

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

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|--|---|---------------------------------|
| William Boykin, <i>et al.</i>  | ) | Civil Action No. 10-01790 (PLF) |
|  | ) |                                 |
| Homeless persons living on<br>the streets of the District of Columbia  | ) |                                 |
|  | ) |                                 |
| PLAINTIFFS   | ) |                                 |
| vs.  | ) |                                 |
|  | ) |                                 |
| Adrian Fenty,<br>in his Individual and Official Capacities<br>1350 Pennsylvania Avenue, NW<br>Washington, DC 20004 | ) |                                 |
|  | ) |                                 |
| DEFENDANT  | ) |                                 |

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**PLAINTIFFS’ REPLY TO DEFENDANT’S OPPOSITION TO  
INJUNCTION REGARDING THE CLOSURE OF LA CASA SHELTER**

**INTRODUCTION**

Plaintiffs brought this action pursuant to The Americans With Disabilities Act, 42 U.S.C. §§ 12101 et seq., 12131, and 12132 (“ADA”), The Fair Housing Act, 42 U.S.C. §§ 3601-3631 and 3604(f)(1)(“FHA”) and the District of Columbia Human Rights Act, D.C. Official Code §§ 2-1401.01 et seq. and 2-1402.21(a)(4) (place of residence discrimination) (“DCHRA”) in response to the closing for La Casa Shelter in Columbia Heights. On November 29, 2010, Defendant filed an opposition to Plaintiffs’ motion for injunctive and declaratory relief. Plaintiffs’ reply to this opposition and evidence in support is provided herewith.

The evidence submitted includes information gathered on behalf of Plaintiffs, including photographs of structures that have been built to facilitate make-shift housing in Columbia Heights since the closing of La Casa. Evidence is also included of census

tracts regarding the racial makeup and poverty indicators in former shelter areas (Wards 1 and 2) and existing shelter areas (Wards 5 and 8). In addition, Affidavits have been collected reflecting the current living circumstances of former La Casa residents. This information was obtained as a result of interviewing homeless persons that are former La Casa residents. This evidence reveals inaccessibility of mental and other health care services, and growing harm incurred by former La Casa residents due to the shelter's closing, with increases in physical and psychological harm. These interviews and other evidence was acquired in a variety of settings, including but not limited to alleys, parks, and other public spaces in the Columbia Heights and Mount Pleasant area, breakfast and food distribution places in the former La Casa area, shelter lines, bus lines and other places providing services to the homeless.

**I. THE PATTERN AND PRACTICE EMPLOYED BY DC OFFICIALS IN CLOSING ITS SHELTERS IS REPUGNANT TO THE GOALS OF THE TEN YEAR PLAN TO END HOMELESSNESS**

**A. THE PSH SHOULD NOT BE PITTED AGAINST THE INTERIM NEED FOR LOW BARRIER SHELTER IN COMMUNITIES THROUGHOUT THE DISTRICT, INCLUDING COLUMBIA HEIGHTS**

In contradiction to the repeated assertions made by District in the pleadings and accompanying declaration filed with the District's opposition on November 29, 2010, the District, in separate pleadings, has admitted that it cannot afford to house all that are needed to be housed at the current time (see §B directly below). What's more, recent statistics clearly reflect a growing and unmet need for shelter which cannot be compensated for or matched in the short-term by the PSH program. Recent reports indicate continued increases in the numbers of homeless persons in DC. And while these numbers have increased, the availability of shelter space and permanent supportive

housing has remained stagnant and does not begin to address the rising need. See “Community partnership for the prevention of homelessness” <http://www.community-partnership.org>. According to a Metropolitan Area Counsel of Government’s May report, the number of unsheltered homeless has increased by between 5-10% since last year. We believe the number to be greater. Other reports and anecdotal accounts not only confirm this statistical picture, but also reveal circumstances more injurious to the health and safety of greater numbers of homeless persons than are indicated in the report. Recent newspaper accounts report overcrowding at District’s one family shelter, leaving some families with children either on the street or living in uninhabitable conditions. Men’s shelters paint a similar picture.

