

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX**

ARNOLD CATALA, CORY ELDER, BEN FOSTER,
JERRY YOUNG,

Plaintiffs,

- against -

THE CITY OF NEW YORK,
LYNELLE MAGINLEY-LIDDIE In Her Official
Capacity As Commissioner Of The New York City
Department Of Correction,

Defendants.

Index No. 820112/2025E

ORAL ARGUMENT REQUESTED

**REPLY MEMORANDUM OF LAW IN SUPPORT OF
PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION**

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TABLE OF CONTENTS

	<u>Page</u>
I. Arguments in Reply	1
A. HALT’s Medical Exemption Will Not Shield the Defendants from Liability for Violating the HALT Act at WF CDU	1
B. DOC Has Not Mooted the Need for Class-Wide Injunctive Relief By Moving Proposed Named Class Members Out of Restrictive Housing.....	4
C. DOC Is Confining Class Members at the North Infirmary Command in Violation of the HALT Act Under the Guise of Involuntary or Voluntary Protective Custody	6
D. Plaintiffs Have Demonstrated Much More Than Reasonably Likely Irreparable Harm	7
E. The Prior Action Pending Doctrine Does Not Apply Here.....	7
F. A Declaratory Judgment Action, Certified as a Class Action, is Proper and Appropriate In This Case	9
G. The Balance of Equities Tips in Plaintiffs’ Favor.....	11
II. Conclusion.....	12

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Billet v. Drexler-Billet</i> , No. 654844/16, 2019 N.Y. Misc. LEXIS 5321 (N.Y. Sup. Ct. N.Y. Cnty 2019).....	9
<i>Brad H. v. City of N.Y.</i> , 185 Misc. 2d 420, 712 N.Y.S.2d 336 (Sup. Ct. N.Y. Cnty. 2000).....	7
<i>Cepeda v. City of New York</i> , No. 25 Civ. 5409 (S.D.N.Y.).....	8, 9
<i>City of New York v. Maul</i> , 14 N.Y.3d 499, 929 N.E.2d 366, 903 N.Y.S.2d 304 (2010).....	6
<i>City of New York v. Nat'l Fire Ins. Co. of Hartford & Gandhi Eng'g, Inc.</i> , No. 114478/2011, 2012 N.Y. Misc. LEXIS 4430 (N.Y. Sup. Ct. N.Y. Cnty. 2012).....	9
<i>Douglas v. City of N.Y.</i> , 79 Misc. 3d 496, 190 N.Y.S.3d 847 (Sup. Ct. N.Y. Cnty. 2023).....	10
<i>Lehigh Portland Cement Co. v. N.Y.S. Dep't of Env't Conservation</i> , 87 N.Y.2d 136, 661 N.E.2d 961, 638 N.Y.S.2d 388 (1995).....	11
<i>Lubonty v. U.S. Bank Nat'l Ass'n</i> , 34 N.Y.3d 250, 139 N.E.3d 1222, 116 N.Y.S.3d 642 (2019).....	4
<i>People ex rel. Maxian v. Brown</i> , 77 N.Y.2d 422, 570 N.E.2d 223, 568 N.Y.S.2d 575 (1991).....	5
<i>McMillian v. Krygier</i> , 197 A.D.3d 800, 153 N.Y.S.3d 198 (3d Dep't 2021).....	11
<i>Morgenthau v. Erlbaum</i> , 59 N.Y.2d 143, 451 N.E.2d 150, 464 N.Y.S.2d 392 (1983).....	10
<i>People v. Dunn</i> , No. 2029/2021, 2021 NYLJ LEXIS 1141 (N.Y. Sup. Ct. N.Y. Cnty. Dec. 6, 2021).....	5
<i>R.C. v. City of N.Y.</i> , 64 Misc. 3d 368, 100 N.Y.S.3d 824 (Sup. Ct. N.Y. Cnty. 2019).....	10

Univ. Healthy Choice Corp. v. Bronx Comty Coll. Aux. Enters Corp.,
 No. 800821/2022E, 2022 WL 1053379 (N.Y. Sup. Ct. Bronx Cnty. Mar. 30,
 2022)..... 9

