

**New York City Council  
Committee on Rules, Privileges & Elections**

**Testimony of Steven Banks  
Corporation Counsel Nominee**

Speaker Menin, Minority Leader Carr, Committee Chair Ung, and Members of the Committee, thank you very much for this opportunity to testify today about my nomination to be the Corporation Counsel for the City of New York.

I have great respect for the City Council's role in this process. And I greatly appreciate the time that the Speaker, the Deputy Speaker, the Minority Leader, the Committee Chair, the Committee members, and many other members of the Council have already spent talking with me about your views on the importance of the Corporation Counsel serving as the chief lawyer for the City as a whole, including the Council and individual Councilmembers.

As many of you know, I have spent more than four decades as a lawyer serving the residents of New York City in many different roles. Beginning in 1981 when I graduated from law school and throughout my professional career, I have had extraordinary opportunities to serve New Yorkers.

Serving as the City's chief legal officer is the opportunity of a lifetime to provide legal leadership and representation to improve the lives of City residents and protect the interests of the City that I love.

The Office of the Corporation Counsel has a storied history and I want to build on that great tradition at a time when the City needs a strong, creative, and effective Law Department more than ever.

I have a unique perspective on the Law Department.

- For 33 years as a Legal Aid lawyer, including ten as head of the organization, I litigated against the Law Department.
- For eight years as a City Commissioner, I was represented by the Law Department in affirmative law reform matters to provide access to rental assistance, SNAP/food stamps, and Medicaid as well as defensive cases to protect the interests of the City and its residents.
- Also, during my time at Legal Aid and in the years since I left City government in December 2021, I have co-counseled with the Law Department on matters relating to the right to shelter and access to housing.

I know first-hand the key role the lawyers and professional support staff at the Law Department play in representing the City of New York and supporting transformational change in every community.

I am honored by this historic nomination to be the first Legal Aid lawyer or public interest lawyer to serve as the Corporation Counsel.

My proven track record of managing a large law firm has given me the expertise and knowledge to lead the Law Department effectively. At Legal Aid, I managed a staff of 1,900, including 1,100 attorneys and 800 support professionals, which is more than the Law Department had at full strength. With my law firm management experience, if confirmed, I look forward to working with the Administration to address the Law Department's staffing needs.

For your information, I have included my resume with my submission that describes in detail my record of successful zealous legal advocacy on behalf of my clients and the organizations that I have led.

While much attention has been paid to the well-known major cases that I have handled for low-income and working New Yorkers, even more importantly, I have represented large numbers of individual clients whose lives have been harmed by City actions. This has provided me with a unique vantage point on the human impact of City policies and practices. The Law Department plays an essential role in addressing those impacts, and I am ready to lead that effort.

Finally, my wife of almost 40 years – who I met on a picket line during the Legal Aid strike in 1982 and is here today – and I have been blessed over the past year with two grandchildren.

I am ready to take on this role because I know that the Corporation Counsel and the staff of the Law Department will continue to make this City a better place for my grandchildren and for every New Yorker, their children and their grandchildren for generations to come.

If confirmed, I will be a zealous legal advocate for New York City, its agencies, its elected officials, and its residents, including all of you.

Thank you for your consideration of my nomination.

## Steven Banks

### **Public interest social justice attorney**

- Former head of The Legal Aid Society.
- Former New York City Social Services Commissioner.
- Former head of a major law firm pro bono program.
- Demonstrated leadership record of developing, implementing, and managing major institutional and systems reforms in the public and private sectors over the course of a 44-year career of public service for low-income families and individuals.
- Frequently featured in media coverage on access to justice matters, including *New York Times* profiles in 2015 and 2022.
- Named a "Trailblazer in Law" in 2024 by *City & State New York*.

### **April 2025 to present:** STEVEBANKSLAW PLLC, a new public interest law firm.

- Providing strategic advice, counsel and representation to a range of clients, including the Coalition for the Homeless, the Office of the New York Attorney General, the Robin Hood Foundation's grantees, and other nonprofits and their low-income clients.

### **February 2022 to April 2025:** Special Counsel leading the pro bono practice at Paul, Weiss, Rifkind, Wharton & Garrison LLP, including these direct pro bono representations:

- Worked with The Legal Aid Society to represent the Coalition for the Homeless in litigation to protect New York City's landmark right to shelter.
- Represented the New York City Board of Correction in its successful lawsuit against the New York City Department of Correction to restore 24/7 video access to monitor conditions at the Rikers Island jail.
- Worked with the Robin Hood Foundation to provide "legal health checkups" for its grantees to help strengthen the nonprofits that provide front-line services in every low-income community in NYC.
- Provided legal support for abortion providers.
- Helped newly arrived individuals obtain immigration status so that they can work and move out of shelters.

### **April 2014 through December 2021:** Commissioner, New York City Department of Social Services, the largest social services agency in the United States.

- Managed approximately 16,000 staff serving over three million New Yorkers each year with an annual budget of \$12 billion.
- Beginning in 2016, led the Department of Homeless Services, in addition to the Human Resources Administration, as head of a joint management structure under the DSS.
- Established and led reforms for high-impact DSS programs, including implementing the first-in-the-nation Right to Counsel program for low-income tenants that, together with increased rent arrears payments, decreased evictions and shelter entries; expanding legal assistance for immigrants; and streamlining, modernizing and increasing access to cash

and rental assistance, SNAP/food stamps, Medicaid, and other programs that address the gap between income and the cost of basic needs and prevent and ameliorate homelessness.

- Closed 290 substandard shelters and replaced them with a smaller number of community-based shelters; created and implemented new rental assistance and social services housing programs that helped more than 175,000 low-income New Yorkers secure permanent housing; and used the threat of eminent domain to convert family shelter sites to nonprofit-owned permanent affordable housing for families residing in shelter, thereby reducing the number of children and families in shelter.
- Implemented initiatives to end chronic veterans' homelessness; and provided services and housing assistance to more than 4,200 unhoused New Yorkers to help them come off the streets and subways and reside in permanent housing or transitional programs.

**September 1981 to April 2014:** Attorney-in-Chief of The Legal Aid Society from 2004 to 2014, the oldest and largest legal aid organization in the United States.

- Managed Legal Aid's legal practice and operations for its criminal, juvenile rights and civil programs, handling 300,000 legal matters each year in all five boroughs with a staff of 1,100 lawyers and 800 other professionals.
- From 1981 to 2004, held a range of frontline and managerial positions at Legal Aid.
- Became the Attorney-in-Chief when Legal Aid was facing a \$21 million deficit and was generally credited with helping the organization regain financial stability, implementing effective management practices, and developing a national reputation for innovative legal leadership, including in law reform litigation.
- Had an extensive track record of working productively with a diverse and unionized workforce and helping the city's most vulnerable residents.
- Managed and led Legal Aid's extensive law reform litigation and advocacy.
- Helped reach a landmark settlement in *McCain v. Koch*, resulting in the establishment of a permanent enforceable right to shelter for families experiencing homelessness in New York City; and for many years also served as counsel to the Coalition for the Homeless, enforcing the right to shelter for single adults.
- Working with former New York Chief Judge Jonathan Lippman, implemented caseload standards for Legal Aid criminal defense and juvenile rights attorneys.

## **EDUCATION**

New York University School of Law-J.D., May 1981

Brown University- B.A., *magna cum laude*, May 1978

*Elected to Phi Beta Kappa*

*Honors Thesis -Anti-Semitism/Russian History*

New York Law Journal

COURT DECISIONS

To view our daily compilation of Court Calendars and Decisions, please see instructions below.

DECISIONS OF INTEREST

NEW YORK | CONTRACTS

Motion to Deny Demand for Jury Trial, Dismissed by Court

Plaintiff brought a breach of contract action arising from a written contract between plaintiff Hess and PA Builders for certain renovations and improvements to her apartment located at 139 Spring Street, Apt. 7A in Manhattan. Plaintiffs and counterclaim-defendants moved for an order striking defendant PA Builders, Inc.'s demand for trial by jury. The motion was denied. The court held PA Builders did not waive its right to a jury trial by asserting an equitable claim in a different, related action.



Justice James G. Clynnes  
Supreme Court

Hess v. PA Builders, Inc., 451934/2022 (November 24)

KINGS | REAL ESTATE

Summary Judgment Granted in Foreclosure Action

Plaintiff commenced an instant foreclosure action. Defendants Eli Barber and Sarah Barber answered, raising thirty affirmative defenses. Plaintiff US Bank moved for summary judgment and an order of reference. It further sought to substitute Chanie Barber, Chiam "Doe", Falyg "Doe", Freida "Doe", Ita Barber, Jackie "Doe", Joseph "Doe", Mr. Zweigenhall, Mrs. Zweigenhall and Vitochok Barber in place of the Doe defendants. Defendants opposed. The motion was granted. The court held a third party affidavit was sufficient to meet the summary judgment burden. The party evinced a familiarity with the procedure used by Wells Fargo and LenderLive and stated that the resulting business records were integrated into Wells Fargo's records and relied upon by it in its regular course of business.



Justice Cencelia R. Edwards  
Supreme Court

US Bank v. Barber, 503726/15 (October 7)

SECOND CIRCUIT | INSURANCE LITIGATION

Second Circuit Holds Insurers Have No Duty To Cover 'Ghost Gun' Sales Lawsuits

Two insurance companies disputed their duty under Texas law to defend and indemnify a firearms retailer in lawsuits arising from the retailer's alleged sales of "ghost gun" kits and parts. Defendant Primary Arms LLC sells and ships firearms and firearm components. The insurer plaintiffs issued liability policies to defendant covering certain damages caused by "accidents." In 2022, NYS, the City of Buffalo, and the City of Rochester filed separate lawsuits against defendant and other firearms retailers, alleging defendants' intentional marketing and sales of firearm parts led to increased gun violence and, consequently, economic damages to plaintiffs. The insurers then filed the instant action, seeking a declaration that they have no duty to defend or indemnify Primary Arms in the underlying suits. The district court held the policies do not extend to the underlying suits and entered judgment for the insurers on all counts. The Second Circuit affirmed, holding that because the underlying suits do not allege an "accident" as required to trigger coverage under the policies, the insurers have no duty to defend or indemnify defendant in those cases.



Circuit Judge Danny Chin  
U.S. Court of Appeals

Granite State Ins. Co. v. Primary Arms LLC, 24-2748-cv (December 10)

U.S. - EONY | PATENT LITIGATION

Court Lets Wallet Seller's Direct, Indirect, and Trade-Dress Infringement Claims Proceed

The Ridge Wallet LLC, which sells thin, hand-stitched wallets, among other offerings, brought an action against Benmo Inc. for patent and trade-dress infringement. Ridge Wallet owns a patent protecting its wallet design. Benmo sells a competing wallet on websites including Amazon.com, WhizzCart, and Supply Leader. Ridge Wallet contended that Benmo has committed direct, induced, and contributory infringement of its patent. Although Ridge Wallet pleaded all three forms of infringement as a single cause of action, they are appropriately considered as separate claims. Benmo also challenged Ridge Wallet's ability to recover punitive damages for willful infringement, as well as its ability to recover pre-litigation damages. The court denied Benmo's motion to dismiss, holding that it would be premature to assess claims for damages at this stage of this case. Specifically, the court determined that Ridge Wallet has pleaded sufficient facts to state a claim for direct infringement of its patent. Ridge Wallet's theories of indirect infringement survive the motion to dismiss, and Ridge Wallet has met each pleading requirement for its allegations of trade-dress infringement.



District Judge Eric Komisar  
Eastern District

The Ridge Wallet LLC v. Benmo Inc., 23-CV-2091 (December 9)

NEW YORK | PERSONAL INJURY

Liability Found Against Defendant Who Injured Plaintiff

Plaintiff commenced a personal injury action to recover for damages allegedly sustained. Specifically, plaintiff was a pedestrian standing on the sidewalk in front of the International House of Pancakes located on Broadway between 176th Street and 177th Street when a New York City Police Department traffic unit vehicle backed into her. Plaintiff was reading a parking sign posted along the curb when she felt an impact on the side of her body and observed the traffic unit vehicle backing into her. Plaintiff moved for summary judgment on the liability claim. The motion was granted. The court held that the defendant's evidence demonstrated that plaintiff was standing on the sidewalk when an NYPD traffic unit vehicle backed onto the sidewalk and into plaintiff's side body. The City did not dispute these facts, nor did the City raise any other facts to create a triable issue.



Justice Hana A. Kingo  
Supreme Court

Gomez v. City of New York, 150536/2021 (November 26)

KINGS | MEDICAL MALPRACTICE

Court Denies Summary Judgment in Medical Malpractice Action After Reargument

Plaintiffs commenced an action alleging defendant Dr. Silverman failed to perform a timely cesarean section, improperly using vacuum assistance, and failing to obtain informed consent. Defendant Dr. Silverman moved for summary judgment, which the court granted and denied in part. Plaintiffs sought reargument of said determination. Reargument was granted and summary judgment was denied. The court held plaintiffs demonstrated they overcame a controlling principle of law: the presence of conflicting testimony from expert witnesses, thereby creating a credibility battle that is properly left to a jury for its resolution.



Justice Patricia Peltas-Colon  
Supreme Court

A.A. v. Silverman, 514143/2015 (October 16)

U.S. - SDNY | IMMIGRATION LAW

DIIS Violated Due Process in Detention Case; Habeas Petition Granted, Release Ordered

Petitioner, a citizen of Jamaica, petitioned for a writ of habeas corpus challenging the lawfulness of his detention by U.S. Department of Homeland Security (DHS) agents and seeking his release from DIIS custody. The petition presented three issues: whether petitioner is detained pursuant to §1225(c)(2), which requires mandatory detention of noncitizens "seeking admission" to the country, or pursuant to §1226(a), which provides for discretionary detention of noncitizens "pending a decision on whether they are admissible to the United States" whether petitioner is detained under §1226, his detention without an individualized assessment of his flight risk or dangerousness violates the Due Process Clause; and if his detention violates the Due Process Clause, whether the court may grant his requested relief of release from DIIS custody or if administrative exhaustion is required. The court granted the petition and held that petitioner is entitled to release, finding that both DHS's failure to follow its own regulations and its failure to afford petitioner the minimal process due under the Fifth Amendment violated petitioner's due process rights.



District Judge Jennifer L. Rochon  
Southern District

Campbell v. Almodovar, 1:25-cv-99509 (December 10)

U.S. - NDNY | CIVIL PROCEDURE

ERISA Abrogates Tribal Immunity for Commercial 401(k) Plans; Motion to Dismiss Denied

Plaintiffs brought an action pursuant to ERISA against Turning Stone Enterprises, the Turn-of-the-Century Benefits Plan & Investment Committee of the Oneida Nation Enterprises, LLC 401(k) Plan (Committee), and John and Jane Dines 1-3ll. Defendants Turning Stone and Committee moved to dismiss the complaint for lack of subject matter jurisdiction based on tribal sovereign immunity. Defendants argued that the Oneida Nation, as a federally recognized tribe, is immune from suit and, because defendants are arms or instrumentalities of the Oneida Nation, they too are immune from suit. Plaintiffs argued that amendments made to ERISA in 2006 provide a clear expression of Congress' intent to abrogate tribes' sovereign immunity related to pension plans provided in the context of commercial activities. The court denied defendants' motion, holding that it has subject matter jurisdiction over plaintiffs' ERISA claims, holding that ERISA's provisions, including the 2006 amendment that specifically included tribal non-commercial plans in the definition of a governmental plan, evince an intent that commercial plans administered by Indian tribes are covered by ERISA.



District Judge Glenn T. Suddaby  
Northern District

Jones v. Turning Stone Enter. LLC, 5:24-CV-1596 (December 9)

NEW YORK | CIVIL PROCEDURE

Court Allows Deposition of Party in Employment Discrimination Case

Plaintiff Merih Anil commenced an action in which she alleges to have suffered employment discrimination and retaliation on the basis of national origin, gender, and age upon being denied promotions and salary increases while an employee with DSS/HRA. Additionally, plaintiff alleged that The City failed to formally complete the agency Equal Employment Opportunity (EEO) review for the EEO complaints plaintiff filed against HRA/HRA. Plaintiff sought an order to compel defendant The City of New York to produce former Commissioner of Human Resources administration (DSS/HRA) Steven Banks for a deposition. The motion was granted. The court held based on a deposition testimony regarding the EEO policy, the deposition of Steven Banks was material and necessary to the action.



Justice Carol Sharpe  
Supreme Court

Anil v. City of New York, 157376/2022 (November 25)

KINGS | CIVIL PROCEDURE

Summary Judgment Denied; Defendant's Reliance on Admissions Was Misplaced

Plaintiff, in a civil action, moved for summary judgment. The motion was granted. The court held defendant's sole reliance on the alleged admissions against interest contained within the transcript was misplaced. Most notably, contained therein was the reporter's on the record notation as to an off-the-record discussion prior to plaintiff owner's statements of withdrawal of claims, which in one of itself raised greater than a mere scintilla of a triable issue of fact to defeat judgment as a matter of law. Plaintiff owner's consent to withdraw all prior claims was insufficient, particularly where the EEO was held for different and distinct claims, claims and claim numbers than in the matter.



Judge Sandra Elena Roper  
Civil Court

Sunrez Medical, PLLC v. Nationwide Ins., CV-776274-22 (December 15)

U.S. - SDNY | DISPUTE RESOLUTION

Court Enforces Arbitration Agreement and Stays Wage-and-Hour Lawsuit

Plaintiffs alleged defendants failed to pay benefits owed and minimum wages, and misclassified plaintiffs as independent contractors. In violation of the FLSA and the NYS Labor Law, Defendants moved to compel individual arbitration of the claims and to dismiss the underlying lawsuit to the Federal Arbitration Act and Rule 12(b)(3) of the Federal Rules of Civil Procedure. Plaintiffs moved to compel discovery pertaining to defendants' arbitration practices prior to resolution of defendants' motion to compel arbitration. The court granted defendants' motion to compel arbitration, denied plaintiffs' motion for discovery, and stayed the action pending arbitration. The court found that an agreement to arbitrate exists, and that plaintiffs' claims fall within the scope of the arbitration provision. The court noted that plaintiffs' challenges to the enforceability of the agreement do not enable them to avoid the binding effect of the arbitration provision but instead must be addressed by the arbitrator in the first instance. The court added that the Collective Action Waiver is binding and enforceable and that plaintiffs failed to articulate a valid basis for seeking discovery.



Magistrate Judge Gary Stein  
Southern District

Guerrero v. GoPuff, 24 Civ. 6727 (December 16)

Notice to Reader

The New York Law Journal has a new email address for the Surrogate's Court. Starting today, please send your decisions and orders to [surrogates@nlj.com](mailto:surrogates@nlj.com)

To view our daily compilation of court decisions, scan, click here or visit <https://www.law.com/nlj/courts/decision-page.html?hl=jph>



To view the complete court calendar, scan, click here or visit <https://www.law.com/nlj/courts/calendar.html?hl=jph>



LIMITED LIABILITY ENTITIES

17 PHINNEY ST. LLC. Filed 12/17/23. Office NY Co. SSSNY designated as agent for process...

LIMITED LIABILITY ENTITIES

50 E. MAIN, LLC. Arts of Org. filed with the SSSNY on 12/17/23. Office NY Co. SSSNY designated as agent for process...

LIMITED LIABILITY ENTITIES

THEKINGOFTHAIWE, LLC. Filed 12/17/23. Office NY Co. SSSNY designated as agent for process...

LIMITED LIABILITY ENTITIES

NOTICE OF FORMALIZATION OF ARTS OF ORG. Filed 12/17/23. Office NY Co. SSSNY designated as agent for process...

LIMITED LIABILITY ENTITIES

NOTICE OF FORMALIZATION OF ARTS OF ORG. Filed 12/17/23. Office NY Co. SSSNY designated as agent for process...

LIMITED LIABILITY ENTITIES

NOTICE OF FORMALIZATION OF ARTS OF ORG. Filed 12/17/23. Office NY Co. SSSNY designated as agent for process...

LIMITED LIABILITY ENTITIES

NOTICE OF FORMALIZATION OF ARTS OF ORG. Filed 12/17/23. Office NY Co. SSSNY designated as agent for process...

LIMITED LIABILITY ENTITIES

NOTICE OF FORMALIZATION OF ARTS OF ORG. Filed 12/17/23. Office NY Co. SSSNY designated as agent for process...

See page 18 for more information. Office of General Services 360709

See Volume of Inland Code at NYLJ.COM













Testimony to be delivered to the New York City Council Committee on Rules, Privileges, Elections, Standards and  
Ethics

FOR THE

Re: Steven Banks Confirmation Hearing

February 4, 2026

Thank you, Speaker Menin, Chair Ung, and Members of the Council's Committee on Rules, Privileges, Elections, Standard and Ethics, for the opportunity to provide testimony regarding the nomination of Steven Banks for the position of Corporation Counsel for New York City.

As the President and CEO of The New York Foundling, I offer full support of the nomination of Steven Banks as Corporation Council. From implementing nationally significant programs like New York City's groundbreaking Right to Counsel, to securing desperately needed affordable homes for the most vulnerable populations, Steve ranks among the most transformative leaders with whom I have ever worked.

My connection with Steve extends back many years and has continued through my leadership at The Foundling. Building on our organization's 155-year history, we provide essential services to help children and families navigate through and beyond foster care, families struggling with conflict and poverty grow stronger, people with developmental disabilities reach their full potential, and remove barriers to the wellbeing of people by providing health and mental health services. Annually, The Foundling serves more than 30,000 people in New York and Puerto Rico.

I first worked with Steve more than a decade ago when I was the head of the Children's Defense Fund in New York City and Steve was the head of The Legal Aid Society. We were both leaders in the successful effort to raise the age at which children can be prosecuted as adults in New York, one of the most transformative criminal justice reforms secured in decades—a change that ended the practice of treating 16- and 17-year-olds as adults and incarcerating young people who needed community-based support in adult jails, with predictably harmful consequences for their life trajectories. As the head of the legal organization representing these predominately young people of color, Steve provided key strategic advice and counsel to the advocacy organizations like mine that were fighting to change this harmful policy. His critical legal assistance helped forge an agreement to raise the age at which young people can be prosecuted in adult criminal court to 18, with appropriate exceptions for serious criminal conduct.

We then served together in City government when he was the New York City Social Services Commissioner and I held various senior positions, including Director of the Office of Management and Budget and Deputy Mayor for Health and Human Services. As the Social Services Commissioner, Steve made transformative changes in the way that the City provides public benefits, social services, and homeless services to get low-income families and individuals the help they needed. After decades of inertia, Steve ushered in a wave of reforms that made our social welfare system more compassionate and effective, including providing access to public benefits online in addition to walk-in office-based help.

After I left City government and I became the head of The Foundling, I recruited Steve to serve on my Board and provide pro bono counsel across a broad range of governance and organizational issues. In every instance, his strategic advice is laser focused on practical solutions. More recently, he has provided me with critical advice and counsel on the specific changes in New York State law that are needed so that frontline staff at my organization and other social services agencies can be paid a living wage, which will benefit clients by reducing staff turnover and strengthening human capital.

As these examples of his legal work throughout his decades-long career attest, Steve has demonstrated the values, the efficacy, and the innovation that New Yorkers can trust to uphold their best interests and to meet the ever-evolving needs of the City. I fully support his nomination.

February 3, 2026

Committee on Rules, Privileges, and Elections  
The New York City Council  
250 Broadway  
New York, NY 10007

Re: Steven Banks' nomination and appointment as Corporation Counsel of the City of New York

To the NYC Council Members of Committee on Rules, Privileges, and Elections:

My name is Merih Anil. I have been a resident of Astoria/Queens in NY Assembly District 36 and NYC Council District 22 for 29 years. I have been a NYC government employee since 2007. I write this letter on behalf of myself and my two children. This letter is a follow-up letter to the Committee's January 15, 2026 public hearing. I was in attendance and intended to testify. However, I was told that the Committee was not accepting in-person testimonies and that I could submit my documents. *See Attachment 1.*

This letter is regarding the public hearing, scheduled for February 4, 2026, for the appointment of Steven Banks as Corporation Counsel. I have already communicated with the NY Assembly District 36, NYC Council Districts 22, 5, and 6 regarding Steven Banks' potential nomination before December 30, 2025 and actual nomination on/after December 30, 2025. I have also communicated my intention to exercise my individual rights as part of the public with Assistant Corporation Counsel on December 30, 2025. *See Attachment 2.* I have also filed with the NYS Supreme Court of New York County to stay the process of Steven Banks' appointment as Corporation Counsel. *See Attachment 3.* Prior to this filing, the Court granted my motion to compel Steven Banks' deposition on November 25, 2025. *See my arguments in Attachment 4.* The Court's decision was featured as one of the "decisions of interest" in New York Law Journal, dated December 19, 2025. *See Attachment 5.* The City appealed the decision. Finally, on January 27, 2026, I came across the following New York City Department of Investigation report, dated January 9, 2024: <https://www.nyc.gov/assets/doi/press-releases/2024/January/02DSSRelease.Rpt.01.09.2024.pdf>. Also, *see Attachment 6.* The paragraph below is from the second page of this NYC DOI report:

Administrator Carter told DOI that she acted at the direction of former DSS Commissioner Steven Banks (who led the agency from April 2015 until December 2021) and who instructed her to decrease the Monthly Eligibility Rate in light of then-Mayor Bill de Blasio's concerns about increases in the rate. Former Commissioner Banks acknowledged that he paid attention to fluctuations in the rate and at times discussed it with then-Mayor de Blasio and other senior Administration officials but denied knowledge of or involvement in any manipulation of the Monthly Eligibility Rate. DOI found that both Administrator Carter and former Commissioner Banks provided credible accounts with respect to their understanding of and involvement with the Monthly Eligibility Rate during the relevant time period, and each account is corroborated in certain respects. However, their accounts are irreconcilable as to the question of whether former Commissioner Banks knew of and directed Administrator Carter to engage in the data manipulation and DOI was not able to corroborate that claim.

I would like to exercise my individual rights and participate in this "advice and consent" process. What motivated me to participate in this direct participatory process is my desire and responsibility

as a parent to make a positive difference and contribution in my children's and future generation's equitable socio-economic and employment outcomes.

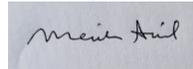
I write to respectfully provide the Committee on Rules, Privileges, and Elections with all this information for their "advice and consent" process. I would like the Committee, including the Counsel to the Committee, to review these records thoroughly at the public hearing and before the City Council's vote. I would like the members to ask Steven Banks regarding his handling of the EEO complaints at DSS during his tenure and the EEO protocol he published in 2016. I would like the members to ask Steven Banks about his Executive Order 742 on "Hiring and Promotion Policy" dated June 12, 2017.

I would like to end my letter with former City Council Speaker Adrienne Adams' opening remarks at the hearing on the nomination of Randy Mastro for the position of Corporation Counsel, dated August 27, 2024:

The role of Corporation Counsel is a prestigious and powerful position in our city government. To serve the public at this level is a great privilege based on qualifications, attributes, and many aspects of a nominee's record. Being a qualified attorney and litigator is not the full breadth of qualifications required for this critical position. There are many experienced and effective lawyers in our great city. But any prospective Corporation Counsel must meet a high standard of commitment to public service and justice.

Please accept this letter as my written testimony for the public hearing scheduled for February 4, 2026, at 1:00PM at City Hall Chambers. Thank you for reading my letter and for your attention.

Respectfully submitted,



Merih Anil, Ph.D. / MPA

██████████ ██████████ ██████████  
Astoria, NY 11106  
██  
██  
██







# The New York City Council

City Hall  
New York, NY 10007

## Committee Agenda Committee on Rules, Privileges and Elections

*Sandra Ung, Chair*

*Members: David Carr, Julie Menin, Kevin Riley, Shaun Abreu, Shekar Krishnan and Chris Banks*

---

Thursday, January 15, 2026

11:30 AM

250 Broadway - 8th Floor - Hearing  
Room 1

---

T2026-0003

AGENDA TO BE ANNOUNCED



## Attachment 2

Merih Anil &lt;merih.anil.2022@gmail.com&gt;

---

**Anil v. The City 157736/2022 - Re: NYC Mayoral Primary Debate - Transcript posted on Bryan Lehrer Show segment**

---

Merih Anil [REDACTED]  
To: "Huth, Phoebe (LAW)" <phuth@law.nyc.gov>

Tue, Dec 30, 2025 at 8:18 PM

Ms. Huth,

This email is a follow up from July 14, 2025 (which was a follow up from June 25, 2025). See both emails below. Today is December 30, 2025.

I would respectfully like you to know that I intend to reach out to the incoming New York City Council Speaker in January 2026 regarding the nomination of Steven Banks to the NYC Corporation Counsel position by Mayor-elect Zohran Mamdani. I believe the City Council Speaker's office schedules the City Council's public hearing and review process for the appointment of Corporation Counsel for NYC. According to the news released today, Mamdani nominated Steven Banks to the position (<https://www.amny.com/law/mamdani-nominates-steven-banks-law-dept-head>).

Once the public hearing is scheduled, I will sign up here to testify against Steven Banks' nomination: <https://council.nyc.gov/testify>.

Section 31 of the New York City Charter states below:  
**Section 31. Power of advice and consent.**

Appointment by the mayor of the commissioner of investigation and the corporation counsel, and of the members of the art commission, board of health (other than the chair), board of standards and appeals, city planning commission (other than the chair), civil service commission, landmarks preservation commission, tax commission, taxi and limousine commission and the public members of the environmental control board shall be made with the advice and consent of the council after a public hearing. Within 30 days after the first stated meeting of the council after receipt of a nomination, the council shall hold a hearing and act upon such nomination and in the event it does not act within such period, the nomination shall be deemed to be confirmed.

The following link is outgoing New York City Council Speaker Adrienne Adams's Opening Remarks at the Public Hearing on the Nomination of Randy Mastro for Corporation Counsel (dated August 27, 2024): <https://council.nyc.gov/press/2024/08/27/2685/>. Her opening remarks affirms the importance of the city council's review and confirmation process.

