Port Authority Bus Terminal. Since that time, the State has provided a broad range of

¹ The Consent Decree (i) requires "[t]he City defendants" to "provide shelter and board" meeting certain minimum standards "to each homeless man" (and, later, to women and families with children) "who applies for it," subject to certain criteria, Consent Decree ¶¶ 1-3, and (ii) provides that "[t]he Commissioner of the New York State Department of Social Services agrees to reimburse the [City] for the operation of ... shelter facilities referred to in this judgment pursuant to New York Social Services Law § 153," subject to certain exceptions, "provided that nothing in this judgment can or does obligate the Legislature of the State of New York to appropriate funds," Consent Decree ¶ 17.

support to the City. The Governor has declared a State Disaster Emergency and issued an Executive Order to support the City's need for legal and regulatory flexibility. The State has directed significant State funds to the City. The State has made numerous State-owned properties available for the City to house migrants. The State has deployed (as of now) 1,840 National Guard members to staff the shelters (and expects to deploy at least 100 additional members this week). The State has provided other staff and technical assistance to the City. The State has coordinated with counties and local officials to facilitate the short-term housing of migrants outside of the City. And the State has advocated for the federal government to assist the City in managing the significant influx of migrants.

The City Proposal makes numerous requests for additional assistance from the State, and the State's review of those requests is ongoing. This response describes the State's extraordinary support thus far and areas where the State may be able to provide additional assistance, including in response to many of the requests made in the City Proposal. This response also identifies some of the challenges that the State has faced in responding to this crisis, in hopes that the City can address these difficulties and improve its collaboration with the State moving forward.

As is further demonstrated below, the State will continue to be a strong partner to the City and is committed to providing significant resources and support to, and advocacy on behalf of, the City and the arriving migrants. At the same time, the State expects that the City will fully utilize the space and other resources that the State has already offered or provided to the City.

First, the Governor declared a State Disaster Emergency in recognition of the humanitarian crisis and continues to act to ensure that the City has the legal and regulatory flexibility to respond to the ongoing crisis.

On May 9, 2023, Governor Hochul declared a State Disaster Emergency and issued an Executive Order recognizing that "the arrival of increased numbers of migrants seeking shelter in the City and State of New York is expected to exacerbate an already large-scale humanitarian crisis and create a disaster emergency to which local governments are unable to adequately respond, creating a threat to health and safety, which could result in the loss of life or property." Executive Order [Hochul] No. 28 [9 NYCRR 9.28].

The Executive Order suspended State laws and regulations to allow for response flexibility in the following areas:

- Entering into contracts for the purchase of food, supplies, services, and equipment to support the immediate needs of migrants; and
- Providing temporary housing for migrants without creating a landlord-tenant relationship between any person or entity leasing or using space, and any individual or entity providing such temporary housing for this purpose.

The Governor has extended the State Disaster Emergency declaration four times and has made additions to the Executive Order to allow for the housing of migrants at the former Lincoln Correctional Facility.

For the Executive Order, the State asked the City whether the City sought the waiver of any additional laws or regulations, but the City did not identify any such requests in response. The State would have considered the list of proposed regulatory waivers contained in the City Proposal earlier this year, had the City made this request in connection with the Executive Order.

The State stands ready to continue to address the City's additional needs for regulatory flexibility and will promptly review requests to waive regulatory requirements. Within the City's Department of Homeless Services ("DHS") system, the State has responsibilities to ensure that any waivers of regulatory requirements do not endanger the health and safety of migrants or others. These regulations are complex and highly technical. While the State may be able to issue system-wide waivers for certain regulations, others, such as increasing limits on capacity, must be reviewed on a facility-specific basis. The State has quickly responded to the few waiver requests that the City has submitted to the State thus far, and Acting Commissioner Guinn of the Office of Temporary and Disability Assistance will meet with the City this week to review the waiver requests in the City Proposal – many of which are new. Acting Commissioner Guinn requests that the City submit all future proposals to waive regulatory requirements directly to the Office of Temporary and Disability Assistance.

