

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

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MAURICE ANTHONY, *et al.*, :

Plaintiffs, :

-against- :

NEW YORK STATE DEPARTMENT OF :

CORRECTIONS AND COMMUNITY SUPERVISION, :

et al., :

Defendants. :

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Index No. 512871/2024
(Capell, J.)

**MEMORANDUM OF LAW IN SUPPORT OF
ORDER TO SHOW CAUSE FOR EXPEDITED DISCOVERY**

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Plaintiffs, on behalf of themselves and all others similarly situated, by and through their undersigned attorneys, respectfully submit this Memorandum of Law in support of their application by order to show cause to obtain expedited discovery from Defendants Daniel F. Martuscello III and the New York State Department of Corrections and Community Supervision (“DOCCS”) regarding DOCCS’ purported suspension of various aspects of the Humane Alternatives to Long-Term Solitary Confinement Act (“HALT”). Defendants are now claiming the authority to suspend at least some parts of these critical legislative mandates, thereby compounding the serious and unlawful harms and risks of harm that Plaintiffs and members of the putative plaintiff classes are suffering due to Defendants’ ongoing HALT violations.

PRELIMINARY STATEMENT

This is a class action lawsuit against Defendants for violating New York’s HALT Act. Plaintiffs bring the instant motion by order to show cause for targeted expedited discovery into DOCCS’ unlawful suspension of HALT protections during its recent staffing dispute and strike of correctional officers, and the resulting conditions of confinement of incarcerated individuals subject to HALT, including the Named Plaintiffs and members of the putative plaintiff classes. DOCCS’ unlawful claim to have “suspended” state law protections exacerbate the ongoing, systemic, and severe violations of HALT for incarcerated people with disabilities. Since the commencement of the strike, Plaintiffs’ counsel at the Legal Aid Society has received hundreds of reports from incarcerated New Yorkers—including Plaintiffs in this case—about the deplorable and life-threatening conditions they are experiencing in prisons across the state.

Plaintiffs are seeking expedited responses to: (i) five (5) interrogatories seeking targeted information urgently required to determine the impact of the purported suspension of HALT on Named Plaintiffs and members of the putative plaintiff classes, *see* Affirmation of Antony

Gemmell in Support of Order to Show Cause for Expedited Discovery, dated March 7, 2025 (the “Gemmell Aff.”), Ex. A (the “Interrogatories”); and (ii) a Notice of Deposition through which Plaintiffs seek to depose Defendant Martuscello or a designee possessing the requisite knowledge about these same subjects. *See* Gemmell Aff., Ex. B. Plaintiffs seek this limited discovery on an expedited basis to determine which provisions of HALT Defendants are claiming to have suspended and to determine Defendants’ position regarding which provisions of this state law—if any—they believe remain in force to determine the impact of the HALT suspension on Named Plaintiffs and members of the putative plaintiff classes. The lack of clarity has severely curbed the ability of attorneys representing incarcerated individuals subject to HALT, including the Named Plaintiffs and the members of the putative classes, to represent and advocate for the critical needs of these individuals and populations. *See* Gemmell Aff. ¶¶ 11–19.

FACTUAL BACKGROUND

As detailed in the Complaint, NYSCEF Doc No. 1, among other filings by Plaintiffs, Defendants have continuously implemented and enforced statewide policies and practices in direct violation of HALT. HALT recognizes that solitary, or segregated, confinement imperils the health and lives of incarcerated individuals, and that it impairs—rather than furthers—the goal of rehabilitation into the wider community. HALT explicitly prohibits segregated confinement in New York’s prisons for people with disabilities and creates rehabilitative alternatives to solitary confinement that are proven to reduce violence. Yet since HALT’s passage, Defendants have refused to properly implement this law. Defendants systemically violate HALT through unlawful policies and practices that place hundreds of people with disabilities in solitary confinement in prisons across New York State. Plaintiffs are a group of individuals with disabilities subject to HALT’s protections who have been held in conditions that violate the Act.

On February 17, 2025, correctional officers working for DOCCS unlawfully instituted a strike. *See* Gemmell Aff., Ex. C. During this strike, the vast majority of DOCCS Corrections Officers did not report to work, and the State of New York was forced to deploy members of the National Guard, who do not have any training in the administration of correctional facilities. *See id.* Incarcerated individuals have reported being locked in their cells 24/7, being assaulted and harassed by prison staff, and being denied regular access to meals and essential services, such as medical care. *See id.*, Ex. D. Since the strike began, at least seven incarcerated individuals have died in state facilities—including a former client of undersigned counsel who died at Auburn Correctional Facility after failing to receive prompt medical care, and at least one death by suicide. *See id.*, Ex. D. Based on news reporting, many of the deceased appear to have been people with disabilities. The killing of a young man at Mid-State Correctional Facility on Saturday, March 1st spurred an investigation by the New York State Attorney General’s Office, leading to 15 staff members being placed on administrative leave. *See* Gemell Aff., Ex. C.

