

**CV 15**

**5986**

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

Plaintiff,

-against-

CITY OF NEW YORK,

Defendant.

**CONSENT DECREE  
AND JUDGMENT**

Civil Action  
No. CV-15-\_\_\_\_\_

(Brodie, J.)  
(Scanlon, M.J.)

**MAUSKOPF, J.  
ORENSTEIN, M.J.**

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**INTRODUCTION**

WHEREAS, the United States of America, through the United States Attorney’s Office for the Eastern District of New York, asserts that the City of New York (“City”) has violated and continues to violate Title II of the Americans with Disabilities Act of 1990 (“Title II” of the “ADA”), 42 U.S.C. §§ 12131-34; 28 C.F.R. §§ 35.130; 35.160, by failing to take appropriate steps to ensure that communications with individuals with disabilities applying to or participating in the City’s homeless shelter system for families are as effective as communications with others and by failing to furnish appropriate auxiliary aids and services where necessary to afford individuals with disabilities, including applicants and participants, an equal opportunity to participate in, and enjoy the benefits of, the services, programs or activities of the City’s homeless shelter system for families; and

WHEREAS, the United States maintains that the City violated Title II by failing to provide RK, a deaf woman, with appropriate auxiliary aids and services to ensure effective communications during her interactions with and participation in the City’s homeless shelter system for families; and

WHEREAS, the City denies these allegations; and

WHEREAS, the parties to this Consent Decree and Judgment, seek to resolve the claims against the City without the expense, delays, risks and uncertainties of litigation; and

WHEREAS, by entering into this Consent Decree and Judgment, the City does not admit to the truth of any claims made against it by the United States; and

WHEREAS, further, nothing in this Consent Decree and Judgment shall be construed as an acknowledgment or admission by the United States that the City has acted, or continues to act, in full compliance with the United States Constitution or federal law;

THEREFORE, the parties hereby enter into this Consent Decree and Judgment and the terms set forth as follows:

#### **DEFINITIONS**

1. Qualified Individual With a Disability “means an individual with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity.” 28 C.F.R. § 35.104.

2. Auxiliary Aids and Services “includes (1) Qualified interpreters on-site or through video remote interpreting (VRI) services; notetakers; real-time computer-aided transcription services; written materials; exchange of written notes; telephone handset amplifiers; assistive listening devices; assistive listening systems; telephones compatible with hearing aids; closed caption decoders; open and closed captioning, including real-time captioning; voice, text, and video-based telecommunications products and systems, including text telephones (TTYs), videophones, and captioned telephones, or equally effective telecommunications devices;

videotext displays; accessible electronic and information technology; or other effective methods of making aurally delivered information available to individuals who are deaf or hard of hearing; ...[3] Acquisition or modification of equipment devices; and (4) Other similar services and actions.” Id.

3. Qualified Interpreter “means an interpreter who, via a video remote interpreting (VRI) service or an on-site appearance, is able to interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary. Qualified interpreters include, for example, sign language interpreters, oral transliterators, and cued-language transliterators.” Id.; see 28 C.F.R. § 35.160(d).

4. Effective Communication means communication with persons who are deaf or have hearing loss that is as effective as communications with others. Effective communication is achieved by furnishing appropriate auxiliary aids and services where necessary to afford qualified individuals with a disability an equal opportunity to participate in or benefit from the services, programs, or activities of a public entity. See 28 C.F.R. § 35.160.

5. DHS Homeless Shelter System means the homeless shelter system operated by the New York City Department of Homeless Services (“DHS”), including, but not limited to, DHS intake centers for persons seeking shelter, all DHS facilities providing shelter to homeless persons which are either directly owned and operated by DHS or which DHS operates through contracts with social services providers, and all social service programs provided by DHS to homeless persons seeking shelter, receiving shelter, or departing from such shelters, including services that may be provided by another City agency within a DHS intake center.

6. Shelter Resident means a person living at or placed in the DHS Homeless Shelter System for any period of time. This may include single overnight stays.

