

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

ALFONSO SMALLS, et al., on behalf of  
themselves and all similarly situated individuals,

Plaintiffs-Petitioners,

v.

DANIEL F. MARTUSCELLO III, as  
Commissioner of the New York State Department  
of Corrections and Community Supervision,

Defendant-Respondent.

Index No. 903926-25

**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION TO ENFORCE  
THE PRELIMINARY INJUNCTION**

**TABLE OF CONTENTS**

PRELIMINARY STATEMENT ..... 1

STATEMENT OF FACTS ..... 1

    I.    Plaintiffs’ Complaint ..... 1

    II.   The Preliminary Injunction..... 2

    III.  Defendant’s Affirmation..... 3

    IV.  Plaintiffs’ Efforts to Address Deficiencies in Defendant’s Affirmation ..... 5

ARGUMENT..... 7

    I.    Defendant is Not Complying with the Preliminary Injunction..... 7

        A.  Defendant has failed to specify which DOCCS facilities he claims are experiencing a facility-wide emergency..... 7

        B.  Defendant has failed to provide sufficient information to determine whether emergencies exist or to clarify their scope..... 9

        C.  Defendant fails to offer detailed facts upon which he relied to determine that there are facility-wide emergencies at certain facilities..... 14

        D.  Defendant has failed to specify the expected duration of *any* facility-wide emergency..... 16

    II.   The Court Should Require Defendant to Comply with the Preliminary Injunction. .... 17

        A.  The Court Should Require Defendant to Supplement His Affirmation with Information Necessary to Assess the Legitimacy of Any Facility-Wide Emergencies He Claims Exist..... 18

        B.  Alternatively, the Court Should Hold Defendant in Civil Contempt. .... 19

CONCLUSION..... 21

**TABLE OF AUTHORITIES**

**Cases**

*Anthony et al. v DOCCS et al.*, Sup Ct, Kings County, Index No. 512871/2024 . . . . . 9

*Dept. of Corrs. & Community Supervision v Sasser*, 81 Misc 3d 236 [Sup Ct, Albany County 2023] . . . . . 17

*El-Dehdan v El-Dehdan*, 26 NY3d 19 [2015] . . . . . 19

*Fuquan F. v D.F.M.*, 2024 WL 5681961 [Sup Ct, Albany County 2024] . . . . . 8

*McCormick v Axelrod*, 59 NY2d 574, *amended*, 60 NY2d 652 [1983] . . . . . 20

*Montauk Improvement, Inc. v Procaccino*, 41 NY2d 913 [1977] . . . . . 18

*People v Sweat*, 24 NY3d 348 [2014] . . . . . 19

*Peterkin v New York State Dept. of Corrs. & Community Supervision*, 2025 WL 1657349 [3d Dept, June 12, 2025, No. CV-24-0895] . . . . . 8

*Tedesco v Elio*, 211 AD3d 1074 [2d Dept 2022] . . . . . 20

*Wehnringer v Brannigan*, 232 AD2d 206 [1st Dept 1996] . . . . . 17, 18

**Statutes**

Civil Practice Law and Rules 5104 . . . . . 19

Correction Law § 137[6][k][iv] . . . . . 2, 12

Correction Law § 401[1] . . . . . 2, 12

Correction Law § 2[23] . . . . . 3, 18

Correction Law § 95 . . . . . 5

Correction Law § 75 . . . . . 5

Correction Law § 137[6][j][ii] . . . . . *passim*

Judiciary Law § 2–b[3] . . . . . 17

Judiciary Law § 753[A] . . . . . 19

## PRELIMINARY STATEMENT

Last month, this Court preliminarily enjoined Defendant’s suspension of the Humane Alternatives to Long-Term Solitary Confinement Law (“HALT”), finding he had failed to draw the rational connection the statute requires between such sweeping action and any “facility-wide emergency.” The Court ordered Defendant to publicly file “detailed facts” describing any such emergency—including its scope and duration—as a basis for suspending HALT in the future.

Defendant has not complied. His lengthy affirmation—aimed at continuing the suspension—is riddled with omissions, contradictions, and ambiguity, and does not even identify the facilities where Defendant claims an emergency exists. And despite Plaintiffs’ repeated efforts to resolve these deficiencies, Defendant continues to withhold basic information the Court needs to assess the legitimacy of his suspension.

To ensure meaningful review of Defendant’s efforts to suspend a statute that protects Plaintiffs and the putative classes from the severe harms of solitary confinement, this Court should enforce its preliminary injunction—by compelling Defendant to supplement his affirmation as described in this motion and, if necessary, by holding him in contempt.

## STATEMENT OF FACTS

### I. Plaintiffs’ Complaint

In February 2025, in response to an illegal mass strike by prison officers, Defendant DOCCS Commissioner Daniel Martuscello III unilaterally “suspended” HALT statewide. This sweeping suspension (the “HALT Suspension” or “Suspension”), had two parts: a nullification of HALT’s limits on segregation, and an across-the-board suspension of programming and recreation. Although the Suspension was originally set to end on June 6, 2025, it continued beyond that date with no definite timeframe for expiration (*see* Decision and Order, NYSCEF Doc No. 67 [hereinafter “Order”], at 8).

Plaintiffs are six individuals housed in various units in prisons across the state, including general population units, who have experienced prolonged and severe isolation under the Suspension, leading to devastating psychological and physical symptoms (*see* NYSCEF Doc No. 49 at 7–11). Plaintiffs filed this case on April 17, 2025, challenging the Suspension under Article 78 and the New York State Constitution (*see* NYSECF Doc No. 1).

Plaintiffs moved to certify two overlapping classes: a 2[23] Facility-Wide Emergency Class of “[a]ll individuals in DOCCS custody who are or will be subject to cell confinement exceeding 17 hours per day under the HALT Suspension and who are not, at the time of such confinement, subject to placement in segregated confinement as a disciplinary sanction”; and a [j][ii] Class of “[a]ll individuals in DOCCS custody who are or will be in disciplinary confinement or housed in a setting whose conditions must at a minimum conform or be comparable to the requirements of RRUs under the Correction Law” (NYSCEF Doc No. 44 at 9).<sup>1</sup>

## II. The Preliminary Injunction

On May 7, 2025, Plaintiffs moved for a preliminary injunction. After briefing and oral argument, the Court granted Plaintiffs’ motion on July 1, 2025, finding that Plaintiffs were likely to succeed on the claim that Defendant’s HALT Suspension was arbitrary and capricious, that they would suffer irreparable harm absent preliminary relief, and that the balance of equities tipped in their favor (*see* Order at 4–12). The Court found that “defendant [had] wholly failed to demonstrate that the continuing suspension of HALT’s programming requirements and cell confinement restrictions [had] a rational basis in fact”—a problem “exacerbated” by the fact that “DOCCS [had]

---

<sup>1</sup> The [j][ii] Class includes individuals “housed in a setting whose conditions must at a minimum conform or be comparable to the requirements of RRUs . . . .” (complaint ¶ 171). Examples of such settings include protective custody and Residential Mental Health Treatment Units (*see* Correction Law §§ 137[6][k][iv], 401[1]).

no date certain by which it expect[ed] the existing emergency to end and the HALT suspension to be lifted” (*id.* at 8).

The Court noted several specific deficiencies that contributed to its decision, including Defendant’s failure to address the out-of-cell time offered to individuals in general population or to provide any facility-by-facility reasoning for extending the Suspension beyond early June 2025 (*id.* at 7–8). As the Court explained, “nowhere within the record before this Court is any written determination that there are post-June 6 emergencies in each DOCCS facility sufficient to permit the continued suspension of HALT’s programming requirements and limitations on segregated confinement” (*id.* at 8).

Therefore, the Court enjoined Defendant “from enforcing or implementing the suspension of the provisions of HALT in DOCCS facilities without a finding of a facility-wide emergency in each facility as set forth in Correction Law § 2(23),” and mandated that, should a facility-wide emergency be declared, Defendant file a “sworn affirmation of a DOCCS employee with personal knowledge setting forth detailed facts describing the facility-wide emergency, including its scope and expected duration” (*id.* at 11).

### **III. Defendant’s Affirmation**

Following the Court’s order, on July 14, 2025, Defendant filed a 96-page affirmation (“Affirmation”) describing various conditions at most DOCCS facilities.

In the Affirmation, Defendant asserts that unspecified DOCCS facilities “remain under a ‘facility-wide’ emergency because they lack sufficient staffing to fully re-implement the suspended aspects of HALT while safely and securely operating the facility as a whole for the entire population” (NYSCEF Doc No. 69 [hereinafter “Martuscello Aff”], ¶ 23). Rather than stating which facilities are experiencing an emergency, Defendant lists facilities that comply fully, partially, or not at all with HALT’s *programming* requirements but does not address whether those

facilities are compliant with HALT's minimum out-of-cell time requirements and limits on segregated confinement (*id.* ¶ 21). Defendant also identifies several facilities at which he purports there are “no HALT requirements,” including Taconic and Queensboro, even though those facilities house people in cells and are therefore governed by HALT (*see id.*; NY St Dept of Corrs. & Community Supervision Directive Nos. 0055 [“Housing units at Taconic . . . consist of single cells [and] single rooms. . . .”], 0077 [“Housing units at Queensboro . . . consist of . . . restricted single cells.”]).

The Affirmation does provide some information about specific facilities, such as the number of full-time positions budgeted for certain prisons (or the “Budget Fill Level”), the number of staff currently available to work (or “current fill level”) at those prisons, the tasks that staff perform, and the availability of programming in Special Housing Units (SHUs) and Residential Rehabilitation Units (RRUs) (*see e.g. id.* ¶¶ 30–35). But the Affirmation contains little to no information regarding the number of out-of-cell hours offered to people in general population at DOCCS facilities, nor does it consistently make clear the amount of out-of-cell time available to people in SHUs, RRUs, and other specialized units, nor whether recreation in RRUs and comparable units takes place in a congregate setting.

With respect to the anticipated duration of ongoing emergencies, Defendant asserts only that his “overall goal is to have all facilities as close to fully operational with the applicable HALT programming requirements by early Fall” (*id.* ¶ 22). Defendant does not offer concrete estimates regarding when he believes a facility-wide emergency will end at any specific prison. Defendant only offers aspirational timelines to comply with HALT's programming requirements at just two facilities, where he still does not address the law's out-of-cell time or other core requirements (*see id.* ¶¶ 179, 239).

While Defendant describes his staff recruitment efforts early in his Affirmation (*id.* ¶ 17), he later acknowledges the problem of “staff retiring or resigning in large numbers, and limited relief from recruitment coming. . . .” (*id.* ¶ 135). Yet, he does not include any discussion of mechanisms available to the state to reduce the incarcerated population or otherwise improve prison staffing ratios,<sup>2</sup> whether any of these measures were considered, to what extent they were implemented or rejected, or the basis for those determinations.

#### IV. Plaintiffs’ Efforts to Address Deficiencies in Defendant’s Affirmation

On July 21, 2025, Plaintiffs submitted a letter to the Court identifying several deficiencies in Defendant’s Affirmation: i) Defendant’s failure to identify where there is a facility-wide emergency; ii) Defendant’s failure to clarify which aspects of HALT remain suspended; iii) Defendant’s failure to provide facility-specific timelines for emergencies to end; and iv) Defendant’s treatment of current staffing levels as per se emergencies without sufficient additional context. (NYSCEF Doc No. 74). Plaintiffs informed the Court that they would meet and confer with Defendants to attempt to resolve these deficiencies before taking further action (*id.*).

Plaintiffs’ counsel requested a meeting with defense counsel to seek clarity and request information that would address the deficiencies (Affirmation of Riley Doyle Evans dated August 19, 2025 [hereinafter “Evans Aff”] ¶ 5). This meeting took place on July 23, 2025, and included DOCCS General Counsel, Jason Golub (*id.*). The parties subsequently corresponded via email and letter until August 8, 2025, when Defendant refused further engagement (Evans Aff ¶¶ 12, 15–16).

During these discussions, Defendant repeatedly declined Plaintiffs’ request to specify which facilities he designated as having an ongoing facility-wide emergency (Evans Aff ¶¶ 6, 15–

---

<sup>2</sup> 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 [CL] § 95; granting early release under CL § 75; identifying candidates for medical parole, compassionate release, or executive clemency; and expanding work release and other temporary release programs.

16, Ex. A). Instead, Defendant advised that where the Affirmation conveys that DOCCS is not currently in compliance with HALT at a particular facility, Plaintiffs should infer that DOCCS has declared an emergency at that facility (Evans Aff ¶ 7). Defendant noted that metrics other than the vacancy rate—reflected in the difference between the Budget Fill Level and current fill level—could be relevant to finding a staffing emergency (Evans Aff ¶ 9), but when Plaintiffs’ counsel requested that Defendant identify those other metrics in writing and provide corresponding data, Defendant did not respond to that request (*id.*; *see* Evans Aff, Ex. A).

Plaintiffs spent several weeks analyzing the Affirmation and corresponding with Defendant to address gaps and inconsistencies in the data Defendant provided (Evans Aff ¶¶ 10–13). The information defense counsel provided via email offered some clarifications but also created ambiguities or conflicted with the Affirmation. For instance, the Affirmation asserts that Woodbourne is among the prisons where HALT programming has been completely restored, but in an email to Plaintiffs, defense counsel stated that people in SHU at the prison were receiving only two hours of daily out-of-cell programming, and not the four hours HALT requires (Martuscello Aff ¶ 21; Evans Aff, Ex. A; CL § 137[6][j][ii]).

Ultimately, Plaintiffs’ review of the data Defendant proffered in his Affirmation and via email suggested that irresolvable gaps and inconsistencies remained, prompting Plaintiffs to send a follow up letter on August 5, 2025, outlining the remaining deficiencies and requesting that Defendant provide the key data points to assess the degree of compliance with HALT at each facility, and thereby the existence and scope of any claimed emergency (Evans Aff ¶ 15, Ex. D). On August 8, 2025, Defendant declined to provide further information and referred Plaintiffs back to the Affirmation and prior emails (Evans Aff ¶ 17, Ex. E).

## ARGUMENT

### I. Defendant is Not Complying with the Preliminary Injunction.

Defendant has not complied with the preliminary injunction, under which he must provide “detailed facts describing the facility-wide emergency” he asserts at any DOCCS prison, “including its scope and expected duration” (Order at 11). Instead, he continues to suspend HALT’s protections at facilities across the state but has failed—and seemingly now refuses—to provide the detailed factual justification the preliminary injunction requires. That failure deprives the Court of the ability to assess the legitimacy of Defendant’s claimed emergencies, frustrating the core purpose of the preliminary injunction.

#### A. Defendant has failed to specify which DOCCS facilities he claims are experiencing a facility-wide emergency.

As a threshold matter, Defendant has not even made clear where he is invoking the emergency exception to HALT, thereby flouting the preliminary injunction’s most basic requirement: that he “file publicly to the docket” any “finding of . . . a facility-wide emergency” (*id.*).

An obvious prerequisite to the Court’s ability to assess the legitimacy of any emergency Defendant asserts at a given facility is that Defendant make clear whether he asserts such an emergency at all (*see id.* at 8 [“[N]owhere within the record before this Court is any written determination that there are post-June 6 emergencies in each DOCCS facility sufficient to permit the continued suspension of HALT’s programming requirements and limitations on segregated confinement.”])).

Defendant has not done so. In his 96-page summary of conditions at dozens of DOCCS facilities, with respect to only two facilities does Defendant clearly state whether the conditions he

describes correspond to any “facility-wide emergency.”<sup>3</sup> And Defendant has declined Plaintiffs’ repeated requests to identify each facility where he asserts such an emergency (Evans Aff ¶¶ 6, 15–16, Ex. E). Instead, his counsel has instructed Plaintiffs to infer the existence of an emergency based solely on whether the conditions Defendant has described reflect compliance with HALT (Evans Aff ¶ 7).

