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July 21, 2025

Via NYSCEF

Hon. Daniel L. Lynch
Albany County Supreme Court
Albany County Courthouse
16 Eagle Street
Albany, New York 12207

Re: *Smalls v. Martuscello*, Index No. 903926-25

Dear Judge Lynch:

On behalf of Plaintiffs in this putative class challenge to Defendant's unlawful suspension of core protections of the Humane Alternatives to Long-Term Solitary Confinement Law, we write in light of Defendant's July 14, 2025 affirmation for two reasons: (1) to raise serious concern over Defendant's noncompliance with the Court's preliminary injunction; and (2) to preview further steps Plaintiffs' intend to take to mitigate the resulting harm to thousands of class members who remain confined in dangerously and unlawfully restrictive conditions statewide.

1. Defendant's Failure to Comply with the Preliminary Injunction

The Court's preliminary injunction is clear: If Defendant invokes HALT's facility-wide emergency exception, he must file an affirmation "setting forth detailed facts describing the facility-wide emergency, including its scope and expected duration" (Decision and Order, NYSCEF Doc. No. 67, at 11 [Jul. 1, 2025] [hereinafter "PI Order"]). Defendant's affirmation fails to satisfy these requirements. Despite its length, the affirmation omits basic information without which the Court cannot meaningfully assess whether DOCCS's continued suspension of HALT is lawful. In effect, Defendant appears to contemplate continuing an indeterminate, statewide suspension of HALT.

A. Defendant fails to identify where HALT remains suspended.

Although Defendant provides narrative descriptions of conditions at each facility, he does not clearly state whether HALT's emergency exception is being invoked at any given location. In some cases—for example, at Bedford Hills, Green Haven, and Hudson—he reports near-normal operations yet provides no indication whether HALT's protections remain suspended at those prisons (Martuscello Aff., NYSCEF Doc. No. 69, ¶¶ 172–73, 199–20, 232–33 [Jul. 14,

2025]). Elsewhere, he references ongoing operational impacts from the strike but offers no explanation of whether, how, or why those conditions qualify as emergencies (*see, e.g., id.*, ¶¶ 63–64; 196–200; 157–165).

B. Defendant has failed to clarify which aspects of HALT remain suspended.

HALT's core protection—the guarantee of minimum daily out-of-cell time—is central to this case and thus the Court's preliminary injunction (*see* PI Order at 3–4). Yet Defendant focuses almost entirely on programmatic offerings, while saying almost nothing about whether HALT's out-of-cell requirements are being met (*see, e.g.*, Martuscello Aff., ¶¶ 38–45, 138–47, 181–87 [describing programming availability at Auburn, Orleans, and Upstate Correctional Facilities while omitting description of out-of-cell time]). If DOCCS is now complying with those requirements systemwide, Defendant should say so. Otherwise, this omission obscures whether and where DOCCS continues to rely on the emergency exception to justify restricting out-of-cell time.

More troubling still, Defendant appears to suggest HALT's out-of-cell requirements do not apply to individuals in general population. He offers no information about those conditions and omits seven facilities from his affirmation entirely based on the mistaken assertion that HALT imposes "no requirement" where there is no RRU or SHU (*id.*, ¶¶ 303–09).

C. Defendant has failed to provide a meaningful timeline for facility-wide emergencies to end.

Despite the Court's explicit concern that DOCCS had "no date certain" for ending the suspension (PI Order at 8), Defendant provides no facility-specific timeline for restoring HALT's protections. Instead, he offers only a generalized "goal" of resuming HALT *programming*—with no mention of HALT's out-of-cell requirements—by "early Fall" (Martuscello Aff., ¶ 22). This vague target, undifferentiated by facility, is particularly troubling given that Defendant relies solely on long-term recruitment and retention efforts to resolve the conditions he claims amount to an emergency—all but ensuring that the suspension will persist indefinitely (*see* Martuscello Aff., ¶ 17).[1]

D. Defendant treats current staffing levels as per se emergencies, without context.

In defending the continued suspension of HALT's protections, Defendant relies heavily on the fact that staffing levels at many DOCCS facilities are currently below the Budgeted Fill Level ("BFL")—the number of positions authorized by the State budget at each facility (*see, e.g.*, Martuscello Aff., ¶¶ 24, 30, 39, 47, 76). But Defendant fails to explain why staffing below BFL now constitutes an emergency, particularly when DOCCS has operated below BFL for

[1] Other, and likely faster, ways to improve staffing ratios include redeploying staff within and across facilities; closing underused facilities; certifying time served in local jails under Correction Law § 95; granting early release under Correction Law § 75; identifying candidates for medical parole or executive clemency; and expanding work release and other temporary release programs.

years without invoking HALT's emergency exception.[2] He provides no data comparing current staffing levels to those that existed before the strike and does not explain why current conditions should be treated differently.

Notably, just *one week* before the strike, Defendant proposed reducing target staffing levels across the prison system by 30%—a reduction that DOCCS itself presumably viewed as operationally feasible (*see* Exhibit, Commissioner's Memorandum on Security Staffing Review [Feb. 10, 2025]). DOCCS only later rescinded that proposal to appease striking officers (*see* Ex. D to Martuscello Aff., NYSCEF Doc. No. 56, Commissioner's Memorandum on Path to Restoring Workforce [Feb. 20, 2025]).[3] And the "circuit breaker" provision in DOCCS's March 8, 2025 agreement with the corrections union—intended to take effect only after the original 90-day HALT suspension—would have permitted further suspension of HALT *only if* a facility's staff vacancy rate reaches at least 30% (*see* Ex. G to Martuscello Aff., NYSCEF Doc. No. 59, ¶ 1(b), Memorandum of Agreement between the State of New York and NYSCOPBA [Mar. 8, 2025]). That DOCCS has repeatedly treated vacancy levels at or below 30% as manageable critically undermines the claim that current vacancy rates—which are almost universally lower—warrant continued suspension of HALT's protections.

2. Plaintiffs' Intended Next Steps

Because Defendant's affirmation is facially insufficient to justify the ongoing suspension of HALT's protections, he must provide additional information for the Court to assess whether the statutory emergency exception has been properly invoked. To resolve these compliance concerns without immediate Court intervention, Plaintiffs have requested a meet-and-confer with Defendant this week to discuss the minimum information needed to assess compliance with the preliminary injunction. If the parties cannot reach agreement, Plaintiffs intend to move promptly for expedited discovery tailored to evaluating the legitimacy of Defendant's emergency assertions and adherence to the preliminary injunction.

We thank the Court for its attention to these issues. Should the Court wish, Plaintiffs are available to discuss them further at a conference.

Respectfully submitted,

THE LEGAL AID SOCIETY
PRISONERS' RIGHTS PROJECT

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[2] Defendant also cites routine operational demands—such as transporting incarcerated individuals to appointments, providing meals and showers, responding to medical issues, and routine attrition—as justifications for invoking HALT's emergency exception (*see, e.g.* Martuscello Aff., ¶¶ 62, 78–79, 82, 91, 96–97, 165, 205–08). But these are standard aspects of running a prison, not emergency conditions.

[3] The memorandum was misdated: It was issued in February 2025, not February 2024.

/s/ Antony P. F. Gemmell

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