Second, the State secured nearly \$1.5 billion in financial support for the City and will continue to provide significant financial assistance to support the City.

The migrant crisis has been extremely costly and will continue to require significant financial resources. Neither the City nor the State should have to absorb these operational needs or costs for what is a matter of federal concern.

Regardless, the Governor appreciates the magnitude of the City's financial needs and has secured nearly \$1.5 billion in the FY 2024 State budget financial plan to support the City in serving migrants. The FY 2024 funds include: over \$1 billion for shelter costs to be provided on a cost reimbursement basis, more than \$160 million for National Guard support, more than \$130 million for health care costs, \$25 million for voluntary relocation, and \$10 million for legal assistance.

The State has already advanced \$250 million of these FY 2024 funds to the City. The City has been slow to submit its cost reimbursement documentation for these funds – thus far submitting cost reimbursement documentation for just \$138 million in expenditures. And the State is providing these funds despite public reporting that raises substantial questions about the operations and conduct of the City's primary contractor,²

² See, e.g., Jay Root, *New York City Had a Migrant Crisis. It Hired a Covid Expert to Help.*, The New York Times (Jul. 30, 2023), <https://www.nytimes.com/2023/07/30/nyregion/migrants-albany-docgo.html>; Joshua Solomon, Raga Justin & Steve Hughes, *DocGo makes millions as health care concerns for migrants remain*,

and about the City’s decision to allow hundreds of migrants to sleep on the street outside the Roosevelt Hotel despite there being hundreds of vacant beds in the City’s shelter system.³

The State has further increased its financial commitment beyond the nearly \$1.5 billion itemized above, including funding, or a commitment to fund, the following:

- Full reimbursement to the City, at an estimated cost of \$248 million annually, for the City to operate a new Humanitarian Emergency Response and Relief Center (“HERRC”) on Randall’s Island, with the capacity to house 2,000 single adults.
- Full reimbursement to the City, at an estimated cost of \$124 million annually, for the City to operate a new HERRC at the Creedmoor Psychiatric Center parking area in Queens, with the capacity to house up to 1,000 single adults.
- Up to \$8 million for communicable disease testing, to be provided once the State receives a finalized, workable plan from the City.
- Nine Metropolitan Transportation Authority (“MTA”) buses daily for migrants at no cost to the City. The MTA has spent an estimated \$2.3 million to date to provide this service.
- To date, the State has spent approximately \$1.5 million to rehabilitate and set up the former Lincoln Correctional Facility for the City to use.
- From July 2022, the State offered the City use of the Port Authority Bus Terminal, which was used as a welcome center until the City stopped such use in June 2023. The Port Authority Bus Terminal continues to be used to receive buses of migrants. The Port Authority of New York and New Jersey has spent over \$2 million to date for public safety, security operations, and maintenance support related to the arrival of migrants.
- The State has created a resettlement program in which it has committed \$25 million to provide one year of permanent housing (in the form of rental payments) and wrap around services outside of the City for 1,250 households. While the State requires these households to apply for asylum and to move voluntarily, the State does not require these households to also have applied

Albany Times Union (Aug. 13, 2023), <https://www.timesunion.com/state/article/docgo-makes-millions-health-care-concerns-18288278.php>.

³ See, e.g., Chris Sommerfeldt, *Hundreds of NYC shelter beds sat vacant while migrants slept outside Roosevelt Hotel: data*, Daily News (Aug. 14, 2023), <https://www.nydailynews.com/news/politics/new-york-elections-government/ny-hundreds-nyc-shelter-beds-vacant-migrants-slept-on-street-20230814-js4depkrr5ddjggvrbs4vrdq4e-story.html>

for or received work authorization to be eligible for this State assistance.⁴ The State has repeatedly communicated to the City that if this resettlement program is successful, then the State will increase the total number of households it will support for relocation. To date, the City has provided the State with a list of 252 households who potentially meet the program's requirements, and thus far only 17 of those eligible households have expressed a willingness to move.