**B. THE DISTRICT’S OWN PLEADINGS REFLECT THE NEED FOR ONGOING LOW BARRIER SHELTER IN THE INTERIM IN COLUMBIA HEIGHTS AREA DUE TO A SCARCITY OF AVAILABLE HOUSING FOR THE MENTALLY DISABLED**

In support of its motion to vacate a December 12, 2003 Consent Order and to dismiss action for violating the Erwin Act by failing to provide community-based alternatives to institutionalizing the mentally ill, the District admitted recently that housing 70% of its consumers in the mental health system is currently “impossible to achieve” because that would unrealistically require “an inexhaustible supply of available, low-cost housing” which is currently lacking in the District. The District blatantly states here that it “cannot defy economic reality to create additional housing on such a massive basis as to comply fully” with the court’s criterion for lifting oversight. See Pl. Ex. 5, Excerpts, Appendix – Discussion of exit criteria at p. 7, from Civil Action No. 74-385 (TFH), Memorandum in support of motion to dismiss, filed Sept. 4, 2009. This admission, combined with the undeniable realization of the numbers of homeless now

attempting to gain access to overcrowded shelters in the District, together negate the assertion that PSH is a feasible short-term strategy to eradicate the need for low barrier shelter, including for those suffering from mental health disabilities.

C. **THE CLOSING OF LOW BARRIER SHELTERS WHILE THE ACUTE NEED STILL EXISTS IS IN CONFLICT WITH THE GOALS ENVISIONED BY THE DRAFTERS OF HOMELESS SERVICES REFORM ACT (“HSRA”) TO END HOMELESSNESS IN THE DISTRICT BY 2014**

Since the closing of the La Casa Shelter, the former residents have been deprived of the ability to reasonably access shelter, forced to live on the street or attempt to stay at overcrowded shelters in some of the most dangerous and isolated parts of the city. (Pl. Ex. 2 in its entirety, Dec. of former La Casa residents) The closing of low barrier shelters - while the acute need still exists - is in conflict with the goals envisioned by the drafters of Homeless Services Reform Act (“HSRA”) to end homelessness in the District by 2014.

The HSRA, D.C. Code § 4-751 *et seq*, was passed in 2005. The purpose of the Act was “to reaffirm the District of Columbia’s commitment to addressing the problem of homelessness.” Homeless Services Reform Act of 2005, D.C. Law 16-35 (2005). The Act was introduced as part of then Mayor Anthony Williams’ plan entitled “Homeless No More: Strategic Plan for Ending Homelessness in Washington, D.C. by 2014” (“Mayor’s Plan”). *Homeless No More: A Strategy for Ending Homelessness in Washington, D.C. by 2014* (Sep. 2004), available at [http://ich.dc.gov/ich/lib/ich/pdf/homeless\\_no\\_more\\_final\\_v1.pdf](http://ich.dc.gov/ich/lib/ich/pdf/homeless_no_more_final_v1.pdf). The stated vision of the Mayor’s Plan was “to improve the quality of life for all residents of the District of

Columbia by preventing and ending homelessness within ten years.” *Id.* at 2. The

Mayor’s Plan stated:

When there are no more men and women living in the streets of Washington, D.C., when every chronically homeless person has been housed, when every person or family facing a housing crisis can find immediate help to stay in their home, and when every person or family that does lose their home can find a decent place to stay for a short while – in neighborhoods all across the city – then homelessness as we now know it will be ended and the objectives of this plan will have been achieved.

*Id.* at 5. The Mayor’s Policy Academy Team recommended a twofold action of “making substantial, immediate investments to improve the existing services for homeless people . . . while launching long-term strategies designed to end homelessness.” *Id.* at 2. One of the stated goals of the Plan was “meeting immediate shelter and housing needs,” by **building new facilities and creating better shelters** and supportive housing.” *Id.* at 18. (emphasis added). The Act was thus intended as an instrument by which to realize the objectives of the Mayor’s Plan,<sup>1</sup> particularly to end homelessness and provide “shelter to meet the housing needs of individuals and families who are homeless.” D.C. Code § 4.753.01(b)(3)A. The HSRA included both short-term and long-term strategies to end homelessness. One of the short-term strategies included in the Act was severe weather shelter, **low barrier shelter**, and temporary shelter. *Id.* (emphasis added). A long-term strategy outlined in the HSRA was to provide supportive housing to meet the long-term housing needs of homeless individuals and families. *Id.* § 4.753.01(4).

