

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

No. 10-767

DISABILITY ADVOCATES, INC.,

Plaintiff-Appellee

and

UNITED STATES OF AMERICA,

Plaintiff-Intervenor-Appellee

v.

DAVID A. PATERSON, *et al.*,

Defendants-Appellants

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

UNITED STATES' OPPOSITION TO NEW YORK COALITION FOR
QUALITY ASSISTED LIVING, INC.'S MOTION TO INTERVENE

PRELIMINARY STATEMENT

On April 23, 2010, the New York Coalition for Quality Assisted Living, Inc. (Coalition) filed a Motion to Intervene in the defendants-appellants' (State's) appeal of the final judgment in this case. The Coalition is composed of for-profit adult homes that contract with the State to provide long-term care for persons with

disabilities. Not satisfied with waiting for this Court to resolve its appeal of the denial of intervention, the Coalition again seeks to insinuate itself into the State's appeal to raise new issues.¹ The instant motion is a blatant attempt to circumvent this Court's review of the district court's order denying intervention. This Court should deny this motion and consider the Coalition's appeal from the district court order in the ordinary course.

It is not surprising that the Coalition would wish to avoid review of the district court's order. Based on its intimate knowledge of the protracted litigation, the district court found that the Coalition chose to sit on the sidelines, all the while on notice that its interests could be implicated. The Coalition did not seek to intervene until the eleventh hour — at that point, it sought to inject collateral issues into the proceedings and relitigate issues that had already been decided. The Coalition's proposed intervention, found untimely by the district court, cannot be transformed into a timely motion by simply filing it in this Court.

The Coalition has no right to inject itself in this civil rights case when the legal issues — the *State's* obligations under the integration mandate — do not

¹ On April 6, 2010, the Coalition filed a submission that purports to be a response in support of the State's motion for a stay pending appeal. Although the Coalition is not a party in this case, the submission raises new arguments that the State does not concerning the merits of the State's appeal. In opposition, Disability Advocates, Inc. filed a motion to dismiss the Coalition's appeal or strike that submission, while the United States filed a motion to strike the Coalition's filing. These three motions are pending before the Court.

concern the Coalition. The Coalition's members' pecuniary interests have no bearing on the State's obligations under federal law. Moreover, the remedial order does not impose any conditions on the Coalition's members. The remedial order is directed at the State and requires the State to perform certain duties. Performance of those duties, such as entering adult homes to meet with residents, is permitted under existing state regulations. State law already requires adult home providers to give state officials and others, including supported housing providers, access to their facilities to provide a service or educational program. The remedial order thus works no new intrusions.

STATEMENT OF THE CASE

1. This appeal arises from an action by Disability Advocates, Inc. (DAI), a disability rights organization, against, *inter alia*, New York mental health agencies for violation of the integration mandate of Title II of the Americans With Disabilities Act (ADA), 42 U.S.C. 12132, and Section 504 of the Rehabilitation Act, 29 U.S.C. 794, as expressed in 28 C.F.R. 35.130(d).² DAI claimed that the State discriminated against adults with mental disabilities residing in, or at risk of entering, 21 adult homes in New York City by failing to offer them placement in the most integrated setting appropriate to their needs. See *Olmstead v. L.C.*, 527

² The United States intervened on November 29, 2009. See *Disability Advocates, Inc. v. Paterson*, No. 03-CV-3209, 2009 WL 4506301 (E.D.N.Y. Nov. 29, 2009).

U.S. 581 (1999) (failure to provide services in the most integrated setting appropriate is discrimination under Title II of the ADA). Adult homes are for-profit adult care facilities licensed and regulated by the State to provide long-term care and supervision for people with mental and physical disabilities.

Following a five-week bench trial, the district court issued 210 pages of findings of fact and conclusions of law, holding that the State's administration of mental health services for DAI's constituents — approximately 4,300 individuals with mental illness — in the adult homes at issue violates the integration mandate. See *Disability Advocates, Inc. v. Paterson*, 653 F. Supp. 2d 184, 188 (E.D.N.Y. 2009) (Trial Decision). In its exhaustive opinion, the court found that (1) the adult homes “are institutions that segregate residents from the community and impede residents’ interactions with people who do not have disabilities,” *id.* at 187, 198, 203-216; (2) supported housing³ is a more integrated setting than adult homes, *id.* at 218-223, 227; and (3) the State has not made any meaningful efforts to enable adult home residents to receive services in the most integrated settings, *id.* at 272-282.