Here is the public documents as part of the City Council's "advice and consent" review process for Randy Mastro's nomination:

<https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=6817810&GUID=091B4829-830E-4DE9-BC78-40DD6EA6D945&Options=&Search=>

Kind regards,  
Merih Anil

----- Forwarded message -----

From: Merih Anil <merih.anil.2022@gmail.com>

Date: Mon, Jul 14, 2025 at 8:08 PM

Subject: Anil v. The City 157736/2022 - Re: NYC Mayoral Primary Debate - Transcript posted on Bryan Lehrer Show segment

To: Huth, Phoebe (LAW) <phuth@law.nyc.gov>

Good evening Ms. Huth,

I hope you are doing well. This email is an update to my email below, dated Wednesday June 18, 2025.

I have confirmed that with The Assembly Member's office that Steve Banks referred to in the NYC Mayoral Primary Debate was "the former DSS Commissioner under Bill de Blasio."

Please also see the following articles in Bloomberg Law, dated June 26, 2025, and in Politico, dated July 13, 2025.

<https://news.bloomberglaw.com/new-york-brief/mamdani-win-jolts-nyc-law-world>

<https://www.politico.com/news/2025/07/13/de-blasio-sets-an-example-as-mamdani-thinks-about-staffing-up-00449610>

Kind regards,  
Merih Anil  
pro se Plaintiff  
[REDACTED]

On Wed, Jun 25, 2025 at 6:35 PM Merih Anil <[merih.anil.2022@gmail.com](mailto:merih.anil.2022@gmail.com)> wrote:

Ms. Huth,

Before the day is over, I would like to share the excerpts below from the NYC Mayoral Primary Debate. As you may recall at today's compliance conference at 80 Centre Street, I mentioned that former Commissioner Steve Banks may come back to city service saying his name was mentioned at the NY1 News' debate. Your response was there were a lot of "Banks" and I asked if you meant "Steve Banks" and you said "yes." I quickly searched if there was a transcript online and easily found one. See below. See yellow highlights. I watched the entire debate and I am not sure if Cuomo also made a reference to him. But I can't tell because it is not in this transcript. It is my understanding that Steve Banks mentioned at the NY1 News debate is the former Commissioner Steve Banks.

What I would like to share with you informally is that my daughter, who just graduated middle school, was also watching the debate with me. When I heard Steve Banks' name for the second time, I told her that Steve Banks is one of the persons in my legal papers. My daughters know that I have a court case and that I work on my court papers. I owe my children an answer because my workplace situation, the discrimination and retaliation I faced, affected their lives, especially starting Summer 2019. Please see the FAC, my deposition, and the medical/health records.

Thank you for your time at the compliance conference today. Looking forward to the July 16 compliance conference. I would like to speak with the Judge that day.

Kind regards,  
Merih

<https://www.wnyc.org/story/nyc-mayoral-primary-debate-trump-and-experience/?tab=transcript>

**Errol Louis:** Okay, candidates, some of you have many years of government experience, while others have spent less than a decade in office. One of you has never been elected to any office. Then, if we consider age, one of you would be, if elected, the oldest person ever to be sworn in as mayor, while another would be the youngest mayor to take office in more than 100 years. Let me start with you, Mr. Mamdani. What do you say to critics who think that a 33-year-old assemblyman who's only been in office four years needs more experience before becoming mayor of the largest city in the country?

**Zohran Mamdani:** What I would ask is for them to judge me by the campaign that I am running. A campaign we began with about two full time employees polling at 1%. That has now grown to be one where we manage over 36,000 volunteers that have knocked on nearly 1 million doors. Ultimately, what I will deliver to New York City is what I've been delivering in this race, innovation and competence. I will do so by hiring the best and the brightest. For too long we've had an understanding of leadership where you simply want to replicate each one of your ideas and hire the people who will be quickest to say yes to whatever you say to them.

I will instead hire the people who have the track records, the excellence, the fluency. It has been a pleasure to meet with incredible officials like Maria Torres-Springer, Patrick Gaspard, like Steve Banks, like Amit Baga, so many who have delivered that public service and that public excellence in this city. That is what I would be doing as the next mayor of this city of New York.

[applause]

**Brian Lehrer:** Mr. Mamdani, any contrast so far?

**Zohran Mamdani:** What is so troubling to see right now is, we also have the NYPD assisting ICE in some of those very missions right here in New York City. We saw the Strategic Response Group arrest a pastor who was peacefully observing the arrest of a migrant at Federal Plaza. When I am the mayor, the NYPD will serve the public safety of New Yorkers. They will not assist Trump's ICE agents. Furthermore, though Donald Trump may not believe in the law, we have to be clear that we do and we will, in fact, bring back our law department to its pre-pandemic staffing levels.

200 additional lawyers and start to provide lawyers for immigrants who are in deportation cases, because we know that by doing so, we in fact increase their likelihood of coming home to their families in New York City by 11 times. Finally, we can see examples in previous mayoral administrations where the mayor's team, like Steve Banks and the last administration, took every single step they could to ensure that none of the personal information the city had would be turned over to the Trump Administration. I would follow that example through all of our agencies.

[applause]

---

 **Gmail - Steve Banks.pdf**  
133K



**TABLE OF CONTENTS**

	<b><u>Page</u></b>
TABLE OF AUTHORITIES.....	3
PRELIMINARY STATEMENT.....	4
STATEMENT OF FACTS.....	5
LEGAL STANDARD.....	7
ARGUMENT.....	9
Point 1 – There is an active employment discrimination case against Steven Banks as former Commissioner of NYC Department of Social Services.....	10
a. Plaintiff demonstrates probability of success on the merits.....	10
b. Steven Banks, as former DSS Commissioner, may be found liable by the Jury or Judge for unlawful employment actions .....	11
Point 2 – There is the prospect of irreparable injury if the provisional relief is withheld.....	11
a. It appears that the defendant City “is about to do, or is doing ... an act in violation of the plaintiff’s rights respecting the subject of the action, and tending to render the judgment [of her active court proceeding] ineffectual.”.....	11
Point 3 – The balance of equities is in Plaintiff’s favor.....	12
Point 4 – New York City Mayor does not have any judicial jurisdiction.....	13
Point 5 – New York City Council does not have any judicial jurisdiction.....	17
Point 6 – Plaintiff’s rights of direct participation in Steven Banks’ nomination and appointment process have been violated.....	18
Point 7 – The status quo between the Parties should be preserved until the final determination of Plaintiff’s active court proceeding.....	20
CONCLUSION.....	21
CERTIFICATE OF COMPLIANCE.....	22

**TABLE OF AUTHORITIES**

<b><u>Cases</u></b>	<b><u>Pages</u></b>
<i>Aetna Ins Co. v. Capasso</i> , 75 N.Y.2d 860, 862 (1990).....	8
<i>Mr. Natural, Inc. v. Unadulterated Food Products, Inc.</i> , 153 AD2d 729, 544 NYS2d 182 (2d Dept. 1989).....	12
<i>Nobu Next Door, LLC v. Fine Arts Housing, Inc.</i> , 4 NY3d 839, 840, 800 NYS2d 48 (2005).....	8
<i>Spectrum Stamford LLC v. 200 Atlantic Title LLC</i> , 162 AD3d 615, 616, 81 NYS3d 5 (1 <sup>st</sup> Dept. 2018).....	20
 <b><u>Statutes</u></b>	
CPLR § 2214 .....	9
CPLR § 6301 .....	5, 7
CPLR § 6313.....	5, 8, 11
CPLR § 7803 .....	5, 8, 19
N. Y. Executive Law § 296.....	6
NYCHRL § 8-107 .....	6
New York City Charter, Section 31.....	4, 9
New York City Charter, Section 391.....	9

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

-----X

MERIH ANIL,

Plaintiff,

-against-

THE CITY OF NEW YORK, STEVEN BANKS as  
the former Commissioner THE NEW YORK CITY  
DEPARTMENT OF SOCIAL SERVICES / HUMAN  
RESOURCES ADMINISTRATION (DSS/HRA),  
DENITA WILLIAMS as Senior Deputy  
Commissioner of Human Resources Solutions at  
DSS/HRA, KRISTEN MITCHELL as Associate  
Commissioner of Office of Research and Policy  
Innovation at DSS/HRA, and MARTHA KENTON as  
Executive Director of Office of Research and Policy  
Innovation at DSS/HRA,

**Index No: 157736/2022**

Defendants.

-----X

**PLAINTIFF’S MEMORANDUM OF LAW IN SUPPORT OF**

**PROPOSED ORDER TO SHOW CAUSE  
WITH TEMPORARY RESTRAINING ORDER**

**TO STAY DEFENDANT FORMER COMMISSIONER STEVEN BANKS’  
NOMINATION AND APPOINTMENT AS CORPORATION COUNSEL OF THE CITY  
OF NEW YORK**

**INTERIM RELIEF AND DECLARATORY JUDGMENT**

**PRELIMINARY STATEMENT**

In a letter to New York City Council Speaker Julie Menin, dated January 14, 2026, pursuant to Section 31 of the New York City Charter, New York City Mayor Zohran Mamdani “present[ed] the name of Mr. Steven Banks to the City Council for advice and consent regarding his appointment as [New York City] Corporation Counsel.” **Exhibit 1**, at 1.

Section 31 of the New York City Charter, Power of advice and consent, outlines that “[a]ppointment by the mayor of ... the corporation counsel... shall be made with the advice and consent of the council after a public hearing. Within 30 days after the first stated meeting of the council after receipt of a nomination, the council shall hold a hearing and act upon such nomination and in the event it does not act within such period, the nomination shall be deemed to be confirmed.” Mr. Steven Banks will either be confirmed or not confirmed as Corporation Counsel by February 14, 2026.

PLAINTIFF MERIH ANIL (“Plaintiff”) respectfully submits this Memorandum of Law in Support of Plaintiff’s Proposed Order to Show Cause, with Temporary Restraining Order, to stay the nomination and appointment of Steven Banks as Corporation Counsel of the City of New York. Steven Banks is one of the named Defendants in Plaintiff’s employment discrimination case against the City of New York (“The City”) at the New York State Supreme Court, New York County. The Jury and/or Judge may find Steven Banks and The City liable on the grounds of unlawful employment actions.

Further, under given circumstances as outlined in this Memorandum of Law, the “advice and consent” process may have already violated Plaintiff’s legal rights.

Plaintiff respectfully requests that this Court grant Plaintiff’s relief for the issuance of a preliminary injunction and temporary restraining order (“TRO”) pursuant to CPLR §§ 6301 and 6313 and declaratory judgment, pursuant to CPLR § 7803, staying and enjoining the nomination and appointment of Steven Banks as Corporation Counsel, pending the final determination of Plaintiff’s court proceeding of her surviving employment discrimination and retaliation claims.

### **STATEMENT OF FACTS**

Plaintiff, an employee with the New York City Department of Social Services/Human Resources Administration ("DSS"), commenced this action in September 2022 against Defendants The City of New York ("City"), Steven Banks, Denita Williams, Kristen Mitchell, and Martha Kenton to redress unlawful employment discrimination and retaliation practices that she has been subjected to as a DSS employee on the basis of her national origin, gender, and age under the New York State Human Rights Law, New York Executive Law § 296 ("SHRL") and the New York City Human Rights Law, New York City Administrative Code § 8-107 ("CHRL"). Defendants' unlawful discriminatory and retaliatory acts resulted in adverse employment action for Plaintiff. First Amended Complaint, **NYSCEF Dkt. 37**.

The Defendants moved, pursuant to CPLR 3211 (a)(7), to dismiss the First Amended Complaint ("FAC") for failure to state a cause of action. The Plaintiff opposed.

Per Hon. Nicholas Moyne's decision and order, dated October 23, 2023, age discrimination and retaliation claims under SHRL and CHRL survived Defendants' motion (third, fourth, fifth, and sixth causes of action).<sup>1</sup> Furthermore, "the portion of defendants' motion to dismiss which sought dismissal of plaintiff's claims which accrued prior to September 10, 2019, is denied as to the age discrimination claims and/or retaliation claims for failure to promote." **NYSCEF Dkt. 73**.

Steven Banks, as former DSS Commissioner, is an individually named Defendant in this legal action. He was appointed as the Commissioner of NYC Human Resources Administration ("HRA") in February 2014 by Mayor Bill de Blasio. Commissioner Banks was also appointed as the Commissioner or Head of NYC Department of Homeless Services ("DHS") in 2016, replacing

---

<sup>1</sup> National Origin and gender discrimination claims (first and second causes of action) were solely dismissed because "the factual predicates for said EEO reports [were] not specified in the complaint." **NYSCEF Dkt. 73**, at 8.

then-Commissioner Gilbert Taylor.<sup>2</sup> Under Commissioner Banks, the two mayoral agencies (HRA and DHS) merged into DSS in 2016, within a 90-day period, with one joint management structure, with Commissioner Banks becoming the Commissioner of DSS/HRA/DHS. Commissioner Banks' tenure lasted for almost 8 (eight) years, from February 2014 through the end of 2021.

Plaintiff is female. She was born in 1968. She is of Turkish descent, a non-practicing Muslim, with a Ph.D. She has been a City employee since 2007. FAC ¶¶ 9-14. Plaintiff alleges that Commissioner Banks "as the Agency Head, failed to fully and fairly investigate the EEO reports Plaintiff filed on October 11, 2019, and on August 31, 2020." FAC, ¶ 26. Plaintiff alleges that "Commissioner Steven Banks as the Agency Head overseeing the agency EEO office knew about Plaintiff's complaint and had personal involvement." FAC, ¶ 30. Defendants "aided and abetted each other in the unlawful actions taken against Plaintiff." *Id.* "Defendants have neglected and/or refused to remedy their illegal and unlawful practices." FAC ¶ 47.

Furthermore, Plaintiff alleges that "[t]he conduct of Defendant The City was done in a conscious disregard of Plaintiff's rights" and that, in addition to an award of punitive and compensatory damages, she "is entitled to equitable and injunctive relief." *Id.*, ¶¶ 97 & 102. In employment discrimination cases, equitable and injunctive relief aim to correct discriminatory practices and prevent future harm.

### LEGAL STANDARD

NY CPLR § 6301 outlines the "[g]rounds for preliminary injunction and temporary restraining order:

A preliminary injunction may be granted in any action where it appears that the defendant threatens or is about to do, or is doing or procuring or suffering to be done, an act in violation of the plaintiff's rights respecting the subject of the action, and tending to render the judgment ineffectual, or in any action where the plaintiff has demanded and would be entitled to a judgment

---

<sup>2</sup> It may be that Commissioner Banks did not officially or formally replace Commissioner Taylor. Plaintiff could not find any official appointment date or announcement regarding such appointment. It may be he just began overseeing DHS as DSS Commissioner.

restraining the defendant from the commission or continuance of an act, which, if committed or continued during the pendency of the action, would produce injury to the plaintiff. A temporary restraining order may be granted pending a hearing for a preliminary injunction where it appears that immediate and irreparable injury, loss or damage will result unless the defendant is restrained before the hearing can be had.

CPRL § 6313(a) provides:

Generally. If, on a motion for a preliminary injunction, the plaintiff shall show that immediate and irreparable injury, loss or damages will result unless the defendant is restrained before a hearing can be had, a temporary restraining order may be granted without notice. Upon granting a temporary restraining order, the court shall set the hearing for the preliminary injunction at the earliest possible time.

“The decision to grant or deny provisional relief, which requires the court to weigh a variety of factors, is a matter ordinarily committed to the sound discretion of the lower courts,” and “[t]he party seeking a preliminary injunction must demonstrate a probability of success on the merits, *danger of irreparable injury* in the absence of an injunction and a balance of equities in its favor.” *Nobu Next Door, LLC v. Fine Arts Housing, Inc.*, 4 NY3d 839, 840, 800 NYS2d 48 (2005). Also, see *Aetna Ins Co. v. Capasso*, 75 N.Y.2d 860, 862 (1990).

Under NY CPLR § 7803, Plaintiff can raise the following questions in her request for TRO and preliminary injunction relief:

CPLR § 7803. Questions raised. The only questions that may be raised in a proceeding under this article are:

1. whether the body or officer failed to perform a duty enjoined upon it by law; or
2. whether the body or officer proceeded, is proceeding or is about to proceed without or in excess of jurisdiction; or
3. whether a determination was made in violation of lawful procedure, was affected by an error of law or was arbitrary and capricious or an abuse of discretion, including abuse of discretion as to the measure or mode of penalty or discipline imposed; or
4. whether a determination made as a result of a hearing held, and at which evidence was taken, pursuant to direction by law is, on the entire record, supported by substantial evidence.

5. A proceeding to review the final determination or order of the state review officer pursuant to subdivision three of section forty-four hundred four of the education law shall be brought pursuant to article four of this chapter and such subdivision; provided, however, that the provisions of this article shall not apply to any proceeding commenced on or after the effective date of this subdivision.

Pursuant to CPLR § 2214(d), “[t]he court in a proper case may grant an order to show cause, to be served in lieu of a notice of motion, at a time and in a manner specified therein.”

### ARGUMENT

New York City Council’s “advice and consent” review process for the appointment of New York City Corporation position is outlined in the New York City Charter Section 31. If the appointment is for a vacant position, Section 391 of the City Charter outlines the process. This “advice and consent” process includes a public hearing and testimonies from the public.

After Hon. Sylvia Hinds-Radix resigned as Corporation Counsel on June 1, 2024, The City had two “advice and consent” processes for the vacant Corporation Counsel position. The first one was for Randy Mastro’s nomination by Mayor Eric Adams, with a public hearing held on August 27, 2024 that lasted almost eleven hours.<sup>3</sup> Before the City Council’s confirmation vote, Mr. Mastro withdrew his nomination.

The second “advice and consent” process was for the nomination and appointment of the current Corporation Counsel Muriel Goode-Trufant. The public hearing for Muriel Goode-Trufant’s appointment was on November 20, 2024, which lasted for 1.5 hours, that included answering pre-hearing questions.<sup>4</sup> On December 5, 2024, the City Council members voted on her appointment, with 41 members voting “affirmative,” 6 members voting “negative,” and 3 voting “abstain,” and they confirmed her appointment as Corporation Counsel. **Exhibit 1**, at 6.

---

<sup>3</sup> <https://www.youtube.com/watch?v=TfV661yg5go>

<sup>4</sup> [https://www.youtube.com/watch?v=fp5\\_ZzVll5c](https://www.youtube.com/watch?v=fp5_ZzVll5c)

Muriel Goode-Trufant is still serving as Corporation Counsel. Mayor Zohran Mamdani presented Steven Banks' name for the position to the City Council in a letter dated January 14, 2026. The City Council scheduled a public hearing for his appointment process at 250 Broadway, 8<sup>th</sup> Floor, Hearing Room 1, on February 4, 2026, at 1:00pm.

For the following reasons, Plaintiff respectfully requests that this Court issue a preliminary injunction, including temporary restraining order, and declaratory judgment until a final judgment is made and entered on Plaintiff's employment discrimination case.

**Point 1 – There is an active employment discrimination case against Steven Banks as former Commissioner of NYC Department of Social Services**

**a. Plaintiff demonstrates probability of success on the merits.**

The employment discrimination action Plaintiff commenced on September 10, 2022 survived two motions to dismiss. Plaintiff filed a Motion for Partial Summary Judgment on retaliation and employer liability claims (Motion Seq. 006) with February 11, 2026 return date. **NYSCEF Dkt. 224**. Steven Banks' nomination and appointment process should stay at least during the pendency of this motion.

Further, with this Court's leave on August 4, 2025, Plaintiff filed a Motion to Compel Steven Banks' Deposition, which was granted. *See*, Motion, **NYSCEF Dkt. 179-200**, and Decision and Order, **NYSCEF Dkt. 210**. Defendants filed a Notice of Appeal on December 5, 2025. **NYSCEF Dkt. 217**. However, Plaintiff argues that Defendants are unlikely to succeed at the appellate court for the following reasons: 1) in their appeal, Defendants raised new arguments that they did not raise in their opposition papers or at the oral argument on October 1, 2025, meaning they cannot treat the appellate court as if it is a trial court; 2) in their appeal, it appears that Defendants would like to argue against the points Plaintiff already raised in her papers that Steven Banks' deposition is not only material and necessary, but also relevant, reasonable, and

proportional to the needs of Plaintiff's legal action. NYSCEF Dkt, 181. However, Defendants did not oppose these arguments, therefore they waived them. NYSCEF Dkt. 204. Thus, they simply cannot argue them at the appellate court.

Steven Banks' nomination and appointment process should stay at least during the pendency of Defendants' appeal to the Appellate Division / First Department. In addition, it appears that Defendants may have abandoned their appeal as they never served Plaintiff the appellate case number since December 5, 2025. Thus, Plaintiff has a high probability of success on the merits.

**b. Steven Banks, as former DSS Commissioner, may be found liable by the Jury or Judge for unlawful employment actions.**

If the final determination of Plaintiff's case is in favor of Plaintiff, then Steven Banks, as former DSS Commissioner, may be found liable for unemployment actions. Thus, this outcome may need to be taken into consideration during the "advice and consent" process. Therefore, this process should stay until the final determination of Plaintiff's court proceedings.

**Point 2 – There is the prospect of irreparable injury if the provisional relief is withheld.**

**a. It appears that the defendant City "is about to do, or is doing ... an act in violation of the plaintiff's rights respecting the subject of the action, and tending to render the judgment [of her active court proceeding] ineffectual." CPLR 6313(a).**

In her action, Plaintiff seeks equitable and injunctive relief, among other reliefs, requiring the City to cure alleged unlawful actions and to prevent future discrimination and retaliation. FAC ¶¶ 97 & 102. To date, Defendants have neglected and/or refused to remedy their illegal and unlawful practices. FAC ¶ 47. If the nomination and appointment process of Steven Banks as Corporation Counsel does not stay and if he is appointed as Corporation Counsel, the City's action would render the judgment of Plaintiff's active court proceeding ineffectual. Plaintiff respectfully prays that this

Court issues TRO / preliminary injunction to stay nomination and appointment of Steven Banks as Corporation Counsel until Plaintiff's court proceeding has a final determination.

**Point 3 – The balance of equities is in Plaintiff's favor.**

A preliminary injunction can be granted “if one is necessary to preserve the status quo and the party to be enjoined will suffer no great hardship as a result of its issuance.” *Mr. Natural, Inc. v. Unadulterated Food Products, Inc.*, 153 AD2d 729, 544 NYS2d 182 (2d Dept. 1989).

Plaintiff argues that neither the City nor Steven Banks will suffer from any hardship if this Court issues a TRO and preliminary injunction staying Steven Banks' appointment process as Corporation Counsel. As an example, when Randy Mastro withdrew his nomination for Corporation Counsel, Mayor Eric Adams nominated the current Corporation Counsel Muriel Goode-Trufant whose appointment was confirmed by the New York City Council with 41 affirmative votes. As for Randy Mastro, he was appointed as First Deputy Mayor by Mayor Eric Adams, within his executive power, with no legislative review.

If this Court grants Plaintiff's request for TRO / preliminary injunction, there is no vacancy to fill as Muriel Goode-Trufant may continue to serve as Corporation Counsel. Further, Mayor Zohran Mamdani has the executive power to appoint Steven Banks to any top-level positions within his administration that does not require legislative review and confirmation process.

It appears that as of June 2025, Steven Banks has already been counseling Mayor Zohran Mamdani in private meetings before his mayoral primary debate; attending his democratic primary election victory party; and was an invited guest by Zohran Mamdani for Colbert late night show.<sup>5</sup>

On June 30, 2025 at Bryan Lehrer show, a caller asked former Comptroller Brad Lander if he “got a sense of whether he'd [Mamdani] be drawing upon longtime city bureaucrats towards

---

<sup>5</sup>Jeff Coltin, Editor in Chief at City & State; <https://www.wnyc.org/story/brad-lander-reflects-on-the-mayoral-campaign>.

his administration, or if we're going to see a totally green administration coming in if he is to win.” Brad Lander’s answered: “Yes, he named some people on the debate stage that I think are more in that former category. He named Steve Banks, who's someone that I have a lot of respect for. Actually, I’ll give another fun detail here. Steve, he named on the debate stage, and then Steve was one of the people he invited to Colbert. I only invited my family, so that signals something.”

Furthermore, since he left his tenure as DSS Commissioner, Steven Banks has been counseling The Law Department and mayoral agencies under Eric Adams’ administration in his capacity as pro bono attorney, including representing current DSS Commissioner Molly Wasow Park in a high-profile lawsuit, among other cases. **NYSCEF Dkt. 205.**

Plaintiff’s OSC with TRO, if granted, would not cause any hardship for the City. Here, if the status quo is preserved, the balance of equities is in Plaintiff’s and public interests favor.

**Point 4 – New York City Mayor does not have any judicial jurisdiction.**

Watching the televised mayoral primary debate on June 12, 2025 and reading the news, Plaintiff realized that Steven Banks may return to the City administration. She shared her opinion with Defense Counsel Phoebe Huth and with this Court. **NYSCEF Dkt. 177**, at 4, 5. Defendants’ Counsel Phoebe Huth did not believe that the name Steven Banks mentioned at the debate was former Commissioner Steven Banks. **Exhibit 2**, at 2.

On July 7, 2025, for the first time during his five-year tenure, Plaintiff visited Mayor Zohran Mamdani’s NY Assembly District office in Astoria in person as his constituent, after she got an appointment for constituency services. Plaintiff summarized this meeting for Defense Counsel Phoebe Huth because the District Office staff confirmed that the name Steve Banks was for the former Commissioner Steven Banks. *Id.*

On July 8, 2025, after the Assembly District office staff directed Plaintiff to do so, Plaintiff also reached out to Zohran Mamdani's campaign team, via their campaign communication page. Plaintiff did not hear from his campaign team.

On October 22, 2025, Plaintiff read in the media that as my Assemblymember running for Mayor, Zohran Mamdani invited Charlotte Bennett as guest to the mayoral debate:

Zohran Mamdani, the Democratic candidate for mayor, invited Charlotte Bennett, the first woman to publicly accuse former Gov. Andrew M. Cuomo of sexual harassment, to Wednesday night's debate, one of several guests he brought to underscore his criticism of Mr. Cuomo. During a section of the debate in which the candidates were each allowed to ask another candidate a direct question, Mr. Mamdani told Mr. Cuomo that Ms. Bennett was in the audience and asked him to address the sexual harassment allegations against him... "You sought to access her private gynecological records," Mr. Mamdani said, alluding to requests that Mr. Cuomo's legal team made as he disputed her allegations. "She cannot speak up for herself because you lodged a defamation case against her. I, however, can speak."<sup>6</sup>

Plaintiff followed up, via email, with the NY Assembly Office on October 26, 2025 and then with the campaign office on November 1, 2025, with updates on her employment discrimination case. **Exhibit 3** and **Exhibit 4**. The same constituents' services staff, from the Assembly District Office, kindly responded, but the campaign team never did.

Plaintiff Charlotte Bennett's lawsuit and Plaintiff Merih Anil's lawsuit have many similarities as well as differences, however, it appears that Mayor Zohran Mamdani may decide which case to bring to public's attention and which case to "dismiss." Neither Mayor nor his then-campaign team and his current administration have any judicial jurisdiction.

If the City continues to proceed with Steven Banks' nomination and appointment process for the Counsel Corporation position, then that would lead to an action which would tend to render the judgment for Plaintiff's employment discrimination case ineffectual, therefore it would

---

<sup>6</sup> <https://www.nytimes.com/2025/10/22/nyregion/mamdani-charlotte-bennett-andrew-cuomo.html>

produce an irreparable injury to the plaintiff, because that very action will deprive Plaintiff of becoming whole again, regardless of the final judgment being in Plaintiff's favor or not. The more Plaintiff understands the rule of law and the judicial system, she appreciates it more.

When Mayor Mamdani established 17 transition teams, with 400 members, after winning the general elections, Plaintiff, via email or LinkedIn, reached out to a couple of the team members in Housing and Legal Affairs, who she knows personally, regarding Steven Banks. Plaintiff provided her feedback for their vetting process. Plaintiff did not hear from any of them regarding her feedback, however these transition team members remain in communication with Plaintiff as colleagues.

Mayor Mamdani's last day as Plaintiff's NY Assemblymember was December 30, 2025. His last newsletter was dated December 5, 2025. **Exhibit 5**. Below are excerpts from Assemblymember's last newsletter to his constituents:

#### **A Note from Zohran**

Hi Neighbor, Happy December. I hope you are staying warm. On November 4th, I was elected Mayor of New York City. It has been the honor of a lifetime serving you in the Assembly and I will never forget the lessons I have learned representing you in Albany. This chapter will now come to an end as I become your mayor on January 1st. This will be the final newsletter I write to you with District 36 updates. With that in mind, I want to start with a simple message: thank you. Thank you for allowing me to represent you over the past five years in the Assembly... We spent each day driven by a clear goal: to deliver a life of dignity for each and every person across Astoria and LIC. In this newsletter, you will find information on my transition to becoming mayor, helpful programs, and neighborhood updates. In service and solidarity, Assemblymember Zohran K. Mamdani.

...

#### **Constituent Stories**

A constituent recently contacted my Assembly office struggling to make ends meet: as a single mother, she couldn't afford childcare or find time to work, trapping her in a cycle of unemployment. Here's how my office helped. She has a degree in psychology and wanted to work but couldn't as she didn't have anyone to watch her son. She couldn't afford a babysitter and lives with her mother, who works full-time and has medical issues. Her son also did not

qualify for 3K because of his age, so my team began investigating if she qualified for a childcare voucher.

Like this constituent in the “Constituent Stories,” Plaintiff reached out to Zohran Mamdani, as her Assemblymember, who was running for Mayor, not only about the name of Steven Banks, but also about his priorities as Mayor if elected. Plaintiff asked the following question as well on July 8, 2025 (**Exhibit 3**, at 2):

Dear Zohran Mamdani,  
My name is Merih Anil. I have been a NYC resident since 1996. I have been a city government employee since May 2007. I watched the NYC Mayoral Primary Debate on June 12, 2025. Among the issues discussed were workplace discrimination and retaliation, including sexual harassment. I did not have the chance to submit my question before the June 12, 2025 debate, but I would like to ask the following: If you get elected NYC Mayor, what would you do to improve Mayoral Agencies’ compliance with the City’s EEO policies and protocols?

