

**New York Supreme Court**

**APPELLATE DIVISION—FIRST DEPARTMENT**

—◆◆◆—  
In the Matter of the Application of

HAWA BOUREIMA, MINKWON CENTER FOR COMMUNITY ACTION,  
MERCEDES CRUZ, ZIOA DAN GUAN, MEKSHENG KWONG,  
REYITA RIVERA, MARTHA RODRIGUEZ, TIDA KONTEH, YAN YE,  
MARIA MA, YUE FU HCAN, ANONIA CANO,

*Plaintiffs-Appellants,*

—against—

THE NEW YORK CITY HUMAN RESOURCES ADMINISTRATION  
and ROBERT DOAR as Commissioner of the New York City  
Human Resources Administration,

*Defendants-Respondents.*

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**MOTION FOR LEAVE TO FILE BRIEF FOR *AMICUS CURIAE*  
NEW YORK CITY PUBLIC ADVOCATE  
IN SUPPORT OF APPELLANTS**

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

-----X

HAWA BOUREIMA, MINKWON CENTER FOR  
COMMUNITY ACTION, MERCEDES CRUZ,  
XIAO DAN GUAN, MEKSHENG KWONG, REYITA  
RIVERA, MARTHA RODRIGUEZ, TIDA KONTEH,  
YAN YE, MARIA MA, YUE FU CHAN, ANTONIA  
CANO,

INDEX NO. 402014/09

**NOTICE OF MOTION  
FOR LEAVE TO FILE  
BRIEF AS AMICUS  
CURIAE**

*Plaintiff-Appellants,*

-against-

The New York City Human Resources Administration  
and ROBERT DOAR as Commissioner of the New York  
City Human Resources Administration,

*Defendant-Respondents.*

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PLEASE TAKE NOTICE that, upon the annexed affirmation of Jennifer Levy, dated March 20, 2014, the Public Advocate for the City of New York will move this Court at a term of the Appellate Division of the Supreme Court, First Department, at the Courthouse located at 27 Madison Avenue, New York, New York on March 30, 2015, at 10 a.m., or as soon thereafter as counsel may be heard, for an order granting leave to file a brief as *amicus curiae* in support of Plaintiff-Appellants.

Dated: March 20, 2015  
New York, N.Y.

OFFICE OF THE PUBLIC ADVOCATE

By:   
\_\_\_\_\_  
Jennifer Levy

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

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INDEX NO. 402014/09

**AFFIRMATION OF  
JENNIFER LEVY  
IN SUPPORT OF  
MOTION FOR  
LEAVE TO FILE  
BRIEF AS  
*AMICUS CURIAE***

JENNIFER LEVY, an attorney admitted to practice in the State of New York, hereby affirms under penalty of perjury:

1. I am the General Counsel in Charge of Litigation for the Public Advocate for the City of New York. I am familiar with the legal issues involved in the above-captioned action. I submit this affirmation in support of the Public Advocate's motion for leave to file the accompanying brief as *amicus curiae* in support of Plaintiff-Appellants.

2. The Public Advocate for the City of New York, Letitia James, is a citywide elected official, the immediate successor to the Mayor, and an *ex-officio* member of the New York City Council. N.Y.C. Charter (“Charter”) §§ 24, 10, 24(9)(e). The Public Advocate is charged with monitoring, investigating, and reviewing the actions of City agencies. She is also responsible for identifying systemic problems, recommending solutions, and publishing reports concerning her areas of inquiry. She has the power to introduce legislation and hold oversight hearings on legislative matters. *Id.* at §24. The Office of the Public Advocate was created to serve as a “watchdog” against the inefficient or inadequate operation of City government. *Green v. Safir*, 664 N.Y.S.2d 232 (N.Y. Sup. Ct. 1997).

3. Prior to her election as Public Advocate, Letitia James was a member of City Council representing Brooklyn’s 35<sup>th</sup> Council District in Brooklyn for two terms. She used her office to advance the cause of human rights, champion the right of immigrants to equal justice, and to promote legislation aimed at protecting the needy. She was a co-sponsor of the Local Civil Rights Restoration Act of 2005 and the Equal Access to Human Services Act of 2003, describing language access at the time of that law’s passage as the “last frontier of the civil rights movement.” Transcript of Dec.