The district court also held that the State may not invoke a fundamental alteration defense because the overwhelming evidence showed that “it would

³ Supported housing is a program, funded by the defendant New York State Office of Mental Health (OMH), where individuals with mental disabilities live in rental apartments scattered among various buildings throughout the community and receive services from the State to support their living in the community.

actually cost less to serve DAI's constituents in supported housing than in Adult Homes." Trial Decision at 301; see also *id.* at 282-298, 305-308, 311. Contrary to the Coalition's assertion (Br. 11), this conclusion did not assume that the State could divert funds used to improve the quality of care in adult homes or to support upgrades such as the installation of air conditioning, though the district court did note that the State could realize additional savings in the long term by taking such steps. *Id.* at 291-294.

2. After the district court's liability finding, and two months after the remedy proceedings were underway, the Coalition moved to intervene. Doc. 362 (Nov. 4, 2009).⁴ The district court granted amicus status to the Coalition pending resolution of the motion. See Doc. 389 (Nov. 24, 2009). As amicus, the Coalition filed a proposed remedial plan, detailing its positions with respect to the parties' proposed plans and offering specific proposals for inclusion in the remedial order. Doc. 391 (Nov. 25, 2009).

On December 23, 2009, the district court denied the Coalition's motion to intervene as untimely. *Disability Advocates, Inc. v. Paterson*, No. 03-CV-3209, 2009 WL 5185807, at *6-7 (E.D.N.Y. 2009) (Intervention Denial). The district court rejected the Coalition's argument that it did not have reason to believe its interests would be adversely affected until the court issued the Trial Decision. *Id.*

⁴ "Doc. ___" indicates the docket entry number of the document filed in the district court.

at *3-4. The Coalition, the court stated, should have been on notice from DAI's 2003 complaint that DAI sought to move qualified and willing adult home residents to more integrated settings. *Id.* at *4. The court further noted the Coalition should have known of the consequences of a finding against the State as early as 2007 when, in summary judgment papers, the parties addressed the cost of moving DAI's constituents to supported housing at summary judgment. *Id.* at *3-4. The court's February 2009 order, denying summary judgment, also discussed this issue "at length." *Ibid.* In addition, the court rejected the Coalition's claim of ignorance because the Coalition had been involved in the case by attending depositions of adult home staff members and responding to document requests before discovery closed in 2006, and sitting in on the trial beginning in May 2009. *Id.* at *4; see also *id.* at *1.

The district court also rejected the Coalition's argument that it believed that its interests were aligned with the State until the State lost on the merits, noting that the Coalition had no basis to believe that the State would represent the Coalition's interests. Intervention Denial at *4. Although the district court recognized that the "lapse of time is only one of several factors to consider" in determining timeliness, it found that "the lengthy and intentional delay in this case weigh[ed] in favor of denying intervention." *Ibid.*

As further support for concluding that the motion was untimely, the district court found that allowing intervention would prejudice the parties and cause undue delay: the Coalition sought to “inject collateral issues regarding their economic entitlements into [this] civil rights action,” and consideration of the Coalition’s “newly presented claims might well require conducting evidentiary hearings or even reopening discovery.” Intervention Denial at *5.⁵ Moreover, the court said, the motion to intervene “explicitly disput[ed] the court’s [liability] findings,” indicating that the Coalition would seek to “relitigat[e] issues which have already been decided after lengthy proceedings.” *Ibid.* By contrast, the district court stated that any prejudice to the Coalition from denying intervention was due to the Coalition’s “tactical decision,” hoping that the State would prevail. *Ibid.* The court stated that any prejudice, however, was “significantly mitigated” by Coalition’s status as amicus and the fact that state law allows an adult home to challenge revocations of its operating certificate by the State. *Id.* at *6. The court further found no “unusual circumstances” to support granting intervention. *Ibid.* Accordingly, the district court denied intervention as of right as well as permissive intervention. *Ibid.*

⁵ In its response to the Coalition’s proposed remedial plan, the United States argued that the plan sought to relitigate issues that the Court had already resolved in order to limit the number of adult home residents who would be permitted to move to supported housing. See Doc. 396 (Dec. 4, 2009).

