

Alan Levine  
*President*

Twyla Carter  
*Attorney-in-Chief  
Chief Executive Officer*

Justine M. Luongo  
*Chief Attorney  
Criminal Practice*

Mary Lynne Werlwas  
*Director  
Prisoners' Rights Project*

February 24, 2025

Via email and certified mail

Commissioner Daniel F. Martuscello III  
New York State Department of Corrections  
and Community Supervision  
The Harriman State Campus  
1220 Washington Avenue  
Albany, New York 12226-2050

Re: Unlawful "Path to Restoring Workforce" Memorandum

Dear Commissioner Martuscello:

We write to express serious concern over the memorandum you issued last week entitled "Path to Restoring Workforce," in which you announce you have suspended unspecified parts of the Humane Alternatives to Long-Term Solitary Confinement Law ("HALT") for an indeterminate period. Such a suspension of HALT exceeds your authority and must be reversed. By no later than this Thursday, February 27, we ask that you confirm you have reversed the suspension; or should you decline to do so, that you identify the specific provisions of HALT you purport to have suspended, as well the reasons for and authority under which you have done so.

HALT affords critical protections to people in prison and was enacted by the Legislature in recognition of the profound harms that solitary confinement inflicts on incarcerated New Yorkers and their families. Like you, we want to see an end to unlawful striking by DOCCS employees, which already has cost at least one life<sup>1</sup> and continues to endanger our clients across the state. But suspension of HALT is not the way to achieve that goal; and you have no legal authority to suspend any part of HALT, much less to do so to appease rogue employees attempting to short-circuit HALT and strongarm its repeal.

The Governor's February 19 executive order, cited in your memorandum, does not give you authority to suspend HALT or any of its provisions. In that executive order, the Governor declares a state of emergency related to illegal striking by DOCCS employees and

---

<sup>1</sup> Jonathan Grant, our former client, was found dead in his cell at Auburn Correctional Facility yesterday morning.

temporarily suspends or modifies various provisions of other state laws. Nowhere does the order suspend HALT or allow you to do so. Nor does HALT itself give you suspension authority. In enacting HALT, the Legislature provided for limited provisions of the statute to apply differently in certain narrowly defined emergency situations. The Legislature did not, however, confer on you the authority to suspend HALT or any of its provisions. Any claim to such authority by you, an executive agency official, conflicts with the express will of the Legislature and threatens the constitutional separation of powers.

Of particular concern are the vague contours of the suspension described in your memorandum, which open the door to potentially boundless circumvention of HALT by DOCCS. Though you reference “elements of HALT that cannot safely be operationalized under a prison wide state of emergency,” you fail to identify what elements those are. And though you suggest the suspension will last “until [you] can safely operate the prisons,” that ambiguous limitation raises the specter of an *indefinite* suspension, especially given the context — an emergency orchestrated by employees engaged in an illegal work stoppage based on the false claim that HALT endangers them.

\* \* \*

We recognize the significant operational challenges that unlawful striking by employees creates for DOCCS. But the path forward cannot include an unlawful and indeterminate rolling back of the most significant legislative progress towards protecting incarcerated New Yorkers in a generation.

We thank you for considering the important issues raised in this letter and look forward to receiving your response on or before February 27.

Sincerely,

/s/ Antony P. F. Gemmell

Antony P. F. Gemmell  
*Supervising Attorney*  
*Prisoners' Rights Project*

cc: Jason Golub, Esq., Deputy Commissioner and General Counsel, DOCCS (by email)  
Brian K. Mahanna, Esq., Counsel to the Governor (by email)