- The Governor has publicly expressed her intention to secure significant additional funds for responding to the migrant crisis in the FY 2025 budget.

The State will continue to support migrants' needs Statewide through various programs, in collaboration with the City. But the State asks for the City's cooperation to ensure that State funds are properly managed. By way of example, the State has provided the City with \$10 million for FY 2024 to provide legal services for migrants to obtain asylum and work authorization at the earliest possible opportunity. The City did not prioritize this critical effort. Had the City done so, it is likely that thousands more migrants would be able to work today.

Third, the State has identified and is making available State-owned properties to house migrants in the City and outside of the City.

Starting in September 2022, Governor Hochul directed her administration to conduct a comprehensive review of State-owned properties that could be used to shelter migrants. This review involved a detailed examination and physical inspection of dozens of State-owned properties across the State. The State considered and evaluated sites based on factors such as whether they could meet critical health and safety standards, how quickly and for what duration they could be used to shelter migrants, and whether they were located near employment opportunities, transit, social services, and other necessary amenities.

As a result of its review, the State identified, and has made available to the City, sites and thousands of beds to shelter migrants. These include the former Lincoln Correctional Facility in Manhattan and JFK Building 197 in Queens, both of which were rehabilitated and opened in June 2023. Additionally, the State made the Creedmoor Psychiatric Center parking area in Queens available to the City on May 3, 2023. The City initially rejected the Creedmoor offer but has now agreed to use the site. This facility is expected to open this week and will increase the City's migrant housing capacity by 1,000 beds.

The State has identified numerous additional State-owned properties and non-State-owned sites that are viable options for sheltering migrants, but the City has not accepted these offers. Combined, these sites could provide temporary shelter to more than 3,000

⁴ It is not advisable to extend this resettlement program to households that have not yet applied for asylum because if such households are not authorized to work following the year of State assistance, those households would likely be ineligible for shelter or other public benefits in areas outside of the City.

migrants. As detailed below, the State identified some sites as early as October 2022. These include the following properties:

- The Roberto Clemente State Park gymnasium in the Bronx
- The Riverbank State Park gymnasium in Manhattan
- The Riverbank State Park amphitheater in Manhattan
- The Brooklyn Cruise Terminal in Brooklyn⁵
- The Manhattan Cruise Terminal in Manhattan⁶
- Pier 7 in Brooklyn⁷
- The Aqueduct Racetrack in Queens⁸
- The Harlem Armory in Manhattan
- The Marcy Avenue Armory in Brooklyn⁹
- The Brooklyn Armory Terminal in Brooklyn
- The Ella McQueen Reception Center in Brooklyn¹⁰
- Gymnasiums at Medgar Evers College in Brooklyn, York College in Queens, and the Borough of Manhattan Community College in Manhattan

⁵ This is a State-owned site that is leased to the City. The State initially identified the Brooklyn Cruise Terminal as a possible site in October 2022, because it would be in less active use in the winter, and offered to move docking cruise ships to New Jersey to maximize terminal space. The City did not accept this suggestion until December 2022, with the terminal eventually opening for use in late January 2023. The terminal closed as a shelter in April 2023, but the State continues to recommend that the City re-open the shelter there and move cruise ships to New Jersey.

⁶ This is a City-owned site that is also in less active use in the winter. The State identified Piers 88, 90, and 94 as potentially viable sites.

⁷ The State raised this site, which is owned and operated by the Port Authority, as an option in December 2022.

⁸ This offer was time-limited from April through September 2023.

⁹ Use of this space will require two months of work to move inventory out and tenting to guard against environmental issues.

¹⁰ The State offered this property in October 2022 to shelter a small number of families with children. The City rejected the site due to its modest size.