Defendant’s outsourcing of his responsibility to identify the facilities where he claims an emergency is unworkable for at least three reasons. First and most fundamentally, it reflects circular reasoning at its worst. Defendant’s self-justifying approach treats mere noncompliance with HALT’s requirements as proof of an emergency that, in turn, warrants suspending those very same requirements. This turns the preliminary injunction’s core requirement on its head, enabling Defendant to manufacture the predicate for suspending HALT.

Second, whether Defendant is complying with HALT in any given moment is a poor proxy for whether he has asserted a facility-wide emergency. As Defendant himself acknowledges, HALT compliance can fluctuate daily within a facility, meaning that compliance today (which under Defendant’s logic would signal no emergency) offers no assurance of compliance tomorrow (*see e.g.* Martuscello Aff ¶ 82 [stating that Elmira restored HALT programming, but “this is reviewed daily”]). And Defendant has a well-documented history of violating HALT for reasons unrelated to any emergency (*see e.g. Fuquan F. v D.F.M.*, 2024 WL 5681961, \*6–7 [Sup Ct, Albany County 2024] [holding DOCCS systematically violated HALT’s requirements to make written findings before imposing segregated confinement];<sup>4</sup> *Peterkin v New York State Dept. of*

---

<sup>3</sup> Defendant states that Greene and Washington are in a state of emergency due to staffing levels (Martuscello Aff ¶¶ 115, 273). Otherwise, he states in general terms that unspecified “DOCCS facilities remain under a ‘facility-wide’ emergency” but does not make facility-specific emergency determinations (Martuscello Aff ¶ 23).

<sup>4</sup> On August 18, 2025, Plaintiffs filed a motion for contempt in this litigation, alleging that Defendant repeatedly violated the court’s injunction (*Fields v Martuscello*, index No. 902997-23, NYSCEF Doc No. 115).

*Corrs. & Community Supervision*, 2025 WL 1657349, \*3 [3d Dept, June 12, 2025, No. CV-24-0895] [holding DOCCS violated HALT by imposing excessive SHU sanctions]; *see also Anthony et al. v DOCCS et al.*, Sup Ct, Kings County, index No. 512871/2024 [challenging DOCCS's violation of HALT's protections for "special populations"]).

And third, Defendant's approach fails even on its own terms because Defendant has provided insufficient information to permit reliable assessment of HALT compliance across DOCCS facilities, as described in the next section (*see infra* section 1.B.).<sup>5</sup>

**B. Defendant has failed to provide sufficient information to determine whether emergencies exist or to clarify their scope.**

Defendant's Affirmation fails to specify which provisions of HALT at issue in this case are suspended at each facility, offering instead incomplete and at times conflicting information regarding HALT compliance. This violates the preliminary injunction in two respects. First, it withholds from the Court critical facts about the "scope" of any facility-wide emergency, which Defendant was ordered to describe (*see* Order at 11). And second, as explained *supra*, because Defendant himself has suggested that Plaintiffs and the Court must infer the existence of an emergency at any particular facility based on whether that facility is complying with HALT, failure

---

<sup>5</sup> Plaintiffs' counsel expended many hours analyzing the information in Defendant's Affirmation, seeking clarification or additional information, and reviewing Defendant's responses, but still concluded it was impossible to determine with certainty where emergencies could be inferred or their scope. Accordingly, Plaintiffs' counsel sent a letter to defense counsel on August 5, 2025, requesting that Defendant specify where emergencies existed and detail their scope and anticipated duration (*see* Evans Aff, Ex. D). In response, Defendant directed Plaintiffs to his Affirmation and previous responses (*see* Evans Aff, Ex. E).

to identify which provisions of HALT are being followed at which prisons further obfuscates where Defendant has declared a “facility-wide emergency.”

**1. Defendant has failed to state whether people in general population are receiving 7 hours of daily out-of-cell time.**

Most members of the 2[23] Facility-Wide Emergency Class, one of the two putative classes in this case, are in general population. Indeed, the Court noted Defendant’s failure to “address conditions in general population, where plaintiffs’ counsel represented their clients remain in cell confinement for more than 17 hours a day” as one basis for its decision (Order at 7). Yet for many facilities, Defendant’s Affirmation never addresses whether DOCCS is complying with HALT’s requirement that people in general population receive at least 7 hours of daily out-of-cell time in each facility. Indeed, Defendant does not even acknowledge that this legal requirement is a component of this litigation (*see e.g.* Martuscello Aff ¶ 16 [describing efforts to reopen HALT programming in facilities with a SHU or RRU but not mentioning out-of-cell time in general population]; *id.* at ¶ 21 [listing Taconic and Queensboro among facilities without “HALT programming requirements,” although they house people in cells and thus are subject to HALT’s limits on cell confinement]).

In response to Plaintiffs’ inquiries, Defendant clarified that DOCCS is providing seven hours of out of cell time to people in general population at certain facilities, but after reviewing and analyzing the information in both Defendant’s Affirmation and his responses to Plaintiffs’ requests (*see* Evans Aff ¶¶ 13–14), Plaintiffs concluded that there remains insufficient information to determine whether DOCCS is meeting the requirement at the following facilities: Attica, Bare

Hill, Bedford Hills, Cape Vincent, Clinton, Coxsackie, Franklin, Gouverneur, Greene, Groveland, Marcy, Mid-State, Orleans, Riverview, Shawangunk, Washington, and Wyoming.<sup>6</sup>

**2. Defendant has failed to provide sufficient information to determine whether people in SHU are receiving at least four hours of out-of-cell programming.**

Defendant also has not provided sufficient information to determine if DOCCS is complying with its obligation to provide people in SHU with four hours of daily out-of-cell programming, including at least one hour of recreation, in several facilities (*see* CL § 137[6][j][ii]). Analysis of both Defendant's Affirmation and the supplemental information provided in response to Plaintiffs' inquiries (*see* Evans Aff ¶¶ 13–14) demonstrated that Defendant has not provided this information at the following facilities: Attica, Bedford Hills, Cayuga, Franklin, Gouverneur, Groveland, Lakeview Shock, Marcy, Mohawk, Orleans, Wende, and Woodbourne.<sup>7</sup>

For instance, Defendant states that programming is offered at the SHU at Cayuga but does not provide enough information to determine if it satisfies HALT's durational requirements (Martuscello Aff ¶ 54 ["Cayuga is offering out of cell programming for SHU . . . . Recreation is also offered; recreation space is limited in the small SHU and they are able to accommodate 2-hour blocks."]). As another example, Defendant does not provide any information about whether programming or recreation is offered to people in the SHU at Attica (*id.* ¶¶ 34–37).

---

<sup>6</sup> Plaintiffs' counsel initially requested information concerning the out-of-cell time offered to people in general population at certain other facilities, which defense counsel provided (Evans Aff, Ex. A). Further analysis of Defendant's assertions revealed that the information in Plaintiffs' possession did not make it possible to determine with certainty whether the 17 facilities listed here were compliant with HALT in this respect. Accordingly, Plaintiffs' counsel requested information about these prisons in their August 5, 2025 letter to defense counsel (*see* Evans Aff, Ex. D). Defense counsel declined to provide any further information (*see* Evans Aff, Ex. E).

<sup>7</sup> As described in Section I.B.5 *infra*, as well as in Exhibit C, the information Defendant provided about Bedford Hills, Groveland, and Woodbourne is insufficient because it is conflicting.

**3. Defendant has failed to clarify whether people in RRUs are receiving at least seven hours of daily out-of-cell programming, activities, and recreation.**

Defendant likewise has not provided sufficient information to determine whether DOCCS is offering people in RRUs at least seven hours of out-of-cell programming, activities, and recreation per day, including at least one hour of recreation in each facility (*see* CL § 137[6][j][ii]). Analysis of Defendant’s Affirmation and supplemental responses (*see* Evans Aff. ¶¶ 13–14) revealed conflicting and therefore insufficient information about Bedford Hills, Coxsackie, Franklin, and Greene.<sup>8</sup>

Defendant’s Affirmation also mentions several “Rru Comparable Units”—those required to have conditions that conform to, or are comparable with, RRU, including Residential Mental Health Treatment Units, Protective Custody, Involuntary Protective Custody, Stepdown, SHU Overflow, General Population Restricted Unit (GPRU), General Confinement-Restricted Unit (GC-RU), and Diversion (*see* CL § 137[k][iv]; CL § 401[1])—but does not provide sufficient information to determine whether people are receiving seven hours of out-of-cell programming and recreation as required under HALT. Taken together, Defendant’s Affirmation and responses to Plaintiffs’ inquiries do not provide this information regarding these alternative restrictive units: Bare Hill GC-RU; Cape Vincent GPRU, Elmira Diversion; Gouverneur GPRU; Shawangunk GPRU; Washington GPRU; Ulster GC-RU; and Wende Diversion and Stepdown.

For instance, Defendant acknowledges that Shawangunk operates a GPRU but does not provide any information about the out-of-cell activities, recreation, or programming offered there (*see* Martuscello Aff ¶¶ 255, 260). Likewise, he states that Wende houses five people in Stepdown and seven in Diversion but does not provide any detailed information regarding the out-of-cell

---

<sup>8</sup> *See* Section I.B.5 *infra* and Evans Aff, Ex. C.

offerings in either unit, except to note that an undefined “restricted population” is offered “the HALT mandated out of cell exercise period” and “cell side program packets” (Martuscello Aff ¶¶ 275, 286).

**4. Defendant has failed to provide sufficient information to determine whether people in RRU are receiving congregate recreation.**

Analysis of Defendant’s Affirmation and supplemental responses (*see* Evans Aff ¶¶ 13–14) similarly showed that Defendant also has not stated whether DOCCS is complying with HALT’s requirement to provide “congregate recreation” to people in RRUs and comparable units at Bedford Hills, Fishkill, Franklin, Lakeview Shock, Mohawk, Washington, and Wende (*see* CL § 137[6][j][ii]).<sup>9</sup> With respect to Fishkill, for example, Defendant asserts that people in one specific RRU are offered three hours of congregate recreation daily but does not address whether people in any of the other six RRUs receive congregate recreation (Martuscello Aff ¶¶ 87, 90).

**5. Defendant has provided conflicting information about compliance with HALT, and thus, the existence and scope of emergencies at numerous facilities.**

The Affirmation itself contains contradictory information about certain facilities. Moreover, Defendant’s responses to Plaintiffs’ requests for clarification have contained information that contradicts other information he provided.<sup>10</sup> These contradictions raise concerns about the reliability of Defendant’s statements regarding compliance with HALT at each facility, casting

---

<sup>9</sup> The information Defendant provided about Lakeview Shock is insufficient because it is conflicting (*see* Evans Aff, Ex. C).

<sup>10</sup> Evans Aff, Exhibit C contains a full list of the conflicting information that Plaintiffs have identified.

further doubt on Defendant’s claim that the Court can accurately infer where facility-wide emergencies exist based on such statements.

For example, in the Affirmation, Defendant lists 14 facilities “that have completely restored the elements of HALT” (Martuscello Aff ¶ 21). But his assertions, either elsewhere in the Affirmation or in emails, about the conditions at five of those facilities—Bedford Hills, Coxsackie, Greene, Franklin, and Woodbourne—indicate otherwise. Specifically, Defendant attests that, as of July 14 at Greene, rather than being fully restored, HALT programming was provided just biweekly, with the hope that it may be increased to weekly by July 21 (*id.* ¶ 114). He further qualifies that HALT programming at Bedford Hills is “fully operational *for the most part*” (*id.* ¶ 172 [emphasis added]). At Franklin, he reveals that an entire category of people—those in “GP RRU” —are not receiving HALT programming (*id.* ¶ 227). At Coxsackie, he reports that programming is offered “on an intermittent basis” in the RMHU (*id.* ¶ 72). And, in an email to Plaintiffs, defense counsel reported that people in Woodbourne SHU were receiving only two hours of out-of-cell programming—not the required four hours (Evans Aff, Ex. A).

**C. Defendant fails to offer detailed facts upon which he relied to determine that there are facility-wide emergencies at certain facilities.**

Even if it were clear where Defendant claims a facility-wide emergency exists—and it is not—he still fails to meet the preliminary injunction’s requirement to provide “detailed facts describing [that] emergency” (*see* Order at 11). As before the Court’s preliminary injunction, Defendant asserts that some DOCCS facilities “lack sufficient staffing to fully re-implement the suspended aspects of HALT while safely and securely operating the facility as a whole for the entire population” (Martuscello Aff ¶ 23). He appears to rely on current staffing levels to support this claim, describing staffing vacancy rates at various facilities (*see e.g. id.* ¶¶ 60, 69). In granting the preliminary injunction, however, the Court recognized that Defendant had “fail[ed] to explain

why [] pre-existing staffing deficiencies were not the basis for facility-wide emergencies before the strike but now are sufficient to create such emergencies,” and found that this failure “likely requires that . . . the suspension of HALT’s programming and confinement rules therein be deemed arbitrary and capricious” (Order at 7 [cleaned up]). Defendant engages in the same problematic behavior now, invoking staffing shortages without providing sufficient additional facts or analysis that would make those shortages an emergency. Although Defendant describes the responsibilities to which correctional staff are allocated at each prison, these tasks were part of routine prison operations before the strike as well and so do not shed light on why staffing shortages now constitute an emergency (*see e.g.* Martuscello Aff ¶ 62).

Data that Defendant has provided on pre-strike staffing levels compared to those levels now—information supplied at Plaintiffs’ behest—only reinforce that his reliance on current staffing levels as the core metric for a facility-wide emergency is flawed. For example, at Sing Sing, the vacancy rate of 15% in July 2025 was identical to the vacancy rate immediately before the strike in February 2025, and declines to 4% when accounting for National Guard staffing (Martuscello Aff ¶ 149; Evans Aff, Ex. B).<sup>11</sup> Yet, Defendant now reports non-compliance with HALT at Sing Sing, suggesting a facility-wide emergency exists there (*see* Martuscello Aff ¶ 153).

The insufficiency of Defendant’s explanations is further demonstrated by his failure to explain why emergencies exist at some facilities with lower vacancy rates but do not exist at facilities with higher vacancy rates. For example, Coxsackie, which operates a SHU, RRU, and

---

<sup>11</sup> Defendant reports a 15% staffing DOCCS vacancy rate, with 592 of 696 positions filled, with 75 National Guard assigned to the facility daily, resulting in 667 of 692, or 96%, of positions filled (Martuscello Aff ¶¶ 149–50). According to the data Defendant provided in response to Plaintiffs’ request for pre-strike staffing information, at Sing Sing, there were 95 vacancies out of 635 budgeted positions on February 16, 2025, resulting in a vacancy rate of 15% (*see* Evans Aff, Ex. B). In January 2024, officers’ vacancy rate was 14% per the Correctional Association of New York (DOCCS Staffing, <https://www.correctionalassociation.org/data/dashboard-staffing> [last accessed Aug. 18, 2025]).