So, contrary to Defendant’s repeated assertions, PSH was never intended to be used as an excuse for displacing the homeless from the low barrier shelters before the

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<sup>1</sup> The Mayor’s plan lists finalizing and passing the HSRA as one of the strategies to realize the goal of ending homelessness by 2014. *Id.* at 6.

needs of the inhabitants have been met, nor was this program intended to hurriedly displace the homeless from the most affluent parts of the District to parts of the city which lack accompanying resources or employment opportunities: PSH programs were never intended to be mutually exclusive with the existence of low barrier shelters. The evidence submitted herewith and of record clearly shows the need for both PSH and low barrier shelter throughout the city, and the lack of feasibility to realistically replace the need for low barrier shelter with PSH under the current prevailing economic conditions.

## **II. THE ONGOING PATTERN AND PRACTICE OF DISPLACING THE MOST VULNERABLE POPULATION TO THE POOREST WARDS IN THE CITY CLEARLY VIOLATES THE ADA**

The evidence of record shows that Plaintiffs have participated in and attempt to continue to participate in mental health and other programs established for the homeless in Columbia Heights (Herman Pedro) and nearby Mount Pleasant (Neighbors Consejo). The evidence also shows that Plaintiffs are now forced to choose between sleeping on the streets in the areas from which they have been displaced, or walking long distances in order to attempt to continue receiving mental health and other services provided in the Columbia Heights/Mt. Pleasant area. See Pl. Ex. 1, 2, 4.

The Supreme Court, in *Olmstead v. L.C.*, 527 U.S. 581 (1999), unambiguously held that the state has an obligation to administer services to those with diverse mental disabilities with an even hand. The reasons for this requirement are clearly stated in the ADA, since “individuals with disabilities continually encounter various forms of discrimination, including outright intentional exclusion... failure to make modifications to existing facilities and practices,... [and] **segregation**...” *Id.* at 589 citing 42 U.S.C. §§ 12101(a)(2), (3), (5) (emphasis added). What’s more, the ADA defines disability with

respect to an individual as a physical or mental impairment that substantially limits one or more of the major life activities of such individual... or being regarded as having such an impairment § 12102(2). Title II's definition states qualified individuals with disabilities as

an individual with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirement for the receipt of services or the participation in programs or activities provided by a public entity.

§ 12131(2). And, according to the Supreme Court, the preamble to the Title II regulations defines "the most integrated setting" appropriate to the needs of qualified individuals with disabilities to mean a "setting that enables individuals with disabilities to interact with non-disabled persons to the fullest extent possible." *Olmstead* at 592. The court in *Olmstead* also sought assurance against a state's "unjustified isolation of individuals with disabilities." *Olmstead* at 591. The District is in violation of the ADA in view of the standards clearly set forth by the Supreme Court. The District by its actions has segregated the disabled population by removing low barrier shelter from places where services exist, to places with the least services available.

Discrimination necessarily requires uneven treatment of similarly situated individuals. According to the Supreme Court,

Congress explicitly identified unjustified segregation of persons with disabilities as a form of discrimination. (See § 12101(a)(2) ("historically society has tended to isolate and segregate individuals with disabilities, and, despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem.") § 12101(a)(5).

*Olmstead* at 588, 589. The tendency of uneven treatment is clearly evident in the District's treatment of Plaintiffs and former La Casa residents. In this case, individuals with mental and physical disabilities have been displaced from their communities, placed in parts of town that are foreign to them, wrought with language barriers, and which areas have the least services for addressing their mental and physical disabilities, and which areas offer little or no opportunities for work or proper nourishment. Plaintiffs and former La Casa residents are indigent and must now walk for miles to reach mental health and other services crucial to their wellbeing. (see declarations....).

### **III. RESTORING LOW BARRIER SHELTER IN THE COLUMBIA HEIGHTS AREA WOULD NOT FUNDAMENTALLY ALTER THE NATURE OF THE DISTRICT'S SERVICES, PROGRAMS OR ACTIVITIES**

The evidence of record clearly shows that effective mental health services serving the plaintiffs have been soundly established in the Columbia Heights area from which Plaintiffs have been displaced. The District has readily admitted this in its pleadings in support of its motion to vacate a December 12, 2003 Consent Order and to dismiss action for violating the Erwin Act by failing to provide community based alternatives to institutionalizing the mentally ill. See Decl. of Stephen T. Baron, Director of DMH, at pages 9-10 in Civil Action No. 74-385 (TFH), Memorandum in support of motion to dismiss, filed Sept. 4, 2009 (Excerpts provided as Pl. Ex. 5).