- SUNY Maritime parking lots
- JFK Building 350 in Queens¹¹

To date, the City has ruled out several of these properties for reasons that do not relate to their suitability as shelters and has not indicated an intent to move forward on the others. The State, however, stands ready to assist with further review and preparation of these sites for use by the City.

Fourth, the State continues to provide staffing, technical assistance, strategic advice, and other operational support to the City.

As set forth above, the State recognizes that the migrant crisis poses a tremendous operational challenge for the City. Staffing, logistical, planning, procurement, budgeting, and management needs are significant. The State has been deploying personnel, emergency response assistance, and logistical support to the City from the inception of this crisis, providing around-the-clock support to address urgent and longer-term needs.

- Governor Hochul deployed the National Guard in September 2022 to help the City's shelters provide necessary care for migrants. There are currently 1,840 National Guard members on mission to support the City's response and shelter operations, fully funded by the State. The Governor expects to deploy at least 100 additional members this week. In particular:
 - National Guard members serve as all or most of the staff at 48 hotels being used as migrant shelters in the City. These include 18 shelters in Queens, 12 shelters in Brooklyn, 10 shelters in Manhattan, seven shelters in the Bronx, and one shelter in Staten Island.
 - National Guard members provide additional staffing at two HERRCs: the Roosevelt Hotel and the New York City Police Department Academy.
 - Over 40 National Guard members were staffed at the Port Authority Bus Terminal daily until June 2023. These members were redeployed to help the City respond to the migrant crisis in other ways once the City stopped using the Port Authority Bus Terminal as a welcome center for migrants.
 - National Guard members help DHS collect data to improve the State's and the City's understanding of migrants' need for services and to operate relevant programs.

¹¹ This space, offered to the City in May 2023, was rejected as too small.

- State personnel are staffed at City emergency response centers. These employees provide the opportunity for close communication between the City and the State. They review requests for State assistance, they attend the City's daily operational calls, and they attend weekly operational calls between the State and the City.
- Governor Hochul and her team are in frequent communication with Mayor Adams and his administration to respond to the City's needs. The State has been providing guidance to and working closely with the City on this crisis consistently since Summer 2022. From September 2022 through May 2023, there were regular – often weekly – meetings between high-level City staff and senior staff from both the Governor's Executive Chamber and State agencies. State officials have also met with the City during and since that time on several discrete issues, such as relocation plans, intake and long-term resettlement processes and strategies, and legal services for migrants.
- Governor Hochul meets daily with the Governor's Executive Chamber and State agency personnel to ensure that she has up-to-date information and provides timely direction regarding the State's support on the migrant crisis.
- Director of State Operations, Kathryn Garcia, Commissioner of the Division of Homeland Security, Jackie Bray, former Commissioner of the Office of Temporary and Disability Assistance, Dan Tietz, and now Acting Commissioner of the Office of Temporary and Disability Assistance, Barbara Guinn, along with other senior administration officials, have made supporting the City in managing the migrant crisis a top priority.
- The State strongly encouraged the City in June 2022 to set up congregate shelters consistent with strategies used in response to natural disasters. Such facilities would shelter single adult migrants together in large tent-based or base camp sites instead of in hotels or DHS shelters. That would avoid overwhelming the existing DHS system or diverting services from the existing homeless population in the City. The State identified possible locations for congregate shelters, engaged vendors so that the City could achieve competitive pricing to operate such sites, and offered to reimburse the City for its operational costs. The City took nearly a year to act upon the State's recommendation.
- The State has also strongly encouraged and continues to encourage the City to establish an incident command center to facilitate communications between the City, the State, and other counties and localities. The City has not done so yet.

The State will continue to provide the above-listed support. The State welcomes the City's continuing input and an opportunity to assist and coordinate with the City on management, operations, and long-term planning. The State also stresses the need for collaborative dialogue. While the City Proposal asks the State for additional staffing

resources, the City must fully deploy and integrate the significant staffing resources that the State is already providing before the State can responsibly allocate more staff.

Fifth, the State continues to coordinate with counties and local officials to facilitate the temporary shelter of migrants outside of the City.