In his very final email to his constituents, re: Five Years as your Assemblymember, on December 30, 2025, Zohran Mamdani conveys the following message:

Hi Neighbor, I hope this email finds you well. As I end my time working as your Assemblymember and begin my transition to becoming your Mayor, I wanted to take a moment to reflect on all of the work we accomplished together in District 36 over the past five years. I invite you to read on about our office’s major constituent wins, legislative victories, and other achievements in Albany, Astoria, and Long Island City. Thank you for entrusting me to represent you in Albany. In service and solidarity, Zohran

Plaintiff entrusted Steven Banks when he was the DSS Commissioner. She believed the Agency would remedy the alleged unlawful discriminatory and retaliatory employment actions when Plaintiff filed her EEO reports in 2019 and 2020. It appears he and his managerial staff condoned and approved them.

As for Plaintiff’s outreach to Mayor Zohran Mamdani as Plaintiff’s former Assemblymember, Plaintiff did not imagine a dismissive no response given his Assembly office and campaign platform.

Mayor Mamdani's and Steven Banks' past, current, and future roles did not and do not include any judicial jurisdiction. Given Plaintiff has an active employment discrimination case against the City and Steven Banks, Plaintiff respectfully request that this Court issue a stay for Steven Banks' nomination and appointment as Corporation Counsel until her case has a final determination.

**Point 5 – New York City Council does not have any judicial jurisdiction.**

Plaintiff reached out to three New York City Council members regarding Steven Banks' potential comeback to the City government. The first one is Plaintiff's own District, represented by Tiffany Caban (District 22). As part of their constituent services, Plaintiff met with staff at the District office on September 22, 2025. The meeting lasted about an hour from noon to 1pm. Two months later, on November 21, 2025, the same staff person at Councilmember Caban's office, via email, provided the following: 'I shared the details of your case with my Chief of Staff and the Council Member and it is their sense that since the case is ongoing, the Council Member would not be able to speak with you about the particulars of the case.' **Exhibit 6**, at 7.

On November 29, 2025, Plaintiff emailed Hon. Gale Brewer's staff (District 6) after the passage of her bill "Intro 1235-A of 2025." *Id.*, at 5. On January 6, 2026, Plaintiff stopped by at The Hon. Speaker Julie Menin's district office (District 5) regarding her case and Steven Banks' nomination to Corporation Counsel position. *Id.*, at 1-4.

None of these City Council Districts provided any response regarding Plaintiff's litigation. This is expected as the New York City Council, as the legislative branch, does not have any judicial jurisdiction. Given that Plaintiff has an active employment discrimination case against Steven Banks, any "advice and consent" review process, including the confirmation voting, may fall into judicial jurisdiction.

The New York City Council scheduled a public hearing, on February 4, 2026 at 1:00pm, for its “advice and consent” regarding Steven Banks’ appointment to be the Corporation Counsel.<sup>7</sup> Plaintiff respectfully requests that this public hearing be stayed until Plaintiff’s case has a final judgment. In the alternative, Plaintiff would like to attend the public hearing on February 4, 2026 and testify on Steven Banks’ nomination and appointment. Plaintiff would also like to submit pre-hearing questions in preparation for the scheduled public hearing.

According to the Hearing Transcript of the Committee on Rules, Privileges, and Elections, dated November 20, 2024, for Muriel Goode-Trufant’s public hearing for the Corporation Counsel position, “the Counsel to the Committee, Jeff Campagna, and the committee staff that worked on today’s hearing, Chief Ethics Counsel Pearl Amor, Director of Investigations, Francesca Del Vecchia, and Deputy Director of Investigations, Alicia Vassal” were also present at the public hearing. **Exhibit 7**, at 4. It appears that these City Council officials and staff reviewed the records of Muriel Goode-Trufant before the scheduled public hearing.

If this Court denies Plaintiff’s proposed Order to Show Cause to stay nomination and appointment of Steven Banks as Corporation Counsel, then the above mentioned staff, including the City Council members of the Committee on Rules, Privileges, and Elections, should review the court proceedings record and ask Steven Banks questions that are relevant to the roles and responsibilities for the Corporation Counsel position. Under New York City Charter, this “advice and consent” includes direct citizen participation through in-person testimony at the public hearing. Therefore, Plaintiff would like to testify at the public hearing is it remains on the City Council’s calendar.

**Point 6 – Plaintiff’s rights of direct participation in Steven Banks’ nomination and appointment process have been violated.**

---

<sup>7</sup> <https://legistar.council.nyc.gov/MeetingDetail.aspx?ID=1381420&GUID=7156F094-61D9-43BB-9AB5-22FB5B14A08B&Search=>

Pursuant to CPLR 7803, Plaintiff has fundamental questions about the legality of the “advice and consent” process given what she was experienced. Plaintiff was blocked to testify in-person at the Committee on Rules, Privileges, and Elections on January 15, 2026. Plaintiff respectfully requests a declaratory judgment to halt the remaining confirmation process while the court reviews the procedural flaws on these grounds as well if this Court finds CPLR 7803 applicable.

The Council failed to follow its own hearing rules for the January 15, 2026 meeting. The meeting agenda was not announced before the hearing. On January 11, 2026, Plaintiff emailed at [hearings@council.nyc.gov](mailto:hearings@council.nyc.gov) to request the meeting agenda for 1/15/26 hearing. Plaintiff also emailed the City Council District 5 with her request. Their response was: “Our office does not have the meeting agenda as it is still in the works of being set by the central staff of the council. As soon as this agenda is solidified and published, it will be added to the agenda PDF in replace of the “to be announced” page.” **Exhibit 6**, at 1.

Plaintiff registered on the New York City Council website for in-person testimony by selecting the Committee on Rules, Privileges, and Elections public hearing that was scheduled for January 15, 2026 and listed in their dropdown menu at <https://council.nyc.gov/testify/>. She prepared two different sets of testimonies not knowing the public hearing agenda. This Committee oversees the City Charter mandated “advice and consent” review process of mayoral nominations to top-level positions, including to Corporation Counsel position. Plaintiff did not want to miss testifying before the Committee on Steven Banks’ nomination and appointment. Plaintiff reported to the sergeant’s desk at the 8<sup>th</sup> floor lobby on 250 Broadway on the day of the public hearing and informed him she was there to testify. He gave Plaintiff a piece of paper to fill. Once in the public hearing room, another sergeant came to me to let Plaintiff know the committee would not hear

testimony. The Sergeant instructed Plaintiff to leave her written testimony. Plaintiff left a copy of her two-page testimony with the Sergeant. **Exhibit 8**, at 2-4. This public hearing lasted only 2 minutes and 20 seconds, which is published as a video recording on the City Council’s website.<sup>8</sup> Plaintiff also emailed the seven members of the Committee on Rules, Privileges, and Elections the same day with a 3-page PDF document as attachment. *Id.*:

“Good afternoon, I was in attendance at this morning's hearing. I prepared to be heard, registered online in advance, however I was told that the committee was not accepting in-person testimonies for today's hearing. Enclosed please find the 3-page PDF submission that I just uploaded to <https://council.nyc.gov/testify/> under today's Committee on Rules, Privileges, and Elections public hearing. Thank you for your time and attention. Kind regards, Merih Anil”

Plaintiff also submitted a letter to Hon. Speaker Julie Menin on January 5, 2026 regarding Steven Banks’ nomination before a public hearing was scheduled. **Exhibit 6**, at 3-4. Plaintiff does not know if the information she provided will be reviewed as part of the “advice and consent” process.

It would be undisputed that any NYC mayoral nomination and appointment that circumvents the strict procedures outlined in the NYC Charter for specific positions, particularly regarding the Council's oversight, can be deemed illegal.

**Point 7 – The status quo between the Parties should be preserved until the final determination of Plaintiff’s active court proceeding.**

As explained in *Spectrum Stamford LLC v. 200 Atlantic Title LLC*, 162 AD3d 615, 616, 81 NYS3d 5 (1<sup>st</sup>Dept. 2018), [i]t is well settled that the ordinary function of a preliminary injunction is not to determine the ultimate rights of the parties, but to maintain the status quo until there can be a full hearing on the merits.”

---

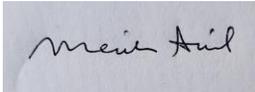
<sup>88</sup> <https://legistar.council.nyc.gov/MeetingDetail.aspx?ID=1376369&GUID=4C6F72E2-278D-417D-ADCB-F0E9DC859562&Search=>



**CERTIFICATION**

In accordance with Rule 202.8-b of the Uniform Civil Rules for the Supreme Court and the County Court of the State of New York that the enclosed brief is produced using 12-point Times New Roman type and the total number of words in the foregoing document including footnotes and exclusive of the caption, table of contents, table of authorities, signature block, and certification is 6,165 according to the “Word Count” function of Microsoft Word, the word-processing system used to prepare the document, and thus that the document complies with the word count limit set forth in Rule 202.8-b that memoranda of law are not to exceed 7,000 words.

Dated: Astoria, New York  
January 26, 2026

By:  \_\_\_\_\_

Merih Anil, Ph.D. / MPA  
Plaintiff (pro se)

  
Astoria, NY 11106  


**Attachment 4**

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

-----X

MERIH ANIL,

Plaintiff,

-against-

THE CITY OF NEW YORK, STEVEN BANKS as  
the former Commissioner THE NEW YORK CITY  
DEPARTMENT OF SOCIAL SERVICES / HUMAN  
RESOURCES ADMINISTRATION (DSS/HRA),  
DENITA WILLIAMS as Senior Deputy  
Commissioner of Human Resources Solutions at  
DSS/HRA, KRISTEN MITCHELL as Associate  
Commissioner of Office of Research and Policy  
Innovation at DSS/HRA, and MARTHA KENTON as  
Executive Director of Office of Research and Policy  
Innovation at DSS/HRA,

Defendants.

-----X

**Index No: 157736/2022**

**PLAINTIFF’S MEMORANDUM OF LAW IN SUPPORT OF  
NOTICE OF MOTION TO COMPEL DEPOSITION OF DEFENDANT  
FORMER COMMISSIONER STEVEN BANKS**

Merih Anil, Plaintiff (pro se)

████████████████████

Astoria, NY 11106

████████████████████  
████████████████████

Phoebe Huth, Defense Counsel  
[phuth@law.nyc.gov](mailto:phuth@law.nyc.gov)

**TABLE OF CONTENTS**

	<b><u>Page</u></b>
TABLE OF AUTHORITIES.....	3
PRELIMINARY STATEMENT.....	5
STATEMENT OF FACTS.....	6
LEGAL STANDARD.....	9
ARGUMENT.....	12
Point 1 - Commissioner Banks’ 2016 EEO Policy Manual, email communications to DSS/HRA/DHS staff regarding EEO, from 2014 through the end of 2021, give evidence that he has or must have personal involvement or knowledge related to Plaintiff’s litigated claims. ....	12
Point 2 – DCAS’ 2014 EEO Standards and Procedures and 2016 EEO Complaint Procedural Guidelines give inference that Commissioner Banks has or must have personal involvement related to Plaintiff’s litigated claims. ....	13
Point 3 – Depositions of DSS EEO staff give inference that Commissioner Banks has or must have first-hand knowledge related to Plaintiff’s litigated claims.....	14
Point 4 – Deposition of Charles Winkler, Respondent of Plaintiff’s EEO complaints, did not produce information on Commissioner Banks’ first-hand or unique knowledge related to the litigated claims. ....	15
Point 5 – Deposition of Commissioner Banks meets the “exceptional circumstances” standard because he has unique knowledge regarding the establishment of a “joint management structure” of HRA and DHS and restructuring of the EEO and Human Resources Offices under DSS. ....	17
Point 6 – Commissioner Banks bears statutory responsibility for the City’s and DSS’ EEO policies and practices, per Chapter 36 of New York City Charter. ....	21
Point 7 – Deposition of Commissioner Banks is relevant and necessary to prosecute this case on the ground of equitable relief and injunctive relief .....	22
Point 8 – Deposition of Commissioner Banks is relevant and necessary to prosecute this case on the ground of punitive damages. ....	22
Point 9 – Defendants cannot argue that Commissioner Banks’ deposition would “severely hinder” his “ability to effectively run [his] agencies.” .....	24
Point 10 – Plaintiffs’ request to depose Commissioner Banks is reasonable and proportional to the needs of the case. ....	25
CONCLUSION.....	27
CERTIFICATE OF COMPLIANCE.....	28

TABLE OF AUTHORITIES

<u>Cases</u>	<u>Pages</u>
<i>Bogan v. City of Boston</i> , 489 F.3d 417, 423 (1st Cir. 2007).....	11
<i>Chauca v. Abraham</i> , 30 N.Y.3d 325, 67 N.Y.S.3d 85, 89 N.E.3d 475, 2017 N.Y. Slip Op. 8158 (N.Y. 2017) .....	24
<i>C.K. through P.K. v. McDonald et al.</i> , 2:22-cv-01791 (NJC) (JMW), 2024 WL 730494 (E.D.N.Y. Dec. 13, 2023) .....	10, 21
<i>C.K. through P.K. v. McDonald et al.</i> , 2:22-cv-01791 (NJC) (JMW), 2024 WL 730494 (E.D.N.Y. Feb. 22, 2024).....	10, 11, 21
<i>Gonzalez v 1225 Ogden Deli Grocery Corp.</i> , 158 AD3d 582, 583 (1st Dept 2018).....	23
<i>Home Ins. Co. v Am. Home Prods. Corp.</i> , 75 NY2d 196, 203-204 (1990).....	24
<i>Lederman v. New York City Dep't of Parks and Rec.</i> , 731 F.3d 199, 203 (2d Cir. 2013).....	9, 10, 11, 18, 24
<i>Matter of Medical Express Ambulance Corp. v. Kirkland</i> , 913 N.Y.S.2d 296, 298 (App. Div. 2010)).....	23
<i>Mirra v. Jordan</i> , No. 13-CV-5519, <u>2016 WL 889683, at *2</u> (S.D.N.Y. Feb. 23, 2016).....	9
<i>Peralta v. Regent Catering, Inc.</i> , No. 17 Civ. 6993, 2022 WL 6799407, at *4 (E.D.N.Y. Mar. 18, 2022).....	9
<i>Presti v. City of New York</i> , 609 F. Supp. 3d 204, 207 (E.D.N.Y. 2022).....	11
<i>Rue v Stokes</i> , 191 AD2d 245, 246 (1st Dept 1993).....	23
<i>Sibley v. Choice Hotels Int'l</i> , No. 14- CV-634 (JS)(AYS), 2015 WL 9413101, at *2–3 (E.D.N.Y. Dec. 22, 2015).....	25
<i>Winfield v. City of New York</i> , No. 15-CV-05236, 2018 WL 4350246, at *1 (S.D.N.Y. Sept. 12, 2018).....	11

<u>Statutes</u>	<u>Pages</u>
CPLR § 3124 .....	5
CPLR § 3101 .....	5
CPLR § 3211 (a)(7) .....	6
NY CPLR § 4549 (2024) .....	12
N. Y. Executive Law § 296 .....	6
N.Y. Exec. Law § 297(4)(c) .....	23
NYCHRL § 8-107 .....	6, 22

**Other Authorities**

<i>Equal Employment Opportunity Policy Manual 2016,</i> Steven Banks, Commissioner, NYC HRA / DSS.....	12
<i>Equal Employment Opportunity Policy, Standards and Procedures to be Utilized by City Agencies 2014, City of New York,</i> Bill de Blasio, Mayor, Stacey Cumberbatch, Commissioner, DCAS.....	13
<i>EEO Complaint Procedural Policy, City of New York, 2016</i> DCAS.....	13
<i>Executive Order No: 742, Hiring and Promotion Policy, issued by</i> Commissioner Banks, June 12, 2017.....	18
<i>Executive Order No: 738, Hiring and Promotion Policy, issued by</i> Commissioner Banks, March 13, 2015.....	18
<i>An Important Announcement About Sexual Harassment,</i> Commissioner Banks email, dated December 17, 2017.....	12
<i>Denim Day 2018 – Creating a Culture Free of Abuse and Harassment,</i> Commissioner Banks email, dated April 20, 2018.....	12
<i>Testimony of Steven Banks,</i> Commissioner Department of Social Services Before the New York City Council General Welfare Committee Oversight Hearing: The Client Experience at HRA Centers February 4, 2019.....	21

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

-----X

MERIH ANIL,

Plaintiff,

-against-

THE CITY OF NEW YORK, STEVEN BANKS as  
the former Commissioner THE NEW YORK CITY  
DEPARTMENT OF SOCIAL SERVICES / HUMAN  
RESOURCES ADMINISTRATION (DSS/HRA),  
DENITA WILLIAMS as Senior Deputy  
Commissioner of Human Resources Solutions at  
DSS/HRA, KRISTEN MITCHELL as Associate  
Commissioner of Office of Research and Policy  
Innovation at DSS/HRA, and MARTHA KENTON as  
Executive Director of Office of Research and Policy  
Innovation at DSS/HRA,

**Index No: 157736/2022**

Defendants.

-----X

**PLAINTIFF’S MEMORANDUM OF LAW IN SUPPORT OF  
NOTICE OF MOTION TO COMPEL DEPOSITION OF DEFENDANT  
FORMER COMMISSIONER STEVEN BANKS**

**PRELIMINARY STATEMENT**

Plaintiff, Merih Anil, (“Plaintiff”), pursuant to Rule 3124 and 3101 of the CPLR, respectfully submits this Memorandum of Law in Support of Plaintiff’s Notice of Motion to Compel Deposition of Defendant former Commissioner Steven Banks (“Commissioner Banks”).

Plaintiff, an employee with the New York City Department of Social Services/Human Resources Administration ("DSS"), commenced this action in September 2022 against Defendants The City of New York ("City"), Steven Banks, Denita Williams, Kristen Mitchell, and Martha Kenton to redress unlawful employment discrimination and retaliation practices that she has been subjected to as a DSS employee on the basis of her national origin, gender, and age under the New

York State Human Rights Law, New York Executive Law § 296 (“SHRL”) and the New York City Human Rights Law, New York City Administrative Code § 8-107 (“CHRL”). Defendants’ unlawful discriminatory and retaliatory acts resulted in adverse employment action for Plaintiff. (First Amended Complaint, **Ex. 1** and **2**).

The Defendants moved, pursuant to CPLR 3211 (a)(7), to dismiss the First Amended Complaint (“FAC”) for failure to state a cause of action. The Plaintiff opposed.

Per Hon. Nicholas Moyné’s decision and order, dated October 23, 2023, age discrimination and retaliation claims under SHRL and CHRL survived Defendants’ motion (third, fourth, fifth, and sixth causes of action).<sup>1</sup> Furthermore, “the portion of defendants’ motion to dismiss which sought dismissal of plaintiff’s claims which accrued prior to September 10, 2019, is denied as to the age discrimination claims and/or retaliation claims for failure to promote.” Order, **Ex. 3**.

Defendants provided their verified Answer on November 14, 2023. Answer, **Ex. 4**. The discovery began after the preliminary conference on January 17, 2024.

### **STATEMENT OF FACTS**

Commissioner Banks is an individually named Defendant in this legal action. He was appointed as the Commissioner of NYC Human Resources Administration (“HRA”) in February 2014 by Mayor Bill de Blasio. Commissioner Banks was also appointed as the Commissioner or Head of NYC Department of Homeless Services (“DHS”) in 2016, replacing then-Commissioner Gilbert Taylor.<sup>2</sup> Under Commissioner Banks, the two mayoral agencies (HRA and DHS) merged into DSS in 2016, with one joint management structure, with Commissioner Banks becoming the

---

<sup>1</sup> National Origin and gender discrimination claims (first and second causes of action) were solely dismissed because “the factual predicates for said EEO reports [were] not specified in the complaint.” Order, **Ex. 3** at 8.

<sup>2</sup> It may be that Commissioner Banks did not officially or formally replace Commissioner Taylor. Plaintiff could not find any official appointment date or announcement regarding such appointment. It may he began overseeing DHS as DSS Commissioner.

Commissioner of DSS/HRA/DHS. Commissioner Banks' tenure lasted for almost 8 (eight) years, from February 2014 through the end of 2021.

Plaintiff is female. She was born in 1968. She is of Turkish descent, a non-practicing Muslim, with a Ph.D. She has been a City employee since 2007. FAC ¶¶ 9-14. Plaintiff alleges that Commissioner Banks "as the Agency Head, failed to fully and fairly investigate the EEO reports Plaintiff filed on October 11, 2019, and on August 31, 2020." FAC, ¶ 26.

"In a phone conference, on August 24, 2020, Monique Quinones-Jackson, the EEO Officer who interviewed Plaintiff on November 25, 2019, informed Plaintiff that Commissioner Steven Banks was aware of Plaintiff's EEO reports as he was notified separately, but the case was not in review stage as Ms. Quinones-Jackson was doing interviews and that she expected "to conclude interviews in the near future." *Id.*, ¶ 27.<sup>3</sup>

At her deposition on October 9, 2024, Ms. Quinones-Jackson testified that "I do not recall the conversation." (Deposition Tr., Oct. 9, 2024; pg 41, ln 17). **Ex. 5**. She also testified that her supervisor at the time was the EEO Officer Stephanie Grant (*id.*, pg 22 & 43). However, she did not recall who her supervisor's supervisor was at the time. *Id.*, pg 22. Athina McBean, the then-EEO Officer for DHS, and the current EEO Officer for DSS/HRA/DHS, testified that the former DSS/HRA EEO Officer Stephanie Grant was directly reporting to Commissioner Banks (Deposition Tr., May 1, 2025; pg 16, ln 19) **Ex. 6**.

Plaintiff concludes that the EEO Investigator Ms. Quinones-Jackson's immediate supervisor in 2019 and 2020 was the then-EEO Officer Stephanie Grant, whose immediate supervisor was Commissioner Banks.

---

<sup>3</sup> Monique Quinones-Jackson's role in 2019 and 2020 was the EEO Investigator, not the EEO Officer.

National origin, gender, and **age** were among the protected categories Plaintiff checked in the "EEO COMPLAINT FORM." DEF003218. **Ex. 6** at 277.

Plaintiff's answer to "What terms and conditions of your employment have been affected by the EEO violation" question in the "EEO COMPLAINT FORM" was "work assignments; salary; promotion; working conditions; and other – **retaliatory supervisory behavior.**" DEF003193, DEF003219. **Ex. 6** at 252 & 278.

The Agency records indicate there are two outcomes to Plaintiff's EEO complaints: substantiated on the basis of national origin and gender discrimination claims as of October 20, 2020 and then unsubstantiated as of March 2022. **Ex. 8**. These records were produced by Defendants in February 2024 and in April 2024, per Plaintiff's discovery demands. The Agency records do not indicate any determination on **age discrimination** and **retaliation** claims.

Plaintiff alleges that "Commissioner Steven Banks as the Agency Head overseeing the agency EEO office knew about Plaintiff's complaint and had personal involvement." FAC, ¶ 30. Defendants "aided and abetted each other in the unlawful actions taken against Plaintiff." *Id.*

Furthermore, Plaintiff alleges that "[t]he conduct of Defendant The City was done in a conscious disregard of Plaintiff's rights" and that, in addition to an award of punitive and compensatory damages, she "is entitled to equitable and injunctive relief." *Id.*, ¶¶ 97 & 102. In employment discrimination cases, equitable and injunctive relief aim to correct discriminatory practices and prevent future harm.

"As a further proximate result of Defendant The City's actions, Plaintiff has suffered and continues to suffer severe and lasting embarrassment, humiliation, anguish, and other incidental and consequential damages and expenses." *Id.*, ¶¶ 96, 101, 108.

The medical and health records Plaintiff produced per Defendants’ discovery demands indicate that Defendants’ discriminatory and retaliatory actions, as alleged by Plaintiff in the Complaint, resulted in both physical and emotional suffering and damages for Plaintiff (lack of sleep, altered immune system, painful mouth ulcers, shingle-like skin rash, upset stomach, dizziness, back pain, weight gain, deconditioning, dyspnea on exertion, constant worry, anxiety, and depression). NYSCEF Doc Nos: 138, 139. FAC ¶¶ 75, 76. Defendant Kenton knew about the “treatable” mouth ulcers on September 20, 2019. Ex. 9 at 198.

### LEGAL STANDARD

Judges are “afforded broad discretion in resolving non-dispositive disputes ...” *Peralta v. Regent Catering, Inc.*, No. 17 Civ. 6993, 2022 WL 6799407, at \*4 (E.D.N.Y. Mar. 18, 2022). *See also Mirra v. Jordan*, No. 13-CV-5519, 2016 WL 889683, at \*2 (S.D.N.Y. Feb. 23, 2016) (“Motions to compel are left to the court's sound discretion.”) (citation omitted).

High-ranking public officials can be deposed upon a showing of “exceptional circumstances justifying the deposition[s]—for example, that the official has unique first-hand knowledge related to the litigated claims or that the necessary information cannot be obtained through other, less burdensome or intrusive means.” *Lederman v. New York City Dep’t of Parks and Rec.*, 731 F.3d 199, 203 (2d Cir. 2013).

In *Lederman*, The Second Circuit held plaintiffs did not demonstrate “exceptional circumstances” warranting the depositions of Mayor Bloomberg and Deputy Mayor Skyler because plaintiffs “did not identify with particularity the information they needed, nor did they contend that Bloomberg and Skyler had first-hand knowledge about the litigated claims or that the relevant information could not be obtained elsewhere.” *Id.* at 203. The Court determined “plaintiffs did not show that Bloomberg and Skyler had the information they were seeking from then-Parks

Commissioner Adrian Benepe, whom plaintiffs previously deposed and who was a named defendant in the suit.” *Id.* Commissioner Benepe, who was deposed, was the then-current Commissioner for the NYC Department of Parks and Recreation.

In *C.K. et al v. Bassett et al* (2:22-cv-01791), Plaintiffs’ motion to compel the depositions of Commissioners of New York State Office of Mental Health (“OMH”) and New York State Department of Health (“DOH”) is granted by Magistrate Judge Wicks. His order is affirmed by District Judge Nusrat J. Choudhury. *C.K. through P.K. v. McDonald et al*, 2:22-cv-01791 (NJC) (JMW), 2024 WL 730494 (E.D.N.Y. Feb. 22, 2024).<sup>4</sup>

In *C.K. et al v. McDonald et al* (2:22-cv-01791), “[p]laintiffs seek to examine the Commissioners [of OMH and DOH] ‘regarding the policies and practices of their respective agencies that have given rise to the alleged failure to provide adequate mental health services to Medicaid eligible children in New York as alleged in the Amended Complaint.’ (ECF Nos. 57, 34.) Plaintiffs argue the Commissioners ‘bear statutory responsibility for these policies and practices, and their understanding as to why these deficiencies have not been addressed, and how they came to exist, is important and relevant.’”

Judge Wicks reasoned: “Unlike the Mayor and Deputy in *Lederman*, the Commissioners here are not only named defendants in the lawsuit, but they are Commissioners of the respective agencies whose very policies are being challenged. In Plaintiffs’ Opposition to Defendant’s Motion for a Protective Order, Plaintiffs further note that ‘as to many important issues, the witnesses [deposed thus far] did not know the answers, reflecting additional, appropriate lines of inquiry for

---

<sup>4</sup> Commissioner McDonald joined DOH in July of 2022. He replaced former-named Defendant Commissioner Mary T. Bassett in this suit. The initial caption of the case was *C.K. et al v. Bassett et al*. The current caption is *C.K. through P.K. v. McDonald et al*.

the Commissioners.” *C.K. through P.K. v. McDonald et al.*, 2:22-cv-01791 (NJC) (JMW), 2024 WL 730494 (E.D.N.Y. Dec. 13, 2023).

The District Judge Nusrat Choudhury ruled that Magistrate Wicks’ “[o]rder accurately described the holding of *Lederman*: an exceptional circumstance justifying the deposition of a high-ranking government official exists where a party establishes either: (i) ‘that the official has unique first-hand knowledge related to the litigated claims[;]’ or (ii) ‘that the necessary information cannot be obtained through other, less burdensome or intrusive means.’ *Lederman*, 731 F.3d at 203; see Order at 10. Defendants concede that agency commissioners are not ‘categorically exempt from being deposed’ under *Lederman*, and may be deposed under ‘exceptional circumstances.’ Defs.’ Objs. at 3. Judge Wicks properly identified the applicable legal standard.’ *C.K. through P.K. v. McDonald et al.*, 2:22-cv-01791 (NJC) (JMW), 2024 WL 730494 (E.D.N.Y. Feb. 22, 2024).

Plaintiff “bear[s] the burden of showing that the deposition of the [high-ranking officials] is appropriate...” *Winfield v. City of New York*, No. 15-CV-05236 (LTS) (KHP), 2018 WL 4350246, at \*1 (S.D.N.Y. Sept. 12, 2018). (then-current Commissioner and former Commissioners of the Department of Housing Preservation and Development were deposed in case challenging a New York City policy). When the burden of showing met, high-ranking officials were ordered to be deposed.

“Depositions of high-ranking officials may be permitted where the official has first-hand knowledge related to the claim being litigated.” *Presti v. City of New York*, 609 F. Supp. 3d 204, 207 (E.D.N.Y. 2022) (citing *Bogan v. City of Boston*, 489 F.3d 417, 423 (1st Cir. 2007)).

## ARGUMENT

**Point 1 – Commissioner Banks’ 2016 EEO Policy Manual, email communications to DSS/HRA/DHS staff regarding EEO, from 2014 through the end of 2021, give evidence that he has or must have personal involvement or knowledge related to Plaintiff’s litigated claims.**

Commissioner Banks, as the author of the DSS Equal Employment Opportunity Policy Manual 2016, states the following under Findings and Recommendations (pg. 20):

The EEO Counselor and/or the EEO Officer summarize the facts of the investigation into a report. The EEO Counselor and/or the EEO Officer then make a recommendation with regard to the allegations. The EEO Officer then submits the investigation report to the Commissioner.... **Ex. 9** at 74.

