



**Beth Haroules**  
*Director, Disability Justice  
Litigation*  
125 Broad St., 19<sup>th</sup> Fl.  
New York NY 10004  
(212) 607-3325  
bharoules@nyclu.org

**Testimony of Beth Haroules On Behalf of the New York Civil Liberties Union  
Before the New York City Council Committee on General Welfare, Jointly  
with the Committee on Immigration, Regarding Oversight -- Emergency  
Shelters and Humanitarian Emergency Response and Relief Centers in New  
York City.**

**June 21, 2023**

The New York Civil Liberties Union (NYCLU) appreciates this opportunity to submit the following testimony regarding Emergency Shelters and Humanitarian Emergency Response and Relief Centers in New York City.

The NYCLU, the New York State affiliate of the American Civil Liberties Union, is a not-for-profit, nonpartisan organization with eight offices throughout the state and over 85,000 members and supporters. The NYCLU defends and promotes the fundamental principles and values embodied in the Bill of Rights, the U.S. Constitution, and the New York Constitution, including the right of every New Yorker to enjoy life, liberty, due process, and equal protection under law. This includes our work in pursuit of community safety, our work to advance the rights of New Yorkers with disabilities and New Yorkers who are unhoused, and our work to advance immigration reform and immigrants' rights.

The NYCLU submits this testimony today to defend New York City's longstanding commitment to the right to shelter, object to planned budget cuts to the critical services actually designed to reduce homelessness, and oppose any attempt by the City or its Mayor to scapegoat recently-arrived migrants as a cause for undermining the city's long tradition of offering shelter to those in need. This Council must ensure that the human rights of unhoused people – whether longstanding New Yorkers or recent migrants seeking shelter here – are respected.

The New York State Constitution commits the city to providing “aid, care and support of the needy” as a legal mandate, and in a city of New York's size and values, meeting the needs of our underprivileged community members should also be a moral imperative. This goal *can* be achieved. New York City can meet the needs of our entire community if it actually prioritizes reducing homelessness – with dedicated funding in its budget for services proven to reduce homelessness, and with policies that focuses on coordinating holistic and proven resources.

Unfortunately, the eight bills on today's agenda, like the proposed city budget and the Mayor's blueprint for reducing homelessness, fall well short of the vision and priority needed to actually

address a worsening economic and human rights crisis. The City's continued practice of using the police as the default response to nearly every social issue has meant the defunding of New York's accessible housing opportunities, public health infrastructure, social safety net, educational services and other vital services that would enable communities to truly thrive. These bills fail to exercise the power the Council possesses to redress these longstanding funding failures, and the NYCLU does not support them.

These bills, as well meaning as they are, are effectively equivalent to the storied exercise of rearranging the deck chairs on the Titanic. Neither the Mayor nor the Council have any coordinated, holistic plan for housing, services, or supports for unhoused New Yorkers, whether they are long-time residents of New York City, or more recent arrivals such as the more than 60,000 migrants and asylum seekers who have arrived in New York City, adding stress on the city's already inadequate shelter system. Homelessness in New York City is not a new issue. There is much more work that the Council could do to ensure the dedication of resources necessary to effectuate the right to housing and shelter in New York City.<sup>1</sup> Budgets are moral documents, and when it comes to New York City's fiscal blueprint, the budget is also an opportunity to imagine the city we want to build. The current fiscal plan, and the bills proposed today, are inadequate to meet the challenge.

### New York City's Longstanding Right to Shelter

As recognized by New York courts, starting with the first decision rendered in the class action lawsuit *Callahan v. Carey* in 1979,<sup>2</sup> the right to shelter in New York City is grounded in Article XVII of the New York State Constitution.<sup>3</sup>

Article XVII was enacted to redress the grievous harm suffered by New Yorkers during the Great Depression.<sup>4</sup> And, as stated by the New York Court of Appeals in *Tucker v. Toia*, 43

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<sup>1</sup> As but one example, the Coalition for the Homeless, the plaintiff in the *Callahan* case establishing the right to shelter in New York City, has recently provided a comprehensive look at the causes of – and solutions to – homelessness in New York, offering up a robust menu of housing types that are necessary to meet the needs of unhoused New Yorkers. See Coalition for the Homeless, *State of the Homeless 2022: New York at a Crossroads*, <https://www.coalitionforthehomeless.org/state-of-the-homeless/>.