7. Effective Date means the date that this Consent Decree and Judgment becomes fully executed.

8. Independent Living Plan ("ILP") means a plan developed and/or revised by DHS, together with the Shelter Resident, which sets forth a strategy for meeting such Shelter Resident's housing-related public assistance and care needs as identified in an assessment and for obtaining housing other than temporary housing and which establishes such Shelter Resident's responsibilities during their receipt of temporary housing assistance and specifies the conditions upon which temporary housing assistance will be provided. See 18 N.Y.C.R.R. § 352.35(b)(2).

#### **STATEMENT OF AGREEMENT**

9. The City agrees to take appropriate steps to ensure Effective Communication with City shelter applicants or clients who are deaf or have hearing loss, including, but not limited to, providing appropriate Auxiliary Aids and Services where necessary to provide those applicants or clients with an equal opportunity to participate in or enjoy the benefits of the Homeless Shelter System.

10. Consistent with 28 C.F.R. § 35.160(c), the City shall not:

- a. require an individual with a disability to bring another individual to interpret for him or her;
- b. rely on an adult accompanying an individual with a disability to interpret or facilitate communication except—
  - (i) In an emergency involving an imminent threat to the safety or welfare of an individual or the public where there is no interpreter available; or
  - (ii) Where the individual with a disability specifically requests that the accompanying adult interpret or facilitate communication, the accompanying adult agrees to provide such assistance, and reliance

on that adult for such assistance is appropriate under the circumstances; and

- c. rely on a minor child to interpret or facilitate communication, except in an emergency involving an imminent threat to the safety or welfare of an individual or the public where there is no interpreter available.

11. Within 90 days of the Effective Date of this Consent Decree and Judgment, the City will ensure that the Homeless Shelter System provides accessibility, pursuant to 28 C.F.R. § 35.160 and the 2010 ADA Standards for Accessible Design, (*see* 28 C.F.R. § 35.104) to all persons who are deaf or have hearing loss. Such accessibility will include, but not be limited to, the presence of visible alarm appliances for fire and smoke detection, and notification and identification devices at the dwelling unit primary entrance accessible to persons who are deaf or have hearing loss within City Shelter facilities. The City shall ensure that at least 10 dwelling units for families with children, 6 units for adult families, 200 beds for single men, and 100 beds for single women have such accessible features. Such units and beds shall not be concentrated in only one location or borough. In the event that an individual who is deaf or has hearing loss is placed in a facility which does not provide such accessibility features, the City will within 24 hours of that placement, ensure that the individual is provided such features or move the individual to a facility which provides them.

12. Within 30 business days of the Effective Date of this Consent Decree and Judgment, the City will ensure that all Shelter Residents and applicants for shelter within the Homeless Shelter System are made aware that, upon request, the City can make available Auxiliary Aids and Services at both intake centers and at the shelters themselves. The City will ensure that any written materials used to provide this information will include a universally recognized pictorial symbol for “Qualified Interpreter.”

13. The City will develop and implement a form that enables Shelter Residents and applicants for shelter within the Homeless Shelter System to request appropriate Auxiliary Aids and Services at DHS intake centers and shelters. This form will include a description of the means by which Shelter Residents may file a grievance with DHS pertaining to any issue arising from their request for Auxiliary Aids and Services. Prior to implementing the form, and no later than 30 days following the Effective Date of this Consent Decree and Judgment, Defendants will submit a copy of the form for review and approval to the Office of the United States Attorney for the Eastern District of New York at the following address: 271 Cadman Plaza East, 7<sup>th</sup> Floor, Brooklyn, New York 11231, Attention: Assistant U.S. Attorney Kelly Horan Florio. The City will implement this form within 30 days of receiving approval of the form from the Office of the United States Attorney for the Eastern District of New York.