Under Commissioner’s Determination, it reads:

The Commissioner and General Counsel review the findings and recommendations made by the EEO Office. The Commissioner may approve the findings and recommendations and, if warranted, may direct that disciplinary action be pursued consistent with the due process rights of the respondent employee. The parties are informed in writing of the final determination and the complainant will once again be made aware of his/her filing options with external agencies. *Id.*

The following is under Accountability:

The Commissioner holds and will continue to hold the EEO Office, Human Resources professionals, managers, and supervisors accountable for effective implementation of New York City’s EEO policies and to ensure fair employment practices...The Commissioner appoints the EEO Officer, who must report directly to the Commissioner. *Id.*

In one of his emails, Commissioner Banks shares that he was a victim of sexual harassment and would have zero tolerance for sexual harassment. **Ex. 9** at 21<sup>5</sup>

Evidence produced during discovery indicates the “Commissioner’s Determination” step for Plaintiff’s EEO complaints and investigation process was not completed: “... Jason

---

<sup>5</sup> All these documents are admissible evidence under CPLR 4549.

Hryckowian, Deputy Director of EEO Investigations, in an email, dated May 12, 2021 informed Plaintiff that “the case is in the final review phase and we will issue a determination as soon as possible.” (Exhibit E at 4).” FAC ¶ 28.

DEF003190 and DEF003352 indicate that Commissioner Banks did not sign off on Plaintiff’s EEO complaints. **Ex. 8** at 24 & 25. It may be that he reviewed and signed off, but it is not on the record. The witnesses deposed lack knowledge. Only Commissioner Banks would have this information.

**Point 2 – DCAS’ 2014 EEO Standards and Procedures and 2016 EEO Complaint Procedural Guidelines give inference that Commissioner Banks has or must have personal involvement related to Plaintiff’s litigated claims.**

During Commissioner Banks’s tenure at DSS/HRA/DHS, the City’s EEO protocols were summarized in DCAS’ EEO Policy: Standards and Procedures to be Utilized by City Agencies.

The “Concluding the Complaint Investigation” section reads (**Ex. 6** at 160):

The EEO Officer will submit a confidential report of the complaint investigation to the agency head at the conclusion of the investigation. If the EEO Officer concludes that a violation of this Policy has occurred, the EEO Officer will recommend appropriate corrective action. The agency head will review the EEO Officer’s report and promptly issue a determination adopting, rejecting, or modifying the recommended action. Such determination shall be in writing and may be issued electronically. The EEO Officer will advise all parties in writing of the outcome of a complaint.

EEO Complaint Procedural Guidelines, published in 2016 by DCAS under “Preparing the Final Report” and “Informing Parties of Outcome” sections read (**Ex. 10** at 14):

The Agency Head must sign each written report and indicate that it has been reviewed and whether the determination and recommendation, if any, is adopted, rejected or modified. After review of the report by the Agency Head, the EEO Office should inform all parties in writing of the outcome of the investigation... indicating the conclusion reached, whether the misconduct alleged has been substantiated, and the agency’s opposition to that kind of activity.

The documents produced by Defendants indicate that the City's EEO protocols were not implemented. The witnesses deposed lack knowledge of Commissioner Banks' personal involvement.

**Point 3 – Depositions of DSS EEO staff give inference that Commissioner Banks has or must have first-hand knowledge related to Plaintiff's litigated claims.**

Deputy Commissioner / EEO Officer Athina McBean, former EEO Deputy Director Jason Hryckowian, and former EEO Investigator Monique Quinones-Jackson, in their depositions in October 2024, testified that the agency EEO investigation process included a review by Commissioner Banks.

Jason Hryckowian testified that “[t]he commissioner was providing a final review of those cases.” Deposition Tr., Oct. 10, 2024; pg 23, ln 14-15; pg 66, ln 3-5. **Ex. 11.**

Monique Quinones-Jackson testified the following (Deposition Tr., Oct. 9, 2024; pg 29-30, **Ex. 5**):

Q. After an investigation is completed, what is the next step?

**A. The person who investigated the case would write a report and submit it to the supervisor.**

Q. Submit it to the immediate supervisor or submit it to the agency head?

**A. To the immediate supervisor.**

Q. Then what happens?

**A. Then the supervisor reviews the document, and at some point, hands it off for review to the commissioner and then the person is given a determination.**

Q. So when the investigator report is reviewed by the commissioner, does that mean the final review or are there any further reviews after the review of the commissioner?

**A. I'm not involved in that process. I'm not at liberty to comment.**

Q. Who would answer that question, if you are not able to answer that question?

**A. I only know that I can't answer that question.**

Athina McBean testified the following (Deposition Tr., May 1, 2025, pg 39-40, **Ex. 6**):

Q. When it's reviewed by Commissioner Park?

**A. At the conclusion of the investigation.**

Q. Before the report is produced or after the report is produced?

**A. After the report is produced.**

Q. So does that review by the commissioner mean she or he signs off?

Q. Or signs the report?

**A. Yes.**

Q. He or she would approve the recommendations or findings or he or she would change, revise or give suggestions? How does that review work?

**A. The commissioner reviews the report. She can ask for us to do more investigation, she can change the determination, she can disagree with our findings.**

Q. To your knowledge, this is how it was handled under Commissioner Banks?

A. Yes.

Furthermore, at her deposition, Ms. McBean could not explain why she and Commissioner Banks departed from the established DCAS and agency EEO protocols; why there are two different outcomes to Plaintiff's EEO complaints. See **Ex. 6 & 7**.

The EEO staff, who were deposed, have been with DSS for more than one or two decades. Plaintiff followed up with them by email every four to six months since June 2020. They never informed Plaintiff about any of the outcomes of her EEO case. However, Defendants' records indicate that they informed Plaintiff's supervisors and managers, including the respondent of her EEO complaints, in March 2022, with the "unsubstantiated EEO case" determination. Athina McBean's email to Program Area managers indicates that "the case was closed 12/17/20" and "[y]es, the case against Mr. Winkler was unsubstantiated. I can't say whether notifications went out..." DEF001295-DEF001297, **Ex. 8** at 11-13.

**Point 4 – Deposition of Charles Winkler, Respondent of Plaintiff's EEO complaints, did not produce information on Commissioner Banks' first-hand or unique knowledge related to the litigated claims.**

Defendants produced Deputy Director Charles Winkler for deposition after objecting Commissioner Banks' deposition: "[A]ny deposition of Mr. Banks would be duplicative of the deposition of Charles Winkler. Accordingly, Defendants will not produce Mr. Banks in response to this Notice absent a court order." **Ex. 16** at 5.

The EEO investigation report, dated October 20, 2020, states that Plaintiff's allegations on the basis of national origin and gender are substantiated. According to the EEO investigation report, "Mr. Winkler denied the allegations." **Ex. 8** at 5. If Defendants' statement that Mr.

Winkler's deposition would be duplicative of Commissioner Banks's is true, then Commissioner Banks denies that Mr. Winkler has violated the City's and DSS's EEO policies.

Although Plaintiff's EEO complaints reported age discrimination and retaliatory supervisory behavior as retaliation claims, they are not mentioned in the substantiated EEO investigation report. Plaintiff also reported the adverse employment actions and the negative effect that these violations had on her wellbeing. *Id.*

According to the substantiated EEO report, "Mr. Dejesus stated that Mr. Winkler appears to be unprofessional. Mr. Dejesus stated that he has observed Mr. Winkler in closed meetings through glass doors and could hear him yelling in a heated exchange with different people. He stated that he did not have any details concerning the meetings but that he noticed that Mr. Winkler behaves this way with women and not with men." *Id.*, at 5.

"Ms. Stevenson stated that Mr. Winkler has not overtly made any comments in front of her but that she perceives him to be a sexist." *Id.*, at 3.

"[Ms. Kenton] stated that she has witnessed Mr. Winkler can be dismissive... She stated that Mr. Winkler has difficulty prioritizing and is often late on deadlines. Ms. Kenton stated that this lateness can sometimes impact Ms. Anil's work..." *Id.* Monique Quinones-Jackson's interview notes also indicate that Defendant Martha Kenton admitted there were other women: "Ms. Kenton stated that she has witnessed Mr. Winkler be dismissive to women by way of ignoring their ideas or suggestions. Ms. Kenton suggested that other women have complained about Mr. Winkler being disrespectful because he is dismissive." DEF000389, **Ex. 5** at 266. "No names provided" is an additional interview note on the same page. *Id.*

When Plaintiff produced a copy of the substantiated EEO investigation report, as an Exhibit, at Martha Kenton's deposition on October 21, 2024, and asked "[w]ould you agree with

Ms. Stevenson's statement that -- do you perceive Mr. Winkler as sexist?", Defendant Kenton testified that "[m]y personal knowledge of Charlie Winkler is that he often behaves in a way I would describe as being sexist." Deposition Tr., Oct. 21, 2025; pg 170, ln 13-20, **Ex. 13**.

On April 17, 2024, Judge Jeanine Johnson declined to sign the judicial subpoenas "at this time" with leave to renew. Court Tr., April 17, 2024; pg 10, ln 3, **Ex. 15** at 47. In her decision, Judge Johnson also stated that "I want to clarify for you [Defense Counsel] that just because someone is high-ranking does not give them blanket immunity from being subpoenaed to court to testify or be deposed, right?" *Id.*, pg 9, ln 16-19. **Ex. 15** at 46.

**Point 5 – Deposition of Commissioner Banks meets the “exceptional circumstances” standard because he has unique knowledge regarding the establishment of a “joint management structure” of HRA and DHS and restructuring of the EEO and Human Resources Offices under DSS.**

Plaintiff's age discrimination and/or retaliation claims in the form of failure to promote is not time-barred and includes incidents in February 2016, September 2016, and March 2017 through March 2022. Order, **Ex. 3**.

On July 14, 2016, Commissioner Banks, sent an email to staff regarding the integration of DHS and HRA into DSS. The excerpt below reads (**Ex. 16** at 9):

I'm sure you have questions, and we want to hear from you. Supervisors, please discuss the coming changes with your staff, and share any questions they have with the transition leadership team. Staff can also send questions directly to the Commissioner's Office at [Commissioner\\_Banks@hra.nyc.gov](mailto:Commissioner_Banks@hra.nyc.gov).

“DSS – DHS” home page, <https://www.nyc.gov/site/dhs/about/dss.page>, as of July 2025, states:

The Department of Social Services (DSS) is comprised of the administrative units of the NYC Human Resources Administration (HRA) and the Department of Homeless Services (DHS). Through integrated management for HRA and DHS, client services can be provided more seamlessly and effectively.

Within the scope of this litigation, Plaintiff asked witnesses EEO and HR related questions, which they could not answer. One witness said she cannot speak for the agency, without mentioning if she was referring to HRA or DHS, or both. Quinones-Jackson Deposition Tr.; pg 39, ln 15; pg 50, ln 19. **Ex. 5.**

Documents produced by Defendants indicate that Commissioner Banks introduced Executive Orders 738 and 742 in March 2015 and July 2017, respectively, on Hiring and Promotion Policy, “EEO monitoring for new hires and promotions from civil service list” as opposed to discretionary hirings; and “in-title promotion and salary increases.” **Ex. 16** at 10-11; **Ex. 17.**

DHS QUARTERLY DIVERSITY AND EEO REPORT FY 2018 4th Quarter, Defendants produced during discovery (DEF000020 – DEF000031), was authored by the current DSS EEO Officer and then-DHS EEO Officer Athina McBean. This document indicates that DHS will work with HRA to establish or “re-establish” groups and programs and “to incorporate DHS staff into existing HRA/DSS” groups: “DHS will be working with HRA to create an employee mentoring program that meet the needs of both agencies.” This “employee mentoring program [was] to help identify and retain high potential candidates for leadership succession.” **Ex. 17** at 3, 5. These may be new approaches to recruitment, hiring, retention, and promotion for new and incumbent staff. Commissioner Banks is in a position with unique knowledge meeting Lederman’s “exceptional circumstances” to answer questions and produce information and evidence that is relevant, necessary, material to prosecute this action. FAC ¶¶ 23-25, 31-47, 64, 104, 107.

The “succession” path for select “high potential” employees may explain the “title conversion” table from 2016 in FAC (page 8). **Ex. 1.** Defendants verified that all the employees listed in this table were younger than Plaintiff. Furthermore, Defendants produced a 2016 email

correspondence between the HR and Plaintiff's program area managers, during the integration and restructuring, that indicated the only employees with no "job description" under Defendants Kristen Mitchell and Martha Kenton were the two oldest employees: Plaintiff and Aleida Valentin. Plaintiff was born in 1968 and worked at DHS for 9 years as of 2016. Aleida Valentin was born in 1948 and worked for the city for 26 years as of 2016. DEF002067, **Ex. 14** at 268. This succession path model may explain why Plaintiff had "returned to previous title" and a decrease in salary in 2016, and why she was not promoted from the Admin. Staff Analyst civil service list with salary increase.. FAC ¶¶ 55-61, 64.

DHS FY2019 DIVERSITY AND EQUAL EMPLOYMENT QUARTERLY REPORT, under VI. Selection (Hiring and Promotion), indicates "increasing the positions filled through civil service lists" is among the EEO Office's monitoring activities (DEF000204, **Ex. 5** at 291).

It appears that DSS deviated from this practice. Both Defendants Kenton and Mitchell testified that they never hired a new employee from any established civil service list. Deposition Tr., Oct. 21, 2024; pg 113, ln 24, **Ex. 13**; Deposition Tr., Oct. 16, 2024; pg 25, ln 16-17, **Ex. 14**. The EEO Officer, Athina McBean, who testified that she had managerial authority to hire in 2014, answered "I don't know, I don't recall." Deposition Tr., May 1, 2025; pg 97, ln 12, **Ex. 6**). This incompliance may explain Defendants Kenton's and Mitchell's ability to hire millennial temporary employees starting in 2018 who are under 30 years old, mostly with masters degrees from Columbia University, who were offered permanent non-competitive positions that were higher-level titles than Plaintiff's current civil service title. See FAC ¶¶ 41, 71, 72, 94, 99.

In reviewing the Agency documents that are public, it appears that the same EEO Officer's approach to EEO complaint investigation process differed under different Commissioners: Stephanie Grant became the EEO Officer for HRA in 2005. A sexual harassment complaint was

filed with her office on October 27, 2008. It was completed by February 4, 2009. The determination letter that was issued, and actually served, indicated that the agency opposed the misconduct of the respondent of the EEO complaint. **Ex. 7** at 77. The case was also sent to Legal immediately for further appropriate action which was completed the same year. This was under the Commissioner Robert Doar administration. Plaintiff's EEO case is still not fully and fairly completed and has not been resolved to date since 2019.

The HR managers Yvette Pilgrim and Defendant Denita Williams under DHS Commissioner Gilbert Taylor<sup>6</sup> would produce a civil service title appointment letter for Plaintiff from the established civil service list (to lower-level "SA" title) within one week of certification by the "Home" agency in February 2015. **Ex. 9** at 151. However, as of February 2016, under Commissioner Banks, they would stop doing so when Plaintiff's number was reached from another list (another lower-level "ASA" title) because they would review the certified civil service list for months. An official appointment letter would not be issued, again, for months because they review the content of the one-paragraph letter. **Ex. 9** at 152; **Ex. 13** 300-311. However, for the other eligible staff listed in the table on page 8 of the FAC, their civil service appointments would be completed in a matter of days when their numbers were reached and their appointments to higher level non-competitive civil service titles with increased salaries would be based on employment actions with "NON-COMPETITIVE APPT NO RULE." DEF003343-DEF003351. See FAC ¶¶ 23-25, 52-57.

Commissioner Banks has the unique knowledge to explain managerial and leadership differences by three administrations as they relate to Plaintiff's litigated claims. His management of the merger of two mayoral agencies gives rise to "exceptional circumstances" standard.

---

<sup>6</sup> Commissioner Taylor left DHS in December 2015.

**Point 6 – Commissioner Banks bears statutory responsibility for the City’s and DSS’ EEO policies and practices, per Chapter 36 of New York City Charter.**

EEO compliance is statutorily required for the NYC agencies through the New York City Charter. Chapter 36 of the New York City Charter mandates that each mayoral agency ensures non-discrimination in employment practices and requires the development and implementation of EEO plans and programs in compliance with federal, state, and city laws. *See C.K. et al v. McDonald et al (2:22-cv-01791)*.

Plaintiff identifies numerous DSS, HRA, and DHS policies for which, as the Agency Head, Commissioner Banks was responsible for implementing. His deposition will help determine his understanding as to why there were deficiencies and why they have not been addressed. This understanding is relevant, material, and necessary to prosecute this action.

Commissioners have executive power, but they are also subject to legislative oversight. It is this local checks and balance of power that resulted in Commissioner Banks’ testimony before the City Council’s oversight hearing on February 4, 2019. Per New York City Council’s website:

Oversight hearings are a key part of the City Council's oversight function, which involves monitoring and evaluating the performance of city agencies and programs. The Council's committees, such as the [Committee on Oversight and Investigations](#), hold hearings where agency officials are called to testify and answer questions. These hearings are a crucial mechanism for holding city agencies accountable to the public and the City Council.

Commissioner Banks’ testimony on February 4, 2019 reads (**Ex. 18** at 1):

Notwithstanding the significant reform efforts we have implemented over the past five years, as painfully illustrated by Ms. Headley’s testimony today and conversations I have had with individual clients, on any given day a client may experience challenges at any one of our offices that do not reflect the major policy changes we have made, our values or the dedication of the vast majority of our staff who came to work at DSS to help people in need.

What happened to Ms. Headley when she turned to us for help has caused me to look in the mirror to see what more I can do to deepen the reforms we have implemented so that nothing like that ever happens again.

The excerpt from Commissioner Banks' email to staff, sent on October 28, 2019 (**Ex. 9**, at 14):

The Dignity You Deserve: Our Promise to New Yorkers in Need  
DSS Commissioner Steven Banks

For decades as a Legal Aid lawyer I represented clients who had fallen through every social safety net. Some had been let down by the very systems that were supposed to help them. In other cases, my clients were subjected to excessive force by government. Many feared coming forward to share their stories, which were traumatic to experience and explain. How could this happen to me for simply asking for help, they wondered? It was my mission and that of my Legal Aid colleagues to fight for them.

Plaintiff's request for a judicial subpoena or court order for Commissioner Banks' deposition or testimony may not be a judicial oversight, but it would be relevant and necessary for prosecuting and/or resolving this legal action.

**Point 7 – Deposition of Commissioner Banks is relevant and necessary to prosecute this case on the ground of equitable relief and injunctive relief.**

Plaintiff argues that the deposition of Commissioner Banks is relevant and necessary not only to prepare for trial but because Plaintiff also seeks equitable and injunctive relief requiring Defendants to cure alleged unlawful actions and to prevent future discrimination and retaliation. Defendants have neglected and/or refused to remedy their illegal and unlawful practices. FAC ¶47.

**Point 8 – Deposition of Commissioner Banks is relevant and necessary to prosecute this case on the ground of punitive damages.**

New York City Human Rights Law 8-107(13)(b) states:

An employer shall be liable for an unlawful discriminatory practice based upon the conduct of an employee or agent which is in violation of subdivision 1 or 2 of this section only where:

1. The employee or agent exercised managerial or supervisory responsibility; or
2. The employer knew of the employee's or agent's discriminatory conduct, and acquiesced in such conduct or failed to take immediate and appropriate corrective action; an employer shall be deemed

to have knowledge of an employee's or agent's discriminatory conduct where that conduct was known by another employee or agent who exercised managerial or supervisory responsibility; or

3. The employer should have known of the employee's or agent's discriminatory conduct and failed to exercise reasonable diligence to prevent such discriminatory conduct.

Under the New York State Human Rights Law, an employer is only liable for the actions of an employee if it became a party to the conduct by encouraging, condoning, or approving it. (See landmark case *Matter of Medical Express Ambulance Corp. v. Kirkland*, 913 N.Y.S.2d 296, 298 (App. Div. 2010)).

Effective October 11, 2019, the New York State Human Rights Law permits an award of punitive damages in certain employment discrimination cases. See N.Y. Exec. Law § 297(4)(c):

If, upon all the evidence at the hearing, the commissioner shall find that a respondent has engaged in any unlawful discriminatory practice as defined in this article, the commissioner shall state findings of fact and shall issue and cause to be served on such respondent an order, based on such findings and setting them forth, and including such of the following provisions as in the judgment of the division will effectuate the purposes of this article: ... (iv) awarding of punitive damages, in cases of **employment discrimination related to private employers** ... to the person aggrieved by such practice ... (Emphasis added).

Commissioner Banks is an individually named Defendant in this legal action. Plaintiff alleges that Mr. Banks “as the Agency Head, failed to fully and fairly investigate the EEO reports Plaintiff filed on October 11, 2019, and on August 31, 2020.” Complaint ¶ 26.

Plaintiff also alleges that “Commissioner Steven Banks as the Agency Head overseeing the agency EEO office knew about Plaintiff’s complaint and had personal involvement.” *Id.*, ¶ 30.

Furthermore, Plaintiff alleges that “[t]he conduct of Defendant The City was done in a **conscious disregard of Plaintiff’s rights**” *Id.*, ¶¶ 97, 102. (Emphasis added).

Unrebutted, sworn, deposition testimony is sufficient as a matter of law to establish liability (see *Rue v Stokes*, 191 AD2d 245, 246 [1st Dept 1993]; see also *Gonzalez v 1225 Ogden Deli Grocery Corp.*, 158 AD3d 582, 583 [1st Dept 2018]). The plaintiff has made a showing that the defendant violated its duty.

“[New York] Court of Appeals Holds Standard for Punitive Damages Under NYCHRL is Willful or Wanton Negligence, Recklessness, or Conscious Disregard.”<sup>7</sup>

In *Chauca v. Abraham*, The Court of Appeals decided:

The Second Circuit has, by certified question, asked us to determine the applicable standard. We conclude that, consistent with the New York City Council's directive to construe the New York City Human Rights Law liberally, the common law standard as [\*2] articulated in *Home Insurance Co. v American Home Prods. Corp.* (75 NY2d 196, 203-204 [1990]) applies. Accordingly, a plaintiff is entitled to punitive damages where the wrongdoer's actions amount to willful or wanton negligence, or recklessness, or where there is "**a conscious disregard of the rights of others** or conduct so reckless as to amount to such disregard" (see *Home Ins. Co. v Am. Home Prods. Corp.*, 75 NY2d 196, 203-204 [1990]). *Chauca v. Abraham*, 30 N.Y.3d 325, 67 N.Y.S.3d 85, 89 N.E.3d 475, 2017 N.Y. Slip Op. 8158 (N.Y. 2017). (Emphasis added).

Plaintiff's allegations in the FAC call for employer liability and punitive damages under New York State and City Human Rights Laws.

**Point 9 – Defendants cannot argue that Commissioner Banks' deposition would “severely hinder” his “ability to effectively run [his] agencies.”** *Lederman*, 731 F.3d 199.

Currently, Commissioner Banks does not serve in any official capacity within the City government. However, his recent public appearances indicate that he is involved in current legal and political affairs in the city and may make a comeback to the City government.<sup>8</sup>

---

<sup>7</sup> <https://nysappeals.com/2017/11/21/court-of-appeals-holds-standard-for-punitive-damages-under-nychrl-is-willful-or-wanton-negligence-recklessness-or-conscious-disregard/>

<sup>8</sup> *Audra Soloway Interviews Steve Banks, a Pioneering Advocate for New York City's Poor, on His Move to Paul Weiss*, March 2022, <https://youtu.be/AIDUTU9x2y0>;  
*Top Pro Bono Leader Resigns from Paul Weiss, a Firm Hit in Trump's Crackdown on Big Law*, The New York Times, April 9, 2025, <https://www.nytimes.com/2025/04/09/business/paul-weiss-steven-banks-trump.html/>  
*In Suits and Ties, Lawyers Protest Trump's Attacks on the Legal System*, The New York Times, May 1, 2025, <https://www.nytimes.com/2025/05/01/nyregion/national-law-day-courthouse-protests.html>  
*In Foley Square, Lawyers Rally to Support the Rule of Law*. The New York Times, NY Edition in paper copy, Section A, p. 12, May 2, 2025.  
*Can Mamdani Persuade New York to Elect Its Youngest Mayor in a Century?* The New York Times, June 10, 2025, <https://www.nytimes.com/2025/06/10/nyregion/mamdani-age-mayor-young.html>  
*NYC Mayoral Primary Debate*, June 12, 2025, WNYC Bryan Lehrer Show, Transcript <https://www.wnyc.org/story/nyc-mayoral-primary-debate-trump-and-experience/?tab=transcript>  
*Mamdani's Primary Win Jolts Legal Industry*, Bloomberg News, June 26, 2025, <https://news.bloomberglaw.com/new-york-brief/mamdani-win-jolts-nyc-law-world>

**Point 10 – Plaintiffs' request to depose Commissioner Banks is reasonable and proportional to the needs of the case.**

Plaintiff's request is reasonable because this action is in the discovery phase and the information sought is relevant, material, and necessary to the asserted claims and defenses.

Plaintiff's request is proportional to the needs of the case given the importance of the issues, the level of alleged Agency actions and inactions, and the importance of the information sought to the asserted claims or defenses. *See, Sibley v. Choice Hotels Int'l*, No. 14- CV-634 (JS)(AYS), 2015 WL 9413101, at \*2–3 (E.D.N.Y. Dec. 22, 2015).

Plaintiff has established that former Commissioner Banks has first-hand and unique knowledge related to the litigated claims and this cannot be obtained through other, less burdensome, or intrusive means. In addition, Defendant Martha Kenton testified at her deposition on October 21, 2024 that Commissioner Banks was “quite hands-on.” **Ex. 13**; pg 109, ln 17.<sup>9</sup>

Furthermore, the “Hurricane Ida Volunteer List incident,” also indicates that Commissioner Banks can be personally involved in incidents involving Plaintiff. During Agency's Hurricane Ida response in 2021, Amanda Hayde from DSS/HRA Emergency Management team was directly talking to Commissioner Banks regarding the volunteer list. PLA01287 (also see NYSCEF Doc. No. 31). Amanda Hayde followed his directives:

I spoke with Commissioner Banks and he asked me to send the list of volunteers to Administrators and Chiefs for a special request that everyone be approved for this assignment... I will work with leadership to address any concerns.

---

<sup>9</sup> Plaintiff, as well, has first-hand knowledge of Commissioner Banks' reading the federal funding reports our unit produces and providing direct input to Defendants Mitchell and Kenton.

Plaintiff's name was in the volunteer list and she was not approved. Her then-immediate supervisor Charles Winkler did not release her for the emergency work. Amanda Hayde must have communicated with Commissioner Banks that Merih Anil's supervisors Charles Winkler, Martha Kenton, Kristen Mitchell, and Kinsey Dinan all agreed that Merih Anil **"cannot be spared to volunteer"** in September 2021. DEF001365-DEF001369. Charles Winkler's managers knew he could not handle Plaintiff's absence if she volunteered, because 1) he did not have the expertise and knowledge for the scheduled provider trainings and 2) he would not cover the other regular work as Plaintiff's immediate supervisor, such as handling 14 support letters (see DEF001365). See, FAC ¶ 33. DSS/HRA EEO investigation interview notes also indicates that Defendant Martha Kenton "stated that Mr. Winkler has difficulty prioritizing and is often late on deadlines. Ms. Kenton stated that this lateness can sometimes impact Ms. Anil's work..." **Ex. 8** at 3. Also see, Cadija Tibbs' email to Plaintiff, dated October 13, 2021, after the Hurricane Ida volunteer list incident, indicating "I am in need of your expertise. I spoke with Charlie [her and Plaintiff's then-supervisor] about this and he has been cc'd on this email as you can see." See FAC ¶ 34. Ms. Tibbs works in a higher-level title than Plaintiff's.

The documents defendants produced also indicate that Defendant Mitchell and Deputy Commissioner Kinsey Dinan were also concerned about Charles Winkler's targeted behavior towards Plaintiff a year earlier. On August 31, 2020, the day Plaintiff filed her second EEO complaint, Defendant Mitchell emails Defendant Kenton and Deputy Commissioner Dinan: "I'm increasingly concerned about Charlie's judgement as a supervisor, as this occurred just days after I spoke with him about the earlier issue raised by Merih." Ms. Dinan emails "I know Kristen did speak with Charlie, and that fact that he sent this article after that conversation is concerning." DEF001470 – DEF001471. **Ex. 8** at 20, 21. As for Defendant Kenton, she was long aware of

Charles Winkler’s sexist behavior toward Plaintiff and other females. DEF000319 – DEF000402. These managers knowingly subjected Plaintiff to discrimination, persistent hostile work environment, and retaliation. FAC ¶¶ 43, 77, 78, 103-108.

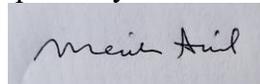
Just like Amanda Hayde from the DSS/HRA Emergency Management Team, the DSS/HRA EEO Officers Stephanie Grant and/or Athina McBean must have or should have talked to Commissioner Banks regarding Plaintiff’s EEO complaints that included age discrimination and retaliation claims. Commissioner Banks knew or should have known of his managers’ discriminatory conduct. He failed to exercise reasonable diligence to prevent such discriminatory and retaliatory conduct.

**CONCLUSION**

Plaintiff respectfully requests that the Court grant Plaintiff’s Motion to Compel former Commissioner Steven Banks’ deposition and that the Court grant other such and further relief deemed just and proper.

Dated: Astoria, New York  
August 4, 2025

Respectfully Submitted,



By: \_\_\_\_\_

Merih Anil, Plaintiff



Astoria, NY 11106

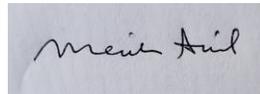
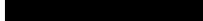


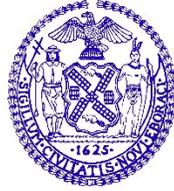
**HON. MURIEL GOODE-TRUFANT**  
Corporation Counsel of the City of New York  
Attorney for Defendants  
100 Church Street, 2<sup>nd</sup> Floor  
New York, NY 10007  
Attn: Phoebe Huth, Esq.  
[phuth@law.nyc.gov](mailto:phuth@law.nyc.gov)  
(212) 356-2434

**CERTIFICATION**

In accordance with Rule 202.8-b of the Uniform Civil Rules for the Supreme Court and the County Court of the State of New York that the enclosed brief is produced using 12-point Times New Roman type, and 10-point Times New Roman type for some quotations, and the total number of words in the foregoing document including footnotes and exclusive of the caption, table of contents, table of authorities, signature block, and certification is 6,930 according to the “Word Count” function of Microsoft Word, the word-processing system used to prepare the document, and thus that the document complies with the word count limit set forth in Rule 202.8-b that memoranda of law are not to exceed 7,000 words.