Statutes

42 U.S.C. § 1983..... 8

Exec. L. § 292(21)..... 4

N.Y. Correct. L. § 2.23..... 1

N.Y. Correct. L. § 137..... 2

N.Y. Correct. L. § 137(6)(h)..... 4

N.Y. Correct. L. §§ 137(6)(k-1)..... 11

N.Y. Correct. L. § 137(6)(k)(4)..... 6

Other Authorities

City of New York Board of Correction, Assessment of Grievance Procedures and
 Processes in the New York City Department of Correction: 2021-2023 (Dec.
 2024), <https://perma.cc/NQ75-B2XX>..... 11

CPLR § 3001 10

CPLR § 3211 8

New York City Bureau of Correction, Special Investigation Report: New York
 City Department of Correction's North Infirmary Command April 6, 2023
 (Dec. 22, 2023), <https://perma.cc/W5AN-U3SR>..... 7

We submit this brief in reply to Defendants' opposition to Plaintiffs' Motion for a Preliminary Injunction, NYSCEF Doc. No. 43-54.

I. Arguments in Reply

A. HALT's Medical Exemption Will Not Shield the Defendants from Liability for Violating the HALT Act at WF CDU

Defendants state that DOC confines people in the WF CDU when Correctional Health Services ("CHS") "determines that they should be housed at West Facility for medical reasons."¹ Defendants' Memorandum in Opp. to Plaintiffs' Motion for Preliminary Injunction, NYSCEF Doc. No. 51 ("Defendants' Br."), at 3; Ex. A. to Affirmation of Charlton Lemon, NYSCEF Doc. No. 46. Defendants argue that HALT simply does not apply when a placement in the CDU is "directed" or "guided" by CHS because of what we will call the "Medical Exemption" in the HALT Act. *See* Defendants' Br. at 11 – 12. But, as shown below, Defendants materially mischaracterize the Medical Exemption and, in practice, they are confining people at CDU with medical, mental health, or other disabilities, whom HALT categorically excludes from segregated confinement.

The "Medical Exemption" is clearly set forth as part of a single sentence in the statute:

Segregated confinement" means the *confinement* of an incarcerated individual in any form of cell confinement *for more than seventeen hours a day other than* in a facility-wide emergency or *for the purpose of providing medical or mental health treatment*.

N.Y. Correct. Law § 2.23 (emphasis added).

¹ Defendants also argue that proposed Class Members are receiving regular adequate medical care in the West proposed Facility CDU. *See, e.g.*, Defendants' Br. at 11. Plaintiffs vigorously contest this assertion. *See, e.g.*, Statement of Jerry Young, NYSCEF Doc. No. 30, at ¶¶ 8-9; Statement of Richard Luttmann, NYSCEF Doc. No. 17, at 2; Statement of James Campbell, NYSCEF Doc. No. 14, at ¶¶ 2-3. Nevertheless, it is not necessary for the Court to reach this factual issue at this stage because, as shown below, the segregated confinement of Class Members is in plain violation of the HALT Act, whatever the City may contend about the adequacy of the medical care it provides.

Thus, the Medical Exemption expressly applies where, (a) *for the purpose of providing medical or mental health treatment*, (b) *a person is confined in a cell for more than 17 hours per day*.²

Plaintiffs do not contest that CHS sometimes decides that people should be housed away from the general population in the WF CDU (or elsewhere) for medical reasons. But such CHS “dispositions” go to the question of where someone is housed, not whether there is a need to confine him in a cell for more than 17 hours per day to provide medical treatment. Accordingly, a CHS recommendation or direction to place someone in a particular facility does not, in and of itself, trigger the Medical Exemption or abrogate DOC’s legal obligation to comply with the HALT Act. Even for someone in need of medical housing, the HALT Act applies in full force and effect.