22 Stated Council Meeting at 83-17, Local Law Bill Jacket, Local Law No. 38 [2003] of City of NY.

4. New York City's Human Resources Administration has a duty to provide the City's most vulnerable populations with the necessities of life: food, subsistence income, rent, and access to medical care. In order to do so in a way that complies with our civil rights laws, the Human Resources Administration must ensure that people of limited English proficiency have equal access to its services. This Public Advocate has an interest in ensuring that all New Yorkers have access to those essential City services.

5. The undersigned contacted both parties to the litigation and neither objected to the Public Advocate filing a brief as *amicus curiae*.

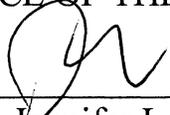
6. Lastly, because of her interest in this issue, should her motion to file the enclosed brief be granted, the Public Advocate requests leave to present her argument to the Court on the day set for oral argument. She requests five minutes before the Court.

WHEREFORE, I respectfully request that this Court enter an order (i) granting the Public Advocate, Letitia James, leave to submit its brief as *amicus curiae* in support of Plaintiff-Appellants; (ii) accepting the brief that has been filed and served along with this motion; (iii) granting the Public Advocate leave to argue before the Court on the date set for argument of the

appeal; and (iii) granting such other and further relief as this Court deems just and proper.

Dated: March 20, 2015  
New York, New York

OFFICE OF THE PUBLIC ADVOCATE

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

Jennifer Levy

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To Be Argued By:  
LETICIA JAMES

New York County Clerk's Index No. 402014/09

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## INTEREST OF AMICUS CURIAE

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22 Stated Council Meeting at 83-17, Local Law Bill Jacket, Local Law No. 38 [2003] of City of NY.

New York City’s Human Resources Administration has a duty to provide the City’s most vulnerable populations with the necessities of life: food, subsistence income, rent, and access to medical care. In order to do so in a way that complies with our civil rights laws, the Human Resources Administration must ensure that people of limited English proficiency have equal access to its services. This Public Advocate has an interest in ensuring that all New Yorkers have access to those essential City services.

### **PRELIMINARY STATEMENT**

Plaintiff-appellants challenge the dismissal of their case by the court below on summary judgment. The court below held that the Human Resource Administration’s (“HRA’s”) failure to provide adequate translation services to limited English proficient individuals could not be challenged under the Equal Access to Human Services Act (“EAHSA”). That decision was based on a determination the EAHSA does not grant a private right of action. The Court simultaneously, and without elaboration, dismissed the plaintiff-appellants’ claims under the New York City Human Rights Law (“NYCHRL”). In this appeal, plaintiff-appellants establish that they have the right to enforce their claims.

In support of plaintiffs' appeal, the Public Advocate submits that the decision below flies in the face of national efforts to ensure language access in essential government services. Further, in this State, with its obligation to care for the needy, the obligation to ensure equal access is enshrined in our constitution. Finally, in this City, with its progressive law making around civil rights issues, and its vibrant immigrant populations, the obligation is both essential from a policy perspective and enforceable under our laws.

## **ARGUMENT**

### **I. PUBLIC POLICY FAVORS THE IMPLEMENTATION OF LANGUAGE ACCESS POLICIES FOR PEOPLE WITH LIMITED ENGLISH PROFICIENCY**

There is a strong public interest in preventing discrimination based on national origin and increasing language access for people with limited English proficiency. That interest is reflected in federal, state and city legislation. And, in New York in particular, there has been a longstanding policy enshrined in our State Constitution, of providing for the needy, regardless of immigration status. In New York City, these policies penetrate to the very fabric of our City because of its large immigrant population and its unchanged status as the country's gateway for new Americans. Failing to ensure people in need are able to access basic services is just plain bad policy.

**a. The National Perspective**

Title VI of the Civil Rights Act of 1964 and its related regulations forbid discrimination on the basis of national origin. 42 U.S.C. § 2000d ; 67 Fed. Reg. 41,455, 41,457 (June 18, 2002). Executive Order 13166, the LEP Executive Order, requires federal agencies to identify services most likely to be utilized by limited English proficient persons and create systems to provide them with meaningful access. 65 Fed. Reg. 50121 (Aug. 11, 2000). Recipients of federal funding, including state and local governments, must take reasonable steps to ensure that limited English proficiency persons may benefit from federally funded programming. *Id.*

As the number of limited English proficient persons in the United States has risen to over 25 million, many city and state agencies have responded by devising language access policies for limited English proficient residents.<sup>1</sup> The cities of Oakland, San Francisco and Washington D.C. have all implemented free, all-inclusive language access programs. Comm. on Gen. Welfare at 5, Local Law Bill Jacket, Local Law No. 38 [2003] of City of NY.