<sup>2</sup> A copy of the December 5, 1979 decision rendered by New York State Supreme Court in the *Callahan v. Carey*, 42852/1979 class action litigation is available at <https://www.coalitionforthehomeless.org/wp-content/uploads/2014/08/CallahanFirstDecision.pdf>.

<sup>3</sup> Article XVII of the New York State Constitution states, “The 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,” N.Y. Const. Art. XVII, §1.

<sup>4</sup> See e.g. Fein, Scott and Ayers, Andrew, “Protections in the New York State Constitution Beyond the Federal Bill of Rights,” Albany Law School, Government Law Center and Rockefeller Institute of Government, 2017, [https://rockinst.org/wp-content/uploads/2018/02/2017-Protections\\_in\\_the\\_New\\_York\\_State\\_Constitution1.pdf](https://rockinst.org/wp-content/uploads/2018/02/2017-Protections_in_the_New_York_State_Constitution1.pdf) (“Although other states have constitutional provisions regarding public welfare, New York State’s article is one of the strongest and most influential [and] extends [mandated aid] to all needy persons, including immigrants not eligible for federal assistance, able-bodied low income persons without dependent children, teenage mothers, and families who have been on public assistance for long periods of time. Article XVII is one reason why New York

N.Y.2d 1, 7 (1977) "[i]n New York State, the provision for assistance to the needy is not a matter of legislative grace; rather, it is specifically mandated by our Constitution." Migrants and asylum-seekers seeking shelter in New York City, are members of the *Callahan* class and themselves are entitled to shelter.

Shamefully, various Mayoral administrations have mounted challenge after challenge to *Callahan* and its progeny over the years since the *Callahan* consent judgment was entered in 1981. To date, those challenges have been unsuccessful. In a cynical attempt to undo that well-established right, Mayor Adams and members of his Administration have pointed to the recent influx of migrants and asylum-seekers as reason for the City to be relieved, in their entirety, of its long-standing legal obligations and commitments under *Callahan* and its progeny to provide shelter.<sup>5</sup>

### Mass Homelessness in New York City

The Council well knows that mass homelessness in New York City is neither a recent phenomenon<sup>6</sup> nor the result of this most recent arrival of migrants. Even before the so-called "migrant crisis" was identified by the administration of Mayor Adams as the reason that the City must be relieved of its *Callahan* obligations and, further, to significantly cut budgets across city agencies,<sup>7</sup> there were more than 60,000 unhoused people in New York City on any given night.<sup>8</sup>

Mayor Adams has failed to address and made worse the plight of unhoused New Yorkers. He has, instead, deployed NYPD to sweep away unhoused people from streets and subways, tried to consign unknown numbers of unhoused New Yorkers to forced treatment and psychiatric hospitalization, failed to address the affordable housing crisis confronting NYC, issued his own counterproductive emergency rules amending the CityFHEPS rental assistance housing voucher program,<sup>9</sup> defunded New York's accessible housing opportunities, educational resources, public

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State's public assistance and Medicaid programs are offered to so many economically needy persons, whatever the circumstances in which they find themselves.").

<sup>5</sup> See Legal Aid Society Letter in opposition to City Defendants' application for modification of provision of Final Judgment on Consent, *Callahan v. Carey*, Index No. 42582/1979, dated May 25, 2023, <https://legalaidnyc.org/wp-content/uploads/2023/05/Callahan-letter-to-court-5-25-23.pdf>.

<sup>6</sup> In fact, in the past four decades, as the Coalition for the Homeless has demonstrated, the City has met its legal obligations under the Judgment, regardless of sharp increases in demand. See "Facts about Homelessness," <https://www.coalitionforthehomeless.org/facts-about-homelessness/> (demonstrating multiple sharp increases in clients sheltered in City-funded shelters since the *Callahan* consent judgment was issued).

<sup>7</sup> See e.g., Kelly Mena, "Mayor Eric Adams Weighs in on Migrants and Housing," NY1, May 2, 2023, <https://www.ny1.com/nyc/all-boroughs/politics/2023/05/03/mayor-weighs-in-on-funding-for-asylum-seekers--lack-of-housing-plan-amid-tentative-state-budget-deal>.

<sup>8</sup> See Coalition for the Homeless, "Basic Facts about Homelessness: New York City," available at <https://www.coalitionforthehomeless.org/basic-facts-about-homelessness-new-york-city/>.