Residential Mental Health Unit (RMHU), has a vacancy rate of 33% (22% when accounting for the National Guard), and is deemed by Defendant to be in an emergency (Martuscello Aff ¶¶ 21, 69–70, 72–74).<sup>12</sup> Yet, at Marcy, with a 31% vacancy rate (16% when accounting for the National Guard), an emergency is apparently in effect with a host of severe restrictions, including in the RMHU—a unit housing people with serious mental illness—where people reportedly receive just two hours of out-of-cell programming *per week* (*id.* ¶¶ 241–43, 247).<sup>13</sup>

Defendant has offered no explanation for these inconsistencies and did not respond to Plaintiffs’ written request to identify and provide data about other factors that might make purported staffing shortages at a DOCCS facility rise to the level of an emergency justifying the suspension of HALT (Evans Aff ¶¶ 6–9, Ex. A). Thus, Defendant’s claimed emergencies appear to rest entirely on current staffing levels, a metric this Court has already deemed inadequate on its own, without further context (*see* Order at 7). Defendant accordingly leaves his suspension of HALT without a rational basis and fails to meet the preliminary injunction’s requirement to provide “detailed facts describing the facility-wide emergency” (*id.* at 11).

**D. Defendant has failed to specify the expected duration of *any* facility-wide emergency.**

The Court expressed concern that, although the initial 90-day window for suspending HALT had elapsed, at oral argument Defendant offered “no date certain by which it expects the existing emergency to end” (Order at 8). Accordingly, the Court ordered Defendant to share

---

<sup>12</sup> Defendant reports that the budget fill level for Coxsackie is 415, the current fill is 276, and that there are also 47 National Guard members supporting operations (Martuscello Aff ¶¶ 68–69). Between the 276 DOCCS staff reported and the 47 National Guard members, this results in a fill level of 323, or a vacancy rate of 22% when accounting for the National Guard. Plaintiffs note that Defendant’s assertion that programming has been “completely restored” is contradicted later by his statement that programming in RMHU is running “on an intermittent basis” (*id.* ¶¶ 21, 72).

<sup>13</sup> Defendant reports that the budget fill level for Marcy is 329, the current fill is 228, and that there are 60 National Guard members present, 12 of which cannot be assigned to posts, implying 48 can be assigned to posts (*id.* ¶¶ 242–43). Between the 228 DOCCS staff and 48 National Guard members who can be assigned to posts, the current fill is 276, resulting in a vacancy rate of 16% when accounting for the National Guard.

detailed facts concerning the “duration” of any facility-wide emergency he declares (*id.* at 11). Yet Defendant does not assert the expected duration of facility-wide emergencies at *any* facility. He merely asserts that his “overall goal is to have all facilities as close to fully operational with the applicable HALT programming requirements by early Fall” (Martuscello Aff ¶ 22).

But Defendant’s aspiration to restore “HALT programming,” which appears to refer solely to programming in SHUs and RRUs, does not shed any light on when he anticipates the conditions underlying any purported emergency in any specific facility to dissipate. Nor does Defendant specify when conditions in general population—where most putative class members are housed—in any specific facility will comply with HALT’s out-of-cell time requirements. Defendant’s scant references to timeframes in his discussions of specific facilities are similarly aspirational and limited in scope (*see* Martuscello Aff ¶ 179 [asserting goal to be “fully operational [at Lakeview Shock] with pre-job action protocols by the end of July 2025” following discussion of programming and congregate recreation modules]; *id.* ¶ 239 [“The hope [at Groveland] is that recruitment efforts will help to increase security staffing levels going forward and thus compliance with HALT programming as we move into the Fall. However, I also recognize that staff attrition and retirements are erasing gains that might be made short term.”]). Over two months have passed since Defendant’s initial 90-day estimate expired, and the Affirmation makes clear that DOCCS remains far from compliant with HALT in most facilities with no concrete plans for restoration.

## **II. The Court Should Require Defendant to Comply with the Preliminary Injunction.**

This Court has inherent authority to ensure compliance with its lawful orders (*see* NY Judiciary Law § 2–b[3]; *Wehringer v Brannigan*, 232 AD2d 206, 207 [1st Dept 1996]). That authority includes broad power to enforce the preliminary injunction through contempt or other appropriate remedies (*see Dept. of Corrs. & Community Supervision v Sasser*, 81 Misc 3d 236, 243 [Sup Ct, Albany County 2023] [recognizing courts are inherently vested with “*all* powers

reasonably required to . . . make [their] lawful actions effective”] [emphasis added] [quoting *Wehnringer*, 232 AD2d at 207]).

Defendant has failed to comply with the preliminary injunction and has refused to correct that violation. The Court should therefore exercise its enforcement authority by ordering Defendant to supplement his Affirmation; or if necessary, by holding him in contempt.

**A. The Court Should Require Defendant to Supplement His Affirmation with Information Necessary to Assess the Legitimacy of Any Facility-Wide Emergencies He Claims Exist.**

Consistent with its broad authority to effectuate the preliminary injunction, the Court should require Defendant to supplement his Affirmation with both his “finding of . . . a facility-wide emergency” at any facility where he asserts one and “detailed facts describing the facility-wide emergency, includes its scope and expected duration” (*see* Order at 11). That supplemental filing should include sufficient information to permit meaningful review by the Court of the rationality of any suspension DOCCS asserts (*see* Order at 6–7 [describing Defendant’s failure to provide findings of fact that would enable meaningful review]; *see also Montauk Improvement, Inc. v Procaccino*, 41 NY2d 913, 914 [1977] [“Failure of the agency to set forth an adequate statement of the factual basis for the determination forecloses the possibility of fair judicial review and deprives the petitioner of his statutory right to such review.”]). Minimally, the supplemental filing must therefore include, with respect to each facility:

- Whether DOCCS asserts a “facility-wide emergency” under CL § 2[23];
- The factors DOCCS relied on to determine that such an emergency exists;
- The underlying data that DOCCS relied on to determine that a facility wide-emergency exists;
- If staffing shortages constitute the primary basis for a facility-wide emergency, an analysis of why such shortages now rise to the level of an emergency under Correction Law § 2[23], if they did not prior to the February 17, 2025 correction officers’ strike;

- The expected duration of any “facility-wide emergency;” and
- Whether Defendant is offering the out-of-cell time, programming, and congregate recreation mandated under HALT to people in general population, SHU, and RRU (or comparable units) respectively.

**B. Alternatively, the Court Should Hold Defendant in Civil Contempt.**

Should the Court conclude that ordering Defendant to supplement his filings will not suffice to bring him into compliance with the preliminary injunction, the Court may also enforce Defendant’s compliance through contempt (Judiciary Law § 753[A]; *People v Sweat*, 24 NY3d 348, 354 [2014]; *see also* CPLR 5104 [an interlocutory or final judgment or order may be enforced by contempt]).<sup>14</sup>

A finding of civil contempt is appropriate where four elements are present. “First, it must be determined that a lawful order of the court, clearly expressing an unequivocal mandate, was in effect” (*El-Dehdan v El-Dehdan*, 26 NY3d 19, 29 [2015] [cleaned up]). “Second, it must appear, with reasonable certainty, that the order has been disobeyed” (*id.* [cleaned up]). “Third, the party to be held in contempt must have had knowledge of the court’s order, although it is not necessary that the order actually have been served upon the party” (*id.* [cleaned up]). Finally, prejudice to a party’s rights must be shown (*id.*).

Each of the elements is satisfied here. First, the Court’s mandate is clear and allows no exceptions: if Defendant makes a finding of a facility-wide emergency, he is required to file a “sworn affirmation of a DOCCS employee with personal knowledge setting forth detailed facts describing the facility-wide emergency, including its scope and expected duration” (Order at 11). Second, the preceding analysis has set forth how Defendant has violated the Order. Third, Defendant’s Affirmation makes clear he has knowledge of the order (*Martuscello Aff ¶ 2*). As to

---

<sup>14</sup> Should the Court elect to address Defendant’s non-compliance by ordering a supplemental filing or through other means, Plaintiffs propose that the Court reserve decision on contempt at this stage in the proceedings.

the fourth element, “[p]rejudice is shown where the party’s actions were calculated to or actually did defeat, impair, impede, or prejudice the rights or remedies of a party” (*Tedesco v Elio*, 211 AD3d 1074, 1076 [2d Dept 2022] [cleaned up]). Plaintiffs easily satisfy that requirement. As the Court recognized, Plaintiffs’ “confinement during the HALT suspension resulted in, and will continue to result in, physical and mental injuries,” and, consequently, irreparable harm (*see* Order at 9). The Court granted the preliminary injunction to ensure that Defendant “comply with his statutory obligations” and impose the egregious and lasting harm created by segregated confinement only under limited circumstances (*id.* at 10 [cleaned up]). By not following this Order, Defendant may be unlawfully subjecting class members to irreparable harm (*see McCormick v Axelrod*, 59 NY2d 574, 587, *amended*, 60 NY2d 652 [1983] [nursing home patients who were moved to different homes in violation of court order were “clearly deprived of a substantial right by the conduct of respondents”]).

**CONCLUSION**

For all these reasons, the Court should require Defendant to comply with the preliminary injunction by supplementing his affirmation with information necessary to assess the legitimacy of any facility-wide emergencies he asserts exist; and, if necessary, by holding Defendant in civil contempt.

Dated: August 19, 2025  
New York, New York

Respectfully submitted,

THE LEGAL AID SOCIETY  
PRISONERS' RIGHTS PROJECT

/s/ Riley D. Evans

Antony P. F. Gemmell

Katherine E. Haas

Lauren P. Stephens-Davidowitz

Riley D. Evans

Samantha R. Coulson

49 Thomas Street, 10th Floor

New York, New York 10013

212-577-3530

revans@legal-aid.org

*Counsel for Plaintiffs-Petitioners*

**CERTIFICATE OF COMPLIANCE WITH 22 NYCRR § 202.8-b**

I hereby certify that this memorandum of law complies with the word-count limitation of 22 NYCRR § 202.8-b because the total word count of all printed text in the body of the memorandum, excluding the parts exempted by section 202.8-b, is 6,190 words according to the word-count function in Microsoft Word, the word processing program used to prepare this document.

Dated: August 19, 2025  
New York, NY

/s Riley D. Evans  
Riley D. Evans

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ALBANY

---

ALFONSO SMALLS, KARIEM TOMLIN, JEROME  
LESLIE, TARON JACKSON, SAIWON ROBBINS, and  
MICHAEL WILLIAMS, on behalf of themselves and all  
similarly situated individuals,

Index No. 903926-25

*Plaintiffs-Petitioners,*

-against-

DANIEL F. MARTUSCELLO III, as Commissioner of the  
New York State Department of Corrections and Community  
Supervision,

*Defendant-Respondent.*

---

**MEMORANDUM OF LAW IN OPPOSITION TO PETITIONERS'  
MOTION TO ENFORCE THE PRELIMINARY INJUNCTION**

LETITIA JAMES  
Attorney General  
State of New York  
*Attorney for Defendant-Respondent  
Daniel F. Martuscello III*  
The Capitol  
Albany, New York 12224

Ryan W. Hickey  
Assistant Attorney General  
Bar Roll No. 5211073  
Telephone: (518) 776-2616  
Email: Ryan.Hickey@ag.ny.gov

Brian P. Henchy  
Assistant Attorney General  
Bar Roll No. 5418843  
Telephone: (518) 776-2726  
Email Brian.Henchy@ag.ny.gov

Date: September 26, 2025

**Table of Contents**

PRELIMINARY STATEMENT ..... 1

STATEMENT OF FACTS ..... 2

ARGUMENT ..... 5

POINT I ..... 5

    RESPONDENT IS COMPLYING WITH THE PRELIMINARY INJUNCTION ..... 5

POINT II ..... 10

    PETITIONERS’ REQUESTS FOR COURT-ORDERED SUPPLEMENTATION  
    OF THE MARTUSCELLO AFFIRMATION AND A FINDING OF CIVIL  
    CONTEMPT SHOULD BE DENIED ..... 10

CONCLUSION ..... 12

Defendant-Respondent Daniel F. Martuscello III, in his capacity as Commissioner of the New York State Department of Corrections and Community Supervision (“DOCCS” or “Department”), respectfully submits this memorandum of law in opposition to Plaintiffs-Petitioners’<sup>1</sup> motion to enforce the preliminary injunction issued in this proceeding (NYSCEF Nos. 80-88). Respondent respectfully submits that the motion must be denied because Respondent is complying with the preliminary injunction.

### PRELIMINARY STATEMENT

On July 2, 2025, the Court issued a Decision and Order granting Petitioners’ motion for a preliminary injunction. NYSCEF No. 67. The Court enjoined Respondent from enforcing or implementing any suspension of the provisions of the Humane Alternatives to Long-Term Solitary Confinement (“HALT”) Act in DOCCS facilities without a finding by Respondent that a facility-wide emergency exists. *Id.* at 11. The Court further ordered that a knowledgeable DOCCS employee publicly file a sworn affirmation detailing the basis for Respondent’s finding that a facility-wide emergency exists. *Id.*

On July 14, 2025, in compliance with the Court’s order, Respondent filed an extensive and detailed affirmation (“Martuscello Affirmation”) giving a facility-by-facility breakdown of the emergency conditions within DOCCS facilities and the extent to which certain elements of the HALT Act remained “suspended” due to those emergency conditions. *See generally* NYSCEF No. 69. Further, the Martuscello Affirmation outlined DOCCS’ ongoing efforts to address staffing shortages in its facilities in the wake of the correction officer strike earlier this year. *Id.*

---

<sup>1</sup> For ease of reference, this memorandum refers to Petitioners-Plaintiffs as “Petitioners,” and to Respondent-Defendant as “Respondent.”

Despite Respondent's ongoing compliance with the preliminary injunction, Petitioners now assert, without basis, that Respondent is in contempt of the Court's order. Petitioners ask the Court to "enforce" the preliminary injunction by directing Respondent to supplement his sworn affirmation, giving what Petitioner deems to be sufficient information to be assured of DOCCS' compliance. Petitioners motion should be denied. As detailed below, Respondent is fully complying with the Court's order and is not violating the preliminary injunction in any way. Although DOCCS continues to partially suspend certain elements of the HALT Act in some of its facilities, it does so for the exact reason this Court found acceptable under the HALT Act, namely that a facility-wide emergency continues to exist within those facilities. Further, both the Martuscello Affirmation and subsequent communications from DOCCS to Petitioners' counsel concerning Respondent's compliance provide more than sufficient information to demonstrate where and why a facility-wide emergency continues to exist. For this same reason, there is no basis to find Respondent in civil contempt. Petitioners' motion must be denied.