In FY 08, DMH awarded a contract to Catholic Charities at Hermano Pedro Day Program, located in the Columbia Heights area of the District, to increase services to homeless individuals. As required by Exit Criteria 13 and 16, DMH memorialized its strategy for serving the homeless and mentally ill in a plan, which was approved by both the Court Monitor and the Dixon plaintiffs' counsel. As a result of all of these services, exit Criteria 13 and 16 relating to homeless services have been moved to inactive status.

Former La Casa residents include a significant population of Hispanic men (see Pl. Ex. 2; see also Pl. ex. 4, excerpts from State of Latinos in DC). Columbia Heights and the general area of north Ward 1/south Ward 4 is well known to host a thriving Hispanic community, offering services which overcome language barriers that former La Casa residents now must face upon their displacement to Wards 5 and 8. What's more, the job opportunities provided in Ward 1 to and the surrounding area are lacking in the areas that former La Casa residents are now forced to live. The displacement of the already marginalized homeless Hispanic population that had stayed at La Casa, and which had found work in their community, undermines their efforts for self-determination. Pl. Ex. 4.

With these facts in mind, the District cannot in good conscience assert that restoring low barrier shelter to Columbia Heights would fundamentally alter the nature of the District's services, programs or activities. The services and job opportunities once made easily accessible to those with mental and other disabilities are now far from the remaining low barrier shelters. By the District's own admission, Columbia Heights has served as a hub for mental health services, including but not limited to provision to the Latino population which formerly resided at La Casa. Pl Ex. 5. Returning shelter to the community where it was recently removed would therefore not fundamentally alter the state's activity, but would rather be in keeping with the spirit and design of the Mayor's Ten Year Plan to End Homelessness.

Plaintiffs challenge both the authority and expertise of Fred Swan in his blanket assertions that reopening low barrier shelter in Ward 1 is not economically feasible. See Swan Dec. filed 11-29-10. Plaintiffs challenge Mr. Swan's unfounded assertions that the

need for low barrier shelter has been satisfied by the PSH program. Mr. Swan has neither the professional capacity nor the credentials for making such blanket statements, and has provided no legally sufficient documentation for his assertions.

#### **IV. THE ONGOING PATTERN AND PRACTICE OF DISPLACING THE MOST VULNERABLE POPULATION TO THE POOREST WARDS IN THE CITY CLEARLY VIOLATES THE FHA**

##### **A. RESIDENCY REQUIREMENTS ARE SATISFIED BY FORMER LA CASA RESIDENTS**

Courts have held that the FHA does not require a dwelling to be a permanent residence. To this end, many courts have held homeless shelters are covered by the FHA. *See Turning Point v. City of Caldwell*, 74 F.3d 941 (9<sup>th</sup> Cir. 1996) (holding homeless shelter covered by FHA); *Woods v. Foster*, 884 F. Supp. 1169, 1174 (N.D. Ill. 1995) (homeless shelter for women and their children covered by FHA); *Vilegas v. Sandy Farms, Inc.*, 929 F. Supp. 1324, 1327 (D.Or. 1996) (housing for migrant farm workers covered by FHA). In consideration of this issue, courts draw a distinction between persons who expect to return to a location as opposed to transient guests such as persons staying at a hotel. The general analysis simply considers whether a person intends to return to a location as distinguished from one of temporary sojourn or transient visit. *United States v. Hughes Memorial House*, 396 F. Supp. 544, 548-49 (W.D. Va. 1975).

The evidence of record supports the conclusion that Plaintiffs had stayed at La Casa for extended periods of time and had expected to return for future nights. The record also clearly shows that Plaintiffs and other former residents have routinely received supportive services within three blocks of La Casa. Pl. Ex. 2. Defendant's argument that La Casa Shelter is somehow outside the ambit of the FHA lacks merit and any factual support.

##### **B. STATISTICAL EVIDENCE CLEARLY REVEALS A DISPARATE IMPACT ON VULNERABLE AND MINORITY POPULATIONS IN THE DISTRICT**

Contrary to defendant's assertions, statistical evidence clearly reveals a pattern of disparate impact on vulnerable and minority populations in the District. A comparison of statistics based on census tracts provides an astounding picture of race and income disparities between the places where shelters have closed, and where they now remain.

Census track 27.01 in Ward 1, where La Casa residents formerly resided, comprises 32% Blacks, 32% Whites, 28% Hispanics, 17% poverty rate and 5.9% unemployment rate. Pl. Ex. 3, pages 5-7.