<sup>9</sup> On May 25, 2023, the Council voted to approve a relatively comprehensive package of legislative solutions to address the City's homelessness crisis but the growing eviction crisis as well by reforming the City's rental assistance voucher program, CityFHEPS. See "Council Votes on Major Legislative Package to Address

health infrastructure, social safety net services, and other vital services that would enable communities, including unhoused migrants and asylum seekers, to thrive, and now proposes to toss untold thousands of New Yorkers into the gutter.

The Council Must Support Investments in Real Community Services, Including Housing, Health and Safety Infrastructures – Not More Policing.

The NYCLU has repeatedly testified before this Council as to the need to reduce our over-reliance on and our over-resourcing of the New York Police Department (“NYPD”) and increase our investments in non-carceral, non-punitive services to support New Yorkers. The safest communities are not the ones with the most police or the highest jail populations; they are the communities with the most resources, the strongest social safety nets, and the most accessible support for people in crisis. But the City’s continued practice of using the police as the default response to nearly every social issue has meant the defunding of New York’s accessible housing opportunities, public health infrastructure, social safety net, and other vital services that would enable communities to truly thrive.<sup>10</sup>

We urge the City Council to continue to keep intense focus on the investment of resources into the lack of supportive housing and culturally appropriate supports and services, to build up the variety of programs and services that are directly under the control of the City and that are proven approaches to help people in the long term. New Yorkers need more direct access to housing, education, economic, and health care resources -- not more police.

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Homelessness Crisis and Help New Yorkers Move Out of the Shelter System,”  
<https://council.nyc.gov/press/2023/05/25/2411/>.

However, rather than signing that package of bills into law, Mayor Adams issued an Emergency Rule under the guise of eliminating the 90-day rule for all shelter entrants, adding counterproductive work requirements for more potential voucher holders that actually add barriers to New Yorkers’ abilities to access CityFHEPS vouchers. *See* NOTICE OF ADOPTION OF EMERGENCY RULE AMENDING THE CITYFHEPS RENTAL ASSISTANCE VOUCHER PROGRAM, <https://www.nyc.gov/assets/home/downloads/pdf/press-releases/2023/HRA-Rule-Amendment-of-Rules-Governing-CityFHEPS-Program-EA.pdf>.

<sup>10</sup> Every day brings new reporting on the elimination of vital education and child care programs that help recent arrivals to the City, including a half-dozen high school programs that offer intensive English classes and subsidized child care programs open to all parents regardless of immigration status that freed them up to work, find housing and apply for asylum. *See, e.g.* Bamberger, Cayla, “Programs that help NYC migrants achieve financial independence are in jeopardy,” New York Daily News, June 20, 2023, <https://www.nydailynews.com/new-york/education/ny-key-education-child-care-programs-for-nyc-migrants-could-expire-20230620-3hvekr3orzf23c5bmylofktwya-story.html>.

And Mayor Adams, rejecting calls to fund a \$70 million pro bono legal services program affording asylum seekers assistance in submitting applications for asylum and work authorization, has instead just announced an underfunded plan to eventually open an appointment-only asylum application center operating under the auspices of the Red Cross. The New York Immigration Counsel immediately noted that the Mayor’s ill-defined legal services plan is “too little, too late.” More than 70,000 migrants have already arrived in the city over the last year, but many have not filed their asylum applications, delaying their eligibility for work authorization and now running up against time restrictions that may prevent them from filing any asylum application. *See* Gartland, Michael, “NYC Mayor Adams unveils plans for asylum application center to assist migrants,” New York Daily News, June 20, 2023, <https://www.nydailynews.com/news/politics/new-york-elections-government/ny-migrants-asylum-application-center-mayor-adams-20230620-156nfm5tzjeejgizwfrwikk4qy-story.html>.

We need the Speaker and City Council to ensure that the FY24 Budget restores and protects critical services and programs that our communities rely on and that are essential for the full recovery of our city, which has resulted in the inaccessibility of low-cost care and long waiting lists. Since Mayor Adams took office he has been steadily cutting personnel, positions and funding from our public schools, homeless and housing services, police oversight, libraries, mental health services, services for the aging, and other critical programs. Concurrently, he has continued to expand the NYPD's resources to advance discriminatory policing practices that fail to meaningfully and systemically address safety concerns of New Yorkers, while working to increase the role of the NYPD in providing social and health services that are best handled by care workers and other expert professionals. New Yorkers need more direct access to economic, health and care resources -- not more police.