### STATEMENT OF FACTS

#### A. *The Preliminary Injunction*

On May 7, 2025, Petitioners moved for a preliminary injunction in this proceeding. On May 23, 2025, Respondent opposed the motion. On July 2, 2025, the Court issued a Decision and Order granting the preliminary injunction. NYSCEF No. 67. Under the preliminary injunction Respondent is "preliminarily enjoined from enforcing or implementing any suspension of the provisions of HALT in DOCCS facilities *without a finding of a facility-wide emergency in each facility* as set forth in Correction Law § 2(23)." *Id.* at 11 (emphasis added). The Court directed that "if [Respondent] makes a finding of such a facility-wide emergency, that finding shall be filed publicly to the docket in this case within two business days of the onset of such reliance and be

accompanied by the sworn affirmation of a DOCCS employee with personal knowledge setting forth detailed facts describing the facility-wide emergency and expected duration.” *Id.*

The Court’s order explains “the granting of this preliminary injunction *does not require [Respondent] to flip a switch and open the cell doors in every facility immediately –[Respondent] still possesses all the discretion granted to him under HALT.* This injunction merely compels him to follow the procedures set forth in Correction Law § 2(23) and make rational determinations of emergencies on a facility-by-facility basis . . . .” *Id.* (emphasis added). The Court directed that the preliminary injunction was to take effect on July 11, 2025, and that Respondent’s compliance affirmation be filed. *Id.*

#### B. *Respondent’s Compliance with the Preliminary Injunction*

##### The Martuscello Affirmation

On July 14, 2025, Commissioner Martuscello complied with the preliminary injunction by timely filing a ninety-six-page affirmation detailing the basis for the partial suspension of HALT due to an ongoing “facility-wide emergency” in many individual DOCCS facilities. NYSCEF No. 69. The Martuscello Affirmation explained, on a facility-by-facility basis, the current status of the HALT suspension and why, if a facility had not yet resumed the suspended elements of HALT, a facility-wide emergency continued to exist. *Id.* Further, the Martuscello Affirmation explained DOCCS’s extensive efforts to recruit additional staff to reduce staffing shortfalls and ultimately pave the way for the safe restoration of all suspended elements of HALT. *Id.*

##### Follow-Up Communications

After filing the Martuscello Affirmation, Petitioners and Respondent, through counsel, engaged in a series of email exchanges to address various questions from Petitioners about DOCCS’ compliance. *See Hickey Affirmation at Exhibit A.* In this email exchange, Respondent,

through counsel: (1) confirmed the facilities which, at that time, had already completely restored all HALT programming (*id.* at p. 6); (2) confirmed, on a facility-by-facility basis, the amount of out-of-cell time and programming offered to incarcerated individuals housed in Residential Rehabilitation Units (“RRUs”); (3) detailed, on a facility-by-facility basis, the amount of out-of-cell programming and recreation offered to incarcerated individuals in Special Housing Units (“SHU”) (*id.* at p. 7); and (4) provided additional data requested by Petitioners concerning the “fill level” for staffing at DOCCS correctional facilities (*id.*). Respondent made good faith efforts to explain and clarify the information contained in the Martuscello Affirmation, but ultimately Petitioners remained unsatisfied. *Id.*

#### DOCCS’ Additional Progress on HALT Restoration Since July 2025

Since the filing of the Martuscello Affirmation in July 2025, DOCCS has continued its efforts to restore the suspended elements of HALT to the greatest extent it can safely do so. Filed herewith is a second affirmation from Commissioner Martuscello (“Second Martuscello Affirmation”), which outlines the significant progress made by DOCCS in restoring the suspended elements of HALT since July 2025. As outlined in the Second Martuscello Affirmation, as of July 14, 2025, there were thirteen (13) DOCCS facilities that had completely restored the programming elements of HALT, nineteen (19) that had partially restored those elements and three (3) that had yet to restore any element due to substantial safety and security concerns. Second Martuscello Affirmation at ¶ 7. The number of DOCCS facilities that are fully operational with respect to the applicable HALT programming requirements has risen from thirteen (13) to twenty-four (24). *Id.* at ¶ 9. These include Albion, Auburn, Bare Hill, Bedford Hills, Cape Vincent, Clinton, Collins, Cossackie, Eastern NY, Elmira, Franklin, Green Haven, Groveland, Hudson, Marcy, Mohawk,

Orleans, Riverview, Shawangunk, Ulster, Washington, Wende, Woodbourne and Wyoming Correctional Facilities. *Id.*

Finally, DOCCS continues to aggressively recruit new correction officers to rebuild staffing levels. *Id.* at ¶¶18-20. As a result of these recruitment efforts, DOCCS has seen a significant increase in the number of individuals signing up for the Correction Officer exam. 1739 individuals signed up for the exam in June, 2046 in July and 2342 in August. *Id.* at ¶ 19. There has also been a 160% increase in individuals taking the correction officer exam. *Id.* Fifty-four individuals graduated in the March 2025 class, and another sixty-four graduated in the April 2024 class. *Id.* Additionally, there are currently 133 correction officer recruits in the DOCCS Training Academy, which includes eighty-five new recruits who reported on September 21, 2025. *Id.* at ¶ 19. This is the largest correction officer class since 2024. *Id.*

## ARGUMENT

### POINT I

#### RESPONDENT IS COMPLYING WITH THE PRELIMINARY INJUNCTION

Petitioners seek an order “enforcing” the preliminary injunction under Judiciary Law § 2-b(3). Under Judiciary Law § 2-b(3), “[a] court of record has power . . . to devise and make new process and forms of proceedings, necessary to carry into effect the powers and jurisdiction possessed by it.” Judiciary Law § 2-b(3). But, distilled to their essence, Petitioners’ misgivings are not about *compliance*, but about their desire for information about current facility conditions they deem sufficient to justify a facility wide emergency, organized in a form that they find most convenient. At its core, Petitioners motion is an effort to shift a burden onto Respondent that neither the Court’s order, nor Article 78, places on them. Respondent is complying with the preliminary injunction, and Court should deny Petitioners’ motion.

The Court's order specifies that to comply with the preliminary injunction Respondent must publicly file an affirmation from a knowledgeable DOCCS employee "setting forth detailed facts describing the facility-wide emergency and expected duration." NYSCEF No. 67. Nothing in the Court's order direct Respondent to provide detailed and ongoing reporting to Petitioners' counsel as a self-appointed arbiter of the legitimacy of DOCCS' compliance efforts.

The Martuscello Affirmation provides ample factual detail, organized by facility, to explain which facilities have ongoing suspension of HALT requirements, and why. NYSCEF No. 69. The Court directed Respondent to publicly file a statement setting forth for each facility, the rational basis for the existence of a facility-wide emergency. NYSCEF No. 67. Respondent did just that, explaining at length how DOCCS correctional facilities continue to face low staffing levels that prohibit them from safely resuming the suspended elements of HALT. NYSCEF No. 69. The Commissioner's determination that there exists a facility-wide emergency is supported by a rational basis. That Petitioners may disagree that these conditions are an "emergency" within the meaning of the statute, does not change the fact that Respondent is complying with the preliminary injunction.

*A. Respondent identified which facilities are experiencing a "facility-wide emergency."*

Petitioners assert that Respondent has not identified the DOCCS facilities in which a "facility-wide emergency" exists. But the Martuscello Affirmation does *exactly* this by stating, facility-by-facility, which facilities still have restrictions on HALT requirements due to their ongoing staffing challenges. NYSCEF No. 69 at ¶¶ 19-23. These are the facilities in which a facility-wide emergency exists. Further, in subsequent email correspondence on July 28, 2025, Respondent, through counsel, referred Petitioner's counsel to paragraph 21 of the Martuscello Affirmation confirming that, as of that date the following facilities had completely restored all

programming elements of HALT: Albion, Coxsackie, Elmira, Greene, Hudson, Bedford Hills, Bare Hill, Cape Vincent, Franklin, Green Haven, Riverview, Shawangunk, Ulster, and Woodburne, and *as such DOCCS does not assert an emergency under CL 2(23) at those facilities at this time.*” Hickey Aff. Exh. A, pp 6-7. Moreover, in response to the instant motion, the Second Martuscello Affirmation lists the additional facilities which are now fully operational with respect to HALT. Second Martuscello Affirmation at ¶ 9.

Further, Respondent’s justification of a facility-wide emergency is not “circular,” but valid and supported. The Martuscello Affirmation explains that in each facility where HALT is not yet fully restored, a facility-wide emergency exists *because that facility does not have adequate staffing* to safely offer the full complement of HALT programming. NYSCEF No. 69.

B. *Respondent’s explanation of the scope of the emergency.*

Petitioners next offer a series of arguments suggesting that Respondent failed to adequately explain the scope of the emergency. None of these arguments have merit.

Petitioners allege that Respondent has not provided sufficient information to determine if DOCCS is complying with its obligation to provide people in SHU and RRU with the required HALT programming and out-of-cell time. As the Second Martuscello Affirmation explains, there are thirty-five DOCCS facilities that have either SHU and/or RRUs and therefore are subject to HALT’s requirements. As of the filing of this memorandum, twenty four of these thirty-five DOCCS facilities are fully operational with respect to HALT programming requirements, including Albion, Auburn, Bare Hill, Bedford Hills, Cape Vincent, Clinton, Collins, Coxsackie, Eastern NY, Elmira, Franklin, Green Haven, Groveland, Hudson, Marcy, Mohawk, Orleans, Riverview, Shawangunk, Ulster, Washington, Wende, Woodbourne and Wyoming Correctional Facilities. Second Martuscello Affirmation at ¶ 9. Although there is now some level of out-of-

cell programming in all DOCCS facilities with SHUs or RRUs, DOCCS is working to reestablish all applicable programming in the remaining eleven facilities while navigating the ongoing staffing, operational and safety challenges. *Id.* at ¶ 12.

*C. Respondent sufficiently detailed why staffing conditions caused facility-wide emergencies.*

Petitioners contend that Respondent failed to detail why a facility-wide emergency exists. This is untrue. As explained in the Martuscello Affirmation, and reiterated in the Second Martuscello Affirmation, some DOCCS facilities cannot yet restore certain elements of HALT, because those facilities lack sufficient staffing to safely do so. Second Martuscello Affirmation at ¶¶ 7-12. While Petitioners may disparage this rationale, their differing view on what should constitute a facility-wide emergency has no bearing on whether Respondent is complying with the preliminary injunction.

First, the standard of review in an Article 78 special proceeding is whether the challenged determination is arbitrary and capricious, *i.e.*, whether it lacks a rational basis in fact. *See Matter of Pell v. Board of Education*, 34 N.Y.2d 222, 231 (1974). Petitioners do not dispute that staffing shortages exist, but instead suggest that it is *their judgment* about whether those shortfalls caused a “facility-wide emergency” that should carry the day. That is not the proper application of Article 78’s standards. Petitioners cannot ask this Court to substitute their judgment about what staffing levels are an emergency with that of Commissioner Martuscello. “It is not the function of judicial review in an article 78 proceeding to weigh the facts and merits *de novo* and substitute its judgment for that of the body reviewed, but only to determine if the action sought to be reviewed can be supported on any reasonable basis.” *Clancy-Cullen Storage Co. v. Bd. of Elections*, 98 A.D.2d 635, 636, (1st Dep’t 1983). The fact that Petitioners disagree with Commissioner Martuscello’s assessment that staffing levels are causing an emergency is not a basis to find that determination

irrational. Indeed, as this Court already explained, “[Respondent] still possesses all the discretion granted to him under HALT.” NYSCEF No. 67 at 10. That discretion inarguably includes the discretion to evaluate whether an emergency exists based on Respondent’s rational judgment of the effects of staffing shortages within its facilities

Further, the fact that facilities suffered from pre-strike staffing challenges does nothing to change the fact that, as explained in the Martuscello Affirmation, the strike drastically increased the number of job vacancies throughout DOCCS. Staffing challenges became considerably more widespread and severe as a result of the correction officers strike. NYSCEF No. 69 at ¶ 12. Petitioners discount the obvious and severe impact of staffing shortfalls on the safe operation of many DOCCS correctional facilities, including Petitioners themselves, the putative class members, and other incarcerated individuals that reside in those facilities.

Finally, the Court should reject Petitioners’ attempt to draw a bright statistical line about what level of staffing shortfall suffices for a “facility-level emergency.” Indeed, this sort of comparison is itself arbitrary and irrational, particular when Petitioners insist that DOCCS must give individualized, facility-by-facility assessments of why an emergency exists. Each DOCCS facility differs in its physical makeup, incarcerated population, program and medical offerings, among various other factors. *See generally* NYSCEF No. 69.

In sum, Respondent is complying with the preliminary injunction by providing a detailed justification of why, in certain facilities, a facility-wide emergency continues to exist.

*D. Respondent explained the expected duration of the HALT Suspension.*

The Martuscello Affirmation stated that DOCCS’ overall goal is to fully restore HALT programming in all facilities by early fall. NYSCEF No. 69 at ¶ 22. This goal is contingent upon many factors, including progress on hiring staff and limiting any further loss of staff. Given these

factors, DOCCS cannot place a date certain on when there will no longer be a facility-wide emergency in any of its facilities. *Id.* That said, DOCCS continues to make significant strides toward ending the emergency, including significant progress in recruiting and training additional correction officers. Second Martuscello Affirmation at ¶¶ 18-20.

## POINT II

### **PETITIONERS' REQUESTS FOR COURT-ORDERED SUPPLEMENTATION OF THE MARTUSCELLO AFFIRMATION AND A FINDING OF CIVIL CONTEMPT SHOULD BE DENIED**

Petitioners seek two forms of relief for Respondent's alleged non-compliance with the preliminary injunction. First, Petitioners ask the Court to order Respondent to supplement his Affirmation. Second, Petitioner asks the Court to hold Respondent in civil contempt under Judiciary Law § 753(A). Both requests for relief should be denied.

*A. Petitioners' request for court-ordered supplementation of the Martuscello Affirmation should be denied.*

Petitioners ask the Court to direct Respondent to supplement his Affirmation with additional information. This request should be denied. In response to this motion, Respondent prepared the Second Martuscello Affirmation which provides updated information on DOCCS' compliance. To the extent Petitioners seek further supplementation, it should be denied.

*B. Petitioners' request for a finding of civil contempt should be denied.*

Under Judiciary Law § 753(A), a party may be found in civil contempt if four elements are satisfied. *El-Dehdan v. El-Dehdan*, 26 N.Y.3d 19, 29 (2015). First, "it must be determined that a lawful order of the court, clearly expressing an unequivocal mandate, was in effect." *Id.* (internal citations and quotations omitted). Second, it must appear, with reasonable certainty, that the order has been disobeyed." *Id.* Third, "the party to be held in contempt must have had knowledge of the court's order, although it is not necessary that the order actually have been served upon the party."

*Id.* Fourth, “prejudice to the right of a party to the litigation must be demonstrated.” *Id.* Civil contempt must be proven by clear and convincing evidence. *Town of Copake v. 13 Lackawanna Props., LLC*, 73 A.D.3d 1308, 1309 (3d Dep’t 2010) (citations omitted). “Contempt should not be granted unless the order or judgment allegedly violated is clear and explicit and unless the act complained of is clearly proscribed.” *Aison v. Hudson River Black River Regulating Dist.*, 54 A.D.3d 457, 458 (3d Dep’t 2008); *see also Matter of Platten v. N.Y. State Div. of Parole*, 85 A.D.3d 1281, 1282 (3d Dep’t 2011)(speculative allegation that a party is violating a court order is insufficient to establish civil contempt).

Petitioners do not satisfy these elements. First, the Court issued a preliminary injunction which recognized Respondent’s lawful discretion to suspend HALT based on the existence of a facility-wide emergency. NYSCEF No. 67 at 10 (noting that Respondent “still possesses all the discretion granted to him under HALT.”). As such, the preliminary injunction’s mandate is limited, and it does not prohibit Respondent from continuing to implement the HALT suspension based upon a facility-wide emergency. *See id.* at 459 (holding that “since there was no clear and direct prohibition to permitting the complained of activities, defendant could not be held in contempt.”). The Court mandated only that Respondent, for each facility for which he made a finding of a facility-wide emergency, submit a sworn affirmation explaining his rationale. NYSCEF No. 67. Respondent is not violating any aspect of the preliminary injunction, much less a “clear and unequivocal” prohibition of the Court. *See Shea v. Signal Hill Rd. LLC*, 206 A.D.3d 1541, 1544 (3d Dep’t 2022)(declining to hold a the defendant in civil contempt because the court’s order did not give specific restrictions on the manner of compliance).

Second, it is Petitioners’ burden to establish with “reasonable certainty” that Respondent disobeyed the terms of the preliminary injunction. *El-Dehdan*, 26 N.Y.3d at 29. Petitioners fail

to do so. As detailed above, Respondent is complying with the Court's order by continuing the HALT suspension in those DOCCS facilities which are currently under a facility-wide emergency. Further, in accordance with the terms of the preliminary injunction, Respondent filed a public statement, the Martuscello Affirmation, explaining how, in each facility, inadequate staffing is causing a facility-wide emergency. NYSCEF No. 69. Petitioners fall well short of their burden to show any violation of the preliminary injunction, much less prove disobedience with "reasonable certainty."