Defendants’ interpretation omits condition (b), above, confinement for more than 17 hours a day, which is an integral part of the antecedent to which the Medical Exemption (beginning with the words “other than”) refers (“confinement . . . in any form of cell confinement *for more than seventeen hours a day* . . .”) (emphasis added). In other words, Defendants ignore that such prolonged cell confinement must itself be “for the purpose of providing medical or mental health treatment.” The law does not permit such confinement just because someone has medical needs.

The Medical Exemption might make sense, for example, when someone has a contagious disease and needs to be treated while isolated for an extended period, when a mental health clinician determines that confinement is necessary to prevent self-harm or suicide during an acute mental health crisis, or when someone needs to be isolated for diagnostic purposes. The Medical

² The Medical Exemption could apply, for example, when DOC manages a contamination of an infectious disease by requiring that an infected person remain quarantined, when a mental health clinician determines that cell confinement is necessary to prevent harm during an acute mental health crisis, or when someone needs to be isolated for testing. Individuals falling under this Medical Exception would not be in the proposed Class, which consists only of “. . . similarly situated persons whom DOC holds or will hold in segregated confinement at *Rikers in violation of the requirements and prohibitions of HALT, N.Y. Correct. L. § 137* . . .” Complaint, NYSCEF Doc. No.1 ¶ 6.a (emphasis added).

Exemption does not mean that DOC may isolate a person in a cell for 23 hours per day just because he needs medical attention or has a disability prompting CHS to issue a “CDU Disposition,” if it is not for the purpose of providing medical treatment.³

Notably, like the Plaintiffs and Affiants in this action, petitioners in previous Article 78 proceedings described *barriers* to accessing medical care while in the CDU, and as soon as they challenged their placement via an Article 78, they were transferred, further undermining any claim that their prolonged segregated confinement at CDU was necessary for medical treatment purposes. *See* Hamilton Aff. ¶¶ 6; 9–10.

Nor can the Medical Exemption be sensibly interpreted to permit indefinite solitary confinement after a period of quarantine or isolation for medical treatment has elapsed. *See, e.g.*, Excerpts from Medical Record of New York City Health and Hospitals Correctional Health Service Regarding Arnold Catala, Ex. EE to the Hamilton Aff. (reason for confinement at WF CDU, starting more than seven months ago, listed as “screening for communicable diseases”); Statement of Richard Luttman, NYSCEF Doc. No. 17 (Mr. Luttman’s placement in isolation in the WF CDU was originally justified as a five-day quarantine; he was there for several months). *See also* Medical Record of New York City Health and Hospitals Correctional Health Service Regarding Jerry Young, Ex. FF to Hamilton Aff. (“status” in the CDU was “medical isolation” as of January 9, 2025 along with the note that he “warrants NIC housing hence refer to CDU pending acceptance”; he was kept for nine months before “accepted to NIC / Dorm 3” on October 10, 2025).

³ For example, Plaintiff Cory Elder’s medical records show that the “CDU Pre-Admission Reason” given was that “[Mr. Elder] warrants NIC [medical dormitory] housing hence refer to CDU pending bed availability.” Medical Record of New York City Health and Hospitals Correctional Health Service Regarding Cory Elder, Ex. DD to Hamilton Aff. There is no medical indication for virtually round-the-clock isolation, but Mr. Elder remains confined in his CDU cell 23 hour per day months later. Statement of Cory Elder, NYSCEF Doc. No. 19 ¶ 5.

Defendants' interpretation of the Medical Exemption not only ignores the wording of the statute; it leads to a nonsensical result. HALT categorically bars members of "Special Populations" from any placement in segregated confinement. N.Y. Correct. L. § 137(6)(h).⁴ This group comprises the proposed Subclass and includes, among others, all people with disabilities as defined in Exec. L. § 292(21), that is, people with any "physical, mental, or medical impairment" We believe that the proposed Subclass makes up the majority of the proposed Class. It makes no sense to read the same statute that (a) *categorically bars* DOC from holding members of Special Populations in segregated confinement, as (b) *permitting* DOC to hold the very same people for more than 17 hours per day (that is, in "segregated confinement"), simply by virtue of their disabilities, when such isolation is not for the purpose of medical treatment. *See Lubonty v. U.S. Bank Nat'l Ass'n*, 34 N.Y.3d 250, 255, 139 N.E.3d 1222, 1225, 116 N.Y.S.3d 642, 645 (2019) (A Court must interpret statutes "to avoid an unreasonable or absurd application of the law," and especially to avoid "inequitable and potentially absurd results") (citation omitted).