One of the demands made by the New York State Correctional Officers and Police Benevolent Association (“NYSCOPBA”) has been the repeal, suspension, or significant alteration of HALT—the law which lies at the center of this Action. This is consistent with longstanding efforts by NYSCOPBA to oppose HALT. *See* Gemell Aff., Ex. E. Since the beginning of the DOCCS strike, DOCCS has suspended various HALT procedures without clarifying the extent of these suspensions. For example, on February 20, 2025, Defendant Martuscello issued a memorandum entitled “Path to Restoring Workforce” announcing a purported suspension of unspecified HALT protections “until we can safely operate the prisons.” *See id.*, Ex. F (copy of memorandum). Neither Defendant Martuscello nor DOCCS specified which provisions of HALT they claim were suspended and which—if any—they believe remain in effect, or for how long.

On February 28, 2025, DOCCS and the NYSCOPBA reached an agreement in principle, reflected in a Consent Award, to partially suspend the strike. As part of this agreement, DOCCS agreed to “continue the temporary suspension of the programming elements of the HALT Act for 90 days from the date of the Consent Award. . . .” *See id.*, Ex. G. Thus, DOCCS’ purported suspension of HALT is set to remain in effect through at least May 29, 2025. The Consent Award also includes a provision for the discretionary suspension of HALT protections in understaffed facilities even after those 90 days. *See id.* Much like the *ad hoc* suspension that was announced during the strike, the Consent Award does not specify which provisions of HALT DOCCS claims are suspended and which provisions of HALT—if any—the agency believes remain in force. *See id.*

Then, on March 6, 2025, after it became clear that the February 28 Consent Award had failed to quell the strike, DOCCS released a proposed Memorandum of Agreement with NYSCOPBA, signed by DOCCS and the Governor’s Office of Employee Relations but not by NYSCOPBA. *See id.*, Ex. H. Like the Consent Award, among the terms of the March 6 proposed Memorandum of Agreement is a provision by which DOCCS would “continue the temporary suspension of the programming elements of the HALT Act for 90 days.” The Memorandum of Agreement does not specify which “programming elements” of HALT are purportedly suspended, and neither Defendant Martuscello nor DOCCS have issued public statements clarifying these matters.

Lawmakers, including Senator Julia Salazar, a sponsor of the HALT Act, have raised concerns about DOCCS’ authority to suspend HALT. *See id.*, Ex. I. Additionally, DOCCS and Defendant Martuscello have themselves indicated that they lack the authority to repeal HALT. *See id.*, Ex. J.

Notwithstanding the agreement by the NYSCOPBA to end the strike and DOCCS' subsequently proposed Memorandum of Agreement, numerous DOCCS correctional officers have continued striking and numerous DOCCS facilities have reported remained understaffed. *See id.*, Ex. D.

On repeated occasions since DOCCS first announced its purported suspension of the HALT Act, Plaintiffs' counsel have requested that DOCCS clarify the nature of and basis for the suspension. To date, DOCCS has not responded to those requests. On February 24, for example, the Prisoners' Rights Project of The Legal Aid Society, one of Plaintiffs' counsel in this case, responded to Defendant Martuscello's "Path to Restoring Workforce" memorandum by requesting, by no later than February 27, that DOCCS reverse the suspension, or else "identify the specific provisions of HALT [DOCCS] purport[s] to have suspended, as well as the reasons for and authority under which [it has] done so." *See id.*, Ex. K. DOCCS did not respond to that letter. On March 6 and 7, Plaintiffs' counsel again contacted DOCCS via email to counsel and offered to meet and confer over Plaintiffs' request for information on the scope of the HALT Suspension in advance of filing this Order to Show Cause. *See id.*, Ex. L. In so doing, Plaintiffs served on Defendants DOCCS and Martuscello copies of the interrogatories and the deposition notice. *See id.*, Exs. A, B. As of this filing, Plaintiffs have received no response to these inquiries.