The City has asked for the State's support in moving migrants in need of temporary shelter to counties around the State. The State supports the effort to move these individuals and families out of the City where possible. There are, however, legal and practical constraints.

- The State has no legal authority to extend the City's obligation to provide shelter under the Consent Decree to other counties and localities that are not signatories to the Consent Decree.
- Many migrants will not willingly move outside of the City, and the State will not sanction a policy of involuntarily relocating individuals or families within or beyond State borders. As one example of the negative impacts of such efforts, on August 7, 2023, the City sent a bus of 77 individuals to Rochester, New York, and 30 of those individuals refused to get off the bus and returned to the City.
- Under federal law, asylum seekers must apply to change venue to move outside of the City. Filing this application to change venue pauses the federal 180-day waiting period between when asylum seekers submit their applications for asylum and when they may apply for work authorization. Relocation can therefore further delay migrants' ability to work and obtain self-sufficiency.
- Finally, in most instances, the City can more effectively provide these individuals and families with essential services, such as public transportation, social services, youth programming, and health care.

The Governor and members of her team have been in close contact with elected officials and local leaders across the State and have participated in multiple calls and briefings with the New York Conference of Mayors and the New York State Association of Counties to encourage counties and localities to accept migrants. These ongoing discussions have resulted in support from several counties and localities outside of the City. The State's efforts will continue, but the City's affirmative cooperation, coordination, and communication with the State, and with other counties and localities, is necessary to this endeavor.

A lack of coordination from the City to date has impeded the State's ability to foster productive relationships and discussions, including with the counties and localities that have offered to help. In particular, the City chose to send migrants to counties and localities outside of the City with little or no notice to or coordination with the State or those counties and localities. That has created opposition and has led to litigation that might

have been mitigated or avoided if the City had acted in concert with the State and with the counties and localities where it sent migrants. Moreover, the City's failure to inform the State of critical incidents that have occurred in shelters outside of the City has compounded these difficulties.

Moving forward, the City should communicate to the State, counties, and localities meaningful notice of all transfers of migrants to other counties and localities before they occur. The City should alert the State, counties, and localities to critical incidents that happen in shelters outside of the City and share with the State clear after-action reports, including corrective action plans, in response to such incidents. In addition, the City should coordinate with counties and localities to ensure that their school districts can support additional children, and that the existing homeless populations in those counties and localities are not displaced because of migrant relocation efforts.

While the foregoing is not an exhaustive list, such communications and coordination are essential to any effort to shelter or resettle migrants outside of the City.

Finally, the Governor continues to be a relentless advocate for assistance from the federal government – with a primary focus on the need for work authorization so that migrants can move out of shelter, and individuals and families can be resettled outside of the City where possible.

Governor Hochul continues to advocate for federal assistance, intervention, and action to support migrants' needs for shelter, asylum, and work authorization. The Governor is in daily contact with the White House in this effort. The Governor has also enlisted the support of the State's bipartisan congressional delegation and has coordinated with the Governors of multiple interior and southern border states to strongly urge the federal government to adopt, modify, or suspend policies, and to deploy resources, for the purpose of relieving migrant pressure on impacted states.

The most essential assistance that the State and the City need from the federal government is the swift, orderly review of all pending parole and asylum applications. Federal law imposes a lengthy 180-day waiting period between the submission of an asylum application and the application for work authorization. Expedited work authorization is therefore essential to solving the migrant crisis. Without work authorization, arriving migrants cannot be self-sufficient and cannot move into permanent housing. The Governor has made expedited work authorizations her number one request to the federal government. For example, the State has advocated for targeted immediate work authorizations, including expanding Temporary Protected Status for Venezuelans, many of whom likely arrived in the United States before the end of Title 42 on May 12, 2023.