Census track 1 is representative of Ward 2, where low barrier shelter had been removed prior to the closing of La Casa, and it comprises 4.8% Blacks, 86% Whites, 4.1% Hispanics, 5.2% poverty rate, and 1.9% unemployment rate. Pl. Ex. 3, pages 8-10. Census track 51, also in Ward 2, comprises 25% Blacks, 59% Whites, 13% Hispanics, 9.4% poverty rate, and 4.3% unemployment rate. Pl. Ex. 3, pages 11-14.

In stark contrast, census track 17.04, where the 801 Shelter is located in Ward 8, comprises 99% Blacks, 0% Whites, 0.2% Hispanics, 63% poverty rate and 50% unemployment rate. Pl. Ex. 3, pages 15-17.

Census tracks for the Ward 5 shelters were not determined by Plaintiffs at the time of filing, but Ward 5 comprises 86% Black, 11% White, 1.4% Hispanic, 20% poverty rate, 15% unemployment rate according to the 2000 Census. Pl. Ex. 3, pages 18-20.

The homeless, which by the District's own admission comprises a larger percentage of mentally disabled, are forced now to live in discrete pockets of Wards 5 and 8, significantly concentrating this disabled and predominantly minority population in

the poorest areas of the city. Contrary to Defendant's allegations, these statistics clearly show the systematic removal of a population that is over 80% minority, and largely disabled, from wards highest in Caucasian population, highest in income, and lowest in poverty, to wards which are highest in minority population, and which areas have the highest illiteracy rates, as well as the highest incarceration, unemployment and high school drop-out rates. The forced relocation of the poor and the disabled to poor, predominantly African American parts of the District from more affluent, predominantly Caucasian parts of the city is a form of residence discrimination, and results in the exacerbating segregation of the disabled and minority population of the District. Contrary to the District's assertions, a clear pattern of state sponsored segregation of a predominantly minority, disabled population clearly exists, in violation of the FHA, ADA and DCHRA.

**V. THE DISRUPTION OF ACCESSIBLE SERVICES FOR THE DISABLED VIOLATES THE HSRA**

The HSRA provides that an administrative hearing be made available to a client or representative thereof who wishes to challenge certain decisions. D.C. Code § 4-754.41(a). A client or representative may request a hearing to obtain any legally available and practicable remedy for an alleged violation of the provider standards listed in §§ 4-754.21-4-754.25 or the client rights listed in §§ 4-754.21-4.754.12, including the denial of a request by an individual with a disability for a reasonable accommodation or modification of policies or practices. DC Code § 4-754.41(b). And while this language does not expressly grant a client a right to an administrative hearing to challenge a decision by a provider of shelter services to terminate those services, subsection (b)(3) undoubtedly allows a client to have a hearing to obtain a remedy if any provider of

services, including a shelter, violates either the standards for providers established in §§ 4-751.21 through 4-754.25, or the client rights established in §§ 4-754.11 and 4-754.12.

The Department of Human Services (DHS), as the Mayor’s designee, must “offer the client or client representative an opportunity for an administrative review by the Department of the decision that is the subject of the fair hearing request.” The provisions of the Act leave no doubt about the Council’s intent that client that is discharged from a shelter has a right to a hearing to review the shelter’s decision to terminate its services. § 4-754.11. The fair hearing provision contains an express recognition of the right to a fair hearing proceeding (§ 4-754.41(d)), and recipients of shelter and supportive housing, while being excluded from the hearing right granted by § 743.41(b)(2), are given the right to a stay pending completion of a fair hearing proceeding.

The Act expressly provides for a client’s right to a hearing DC Code §§ 4-754.41(b)(1) and 4-754.42(d)(2)(D)(v). And, by providing a stay of the termination of shelter services pending the outcome of fair hearing proceedings, the Act implicitly provides that such proceedings must be available in shelter termination cases. See §§ 4-754.11 and 754.41(d). What’s more, HSRA explicitly requires DHS to reinstate a client’s access to the services received prior to the issuance of the order, pending the outcome of a hearing pursuant to §§ 4-754.41 and 4-754.42. DC Code § 4-754.38(e). Accord *Paschall v. District of Columbia Dep’t of Health*, 871 A.2d 463 (D.C. 2005).