Plaintiffs and members of the putative classes are all incarcerated people with disabilities, who disproportionately bear the brunt of segregated confinement. Information on whether and how DOCCS' purported HALT suspension will impact them is thus of central importance to this case and to the wellbeing of Named Plaintiffs and the putative class. *See generally* NYSCEF Doc No. 1.

ARGUMENT

I. Legal Standards

Granting an order to show cause is solely within the court's discretion, and that discretion may be "liberally used." *See The Nonhuman Rts. Project, Inc. ex rel. Hercules & Leo v. Stanley*, 49 Misc. 3d 746, 755, 16 N.Y.S.3d 898, 905 (Sup. Ct., N.Y. County 2015) (citing New York Civil Practice Law and Rules ("CPLR") 2214). An order to show cause should be granted in a "proper case." CPLR 2214(d). 22 N.Y.C.R.R. § 202.8-d further clarifies that orders to show cause are appropriate "where there is genuine urgency."

Requesting expedited discovery through an order to show cause is an appropriate use of this legal mechanism. *See Ocean Hill Residents Ass'n v. City of N.Y.*, 33 Misc.3d 1230(A), 943 N.Y.S.2d 793, 2011 WL 6091178, at *12 (Sup. Ct., Kings County 2011) (granting plaintiff's motion by Order to Show Cause requesting expedited disclosure because the information sought was "material and necessary" for petitioners' claims and was "in the exclusive possession of [r]espondents."). Indeed, New York courts are vested with the discretionary authority to grant expedited discovery. *See, e.g., Rational Strategies Fund v. Hill*, 40 Misc. 3d 1214(A), 977 N.Y.S.2d 669, 2013 WL 3779654, at *3 (Sup. Ct., N.Y. County 2013) ("The decision of whether to grant expedited discovery is within the discretion of this Court."). This authority is central to the trial court's "broad discretion to control discovery." *Id.* (citing *J.G. v. Zachman*, 34 A.D.3d 1277, 1278, 825 N.Y.S.2d 621 (4th Dep't 2006)); *see* CPLR 3107 (the court may order a deposition timeline that is shorter than the statutory minimum).

Under New York law, "expedited discovery is warranted where there is ample need for it." *Stop BHOD v. City of N.Y.*, 22 Misc. 3d 1136(A), 881 N.Y.S.2d 367, 2009 WL 692080, at *14 (Sup. Ct., Kings County 2009) (granting petitioners' request for expedited discovery from New York City Department of Correction). Courts have routinely found ample need for expedited

discovery when the information sought is necessary to prove unlawful conduct and is within the defendant's exclusive possession. *See, e.g., Bel Geddes v. Zeiderman*, 228 A.D.2d 393, 644 N.Y.S.2d 729 (1st Dep't 1996) (affirming grant of discovery priority to plaintiffs because the relevant information needed to support plaintiffs' allegations of unlawful conduct were exclusively within the knowledge of defendants); *Canaanite LLC v. Wolfe*, No. 653065/2023, 2023 WL 6162034, at *5 (Sup. Ct., N.Y. County Sept. 21, 2023) (granting the plaintiff's motion for "limited, targeted" expedited discovery after finding that "plaintiff has demonstrated that the documents sought are relevant and necessary to this proceeding and are likely to be in the sole possession of the defendants"); *Sylmark Holdings Ltd. v. Silicone Zone Intl. Ltd.*, 5 Misc. 3d 285, 302, 783 N.Y.S.2d 758, 774 (Sup. Ct., N.Y. County 2004) (granting plaintiff's request for expedited discovery "to explore defendants' misfeasance . . . in light of defendants' unique possession of the information necessary to determine the extent of their unlawful conduct").

Moreover, New York courts have recognized that expedited discovery is appropriate when there are concerns about health, safety, security, or well-being. Indeed, in *Stop BHOD*, 2009 WL 692080, at *13, the Court granted petitioners' request for expedited discovery related to the City's use of a Department of Corrections facility after petitioners raised concerns about public safety and well-being. *See also U.S. v. Erie Cnty., NY*, No. 09-CV-849S, 2010 WL 11578742, at *4 (W.D.N.Y. Mar. 6, 2010) (finding good cause to grant plaintiff's request for expedited discovery where requests were narrowly tailored and reasonable and incarcerated persons' health, safety, and well-being was implicated, including "increasing frequency of suicides and suicide attempts"). Already, Plaintiffs and members of the putative classes are suffering torturous periods in solitary confinement in violation of HALT. *See* NYSCEF Doc No. 1. It is critical to the safety of these individuals, all of whom are people with disabilities, who face disproportionate harm from solitary

confinement, that Defendants clarify the extent to which DOCCS' suspension of HALT will impact them, as well as DOCCS' purported basis and authority for "suspending" this state law.