14. The City will promulgate procedures to implement the terms of this Consent Decree and Judgment, and will provide training about Title II ADA compliance and these procedures to all City employees involved with the DHS Homeless Shelter System whose regular job responsibilities include interaction with shelter applicants or residents, including program administrators, shelter directors, and shelter staff. The City will further ensure that all contract shelter employees whose regular job responsibilities include interaction with shelter applicants or residents also receive this training. Prior to provision of this training, and no later than 30 days following the Effective Date of this Consent Decree and Judgment, the City will submit a copy of the proposed training for review and approval to the Office for the United States Attorney for the Eastern District of New York. The City will ensure that all such employees receive this training within 90 days of receiving approval of the training from the Office of the United States Attorney for the Eastern District of New York. The City will further

ensure that all such employees receive refresher training on this topic at least once every two years after receiving the initial training. Proposed refresher training will be similarly reviewed and approved by the Office of the United States Attorney for the Eastern District of New York during the time period covered by this Consent Decree and Judgment. This training will include, but will not be limited to, information about the Title II definition of a Qualified Interpreter and what types of persons may and may not appropriately serve as Qualified Interpreters for persons who are deaf or have hearing loss. The City will ensure that any new employees involved with the Homeless Shelter System whose regular job responsibilities include interaction with shelter applicants or residents will receive Title II training within 30 days of beginning employment.

15. Within 30 days of the Effective Date of this Consent Decree and Judgment, the City will ensure that each intake center and shelter in the DHS Homeless Shelter System can make available a Qualified Interpreter upon request for persons who are deaf or have hearing loss within a reasonable period of time, but no more than two hours after the request is made. DHS will also advise any social services provider with whom it contracts subsequent to the Effective Date of this Consent Decree and Judgment of their obligation to provide Qualified Interpreters to persons who are deaf or have hearing loss upon request, and DHS will ensure that each such provider can make available a Qualified Interpreter within a reasonable period of time, but no more than two hours after the request is made. To the extent that a person who is deaf or has hearing loss is placed in a shelter which cannot make available a Qualified Interpreter within two hours, an outcome which DHS shall take all reasonable steps to avoid, DHS shall make best efforts to transfer that person within 24 hours, along with any members of that person's family, to a shelter which can make a Qualified Interpreter available within a reasonable period of time, and will provide this person with advanced notice of this impending transfer. If DHS is unable

to transfer such person within 24 hours, or is otherwise unable to secure interpreter services for such person, the City will notify the Office of the United States Attorney for the Eastern District of New York within seventy-two hours of the request for an interpreter and the parties will work collaboratively to identify a resolution. If the City remains unable to resolve the issue after working collaboratively with the United States Attorney for the Eastern District of New York, this will constitute a violation of the Consent Decree and Judgment.

16. To the extent that shelter staff schedule a meeting or meetings in advance with a Shelter Resident who is deaf or has hearing loss, such staff will ensure that a Qualified Interpreter is provided at that meeting or meetings.

17. Upon expiration of the City's current contract with an outside interpretation service, the City will make best efforts to require that any contract renewals or new contracts with interpretation services will ensure that Qualified Interpreters can be made available at intake centers and City directly operated shelters within one hour of receiving the request.

18. The City will create and implement a building inspection checklist for use when it evaluates buildings for inclusion into the DHS Homeless Shelter System. The checklist will assess compliance with Title II and the ADA Standards for Accessible Design, as they relate to persons who are deaf or have hearing loss, for each. All City employees whose job responsibilities include evaluating buildings for inclusion into the DHS Homeless Shelter System will be trained on the proper use of the checklist prior to conducting any such evaluation. Prior to finalization, and no later than 30 days following the Effective Date of this Consent Decree and Judgment, the City will submit a copy of the checklist template for review and approval to the Office of the United States Attorney for the Eastern District of New York at the address listed



above in Paragraph 13. The City will implement the checklist within 60 days of receiving approval from the Office of the United States Attorney for the Eastern District of New York.

19. Within 90 days of the Effective Date of this Consent Decree and Judgment, the City will establish a tracking system to identify each Shelter Resident or applicant for shelter within the Homeless Shelter System who requests Auxiliary Aids and Services. The tracking system will include a description of the Auxiliary Aids and Services requested, whether the request was granted and, if so, on what date the requested Auxiliary Aid(s) and/or Service(s) were provided. If the request is rejected, the reasons for the rejections must be set forth in writing and provided to the Resident or applicant.