Finally, Petitioners fail to demonstrate that any of their rights were prejudiced. To the extent Respondent continues to suspend certain elements of HALT, it is only because there continues to be a facility-wide emergency which necessitates continued limitations. Petitioners' rights are not prejudiced under HALT under these circumstances.

Accordingly, Petitioners request for a finding of civil contempt should be denied.

### CONCLUSION

Petitioners' motion for enforcement of the preliminary injunction should be denied.

Dated: Albany, New York  
September 26, 2025

LETITIA JAMES  
Attorney General  
State of New York  
*Attorney for Defendant-Respondent*  
*Daniel F. Martuscello III*  
The Capitol  
Albany, New York 12224

By: s/ Ryan W. Hickey  
Ryan W. Hickey  
Assistant Attorney General  
Bar Roll No. 519020  
Telephone: (518) 776-2616  
Email: Ryan.Hickey@ag.ny.gov

TO: Counsel of record (*Via NYSCEF*)

**STATEMENT PURSUANT TO 22 NYCRR 202.8-b**

I, Ryan W. Hickey, affirm under penalty of perjury pursuant to CPLR 2106, that the total number of words in the foregoing memorandum of law, inclusive of point headings and footnotes and exclusive of pages containing the caption, table of contents, table of authorities, and signature block, is 3351. The foregoing memorandum of law complies with the word count limit set forth in 22 NYCRR 202.8-b. In determining the number of words in the foregoing memorandum of law, I relied upon the word count of the word-processing system used to prepare the document.

  
Ryan W. Hickey

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ALBANY

---

ALFONSO SMALLS, KARIEM TOMLIN, JEROME  
LESLIE, TARON JACKSON, SAIWON ROBBINS, and  
MICHAEL WILLIAMS, on behalf of themselves and all  
similarly situated individuals

**AFFIRMATION**

Index No. 903926-25

*Plaintiffs-Petitioners,*

-against-

DANIEL F. MARTUSCELLO III, as Commissioner of the  
New York State Department of Corrections and Community  
Supervision,

*Defendant-Respondent.*

---

Daniel F. Martuscello III, affirms the following under the pains and penalties of perjury:

1. I am employed as the Commissioner for the New York State Department of Corrections and Community Supervision (DOCCS). As such, I am fully familiar with the facts and circumstances to which I testify herein.

2. I make this Affirmation in opposition to Plaintiffs-Petitioners' motion for enforcement of the preliminary injunction. NYSCEF Nos. 80-88.

3. This Affirmation is based upon my personal knowledge and/or my review of documents and records maintained in the normal and ordinary course of DOCCS' business operations.

4. In response to the Court's Decision and Order dated July 1, 2025 (NYSCEF No. 67), I submitted a 96 page Affirmation dated July 14, 2025, that contained 309 paragraphs detailing

which of DOCCS facilities remained under a “facility-wide emergency” following the significant and ongoing staffing and operational challenges resulting from the illegal job action. NYSCEF No. 69.

5. For the sake of judicial economy, I respectfully refer to and fully incorporate that Affirmation herein.

6. DOCCS has 35 facilities with Special Housing Units (SHUs) and/or Residential Rehabilitation Units (RRUs) that are subject to the programming elements of the Humane Alternatives to Long-Term Solitary Confinement Act (“HALT”).

7. When I submitted my July 14, 2025 Affirmation, there were 13 DOCCS facilities that had completely restored the programming elements of HALT, 19 that had partially restored those elements and 3 that had yet to restore any element due to substantial safety and security concerns.<sup>1</sup>

8. Since the submission of my original Affirmation, DOCCS facilities have continued to make significant progress in resuming suspended elements of HALT as their staffing permits.

9. As of today, the number of DOCCS facilities that are fully operational with respect to the applicable HALT programming requirements has risen from 13 to 24. These include Albion, Auburn, Bare Hill, Bedford Hills, Cape Vincent, Clinton, Collins, Coxsackie, Eastern NY, Elmira, Franklin, Green Haven, Groveland, Hudson, Marcy, Mohawk, Orleans, Riverview, Shawangunk, Ulster, Washington, Wende, Woodbourne and Wyoming Correctional Facilities.

---

<sup>1</sup> Although Paragraph “21” of my Affirmation erroneously stated that Greene Correctional Facility (“Greene”) had completely restored the programming elements of HALT, as described in greater detail in Paragraphs “107” – “115” of that Affirmation, Greene was fully compliant with the HALT requirements in the Special Housing Unit, but was operating programming in the RRU on a rotational basis.

10. It is also worth noting that of the 3 facilities that had not restored any programming element of HALT as of July 14, 2025, 2 of them are now fully functional (Clinton and Mohawk), and the remaining facility (Mid-State) is offering 2 hours of out-of-cell programming on Tuesday and Thursday and 2 hours of out-of-cell recreation on Monday, Wednesday, Friday, Saturday and Sunday.

11. As outlined in my July 14<sup>th</sup> affirmation, Mid-State continues to operate with significant vacancies in security staffing. In July, there was a security staff vacancy rate at Mid-State of 58%. As of this week, there is still a 49% vacancy rate including security staff out on extended leave (e.g., workers compensation). These staffing levels are substantially below where we can safely resume full programming.

12. Although there is now some level of out-of-cell programming in all DOCCS facilities with Special Housing Units and/or Residential Rehabilitation Units, DOCCS is working to reestablish all applicable programming in the remaining 11 facilities while navigating the ongoing staffing, operational and safety challenges. The challenges for these facilities are outlined in my July 14<sup>th</sup> affirmation.

13. Governor Hochul's Executive Order No. 47 declaring a disaster emergency in the State of New York continues to be in full force and effect and staffing shortages still present a major challenge to reaching our objection.

14. The budgeted fill level for Correction Officers is 14,922. Presently, there are still approximately 4,850 Correction Officer vacancies which is nearly one-third of the total fill level.

15. In addition to the staffing shortages directly related to the strike, we continue to lose additional security staff to retirements and resignations, as well as long-term FMLA and other mandated leave.

16. In fact, since the date of my last Affirmation (July 14, 2025), another 164 Correction Officers and Correction Officer Trainees have left DOCCS employ.

17. At the same time, due to the illegal strike there was a backlog of State-ready incarcerated individuals being held at local and county jails. However, those incarcerated individuals are now being admitted into DOCCS custody in large numbers. Between July 1, 2025 and September 21, 2025, DOCCS admitted an additional 4,059 individuals. This is a 64% increase in the number of incarcerated individuals admitted during the same time period in 2024. These new admissions place an additional strain on DOCCS' existing safety, security and operational challenges.

18. In order to counteract our staffing limitations, we continue an aggressive recruiting campaign for Correction Officers. DOCCS and New York State have taken a number of steps to increase recruitment numbers including:

- After extensive analysis and site visits, the Department of Civil Service authorized, and the Division of Budget approved, a one-grade pay increase and a statewide Geographic Pay Differential of \$5,000 for all Correction Officers and Sergeants. They also approved a \$5,000 Geographic Pay Differential for Lieutenants. The approval was effective May 22, 2025 (Administration) and May 29, 2025 (Institution). This approval recognizes the important work performed by our staff and the critical need to retain our current staff and recruit the next generation of correctional professionals.
- The Department has contracted with Office of General Services (OGS) Media Services on a large-scale recruitment campaign featuring a multi-channel approach, including social media, multicultural digital, streaming audio, video and static ads to better familiarize the public on DOCCS' mission. The campaign went live in

February 2025 targeting upstate NY community college campuses and military bases.

- DOCCS has increased the current advertising expenditure and has entered into a new multi-year contract with a vendor with correction-based recruitment experience.
- We now have a Statewide Recruitment Unit, and social media accounts (*NYSDOCCS-Recruitment*), who have been running recruitment centers in various locations, including Champlain Centre mall in Plattsburgh and Destiny USA mall in Syracuse.
- The Department launched an advanced placement initiative to attract applicants with Correction Officer experience at a pay rate commensurate to their experience.
- The Fiscal Year 2026 Enacted Budget includes allowing 18-year-olds to apply for the position of Correction Officer with the following stipulations for those under the age of 21:
  - They will be restricted from certain roles that generally require more experience, such as roles that require a firearm or those involving unsupervised contact with incarcerated individuals.
  - There are restrictions on carrying firearms, conducting incarcerated individual transfers, or having close contact with incarcerated individuals for their first year and a half.
  - There are new reporting, enhanced training, and mentoring requirements for these younger officers.
- The Enacted Budget also allows for out-of-state residents to apply to become a Correction Officer in New York State.
- We have also launched regional recruitment in the following counties: Greene, Seneca, Cayuga, Oneida, Franklin, Dutchess, Chemung, Ulster, and Clinton.
- On July 10, 2025, I issued a memorandum announcing a new Labor Management Agreement (LMA) with NYSCOPBA, three Memorandum of Agreements (MOAs) with NYSCOPBA and Council 82, and one MOA with CSEA and PEF. These agreements included the following recruitment and retention initiatives that were supported in the budget:

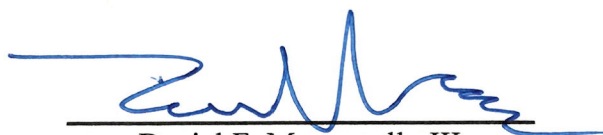
- Correction Officer Reassignment Program (LMA – NYSCOPBA) – To build on the success of the Department’s Regional Hiring Recruitment Initiative, which has been expanded to nine counties providing direct placement to 20 facilities, the Department engaged NYSCOPBA on moving the Department to a statewide regional recruitment and hiring model. As part of this effort, six regions have been established for the regional hiring initiative. Prior to CO Recruit’s assignment within their selected region, Central Office will consult reassignment lists to ensure and protect existing reassignment rights and to increase opportunities for current COs to reassign to their preferred work locations.
- Correction Officer Sign-On Bonus (MOA – NYSCOPBA) – Newly appointed CO Trainees will receive a \$3,000 one-time lump sum bonus that shall be paid in two installments. The first \$1,500 shall be paid upon successful completion of their on-the-job training and the second \$1,500 upon the successful completion of the 52-week probationary period.
- Retention Bonus (MOA – NYSCOPBA/Council 82, MC) – COs, Sergeants, Lieutenants, and Captains who successfully complete 25-29 years of creditable service will receive a one-time lump sum bonus of \$1,000. COs, Sergeants, Lieutenants, and Captains who successfully complete 30 years or more of creditable service will receive a one-time lump sum bonus of \$5,000.
- Pay Differential for College Degree (MOA – NYSCOPBA, C82, MC) – Eligible COs, Sergeants, Lieutenants, and Captains will receive a one-time lump sum pay differential of \$250 for an Associate Degree, \$500 for a Bachelor’s Degree, and \$750 for a Master’s Degree or higher.
- Civilian Correction Institutional Differential (MOA – CSEA, PEF, MC) – DOCCS civilian staff serving in titles allocated to salary grade 5 up to and including salary grade 23, whose official workstation is a correctional facility, shall be paid a salary differential at the rate of \$1.00 per hour for the first 40 hours worked of their regular scheduled work week.

19. As a result of these recruitment efforts, DOCCS has seen a significant increase in the number of individuals signing up for the Correction Officer exam. 1739 individuals signed up for the exam in June, 2046 signed up in July and 2342 signed up in August. There has also been a 160% increase in individuals taking the Correction Officer exam as compared to last year. We are pleased to report that 54 individuals graduated in the 25-03 class and another 64 graduated in

the 25-04 class. Additionally, there are currently 133 Correction Officer recruits in the Academy, which includes 85 new recruits who reported on September 21, 2025. This is the largest Correction Officer class since 2024. Although it will take time for them to complete their on-the-job training and become fully integrated into their new positions, these new officers will provide much needed assistance.

20. As DOCCS continues to aggressively recruit the next generation of correctional leaders and rebuild our security staffing numbers, we expect facilities to be in a better position to resume their regular operations.

I affirm this 26<sup>th</sup> day of September 2025, under the penalties of perjury under the laws of New York, which may include a fine or imprisonment, that the foregoing is true, and I understand that this document may be filed in an action or proceeding in a court of law.



Daniel F. Martuscello III  
Commissioner  
NYS DOCCS

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

ALFONSO SMALLS, et al., on behalf of  
themselves and all similarly situated  
individuals,

Plaintiffs-Petitioners,

v.

DANIEL F. MARTUSCELLO III, as  
Commissioner of the New York State  
Department of Corrections and Community  
Supervision,

Defendant-Respondent.

Index No. 903926-25

**REPLY MEMORANDUM OF LAW IN FURTHER SUPPORT OF  
PLAINTIFFS' MOTION TO ENFORCE THE PRELIMINARY INJUNCTION**

THE LEGAL AID SOCIETY  
PRISONERS' RIGHTS PROJECT  
Antony P. F. Gemmell  
Katherine E. Haas  
Lauren P. Stephens-Davidowitz  
Riley D. Evans  
Samantha R. Coulson  
49 Thomas Street, 10th Floor  
New York, New York 10013  
212-577-3530  
agemmell@legal-aid.org

Dated: October 2, 2025  
New York, New York

**TABLE OF CONTENTS**

TABLE OF AUTHORITIES ..... ii

PRELIMINARY STATEMENT ..... 1

ARGUMENT ..... 1

    I. Defendant’s Submissions Remain Incomplete, Inconsistent, and Evasive..... 1

        A. Defendant Still Has Not Identified Where and to What Extent He Asserts Facility-  
Wide Emergencies. .... 1

        B. Defendant Still Has Not Shown How Staffing Shortages Constitute Emergencies in  
Specific Facilities..... 5

        C. Defendant’s Blanket “Early Fall” Goal Is Vague and Apparently Inaccurate..... 7

    II. The Court Should Enforce Its Preliminary Injunction..... 8

CONCLUSION..... 9

**TABLE OF AUTHORITIES**

**Cases**

*Burlington Truck Lines v United States*, 371 US 156 [1962] ..... 6

*Fuquan F. v D.F.M.*, 2024 WL 5681961 [Sup Ct, Albany County 2024]..... 2

*Montauk Improvement, Inc. v Proccacino*, 41 NY2d 913 [1977] ..... 5

*Motor Veh Manufacturers Assn of the United States, Inc. v State Farm Mut. Automobile. Ins Co.*,  
463 US 29 [1983]..... 6

*Off. Bldg. Assoc. v Empire Zone Designation Bd.*, 95 AD3d 1402 [3d Dept 2012]..... 5

*Peterkin v New York State Dept. of Corrs. & Community Supervision*, 2025 WL 1657349 [3d  
Dept, June 12, 2025, No. CV-24-0895] ..... 2

*Wehringer v Brannigan*, 232 Ad2d 206 [1st Dept 1996]..... 8

**Statutes**

Judiciary Law § 2-b[3]..... 7

**Other Authorities**

*Review of the First Two Years of HALT at the New York State Department of Corrections and  
Community Supervision*, NY St Off of the Inspector Gen (Aug. 2024) ..... 3

## PRELIMINARY STATEMENT

Even now, Defendant continues to defy this Court’s preliminary injunction, depriving both the Court and Plaintiffs of any meaningful basis to assess the legitimacy of the emergencies he invokes to suspend HALT’s core protections across the state. Instead of providing the basic, facility-specific facts the Court ordered, he has provided information that is incomplete, inconsistent, and evasive. Defendant has failed to identify where and to what extent HALT is suspended, why longstanding staffing shortages now constitute emergencies in the specific facilities where HALT is suspended, and the factors on which he relied to declare those emergencies. And he has clung to a vague and apparently inaccurate “goal” of ending the HALT Suspension in “early fall.”