**VI. THE PATTERN OF DISPLACEMENT UNDERMINES SELF-DETERMINATION AND VIOLATES THE HUMAN RIGHTS TREATIES AND RESOLUTIONS OF WHICH DC AND THE US ARE SIGNATORIES**

The District’s goal of ending homelessness is not unique to D.C. The international community recognized the right to housing as early as 1948 in the Universal Declaration of Human Rights<sup>2</sup> and later codified the right in the International Covenant on Economic, Social and Cultural Rights in 1967.<sup>3</sup> In 1976, the international community came together in the United Nations conference “Habitat: the United Nations Conference on Human Settlements” where the international community declared its commitment to “adopting bold, meaningful and effective human settlement policies and spatial planning strategies realistically adapted to local conditions.”<sup>4</sup> Following that conference was the 1996 Istanbul Declaration and the accompanying “Habitat Agenda” signed by 177 countries, including the United States. The signatories of the Habitat Agenda declared their commitment:

[T]o the full and progressive realization of the right to adequate housing, as provided for in international instruments. In this context, we recognize an obligation by Governments to enable people to obtain shelter and to protect and improve dwellings and neighborhoods.

The Habitat Agenda Goals and Principles, Commitments and the Global Plan of Action, Chapter 1, Paragraph 39, *available at* [http://www.unhabitat.org/downloads/docs/1176\\_6455\\_The\\_Habitat\\_Agenda.pdf](http://www.unhabitat.org/downloads/docs/1176_6455_The_Habitat_Agenda.pdf). What was envisioned in the HSRA – to end homelessness in the District by 2014 – therefore reflects the vision of the international community in actualizing the right to housing at national *and* local levels. Moreover, the approach taken by the HSRA, in particular, the

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<sup>2</sup> *Universal Declaration of Human Rights*, G.A. res. 217A (III) art. 25, U.N. Doc A/810 at 71 (1948), *available at* <http://www.un.org/en/documents/udhr/index.shtml>.

<sup>3</sup> International Covenant on Economic, Social and Cultural Rights art. 11(1), Dec. 16, 1966, 993 U.N.T.S. 3, 4-5 [hereinafter ICESCR], *available at* <http://www2.ohchr.org/english/law/cescr.htm>

<sup>4</sup> The Vancouver Declaration on Human Settlements and the Vancouver Action Plan, (paragraph I.1.(a)).

inclusion of both short- and long-term strategies towards ending homelessness, parallels that of the progressive realization of the right to housing required under international human rights law.

In 2008, the D.C. City Council declared D.C. a Human Rights City. In the Resolution, the City Council declared its intention to use a human rights framework to “assist in identifying the issues and inform the actions in our DC communities, for meaningful, positive economic and social change”, with the ultimate purpose being the realization of goals such as “sustainable development.” The Resolution is evidence of the District’s commitment to incorporate international human rights into its decision-making framework. Moreover, the Resolution, together with the HSRA, illustrate the District’s commitment to the realization of the right to housing. A failure to incorporate an international human rights framework into the interpretation of statutes such as the HSRA would render this Declaration meaningless.

To ensure that this declaration does not ring hollow, the D.C. government must, at the very least, interpret its laws in accordance with international human rights standards. Indeed, numerous U.S. courts have relied upon international human rights norms to guide their interpretation of federal and local statutes. International bodies and foreign courts alike have acknowledged that the right to housing includes, among other requirements, an obligation on the state, at a minimum, to refrain from taking action which impedes the ability of individuals to have access to shelter, particularly for vulnerable groups such the homeless. In the present case, the District of Columbia has clearly taken such a retrogressive action in closing La Casa Shelter, because in doing so it has greatly impeded the ability of former residents of La Casa Shelter to have access to shelter.

Article 25 of the Universal Declaration of Human Rights (UDHR), a declaration adopted by the United Nations General Assembly on December 10, 1948, provides that:

Everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including food, clothing, *housing* and medical care and necessary social services.

*Universal Declaration of Human Rights*, G.A. res. 217A (III) art. 25 (emphasis added), U.N. Doc A/810 at 71 (1948), *available at* <http://www.un.org/en/documents/udhr/index.shtml>.

While often not considered a binding legal instrument, the UDHR arguably forms part of customary international law, and is thus binding on all states.<sup>5</sup> Another international instrument providing for a right to housing is the International Covenant on Economic, Social, and Cultural Rights (ICESCR), which states in Article 11(1) that:

The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and *housing* and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.