3. On March 1, 2010, the district court issued the remedial order, which specifically states that the court considered the Coalition's proposed remedial plan. See Doc. 405 (Remedial Order & Judgment at 3 (Remedial Order)). The Remedial Order requires the State to take steps to comply with the integration mandate within four years by, *inter alia*, (1) developing supported housing beds for DAI's constituents, at a rate of 1,500 beds annually; (2) securing necessary support services for supported housing residents; (3) conducting in-reach to DAI's constituents to assist their transition to supported housing; and (4) ensuring that DAI's constituents are informed of alternative housing options. Remedial Order at 5-8. The State appealed. The Coalition now seeks to intervene in the State's appeal even though it has appealed the denial of intervention and filed a protective notice of appeal with respect to the judgment.

ARGUMENT

A. *The Coalition Cannot Intervene On Appeal To Evade Direct Review Of The Denial Of Intervention*

The Coalition should not be allowed to circumvent an appeal of the district court's ruling by filing a new motion to intervene on appeal. That is especially important here where the district court held that the Coalition's motion was untimely and a determination of timeliness is committed to the sound discretion of the trial court to consider the totality of the circumstances. See *United States v. Pitney Bowes, Inc.*, 25 F.3d 66, 70 (2d Cir. 1994). This Court has recognized that

the deferential abuse of discretion standard of review is applied to denial of motions to intervene because they are based on “fact-intensive inquiries and a district court ‘has the advantage of having a better sense’ of the case than we do on appeal.” *Mastercard Int’l Inc. v. VISA Int’l Serv. Ass’n*, 471 F.3d 377, 389 (2d Cir. 2006) (citation omitted). The Coalition would have this Court ignore the district court ruling and, instead review its current motion, presumably *de novo*. They have no legal support for this extraordinary proposition.

To be sure, cases exist where a court of appeals allowed an individual to intervene on appeal. See Br. 15 & n.3 (citing cases). Whatever the merit of those cases from other circuits, they are inapplicable here. Those cases involve situations where the party failed to petition to intervene in district court but was allowed to intervene on appeal. Here, the Coalition moved to intervene below, the district court denied that motion, and the Coalition appealed that denial. This Court should decide the appeal of the denial of intervention in the ordinary course and reject this attempt to circumvent that review.

B. The Coalition Cannot Satisfy The Requirements For Intervention

1. Even if the Court considers the Coalition’s motion to intervene on appeal, intervention is not warranted. To intervene as of right under Federal Rule of Civil Procedure 24(a)(2), the Coalition must satisfy four conditions: (1) file a timely motion; (2) claim an interest relating to the property or transaction that is the

subject of the action; (3) be so situated that without intervention the disposition of the action may impair that interest; and (4) show that the interest is not already adequately represented by existing parties. *Mastercard*, 471 F.3d at 389.

Intervention should be denied if even one of the requirements is not met. See *In re Holocaust Victim Assets Litig.*, 225 F.3d 191, 197-198 (2d Cir. 2000). In this case, the Coalition cannot satisfy the first three requirements.

a. The Coalition cannot escape the fact that its motion to intervene is untimely. The Coalition's motion to intervene was not timely when it was filed in the district court and thus cannot be considered timely now. Factors to consider in determining timeliness include: (1) how long the applicant knew or should have known of its interests before moving to intervene; (2) prejudice to the parties resulting from the delay; (3) prejudice to the applicant if intervention is denied; and (4) presence of unusual circumstances weighing in favor or against intervention. See *Mastercard*, 471 F.3d at 390.

As the district court found, DAI's 2003 complaint and the parties' 2007 summary judgment motions put the Coalition on notice that its interests could be affected by this case. Intervention Denial at *3. The court noted DAI's complaint requested allowing qualified and willing adult home residents to move to more integrated settings and "[s]hifting residents and funds from impacted adult homes to community-based residential programs." *Ibid.* (quoting Compl. ¶ 118). The

district court further stated that the parties and the court specifically addressed the cost of moving DAI's constituents from adult homes to supported housing, including potentially eliminating grant programs. *Id.* at *4. The Coalition does not dispute these findings. Nor does it challenge the district court's determination that the Coalition's claims concerning its "economic entitlement[]" would delay the proceedings and prejudice the parties by requiring the court to "conduct[] evidentiary hearings or even reopening discovery." *Id.* at *5.