Dated: Astoria, New York  
August 4, 2025

By:   
Merih Anil, Plaintiff  
  
Astoria, NY 11106  
  




The City of New York  
Department of Investigation

JOCELYN E. STRAUBER  
COMMISSIONER

180 MAIDEN LANE  
NEW YORK, NY 10038  
212-825-5900

Release #02-2024  
nyc.gov/doi

**FOR IMMEDIATE RELEASE  
TUESDAY, JANUARY 9, 2024**

**CONTACT: DIANE STRUZZI  
(212) 825-5931**

**DOI ISSUES REPORT ON DISCLOSURE OF OVERNIGHT STAYS AT THE PATH INTAKE CENTER IN SUMMER 2022 AND THE MANIPULATION OF THE PUBLICLY-REPORTED PATH ELIGIBILITY RATE FROM 2017 TO EARLY TO MID-2022**

Jocelyn E. Strauber, Commissioner of the New York City Department of Investigation (“DOI”), issued a Report today that examined two separate and unrelated allegations regarding the Prevention Assistance and Temporary Housing Intake Center (“PATH”). PATH is an intake facility in the Bronx for families with children seeking shelter provided by the City Department of Homeless Services (“DHS”), an agency that is part of the City Department of Social Services (“DSS”). First, DOI investigated DSS’s identification of, and disclosure to City Hall and others of, a July 18, 2022 incident in which four families who arrived at PATH before 10 p.m. remained there overnight. The overnight stays violated longstanding DHS policy that families arriving at PATH by 10 p.m. be provided with a shelter placement and transported out of the intake center by 4 a.m. the following morning, a policy referred to in the Report as the “10-to-4 Rule”. Second, DOI investigated an allegation that DSS manipulated the publicly-reported 30-day eligibility rate of homeless families with children applying for DHS shelter from mid-2017 through early to mid-2022. The Report describes DOI’s findings regarding both allegations and the six recommendations DOI issued to DSS as a result. A copy of the Report is attached to this release and can be found at the following link: <https://www.nyc.gov/site/doi/newsroom/public-reports.page>

DOI Commissioner Jocelyn E. Strauber said, “This in-depth, 18-month investigation tackled two complex and distinct issues involving the City’s PATH Center. First, DOI found weaknesses in PATH’s policies and procedures applicable to tracking the entry and exit times of families seeking shelter, among other issues, which limited DSS’s ability to timely identify and report violations of DSS’s policies concerning the provision of shelter to those families (the “10-to-4 Rule”) in the summer of 2022. Second, DOI identified an intentional and years-long effort within DSS to manipulate the number of families eligible for shelter on a daily basis, dating from 2017 through early to mid-2022, in order to control the Monthly Eligibility Rate, a publicly-reported figure. Accuracy and transparency are critical to government operations, and DOI’s recommendations seek to improve DSS’s procedures and to facilitate the collection and reporting of correct information concerning families in need of shelter.”

**Allegations Regarding DSS’s Identification and Disclosure of Violations of the “10-to-4” Rule in the Summer 2022**

On July 18, 2022, executive leadership at DSS and DHS were notified that four families who arrived at the DHS PATH Intake Center before 10 p.m. on July 17 remained in the PATH building until after 4 a.m. on July 18, and thus were not en route to temporary shelter by 4 a.m. in violation of the 10-to-4 Rule. The 10-to-4 Rule is a DHS policy, in place for at least two decades, based on [Section 21-313 of the New York City Administrative Code](#). Section 21-313 requires DHS to provide “temporary shelter placement for that night” (including transportation) to any family with minor children “in the process of applying” for DHS services as of 10 p.m. in

the evening. Subsequent to these events — and in light of the ongoing influx of migrant families in need of shelter in New York City — the 10-to-4 Rule was, and remains, temporarily suspended. DOI’s investigation into the above-described violations and surrounding events found significant gaps in PATH’s record-keeping concerning the entry and exit times of families at the PATH facility. Due to those gaps, and deficiencies in DSS’s compliance and staff training relating to the 10-to-4 Rule, DSS Leadership (and City Leadership) were unaware of additional violations of the 10-to-4 Rule. The investigation also exposed a lack of full transparency by former DSS Commissioner Gary Jenkins in his initial discussions with City Hall about the July 18 incident. City Leadership disclosed the four violations that occurred on July 18 during a press conference on July 21 and thereafter, in August, City leadership identified and disclosed a fifth violation that had occurred on July 19<sup>th</sup>.

DOI’s investigation included a review of PATH data and thousands of emails and text messages, multiple site visits to PATH, and interviews of more than 20 witnesses. DOI identified a total of 11 violations of the 10-to-4 Rule that occurred on and prior to July 18 – six more than City Leadership was aware of as of August 2022. Recordkeeping failures at PATH ultimately prevented DOI from determining with certainty how many families spent one or more nights at PATH in the summer of 2022, in violation of the 10-to-4 Rule. DOI’s investigation revealed that PATH does not reliably document the time that families enter the facility and does not even attempt to document their exit times.

### **Allegation Related to DHS’s Manipulation of Public-Facing Shelter Eligibility Data**

DOI’s investigation substantiated a separate allegation that from June 2017 through early to mid-2022, DHS Administrator Joslyn Carter and her subordinates, acting at her direction, artificially lowered PATH’s publicly-reported Monthly Eligibility Rate by delaying DHS’s final determination that families had been deemed eligible for shelter, when there was no legitimate reason for that delay. The rate is published on [NYC Open Data](#), and reflects the percentage of families seeking DHS shelter who are found eligible for shelter each month. The City uses the PATH Eligibility Rate for census forecasting, shelter capacity planning, and budgeting for rental assistance vouchers and shelter beds.

Administrator Carter told DOI that she acted at the direction of former DSS Commissioner Steven Banks (who led the agency from April 2015 until December 2021) and who instructed her to decrease the Monthly Eligibility Rate in light of then-Mayor Bill de Blasio’s concerns about increases in the rate. Former Commissioner Banks acknowledged that he paid attention to fluctuations in the rate and at times discussed it with then-Mayor de Blasio and other senior Administration officials but denied knowledge of or involvement in any manipulation of the Monthly Eligibility Rate. DOI found that both Administrator Carter and former Commissioner Banks provided credible accounts with respect to their understanding of and involvement with the Monthly Eligibility Rate during the relevant time period, and each account is corroborated in certain respects. However, their accounts are irreconcilable as to the question of whether former Commissioner Banks knew of and directed Administrator Carter to engage in the data manipulation and DOI was not able to corroborate that claim.

In its investigation, DOI was unable to assess the full impact of DHS’s manipulation of the Monthly Eligibility Rate due chiefly to limitations in the available data. However, witnesses uniformly told DOI that DHS’s method of manipulating the Monthly Eligibility Rate did not have any substantive impact on the ultimate eligibility determinations (i.e., no eligible family was coded as ineligible for shelter due to the manipulation). Witnesses also told DOI that the manipulation did not cause any families to be denied shelter for which they were eligible, because they were able to remain in their existing DHS shelter on a conditional basis while their eligibility determination was pending. However, the practice could have delayed the transition of unhoused families from DHS shelter into permanent housing.

Witnesses informed DOI that DHS’s manipulation of the Monthly Eligibility Rate ended around early- to mid-2022, when it became apparent that the new mayoral and DSS administrations were not focused on the Monthly Eligibility Rate. DOI found no evidence that former DSS Commissioner Gary Jenkins, current DSS Commissioner Molly Wasow Park, or anyone in the current mayoral administration had any knowledge of the manipulation.

In light of the findings described above, DOI made six Policy and Procedure Recommendations to DSS to address these issues:

- 1: DSS should design and implement a process to ensure families' arrival and departure times at PATH are consistently and accurately documented.
- 2: The process described in Recommendation #1 should be fully automated.
- 3: Once the process described in Recommendation #1 is implemented, and regardless of whether Recommendation #2 has already been implemented, DSS should conduct regular audits to ensure that the process is functioning as intended and that client movements into, within, and out of PATH are easily discernible.
- 4: DSS should create a written procedure detailing the requirements of the right to shelter for homeless families with minor children. This procedure should include provisions on the reporting of 10-to-4 Rule violations up the chain within DHS/DSS leadership, City Hall, and the public.
- 5: DSS should provide regular training to PATH staff and DHS/DSS leadership concerning the requirements of the right to shelter for homeless families with minor children, and DHS's obligations and policies with respect to the same.
- 6: In light of the manipulation of publicly-reported data confirmed by DOI, DSS should design and implement an internal audit process intended to ensure the integrity of all data that DHS makes public.

This investigation was conducted by Confidential Investigator Daniel Malvey, former DOI Legal Fellow Mirelis Gonzalez, and Inspector General Audrey Feldman, with the assistance of Deputy Inspector General Jeremy Reyes and Inspector General John Bellanie, under the guidance of Deputy Commissioner of Strategic Initiatives Christopher Ryan and Deputy Commissioner/Chief of Investigations Dominick Zarrella.

*DOI is one of the oldest law-enforcement agencies in the country and New York City's corruption watchdog. Investigations may involve any agency, officer, elected official or employee of the City, as well as those who do business with or receive benefits from the City. DOI's strategy attacks corruption comprehensively through systemic investigations that lead to high-impact arrests, preventive internal controls and operational reforms that improve the way the City runs.*

**DOI's press releases can also be found at [twitter.com/NYC\\_DOI](https://twitter.com/NYC_DOI)**  
**Know something rotten in City government? Help DOI Get the Worms Out of the Big Apple.**  
**Call: 212-3-NYC-DOI or email: [Corruption@DOI.nyc.gov](mailto:Corruption@DOI.nyc.gov)**

New York City  
Department of Investigation

Investigation into Two  
Allegations Concerning Data  
Maintenance and Reporting at  
the Department of Homeless  
Services PATH Intake Center

Jocelyn E. Strauber  
Commissioner

Audrey Feldman  
John Bellanie  
Inspectors General

January 2024



Table of Contents

- I. Executive Summary ..... 1
- II. Investigative Findings..... 8
  - A. The Family Shelter Mandate, Section 21-313, and the 10-to-4 Rule..... 8
  - B. DSS’s Institutional Practices Surrounding Section 21-313 and the 10-to-4 Rule..... 11
  - C. DSS’s Response to the July 18 Violations ..... 15
  - D. DSS’s Failure to Identify and Report at Least Six Additional 10-to-4 Rule Violations in Summer 2022..... 22
  - E. Manipulation of the Publicly-Reported Monthly Eligibility Rate from June 2017 Until Mid-2022 ..... 24
- III. Recommendations..... 35

## I. Executive Summary

On the morning of Monday, July 18, 2022, executive leadership at the New York City Department of Social Services (“DSS”) and Department of Homeless Services (“DHS”)<sup>1</sup> were notified that more than ten families who had arrived at the DHS Prevention Assistance and Temporary Housing Intake Center (“PATH”) the previous evening remained in the building overnight (that is, they were not provided with temporary shelter placement the evening of their arrival). Four of those ten families had arrived before 10 p.m. on July 17, making their overnight stay at PATH a violation of a longstanding DHS policy in place at that time. That policy required that families arriving at PATH by 10 p.m. be provided with a shelter placement and transported out of PATH by 4 a.m. the following morning (hereinafter the “10-to-4 Rule”). The 10-to-4 Rule was based on Section 21-313 of the New York City Administrative Code (hereinafter “Section 21-313”), which requires DHS to provide “temporary shelter placement for that night” (including transportation) to any family with minor children “in the process of applying” for DHS services “as of ten o’clock in the evening.”<sup>2</sup> We note that, subsequent to the events discussed herein, and in light of the ongoing influx of migrant families in need of shelter to New York City, Mayor Eric Adams has temporarily suspended the aforementioned 4 a.m. deadline.<sup>3</sup>

This Report does not focus on the causes of the above-described incident (hereinafter referred to as the “July 18 Violations”), or of the seven additional 10-to-4 Rule violations that took place during the Summer of 2022 (confirmed through DOI’s investigation). We note, however, that the violations took place in the context

---

<sup>1</sup> DSS is an umbrella agency encompassing both DHS and the Human Resources Administration (“HRA”).

<sup>2</sup> No court has determined whether Section 21-313 mandates that DHS must place and transport “pre-10” families by any particular time to satisfy the statute’s requirement that families receive shelter “for that night.” This Report takes no position on that question, or on whether the 10-to-4 Rule violations discussed herein are also violations of the statute. The relevant DHS policy in place for at least two decades required families to have left PATH and be en route to their shelter placement by 4 a.m.

<sup>3</sup> Specifically, on May 10, 2023 Mayor Eric Adams temporarily suspended Section 21-313 “to the extent that provision sets a deadline for the City’s temporary shelter placements,” meaning that the above-referenced 10-to-4 Rule does not apply. The suspension remains in place as of the date of this Report. We note that the suspension does not impact the City’s general obligation to provide shelter to families with minor children. While the City has asked the Hon. Deborah Kaplan, Deputy Chief Administrative Judge for the New York City Courts, New York State Supreme Court, to stay New York City’s right to shelter for *single adults* when DHS “lacks the resources and capacity to establish and maintain sufficient shelter sites, staffing, and security to provide safe and appropriate shelter,” that request itself, if granted, does not impact the City’s obligation to provide temporary shelter placement for families with minor children in need of housing. Available at [https://www.nyc.gov/assets/home/downloads/pdf/press-releases/2023/city-application-to-justice-kaplan-callahan-v-carey-5-23-23.pdf?utm\\_medium=email&utm\\_name=&utm\\_source=govdelivery](https://www.nyc.gov/assets/home/downloads/pdf/press-releases/2023/city-application-to-justice-kaplan-callahan-v-carey-5-23-23.pdf?utm_medium=email&utm_name=&utm_source=govdelivery). See also Section II(A) below.

of an unprecedented influx of newly-arrived migrant families in need of shelter during that period and that, several days before the July 18 Violations, DHS's Client Assistance and Rehousing Enterprise System ("CARES") database had been taken "offline" for cybersecurity updates. Among other functions, CARES serves as DHS' electronic mechanism to locate and assign shelter beds for families at PATH. Because the database was not available shortly before and during this incident, DHS was required to assign all shelter beds manually; according to DSS, this significantly slowed down the assignment process and contributed to DHS's failure to place families in compliance with the 10-to-4 Rule.

This Report and its findings are limited to DSS and DHS's flawed response to the 10-to-4 Rule violations that took place during the Summer of 2022, attributable to the practices and procedures (or lack thereof) that limited DSS's ability to readily determine and accurately report what had occurred. Most importantly, DHS does not precisely document the times that families arrive at PATH, and makes no attempt to document their exit times. In the case of the July 18 Violations, the absence of this information led to a series of communication and reporting lapses discussed at length herein: First, even though PATH was responsible for escalating the July 18 Violations to DHS and DSS leadership, PATH officials did not do so, and agency leadership learned about the July 18 Violations only because management of a distinct DHS unit was aware of and escalated the violations. Second, DSS issued a public report on the morning of July 19 that incorrectly represented zero 10-to-4 Rule violations the previous morning. Third, DSS leadership and City Hall were unaware of at least seven other recent violations of the 10-to-4 Rule, and therefore the City incorrectly reported only four violations during a press conference held on Thursday, July 21 (when in fact, unbeknownst to DSS and City leadership, at least seven more violations had taken place in the 30 days before the press conference in addition to the four that took place on July 18).

The above-described issues were exacerbated by then-DSS Commissioner Gary Jenkins' lack of full transparency in his communications about the July 18 Violations. In particular, Jenkins decided to delay notifying the Legal Aid Society (individually and together with its affiliate Coalition for the Homeless, "Legal Aid"), the court-appointed monitor for the City's shelter system,<sup>4</sup> about the violations for approximately 24 hours. While the delay was brief, Jenkins could not provide DOI with a sufficient explanation for it. For this reason, DOI found that the delay in notification represented a departure from DHS's longstanding practice to promptly

---

<sup>4</sup> In 1981, as part of the landmark consent decree in *Callahan v. Carey*, State Supreme Court Justice Richard W. Wallach appointed Coalition for the Homeless as the monitor for shelters for homeless adults. Sup. Ct., N.Y. County Index No. 42582/79, Aug. 26, 1981. Mayor Bill de Blasio extended the Coalition's oversight to include shelter for homeless families in 2016. *Organizing and Shelter Monitoring*, COALITION FOR THE HOMELESS, available at <https://www.coalitionforthehomeless.org/our-programs/advocacy/organizing-and-shelter-monitoring/>.

notify Legal Aid about any significant issues impacting the DHS shelter system, and justifiably resulted in Legal Aid expressing concerns about the City's transparency on this issue.<sup>5</sup>

Additionally, although Jenkins promptly informed his direct supervisor, Deputy Mayor Anne Williams-Isom, that families had remained at PATH past the 4 a.m. deadline on the morning of July 18, he did not fully convey the legal or factual significance of that fact to Deputy Mayor Williams-Isom at that time, nor did he convey that he intended to withhold that fact from Legal Aid for 24 hours (inconsistent with DSS's precedent of reporting significant incidents to Legal Aid without unjustified delay). Jenkins and his Chief of Staff also denied that families were "sleeping at PATH" upon receiving an inquiry the following day (Tuesday, July 19) from the Deputy Mayor's staff, such that City Hall did not have a complete understanding of what had occurred at PATH until public reports began circulating later that week about the number of families who allegedly spent the night at PATH and the amount of time those families spent at the intake center.

In those public reports, which first emerged on Wednesday, July 20, two families interviewed by NBC News 4 ("News 4") reported sleeping at PATH for at least three consecutive nights during the week of July 18.<sup>6</sup> One of the interviewed families provided News 4 with cell phone camera footage of families lying on the floor of the intake center with blankets and pillows (although the footage does not establish the length of time that families remained at the center, and the fact that a family may rest or even sleep on the floor at PATH during the intake process is not itself a violation of any policy or law).<sup>7</sup> Likewise, Legal Aid publicly alleged that "many

---

<sup>5</sup> For instance, Legal Aid told NBC News 4 in the wake of the July 18 Violations that "we fear that we can no longer rely on this Administration for straight answers on the crisis facing families and individuals seeking shelter. To date, we are still waiting for complete data from the City regarding the extent of the violations, and we are concerned that the City's failure to comply with the right to shelter and related local laws may be much more widespread than the City initially reported." Melissa Russo, *Legal Aid Demands Immediate Probe of 'Stunning' Report on NYC Shelter Cover-Up*, NBC NEWS 4 (Aug. 11, 2022), available at <https://www.nbcnewyork.com/investigations/migrant-crisis/legal-aid-demands-immediate-probe-of-stunning-report-on-nyc-shelter-cover-up/3820400/>.

<sup>6</sup> See *Legal Aid Claims Mayor Adams Exaggerated NYC Migrant Crisis to Cover Shelter System Violations*, NBC NEWS 4 NEW YORK (July 20, 2022), available at <https://www.nbcnewyork.com/news/legal-aid-claims-eric-adams-exaggerated-nyc-migrant-crisis-to-cover-shelter-system-violations/3783504/>; *Mayor Adams Denies Mishandling of Migrant Families in NYC*, NBC NEWS 4 NEW YORK (July 21, 2022), available at <https://www.nbcnewyork.com/news/mayor-adams-denies-mishandling-of-migrant-families-in-nyc/3785324/>. DOI was unable to determine whether or not these claims were accurate due to the limitations in the available data discussed at length in this Report.

<sup>7</sup> See *Mayor Adams Denies Mishandling of Migrant Families in NYC*, NBC NEWS 4 NEW YORK (July 21, 2022), available at <https://www.nbcnewyork.com/news/mayor-adams-denies-mishandling-of-migrant-families-in-nyc/3785324/>.

families . . . slept overnight at PATH” during the week of July 18.<sup>8</sup> Legal Aid also criticized DSS’s failure to immediately notify Legal Aid about the violations, in contravention of DSS’s historical practice.<sup>9</sup>

At a July 21 press conference, Jenkins and Mayor Eric Adams acknowledged – consistent with the information that DHS obtained in the days prior and provided to City Hall – that four technical violations of the 10-to-4 Rule had occurred as of that date, all on the morning of July 18 (meaning that four families arrived at PATH before 10 p.m. on July 17 and remained there after 4 a.m.).<sup>10</sup> Jenkins explained at the same press conference that “we are required by state law to house [any] family [present at PATH by 10 p.m.] in a conditional placement by 4 a.m.”<sup>11</sup> Mayor Adams acknowledged a violation of “the letter of the law” but stated that the City remained within “the spirit of the law” and that “of my knowledge we don’t have families that are living overnight” at the intake center.<sup>12</sup> In fact, unbeknownst to both Jenkins and City Hall, other violations of the 10-to-4 Rule had occurred both before and after the July 18 Violations. About one month later, the City belatedly disclosed a fifth violation that took place on Tuesday, July 19 (the night after the four violations discussed during the July 21 press conference).<sup>13</sup> A timeline of key events with respect to the July 18 Violations is included in this Report as **Appendix A**.

In August 2022, News 4 reported allegations that former DSS Deputy Director of Press and Communications Julia Savel had been terminated in retaliation for informing City Hall about the July 18 Violations, which Savel claimed that Jenkins was trying to conceal.<sup>14</sup> DOI began an investigation into the events surrounding the

---

<sup>8</sup> *Legal Aid Claims Mayor Adams Exaggerated NYC Migrant Crisis to Cover Shelter System Violations*, NBC NEWS 4 NEW YORK (July 20, 2022), available at <https://www.nbcnewyork.com/news/legal-aid-claims-eric-adams-exaggerated-nyc-migrant-crisis-to-cover-shelter-system-violations/3783504/>.

<sup>9</sup> See Press Release, Legal Aid Society, *Legal Aid, Coalition for the Homeless Condemn City for Violating Local Law by Denying Homeless Families with Minor Children Shelter Placements* (July 20, 2022), available at <https://legalaidnyc.org/wp-content/uploads/2022/07/Legal-Aid-Coalition-for-the-Homeless-Condemn-City-for-Violating-Local-Law-by-Denying-Homeless-Families-With-Minor-Children-Shelter-Placements.pdf>.

<sup>10</sup> See Transcript, “Mayor Eric Adams Provides Update on Asylum Seekers,” (July 21, 2022), available at <https://www.nyc.gov/office-of-the-mayor/news/534-22/transcript-mayor-eric-adams-provides-on-asylum-seekers>.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> See Chris Sommerfeldt, *NYC Social Services Commissioner Gary Jenkins Denies Shelter Crisis Coverup*, NEW YORK DAILY NEWS (Aug. 19, 2022), available at <https://www.nydailynews.com/news/politics/new-york-elections-government/ny-nyc-dss-commissioner-gary-jenkins-denies-shelter-coverup-cbs-20220818-2z0gc72pz5cujjxwnegdqy5uy-story.html>. This fifth violation is discussed in further detail in Section II(C) below.

<sup>14</sup> See Melissa Russo, *Amid Shelter Crisis, NYC Agency Fires Official Who Pushed Back on ‘Lies’: Source*, NBC NEWS 4 (Aug. 10, 2022), available at <https://www.nbcnewyork.com/investigations/migrant-crisis/amid-shelter->

July 18 Violations shortly thereafter. DOI's investigation included a review of PATH data and thousands of emails and text messages, multiple site visits to PATH, and interviews of more than 20 witnesses.

DOI's investigation focused primarily on DSS's process for identifying and reporting 10-to-4 Rule violations. We conducted a limited inquiry into the reasons for Savel's termination. DOI found some evidence that supported Savel's claim that her termination resulted principally from her conversations with City Hall about the events discussed herein, as Savel has claimed, but also some evidence that, as Jenkins has publicly stated, Savel's termination was due to "documented instances" where she was reportedly "unprofessional with her peers, with her subordinates and with senior management."<sup>15</sup> DOI was unable to reach a conclusion on this issue, but in any event, because Savel alleges retaliation as a result of reporting certain facts to City Hall (as opposed to DOI), she is ineligible for employment protection under the City's Whistleblower Law (NYC Admin. Code Section 12-113).

With respect to the situation at PATH in the Summer of 2022, DHS's limited recordkeeping ultimately prevented DOI from determining how many "pre-10" families spent one or more nights at PATH during that period in violation of the 10-to-4 Rule (as opposed to obtaining temporary shelter placement and transport by 4 a.m. the morning after their arrival). DOI's inability to reconstruct this figure was due mainly to the fact that PATH does not precisely document the time that families enter the facility, and makes no attempt to document their exit times. Moreover, surveillance footage from PATH at the times and locations that might have allowed DOI to reconstruct entry and exit times was missing when DOI requested it.<sup>16</sup> DHS may not have recognized the need to systematically document client entry and exit times at PATH before the Summer of 2022 because known violations of the 10-to-4 Rule were very rare before that point. However, the events of Summer 2022 make clear that such information must be maintained.

In addition to the five violations ultimately acknowledged by the City that occurred on July 18 and 19, 2022, and in spite of the above-described shortcomings in PATH's records, DOI identified six more apparent violations of the 10-to-4 Rule that occurred earlier in the Summer of 2022. In other words, DOI identified six additional instances in which a family who arrived at PATH before 10 p.m. was not en route to

---

[crisis-nyc-agency-fires-official-who-pushed-back-on-lies-source/3817837/](#). Savel's allegations are addressed in Section II(C) of this Report.

<sup>15</sup> See Bernadette Hogan, *Embattled NYC Homeless Services Chief Gary Jenkins Denies Coverup Claims by Former Aide*, NEW YORK POST (Aug. 18, 2022), available at <https://nypost.com/2022/08/18/homeless-services-chief-denies-coverup-claims-by-former-aide/>.

<sup>16</sup> As discussed in Section II(B) below, DHS and its vendors stated that this was most likely due to a technical server issue, but could not provide any documentation confirming the server error.

a shelter (or in a shelter) by 4 a.m. the following day. Specifically, DOI identified three violations on June 29 and another three on July 3 and 4, 2022. On each of these dates, the PATH manager on duty sent a “4 a.m. Report” email to DHS and DSS leadership incorrectly stating that no clients remained in the building as of 4 a.m. – even though evidence reviewed by DOI makes clear that the manager on each of these dates was aware that families had in fact remained in the building past 4 a.m. Although these six additional violations represent a tiny fraction of the families seeking DHS shelter in this period, the fact that these violations were not reported to DSS leadership or to the public indicates a need for DHS to improve its procedures for ensuring an accurate count of 10-to-4 Rule violations at PATH. A complete list of the eleven 10-to-4 Rule violations during the Summer of 2022 that DOI has now confirmed (only five of which were previously identified and reported publicly by DSS) is included in this report as **Appendix B**.

DOI attributes DSS’s failure to identify at least six previously-unreported violations to gaps in DSS’s policies and procedures concerning Section 21-313 and the 10-to-4 Rule. Specifically, although DHS policy has provided since 2003 that “families with children who are at [PATH] prior to 10 pm and have not been assigned a conditional placement” must “be placed overnight in an overnight placement facility” pursuant to an “Overnight Process” which “ends at 4 am,”<sup>17</sup> DHS never issued detailed policies and procedures concerning the requirements of Section 21-313 and the 10-to-4 Rule, how to comply with (and document compliance with) Section 21-313 and the 10-to-4 Rule, or how to identify and report violations of Section 21-313 and/or the 10-to-4 Rule. DSS also never offered any formal training to either PATH employees or to its own leadership on the subject. As a result, DOI found that although violations of the 10-to-4 Rule occurred at PATH on at least four separate mornings in June and July 2022, the only violations that were timely escalated to DSS leadership, including then-Commissioner Gary Jenkins, were those that occurred on Monday, July 18. And as noted above, even in the wake of the July 18 Violations, DSS’s lack of institutional knowledge and procedures surrounding the requirements of Section 21-313 and the 10-to-4 Rule hampered the City’s ability to quickly and accurately convey what had occurred to both Legal Aid and the public.

Finally, DOI also has substantiated an allegation that predates and is distinct from the facts discussed above, related to PATH’s reporting of public-facing data from approximately 2017 through early 2022. To be clear, this allegation relates to a prior DSS and City Hall Administration, and has no relevance to the events at PATH during the Summer of 2022 also discussed in this Report. However, the investigations of these distinct issues overlapped because there are common witnesses to both, and

---

<sup>17</sup> DHS Procedure No. 03-501 (2003) (on file with DOI).

because both involve the collection and maintenance of information by PATH that is reported to the public. This Report therefore addresses both issues.

The separate allegation substantiated by DOI is that from approximately June 2017 until early or mid-2022, DHS Administrator<sup>18</sup> Joslyn Carter and her subordinates artificially lowered PATH's publicly-reported "Monthly Eligibility Rate," (hereinafter the "Eligibility Rate" or the "Rate"),<sup>19</sup> which tracks the percentage of families who seek shelter at PATH ultimately deemed eligible for DHS services. Although DOI was unable to quantify the impact that this manipulation had on homeless families, it logically would have subjected some eligible families to, at a minimum, slightly longer wait times to qualify for housing vouchers – potentially prolonging by at least some small amount of time the families' stays in shelters and delaying their moves into more stable housing. It is important to note that the additional wait time for any given family may not have been substantial, and it is not clear why maintaining an artificially lowered Eligibility Rate had any benefit to DSS or to the prior mayoral administration. The practice ceased, at the latest, in mid-2022, and there is no indication that the DSS Commissioners in the current mayoral administration had any knowledge of it.

Although Administrator Carter and numerous of her current and former subordinates admitted to participating in the manipulation of the Rate, DOI's investigation was inconclusive in certain significant respects. Most notably, Administrator Carter told DOI that she acted at the direction of former DSS Commissioner Steven Banks (who led the agency from April 2016 through December 2021).<sup>20</sup> According to Administrator Carter, Banks instructed her to "bring the [eligibility] rate down" in order to "appease" then-Mayor Bill de Blasio's concerns about increases in the Rate. Banks acknowledged that he paid attention to fluctuations in the Rate and at times discussed it with de Blasio and other senior officials, but denied knowledge of or involvement in any manipulation of the Rate. Several other witnesses confirmed that Banks paid close attention to fluctuations in the Rate during his tenure, but either stated that they did not have any knowledge of the Rate manipulation themselves or that they had no knowledge about whether Banks knew about the manipulation. While Administrator Carter and Banks both gave credible accounts with respect to their understanding of the Eligibility Rate

---

<sup>18</sup> The Administrator is the highest-ranking official in DHS, and reports up to the DSS Commissioner and First Deputy Commissioner. *See* footnote 1 above.