International Covenant on Economic, Social and Cultural Rights art. 11(1) (emphasis added), Dec. 16, 1966, 993 U.N.T.S. 3, 4-5 [hereinafter ICESCR], *available at* <http://www2.ohchr.org/english/law/cescr.htm>

The ICESCR requires State Parties to “take steps...to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized” in the Covenant. *Id.* at art. 2(1) In order to show the progressive

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<sup>5</sup> The 1968 U.N. International Conference on Human Rights advised that the UDHR “constitutes an obligation for the members of the international community” to all persons. *Proclamation of Teheran*, Final Act of the International Conference on Human Rights, Teheran, 22 April to 13 May 1968, U.N. Doc. A/CONF. 32/41 at 3 (1968), *available at* <http://www1.umn.edu/humanrts/instree/l2ptichr.htm>.

realization of a right, a state must show that there has been “progress over time.”

Committee on Economic, Social and Cultural Rights, General Comment 1, The right to adequate housing (Sixth session, 1991) para. 7, U.N. Doc. E/1989/22, at 87 (1989),

*available at*

[http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/38e23a6ddd6c0f4dc12563ed0051cde7?Open](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/38e23a6ddd6c0f4dc12563ed0051cde7?Open)

document. This treaty has been ratified by 160 countries, and although the United States has not ratified it, it has signed it.<sup>6</sup>

Even though only a signatory to the Covenant, the U.S. must meet minimum international obligations as a signatory. Indeed, Article 18 of the Vienna Convention on the Law of Treaties, which governs the nature of obligations required of treaty signatories, states that:

A State is obliged to refrain from acts which would defeat the object and purpose of a treaty when...it has signed the treaty or has exchanged instruments constituting the treaty subject to ratification, acceptance or approval, until it shall have made its intention clear not to become a party to the treaty.<sup>7</sup>

Vienna Convention on the Law of Treaties art. 18(a), May 23, 1969, 1155

U.N.T.S. 31, 8 I.L.M. 679, *available at*

[http://untreaty.un.org/ilc/texts/instruments/english/conventions/1\\_1\\_1969.pdf](http://untreaty.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf).

The “object and purpose” of the ICESCR is clear from its language: to ensure the progressive realization of the rights contained within the Covenant, including the right to

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<sup>6</sup> United Nations Treaty Collection, *Status of Treaties: International Covenant on Economic, Social and Cultural Rights*, *available at*

[http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV3&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV3&chapter=4&lang=en) (last visited on October 18, 2009).

<sup>7</sup> While the United States has not ratified the Vienna Convention itself, it is generally recognized that the United States accepts the Convention as an expression of customary international law, which is binding on all States. *See generally* Restatement (3<sup>rd</sup>) of Foreign Relations Law (1987), Part III, Introductory Note.

housing.<sup>8</sup> Therefore, while the United States may not be legally bound to take affirmative steps toward the progressive realization of the right to housing, it is clear that it cannot take actions that are retrogressive with regard to the progressive realization of this right, because such actions would clearly violate the object and purpose of the treaty. The District by its actions of closing low barrier shelters in the most affluent wards of the city, forcing the homeless to either sleep on the streets or aggregate in the poorest parts of the city are in apparent violation of these treaties.

## **VII. DESPITE DEFENDANT’S ASSERTIONS, NO BINDING LEGAL DOCUMENTS ENSURE THE RETURN OF LA CASA TO COLUMBIA HEIGHTS**

The District, in opposing the reopening of low barrier shelter in downtown DC and in the Ward 1, Columbia Heights area, assures plaintiffs that no pattern of displacement exists because homeless facilities will be restored to that area. The contradictions in the evidence provided by the District, however, undermine any credibility or assurance that shelter facilities will in fact ever be restored to Columbia Heights. The District provides contradictory and confusing evidence concerning where the La Casa homeless facilities will be located, who currently owns that land, how it will be conveyed, and whether the city will have funds to actually complete this endeavor. See, e.g., Def. Ex. 6 on page 1, ¶ 3 of Amendment to Land Disposition and Development Agreement and Assignment Agreement with Respect to the West Parcel (hereinafter “Amendment to Land Disposition”), where the First LDA Amendment “set forth certain amendments to the LDA and bifurcated the disposition of the Property to allow for the

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<sup>8</sup> Additionally, retrogressive measures have been described as “prima facie violation(s) of the Covenant.” See High Commissioner’s Report at supra. note 40, paragraph 15.

relocation of the homeless shelter located on the West Parcel...prior to conveyance of the West Parcel to the Developer.” See also page 2, third full paragraph of this amendment:

Whereas, the Assignee has requested and the District has agreed to proceed with the conveyance of the West Parcel (as amended) to the Developer prior to the relocation of the homeless shelter and to otherwise amend certain terms of the LDA and the First LDA Amendment as applicable only to the West Parcel...”