Meanwhile, thousands of class members remain subject to the severe harms of segregated confinement that HALT was enacted to curb. Plaintiffs ask for nothing extraordinary—only that Defendant be required to obey this Court’s clear mandate. Because Plaintiffs have established their entitlement to that relief, the Court should grant this motion.

## ARGUMENT

### **I. Defendant’s Submissions Remain Incomplete, Inconsistent, and Evasive.**

#### **A. Defendant Still Has Not Identified Where and to What Extent He Asserts Facility-Wide Emergencies.**

Defendant claims to have “detail[ed] which of DOCCS[’s] facilities remain[] under a ‘facility-wide emergency’ . . . .” (Martuscello Aff dated Sept. 26, 2025, NYSCEF Doc No. 95, ¶ 4 [hereinafter “Second Martuscello Aff”]). He has done no such thing. Rather than identifying where and to what extent he asserts emergencies, Defendant asks the Court to infer their existence from whether DOCCS purports to comply with HALT’s programming requirement in Special

Housing Units (“SHU”) and Residential Rehabilitation Units (“RRU”) (Mem in Opp to Petitioners’ Mot to Enforce, NYSCEF Doc No. 94, at 6 [hereinafter “Opp”]). That approach fails for three independent reasons.

*First*, mere noncompliance with HALT is a poor proxy for the existence of an emergency. DOCCS has a well-documented history of systemic HALT violations wholly unrelated to any emergency. HALT’s legislative sponsors have decried DOCCS’s pervasive non-compliance with the law (Ex. 2 to Gemmell Aff, NYSCEF Doc No. 7, Letter from Julia Salazar et al., Feb. 27, 2023). The New York State Office of Inspector General (“OIG”) likewise issued a report on DOCCS’s failure to comply with many of HALT’s central mandates (Ex. 4 to Gemmell Aff, NYSCEF Doc No. 9, OIG, *Review of the First Two Years of HALT* [Aug. 2024]). Courts around the state have also recognized that DOCCS has failed on a systemic level to comply with HALT (*see e.g. Fuquan F. v D.F.M.*, 2024 WL 5681961, \*6–7 [Sup Ct, Albany County 2024] [holding DOCCS systematically violated HALT’s requirements for imposing segregated confinement exceeding three days];<sup>1</sup> *Peterkin v New York State Dept of Corrs & Community Supervision*, 2025 WL 1657349, \*3 [3d Dept, June 12, 2025, No. CV-24-0895] [holding DOCCS violated HALT by imposing excessive SHU sanctions]). Other litigation challenging DOCCS’s systemic non-compliance with HALT’s protections for people with disabilities is pending (*Anthony v DOCCS*, Sup Ct, Kings County, 2024, Capell, J., index No. 512871/2024). Against this backdrop, Defendant’s non-compliance with HALT cannot credibly be equated with lawful invocation of emergency powers.

---

<sup>1</sup> The *Fields* plaintiffs recently filed a motion for contempt alleging that DOCCS has repeatedly violated the court’s order in that case (Mem in Support of Mot for Contempt, *Fields v Martuscello*, Sup Ct, Albany County, index No. 902997-23, NYSCEF Doc No. 115).

*Second*, even if HALT compliance could serve as a proxy for the existence of a facility-wide emergency, Defendant has chosen the wrong benchmark by which to evaluate that compliance. He focuses almost exclusively on compliance with the SHU and RRU programming requirements in Correction Law § 137 (6)(j)(ii), while ignoring Section 2(23)'s mandate that people in general population receive at least seven hours out of cell each day. DOCCS has confined thousands of 2(23) class members<sup>2</sup> who are in general population—including Plaintiffs Smalls, Tomlin, and Leslie—to their cells for up to 24 hours daily under the HALT Suspension.<sup>3</sup> Compliance with SHU and RRU programming says nothing about whether Defendant is invoking emergencies to deny out-of-cell time to these class members. The Court highlighted precisely this flaw in granting the preliminary injunction (Decision and Order, NYSCEF Doc No. 67, at 7–8 [hereinafter “Order”]), yet Defendant repeats it now.

*Third*, even if complying with HALT's SHU and RRU programming requirements were a reliable proxy for whether Defendant is asserting any emergency—it is not—Defendant's contradictory and omission-riddled representations would render that proxy worthless. Both in their opening brief and in correspondence with Defendant's counsel, Plaintiffs already identified numerous contradictions and omissions in Defendant's accounting of such compliance, including inconsistent statements about the provision of programming at seven facilities, failure to confirm whether required SHU programming hours are offered at numerous others, and failure to address

---

<sup>2</sup> The putative 2[23] Facility-Wide Emergency Class is comprised of “all individuals in DOCCS custody who are or will be subject to cell confinement exceeding 17 hours per day under the HALT Suspension and who are not, at the time of such confinement, subject to placement in segregated confinement as a disciplinary sanction” (See Pls.' Mem in Support of Mot for Class Certification, NYSCEF Doc No. 44, at 9). It includes people in general population who are not facing disciplinary sanctions, as well as people in forms of disciplinary confinement, like RRU, where HALT ordinarily requires at least seven hours of out-of-cell time per day.

<sup>3</sup> A senior DOCCS official stated under oath that DOCCS claimed the HALT Suspension provided DOCCS with “legal authority to hold any incarcerated individual in cell confinement for more than seventeen hours a day, including those in general population” (Ex. 18 to Gemmell Aff, NYSCEF Doc No. 23, DOCCS & Commissioner Martuscello's Responses to Plaintiffs' Second Set of Interrogatories in *Anthony v DOCCS* [Apr. 4, 2025], at 4).

HALT's programming requirements in various specialized units aside from SHU or RRU (*see* Plaintiffs' Mem in Support of Mot to Enforce, NYSCEF Doc No. 81, at 11–14 [hereinafter "Pls.' Mem"]; Ex. C to Aff of Riley Doyle Evans, NYSCEF Doc No. 86 [hereinafter "Evans Aff"]).

Defendant does little to cure these defects in his opposition. He addresses only one of the seven conflicts in his own statements that Plaintiffs pointed out (*see* Ex. C to Evans Aff [listing conflicting statements regarding Bedford Hills, Coxsackie, Franklin, Greene, Groveland, Lakeview and Woodbourne]; Second Martuscello Aff ¶ 7 n 1 [addressing Greene only]). He still fails to state whether the required out-of-cell programming is provided in SHU at four facilities (*see* Second Martuscello Aff ¶ 9 [providing updates regarding HALT programming at several facilities, but not including Attica, Cayuga, Gouverneur, or Lakeview]). And he continues to ignore HALT's out-of-cell requirements in other specialized units, like protective custody and Residential Mental Health Treatment Units (*see* Second Martuscello Aff ¶ 6 [referencing only SHU and RRU as subject to HALT's programming requirements]). Defendant's persistent failure to provide clarity on these points—despite specific, repeated requests by Plaintiffs' counsel—makes determining facility-by-facility compliance impossible.<sup>4</sup>

Because Defendant's opposition barely engages with, and certainly does not remedy, these defects, it remains impossible to discern exactly where Defendant is complying with HALT's limitations on segregated confinement, and thus impossible to identify which facilities are in a state of "facility-wide emergency" using that information as a proxy as Defendant suggests the Court should do. To comply with the Order, Defendant must clearly state where a facility-wide emergency exists, and he simply has not done so.

---

<sup>4</sup> Defendant's suggestion that Plaintiffs are demanding "detailed and ongoing reporting" is backwards (Opp at 6). It is Defendant's own insistence that his invocation of emergencies be inferred from its purported compliance with HALT's programming requirements that forces Plaintiffs to dig into the details—reporting that would be unnecessary if Defendant simply explained what was suspended, where, and why.

**B. Defendant Still Has Not Shown How Staffing Shortages Constitute Emergencies in Specific Facilities.**

Defendant responds to Plaintiffs' claim that he has not sufficiently described the emergency at each facility by repeating that staffing shortages are the problem and by accusing Plaintiffs of trying improperly to substitute their judgment for the agency's. That mischaracterizes Plaintiffs' arguments and misapplies the Article 78 standard. Plaintiffs do not ask the Court to rule that staffing shortages can never be an emergency, or to decide now that no emergencies exist. They seek only what rational agency decision-making requires: a reasoned explanation why Defendant believes DOCCS's staffing levels amount to an emergency at each facility where HALT is suspended. Article 78 review does not allow the Court to substitute Defendant's judgment with Plaintiffs'. But neither does it allow blind deference to an agency's say-so. To withstand review, the agency must not only reach a substantively reasonable decision but also explain it in a manner that permits judicial review (*see Montauk Improvement, Inc. v Proccacino*, 41 NY2d 913, 914 [1977] ["Failure of the agency to set forth an adequate statement of the factual basis for the determination forecloses the possibility of fair judicial review and deprives the petitioner of his statutory right to such review."]; *Off Bldg Assn v Empire Zone Designation Bd*, 95 AD3d 1402, 1405 [3d Dept 2012] [requiring "sufficient information to permit this Court to both discern the rationale for the administrative action taken and undertake intelligent appellate review thereof"]). Defendant has done neither here.

When Defendant relied solely on staffing levels to justify the HALT suspension in opposing Plaintiffs' motion for a preliminary injunction, the Court rejected that rationale, finding that staffing shortages, without more, could not rationally explain the asserted emergencies. As the Court observed, Defendant failed "to explain why . . . pre-existing staffing deficiencies were not the basis for facility-wide emergencies before the strike but now are sufficient to create such

emergencies” (Order at 7). Yet Defendant presses the same claim again, gesturing vaguely to the existence of “more widespread and severe” shortfalls following the strike, without providing further reasoning (*see* Opp at 9).

That claim cannot withstand scrutiny. As Plaintiffs have shown, there are facilities where the very factor Defendant emphasizes—staff vacancy rates—does not support the scope of the asserted emergency (Pls.’ Mem at 15–16). Rather than address specific deficiencies Plaintiffs have identified in the information DOCCS provided about various facilities, Defendant instead relies on statewide staffing data in his opposition to this motion (*see* Second Martuscello Aff ¶¶ 14–17, 19). But that is not enough to meet the Order’s requirement that Defendant identify an emergency and provide relevant information for “each facility” where he suspends HALT (Order at 11 [preliminarily enjoining Defendant from suspending provisions of HALT “without a finding of a facility-wide emergency in *each facility*” and requiring that such a finding be supported by “detailed facts describing the facility-wide emergency”] [emphasis added]). Defendant’s failure to connect the facts before him to the decisions he has made about specific facilities violates the Order and epitomizes irrationality (*see Motor Veh Manufacturers Assn of the United States, Inc. v State Farm Mutual Automobile Ins Co.*, 463 US 29, 43 [1983] [“[T]he agency must examine the relevant data and articulate a satisfactory explanation for its action including a ‘rational connection between the facts found and the choice made.’”] [quoting *Burlington Truck Lines v United States*, 371 US 156, 168 [1962]]).<sup>5</sup>

---

<sup>5</sup> Defendant also argues the Court should reject Plaintiffs’ supposed effort to “draw a bright statistical line” about what level of staffing shortfall suffices for a facility-wide emergency (Opp at 9). That mischaracterizes Plaintiffs’ position. Plaintiffs do not ask the Court to impose any mechanical threshold. Rather, they insist on what the Court’s Order already requires: individualized, facility-specific explanations grounded in reality rather than in generalizations untethered from the facts.

Defendant himself concedes that “many factors” contribute to the asserted emergencies (Opp at 9). The only ones he specifies, however, are staff hiring and retention, which are simply restatements of the staffing rationale this Court has already found inadequate without more. Beyond that, Defendant offers no additional “detailed facts describing the emergency at each facility” as the Court’s order requires (Order at 11). What Defendant offers is not explanation but evasion—the very hallmark of arbitrary decision-making.

**C. Defendant’s Blanket “Early Fall” Goal Is Vague and Apparently Inaccurate.**

Defendant falsely suggests that Plaintiffs are demanding a “date certain” for the end of the HALT Suspension (Opp at 10). They are not. What Plaintiffs seek is a rational, *facility-specific* explanation of the expected duration of the Suspension, as the Order requires to enable judicial review.

Instead, Defendant offers only a vague, aspirational goal of “early fall” across the entire system. That blanket pronouncement is inadequate. First, it ignores Defendant’s own acknowledgment that conditions vary significantly by facility (*see e.g.* Opp at 9). Second, early fall is already upon us with no signal that Defendant has immediate plans to end the HALT Suspension statewide, leaving many class members still subject to the same indefinite suspension the Court enjoined over three months ago on July 1 (*see* Order at 7–8 [observing that the 90-day time frame initially set by Defendant had expired on June 6, 2025, but “the suspension nevertheless remained in place, to varying degrees, throughout the DOCCS system”]).

The Court’s Order requires Defendant to “set forth detailed facts describing the facility-wide emergency, including its . . . duration” (Order at 11). An inaccurate, one-size-fits-all timeline is no substitute for the individualized, facility-specific facts the Court ordered.

## II. The Court Should Enforce Its Preliminary Injunction.

In light of Defendant's ongoing noncompliance with the Order, Plaintiffs ask for something simple: that the Court require him to obey (*see* Pls.' Mem at 18–19). Defendant resists even this modest relief, insisting he has complied with the Order. He has not. As Plaintiffs have shown, Defendant has repeatedly failed to provide the information the Court required, despite ample opportunity to do so (Pls.' Mem at 7–17; *supra* at 1–7). The Court should now order compliance, consistent with its inherent authority (*see* Judiciary Law § 2-b[3]; *Wehringer v Brannigan*, 232 Ad2d 206, 207 [1st Dept 1996]).

In response to Plaintiffs' alternative request that the Court hold Defendant in contempt if necessary to secure compliance, Defendant argues Plaintiffs have not met three of the four elements required for civil contempt (*see* Opp at 11–12). He first claims he has not disobeyed a “clear and unequivocal” order with “reasonable certainty” (*see id.*). To make that claim, Defendant mischaracterizes Plaintiffs' argument. Plaintiffs have never asserted that the Court's Order “prohibit[s Defendant] from continuing to implement the HALT Suspension based upon a facility-wide emergency” (*id.* at 11). Rather, the Order required Defendant to provide specific information necessary for meaningful Article 78 review of any facility-wide emergency he asserts as a basis to suspend HALT. Defendant has failed to provide that information. As Plaintiffs have explained, the record makes plain that Defendant has violated the Court's clear mandate (Pls.' Mem at 7–17; *supra* at 1–7).

Finally, Defendant insists Plaintiffs cannot show prejudice because he is only suspending HALT when necessary (Opp at 12). But his refusal to provide information required for the Court to assess the rationality of that assertion *is* gravely prejudicing Plaintiffs. Until Defendant complies with the Order, Plaintiffs and other class members remain subject to the “physical and mental

injuries” and “irreparable injury” of segregated confinement without any way for the Court to determine whether those restrictions are rationally supported or, to the contrary, unlawful at each specific facility (Pls.’ Mem at 19–20 [quoting Order at 9]).

### CONCLUSION

For these further reasons, the Court should require Defendant to comply with the preliminary injunction by supplementing his affirmation with information necessary to assess the legitimacy of any facility-wide emergencies he asserts exist; and, if necessary, by holding Defendant in civil contempt.