A motion to intervene that was untimely when made in district court can hardly be considered timely when filed in this Court. The key inquiry is when the purported intervenor had notice that its interests could be affected and would not be represented by any party.

The Coalition argues (Br. 16-17) that under *United Airlines, Inc. v. McDonald*, 432 U.S. 385, 395-396 (1977), a post-judgment motion to intervene is timely so long as the putative intervenor acts promptly after entry of final judgment. *McDonald* held, "[I]f a motion to intervene is timely under the four considerations, the fact that it is a post-judgment motion will not render it untimely as long as it was filed promptly after judgment." *Dow Jones & Co., Inc. v. Department of Justice*, 161 F.R.D. 247, 251 (S.D.N.Y. 1995) (Sotomayor, J.) (emphasis in original). It did not say that an untimely motion can somehow become timely when filed after judgment. *McDonald* involved an unnamed class

member who moved to intervene in district court after final judgment to appeal the denial of class certification. 432 U.S. at 390. The Supreme Court held that, “in view of all the circumstances,” intervention was timely. *Id.* at 396; see also *D’Amato v. Deutsche Bank*, 236 F.3d 78, 84 (2d Cir. 2001) (timeliness is an equitable consideration based upon the totality of the circumstances).

Significantly, the intervenor in *McDonald* had every reason to think her interests were being represented and only became aware that plaintiffs would not appeal the denial of class certification after final judgment was entered. Indeed, she had “no reason * * * to suppose that they would not later take an appeal” because plaintiffs had sought an interlocutory appeal of the denial of class certification. *McDonald*, 432 U.S. at 393-394.

By contrast, the Coalition waited years after it was on notice of the remedy under consideration before moving to intervene in district court. And as the Coalition concedes (Br. 18), it had no reason to believe that the State ever represented its interests.

Instead, this case is similar to *United States v. Yonkers Board of Education*, 801 F.2d 593, 596 (2d Cir. 1986), where the putative intervenors moved to intervene three months into the remedial proceedings and sought to relitigate issues the district court had decided after lengthy proceedings. Affirming the denial of intervention as untimely, this Court stated that the motion to intervene

“resemble[d] [a motion for] post-judgment intervention, which is generally disfavored.” *Ibid.*; *Farmland Dairies v. Commissioner of N.Y. State Dep’t of Agr. & Mkts.*, 847 F.2d 1038, 1044 (2d Cir. 1988) (same). Whatever interest the Coalition had in this litigation, it had years before it moved to intervene.

b. The Court can reject the Coalition’s motion based on untimeliness alone, but the motion fails to meet the other requirements of intervention as well. See *Farmland Dairies*, 847 F.2d at 1045. The Coalition asserts (Br. 7-8, 17-18) that it has a material interest in the appeal. But it is clear that the Coalition’s pecuniary interest is not what this case is about. At issue in this litigation is the State’s obligation to administer its services for people with disabilities in the most integrated setting appropriate for their needs, and not the operation of any particular adult home. See 28 C.F.R. 35.130(d) (“A public entity shall administer services * * * in the most integrated setting appropriate to the needs of qualified individuals with disabilities.”). The pecuniary interests of adult homes do not determine whether the State has violated the integration mandate and what the State needs to do to comply with federal law. The State has an obligation to comply with federal law, even when acting through private entities. See *Olmstead v. L.C.*, 527 U.S. 581, 607 (1999) (applying integration mandate to the State where State contracted with private provider to deliver mental health services); *Radaszewski v. Maram*, 383 F.3d 599, 614 (7th Cir. 2004) (same). Once a

violation is proven, the State must take corrective action, subject only to the State's showing that such an action would constitute a *fundamental* alteration of its program. The pecuniary interest of private businesses is not part of the calculation.