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<sup>1</sup> See *Language Access Policy Brief*, Local Progress (last visited Mar. 20, 2015) <http://localprogress.org/wp-content/uploads/2013/09/languageaccess-ID-31659.pdf>.

**b. New York State and the Obligation to Care for the Needy**

The State of New York has long recognized the importance of providing care and access to resources for needy New Yorkers. Section 1 of Article 17 of the New York State Constitution reads, in part, “[T]he aid, care and support of the needy are public concerns, and shall be provided by the state, and by such of its subdivisions.” NY CLS Const. Art. XVII, § 1. The amendment was proposed by Mayor Fiorello H. LaGuardia, passed by the New York State Legislature and approved by voters in 1938.<sup>2</sup> Upon review by the Court of Appeals in 1977, state aid for in need populations was recognized as a “fundamental part of the social contract.”<sup>3</sup>

Article 17 imposes an affirmative duty upon the state to provide aid for the needy. *Bernstein v. Toia*, 43 N.Y.2d 437 (N.Y. 1977); *Tucker v. Toia*, 43 N.Y.2d 1 (N.Y. 1977). While the extent of the aid, the recipients of the aid, and its distribution is largely left to the discretion of the legislature, *Mark G. v. Sabol*, 247 A.D.2d 15 (N.Y. App. Div. 1st Dep't 1998), where the legislature excludes groups based on their national origin, the Court of Appeals has found those distinctions to be unconstitutional. *Aliessa v. Novello*, 96 N.Y.2d 418 (N.Y. 2001). In *Aliessa*, the Court found that denying Medicaid to immigrants who were Permanently Residing

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<sup>2</sup> David Stout, *Federal Welfare Shift Spotlights Unusual Amendment to State Constitution*, N.Y. Times, Sep. 8, 1996 at A41.

<sup>3</sup> *Id.*

Under Color of Law violated the Equal Protection Clause of the New York State Constitution because of New York's constitutional mandate to care for the needy. The EAHSA simply codifies what is, in fact, an obligation derived from our constitution.

**c. New York City and the EAHSA**

The EAHSA was introduced in 2002 in response to the settlement in a class action lawsuit that was brought against the Human Resources Administration alleging a failure to provide adequate translation services for food stamps. Comm. on Gen. Welfare at 5, Local Law Bill Jacket, Local Law No. 38 [2003] of City of NY. According to an internal survey conducted for the City Council, even after the implementation of the settlement, “31% of non-English speakers in a random sample of recipients were not receiving translated forms and notices when they applied for food stamps at food stamp offices. Likewise, 56% of non-English speakers were not receiving translated notices when they sought to apply for food stamps at job centers.” *Id.* at p. 5, ft. 16.

In a separate survey by the New York State Office of Temporary and Disability Assistance “11% of food stamp recipients said that they had been told in the previous six months by an HRA employee that interpreter services were not available at their HRA office; 15% said that they had been told within the last six

months by an HRA employee to bring their own interpreter to a food stamp location.” *Id.* In the settlement, the City agreed to improve translation services by translating basic forms into at least six core languages, and by providing more translators at locations that served significant limited English Proficient populations; however, the provisions of the settlement were to sunset after 3 years. *Id.* p.5.

The purpose of the bill, as laid out in the committee report, was “to expand upon recent improvements in the manner in which HRA serves [limited English Proficient] clients and [to] ensure that those improvements are permanent.” *Id.* p.6. According to then-Council Member John Liu, who introduced the bill, “for a long time, a large percentage of New Yorkers have been excluded from City services and benefits simply because of their lack of ability to speak English fluently. That has to stop.” Transcript of Dec. 12 Comm. on Gen. Welfare Meeting at 5, Local Law Bill Jacket, Local Law No. 38 [2003] of City of NY.