<sup>19</sup> *See* NYC OPEN DATA, *PATH and ADIC Monthly Eligibility Rate*, available at <https://data.cityofnewyork.us/Social-Services/PATH-and-AFIC-Monthly-Eligibility-Rate/985h-mtct>.

<sup>20</sup> Banks previously served as the Commissioner of the City's Human Resources Administration ("HRA") from 2014 until April 2016, when de Blasio consolidated HRA with DHS under a single newly-created administration – DSS – and appointed Banks the Commissioner of that entity.

during the relevant time period, and each account is corroborated in certain respects, their accounts are irreconcilable as to the question of whether Banks knew of and directed Administrator Carter to engage in the Rate manipulation, and we are aware of no evidence corroborating Administrator Carter's statement that Banks directed her to manipulate the Rate.

As DHS's family shelter population is now at record highs,<sup>21</sup> DSS must maintain accurate information about the circumstances at PATH, including with respect to families' entry and exit times and the percentage of families appearing at PATH who are eligible for DHS services. Any information provided to the public about these matters also must be accurate. This Report details DOI's findings and sets forth DOI's recommendations to DSS to mitigate the issues that those findings reflect. DOI will continue to monitor DSS's implementation of these recommendations and reforms. DOI has also issued a referral to DSS with respect to the manipulation of the PATH Monthly Eligibility Rate.

## II. Investigative Findings

### A. The Family Shelter Mandate, Section 21-313, and the 10-to-4 Rule

Section 21-313 was passed in connection with litigation that established New York City's right to shelter for homeless families with minor children (hereinafter the "Family Shelter Mandate").<sup>22</sup> The Family Shelter Mandate originated in *McCain v. Koch*, a 1983 class action lawsuit brought by Legal Aid challenging the adequacy of the City's emergency housing for homeless families with children.<sup>23</sup> In 1986, an appellate court granted the preliminary injunction sought by plaintiffs, after determining they would likely prevail on their claim that the New York State

---

<sup>21</sup> See NYC OPEN DATA, *DHS Homeless Shelter Census*, available at <https://data.cityofnewyork.us/Social-Services/DHS-Homeless-Shelter-Census/3pjq-nen9/data>.

<sup>22</sup> Following the events at issue in this Report, the City sought to modify the right to shelter as applied to homeless adult families and single adults, but has not to date sought to modify the right to shelter for homeless families with minor children. See Letter from Thomas C. Crane, Deputy Chief of General Litigation, New York City Law Department, to the Hon. Deborah Kaplan, Deputy Chief Administrative Judge for the New York City Courts, New York State Supreme Court (May 23, 2023) (requesting to stay New York City's right to shelter for single adults when DHS "lacks the resources and capacity to establish and maintain sufficient shelter sites, staffing, and security to provide safe and appropriate shelter"), available at [https://www.nyc.gov/assets/home/downloads/pdf/press-releases/2023/city-application-to-justice-kaplan-callahan-v-carey-5-23-23.pdf?utm\\_medium=email&utm\\_name=&utm\\_source=govdelivery](https://www.nyc.gov/assets/home/downloads/pdf/press-releases/2023/city-application-to-justice-kaplan-callahan-v-carey-5-23-23.pdf?utm_medium=email&utm_name=&utm_source=govdelivery).

<sup>23</sup> See 127 Misc. 2d 23, 484 N.Y.S.2d 985 (N.Y. Misc. 1984).

Constitution obligated the City to provide emergency shelter for homeless families with children.<sup>24</sup>

During the course of the *McCain* litigation in 1999, the City enacted Section 21-313, which entitles any family with minor children “in the process of applying” for DHS services “as of ten o’clock in the evening” to “temporary shelter placement for that night,” and requires DHS to “arrange transportation for the families to and from the temporary shelter placement.”<sup>25</sup> DOI did not identify any definitive interpretation or DHS guidance concerning how to determine that a family is “in the process of applying” for services at 10 p.m. pursuant to Section 21-313. Based on this investigation, DOI recommends that a family’s application “process” be deemed to commence immediately after the family passes through security at the PATH entrance, and that the time that the family passes through security be documented.

Although DHS policy has suggested that a family must be en route to, or have arrived at, their temporary shelter placement by 4 a.m. to comply with Section 21-313 since at least 2003,<sup>26</sup> no judicial authority, statute, or regulation has ever declared that deadline to be required by law. Historical correspondence between DHS and Legal Aid nevertheless supports an understanding between the parties that: (1) DHS must provide both shelter placements and transportation to any families who arrive at PATH by 10 p.m. by 4 a.m., and (2) DHS will inform Legal Aid if DHS fails to meet this deadline.<sup>27</sup> Specifically, an August 14, 2007 letter from Legal Aid to DHS concerning several “pre-10” families who had not been provided with timely transportation to their shelter placements by 4 a.m. referred to DHS’s “assurance that it is still the City’s policy to provide a placement to every family who arrives at Path by 4 A.M., and your assurance that [Legal Aid] will be informed ... should these violations recur regardless of whether the violations are due to a lack of placement or

---

<sup>24</sup> See *McCain v. Koch*, 117 A.D.2d 198, 214-15 (N.Y. App. Div. 1986). The right to shelter initially applied only to homeless single men. See *Callahan v. Carey* (Sup. Ct., N.Y. County Index # 42582/79, Aug. 26, 1981). It was later extended to single women on equal protection grounds. See *Eldredge v. Koch* (98 A.D.2d 675, 676, N.Y. App. Div., 1st Dep’t 1983). In 2008 – after decades of court battles – the City and Legal Aid settled *McCain* and related litigation by entering into a final consent decree, pursuant to which the City agreed that “[e]ligible homeless families with children, defined as families with children who lack alternate housing . . . are entitled to emergency shelter and the City shall not deny shelter to such families.” Final Judgment, *Boston v. City of New York*, No. 402295-08 (Sup. Ct. N.Y. Co. Dec. 12, 2008) (hereinafter the “*Boston* consent decree”). No court has determined whether the right to shelter is guaranteed under the New York State Constitution.

<sup>25</sup> N.Y.C. Administrative Code § 21-313.

<sup>26</sup> DHS Procedure No. 03-501 (2003) (on file with DOI).

<sup>27</sup> Numerous DSS and DHS officials interviewed by DOI confirmed this understanding.

lack of transportation.”<sup>28</sup> Consistent with the parties’ apparent historical agreement that DHS would inform Legal Aid of any violations, former DSS General Counsel Martha Calhoun informed DOI that it was DHS’s longstanding practice to promptly disclose any significant issues impacting the shelter system (such as flooding at a shelter, the need to relocate certain families, or violations of the 10-to-4 Rule at PATH) to Legal Aid as soon as DHS had confirmed the relevant facts and notified DSS leadership, and in certain cases, notified City Hall as well. Current DSS Commissioner Molly Park likewise told DOI that it was typical for DSS to notify Legal Aid of significant issues involving the shelter system within a few hours, with some variation depending on the nature of the issue and DSS’s need to update internal stakeholders before making a disclosure.

On May 10, 2023, Mayor Eric Adams issued Emergency Executive Order 402, temporarily suspending Section 21-313 “to the extent that it sets a deadline for the City’s temporary shelter placements.”<sup>29</sup> The temporary suspension is based on the challenges resulting from the significant and ongoing influx of migrants into the City’s shelter system, and remains in place as of the issuance of this Report.<sup>30</sup> DSS officials informed DOI that the suspension is intended to give DHS the flexibility it would need if, for example, a large number of migrant families were to arrive at PATH around 9 p.m., but that PATH has nevertheless continued to make every effort to comply with the historical 4 a.m. deadline since the suspension took effect. DSS also was not aware of any further instances of “pre-10” families remaining at PATH past 4 a.m. since the Summer of 2022.<sup>31</sup>

---

<sup>28</sup> Letter from Thomas C. Crane, General Litigation Bureau Chief, Legal Aid Society, to Michele Ovesey, General Counsel, DHS (Aug. 14, 2007) (on file with DOI).

<sup>29</sup> See NYC Emergency Exec. Order No. 402 (May 10, 2023), available at <https://www.nyc.gov/office-of-the-mayor/news/402-003/emergency-executive-order-402>. The order also extended the City’s state of emergency “based on the arrival of thousands of individuals and families seeking asylum” (first declared October 7, 2022). *Id.*; see also Chris Sommerfeldt, *Mayor Adams Suspends NYC Right-to-Shelter Rules Ahead of Expected Migrant Surge*, NEW YORK DAILY NEWS, May 10, 2023, available at <https://www.nydailynews.com/news/politics/new-york-elections-government/ny-mayor-adams-signs-order-suspending-nyc-right-to-shelter-rules-20230511-w2jygovahrekjganbm6ne3ioa-story.html>; Elizabeth Kim, *How Mayor Adams Was Able to Bypass NYC’s Decades-Old Right-to-Shelter Rules*, GOTHAMIST, available at <https://gothamist.com/news/how-mayor-adams-was-able-to-bypass-nycs-decades-old-right-to-shelter-rules>.

<sup>30</sup> Specifically, Emergency Executive Order 402 provided that it would “remain in effect for five (5) days,” and as of the date of this Report has been renewed every five days since it was issued, most recently on January 5, 2024. See NYC Emergency Exec. Order No. 542, available at <https://www.nyc.gov/office-of-the-mayor/news.page?type=Executive#page-1>.

<sup>31</sup> Notably in this regard, since the Summer of 2022 the City has opened centralized intake centers for migrant arrivals (including migrant families), such that PATH no longer serves as the intended point of entry for the majority of migrant families into the City’s shelter system.

## B. DSS's Institutional Practices Surrounding Section 21-313 and the 10-to-4 Rule

### *The DHS Application Process at PATH*

Applying for DHS shelter at PATH is a multi-step process that takes several hours per family. Upon entering the facility, families pass through a security checkpoint staffed by the Department of Homeless Services Police Department (“DHSPD”) and receive a paper application from a temporary worker at one of two “greeter posts” immediately past security.<sup>32</sup> Families begin to complete the paper application as they wait in line to be seen by a DHS intake worker at a service window on the first floor.

The first-floor service window is the first opportunity for an applicant family to interface directly with DHS staff. The DHS intake worker reviews the family’s paper application and enters basic information pertaining to the family and its individual members into DHS’s client management database, CARES, which is then used to generate a Temporary Housing Assistance (“THA”) application. Based on the information provided by the family, the intake worker also determines which other PATH units<sup>33</sup> the family will see during the assessment process, and creates a ticket for the family in “Q-Flow,” a customer flow database that tracks the status of each family during their time at PATH. A printout of the Q-Flow ticket, containing the family’s CARES ID number and a timestamp of when the ticket was issued, is provided to the family before they are directed to the next location.

After completing intake, families make their way through the building to complete a multi-step application process which includes: (1) a meeting with a representative of the HRA Homeless Diversion Program, which attempts to identify available housing for the families outside the DHS system by connecting the family to rental assistance and/or contacting friends and family members who may be able to provide housing; and, if those efforts are unsuccessful (2) a meeting with the DHS “Programs” staff, which is the first step in DHS’s investigation to determine whether a family has alternative housing options that would make them ineligible for DHS services under the *Boston* consent decree.<sup>34</sup>

---

<sup>32</sup> The role of the “greeters” is generally to hand out paper applications, answer basic questions, and redirect single adults or adult families to the appropriate DHS intake facility. The “greeters” do not perform any intake work themselves, and they do not record the time of families’ arrival at PATH.

<sup>33</sup> Depending on the family, the assessment process at PATH may include (for instance) a domestic violence evaluation, medical evaluation, and/or meeting with a representative from the City Department of Education.

<sup>34</sup> See footnote 24 above. DHS eligibility investigations and the publicly-reported PATH 30-day eligibility rate are discussed in detail in Section II(E) of this Report.

Once the assessment process is complete, DHS's Housing Emergency Referral Operations ("HERO") unit is responsible for locating a shelter placement for the families. Families who arrive at PATH before around 5 p.m. typically receive "conditional" placement at a family shelter that same evening.<sup>35</sup> Families who arrive later in the evening are typically placed for one night at a DHS-contracted "overnight" hotel facility and then brought back to PATH to complete their application the following morning, after which they receive their conditional shelter placement.

Even after a family accepts a conditional or overnight shelter placement, it can be several hours before DHS provides the family with transport from PATH to the shelter location.<sup>36</sup> Families who receive a conditional placement typically leave PATH on a DHS fleet van. The last DHS fleet van of the evening usually departs PATH around 2 a.m. Families who are "overnighted" typically leave PATH on a DHS-contracted charter bus. The last charter bus usually departs PATH shortly before or at 4 a.m. As further discussed in Section II(D) below, PATH has also hired taxi services to transport individual families when the DHS fleet and buses were filled to capacity or otherwise unavailable.

#### *PATH's Lack of Accurate Data on Client Entry and Exit Times*

DOI found that PATH lacks procedures to accurately record family arrival and departure times, despite having two systems (CARES and Q-Flow) that should be capable of doing so. For this reason, PATH cannot reliably identify and report any families that arrived before 10 p.m. but were not en route to an overnight placement before 4 a.m. – that is, any violations of the 10-to-4 Rule.

As described above, the first timestamped entries associated with a family's arrival at PATH are the issuance of the THA form in CARES and the issuance of a ticket in Q-Flow. Neither of these entries occurs until after the family has already cleared DHSPD security, waited in line, and spoken with a DHS worker at one of the first-floor intake windows. Witnesses informed DOI that around mid-2022, when large numbers of migrant families began appearing at PATH, the approximate average wait time to speak to an intake worker was between around 20 minutes to an hour. It is therefore likely that many families whose application start times were documented by PATH as being shortly after 10 p.m. in fact passed through PATH security before the 10 p.m. cutoff.

---

<sup>35</sup> The "conditional" status is pending the outcome of DHS's multi-day eligibility for shelter investigation. Families found eligible usually remain at the same shelter where they are housed initially once the investigation is complete.

<sup>36</sup> Families are also permitted to take public transit or arrange for their own transportation if they so choose.

In contrast with family arrival times – which as described above are recorded, albeit with a potentially meaningful delay – DOI found that PATH does not record family exit times at all. The last timestamped entry in CARES reflects the time that a family at PATH accepts a conditional or overnight shelter placement, which may be hours before DHS provides the family with transportation to the shelter location. While PATH maintains written manifests documenting the identity of families on each charter bus and DHS fleet vehicle that departs from PATH, as well as receipts for each cab or car service that DHS provides to transport a family from PATH, these documents are not timestamped and the associated information is maintained in hard copy and not logged electronically.<sup>37</sup>

Currently, PATH attempts to track its compliance with the 10-to-4 Rule primarily through manual “sweeps” to identify which families remain in the building at a given point in time.<sup>38</sup> The sweeps involve walkthroughs of the facility by PATH staff at regular intervals each day (including one at 4 a.m.), and are intended to provide a snapshot of the families in the building, their arrival time at PATH, and their placement status. PATH staff document the results of the sweeps on handwritten logs. The PATH manager on duty is expected to send a “4 a.m. report” via email each morning to a distribution list of DHS and DSS leadership (including the DSS Commissioner) stating whether or not there are families remaining on the premises as of the 4 a.m. sweep.

DOI’s ability to reconstruct potential additional violations of the 10-to-4 Rule was constrained by the limited records maintained by PATH. Specifically, the timestamped sweep forms are filled out by hand, and although they are typically scanned and circulated via email, the physical copies are not preserved, nor are scanned electronic copies maintained in any central location. They are preserved only in the emails of the senders and recipients. The data collected during the sweeps is also never entered into Q-Flow or CARES.

DOI also attempted to collect surveillance footage to determine whether families remained at PATH past 4 a.m. during the relevant time period. However, DOI learned that footage from the PATH basement (where families typically exit) had not been preserved for key dates and times. DHS and its vendors informed DOI that this issue was apparently caused by a failure of one of the backup servers used

---

<sup>37</sup> DHS produced to DOI copies of receipts for taxi services to provide client transport at PATH from April 2022-January 2022, none of which were timestamped. DOI was informed by DSS that the bus manifests similarly were not timestamped, and that due to their large volume they were not available electronically but only in hard copy.

<sup>38</sup> In response to the increasing number of migrant family arrivals throughout the Spring and Summer of 2022, DSS leadership instructed PATH staff to complete sweeps as often as every two hours. These sweeps are a significant administrative burden.

to store footage, and that the issue has since been resolved. DHS and its vendors were unable to provide any documentation or proof of the server failure, however, and DHS's vendors told DOI that they could not definitively exclude the possibility of tampering. Moreover, DHS's failure to identify this issue until receiving DOI's collection request represents a significant lapse in security at the intake center.<sup>39</sup>

DOI acknowledges that for at least ten years before the July 18 Violations at issue here, no documented violations of the 10-to-4 Rule had occurred at PATH. Consequently, DSS had not previously identified the need to implement more robust procedures and recordkeeping concerning compliance with the 10-to-4 Rule. But as the unprecedented influx of migrant families and the resulting stress on PATH revealed, the absence of such procedures and recordkeeping hampered the City's ability to promptly and accurately confirm the relevant facts surrounding the July 18 Violations and inform the public of those facts. Moreover, due to the limited records and video footage available from PATH, DOI cannot be certain that the six additional violations of the 10-to-4 Rule that DOI identified by conducting a thorough email review, coupled with witness interviews and a review of CARES and Q-Flow data (discussed in Section II(D)), were in fact the only undisclosed violations during the Summer of 2022.

*DHS's Lack of Procedures Concerning the Family Shelter Mandate, Section 21-313, and the 10-to-4 Rule*

DOI also found that DHS lacks adequate written policies or training regarding the Family Shelter Mandate, Section 21-313, and the 10-to-4 Rule, beyond the above-referenced 2003 procedure which provides simply that the "overnight process" for "families with children who are at [PATH] prior to 10 pm . . . ends at 4 am."<sup>40</sup> There is no DHS policy document, statute or regulation that clearly lays out how to comply and document compliance with Section 21-313 and/or the 10-to-4 Rule. DHS leadership and PATH staff uniformly stated during interviews with DOI that they had not received any formal training on the Family Shelter Mandate or the 10-to-4 Rule (although they were generally aware of them via word of mouth and informal supervisory guidance). DOI found that this lack of formal guidance contributed to confusion among DSS leadership and PATH staff as to the requirements of Section 21-313 and the 10-to-4 Rule and the significance of any potential violations, which in turn contributed to the various reporting and communication lapses discussed in Sections II(C) and (D) below.

---

<sup>39</sup> Security at PATH is particularly important given that it is a point of entry to the shelter system for domestic violence victims, who become homeless by fleeing their abusive partners.

<sup>40</sup> DHS Procedure No. 03-501 (2003) (on file with DOI).

### C. DSS's Response to the July 18 Violations

DOI found that DSS's lack of procedures regarding Section 21-313 and the 10-to-4 Rule, coupled with PATH's incomplete record-keeping with regard to family entry and exit times at PATH, led to several shortcomings in the City's response to the July 18 Violations. Specifically: PATH did not escalate the July 18 Violations to DHS and DSS leadership, who learned about the violations from a distinct unit within DHS (albeit within approximately two hours of the violations); DSS issued a public-facing report erroneously documenting zero 10-to-4 Rule violations on July 18; and DHS did not escalate to DSS leadership the fact that an additional fifth violation occurred the following morning (Tuesday, July 19), which resulted in the City incorrectly confirming only four violations during a press conference regarding the situation at PATH on Thursday, July 21. DOI further determined that then-DSS Commissioner Gary Jenkins exacerbated these shortcomings by not immediately informing Legal Aid of the July 18 Violations and by not being fully transparent with City Hall about the significance of families remaining overnight at PATH.

#### *PATH's Delayed Escalation of the July 18 Violations to DHS Leadership*

As noted in Section II(B) above, each morning the PATH manager on duty is expected to send a "4 a.m. report" email, notifying DHS and DSS leadership (including the DHS Administrator and DSS Commissioner) whether there are families remaining at PATH. The manager is expected to send that report at, or shortly after, the 4 a.m. deadline. Although the 4 a.m. PATH manual "sweep" on Monday, July 18, 2022 identified at least fourteen families (including four "pre-10" families) remaining at PATH as of 4 a.m., the PATH manager on duty failed to send a "4 a.m. report" or otherwise notify agency leadership of this fact. Rather, it was DHS HERO Director Reesa Henderson – who heads a unit distinct from PATH which is responsible for matching DHS applicants with available shelter beds – who first notified DHS Administrator Carter and her direct reports of the violations on the morning of July 18 at 6:09 a.m.

Administrator Carter expressed frustration that PATH itself had not notified DHS leadership of the violations, which she wrote at the time should have been "an escalation call." Jenkins also told DOI that he would have expected to receive a "4 a.m. report" notifying him of any violations of the 10-to-4 Rule if and when they occurred. However, the PATH manager on duty that night told DOI that she did not send out a "4 a.m. report" email that morning in part because she thought she should get input from her superiors before discussing the issue via email, but had difficulty reaching them. DOI found that DSS's lack of formal procedures for managing violations of Section 21-313 contributed to the manager's lack of clarity as to how to make a notification, and thus to the delay in making it.

*DSS's Issuance of an Incorrect "DHS Daily Report" Showing Zero 10-to-4 Rule Violations on July 18, 2022*

DHS's Office of Planning and Performance Management ("OPPM") makes public on its website a "DHS Daily Report" that reflects, among other data, the DHS shelter census as well as the number of "[f]amilies w/ children at PATH Overnight (pre 10PM)" for the previous day.<sup>41</sup> OPPM incorrectly publicly reported this number for July 18, 2022 as zero (**Exhibit 1**). DOI found that this error was caused by the fact that the field in the report that reflects the number of families (if any) who spent the night at PATH is pre-populated as zero, and is published as zero unless DHS informs OPPM that violations have occurred. At the time of the July 18 Violations, there was no process in place to ensure that DHS informed OPPM about the number of violations, if any – indeed, DSS leadership was unaware that OPPM was publicly reporting this number until the Legal Aid Society brought the July 18 error in the public reporting to DSS's attention. Although OPPM staff have since been added to the email distribution list for the daily "4 a.m. report," this field still pre-populates as zero in the absence of additional information, and there is no automated process to populate the "[f]amilies w/ children at PATH Overnight (pre 10PM)" field, so the risk of erroneous reporting remains.<sup>42</sup>

*Former Commissioner Jenkins' Lack of Full Transparency in the Wake of the July 18 Violations*

Through witness interviews, DOI established that around 8 a.m. on July 18, 2022, then-Commissioner Jenkins spoke with DHS Administrator Carter by phone about the fact that pre-10 p.m. families had remained at PATH past the 4 a.m. deadline. In an interview with DOI, Administrator Carter (who is not an attorney) recalled telling Jenkins that the events at PATH amounted to a legal violation, and that DSS should notify Legal Aid immediately. Jenkins told DOI that he recalled a conversation with Administrator Carter concerning the events at PATH, and that he knew from Administrator Carter's tone that the situation was "serious." However, in contrast with Administrator Carter's account, Jenkins maintained that although he understood from Administrator Carter that families had remained at PATH past the 4 a.m. deadline in violation of DHS procedure, he did not understand that morning the implication that the law may have been violated. Rather, Jenkins stated that he

---

<sup>41</sup> See "DHS Daily Report," available at <https://www.nyc.gov/assets/dhs/downloads/pdf/dailyreport.pdf>.

<sup>42</sup> As summarized in Appendix B, DOI identified a total of at least five dates during the Summer of 2022 on which 10-to-4 Rule violations occurred at PATH (June 29, July 3, July 4, July 18, and July 19). PATH did not notify agency leadership about the violations through the "4 a.m. report" on any of these dates. DOI therefore believes that OPPM's inclusion on the "4 a.m. report" email is insufficient to ensure that violations are accurately reported in OPPM's DHS Daily Report. Rather, DSS should implement automated process to identify violations that does not rely on individual employees to self-report.

came to understand that implication only gradually during the course of discussions that took place over the following days. Shortly after his call with Administrator Carter, Jenkins texted his direct supervisor, Deputy Mayor Anne Williams-Isom, that “we had some families past the 4 am assignment at PATH this morning” and that he was “getting more details” (**Exhibit 2**).

*Decision to Delay Notification to Legal Aid Society*

Despite Administrator Carter’s apparent advice to the contrary, the fact that the events at PATH violated the longstanding 10-to-4 Rule, and DHS’s well-established practice of notifying Legal Aid of significant events impacting the shelter system as soon as DHS had confirmed the facts and informed leadership, Jenkins decided to delay notifying Legal Aid about the July 18 Violations by approximately 24 hours. In an interview with DOI, Jenkins stated that he wanted to more fully discuss the July 18 Violations with City Hall (and in particular, Deputy Mayor Williams-Isom) before approaching Legal Aid about the issue. When pressed, however, Jenkins could not recall any substantive discussions with City Hall about the July 18 Violations before Legal Aid was notified, despite his ample opportunity to have such discussions on July 18 and 19.<sup>43</sup> For instance, although Jenkins indicated to DOI that he viewed a previously-scheduled “Asylum Seeker Task Force” call on afternoon of July 18 (hereinafter the “Task Force Call”) as a potential opportunity to more fully brief City Hall on the July 18 Violations, contemporaneous records and accounts from numerous witnesses (including Deputy Mayor Williams-Isom) confirm that the July 18 Violations were not discussed on the call.

Ultimately, per Jenkins’ instruction, DSS waited more than 24 hours after the July 18 violations before notifying Legal Aid. Notification was made shortly after the Mayor’s Office issued a previously-planned press statement the following day (Tuesday, July 19) regarding the rapidly-increasing number of migrant arrivals in New York City. Although there was no legal requirement that Legal Aid be notified, and although Jenkins’ one-day delay was relatively brief, DOI found that the delayed notification served no legitimate purpose. The delay was therefore contrary to DHS’s well-established practice to promptly notify the Legal Aid Society of significant issues related to the shelter system (including violations of the 10-to-4 Rule), and created the impression that the agency was not being transparent about an issue of significant public interest. In a press release issued later that week, Legal Aid drew a “stark contrast” between “the current administration’s” alleged “efforts to hide” the

---

<sup>43</sup> See subsection below for further discussion of Jenkins’ communications with City Hall.

situation at PATH and a historical instance in which DSS “notified Legal Aid . . . immediately” following a 10-to-4 Rule violation.<sup>44</sup>

### *Communications with City Hall About the July 18 Violations*

As noted above, DOI’s investigation began as a result of public allegations by DSS’s former Deputy Commissioner of Press and Communications Julia Savel that Jenkins attempted to conceal the July 18 Violations from City Hall, and that Savel had been terminated in retaliation for informing City Hall staffers about the violations.<sup>45</sup> Although DOI found that Jenkins did not conceal the fact that families remained at PATH past the 4 a.m. deadline from City Hall, he nevertheless lacked full transparency in his communications with senior officials about the situation.

Within approximately one hour of learning about the July 18 Violations, Jenkins texted Deputy Mayor Anne Williams-Isom that “we had some families past the 4 am assignment at PATH this morning” and that he was “getting more details” (**Exhibit 2**). Notably, however, Jenkins did not elaborate to Williams-Isom that this was a violation of the 10-to-4 Rule, which was in place at that time, and may have constituted a violation of the law.<sup>46</sup> Nor did he tell Williams-Isom that he would be delaying informing Legal Aid of the issue, contrary to standard practice. As a result,

---

<sup>44</sup> Press Release, Legal Aid Society, Legal Aid, Coalition for the Homeless Condemn City for Violating Local Law by Denying Homeless Families with Minor Children Shelter Placements (July 20, 2022), *available at* <https://legalaidnyc.org/wp-content/uploads/2022/07/Legal-Aid-Coalition-for-the-Homeless-Condemn-City-for-Violating-Local-Law-by-Denying-Homeless-Families-With-Minor-Children-Shelter-Placements.pdf>.

<sup>45</sup> See Melissa Russo, *Amid Shelter Crisis, NYC Agency Fires Official Who Pushed Back on ‘Lies’: Source*, NBC NEWS 4 (Aug. 10, 2022), *available at* <https://www.nbcnewyork.com/investigations/migrant-crisis/amid-shelter-crisis-nyc-agency-fires-official-who-pushed-back-on-lies-source/3817837/>. DOI conducted a limited inquiry into the reasons for Savel’s termination, and did not reach a conclusion as to whether her termination resulted principally from her conversations with City Hall about the events discussed herein, as Savel has claimed or, as Commissioner Jenkins has publicly stated, due to “documented instances” where she was reportedly “unprofessional with her peers, with her subordinates and with senior management.” See Bernadette Hogan, *Embattled NYC Homeless Services Chief Gary Jenkins Denies Coverup Claims by Former Aide*, NEW YORK POST (Aug. 18, 2022), *available at* <https://nypost.com/2022/08/18/homeless-services-chief-denies-coverup-claims-by-former-aide/>. Savel was terminated in the immediate aftermath of the events discussed in this Report and Commissioner Jenkins acknowledged being upset that Savel had told City Hall that families were “sleeping at PATH.” But Commissioner Jenkins told DOI that Savel’s termination was already “in the works” when Savel made those statements, and his account is supported to at least some extent by documentation that DSS produced to DOI. In any event, because Savel alleges retaliation as a result of reporting certain facts to City Hall (as opposed to DOI), she is ineligible for employment protection under the City’s Whistleblower Law (NYC Admin. Code Section 12-113).

<sup>46</sup> As discussed above, although Commissioner Jenkins maintained that he likewise did not understand there had been a potential legal violation on the morning of July 18, his account is contradicted by DHS Administrator Joslyn Carter, who informed DOI that she told Commissioner Jenkins that there had been a legal violation during a phone call with him that morning.

Williams-Isom did not immediately appreciate the significance of the violations and instead viewed them as, in her words, a “small operational issue.”