The Coalition contends (Br. 8-9) that the Remedial Order impairs its interests because it imposes obligations on adult homes, jeopardizing their ability to operate. In fact, the court's order does not require adult homes to close. Furthermore, the fiscal difficulties, including having to close or losing operating certificates (Br. 8-9), cited by the Coalition are contingent on future actions by the State. For that reason, the Coalition's asserted interests are not sufficiently direct and substantial to justify intervention as of right. See *Washington Elec. Co-Op., Inc. v. Massachusetts Mun. Wholesale Elec. Co.*, 922 F.2d 92, 97 (2d Cir. 1990) ("An interest that is * * * contingent upon the occurrence of a sequence of events before it becomes colorable, will not satisfy [Rule 24(a)(2)]."). See also *Person v. New York State Bd. of Elections*, 467 F.3d 141, 144 (2d Cir. 2006) (denying motion to intervene on appeal where the putative intervenor had only an "abstract interest" in the subject of the case); *United States v. Peoples Benefit Life Ins. Co.*, 271 F.3d 411, 415 (2d Cir. 2001) ("For an interest to be cognizable under Rule 24(a)(2), it must be 'direct, substantial, and legally protectable.'") (citation omitted).

An analogous case is *Restor-A-Dent Dental Laboratories, Inc. v. Certified Alloy Products Inc.*, 725 F.2d 871, 877 (2d Cir. 1984), in which the Court affirmed

the denial of a general liability insurer's motion to intervene as of right in a breach of contract action brought against one of its insureds. In holding that the insured did not have an interest justifying intervention, the Court relied in part on the reasoning that the insurer's interest was only in its potential liability following an adverse judgment against its insured, and not in the underlying breach of contract action. *Id.* at 875.

As for the Coalition's contention (Br. 9) that the Remedial Order impairs its property and speech rights, the Remedial Order does not require adult homes to do anything that they are not already obligated to do under state law. For instance, the Coalition argues (Br. 9) that the Remedial Order requires adult home providers to allow supported housing providers to enter their facilities to conduct in-reach among the residents. State law, however, already requires adult home operators to give community organizations, such as supported housing providers, access to adult homes to provide "a service or educational program." N.Y. Soc. Serv. L. § 461-a(3)(b)(ii); 18 NYCCR 485.14(a)(2). To the extent that the order requires as the Coalition argues (Br. 9) that adult homes provide information to residents about supported housing, that requirement is also consistent with existing state law. Under state law, adult homes must provide such case management services "as are necessary to support the resident in maintaining independence of function and personal choice," including assisting residents in "mak[ing] and execut[ing] sound

discharge or transfer plans.” 18 NYCCR 487.7(g). Indeed, the Coalition’s proposed remedial plan states that “[a]dult homes should provide residents information about supported housing and how to access that program” and “[c]ase managers should also be trained to address questions related to supported housing, since responding to [those] inquiries * * * [is] part of the adult homes’ already existing case management obligation.” Doc. 391 at 4, ¶ 18.

2. The Coalition’s request (Br. 19) for permissive intervention should also be denied as untimely.⁶ See *Mastercard*, 471 F.3d at 391 (affirming denial of motion for permissive intervention as untimely); see also Fed. R. Civ. P. 24(b) (provides for permissive intervention “[o]n timely motion”). Moreover, “[t]he principal guide in deciding whether to grant permissive intervention is ‘whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.’” *Pitney Bowes*, 25 F.3d at 73 (quoting Rule 24(b)(2)). The Coalition seeks to inject arguments that have not been addressed by the parties or district court. As emphasized earlier, the Coalition cannot raise new issues at this juncture. To the extent they wish to address the issues raised by the State, participation as amicus curiae should be sufficient. Accordingly, permissive intervention is not warranted.

⁶ The district court denied the Coalition’s request for permissive intervention as untimely. See Intervention Denial at *6; see also *United States v. Hooker Chems. & Plastics Corp.*, 749 F.2d 968, 990 n.19 (2d Cir. 1984) (“[A] denial of permissive intervention has virtually never been reversed.”).

C. *The Coalition Does Not Have Standing As A Non-Party Appellant*

The Coalition argues (Br. 7-14) that intervention is warranted because it has standing as a non-party appellant. Again, it suggests an artifice to evade review of the district court's order denying intervention. The Coalition should not be permitted to ignore the court's order by giving itself a different title.