**d. The Failure to Enforce the EAHSA Would Harm a Significant Number of New Yorkers, Including Children and the Elderly**

Failing to enforce the provisions of the EAHSA would make access to vital social services difficult or impossible for millions of low English proficiency New

Yorkers.<sup>4</sup> According to the most recent U.S. Census household survey, 23.2% of New Yorkers over the age of five speak English “less than very well,” meaning over 1.79 million residents of New York need some type of translation assistance.<sup>5</sup> That percentage is doubled when the examined population is foreign-born; 49.3% of foreign-born New Yorkers speak English less than “very well.”<sup>6</sup>

Further, in New York City, immigrants with limited English proficiency are 20% more likely to be impoverished, as compared to their English-speaking counterparts.<sup>7</sup> In New York City, children are particularly vulnerable. According to the most recent Census data, an astonishing 29.4% of children live in poverty.<sup>8</sup> Even more important for the instant case, over 37% of children utilize some form

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<sup>4</sup> Language services are still lagging behind what is required by the EAHSA. *See Still Lost in Translation*, New York Immigration Coalition, 3 (July 2010), [http://www.thenyic.org/sites/default/files/Still\\_Lost\\_in\\_Translation\\_7\\_7\\_10\\_0.pdf](http://www.thenyic.org/sites/default/files/Still_Lost_in_Translation_7_7_10_0.pdf) (where 44% of survey participants did not receive any communication assistance from the HRA office they visited.).

<sup>5</sup> *2009-2013 American Community Survey 5-Year Estimates*. American Fact Finder (last visited Mar. 19, 2015) [http://factfinder.census.gov/bkmk/cf/1.0/en/place/New\\_York\\_city,\\_New\\_York/ORIGINS\\_AND\\_LANGUAGE/FOREIGN\\_BORN](http://factfinder.census.gov/bkmk/cf/1.0/en/place/New_York_city,_New_York/ORIGINS_AND_LANGUAGE/FOREIGN_BORN) [hereinafter, American Community Survey].

<sup>6</sup> *Id.*

<sup>7</sup> 39% of LEP immigrants are on welfare, compared to 19% of fluent immigrants. *See Randy Capps, et. al., How are Immigrants Faring After Welfare Reform?: Preliminary Evidence from Los Angeles and New York City*, The Urban Institute (March 4, 2002) [http://www.urban.org/uploadedpdf/410426\\_final\\_report.pdf](http://www.urban.org/uploadedpdf/410426_final_report.pdf)

<sup>8</sup> American Community Survey.

of public assistance, one type of assistance that the city's Human Resources Administration provides.<sup>9</sup>

Elderly immigrants are also vulnerable to the consequences of language barriers due to limited English proficiency. Sixty-five percent of all senior New Yorkers live in poverty, with older immigrants comprising nearly half of this population.<sup>10</sup> Nearly two-thirds of older immigrants are limited English proficient and experience difficulty locating and accessing support programs.<sup>11</sup>

It is not in our City's interest to further impoverish immigrant families by denying them access to basic services. Children experiencing the stress of life in poverty have a more difficult time in the school environment, which imposes the need for additional resources on our education system. Seniors who can't afford their rent are forced into court, which drains unnecessary resources from the court system. Parents without food are left scrambling to feed their children. In this City in particular, it is essential to our social fabric to ensure equal access.

## **II. THE FAILURE OF THE HUMAN RESOURCES ADMINISTRATION TO PROVIDE LANGUAGE ACCESS SERVICES IS A VIOLATION OF THE NEW YORK CITY HUMAN RIGHTS LAW**

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<sup>9</sup> *Id.*

<sup>10</sup> Christian Gonzalez-Rivera, *Taking Care of New York City's Graying Immigrants*, Next City (July 25, 2013), <http://nextcity.org/daily/entry/op-ed-taking-care-of-new-york-citys-graying-immigrants>

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

The NYCHRL is intended to be applied more broadly than any equivalent federal or state civil rights legislation. There is no doubt that HRA is subject to its mandates or that the law gives rise to disparate impact claims. It is also clear that the failure to provide language access constitutes national origin discrimination. And, finally, the plaintiff-appellants have stated a *prima facie* case of disparate impact discrimination. The Court’s decision below should be reversed.