We also urge the Speak and City Council to exercise its oversight authority to redress the fact that there are enough vacant apartments in the city's public and supportive housing systems to accommodate 15,000 people. These empty units across the two systems combined could and should be used to transition homeless New Yorkers out of shelters and into the empty apartments, thereby creating capacity for migrants and asylum seekers in the shelter system.<sup>11</sup>

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The NYCLU thanks the Committees for the opportunity to provide testimony on these critical issues. We stand ready to working with the members of the Committees conducting this oversight hearing, and all appropriate partners, to advance meaningful policy changes that will actually improve the lives of all New Yorkers.

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<sup>11</sup> Councilmember Lincoln Restler has released agency-level data shows that NYCHA has almost 4000 empty units across its system as of the end of May while more than 2600 units sit vacant in the City's supportive housing network. See Sommerfeldt, Chris, "Beds for 15,000 people sit empty in NYC's public, supportive housing systems amid migrant crisis," New York Daily News, June 19, 2023, [www.nydailynews.com/news/politics/new-york-elections-government/ny-beds-empty-nyc-public-supportive-housing-systems-amid-migrant-crisis-20230619-762ilfgt5vcsjdh5tf4xv7iyy-story.html?oref=csny\\_firstread\\_nl](https://www.nydailynews.com/news/politics/new-york-elections-government/ny-beds-empty-nyc-public-supportive-housing-systems-amid-migrant-crisis-20230619-762ilfgt5vcsjdh5tf4xv7iyy-story.html?oref=csny_firstread_nl).

## Appendix A

NYCLU's Comments on Int. 942-2022, Int. 943-2023, Int. 1064-2023, Int. 1072-2023, Int. 1080-2023, Int. 1084-2023, Int. 1095-2023 and Int. 1096-2023

There are eight pieces of legislation on today's hearing agenda.

### Emergency Congregate Housing Standards

Ints. 942,<sup>12</sup> 943,<sup>13</sup> 1084,<sup>14</sup> and 1095<sup>15</sup> apply to emergency congregate housing in New York City, including at the Humanitarian Emergency Response and Relief Centers (HERRCs), established by the Adams Administration to address the increase of migrants in the City. These bills are intended to ensure that standards currently applicable to other congregate shelters in the City will apply to emergency shelters being used to house migrants and asylum seekers.

Mayor Adams has, however, already unilaterally, and inappropriately, suspended the operation of critical provisions of the New York City Administrative Code relating to the right to shelter and conditions in existing shelters settings. *See e.g.* Emergency Executive Order 402, May 10, 2023, <https://www.nyc.gov/office-of-the-mayor/news/402-003/emergency-executive-order-402>. See also Emergency Executive Order 430, June 14, 2023, the most recent extension of the May 2023 suspension order, <https://www.nyc.gov/office-of-the-mayor/news/430-003/emergency-executive-order-430>.

While we obviously support the intent of these bills, the Council heard the same threat, repeated twice today by the Administration representatives testifying, that Mayor Adams will simply

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<sup>12</sup> Int. 942 would establish minimum standards for the HERRCs and other emergency congregate housing in New York City, established by the Adams Administration to address the increase of migrants in the City. The standards set forth in Int. 942 would mirror those that already apply to shelters operated by the Department of Social Services (DSS) and that effectuate the rights, entitlements and due process protections afforded New Yorkers seeking shelter under the seminal litigation, *Callahan v. Carey*, and its progeny.

<sup>13</sup> Int. 943 would require that the Mayor provide written and verbal notification of the right to be placed in a Department of Social Services (DSS) shelter to individuals and families who are housed in specific types of emergency congregate housing in New York City.

<sup>14</sup> Int. 1084 would require the Department of Health and Mental Hygiene (DOHMH) to develop a trauma informed care training to be offered to individuals providing services to refugees, asylees and migrants. All New Yorkers receiving emergency shelter services would actually benefit from staff **mandatorily** trained in trauma informed care. *See* Kushel, M., Moore, T., et al. (2023). "Toward a New Understanding: The California Statewide Study of People Experiencing Homelessness. UCSF Benioff Homelessness and Housing Initiative" ("Participants reported how stress and trauma over the life course preceded their experience with homelessness. Participants reported experiences of discrimination, exposure to violence, incarceration, and other traumas prior to homelessness. These experiences interacted and compounded to increase vulnerability to homelessness.").

<sup>15</sup> Int. 1095 would require DOHMH to staff at least one mental health coordinator to provide resources on trauma-informed, language accessible mental health services in the city at any location where refugees, asylees, and migrants receive services from city agencies or contracted provider.

expand the scope of that Emergency Executive Order suspending these proposed new Administrative Code provisions – if and when they may be enacted.