Moreover, the weight of the evidence suggests that Jenkins did not engage in any further substantive communications with City Hall about the July 18 Violations until after the situation at PATH became the subject of public reports later that week – even though he had multiple opportunities to do so.<sup>47</sup> First, as noted above, Jenkins did not raise the 10-to-4 Rule violations during the July 18 Citywide “Task Force Call” regarding the migrant influx. Second, on Tuesday, July 19, Jenkins, Deputy Mayor Williams-Isom, and members of their respective staffs attended a street homelessness-related announcement by Mayor Eric Adams in the City Hall rotunda at approximately 11 a.m. During the course of that gathering, Savel informed a City Hall press staffer (“Staffer 1”) that families had been “sleeping at PATH.” This message reached the Deputy Mayor’s staff, one of whom (“Staffer 2”) texted Jenkins to ask whether it was true that “families were sleeping on the floor at PATH last night,” which City Hall had “heard from Julia [Savel].” After receiving this text, Jenkins spoke to another one of the Deputy Mayor’s staffers (“Staffer 3”) in person.

Jenkins and Staffer 3 provided different accounts of this conversation: Jenkins told DOI he explained to Staffer 3 that although clients might sometimes sleep or rest at PATH, they were not “laid out on the floors” and the increased volume of families arriving at PATH had resulted in longer processing times.<sup>48</sup> But Staffer 3 later memorialized in an email to Deputy Mayor Williams-Isom that Jenkins had told her: “[N]o one slept at PATH, it was a misunderstanding because families are taking a long time to be processed when they come late at night and because of how chaotic it is.”<sup>49</sup> Staffer 2 recalled separately receiving a call from Jenkins’ Chief of Staff around the same time, and relaying the message she had received from the DSS Chief of Staff in a contemporaneous text message to Staffers 1 and 3: “Confirmed that no one slept at path. The buses are coming at any time of day and there are long wait times, but they’ve been able to place everyone.” (**Exhibit 3**). DOI’s investigation found that, because Jenkins did not provide sufficient context to the Deputy Mayor and her staff regarding the July 18 Violations, and at a minimum appeared to minimize, if not misrepresent, the circumstances at PATH, the Deputy Mayor and her staff (and others at City Hall whom the Deputy Mayor otherwise may have notified) lacked a full understanding of the violations and their implications until public reports about

---

<sup>47</sup> Although Commissioner Jenkins told DOI that he discussed the situation with the Deputy Mayor and her office during the course of July 18 and 19, he could not recall any specific discussions when pressed, and DOI did not identify any other evidence in the factual record suggesting that any such discussions occurred.

<sup>48</sup> Commissioner Jenkins told DOI that he (incorrectly) assumed at this time that Deputy Mayor Williams-Isom had already informed her staff about the July 18 Violations.

<sup>49</sup> Staffer 3 maintained this account upon being interviewed by DOI.

conditions at PATH began surfacing on Wednesday, July 20, 2022. Indeed, the above-referenced communications suggest that the Deputy Mayor’s senior staff understood, incorrectly, that there had been no significant operational issues at PATH in the days leading up to July 20.

Jenkins told DOI that he was “annoyed” when he learned that Savel had informed City Hall that families were “sleeping at PATH,” and that he spoke individually with Savel at the time to warn her to “be more careful with [her] language.” Jenkins explained that he believed the terminology used by Savel – that families were “sleeping” at PATH – represented an attempt to “spin” the situation or suggest that PATH was “doing . . . something wrong.” While Jenkins may be correct that the violations of the 10-to-4 Rule were not PATH’s fault, but rather were due to the unprecedented influx of migrant families in need of shelter, DOI found no indication that Jenkins made any effort to convey to City Hall the legal or practical significance of DHS’s failure to ensure that families who sought DHS services by 10 p.m. be placed in temporary shelter that evening (rather than spend the night at PATH), nor did DOI find any indication that City Hall understood the significance of those facts. Deputy Mayor Williams-Isom informed DOI that in retrospect, she was frustrated that Jenkins did not provide additional context with respect to the events at PATH before Wednesday, July 20, when the City found itself ill-prepared to respond to public allegations concerning families’ experiences at PATH and the associated legal implications (discussed further below). DOI found that Jenkins’ conduct also placed City Hall in the position of appearing to be less than transparent, when in fact key decision-makers at City Hall were acting with incomplete information.

#### *DSS’s Untimely Identification and Reporting of a Fifth 10-to-4 Rule Violation on Tuesday, July 19*

As DSS has publicly acknowledged, at least one additional violation of the 10-to-4 Rule occurred at PATH on the morning of Tuesday, July 19 (in addition to the four that occurred the previous morning).<sup>50</sup> Emails reviewed by DOI suggest that at least 13 families remained at PATH awaiting placement at around 5 a.m. on July 19. At 6:24 a.m., the PATH manager on duty sent a “4 a.m. report” email to agency leadership which stated that “as of 6:25 a.m., all clients were given placement” and “[n]o clients were left in the building.” Notably, the July 19 “4 a.m. report” did not indicate how many families remained at PATH as of 4 a.m., nor whether any of the affected families had arrived before 10 p.m. the previous evening. Jenkins recalled

---

<sup>50</sup> See Chris Sommerfeldt, *NYC Social Services Commissioner Gary Jenkins Denies Shelter Crisis Coverup*, NEW YORK DAILY NEWS (Aug. 19, 2022), available at <https://www.nydailynews.com/news/politics/new-york-elections-government/ny-nyc-dss-commissioner-gary-jenkins-denies-shelter-coverup-cbs-20220818-2z0gc72pz5cujjzxwnegdgy5uy-story.html>.

that he was informed on the morning of July 19 that none of the affected families had arrived before 10 p.m., such that no additional violations had occurred.

In contrast to what Jenkins was reportedly told, at 9:21 a.m. on July 19, PATH management informed then-DHS Deputy Commissioner Doreen Howe via email that one unidentified family who had “entered the building before 10pm” had “left after 4am” because the family had to be placed in a cab after the PATH-chartered bus broke down. Howe informed DOI that although she believed she had forwarded this email to Administrator Carter upon receiving it, she later realized that she had not done so and therefore neither DHS nor DSS leadership was informed of this additional violation until August 2022, when Howe discovered the email forwarding error.<sup>51</sup> DSS publicly disclosed the fifth violation on August 18.<sup>52</sup> Although this reporting error was not the fault of any single individual, it could have been avoided if DHS had in place the procedures to document family entry and exit times that we are recommending herein.

### *The City’s Difficulty in Responding to Public Allegations Concerning PATH During the Week of the July 18-19 Violations*

The situation at PATH became a subject of public scrutiny on the evening of Wednesday, July 20, when News 4 ran a TV segment about a Venezuelan migrant family who reported having slept five consecutive nights at PATH awaiting a shelter placement.<sup>53</sup> That same evening, Legal Aid issued a press release addressing both News 4’s reporting and the July 18 Violations,<sup>54</sup> which criticized DSS for allegedly “flout[ing] a clear statute and court settlement by denying these families with minor children, including asylum seekers, placement at local shelters, relegating them to spend the night, and in some cases days, sleeping in a City office.”<sup>55</sup>

---

<sup>51</sup> In an interview with DOI, Howe expressed uncertainty regarding whether this family actually remained at PATH past the 4 a.m. deadline, since (according to Howe) PATH’s paper-based records did not reflect this. Nevertheless, DHS publicly disclosed this fifth violation on August 18, 2022. DOI was unable to locate the paper-based records that might have confirmed Howe’s account.

<sup>52</sup> See Chris Sommerfeldt, *NYC Social Services Commissioner Gary Jenkins Denies Shelter Crisis Coverup, Claims Ex-Spokeswoman Got Fired for ‘Unprofessional’ Behavior*, NEW YORK DAILY NEWS (Aug. 18, 2022), available at <https://www.nydailynews.com/news/politics/new-york-elections-government/ny-nyc-dss-commissioner-gary-jenkins-denies-shelter-coverup-cbs-20220818-2zogc72pz5cujjzxwnegdgy5uy-story.html>.

<sup>53</sup> *Legal Aid Claims Mayor Adams Exaggerated NYC Migrant Crisis to Cover Shelter System Violations*, NBC NEWS 4 NEW YORK (July 20, 2022), available at <https://www.nbcnewyork.com/news/legal-aid-claims-eric-adams-exaggerated-nyc-migrant-crisis-to-cover-shelter-system-violations/3783504/>.

<sup>54</sup> DSS had previously disclosed the July 18 Violations to Legal Aid on Tuesday, July 19.

<sup>55</sup> See Press Release, Legal Aid Society, Legal Aid, Coalition for the Homeless Condemn City for Violating Local Law by Denying Homeless Families with Minor Children Shelter Placements (July 20, 2022), available at

Witness interviews confirmed that the City's ability to respond to these allegations was hampered by the limited and confusing nature of the information available from PATH. Emails and text messages reviewed by DOI show that DSS and City officials struggled for the remainder of the week to confirm the precise number of 10-to-4 Rule violations, as well as the relevant PATH arrival, departure, and placement times for families whose alleged circumstances were brought to DSS's attention by Legal Aid and the press.

On Thursday, July 21, Jenkins and Mayor Eric Adams held a press conference in response to News 4 and Legal Aid's allegations, in which the City first publicly confirmed four 10-to-4 Rule violations on Monday, July 18 (following the initial disclosure to Legal Aid on July 19).<sup>56</sup> Unbeknownst to City leadership at that time, the reported number was inaccurate because: (1) as explained above, a fifth violation had occurred at PATH on Tuesday, July 19 but had not yet been escalated to DSS leadership or to City Hall; and (2) as explained below, at least six additional violations had occurred at PATH in late June and early July, 2022, but were never escalated to DSS leadership and were identified only in the course of DOI's investigation.

#### **D. DSS's Failure to Identify and Report at Least Six Additional 10-to-4 Rule Violations in Summer 2022**

As noted in Section II(B) above, although PATH typically provides families with transport to their shelter placements in a DHS fleet van or a privately-contracted charter bus, PATH may also pay for taxi services to transport individual families if the DHS fleet and buses are filled to capacity or unavailable due to schedule or maintenance issues. According to emails and witness testimony, PATH began to use taxi services for clients with increasing regularity during the Summer of 2022, when the volume of families appearing at the intake center sharply increased.

DOI confirmed that on at least two of these occasions, families who had arrived at PATH before 10 p.m. the previous evening were placed into taxis to their shelter placements after 4 a.m. (in violation of the 10-to-4 Rule). On both occasions, the PATH manager on duty sent an inaccurate "4 a.m. report" email incorrectly stating that no clients remained at the intake center as of 4 a.m.:

---

<https://legalaidnyc.org/wp-content/uploads/2022/07/Legal-Aid-Coalition-for-the-Homeless-Condemn-City-for-Violating-Local-Law-by-Denying-Homeless-Families-With-Minor-Children-Shelter-Placements.pdf>.

<sup>56</sup> See Transcript, "Mayor Eric Adams Provides Update on Asylum Seekers," July 21, 2022, *available at* <https://www.nyc.gov/office-of-the-mayor/news/534-22/transcript-mayor-eric-adams-provides-on-asylum-seekers>.

- *June 29, 2022 (three families, three violations)*

Email correspondence indicates that three families departed PATH in taxis between approximately 4:20 and 5:20 a.m. on Wednesday, June 29. DOI confirmed through CARES and Q-Flow data that all three of these families arrived before 10 p.m. the previous evening. Q-Flow data shows one of these families arriving at PATH at 10:02 p.m. on Monday, June 27, such that they spent two overnights at the intake center (representing only one confirmed 10-to-4 Rule violation, since the family is recorded as having arrived two minutes after the 10 p.m. deadline on the first night).<sup>57</sup> Despite the fact that three families left the intake center after 4 a.m., the PATH manager on duty circulated a “4 a.m. report” on the morning of June 29 incorrectly indicating that “no clients [were] left in the building.” Later that morning, the same PATH manager sent an email to her PATH colleagues concerning reimbursement for the clients’ taxi fares, in which she reported that petty cash had been “used for cab services to transport three families to conditional placements at approximately 5:20 AM.” In an interview with DOI, the manager confirmed that she knew on that date that clients remained at PATH past 4 a.m.; she was unable to provide DOI with a satisfactory explanation for her “4 a.m. report” which stated the contrary.

- *July 3-4, 2022 (two families, three violations)*

Email correspondence indicates that five families departed PATH in taxis at around 4:30 a.m. on Monday, July 4. DOI confirmed through CARES and Q-Flow data that two of these families arrived before 10 p.m. the previous evening. CARES data shows one of these families arriving at PATH at 7:18 p.m. on Saturday, July 2, such that the family spent two overnights at the intake center (representing two 10-to-4 Rule violations). Despite the fact that several families left the intake center after 4 a.m., another PATH manager on duty (not the same person who was on duty on June 29 in the example referenced above) circulated a “4 a.m. report” on the morning of July 4 indicating that “no clients [were] left in the building.” However, the same PATH manager also documented in an email to DHS colleagues later that morning that at least five families departed PATH after 4 a.m., two of whom had accepted conditional placements (and who therefore almost certainly would have arrived before the 10 p.m. cutoff). DOI did not interview the second manager.

---

<sup>57</sup> As noted in Section II(B) above, it is likely that many families (like this one) who were recorded as having arrived shortly after the 10 p.m. deadline in fact entered the building and cleared PATH security before the deadline.

The lack of sufficient recordkeeping as to families' arrival and departure times limited DOI's ability to determine whether there were violations of the 10-to-4 Rule beyond those identified above. For example, on Saturday, July 16 at 1:02 p.m., a PATH staffer wrote to her supervisor that she could not attend to another task because she was "[s]till trying to get the families who slept here overnight, out of the building." Her email does not make clear the time that the families arrived, or other identifying information from which DOI potentially could make that determination. To the extent that the staffer was referring to families that arrived before 10 p.m., this email suggests additional violations despite the fact that the PATH manager on duty that morning had sent out a "4 a.m. report" indicating that "[a]s of 4am, all clients were given placements," and "[n]o clients are left in the building." To the extent that the staffer's email referred to families that arrived after 10 p.m., her email would not indicate the existence of any additional violations.

DOI recognizes that during the Summer of 2022, PATH's leadership, managers, and line staff found themselves managing a quickly-developing crisis without the benefit of robust institutional procedures or support, and that a small number of 10-to-4 Rule violations may have been unavoidable given the rapid increase in arrivals at PATH. Additionally, although DOI found that at least two separate PATH managers sent inaccurate "4 a.m. report" emails on June 29 and July 4, 2022, respectively, we attribute their conduct largely to flaws in the design of PATH's procedures, which tasked relatively junior employees with reporting to the DSS Commissioner – with whom they would have had little if any contact in their day-to-day roles – that a serious violation of longstanding agency policy had occurred, with little or no training on the this aspect of their obligations. Because of these procedural shortcomings, no 10-to-4 Rule violations were reported to DSS leadership until at least the third instance in the Summer of 2022 in which such violations occurred. Furthermore, the patterns associated with the eleven confirmed violations – such as inaccurate or inconsistent "4 a.m. report" emails, a lack of available video surveillance footage, and PATH's failure to track when clients leave the building – reflect potentially systemic problems that could have masked additional violations of the 10-to-4 Rule. Ultimately, due to the poor quality of the available evidence, DOI cannot draw any conclusions about the likely scope of 10-to-4 Rule violations at PATH during this period.

#### **E. Manipulation of the Publicly-Reported Monthly Eligibility Rate from June 2017 Until Mid-2022**

This section addresses the separate and distinct allegation regarding the manipulation of PATH's publicly-reported data on the percentage of families eligible for DHS shelter. As described in further detail throughout this section, DOI determined that the PATH Eligibility Rate between June 2017 and mid-2022 was subject to manipulation and therefore not accurately reported to the public. DHS

Administrator Joslyn Carter, and numerous witnesses whom she supervised, confirmed that during this period, Administrator Carter directed PATH leadership to artificially lower the Eligibility Rate by instructing managers to limit the number of eligible cases they finalized each day in CARES.

DOI's investigation was inconclusive with respect to whether Administrator Carter was acting at the direction of former DSS Commissioner Steven Banks when she directed others to manipulate the Eligibility Rate. While Administrator Carter told DOI that she acted at his direction, Banks denied this allegation and DOI's investigation did not identify evidence sufficient to substantiate his involvement in or knowledge of the manipulation of the Rate.

Notably, and as described in further detail below, witnesses uniformly told DOI that DHS's method of manipulating the Eligibility Rate did not have any substantive impact on ultimate eligibility determinations (i.e., no eligible family was coded as ineligible due to the manipulation). Witnesses also told DOI that the manipulation did not cause any families to be denied shelter for which they were eligible, because they remained in their "conditional" DHS shelter placement (that is, they were able to reside in a DHS shelter on a conditional basis) while their eligibility determination was pending, and thereafter. As discussed below, DOI has been unable to assess the full impact of DHS's manipulation of the Eligibility Rate. However, the practice could have delayed the transition of unhoused families from DHS shelter into permanent housing.

### *DHS Eligibility Determinations*

As noted in Section II(B) above, PATH's assessment process for each family begins with an investigation to determine the family's eligibility for DHS services. This investigation, which takes at least several business days, typically includes obtaining a detailed housing history from the family and conducting field visits with other family members, as well as current and former landlords, to verify that no alternative housing option is available.<sup>58</sup> DHS provides housing, referred to as "conditional" shelter placement, for families seeking shelter at PATH while this eligibility investigation is pending. The family remains in City-provided housing, and their shelter status remains "conditional," until the investigation is complete.

Upon completing an eligibility investigation, DHS Program staff make a preliminary eligibility determination and code the family's case in CARES as either "XA" (ineligible due to non-cooperation), "XX" (ineligible due to DHS identifying

---

<sup>58</sup> As discussed below, the eligibility criteria and guidelines for eligibility investigations applied by DHS are set by the New York State Office of Temporary and Disability Assistance.

another available housing option), or “YY” (preliminarily eligible). Cases coded “XA” are not subject to supervisory review, whereas cases coded “XX” are subject to review by a first-line supervisor. Cases found preliminarily eligible and coded “YY” are subject to two levels of supervisory review, by a first-line supervisor and then by a manager. During the pendency of the eligibility investigation, a client’s case may be placed on “hold” if, for instance, additional review and input is required from another program area such as DSS legal or the domestic violence unit. Once a family is deemed preliminarily eligible and that determination is confirmed via two levels of supervisory review, the family is determined to be eligible for shelter and their DHS shelter placement is no longer conditional. During the period relevant to this investigation, after a family was determined to be eligible, and had resided in a DHS shelter for at least 90 days,<sup>59</sup> the family could qualify for a City Family Homelessness and Eviction Prevention Supplement (“CityFHEPS”) rental assistance voucher, which can be used to subsidize rent for more permanent accommodations outside of the shelter system.

### *The Publicly-Reported 30-Day PATH Eligibility Rate*

DHS publishes PATH’s 30-day Eligibility Rate on NYC Open Data on the last day of each month. The Rate represents the percentage of families seeking DHS shelter who are found eligible for shelter each month following the eligibility investigation described above.<sup>60</sup> The City uses the Eligibility Rate for census forecasting, shelter capacity planning, and budgeting for rental assistance vouchers and shelter beds. DSS Commissioner Molly Park further explained that the City closely monitors the Eligibility Rate because fluctuations may signal underlying trends, such as changes in unemployment or eviction rates, that could lead to increased (or decreased) demand for shelter services, potentially impacting the City’s overall homelessness policy. The Eligibility Rate has also received press scrutiny.<sup>61</sup>

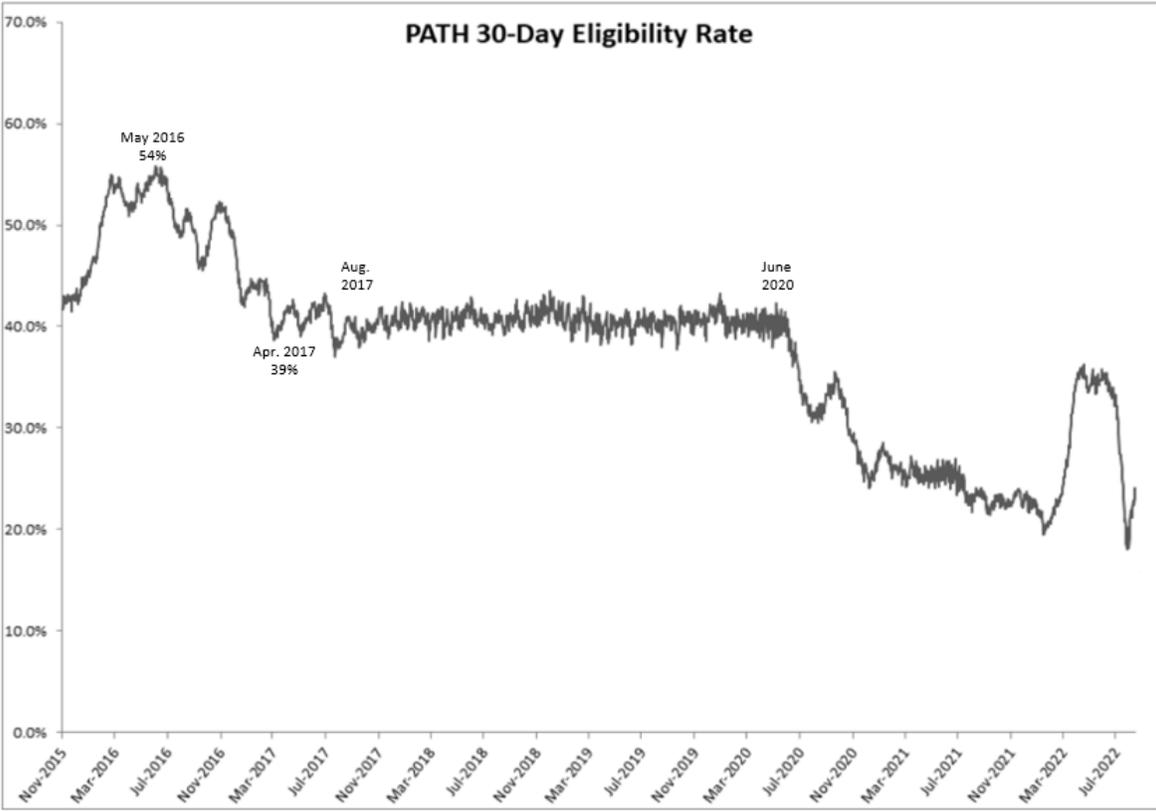
---

<sup>59</sup> 68 R.C.N.Y. § 10-04(b)(1). The City ended the so-called “90-day rule” on June 16, 2023. Press Release, City of New York, *Mayor Adams Ends 90-Day Rule for All Populations, Expands Eligibility to City-Funded Rental Assistance for All New Yorkers in Shelter* (June 16, 2023), available at <https://www.nyc.gov/office-of-the-mayor/news/427-23/mayor-adams-ends-90-day-rule-all-populations-expands-eligibility-city-funded-rental#0>.

<sup>60</sup> See “PATH and AFIC Monthly Eligibility Rate,” <https://data.cityofnewyork.us/Social-Services/PATH-and-AFIC-Monthly-Eligibility-Rate/985h-mtct>.

<sup>61</sup> See, e.g., Suhail Bhat and Josefa Velasquez, *Three in Four Family Shelter Application Rejected in 2021, Setting Record*, THE CITY (Jan. 30, 2022), <https://www.thecity.nyc/2022/1/30/22909663/family-shelter-applications-rejected>.

Figure 1



The overall increase and then decline in the Eligibility Rate from late 2015 to mid-2017 shown in Figure 1 above was caused by a series of State-level regulatory changes concerning how to treat families appearing for intake at PATH who had most recently been staying with a friend or relative – and specifically, whether DHS could consider the friend or relative’s residence an “available” housing option, such that the family would be ineligible for DHS shelter under the *Boston* consent decree.<sup>62</sup> In late 2015, the New York State Office of Temporary Disability Assistance (“OTDA”) published an Administrative Directive (the “2015 ADM”) granting broad deference to friends or relatives who declined to allow the applicant family to return to their residence (making the housing option unavailable).<sup>63</sup> The 2015 ADM caused more

<sup>62</sup> See footnote 24 above.

<sup>63</sup> 15 ADM 06, Section II(D)(2): “...an applicant for THA who leaves a friend or relative’s residence may be determined to have an available housing resource, if after an investigation the SSD determines the applicant has permission of the friend or relative to return to the residence. However, a housing resource should not be considered available if after an investigation it is found that the primary tenant, who is not a legally responsible relative of the applicant, declines to allow the applicant to return to the residence.”

families to be deemed eligible for DHS shelter, and thus caused the Eligibility Rate to spike from 42% in October 2016 to 54% in May 2016. OTDA withdrew the 2015 ADM in late 2016 at the City's request,<sup>64</sup> and issued a new ADM (the "2016 ADM") which required a friend or relative who had previously provided housing to the applicant family to provide a "reasonable justification to decline to allow the applicant to return" in order for DHS to consider the housing unavailable.<sup>65</sup> By April 2017, the Eligibility Rate had retreated to 39%.

As also shown in Figure 1, beginning in mid-2017 the Eligibility Rate roughly flatlined for nearly three years, remaining between 39 and 42 percent from August 2017 until June 2020. DOI found that this period of marked stability in the Eligibility Rate was attributable to DHS's efforts to manipulate the Rate, which DHS accomplished by putting certain positive eligibility determinations on "hold" in order to ensure that the ratio of positive to total final eligibility determinations remained roughly constant each day.

### *Origin of the Directive to "Manage the Eligibility Rate"*

Witnesses uniformly told DOI that the Eligibility Rate was closely tracked at the highest levels of City government during the above-described time period, and that Banks was focused on the Rate. While Administrator Carter claimed that Banks directed her to manipulate the Rate following the implementation of the 2016 ADM, Banks denied that he directed Administrator Carter to do so, and further denied any knowledge that the Rate was manipulated. No other witness with whom DOI spoke corroborated Administrator Carter's account of Banks' knowledge and direction of the manipulation. While DOI identified numerous emails in which Banks makes inquiries about an increase in the rate, no documents reviewed in the course of the investigation definitively confirmed his direction or knowledge of the manipulation.

Administrator Carter, on the one hand, told DOI that Banks instructed her to bring the Rate down, and "knew that we were not putting in [eligibility] determinations the same day so that it kept the rate down" (in other words, he knew that PATH was manipulating the Rate using the methods detailed below). Administrator Carter recalled that there was "a real focus [on] and . . . scrutiny" of the Eligibility Rate during the Administration of former Mayor Bill de Blasio, and

---

<sup>64</sup> Suhail Bhat and Josefa Velasquez, *Three in Four Family Shelter Applications Rejected in 2021, Setting Record*, THE CITY (Jan. 30, 2022), <https://www.thecity.nyc/2022/1/30/22909663/family-shelter-applications-rejected>.

<sup>65</sup> 16 ADM 11, Section D(2): "...an applicant for THA who leaves a friend or relative's residence may be determined to have an available housing resource, if after an investigation the SSD determines the applicant has permission of the friend or relative to return to the residence. However, a housing resource should not be considered available if after an investigation it is found that the primary tenant, who is not a legally responsible relative of the applicant provides a reasonable justification to decline to allow the applicant to return to the residence."

stated that Banks told her “that the Mayor was really angry that the rate had increased tremendously” following the 2015 ADM. Although Administrator Carter stated that she did not “really understand” the reason for the former administration’s apparent focus on the PATH Eligibility Rate, she generally understood that a higher rate resulted in a negative “impact on [shelter] capacity” and “increased costs” to the City. Administrator Carter stated that for this reason, following the 2016 ADM, Banks “wanted to make sure [the Eligibility Rate] stayed level and did not go back up,” and told her that de Blasio was “obsessed with getting the rate down.” According to Administrator Carter, Banks justified DHS’s method of manipulating the Rate by positing that the manipulation had no detrimental impact on homeless families, who would remain in their conditional shelter placement while their positive eligibility determination was on hold.<sup>66</sup> Administrator Carter further told DOI that she never would have engaged in the manipulation of the Rate if she had not been ordered to do so by her superior.

In contrast with Administrator Carter’s testimony, Banks denied any knowledge that DHS was manipulating the PATH Eligibility Rate, and maintained that he was not aware of any effort to delay final eligibility determinations in order to prevent the eligibility rate from increasing. According to Banks, the PATH Eligibility Rate was important mainly as a predictive “proxy for the shelter census” (that is, the number of families residing in City-provided shelter), a number which was overall “a much bigger focus” for the former administration.<sup>67</sup> Banks further described the Eligibility Rate as only one of “a litany of . . . things” that “might come up” in meetings between himself and de Blasio concerning homelessness, such as shelter move-outs, the right to counsel, and street homelessness outreach. Banks acknowledged that de Blasio paid close attention to the changes in the Eligibility Rate that resulted from the 2015 and 2016 ADMs, that DSS engaged in efforts to “monitor” the Eligibility Rate during and after that period, and that it “would have been an issue with the Mayor” if the Eligibility rate were to increase significantly above 40 percent (where it appeared to have stabilized following the 2016 ADM change).<sup>68</sup> For this reason, Banks stated that the Eligibility Rate exceeding 40 percent for “more than a day or two . . . would have been a concern of mine,” and “was sort of a trigger for me” to ask Administrator Carter whether some underlying trend might have been causing the variation.

---

<sup>66</sup> As discussed below, the conduct in question may in fact have had a negative impact on some homeless families.

<sup>67</sup> DOI found no evidence that the DHS shelter census, which is also publicly reported, was ever manipulated.

<sup>68</sup> A review of email communications between Banks and de Blasio did not reveal any communications regarding manipulation of the Eligibility Rate, nor did they indicate that the Mayor pressured Banks to decrease the Eligibility Rate.

Overall, Banks characterized the monitoring of the Eligibility Rate during this period as an effort to ensure that DHS was closely following the terms of the new ADM, rather than as a focus on the published Eligibility Rate itself, and maintained that “a discussion that we should keep [the Rate steady]” in “a formulaic way . . . was not a discussion we had.” When confronted with evidence that PATH manipulated the Eligibility Rate, Banks expressed surprise, and opined that the conduct confirmed by DOI “feels like bureaucracy just sort of taking the messages that the Mayor expressed to Joslyn and me – [and] that I expressed to Joslyn” in a direction that “makes no sense.”<sup>69</sup> Banks further explained that he had attributed the lack of meaningful fluctuation in the Eligibility Rate from mid-2017 until early 2020 not to manipulation of the Rate, but rather to regulatory changes implemented during his tenure that effectively decreased the City’s eviction rate, which he explained would have made it “natural” for the Rate to decrease and fluctuate less.