**a. The NYCHRL Must be Interpreted Broadly**

Title 8 of the Administrative Code of the City of New York, the New York City Human Rights Law (“NYCHRL”), was created by the New York City Council in order to address prejudice, intolerance, bigotry, discrimination and bias-related violence in New York City. N.Y.C. Admin. Code §8-101. Under the NYCHRL, discriminatory practices based upon a person’s actual or perceived difference of race, color, creed, national origin, alienage or citizenship status, gender, sexual orientation, disability, marital status and partnership status are unlawful. *Id.* at §8-102. The areas covered by the NYCHRL include employment, housing, public accommodations, retaliation, bias-based harassment and bias-based profiling by law enforcement. The NYCHRL also creates a clear private right of action for “any person claiming to be aggrieved by an unlawful discriminatory practice as defined in chapter one of this title.” *Id.* at §8-502(a).

In response to concerns that state courts were interpreting the NYCHRL as a “carbon copy” of federal and state human rights laws, the City Council enacted the Local Civil Rights Restoration Act of 2005 (“Restoration Act”). The Restoration Act makes it clear that federal and state human rights laws form a “floor” beneath which the NYCHRL cannot fall. This provision requires judges to give the law a broad and independent interpretation and “take its protections to the furthest reaches of what is constitutionally permissible.”<sup>1</sup> N.Y.C. Local Law No. 85 of 2005 sec. 1 (Oct. 3, 2005). In fact, based on the revisions of the Restoration Act, the “the City [Human Rights Law] now explicitly requires an independent liberal construction analysis in all circumstances.” *Williams v. New York City Hous. Auth.*, 61 A.D.3d 62, 66 (N.Y. App. Div. 1st Dep’t 2009).

**b. HRA’s Actions Are Subject to Challenge Under the NYCHRL**

The broad remedial intent of the NYCHRL provides the plaintiff-appellants with access to the protections available against any discrimination by any place or provider of public accommodations. Under the NYCHRL, it is unlawful for “any person, being the owner, lessor, proprietor, manager, superintendent, agent or employee of any place or provider of public accommodation . . . directly or indirectly, to refuse, withhold from or deny any of the accommodations, advantages, facilities or privileges thereof . . .” N.Y.C. Admin. Code § 8-107(4). As defined by the statute, “governmental bodies or agencies” are persons. *Id.* at §

8-102. Under the statute, providers of public accommodation include any entity that offers “goods, services, facilities, accommodations, advantages or privileges of any kind.” *Id.* at § 8-102(9). State courts have found that the Human Resources Administration is covered by the New York City Human Rights Law. *See Doe v. City of New York*, 42 Misc.3d 502, 976 N.Y.S.2d 360 (Sup. Ct. N.Y. County 2013).

**c. Plaintiff-Appellants Have Stated a Disparate Impact Claim Under the NYCHRL**

HRA’s failure to provide interpretation and translation services to people with limited English proficiency, as required by the EAHSA, gives rise to a disparate impact claim of discrimination under the NYCHRL. N.Y.C. Admin. Code § 8-107(17). A disparate impact occurs when a “facially neutral practice has a disproportionate impact on a protected class.” *Emmer v Trustees of Columbia Univ. in the City of N.Y.*, 2014 NY Slip Op 31200 (U) (N.Y. Sup. Ct. Apr. 24, 2014). In this case, all plaintiffs fall within the protected “national origin” class, which under the broad definition of the NYCHRL includes ancestry. N.Y.C. Admin. Code § 8-102(7).

Further, under established Supreme Court precedent, “a nexus exists between language and national origin” and the denial of services based on English proficiency constitutes discrimination based on national origin. *See Sandoval v.*

*Hagan*, 197 F.3d 484 (11th Cir. 1999), *rev'd sub nom Alexander v. Sandoval on other grounds*, 532 U.S. 275 (2001). *See also Lau v. Nichols*, 414 U.S. 563 (1971).

HRA's failure to provide translation resources appears facially neutral, as there is no direct targeting of limited English proficient New Yorkers. However, as limited English proficient individuals are exactly those who utilize the help of interpreters, translators and trained bilingual employees, the denial of these services will have a disparate impact on members of the protected class. Ultimately, this satisfies the first prong of a disparate impact claim under the NYCHRL that the current practices have a disproportionate impact on a class of protected persons.

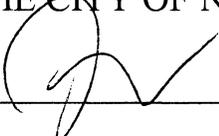
### **CONCLUSION**

For all of the above reasons, plaintiff-appellants appeal should be granted and the decision below reversed.

Dated: March 20, 2015  
New York, NY

Respectfully submitted,

OFFICE OF THE PUBLIC ADVOCATE  
FOR THE CITY OF NEW YORK

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

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