As indicated above, State and federal officials have requested that the City prioritize assisting migrants with applying for asylum. These officials held regular – often weekly – calls with City officials to discuss how the State and the federal government can help the City prioritize this work. In addition, the State offered to fund up to \$10 million of this work, upon receipt from the City of a workable program proposal. The City submitted its

proposal in June 2023, and the program launched shortly thereafter. The City should have acted promptly, and by not acting promptly, it only delayed the 180-day waiting period for many migrants. It is likely that many more migrants would be able to work today if the City had prioritized this effort sooner.

Moreover, many migrants who have applied for asylum have faced huge backlogs in federal processing and significant delays in asylum hearings. Thus, the Governor has also made urgent requests for the federal government to increase the number of immigration judges and other federal technical staff in New York to help asylum seekers submit proper documentation to apply for asylum. Furthermore, the State and the federal government have discussed whether there are ways of expediting the Department of Justice accreditation process for individuals and organizations seeking to represent asylum seekers in their application process.

The State has also pressed the federal government to provide additional federal funding and resources. That includes funding to make federal properties in the City and the State available for short-term sheltering of migrants, including military and naval installations and General Services Administration properties. In particular, the State has made multiple requests to use Floyd Bennett Field in Brooklyn, one of the largest open-space areas within the City, and Fort Wadsworth in Staten Island. These locations could house thousands of additional migrants and would relieve pressure on the City until more migrants apply for asylum, receive work authorization, and are able to leave shelters.

In a further effort to eliminate barriers to obtaining additional federal management and funding, the State has engaged with State and federal legislative staff to develop and suggest regulatory flexibilities to expedite work authorization requests, and separately to draft federal funding requests related to the migrant crisis. That includes examining federal funding programs to identify existing opportunities for federal support for humanitarian operations.

Governor Hochul and her team continue to have regular conversations with the President, White House staff, the Department of Homeland Security, the Department of Commerce, the Department of Interior, the Department of Agriculture, members of Congress, and Governors of other states to advocate for all of these essential forms of assistance.

The State is committed to advocating for increased federal monetary support for New York and will continue identifying possible ways to achieve this goal. The State will promptly consider all proposals from the City regarding federal advocacy by the State, in coordination with the City's own efforts to petition the federal government.

* * *

The State has provided and will continue to provide an unprecedented level of assistance to the City and to develop dynamic strategies to support the City in meeting its legal obligations and handling this crisis effectively.

While it is the City's responsibility to meet its obligation to provide shelter under the Consent Decree,¹² the State stands ready to work with all parties to this litigation to more rapidly resettle both asylum seekers and the City's existing homeless population. The State has already established its willingness to connect any migrant with work authorization to employment and to move households that have applied for asylum into permanent housing. The State will discuss expansions of existing programs, what is required of the City and the State to make these programs work, and other ideas for programs to reduce both migrant and non-migrant need for shelter. In addition, the State welcomes a discussion on what types of case management services are required to better manage and increase the exits of migrants from City shelters, including what financial support from the State could be made available for such a coordinated program.

In some instances, the City has failed to accept the State's offers of assistance or recommendations for State facilities. The City has not made timely requests for regulatory changes, has not always promptly shared necessary information with the State, has not implemented programs in a timely manner, and has not consulted the State before taking certain actions. While Governor Hochul and Acting Commissioner Guinn appreciate Mayor Adams's public acknowledgement of the State's significant role in the crisis response, the City can and should do more to act in a proactive and collaborative manner with the State.

The State will continue to work closely with the City to meet its obligations under the Consent Decree and to help the City more effectively manage this crisis. The unprecedented level of support by the State reflects Governor Hochul's understanding that this humanitarian crisis deserves both compassion and substantial assistance. The State is actively working towards the day when the new migrant population can contribute to the State's economy and achieve self-sufficiency through asylum status and work authorization.

Respectfully,

/s/ Faith E. Gay

Faith E. Gay

Cc: The Honorable Erika M. Edwards
Counsel of Record

¹² The State acknowledges that the City is seeking to modify its *Callahan* obligations, which the Plaintiffs have opposed.