Dated: October 2, 2025  
New York, New York

Respectfully submitted,

THE LEGAL AID SOCIETY  
PRISONERS’ RIGHTS PROJECT

/s/ Antony P. F. Gemmell

Antony P. F. Gemmell  
Katherine E. Haas  
Lauren P. Stephens-Davidowitz  
Riley D. Evans  
Samantha R. Coulson  
49 Thomas Street, 10th Floor  
New York, New York 10013  
212-577-3530  
agemmell@legal-aid.org

*Counsel for Plaintiffs-Petitioners*

**CERTIFICATE OF COMPLIANCE WITH 22 NYCRR § 202.8-b**

I hereby certify that this memorandum of law complies with the word-count limitation of 22 NYCRR § 202.8-b because the total word count of all printed text in the body of the memorandum, excluding the parts exempted by section 202.8-b, is 2,627 words according to the word-count function in Microsoft Word, the word processing program used to prepare this document.

Dated: October 2, 2025  
New York, New York

*/s/ Antony P. F. Gemmell*  
Antony P. F. Gemmell

**THE  
LEGAL AID  
SOCIETY  
CRIMINAL  
DEFENSE**

49 Thomas Street  
New York, New York 10013  
212-577-3300  
www.legalaidnyc.org

Alan Levine  
President

Twyla Carter  
Attorney-in-Chief  
Chief Executive Officer

Justine M. Luongo  
Chief Attorney  
Criminal Defense Practice

Mary Lynne Werlwas  
Director  
Prisoners' Rights Project

November 7, 2025

Via NYSCEF

The Honorable 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:

As counsel for Plaintiffs in this putative class challenge to Defendant's suspension of core provisions of the Humane Alternatives to Long-Term Solitary Confinement Law, we write pursuant to the Court's instructions during the October 22 hearing to correct the record on DOCCS's inaccurate and misleading representations about the current state of HALT compliance in New York prisons.

Defendant's failure—indeed, refusal—to acknowledge the true extent of the sweeping restrictions DOCCS continues to impose under a suspension now entering its ninth month underscores the pressing need for this Court to enforce its preliminary injunction by entering Plaintiffs' proposed order (*see* NYSCEF Doc No. 82),<sup>1</sup> and may ultimately warrant further, more robust measures to secure DOCCS's compliance with HALT for thousands of class members who remain subject to extreme and unlawful isolation.

I. DOCCS Has Misrepresented the Scope of the HALT Suspension.

During the October 22 hearing, DOCCS repeatedly claimed the HALT suspension is now limited to seven facilities and applies only to programming requirements in Residential Rehabilitation Units within those facilities (*see* tr at 37:7–17).<sup>2</sup> Out-of-cell time in general

---

<sup>1</sup> Plaintiffs may amend their proposed order enforcing the preliminary injunction to include limited requests for enforcement discovery. Plaintiffs will make any such amended proposal in conjunction with their supplemental submission, ordered by the Court to be filed on or before November 21, 2025 (*see* tr at 65:5–9).

<sup>2</sup> Those facilities are Adirondack, Attica, Cayuga, Five Points, Gouverneur, Greene and Lakeview Correctional Facilities (*see* tr at 62:23–63:3).

population housing, DOCCS assured the Court, had returned to normal statewide (*see* tr at 43:9–16 [expressing Defendant’s “baffle[ment]” by concerns about out-of-cell time in general confinement because “general population is operating normally”]).

None of that is true. Sworn affirmations submitted with this letter from three dozen people incarcerated at prisons across New York sharply contradict DOCCS’s representations about the scope of the suspension, and describe conditions violating HALT in facilities and housing units where DOCCS insists no emergency exists, including:

- *Twenty-six class members housed in general population at ten prisons*,<sup>3</sup> all of whom report being confined to their cells for more than 17 hours a day—some for as long as 23.5 hours—despite having no relevant disciplinary confinement sanction against them. These class members include:
  - Ronald Alston, who is locked in his cell at Attica for at least 21 hours a day (*see* affirmation of Alston ¶ 7 [“It feels like I’m in SHU. I don’t get to socialize. I have no human contact; we’re yelling at one another all day. I feel frustrated. I feel taxed and tired – really tired]); and
  - Alfonso Smalls, who is locked in his cell at Coxsackie CF for at least 21.5 hours every day (*see* affirmation of Smalls, ¶ 11 [“I feel very upset and depressed. Every time I want to do something, I am instead stuck in my cell the majority of the day. It is impossible for me to accomplish my goals and my rehabilitation under these circumstances.”]).
- *Four class members in Upstate CF’s RRU*—the most populous such unit in the state,<sup>4</sup> and not among those DOCCS identified as still subject to the suspension—all of whom report being denied the congregate programming and recreation that HALT requires and instead being locked in their cells for between 20 and 24 hours a day (*see* affirmations of Diggs, Guzman, Scott, Taveras). These class members include:

---

<sup>3</sup> These facilities include Attica, Auburn, Clinton, Coxsackie, Eastern, Elmira, Five Points, Green Haven, Sing Sing, and Upstate CFs (*see* affirmations of Alston, Bishop, Diaz, Hines, Navarro [Attica]; affirmation of Tomlin [Clinton]; affirmations of Bah, Lee, Lowe, Smalls, Thomas [Coxsackie]; affirmations of Miller, Patterson [Eastern]; affirmations of Bethea, Hill, McGregory, Zimmerman [Elmira]; affirmation of Sanders [Five Points]; affirmations of Dedmon, Sanchez, Simmons, Washington, L. Wright [Green Haven]; affirmations of Dixon, Leslie [Sing Sing]; affirmation of Lewin [Upstate]).

<sup>4</sup> The Upstate RRU housed 589 people as of October 1 (*see* DOCCS, *HALT Monthly Report*, October 2025, available at <https://doccs.ny.gov/halt-monthly-report-october-2025>).

- Twenty-year-old<sup>5</sup> Donavin Taveras, who remains in 24-hour cell confinement with no access to programming (see affirmation of Taveras ¶ 8 [“Being cooped up in a cell where you’re not able to move at all messes with you. I sit in one spot all day. I don’t talk to my family much and I can’t even explain what it’s like being with my thoughts all day”]); and
- Ronnie Diggs, who is locked in his cell between 21–24 hours a day (see affirmation of Diggs ¶¶ 6, 8 [“I feel like a caged animal and I feel trapped. It’s very small and depressing. It’s traumatizing . . . . These conditions mean that even if I am suicidal, it is not believed. I’m told I’m trying to pull a stunt.”]).
- *Five class members in other specialized units*<sup>6</sup> where they are entitled to seven hours out-of-cell per day under HALT but nonetheless report being confined to their cells for between 19.5 and 24 hours a day. These class members include:
  - Bismark Lithgow, who is deaf<sup>7</sup> and housed in the Sensorially Disabled Unit at Eastern Correctional Facility and locked in his cell for 19.5–21.5 hours a day (see affirmation of Lithgow ¶ 8 [“I’m by myself most of the day with no one to talk to. Because I am deaf and use [American Sign Language], I can’t call people on the tablet in my cell or use a regular phone in the yard . . . so I’m left to choose between going outside during rec time or being able to talk to other people [using assistive technology available]in the [Sensorially Disabled Unit room.”]]).

These accounts, gathered in the past two weeks alone,<sup>8</sup> expose an ongoing HALT suspension that is apparently far broader than Defendant has admitted and confirm what both Plaintiffs’ counsel and recent media reporting have observed: Systemic noncompliance with HALT persists across New York prisons, including in facilities where DOCCS asserts no lawful basis for suspending the statute (see Chris Gelardi, *This Place is a Circus: Eight Months Since a*

---

<sup>5</sup> HALT prohibits segregated confinement for individuals under the age of 22 (see Correction Law §§ 2[33]; 137[6][h]).

<sup>6</sup> These units include the Diversion Unit at Clinton CF, a protective custody unit at Coxsackie CF, the Sensorially Disabled Unit at Eastern CF, and the Step-Down Program at Mid-State CF (see affirmation of Witherspoon [Clinton]; affirmation of J. Wright [Coxsackie]; affirmation of Lithgow [Eastern]; affirmations of Mannino, Rosado-Thomas [Mid-State]).

<sup>7</sup> HALT prohibits segregated confinement for individuals with disabilities, including people who are deaf (see Correction Law §§ 2[33]; 137[6][h]).

<sup>8</sup> Plaintiffs’ counsel obtained these affirmations in just two weeks despite significant barriers to arranging legal calls and visits. With additional time, we expect interviewing additional class members and will submit further affirmations along with Plaintiffs’ supplemental filing on or before November 21.

*Guard Strike, State Prisons Remain in Crisis*, NY Focus, Oct. 30, 2025, <https://nys-focus.com/2025/10/30/new-york-prison-strike-lockdowns>).

## II. DOCCS Has Misstated Its Obligations under HALT.

At the hearing, Defendant also repeatedly claimed HALT “does not apply to general population” (tr at 60:9–12). That remarkable assertion is incorrect. HALT prohibits DOCCS from imposing segregated confinement, defined as “*any* form of cell confinement for more than seventeen hours a day other than in a facility-wide emergency,” except in limited circumstances following a disciplinary hearing (CL §§ 2[23] [emphasis added]; 137[6][k]). Nowhere does HALT exclude general population housing from that prohibition.

From the outset, Plaintiffs have challenged DOCCS’s unlawful use of segregated confinement in general population under the HALT suspension (*see e.g.* NYSCEF Doc No. 1, complaint at ¶¶ 77, 171; NYSCEF Doc No. 4, mem in support of art 78 petition at 10–14). The Court relied on DOCCS’s failure to account for that very practice in issuing its preliminary injunction (*see* NYSCEF Doc No. 67, decision & order at 7). Indeed, it was Defendant’s steadfast refusal to confirm in his affirmations the out-of-cell time available to class members in general population that in part prompted Plaintiffs’ motion to enforce that injunction.

Defendant’s insistence that HALT does not apply to class members in general population reflects a fundamental misunderstanding or disregard for DOCCS’s statutory obligations. That position—asserted by DOCCS’s chief legal officer, no less—further undermines the credibility of Defendant’s claims about the scope of the HALT suspension and underscores the need for this Court to enforce DOCCS’s adherence to the preliminary injunction.

\* \* \*

As the record now before the Court makes clear, some nine months into the HALT suspension, Defendant has continued to shield DOCCS’s actions from meaningful judicial review, defying the Court’s preliminary injunction at a profound cost to thousands of class members who remain in unlawfully restrictive confinement.

Defendant’s repeated misstatements during the October 22 hearing about the scope of the HALT suspension, compounded by his counsel’s apparent fundamental misapprehension of HALT’s requirements, undermine DOCCS’s credibility; underscore the need for enforcement of the preliminary injunction; and, given the persistence and breadth of DOCCS’s failure to comply with HALT, may warrant further relief to bring the agency into compliance with HALT.

We thank the Court for considering this submission and are available to address any questions or concerns the Court may have.

Respectfully submitted,

THE LEGAL AID SOCIETY  
PRISONERS' RIGHTS PROJECT

/s/ Antony P. F. Gemmell

Antony P. F. Gemmell  
Riley D. Evans  
Katherine E. Haas  
Lauren P. Stephens-Davidowitz  
  
agemmell@legal-aid.org  
212-577-7941



**Office of the New York State  
Attorney General**

**Letitia James  
Attorney General**

Writer Direct: (518) 776-2616

November 14, 2025

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

Re: *Matter of Alfonso Smalls, et al. v. Martuscello*  
Albany County Supreme Court  
Index No. 903926-25

Dear Judge Lynch:

This office represents Respondent Daniel F. Martuscello III (Martuscello) in this matter. As directed by the Court at the October 22, 2025 oral argument, Respondent submits the Affirmations of Respondent Martuscello (Third Martuscello Affirmation), Julie Wolcott, Thomas Gee, Leanne Latona, Mark Rockwood, and Aaron Torres, which supplement Respondent's prior submissions concerning DOCCS' ongoing compliance with the preliminary injunction in this matter.

#### Special Housing Units and Residential Rehabilitation Units

The Humane Alternatives to Long-Term Solitary Confinement Act (HALT) was created, in part, to reduce the use and duration of "solitary confinement" resulting from disciplinary infractions and to divert individuals from Special Housing Units (SHUs) to alternative, rehabilitative programs inside Residential Rehabilitation Units (RRUs). HALT sets due process requirements and parameters for when an individual can be placed in SHUs and RRUs and limits the time incarcerated individuals can spend there. It also provides for specific programming and other out-of-cell time for individuals housed in SHUs and RRUs as part of their disciplinary rehabilitation. As recognized by this Court in its July 1, 2025 Decision and Order, Respondent has the authority to suspend these HALT provisions in DOCCS' SHUs and RRUs upon a showing of a "facility-wide emergency" at each impacted facility.

DOCCS has thirty five facilities with SHUs and/or RRUs that are subject to the due process and programming requirements of HALT. Respondent submitted a 96-page Affirmation on July 14, 2025, detailing the facility-wide emergency in each of those facilities. At that time, there were thirteen DOCCS facilities that had completely restored the

programming elements of HALT, 19 that had partially restored those elements and 3 that had yet to restore any element due to the substantial safety and security concerns present.

When Respondent submitted his September 26, 2025, Affirmation, the number of DOCCS facilities that were fully operational with respect to the applicable HALT programming had risen from 13 to 24 and there was some level of out-of-cell programming in all DOCCS facilities with SHUs and/or RRUs.

Currently, HALT programming is fully operational in all SHUs throughout the State, and 30 of the 35 facilities are fully operational with respect to their applicable HALT programming requirements in their RRUs. The 5 remaining facilities (Attica, Cayuga, Collins, Gouverneur and Greene) continue to experience significant staffing, operational and safety challenges while working towards full resumption of programming. Affirmations from each of those facility Superintendents are submitted with this letter.

#### General Population

As a preliminary matter, Respondent does not dispute that the definition of segregated confinement set forth in Correction Law § 2(23) applies to individuals housed in general population and the statements made by counsel during oral argument on October 22<sup>nd</sup> are not in conflict with this position. However, the point that was being made is that HALT's provisions regarding when and how an individual can be placed in segregated confinement in connection with a disciplinary proceeding and the programming and out-of-cell time that must be offered to those individuals do not apply to individuals in other housing settings, including general population.

An individual can be confined in a general population cell for more than seventeen hours a day during a facility-wide emergency without a hearing and without satisfying HALT's two-pronged analysis. See Correction Law §2(23). In other words, an individual can be placed in "segregated confinement" in a general population cell without DOCCS having to establish that: (1) the person committed at least one of the seven acts found in Correction Law §137(6)(k)(ii), and (2) the acts were so heinous or destructive that placement of the person in general population housing creates a significant risk of imminent serious physical injury to staff or other incarcerated persons and creates an unreasonable risk to the security of the facility. This is consistent with, and supported by, the Appellate Division, Third Department's Decision in *Walker* where the Court held that DOCCS' placement of the Petitioner in an RMHU for longer than three days without the requisite findings under the HALT Act did not violate Correction Law §137(6)(k)(ii). See *Matter of Walker v. Commissioner, NYS DOCCS*, 235 N.Y.S.3d 486 (3d Dep't 2025). The Court in *Walker* explicitly stated that the legislature including only SHU and RRU housing in the HALT legislation "implies that its exclusion [of other housing within DOCCS] was intended by the legislature." The *Walker* decision is consistent with Correction Law §2(23) which does not require DOCCS to provide individuals in general population with the same programming and out-of-cell provisions applicable to SHUs and RRUs as set forth in Correction Law §137(6)(j)(ii).