In each of the cases the Coalition cites in support (Br. 11-12), non-party standing was warranted because there was either a special relationship between the non-party and party or both entities had a stake in the subject of the litigation. For instance, in *Aurelius Capital Partners, LP v. Republic of Argentina*, 584 F.3d 120, 127 (2d Cir. 2009), cert. denied, 2010 WL 680713 (Mar. 1, 2010), involved a district court's orders of attachment and execution over Argentine social security funds which, under proposed Argentine legislation, were to be transferred to a government agency to administer. *Id.* at 123-124. This Court allowed the government agency, although not a party, to challenge the district court orders on appeal because, as the Court stated, the agency, "as the entity that manages the funds, has a[] * * * direct interest in the property" and the agency's "property [was] at stake." *Id.* at 128.

Similarly, in *United States v. International Brotherhood of Teamsters*, 931 F.2d 177, 184 (2d Cir. 1991), non-parties affiliated with the Teamsters were allowed to appeal an order affecting their contractual rights. The Court stated that

the non-parties, were bound by the consent decree between the government and the Teamsters because the Teamsters represented the collective Teamsters' membership. *Id.* at 179-180.

Likewise, in *Official Committee of Unsecured Creditors of WorldCom v. SEC*, 467 F.3d 73, 75 (2d Cir. 2006), and *Kaplan v. Rand*, 192 F.3d 60, 67 (2d Cir. 1999), the Court granted non-party standing to a committee of creditors and a shareholder, respectively, because they had a stake in the corporate funds that were the subject of the litigation. *Kaplan* involved a shareholder who objected to the proposed allowance for attorney's fees in accordance to a settlement notice, and then sought to appeal the payment of attorney's fees from corporate funds. 192 F.3d at 66-67. The Court said that a judgment directing payment of attorney's fees for bringing a derivative suit on behalf of the corporation affected "the interests of all stockholders in the financial well-being of the corporation," and "a stockholder who takes the time and trouble to respond to the court's notice of settlement has not sat on his right to voice and pursue this objections." *Id.* at 67. The non-party creditors in *WorldCom* also participated throughout the proceedings below despite not formally a party. 467 F.3d at 76. In fact, the creditors supported the SEC and WorldCom's settlement in bankruptcy court and district court, and then objected to the plan to distribute funds at the fairness hearing. *Ibid.* Thus, the Court allowed the creditors to appeal the order approving the distribution plan. *Id.* at 79.

Unlike the non-party appellants in *WorldCom* and *Kaplan*, the Coalition has no stake in the subject of this lawsuit and sat on the sidelines for years before attempting to intervene. Moreover, unlike in *Aurelius*, 584 F.3d at 124, the Coalition's relationship with the State does not render it a subcomponent of the State. See also *Karaha Bodas Co. v. Perusahaan Pertambangan Minyak Dan Gas Bumi Negara*, 313 F.3d 70, 82 (2d Cir. 2002) (allowing the Republic of Indonesia to intervene in an appeal of an arbitral award against an agency of Indonesia because the Republic "own[ed] the property encompassed by the garnishment order"), cert. denied, 539 U.S. 904 (2003). And, unlike in *International Brotherhood of Teamsters*, the State has never represented the Coalition's interest.

Hispanic Society of the New York City Police Department Inc. v. New York City Police Department, 806 F.2d 1147 (2d Cir. 1986), aff'd sub nom., *Marino v. Ortiz*, 484 U.S. 301 (1988), is analogous to this case. In *Hispanic Society*, this Court dismissed an appeal by non-party police officers who challenged an employment discrimination settlement on the grounds that it would harm their promotion opportunities. *Id.* at 1152. The Court held that the non-party officers' interests were not affected by the judgment because, *inter alia*, they had no right to a promotion under state law. *Ibid.* Similarly, the Coalition's members, adult home providers, have no legally-protected interest in keeping adult home residents at

their facilities in perpetuity. In fact, state law authorizes the State to close adult homes or consolidate under-utilized adult homes. See Trial Decision at 297.

As the Supreme Court stated in *Marino*, 484 U.S. at 304, the “better practice” is for a non-party to seek to intervene in district court and appeal any denial of intervention. This Court should review the denial of intervention by the district court in the ordinary course, according the district court’s decision due deference.

CONCLUSION

The Court should deny the Coalition’s Motion to Intervene.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on May 6, 2010, a copy of the foregoing United States' Opposition To New York Coalition For Quality Assisted Living, Inc.'s Motion To Intervene was served by CM/ECF on:

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