20. Once per month for a period of six months following the Effective Date of this Consent Decree and Judgment, once every three months for a period of nine months thereafter, and once every six months thereafter for the life of this Consent Decree and Judgment, DHS' office of Diversity and Equal Opportunity Affairs will review every request for Auxiliary Aids and Services which DHS has then received from a Shelter Resident to-date, and will communicate directly with knowledgeable staff of the shelter in which the deaf or hard of hearing resident who made each request resides, to ensure that each resident who requested Auxiliary Aids and Services received and continues to receive those Auxiliary Aids and Services necessary to ensure Effective Communication.

21. The City will retain a copy, for 3 years from the date of receipt, of all written requests for Auxiliary Aids and Services received from Shelter Residents or applicants to the Homeless Shelter System. Upon the request of the United States Attorney's Office for the Eastern District of New York, the City will produce those forms for inspection and review.

22. Within 90 days of the Effective Date of this Consent Decree and Judgment, Defendants will pay the sum of \$2,500 to RK.

23. In the event that DHS refers a Shelter Resident who is deaf or has hearing loss via that Shelter Resident's ILP to the New York City Human Resources Administration ("HRA") for the purposes of opening or maintaining an active public assistance case, or for the purposes of obtaining subsidized employment, and where DHS is aware of the date, time and location of that Shelter Resident's appointment with HRA, DHS will notify HRA at least twenty four hours in advance of that appointment that the Shelter Resident is deaf or has hearing loss and must be provided with a Qualified Interpreter during the appointment. In the event that DHS does not become aware of the date, time, and location of the appointment until within 24 hours of the appointment, DHS will so notify HRA as far in advance of the appointment as is reasonably possible, but in no event less than two-and-a-half hours in advance of the appointment. HRA will, in such circumstances and when so notified by DHS, provide a Qualified Interpreter to the Shelter Resident at this appointment. Further, in the event that DHS submits an application for a Section 8 housing voucher on behalf of a Shelter Resident who is deaf or has hearing loss to the New York City Department of Housing Preservation and Development ("HPD"), or in the event that such a Shelter Resident submits such an application to HPD on their own and subsequently informs DHS that they have done so, DHS will notify HPD at or around the time DHS submits the application or is notified that the Shelter Resident submitted the application that the Shelter Resident is deaf or has hearing loss and must be provided with a qualified interpreter during any scheduled appointment held with HPD in connection with the Section 8 application. HPD will, in such circumstances and when so notified by DHS, provide a Qualified Interpreter to the Shelter Resident at any such scheduled appointment. Finally, in the event that DHS refers a

Shelter Resident who is deaf or has hearing loss via that Shelter Resident's ILP to the New York City Housing Authority ("NYCHA") for the purposes of obtaining subsidized permanent housing, and where DHS is aware of the date, time and location of that Shelter Resident's appointment with NYCHA, DHS will notify NYCHA in advance of that appointment that the Shelter Resident is deaf or has hearing loss and must be provided with a Qualified Interpreter during the appointment.

24. If, after relaying information to HRA, HPD, or NYCHA in the circumstances and manner described in paragraph 23, DHS is later informed by the Shelter Resident who is deaf or has hearing loss that the Shelter Resident did not receive interpretation services from HRA, HPD, or NYCHA, the City and/or NYCHA will investigate this claim and the City will report the results of that investigation to the Office of the United States Attorney for the Eastern District of New York within 30 days of receiving the report from the Shelter Resident.

#### **ENFORCEMENT**

25. For a period of three (3) years after the Effective Date of the Consent Decree and Judgment, the City will submit to the United States an annual written report outlining its compliance with this Consent Decree and Judgment. This report will include a written summary of how the City has complied with the terms of Paragraphs 9 through 24 of this Consent Decree and Judgment during the prior year. It will also provide information as to how many individuals requested Auxiliary Aids and Services during that year, along with how City and/or shelter staff responded to those requests. If any requests were denied, the City will provide an explanation as to the denial. This annual report shall be submitted on or before the last day of September of each year to the Office of the United States Attorney for the Eastern District of New York at the address listed above in Paragraph 13.