The Medical Exemption simply does not apply to people with disabilities or medical issues who do not need to be isolated 17 hours or more per day for treatment, but the statute's prohibition against isolating members of Special Populations in segregated confinement is clear.

B. DOC Has Not Mooted the Need for Class-Wide Injunctive Relief By Moving Proposed Named Class Members Out of Restrictive Housing

Over many years, The Legal Aid Society has represented people unlawfully confined in the Segregated Cells in Article 78 special proceedings. Since 2016, faced with these cases, DOC has regularly resorted to moving people out of these units to moot Article 78 special proceedings

⁴ HALT provides that "[p]ersons in a special population . . . shall not be placed in segregated confinement for any length of time, except in keeplock for a period prior to a disciplinary hearing" (N.Y. Correct. L. § 137(6)(h)). The "keeplock" qualification does not apply here.

brought to challenge the conditions of their confinement on an individual basis. See Hamilton Aff. ¶¶ 9–10. This happened, for example, when Plaintiff Cory Elder filed an Article 78 petition objecting to his confinement in WF CDU in 2024. DOC promptly transferred him to moot his Article 78 proceeding, only to subsequently place him back in WF CDU in violation of HALT. See Hamilton Aff. ¶ 12.

DOC plays this cat-and-mouse game to avoid accountability for its continuing violations of the HALT Act, but that cannot work in class action litigation, in which courts recognize an exception to the mootness doctrine for harms that are “capable of repetition, yet evading review.” See *People ex rel. Maxian v. Brown*, 77 N.Y.2d 422, 425, 570 N.E.2d 223, 224, 568 N.Y.S.2d 575, 576 (1991); see also *People v. Dunn*, No. 2029/2021, 2021 NYLJ LEXIS 1141, *2 (N.Y. Sup. Ct., N.Y. Cnty. Dec. 6, 2021). DOC’s misuse of solitary confinement in violation of the law is not only “*capable* of repetition”; over the past 15 years. DOC has been misusing the very cells at issue here to hold people illegally in solitary confinement, and if not enjoined, it can be expected to continue to do so, perpetuating the very psychological and physical devastation that the HALT Act was intended to prevent. See NYSCEF Doc. No. 6 at pp. 4-8.

The New York Court of Appeals has emphasized that the “capable of repetition, yet evading review” doctrine should be liberally applied to repeated violations of law, each too ephemeral to be conclusively litigated, of exactly the kind at issue here:

[W]e concur . . . that an exception to mootness should be applied in this case. Plaintiffs raise substantial and novel questions as to whether . . . [defendants] are fulfilling their statutory responsibilities. These issues are likely to recur and may evade review given . . . the fact that some placements tend to be transitory (see *Matter of Savastano v. Prevost*, 66 N.Y.2d 47, 48 . . . (“While all 25 patients who are the subject of the petition have by now been transferred . . ., we retain jurisdiction because of the substantial issues raised, the likelihood of repetition, and the fact that these issues may otherwise evade review”).

City of New York v. Maul, 14 N.Y.3d 499, 507, 929 N.E.2d 366, 371, 903 N.Y.S.2d 304, 309 (2010) (class of developmentally disabled persons certified to pursue claims against a New York State governmental agency and the New York City Administration for Children’s Services for inadequate services while the proposed class members were in foster care).

When DOC moves people out of the Segregated Cells, they do not stay empty for long, as DOC cycles other people into those same cells, to be held 23 hours a day or more in violation of the HALT Act. DOC has done this for years and shows no signs of stopping. This is precisely the kind of case for which the “capable of repetition, yet avoiding review” doctrine is intended.