### Public Assistance Benefits Resources

Ints. 1072,<sup>16</sup> Int. 1080,<sup>17</sup> and 1096<sup>18</sup> address benefits resources, qualifications and eligibility coordination more broadly for all New Yorkers who seek housing and other public assistance benefits.

We note that Int. 1072 uses retrogressive definitional language that excludes transgender and non-binary individuals from the protections afforded “families with children” by this legislation. Proposed § 21-334 defines “families with children” as including only “a single pregnant **woman**” and “families including at least 1 pregnant **woman**.” We ask that the Council consider amending the definitional language from “pregnant woman” to “pregnant person.”

With respect to Int. 1080, we would ask that the Council consider ensuring that the various resources to be created under Int. 1080 reach all New Yorkers in analogue form as well as via the online websites of the various City agencies involved in this initiative because we still have a massive digital divide in this city. As the Council is well aware, predictably, the brunt of the digital divide falls on particular communities. The Council has reported, for example, that the most impacted communities are home to individuals who disproportionately live at the intersection of poverty and structural racism. About a quarter of New York City households still lack a broadband subscription at home and the percentage is even higher for Black, Hispanic, low-income, and senior households. For some community districts — many in the Bronx and high-poverty areas — over 40% of households do not have high-speed broadband service. Between 11 and 13 percent of NYC DOE students in each borough lack access to adequate internet at home during remote learning. See, e.g., Broadband and Equal Access to the Internet in New York City, <https://council.nyc.gov/data/internet-access/>.

And, of course, not all temporary housing settings, particularly the less traditional sites in which the City is housing new migrants, necessarily provide broadband access. See, e.g., New York City Bar, June 6, 2023 “Report in Support of Legislation Providing Internet Access to Individuals Living in Temporary Housing Throughout New York State,” <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/digital-divide-free-wifi-for-homeless-shelter-residents>.

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<sup>16</sup> Int. 1072 would reduce the required housing history from two years to one year in order for families with children to demonstrate their eligibility for entry into the Department of Homeless Services (DHS) shelter system and would require DHS to create digital case records.

<sup>17</sup> Int. 1080 would require, among other things, that DSS publish searchable information on emergency feeding programs, food benefits programs, and senior centers on its website and through other City digital platforms.

<sup>18</sup> Int. 1096 would eligibility specialists are available at every shelter to assist residents with determining eligibility for public assistance benefits.

## Data Collection

Finally, Int. 1064 is a data reporting bill that would require DSS to report, no later than December 2024, a variety of data on the outcomes and operations of homelessness prevention and aftercare, as well as issuing a one-time report no later than January 31, 2025, on early indicators of housing instability, opportunities for early intervention and potential means to expand services offered or populations served.

While the data collection contemplated by Int. 1064 is extensive, the proposed legislation takes a blunderbuss approach to the categories of data mandated to be reported annually by DSS with respect to its programmatic operations and outcomes. Int. 1064 might benefit from a more systematic planning approach in order to establish an effective and targeted collection and reporting of data by DSS and the other City agencies that are engaged in the provision of homelessness services, including prevention and aftercare services.

Moreover, the second part of Int. 1064 appears both duplicative and reductive of the work that already exists in the field of housing instability and opportunities for early interventions to stave off homelessness. For example, the United States Department of Health and Human Services/Office of Disease Prevent and Health Promotion already has compiled an extensive summary of the literature on Housing Instability, available at <https://health.gov/healthypeople/priority-areas/social-determinants-health/literature-summaries/housing-instability>.

The Adams Administration has itself issued a “blueprint” to address, among other topics, Homelessness and Housing Instability, <https://www.nyc.gov/assets/home/downloads/pdf/office-of-the-mayor/2022/Housing-Blueprint.pdf>. That Housing Blueprint notes, appropriately, that “[w]hile DHS represents the City’s largest shelter system, the universe of homeless New Yorkers is larger than the DHS shelter population. There are three additional agencies that assist individuals experiencing homelessness – HPD, DYCD, and HRA (HASA and Domestic Violence) – each of which report on their clients separately and employ different tools to serve them.”

Int. 1064 perpetuates a current focus on DHS operations and programs alone which, the Housing Blueprint notes, will continue to “obscures the true picture of homelessness in New York City and diminishes our accountability to address the full scope of the problem, reducing transparency for the public and making progress more difficult to track.”