And compare this to the following text **which has been deleted**, ¶ 8 on page 3

At closing, Assignee shall accept the West Parcel subject to the La Casa Shelter home shelter facilities (“La Casa Shelter”) which currently occupy a portion of the West Parcel and ISS Parcel. The District and Assignee agree to work together to relocate La Casa Shelter by June 30, 2009.

and ¶ 10 on the top of page 4 of the Amendment to Land Disposition, which together delete any language setting forth time constraints or assurances as to the construction of the shelter’s replacement. The deleted language reads:

Developer shall achieve Commencement of Construction on or before the date which is one (1) year after the date that the La Casa Shelter vacates the Property and shall diligently pursue completion of the improvements such that Completion of Construction shall occur on or before the date that is twenty-eight (28) months after the date that the La Casa Shelter vacates the Property.

It is also entirely unclear whether any land which will host the proposed future homeless facilities has in fact been conveyed to the District, after the District’s conveyance of the former La Casa property for \$10.00. See, e.g. Final Report for Z.C. 07-02, January 25, 2008, Def. Ex.7 at last full paragraph on page 4 (filed 11-29-10), which states that the Community Based Residential Facility “will be constructed separately by the District of Columbia government, on former RLARC land **donated**

**back to the District by the applicant.** (emphasis added). It is unclear, however, if that conveyance has ever occurred.

Plaintiffs therefore remain doubtful as to the District's intentions, and as to the District's binding obligations, and the ultimate validity of any verbal or written assurances made by the District regarding the return of homeless services to Columbia Heights. This is in light of the apparent contradictions of record noted in the foregoing paragraphs, and the uncertainties illustrated by the trail of deletions and amendments regarding its location and timeframe for completion. Plaintiffs are also wary of the ultimate ambiguity enshrined in this conveyance by the anti-deficiency clause, now incorporated into the documents of conveyance. See Def. Ex. 6. at page 5, ¶ 15, which states in part that

The District's authority to make such obligations is and shall remain subject to the provisions of ... D.C. Official Code Section 47-105; (iii) the District of Columbia Anti-Deficiency Act... as the foregoing statutes may be amended from time to time....

#### **VIII. NO TRANSPARENCY OF ACCOUNTABILITY OR CREDIBLE EVIDENCE HAS BEEN PROVIDED BY CITY OFFICIALS FOR THE SUCCESS OF THE FLEDGLING PSH PROGRAM**

While the PSH concept to end homelessness, with respect to the Mayor's ten year plan to end homelessness, is to be applauded for its earnest and ongoing attempts to eradicate the need for low barrier shelters and supportive services, this program is in the very early stages of development. The statistics clearly indicate that the amount of supportive housing allotted cannot keep pace with the immediate needs for low barrier shelter. Because of this undeniable fact, one program should not be pitted against the other. Instead, the PSH program should work in synchrony, not at odds with low barrier

shelter programs, and accompanying services made available for both programs, in non-segregated, city-wide community settings.

What is particularly troubling about Mr. Swan's assertions concerning the 95% success rate of the PSH program, however, is that no objective monitoring or tracking of the program has even been provided by city officials, despite repeated requests and despite the large amounts of public money involved in the program. Anecdotal evidence has surfaced over the past two years suggesting a lack of proper oversight, and incidents have occurred PSH participants were placed in drug and crime ridden areas, and experienced physical harm. Anecdotal evidence has surfaced about men losing their apartments for various reasons, and men have been found dead in housing due to smoke inhalation. Persons have reportedly fallen through the cracks of the system due to a lack of adequate and accessible accompanying services. No records or accountability have been provided by city officials regarding the allotting of contracts to providers, what criteria were used in awarding contracts to providers, or what standards were required and what supervision and oversight exist for determining the competence and accountability of providers. It is unclear what roles and salaries providers have been allotted, and what record keeping they are required to maintain. No transparency has been provided by city officials regarding the attrition rates of PSH. The District has admitted it does not report when an apartment has been vacated by one recipient and immediately filled by another. No records tracking attrition rates or success rates have ever been made public since the program's inception. It is therefore unclear from which sources Mr. Swan derives his data for determining success rates.

For these reasons, justice requires fulfillment of Plaintiffs' request for injunctive and declaratory relief.

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Respectfully submitted,

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