C. DOC Is Confining Class Members at the North Infirmery Command in Violation of the HALT Act Under the Guise of Involuntary or Voluntary Protective Custody

Defendants argue that proposed Class Members DOC confines on the second floor of the NIC are in involuntary or voluntary protective custody, which, Defendants imply, somehow makes them not in segregated confinement. They cite no law (and there is none) to support this made-up exception to the statutory definition of segregated confinement.

In fact, to the contrary, the statute provides that “no person may be held in segregated confinement for protective custody. Any unit used for protective custody must, at a minimum, conform to requirements governing residential rehabilitation units.” N.Y. Correct. L. § 137(6)(k)(iv). In residential rehabilitation units, people are entitled to “six hours of daily out-of-cell congregate programming, services, treatment, recreation, activities and/or meals, with an additional minimum of one hour for recreation.” *Id.* § 137(6)(j)(ii).

Moreover, as the New York City Board of Correction, DOC’s regulator, found in a recent investigation, when DOC confines people in the NIC cages, it violates the Board’s Minimum Standards:

DOC operates the structurally restrictive units at NIC as a form of restrictive housing. Former DOC Commissioner Louis Molina has described NIC as “involuntary protective

custody.” People in custody are assigned to NIC second and third floors without disciplinary hearings for as long as DOC chooses to keep them there.

New York City Bureau of Correction, Special Investigation Report: New York City Department of Correction’s North Infirmary Command April 6, 2023 Fire at 3 (Dec. 22, 2023), <https://perma.cc/W5AN-U3SR>, at p.3.

D. Plaintiffs Have Demonstrated Much More Than Reasonably Likely Irreparable Harm

“Plaintiffs and the class only have to demonstrate ‘a potential’ that irreparable injury will result if a preliminary injunction is not awarded to them.” *Brad H. v. City of N.Y.*, 185 Misc.2d 420, 430, 712 N.Y.S.2d 336, 344 (Sup. Ct. N.Y. Cnty. 2000). In this case, there is much more than “potential” injury. With every passing day, Class Members suffer the well-documented physical and psychological harm that solitary confinement causes. See the authorities cited in Plaintiff’s Memorandum in Support of Motion for Preliminary Injunction, NYSCEF Doc. No. 6, 9-18; Affidavit of Dr. Craig Haney, NYSCEF Doc. Nos. 11, 27. Each day spent in solitary confinement not only prolongs their suffering but compounds the risk of serious, often irreversible psychological and physical damage. Defendants’ suggestion that this harm cannot occur in the short term or can be remedied by mental health visits is contradicted by substantial scientific literature. See Haney Affidavit, NYSCEF Doc. No. 27, ¶¶ 15-33.

E. The Prior Action Pending Doctrine Does Not Apply Here

Defendants contend that Plaintiffs are unlikely to succeed on the merits because their putative class action should be barred under the “prior action pending” doctrine. Defendants’ Br. at 12 et seq.

The prior action pending doctrine is based on New York Civil Practice Law & Rules (“CPLR”), which provide that a “party may move for judgment dismissing . . . causes of action . . . on the ground that . . . there is another action pending between the same parties for the same

cause of action in a court of any state or the United States; *the court need not dismiss upon this ground but may make such order as justice requires.*” CPLR § 3211 (emphasis added).

In *Cepeda v. City of New York*, No. 25 Civ. 5409 (S.D.N.Y.) (hereinafter, “*Cepeda*”) — the other action on which Defendants rely for this argument — both the parties and the relief sought are distinct from the present case. As to the parties, the *Cepeda* plaintiffs and putative class are people who seek damages for past injuries that occurred on or after July 1, 2022. *See* Complaint ¶¶ 181 – 197, NYSCEF Doc. No. 50, ¶¶ 181 – 198. By contrast, the Plaintiffs and class members in this action are people who are or will be held in unlawful segregated confinement presently or in the future and who seek forward-looking injunctive and declaratory relief. NYSCEF Doc. No. 1, ¶¶ 12 – 17.