Additional witness testimony confirmed that Banks was focused on the Eligibility Rate and that he often asked questions about it (which Banks himself did not deny), but did not resolve the fundamental question as to whether Banks knew that Administrator Carter and her subordinates were manipulating the Rate by delaying certain positive eligibility determinations. In particular, DOI spoke to six witnesses (five from DHS, and one former official from the City’s Office of Management and Budget (“OMB”)), who confirmed that Mayor de Blasio’s administration, and Banks in particular, were very focused on the Eligibility Rate. One of the DHS witnesses recalled participating in biweekly in-person meetings with Banks and Administrator Carter beginning in 2016 to discuss diversion efforts for homeless families. According to this witness, Banks “was always looking very closely at the [Eligibility Rate] trend” and would inquire about any variations during these meetings. Similarly, DSS Commissioner Molly Park, who served as DHS’s First Deputy Commissioner from 2019 to 2023, recalled participating in weekly supervisory meetings with Administrator Carter and Banks in which the Rate was sometimes discussed in the context of understanding “trends we were seeing and how to plan for that.” The remaining three witnesses reported directly to Administrator Carter while at PATH and testified that Administrator Carter told them that the Rate was important to Banks and the mayoral administration. Despite corroborating the Eligibility Rate’s importance to Banks and the de Blasio administration, when asked if Banks was aware of the manipulation, or directed it, the witnesses all stated that they had no knowledge that he directed, or was aware of, the manipulation. We

---

<sup>69</sup> Banks also questioned the underlying logic behind the manipulation, which he noted would not ultimately have had any impact on the overall DHS shelter census (and correspondingly, the DHS shelter budget). As explained below, because the method employed by DHS to hold the Rate constant simply postponed eligibility determinations – rather than requiring eligible families to be deemed ineligible, for example – Banks appears to be correct that the manipulation would not ultimately have impacted the number of families eligible for shelter. For that reason, DOI has been unable to determine whether or how this manipulation ultimately benefitted DHS or the former Administration.

note that some of the witnesses may not themselves have been aware that any manipulation had occurred.

The former OMB official, who worked at that office from 2011 until 2020 (and whose portfolio included DHS for the duration of that time), confirmed that OMB tracked the Eligibility Rate on a daily basis during the de Blasio Administration, and stated that although she was unaware of any manipulation, she knew based on her interactions with City Hall and OMB officials that keeping the Rate from increasing too much was “definitely” a top focus for Banks and the mayoral administration. The former official believed that, had the Eligibility Rate increased significantly during her time at OMB, OMB likely would have worked with DHS to double-check DHS’s eligibility determinations to ensure that they were accurate and to determine what if any underlying trends might be driving that change.

The documentary evidence reviewed by DOI likewise establishes that Banks was focused on and made inquiries about increases in the PATH Eligibility Rate, but is insufficient to draw any conclusions about Banks’ alleged knowledge of the Rate’s manipulation. For example, on December 17, 2019, after receiving an email that the reported PATH 30-day Eligibility Rate had reached 42.0 percent, Banks repeatedly followed up with Administrator Carter to inquire whether there were “any issues here.” After (in her words) “[c]hecking on the why” with her subordinates, Administrator Carter responded that PATH was “clearing holds in advance of [an upcoming regulatory change]” and that “I have asked that they stop.” Banks replied: “Thanks.” (**Exhibit 4**). This email could be understood as Administrator Carter conveying to Banks that she would direct her subordinates to ensure that positive eligibility determinations remain on “hold” in order to maintain or lower the Eligibility Rate.

With respect to the above-described email, Banks explained that on January 1, 2020, a new State regulation took effect requiring DHS to finalize a family’s eligibility determination within 15 days of their initial application.<sup>70</sup> Banks recalled being concerned this rule would encourage PATH staff to incorrectly clear holds and make eligible families ineligible in an effort to avoid breaching the 15-day deadline, and wanting to ensure that PATH staff understood that the rule allowed for exceptions to that 15-day deadline. Per Banks, Administrator Carter’s directive here to stop “clearing holds” related to the PATH staff clearing holds improperly due to perceived time pressure.

In addition to the above-described communication, DOI identified numerous emails in which Banks reached out to Administrator Carter following a slight increase in the Eligibility Rate to inquire why the Eligibility Rate had increased. DOI

---

<sup>70</sup> See 18 CRR-NY 900.9(c).

did not find any comparable communications relating to a decrease in the Eligibility Rate, but it is difficult to draw any conclusions from that fact. As Banks and other witnesses explained, an increase in the Eligibility Rate would have raised potential concerns for DSS and the Administration, and would have resulted in inquiries about the nature and reason for the increase. A decrease in the Eligibility Rate would not have raised such concerns.

Overall, Administrator Carter and Banks' accounts as to his knowledge and involvement in the manipulation of the Eligibility Rate are irreconcilable, and DOI found insufficient evidence to substantiate Administrator Carter's account that Banks directed or knew of the manipulation.

### *PATH's Implementation of the Directive to "Manage the Eligibility Rate"*

Administrator Carter and numerous other witnesses confirmed that in or around June 2017, Carter and her subordinates at PATH devised a process to (in her words) "phase in eligibility" – that is, "[i]f there were 15 families that were eligible, we did not make all 15 families eligible at the same time." Instead, some were made eligible that day, and the rest would be placed on hold and made eligible the next day or later in order to keep the Eligibility Rate roughly constant on a day-to-day basis.

To ensure that the Eligibility Rate would be as close as possible to a range dictated by Administrator Carter, in June 2017 PATH leadership and managers developed what they referred to as "the formula": an Excel file containing an equation that would yield the number of preliminarily eligible cases PATH should finalize each day in order to hold the Eligibility Rate more or less constant.<sup>71</sup> In the example Administrator Carter provided, if 15 families were eligible but the application of the formula indicated that only ten should be coded as eligible on a particular day in order to keep the Eligibility Rate at approximately 40 percent, the first ten eligible families who were processed at PATH would have their eligibility determinations finalized but the last five would be placed on hold. DOI identified the Excel "formula" file on a PATH shared drive, and also identified an instruction sheet providing step-by-step directions for using the file (including "play with the numbers" as the final step) (**Exhibit 5**).

After running the "formula" file each day, PATH leadership would speak with whichever manager was on-duty to finalize eligible "YY" cases and instruct the manager how many "YY" cases they should finalize. PATH managers interviewed by DOI confirmed that they had received instructions from PATH leadership about how

---

<sup>71</sup> DOI was unable to reconstruct precisely how the "formula" file worked due to the fact that many of the inputs were pulled from internal DHS daily reporting that has not been preserved by the agency in the normal course of its business.

many “YY” cases to code as eligible each day, and generally understood that this instruction was related to efforts to manage or maintain the Eligibility Rate at a particular level. Although managers were required to put any surplus eligible cases on “hold,” managers were not provided any instructions as to how to document those holds in DHS’s CARES database. For this reason and others, and as detailed below, DOI was not able to precisely quantify how many families were placed on hold solely for purposes of managing the eligibility rate and how many were placed on hold for legitimate pending items relating to their applications. DOI also was unable to determine how long families were placed on hold solely for purposes of managing the eligibility rate.

Administrator Carter spearheaded DHS’s efforts to manipulate the Eligibility Rate, but she did not act alone. Rather, DOI found that numerous current and former DHS personnel, at varying levels of seniority, were, to varying extents, aware of and/or active participants in DHS’s efforts to manipulate the Eligibility Rate, acting at the direction of their respective supervisors. DOI is referring its findings concerning these employees to DSS for whatever action the agency deems appropriate.

### *Potential Impact on Homeless Families*

DOI found that DHS’s efforts to control the Eligibility Rate caused families who had been found preliminarily eligible (“YY”) by a first-level DHS investigator to remain on hold pending managerial review for longer than necessary. As discussed above, the “formula” effectively held the Eligibility Rate constant by placing cases that had been identified as preliminarily eligible on hold and delaying their finalization in CARES. Administrator Carter acknowledged that this method would have created a backlog of preliminarily eligible cases over time, and would potentially have resulted in longer shelter stays for eligible families, but neither she nor any other witness could quantify the size of the backlog or estimate the average or maximum number of days that families remained on this arbitrary hold.

Although any impacted families would have been provided conditional shelter placement pending a final determination on their case in CARES — meaning no family deemed preliminarily eligible was unhoused as a result of being kept in hold status — DHS’s efforts to manipulate the Eligibility Rate nevertheless had a potential negative impact on these families. Specifically, families generally exit DHS shelter using a CityFHEPS housing voucher<sup>72</sup> or other forms of rental assistance enabling them to find and keep more stable housing. Under the “90-day rule” in effect during the relevant time period, families in DHS shelter could not qualify for a

---

<sup>72</sup> CityFHEPS is the largest city-funded rental assistance program in the nation.

CityFHEPS voucher until they had resided in a DHS shelter for at least 90 days.<sup>73</sup> DSS confirmed that this 90-day period began to run on the date on which a final positive eligibility determination was made, not the date when the family first received a conditional shelter placement. DOI thus found that DSS's manipulation of the Eligibility Rate likely caused affected families to wait longer than necessary to qualify for housing vouchers – and therefore, to potentially spend longer than necessary in homeless shelters before they could obtain permanent housing.

Additionally, according to Banks, the Eligibility Rate was used to plan for shelter capacity in New York City during the relevant period. Without an accurate Eligibility Rate between the years of 2017 and 2022, it is possible that this effort caused the City to miscalculate its true shelter capacity needs; that is, to the extent that the manipulation masked the true percentage of families in need of shelter, that fact may have impacted the City's shelter capacity planning. However, DOI is unaware of any resulting harm, such as insufficient City shelter capacity, due to the rate manipulation.

Witnesses uniformly informed DOI that DHS's manipulation of the Eligibility Rate ended around early- or mid-2022, when it became apparent that the new mayoral and DSS administrations were not focused on the Eligibility Rate. DOI found no evidence that former DSS Commissioner Gary Jenkins, current DSS Commissioner Molly Park, or anyone in the current mayoral administration had any knowledge of the manipulation.

#### *DOI's Limitations in Quantifying the Impact*

DOI was unable to quantify the number of families affected or the amount of time they spent on hold due to limitations in the historical CARES data maintained by DHS. The CARES database contains 24 possible hold categories, all of which are facially legitimate. As noted above, PATH managers did not create a separate category within the database to designate those holds that were solely due to application of the formula – that is, those holds intended solely to maintain the Eligibility Rate at approximately 40%. For this reason, DOI was unable to segregate families whose cases were put on hold to maintain the Eligibility Rate from families whose cases were put on hold for legitimate reasons (such as the need for additional legal review or mediation with family members with whom they might otherwise stay).

---

<sup>73</sup> 68 R.C.N.Y. § 10-04(b)(1). The City ended the 90-day rule on June 16, 2023. Press Release, City of New York, *Mayor Adams Ends 90-Day Rule for All Populations, Expands Eligibility to City-Funded Rental Assistance for All New Yorkers in Shelter* (June 16, 2023), available at <https://www.nyc.gov/office-of-the-mayor/news/427-23/mayor-adams-ends-90-day-rule-all-populations-expands-eligibility-city-funded-rental#/0>.

Further, DOI could not replicate or re-run the “formula” in order to estimate its impact on families. As observed in Exhibit 5, the formula relied on several documents and programs, including: (1) an excel file named “PATH Case Outcomes,” (2) a program called iReport, which was replaced by new software in May 2022 and is no longer functional, (3) the 30-Day Eligibility Rate email, and (4) an excel file named “Group Stats-Case Distribution.” Witnesses reported to DOI that these files were no longer in use or preserved on their computers, preventing DOI from being able to reconstruct or re-run the formula.

### III. Recommendations

DOI’s investigation found procedural weaknesses compromising DSS’s ability to timely identify and report violations of the 10-to-4 Rule at PATH. In light of the above findings, DOI made certain Policy and Procedure recommendations to DSS to address these issues:

- 1) DSS should design and implement a process to ensure families’ arrival and departure times at PATH are consistently and accurately documented. This process should:
  - a) Log families’ arrival times as soon as they pass through security at the first-floor entrance;
  - b) Log families’ departure times as their DHS-arranged transport departs PATH to their overnight or conditional shelter placement or, when families choose to arrange their own transport, log the time that the families exit the intake center;
  - c) Track families who choose to intermittently leave PATH to attend to other needs (such as buying food) during the course of the application process;
  - d) Define the time period for when a family will be deemed to have terminated the application process due to their intermittent absence from PATH, and notify families at PATH of the same; and
  - e) Be memorialized in writing.
- 2) The process described in Recommendation #1 should be fully automated (although implementation of a manual process consistent with Recommendation #1 should not be delayed even if this Recommendation #2 is rejected or not implemented due to cost or other reasons). In particular, the automated process should:

- a) Rely on scanners to track families through PATH (i.e., not rely on handwritten input of entry/exit data), and be able to sync data from the scanners with CARES;
  - b) Automatically inform PATH leadership, HERO management, and DHS/DSS leadership, at 4 a.m. each morning, of the number of families who arrived at PATH at or before 10 p.m. and who remain at PATH, and if the number is greater than zero, the current shelter assignment status of each family; and
  - c) Automatically input the number of 10-to-4 Rule violations (that is, the number reported per recommendation 2(b) above) into DHS's public-facing "Daily Report."
- 3) Once the process described in Recommendation #1 is put in place, and regardless of whether Recommendation #2 has already been implemented, DSS should conduct regular audits to ensure that the process is functioning as intended and that the times of client movements into, within, and out of PATH are easily discernible.
  - 4) DSS should create a written procedure detailing the requirements of the Family Shelter Mandate, 10-to-4 Rule, and Section 21-313 as applied to the PATH intake process. This procedure should include provisions on reporting violations up the chain within DHS/DSS, to City Hall, and to the public.
  - 5) DSS should provide regular training to PATH staff and DHS/DSS leadership concerning the requirements of the Family Shelter Mandate, Section 21-313, the 10-to-4 Rule, and DHS's obligations with respect to the same.
  - 6) In light of the manipulation of publicly-reported data confirmed by DOI, DSS should design and implement an internal audit process intended to ensure the integrity of data that DHS makes public.

## Exhibit 1



## DAILY REPORT

7/19/2022

(Data from Monday, July 18, 2022)

SINGLE ADULTS	
Drop-in Center Clients Served	424
Drop-in Center Overnight Census	150
Faith Bed Census	23
Outreach Contacts	262
Outreach Placements	18
Safe Haven Utilization	1507
Veterans In Short-term Housing	187
Criminal Justice Short-term Housing	85

FAMILY INTAKE	
Families Requesting Temporary Housing at PATH	130
Adult Families Requesting Temporary Housing at AFIC	23
Families Placed in Overnight Accommodations	0
Families w/children at PATH Overnight (pre 10PM)	0

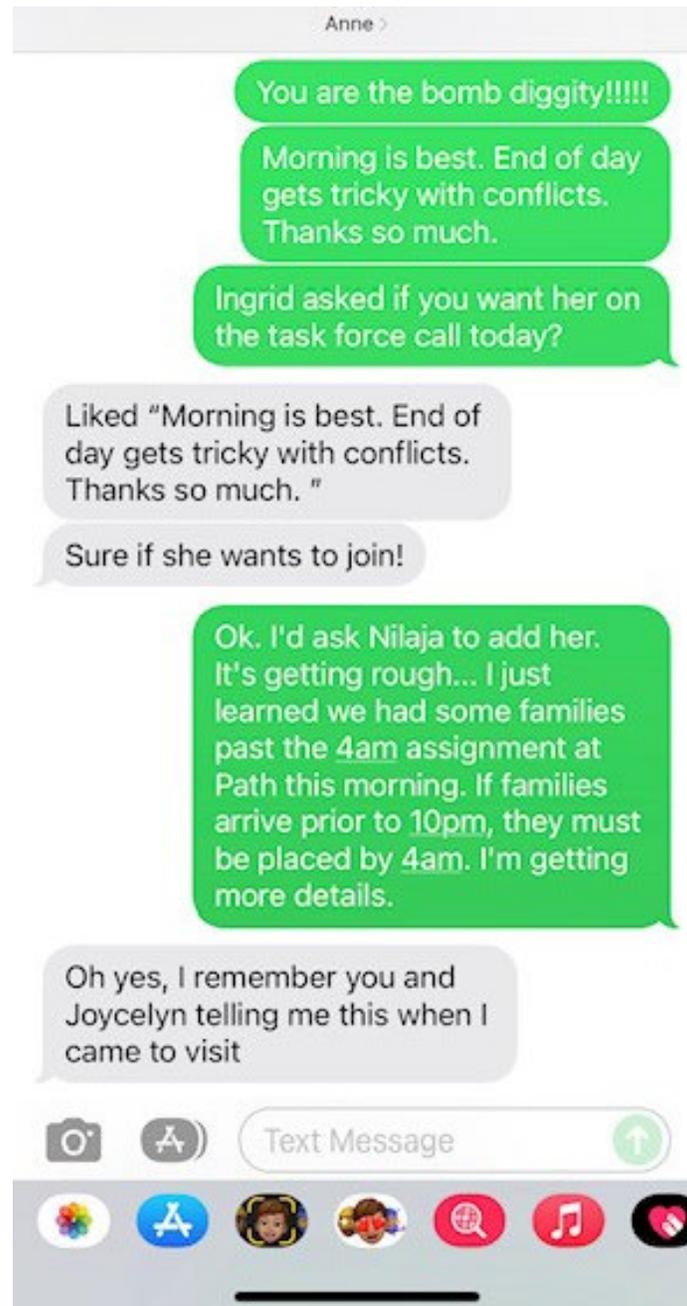
TOTAL SHELTER CENSUS	
Adults	32,363
Children	16,090
<b>Total Individuals</b>	<b>48,453</b>

SINGLE ADULTS	
Men	12,313
Women	4,095
<b>Total Single Adults</b>	<b>16,408</b>

FAMILIES WITH CHILDREN	
Families	9,404
Adults	12,916
Children	16,090
<b>Individuals</b>	<b>29,006</b>

ADULT FAMILIES CENSUS	
Families	1,445
<b>Individuals (Adults)</b>	<b>3,039</b>

## Exhibit 2\*



\* DOI confirmed that the messages in green were sent by Commissioner Jenkins, and the messages in grey were sent by Deputy Mayor Williams-Isom. Although DOI was unable to obtain a timestamped copy of these text messages, DOI confirmed that the message from Commissioner Jenkins concerning PATH was sent at 8:54 a.m. on July 18, 2022.

Exhibit 3

Time	Party	Description
7/19/2022 12:31:58 PM(UTC-4)	From: [Staffer 2] To: [Staffer 3] To: [Staffer 1]	Confirmed that no one slept at path. The buses are coming at any time of day and there are long wait times, but they've been able to place everyone
7/19/2022 12:36:32 PM(UTC-4)	From: [Staffer 3] To: [Staffer 2] To: [Staffer 1]	Liked "Confirmed that no one slept at path. The buses are coming at any time of day and there are long wait times, but they've been able to place everyone "
7/19/2022 12:48:12 PM(UTC-4)	From: [Staffer 1] To: [Staffer 2] To: [Staffer 3]	That's great. Really appreciate you checking

## Exhibit 4

**Re: PATH 30-day eligibility rate – 12/16/2019**

---

**From:** "Banks, Steven" <banksst@dss.nyc.gov>  
**To:** "Carter, Joslyn" <jcarter@dhs.nyc.gov>  
**Date:** Wed, 18 Dec 2019 06:46:30 -0500

---

Thanks. Let's discuss the 1/1 issue

Sent from my iPhone

On Dec 18, 2019, at 6:43 AM, Carter, Joslyn <JCARTER@dhs.nyc.gov> wrote:

They were clearing holds in anticipation of the January 1 rules. I have asked that they stop.

Joslyn Carter, LCSW | DHS Administrator  
Department of Homeless Services  
33 Beaver Street  
New York, NY 10004  
T: 212-361-7963  
F: 917-637-7482

---

**From:** Banks, Steven <banksst@dss.nyc.gov>  
**Sent:** Wednesday, December 18, 2019 12:16:42 AM  
**To:** Carter, Joslyn <JCARTER@dhs.nyc.gov>  
**Subject:** RE: PATH 30-day eligibility rate – 12/16/2019

Any update here? Thanks.

---

**From:** Carter, Joslyn  
**Sent:** Tuesday, December 17, 2019 11:44 AM  
**To:** Banks, Steven <banksst@dss.nyc.gov>  
**Subject:** Re: PATH 30-day eligibility rate – 12/16/2019

Checking on the why

Joslyn Carter, LCSW | DHS Administrator  
Department of Homeless Services  
33 Beaver Street  
New York, NY 10004  
T: 212-361-7963  
F: 917-637-7482

---

**From:** Banks, Steven <banksst@dss.nyc.gov>  
**Sent:** Tuesday, December 17, 2019 11:38:44 AM  
**To:** Carter, Joslyn <JCARTER@dhs.nyc.gov>  
**Subject:** Fwd: PATH 30-day eligibility rate – 12/16/2019

Any issues here? Tx

Sent from my iPhone

Begin forwarded message:

**From:** "Shanley, Ryan" <shanleyr@dss.nyc.gov>  
**Date:** December 17, 2019 at 9:26:47 AM EST  
**To:** "Seidel, Todd" <seidelt@dss.nyc.gov>, "Roberts, Dawn" <robertsda@dss.nyc.gov>, "Snyder, Karl" <snyderk@dss.nyc.gov>, "Banks, Steven" <banksst@dss.nyc.gov>, "Murphy, Molly" <murphymolly@dss.nyc.gov>, "Carter, Joslyn" <JCARTER@dhs.nyc.gov>, "Thrun, Kevin" <KThrun@dhs.nyc.gov>, "Howe, Doreen" <DHowe@dhs.nyc.gov>, "White, Cassandra" <CWHITE@dhs.nyc.gov>, "Callhoun, Martha" <calhounm@dss.nyc.gov>, "Holm, Annette"

## Exhibit 4 (cont.)

<holma@hra.nyc.gov>, "Reckson, Molly" <RecksonM@omb.nyc.gov>, Francesco Brindisi <BrindisiF@omb.nyc.gov>, "Barclay, Donaldson" <DBARCLAY@dhs.nyc.gov>, "Chimowitz, Michael (OMB)" <ChimowitzM@omb.nyc.gov>, "Chavez, Vida" <VCDOWNES@dhs.nyc.gov>, "Gradie, Hunter" <HGradie@dhs.nyc.gov>, "French, Scott" <frenchs@dss.nyc.gov>, "Cowan, Robert" <rcowan@dhs.nyc.gov>, "Cifu, Constantina" <CCIFU@dhs.nyc.gov>, "Gomez, Greg" <gomezg@hra.nyc.gov>, "Duval, Hector" <duvath@hra.nyc.gov>, "Gelin, Rosy" <RGELIN@dhs.nyc.gov>, "Twum-Baah, Ebenecia" <ETWUMBAAH@dhs.nyc.gov>, "Garabedian, Lisa" <garabedianl@dss.nyc.gov>, "Mitchell, Kristen" <mitchellkr@dss.nyc.gov>, "Levine, Ellen" <levinee@dss.nyc.gov>, "Stevenson, Melissa" <stevensonme@dss.nyc.gov>, "Zernich, Haley" <zernichh@dss.nyc.gov>, "Small, Shaul" <smallsh@dss.nyc.gov>, Molly Park <PARKM@dhs.nyc.gov>, "Rodriguez, Iris" <IRODRIGU@dhs.nyc.gov>, "Gonzalez, Adrian" <AGonzalez@dhs.nyc.gov>  
Subject: PATH 30-day eligibility rate – 12/16/2019

The PATH 30-day eligibility rate for 12/16/2019 was 42.0%.

**Exhibit 5**

1. Navigate to the QA folder in the R:Drive and open the YY Outcomes Folder
2. Open the "PATH Case Outcomes" excel sheet
3. Click on the "Data" tab; please do not enter data on the Projections tab (main page)
4. Open internet explorer and navigate to the ireport
5. Ireport -> Start -> Management Reporting -> Intake Management Tool -> Expand and select FinalReviewProductivityRpExcel -> Double click on PATH as your intake center -> select next
6. With your excel PATH Case Outcomes sheet open, enter the date that displays in cell F17 as your parameter start and end dates -> select next and lastly, select request
7. Once the report is sent to your email, open the excel sheet and select enable editing across the top of the page
8. Place a filter across the top and deselect Add-Ons as an Application Type
9. Obtain the number of Finalized Case Outcomes (highlight down under heading) , please this number in cell I17 on the Case Outcomes sheet (total outcomes box next to the date)
10. Next, deselect all outcomes with the exception of the Eligible outcomes. Obtain the number of Finalized Case Outcomes that were coded Eligible. Place this number in cell H17 (Total YY next to the date) .
11. Open the attachment from the 30 Day Eligibility Rate email
12. With the attachment open, open the tab named "Backup Data"
13. With this tab open, scroll to the last entry. Enter these numbers on your Case Outcome Sheet in cells H16 and H17 (next to prior day rolling total)
14. Lastly, navigate back to the QA folder in the R-Drive and open subfolder, "Group Stats-Case Distribution" , Open this current weeks sheet. Obtain the number of outcomes due and allow room for holds, enter your total outcomes on the Case Outcomes Sheet in cell M6.
15. Play with numbers

Appendix A

Timeline of key events and communications, July 18, 2022 - July 21, 2022

July 18, 2022	July 19, 2022	July 20, 2022	July 21, 2022
<p><b>Four Families Arrive at PATH Before 10PM but Remain Past 4AM</b></p> <ul style="list-style-type: none"> <li>AC notifies CJ of the incident around 8:00 a.m.</li> <li>CJ texts DMWI that that “we had some families past the 4 am assignment at PATH this morning”</li> <li>By 11:30 a.m., the four families have been placed</li> <li>DHS and City Hall participate in Task Force Call regarding asylum seekers but do not discuss the PATH violations</li> </ul>	<p><b>Mayor Holds Unrelated Press Availability, and DSS Notifies Legal Aid</b></p> <ul style="list-style-type: none"> <li>DHS Deputy Commissioner Howe is alerted of an additional “pre-10” family who remained at PATH as of 4 a.m. She attempts to escalate it to AC by email, but realizes weeks later the message never sent.</li> <li>Mayor Adams holds a press availability for an unrelated DSS matter</li> <li>During the press availability, DSS Deputy Commissioner Julia Savel tells Staffer 1 that families were sleeping at PATH. DMWI’s team speaks with CJ about this in person. According to Staffer 3, Jenkins denied that families were sleeping at PATH, stating instead that the problem was increased volume creating longer wait times</li> <li>DSS calls Legal Aid and informs them of the violations</li> </ul>	<p><b>Public Reports of Violations at PATH</b></p> <ul style="list-style-type: none"> <li>NBC NEWS reports on a family who spent five nights at PATH</li> <li>Legal Aid releases a statement condemning DSS for “flout[ing] a clear statute and court settlement”</li> </ul>	<p><b>City Hall and DSS Acknowledge Violations and Legal Aid Responds</b></p> <ul style="list-style-type: none"> <li>Mayor Adams and CJ hold press conference addressing the PATH violations, and confirming four violations that took place on July 18</li> <li>Legal Aid issues press release in response to the press conference, referring to the Mayor’s comments as “misleading and problematic”</li> </ul>

AC: Administrator Carter  
 CJ: Commissioner Jenkins  
 DMWI: Deputy Mayor Williams-Isom

## Appendix B

### *Confirmed 10-to-4 Rule Violations, Summer 2022*

<b>Date of Violations</b>	<b>Number of Violations</b>	<b>Date Escalated to DHS/DSS Leadership*</b>	<b>Date Reported Publicly by DSS</b>	<b>Discussed in Report</b>
June 29, 2022	3	N/A	N/A	Section II(D)
July 3-4, 2022	3 <sup>†</sup>	N/A	N/A	Section II(D)
July 18, 2022	4	July 18, 2022	July 21, 2022	Section II(C)
July 19, 2022	1	August 2022 (day unknown)	August 18, 2022	Section II(C)
<b>TOTAL</b>	<b>11</b>			

---

\* As used here, “DHS/DSS Leadership” refers to anyone at or above the DHS Administrator.

<sup>†</sup> The three violations represent only two affected families, one of whom remained at PATH for two consecutive nights (July 2-3 and July 3-4).

**THE COUNCIL  
THE CITY OF NEW YORK**

*Appearance Card*

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition

Date: \_\_\_\_\_

(PLEASE PRINT)

Name: Steven Banks (Advisor)

Address: \_\_\_\_\_

I represent: \_\_\_\_\_

Address: \_\_\_\_\_

**THE COUNCIL  
THE CITY OF NEW YORK**

*Appearance Card*

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition

Date: \_\_\_\_\_

(PLEASE PRINT)

Name: Melanie Hartzog

Address: NY Founding

I represent: NY Founding

Address: \_\_\_\_\_

**THE COUNCIL  
THE CITY OF NEW YORK**

*Appearance Card*

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition

Date: \_\_\_\_\_

(PLEASE PRINT)

Name: AG Jones

Address: \_\_\_\_\_

I represent: NY Founding

Address: \_\_\_\_\_

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition

Date: \_\_\_\_\_

(PLEASE PRINT)

Name: Brendan McEvoy

Address: \_\_\_\_\_

I represent: 2nd District

Address: \_\_\_\_\_

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition

Date: \_\_\_\_\_

(PLEASE PRINT)

Name: Travis Smith

Address: \_\_\_\_\_

I represent: Legal Aid

Address: \_\_\_\_\_

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_

in favor  in opposition

Date: 2/4/26

(PLEASE PRINT)

Name: Touceli Komatsu

Address: \_\_\_\_\_

I represent: Self

Address: \_\_\_\_\_

Please complete this card and return to the Sergeant-at-Arms