See generally id.

II. Plaintiffs Require Expedited Discovery Because Critical Relevant Evidence Remains in Defendants' Exclusive Possession and Plaintiffs' Health, Safety and Well-Being Is at Risk

Here, Plaintiffs' targeted discovery requests warrant expedited treatment both because the information sought is in the exclusive possession of Defendants and because they are critical to Plaintiffs' health, safety and well-being, as well as the health, safety and well-being of all members of the putative classes. HALT was enacted to protect some of the most vulnerable individuals incarcerated in the New York prison system, in the recognition that they face particularly acute medical, physical, and psychological danger when forced to live in solitary confinement. Already, Defendants were violating the HALT protections afforded to the Named Plaintiffs and members of the putative classes through their systemic, statewide policies and practices. That Defendants now claim the authority to "suspend" the very state protections that prohibit these practices only heightens the ongoing dangers the Plaintiffs face.

Moreover, the extent of DOCCS' suspension of HALT and its potential impact on Plaintiffs and class members is shrouded in uncertainty. It is impossible to know which provisions of HALT have been suspended, which remain in effect, and for how long. It is further impossible to discern which provisions of HALT are subject to discretionary suspension in supposedly understaffed facilities under the terms of the Consent Agreement. What's more, given the conditions in DOCCS prisons, DOCCS has largely suspended legal calls, thus preventing attorneys and advocates from contacting their incarcerated clients and receiving information on the enforcement and/or suspension of HALT protections. *See Gemmell Aff., Ex. M.* This inability to communicate with attorneys and advocates has limited access to information about the status of HALT at this time

and has significantly impacted Plaintiffs' ability to prosecute this case. Only DOCCS has knowledge about the scope of the suspension of HALT. *See Sylmark Holdings*, 5 Misc. 3d at 302 (granting plaintiff's request for expedited discovery "in light of defendants' unique possession of the information necessary to determine the extent of their unlawful conduct").

The limited discovery requested will enable Plaintiffs to (i) enforce their rights if they are being further violated by Defendants and (ii) determine whether to move for injunctive and/or other relief seeking to ensure and/or reinstate protections for individuals with disabilities incarcerated in DOCCS facilities.

Responding to these discovery requests on an expedited basis will not prejudice Defendants or impose any undue burden on them, as it is limited to a discrete set of five interrogatories and a single deposition that will be limited in scope. The prejudice that Plaintiffs will face without this expedited discovery—the inability to track the extent of DOCCS' ongoing violations of HALT, which is information critical to the prosecution of Plaintiffs' claims and which severely curbs the ability of Plaintiffs' attorneys to represent the critical needs of Plaintiffs—is far greater than any inconvenience that might be suffered by Defendants.

Accordingly, Plaintiffs' request for targeted, discrete discovery from DOCCS about the suspension of HALT, the current conditions of members of the putative plaintiff classes under the suspension of HALT, and DOCCS' purported authority for suspending certain provisions of HALT, on an expedited basis is exactly the sort of discovery appropriate for expedition under an order to show cause.¹ *See, e.g., Canaanite*, 2023 WL 6162034, at *3 (granting the plaintiff's motion for "limited, targeted" expedited discovery, including "limited depositions"); *see also Stop BHOD*, 2009 WL 692080, at *13.

¹ Expedited discovery is further warranted given the repeated, extended delays in Defendants' responses to Plaintiffs' discovery requests thus far in this Action. *See Gemmill Aff.* ¶¶ 18–19.

CONCLUSION

For all of these reasons, Plaintiffs respectfully request that their motion for expedited discovery be granted in its entirety.

Dated: March 7, 2025
New York, New York

Respectfully submitted,

/s/ Antony P. F. Gemmell

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CERTIFICATION OF COMPLIANCE

1. The following statement is made in accordance with NYCRR § 202.8-b.
2. Plaintiffs' Memorandum of Law In Support of Plaintiffs' Order to Show Cause for Expedited Discovery was prepared in the Microsoft Word processing system, with Times New Roman typeface, 12-point font.
3. The total number of words in this document, exclusive of any caption, table of contents, table of authorities, and signature block is 2,815.

Dated: March 7, 2025
New York, New York

Respectfully submitted,

/s/ Antony P. F. Gemmell
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Counsel for Plaintiffs