Turning to the causes of action, in *Cepeda*, the first four Claims for Relief are under 42 U.S.C. § 1983, alleging underlying violations of various provisions of the U.S. Constitution based on four different theories. *See id.* ¶¶ 212 – 221, 222 – 229, 230 – 236, 237 – 243 (respectively). These four claims are followed by pendent state claims for alleged violations of the HALT Act and for alleged wrongful confinement under New York common law. *See id.* ¶¶ 244 – 262.

The HALT Act claim is a relatively small part of the complaint, which otherwise centers on federal constitutional issues and a state common law legal theory, none of which is present in this case. In contrast, the Complaint filed in this Court sets forth only two Causes of Action, both arising under the New York State HALT Act. NYSCEF Doc. No. 1 ¶¶ 65 – 75. Crucially, the *Cepeda* plaintiffs are seeking only monetary damages, whereas, in this case, the Plaintiffs are seeking only forward-looking, non-monetary relief.⁵

⁵ This statement is without prejudice to the right of Plaintiffs or Plaintiffs’ co-counsel later to seek any recovery of attorneys’ fees, expenses or the like to which they may be entitled under applicable law.

Under New York law, the prior action pending doctrine does not apply where, as here, the relief sought in the two actions at issue is not substantially identical. *See Billet v Drexler-Billet*, No. 654844/16, 2019 N.Y. Misc. LEXIS 5321, at *12 (N.Y. Sup. Ct. N.Y. Cnty 2019) (“That portion of the motion . . . is denied, as . . . ‘*the relief sought in this action is not substantially the same as the relief sought in the . . . [allegedly prior pending] action*, and there is not a substantial identity of the parties’”) (quoting *Swartz v. Swartz*, 145 A.D.3d 818, 822, 44 N.Y.S.3d 452 (2nd Dep’t 2016)); *City of New York v. Nat’l Fire Ins. Co. of Hartford & Gandhi Eng’g, Inc.*, No. 114478/2011, 2012 N.Y. Misc. LEXIS 4430, at *5 (N.Y. Sup. Ct. N.Y. Cnty. 2012) (“prior action pending” defense denied because, among other things, “there is no identity of parties in the two actions, the relief is not the same and there is good reason to maintain the separate existence of these actions”). That is undeniably true in the present situation, where the relief sought in the two actions is totally different and non-overlapping.

Because five of the six Claims for Relief in *Cepeda* (raising mostly federal constitutional issues) are materially different from the two state Causes of Action in this case, and the remedies sought in the two cases are entirely different and non-overlapping, the “prior action pending” doctrine does not bar Plaintiffs from proceeding with this case.

F. A Declaratory Judgment Action, Certified as a Class Action, is Proper and Appropriate In This Case

Defendants argue that this declaratory judgment action is not the proper vehicle for the Plaintiffs’ claims, which should have been pursued through a series of Article 78 special proceedings “following Plaintiffs’ exhaustion of their administrative remedies.” NYSECF Doc. No. 51 at 2, 15-17. The appropriateness of a declaratory judgment is not before the Court on this motion for a preliminary injunction; “probability of success on the merits” goes to liability, not remedy. *Cf. Univ. Healthy Choice Corp. v. Bronx Comty Coll. Aux. Enters Corp.*, No.

800821/2022E, 2022 WL 1053379, at *5 (N.Y. Sup. Ct. Bronx Cnty. Mar. 30, 2022) (decision on preliminary injunction motion does not require court to address damages “at this time and would be addressed in the underlying action”).

Furthermore, Supreme Court Justices have broad discretion to issue a declaratory judgment, provided that there is a “justiciable controversy.” CPLR § 3001; *Morgenthau v. Erlbaum*, 59 N.Y.2d 143, 451 N.E.2d 150, 464 N.Y.S.2d 392 (1983). New York courts have not hesitated to address challenges to the policies and practices of municipal agencies in plenary actions seeking declaratory and other relief, rather than special proceedings. *See, e.g., Douglas v. City of N.Y.*, 79 Misc. 3d 496, 498, 190 N.Y.S.3d 847, 849 (Sup. Ct. N.Y. Cnty. 2023) (declining to dismiss declaratory judgment action challenging, on both statutory and constitutional grounds, NYPD’s policy and practice of detaining people before issuing “appearance tickets”); *R.C. v. City of N.Y.*, 64 Misc. 3d 368, 100 N.Y.S.3d 824 (Sup. Ct. N.Y. Cnty. 2019) (class action challenging NYPD’s policy and practice of maintaining, using and disclosing sealed records).