26. This Consent Decree and Judgment does not purport to remedy any other potential violations of the ADA or any other Federal law not specifically referenced herein. Nor does this Consent Decree and Judgment affect the City's continuing responsibility to comply with all aspects of the ADA.

27. The Consent Decree and Judgment shall be binding on the City and its employees, representatives, officers, subsidiaries, or successors in interest.

28. This Consent Decree and Judgment constitutes the entire agreement between the parties relating to the issues raised in the United States' underlying investigation, and no other statement, promise, or agreement, either written or oral, made by either party or agents of either party prior, that is not contained in this Consent Decree and Judgment, shall be enforceable.

29. The United States reserves all legal and equitable remedies available to enforce the provisions of this Consent Decree and Judgment, except as expressly stated herein. The Court shall retain jurisdiction over this matter for the purpose of enforcement of the terms of this Consent Decree and Judgment. This Consent Decree and Judgment shall terminate three years from the date that the parties execute this Consent Decree and Judgment or sooner, upon certification by the United States that the City has maintained Substantial Compliance with all provisions of this agreement for the previous twelve months. "Substantial Compliance" indicates that the City has achieved compliance with most or all requirements of the substantive provisions of this Consent Decree and Judgment. Any alleged noncompliance must be systemic. Noncompliance with mere technicalities, or temporary failure to comply during a period of otherwise sustained compliance, shall not constitute failure to maintain Substantial Compliance. At the same time, intermittent compliance during a period of sustained noncompliance shall not constitute Substantial Compliance.


30. If, after the end of the three year period described in Paragraph 29 above, the United States determines that the City is not in Substantial Compliance, and the City disputes that determination, the City may move for relief from this Court. The City may also move for termination if the United States takes no action at the end of the three year period. In any such motion, the City shall bear the burden of demonstrating that it is in Substantial Compliance as set forth in Paragraph 29 above. In the event that the United States finds that the City has violated this Consent Decree and Judgment, it shall, before applying to the District Court for relief, endeavor in good faith to resolve informally with the City any differences regarding interpretation of and compliance with the Consent Decree and Judgment. However, if the parties are not able to resolve their differences informally, the United States reserves the right to move this Court to impose any remedy authorized by law or equity, including, but not limited to, an order requiring performance of such act or deeming such act to have been performed.

31. This Consent Decree and Judgment may be signed in counterparts, and its validity shall not be challenged on that basis.

32. Each party shall bear their own costs and fees associated with this case.

Dated: October 15, 2015

ROBERT L. CAPERS  
United States Attorney  
Eastern District of New York  
Attorney for the United States of America  
271 Cadman Plaza East  
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By:   
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ZACHARY W. CARTER  
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Attorneys for Defendant City of New York  
100 Church Street  
New York, New York 10007

By: \_\_\_\_\_  
Eric Porter  
Assistant Corporation Counsel

SO ORDERED this  
\_\_\_\_ day of \_\_\_\_\_, 2015

\_\_\_\_\_  
U.S.D.J.

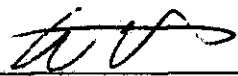
32. Each party shall bear their own costs and fees associated with this case.

Dated: October 15, 2015

KELLY T. CURRIE.  
Acting United States Attorney  
Eastern District of New York  
Attorney for the United States of America  
271 Cadman Plaza East  
Brooklyn, New York 11201

By: \_\_\_\_\_  
Kelly Horan Florio  
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Assistant United States Attorneys

ZACHARY W. CARTER  
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Attorneys for Defendant City of New York  
100 Church Street  
New York, New York 10007

By:  \_\_\_\_\_  
Eric Porter  
Assistant Corporation Counsel

SO ORDERED this  
\_\_\_\_ day of \_\_\_\_\_, 2015

\_\_\_\_\_  
U.S.D.J.

SO ORDERED:  
s/ MKB 10/26/2015

\_\_\_\_\_  
MARGO K. BRODIE  
United States District Judge