As discussed above, the Article 78 approach has been tried by people in custody and has failed to bring systemic relief. If a person even has the opportunity and fortitude to bring an individual claim, DOC has a longstanding practice of moving people once they file Article 78 proceedings challenging their cell confinement, thereby perpetually avoiding accountability for their violations of HALT. *See* § I.B., above. Defendants attempt to use the same tactic again here. But if this Court certifies Plaintiff’s proposed Class and Subclass, it will not work because of the doctrine of “capable of repetition, yet evading review” discussed above. *See id.* This Court’s ability to put an end to this evasive tactic is also a key reason why an action seeking a declaratory

judgment, along with injunctive relief, is superior to other procedures, including a series of Article 78 special proceedings.⁶

G. The Balance of Equities Tips in Plaintiffs' Favor

On the equities, Defendants claim that an injunction requiring DOC to offer people in custody the out-of-cell time to which they are entitled under HALT would cause a security risk. Defendants' Br. at 18. But, while there is no exception in HALT allowing DOC to warehouse people in indefinite solitary confinement on the basis of an assertion that they pose a security risk or have medical issues, neither does the statute tie correction officers' hands in managing security risks; it merely requires that, to impose segregated confinement or other security measures, they follow certain procedural requirements. *See* N.Y. Correct. L. §§ 137(6)(k)(i) (setting forth procedural requirements), (j)(vi) (describing circumstances when segregated confinement may be imposed beyond durational limit), (j)(vii) (permitting use of restraints during out-of-cell programming with individualized determination).

On the other side of the scale, Plaintiffs and the putative class members continue suffering the well-known, often devastating and irreversible harms of solitary confinement that the HALT Act was enacted to prevent. The balance of equities tips decidedly in their favor.

⁶ Defendants argue that, in the event that the action is converted to an Article 78, Plaintiffs' failure to exhaust their administrative remedies bars them from obtaining declaratory relief. *See* Defendants' Br. at 2, 17. But "[e]xhaustion is not required where, among other things, 'an administrative challenge would be futile. . . .'" *McMillian v. Krygier*, 197 A.D.3d 800, 801, 153 N.Y.S.3d 198, 201 (3d Dep't 2021) (citation omitted); *Lehigh Portland Cement Co. v. N.Y.S. Dep't of Env't Conservation*, 87 N.Y.2d 136, 138, 661 N.E.2d 961, 962, 638 N.Y.S.2d 388, 389 (1995). It is well documented that the DOC grievance process is dysfunctional and ineffective. *See* City of New York Board of Correction, Assessment of Grievance Procedures and Processes in the New York City Department of Correction: 2021-2023 (Dec. 2024), <https://perma.cc/NQ75-B2XX>. A BOC investigation found that the DOC grievance system lacked adequate safeguards, was operated by staff without necessary training, and that accessing a grievance box was 'particularly challenging.' *Id.* at 3. In these conditions, Plaintiffs satisfy the futility test, excusing exhaustion of administrative remedies.

II. Conclusion

Plaintiffs respectfully submit that the Court should sign the Order in substantially the form submitted (NYSCEF Doc. No. 7) to put a stop to Defendants' continuing violation of the HALT Act at devastating expense to the physical and mental well-being of members of the proposed Class.


Dated: November 25, 2025 Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

The Memorandum of Law in Support of Plaintiffs' Motion for Preliminary Injunction was prepared in the Microsoft Word processing system, with Times New Roman typeface, 12-point font.

The total number of words in this document, exclusive of any caption, other words on the cover, table of contents, table of authorities, and signature block is less than 4,000.

I therefore certify that the foregoing Memorandum of Law conforms with Rule 202.8-b of the Uniform Civil Rules for the Supreme Court in that it does not exceed 4,200 words, exclusive of caption, table of contents, table of authorities and signature block.

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