As explained in greater detail in the accompanying Supplemental Affirmation of Respondent Martuscello, individuals in general population in all twenty nine medium and

minimum-security facilities are offered at least seven hours a day of out-of-cell time through the Department's recover, recruit and rebuild campaign in a variety of ways, including, but not limited to, mealtimes, recreation, academic, vocational training, college programming and visitation. Third Martuscello Affirmation at ¶7.

Commissioner Martuscello explains that in DOCCS' thirteen maximum-security facilities, where the incarcerated individuals are not in dorm style housing in general population, the ability to offer every incarcerated individual with seven hours of out-of-cell time every day is fluid due to the ongoing staffing shortages and associated security risks within a maximum-security prison. *Id.* at ¶ 8. Every out-of-cell movement by incarcerated individuals within DOCCS' maximum-security facilities must be controlled with a significant security staff presence to maintain safety for the incarcerated population and staff and staffing vacancies at most maximum-security facilities exceed 30%. This figure is compounded by additional long-term leaves and attrition in the form of retirements and resignations. *Id.* at ¶ 9. In short, a maximum-security facility with such significant staffing vacancies during an ongoing state of emergency cannot responsibly offer seven hours of out-of-cell time to every incarcerated individual every day without risking the lives, health and well-being of the incarcerated population they are tasked to protect and the staff working inside. *Id.* at ¶11.

The full restoration of all suspended aspects of HALT remains an ongoing process that depends on many changing variables. The Department remains committed to continuing its positive trajectory to achieving this goal. In the meantime, Correction Law §2(23) and §137 both afford the Commissioner the discretion to suspend certain out-of-cell requirements during the existence of the facility-wide emergencies. Respondent is not in violation of the preliminary injunction and the Court should deny Petitioners' motion in its entirety.

Respectfully submitted,

*s/ Ryan W. Hickey*

\_\_\_\_\_  
Ryan W. Hickey  
Assistant Attorney General

cc: Counsel of record (Via NYSCEF)

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ALBANY

---

ALFONSO SMALLS, KARIEM TOMLIN, JEROME  
LESLIE, TARON JACKSON, SAIWON ROBBINS, and  
MICHAEL WILLIAMS, on behalf of themselves and all  
similarly situated individuals

**SUPPLEMENTAL  
AFFIRMATION**

*Plaintiffs-Petitioners,*

Index No. 903926-25

-against-

DANIEL F. MARTUSCELLO III, as Commissioner of the  
New York State Department of Corrections and Community  
Supervision,

*Defendant-Respondent.*

---

Daniel F. Martuscello III, affirms the following under the pains and penalties of perjury:

1. I am employed as the Commissioner for the New York State Department of Corrections and Community Supervision (DOCCS). As such, I am fully familiar with the facts and circumstances to which I testify herein.

2. I make this Affirmation in further opposition to Plaintiffs-Petitioners' motion for enforcement of the preliminary injunction. NYSCEF Nos. 80-88. I also incorporate herein by reference my Affirmations dated July 14, 2025, and September 26, 2025, and the Affirmations from the Superintendents submitted contemporaneously herewith.

3. As with my prior Affirmations, this Affirmation is based upon my personal knowledge and/or my review of documents and records maintained in the normal and ordinary course of DOCCS' business operations.

4. As a preliminary matter, all DOCCS correctional facilities remain under a Governor-issued state of emergency due to the strike and resulting staffing shortages. Every facility has been, and continues to be, adversely affected by the staffing shortages and they need to constantly assess their operational challenges and adjust to accommodate their day-to-day responsibilities.

5. DOCCS continues to be supported by more than 2,500 members of the National Guard across our facilities. The National Guard provide safety and security operational support in facilities that continue to face significant challenges.

6. According to Correction Law §2(23), segregated confinement is defined as “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.” (Emphasis added) Beyond the out-of-cell requirement, Correction Law §2(23) does not mirror the additional requirements of the Humane Alternatives to Long-Term Solitary Confinement Act (HALT) which applies to disciplinary housing.

7. Individuals in general population throughout all DOCCS facilities are being offered out-of-cell time to the best of each facility’s ability given the ongoing staffing and operational challenges. All 29 medium and minimum-security facilities are offering at least 7 hours a day of out-of-cell time through our recover, recruit and rebuild campaign in a variety of ways, including, but not limited to, mealtimes, recreation, academic, vocational training, college programming and visitation. While there may be one-off examples or specific situations where DOCCS must shift or modify general population schedules due to our ongoing staffing emergency, this does not constitute a violation of law.

8. Our 13 maximum-security prisons continue to face challenges offering every incarcerated individual with at least 7 out-of-cell hours a day due to consistently and materially significant staffing shortages.

9. The security requirements within maximum security prisons require that every out-of-cell movement by incarcerated individuals be controlled with a significant security staff presence to maintain safety for the incarcerated population and staff. Security vacancies at most maximum-security facilities exceed 30%, and this figure is compounded by additional long-term leaves and attrition in the form of retirements and resignations.

10. For example, Attica Correctional Facility (Attica), when fully staffed, has 662 security staff members, including 596 correction officers. Currently, there are only 443 correction officers filling those 596 positions and, of the 443 assigned, 51 are unavailable to work due to Workers Compensation, long-term leave, paid parental leave or light-duty restrictions. This leaves Attica with only 392 working officers, out of 596 allotted (a vacancy of 35%), to provide the necessary and appropriate care, custody and control over their nearly 1800 incarcerated individuals. *See* Wolcott Affirmation dated November 10, 2025.

11. A maximum-security facility, such as Attica, with vacancies this high during an ongoing emergency cannot responsibly offer 7 hours of out-of-cell time to every incarcerated individual every day without risking the lives, health and well-being of the incarcerated population they are tasked to protect and the staff working inside. Individuals in maximum-security prisons have committed serious crimes, many of which are violent in nature. It is our responsibility to address this reality in the context of the state of emergency and our staffing limitations and to balance the same against other interests, such as out-of-cell time. This is a dire situation that

Petitioners do not bear responsibility for, but one that is contemplated in the emergency exception to Correction Law §2(23).

12. Generally, individuals are placed in segregated confinement when a confinement sanction is imposed in connection with a disciplinary hearing. This determination to impose segregated confinement due to disciplinary infractions triggers the application of HALT. The segregated confinement served in accordance with HALT is not served in general population housing. Rather, this time is served in either a Special Housing Unit (SHU), or, for extended confinement, a Residential Rehabilitation Unit (RRU).

13. As previously stated, DOCCS has 35 facilities with SHUs and/or RRUs that are subject to the programming elements of HALT.

14. When I submitted my July 14, 2025 Affirmation, there were 13 DOCCS facilities that had completely restored the programming elements of HALT, 19 that had partially restored those elements and 3 that had yet to restore any element due to substantial safety and security concerns.

15. By September 26, 2025, the number of DOCCS facilities that were fully operational with respect to the applicable HALT programming requirements had risen from 13 to 24 and there was some level of out-of-cell programming in all DOCCS facilities with SHUs and/or RRUs. *See* Martuscello Affirmation dated September 26, 2025.

16. However, despite our substantial progress, operating conditions within each facility remain fluid and can change daily, or even hourly, depending upon available resources. Examples of resource limitations that remain fluid are both the number of staff calling in sick on a given day

as well as the number of National Guard available due to factors such as their federally mandated training, both of which impact a facility's ability to provide safe out-of-cell time and programming.

17. As of today, HALT programming is now fully operational in all SHUs throughout the State, and 30 of the 35 facilities are fully operational with respect to their applicable HALT programming requirements in their RRUs.

18. The remaining 5 facilities continue to experience significant staffing limitations, along with facility-specific operational and safety challenges. These include Attica, Cayuga, Collins, Gouverneur and Greene Correctional Facilities.

19. As described in greater detail in the accompanying affirmations from the facility Superintendents at each of these 5 facilities, they are offering a significant level of HALT programming despite their operational and safety challenges.

20. DOCCS facilities continue to work hard to resume the suspended elements of HALT as their staffing and operational needs permit.

21. As detailed in my September 26, 2025 Affirmation, DOCCS is also taking considerable steps to address its staffing limitations.

22. Given the inherent fluidity of the state of emergency, it is not pragmatic for DOCCS to provide a precise date by which all suspended elements will be resumed within every facility. It is also not pragmatic, or operationally responsible, to allow Petitioners or any other third party to determine what constitutes a facility emergency or what level of proof is required to meet the emergency requirement, beyond the reasonableness standard which I believe we continue to meet.


23. As we have repeatedly stated, the situation within each of our facilities is fluid and being monitored by leadership to ensure the best possible outcomes for all staff and incarcerated,

while always ensuring that safety and security are being maintained. Simply put, this is a herculean task with 30% fewer staff, and one that puts everyone in our facilities at risk. It is also a Governor recognized state of emergency and one that does not improve with the attempts by Petitioners to continuously micro-manage our ability to recover operations based on their views of what constitutes an emergency in either general population or segregated housing.

24. Forcing DOCCS to indiscriminately and hastily open its cells for extended durations to some of the most violent individuals in the system poses an extreme risk to human life, it is not a tenable path forward, and it is not what the law contemplates in the event of an emergency like the one confronted by DOCCS.

25. Notwithstanding, DOCCS expects to continue to progress towards full resumption of HALT programming by the commencement of the upcoming fiscal year.

I affirm this 14<sup>th</sup> day of November 2025, under the penalties of perjury under the laws of New York, which may include a fine or imprisonment, that the foregoing is true, and I understand that this document may be filed in an action or proceeding in a court of law.



Daniel F. Martuscello III  
Commissioner  
NYS DOCCS

**THE  
LEGAL AID  
SOCIETY  
CRIMINAL  
DEFENSE**

49 Thomas Street  
New York, New York 10013  
212-577-3300  
www.legalaidnyc.org

Alan Levine  
*President*

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

Justine M. Luongo  
*Chief Attorney  
Criminal Defense Practice*

Mary Lynne Werlwas  
*Director  
Prisoners' Rights Project*

December 3, 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:

As counsel for Plaintiffs in this challenge to Defendant's suspension of HALT at prisons across New York, we write in response to Defendant's filing on November 14, 2025, which only underscores the need for enforcement of the preliminary injunction.

Defendant's November 14 submission reflects two basic problems: His representations about the state of HALT compliance are consistently unreliable, and he persists in advancing a sweeping interpretation of his emergency authority that exceeds what the statute allows.

Absent any indication Defendant will remedy these defects voluntarily, further measures are needed to ensure he complies with the preliminary injunction. Plaintiffs thus respectfully request that the Court enter the attached amended proposed order, which would require Defendant to identify the facilities where DOCCS claims a facility-wide emergency exists, provide the facility-specific information the preliminary injunction mandates for any such emergency, provide periodic updates on the status of the HALT suspension, comply with HALT where no emergency is asserted, and demonstrate such compliance.

I. Defendant's representations about the state of HALT compliance are consistently unreliable.

Defendant's latest filing continues a pattern of shifting positions and unexplained discrepancies and omissions, confirming that his representations about HALT compliance cannot be trusted and that more robust measures to enforce the preliminary injunction are warranted.

*First*, his November 14 filing confirms Defendant has misled the Court for months about DOCCS's compliance with HALT's requirement that individuals in general population be allowed out of their cells for at least seven hours each day.

In his first affirmation following the preliminary injunction on July 14, Defendant conspicuously elided that requirement despite its centrality to Plaintiffs' claims (*see generally* Second Martuscello Aff, NYSCEF Doc No. 69). When Plaintiffs pressed the issue later that month, Defendant reported that 20 prisons, including eight maximum-security facilities, were providing the required out-of-cell time in general population (*see* Evans Aff, Ex. A, NYSCEF Doc No. 84 [email correspondence between counsel]).<sup>1</sup> At the October 22 hearing, his counsel then claimed to be "baffled" that general population out-of-cell time was even at issue, on the grounds that general population was "operating normally" statewide—something defense counsel claimed Defendant had already "represented repeatedly"—and that HALT's limits on segregated confinement did not apply to general population at all (Tr. 43:9–22, 60:9–15, NYSCEF Doc No. 104).

Defendant now abandons those positions. The parties now appear to agree that HALT limits cell confinement to 17 hours per day in general population in the absence of a facility-wide emergency (*see* Def's Ltr to Ct, Nov. 14, 2025, NYSCEF Doc No. 142). And confronted with 26 sworn affirmations reflecting widespread noncompliance with this requirement, Defendant now concedes that all 13 of DOCCS's maximum-security facilities "continue to face challenges offering . . . at least 7 out-of-cell hours a day" in general population (Fourth Martuscello Aff ¶ 8, NYSCEF Doc No. 143).<sup>2</sup> This sudden reversal cannot be reconciled with Defendant's emphatic assurances to the Court and Plaintiffs' counsel only weeks earlier.<sup>3</sup>

Even taking Defendant's latest filing at face value, his characterization of conditions in general population at the maximum-security facilities is misleading. He claims that "the ability to offer every incarcerated individual with seven hours of out-of-cell time every day is fluid due to the ongoing staffing shortages and associated security risks" (Def's Ltr to Ct, Nov. 14, 2025, at 3). But dozens of class members have testified that there has been nothing "fluid"

---

<sup>1</sup> Those facilities were Auburn, Eastern, Elmira, Five Points, Sing Sing, Upstate, and Wende, as well as Green Haven, which Defendant had already represented was operating as normal (Second Martuscello Aff ¶¶ 232–33).

<sup>2</sup> Plaintiffs submit with this letter affirmations from four additional people in general population at maximum-security facilities—three at Attica and one at Wende—each describing receiving well under seven hours of out of cell time per day (*see* affirmations of Hall, Ryan, Washington [Attica]; affirmation of H'Shaka [Wende]).

<sup>3</sup> Defendant now suggests his counsel's October 22 statement about general population "operating normally" concerned only HALT's programming and disciplinary provisions, not out-of-cell time (*see* Def's Ltr to Ct, Nov. 14, 2025). The transcript shows otherwise (*see* Tr. 43:16–19 ["[Plaintiffs] have this apprehension that DOCCS is somehow . . . holding people in general population for more hours than they're supposed to. And again, we deny that."]).

about their out-of-cell time as far as HALT compliance is concerned: They have been locked in their cells for more than 17 hours and up to 24 hours per day consistently since February, and many have observed similar conditions for others held in their units (*see* Exs. 2–7, 9–13, 15, 17–22, 24, 26, 27, 30, 31, 33 to Pls.’ Ltr to Ct, Nov. 7, 2025, NYSCEF Doc Nos. 105–110, 112–116, 118, 120–125, 127, 129, 130, 133, 134, 136).

*Second*, Defendant fails to explain—or even acknowledge—the inconsistency between his representations about RRU programming and the sworn accounts of class members. He insists that HALT’s RRU programming requirements remain suspended at only five facilities (Fourth Martuscello Aff ¶ 17). But ten individuals housed in RRUs or RRU-comparable units at four other facilities—including the state’s most populous RRU at Upstate Correctional Facility—report being locked in their cells between 19.5 and 24 hours per day (*see* Pls.’ Ltr to Ct, Nov. 7, 2025, NYSCEF Doc No. 103 [cataloguing affirmations filed by nine such individuals]; Hyatt Aff).<sup>4</sup> Defendant nowhere attempts to explain this discrepancy.

*Third*, Defendant still has not addressed key deficiencies identified in Plaintiffs’ enforcement briefing, including the preliminary injunction’s requirement that he provide the expected duration of any facility-wide emergency and the Court’s prior rejection of his staffing-shortage rationale (*see generally* Pls.’ PI Enforcement Reply Mem, NYSCEF Doc No. 61 [identifying continuing areas of non-compliance]). Rather than supply the facility-specific durational information the preliminary injunction requires, Defendant recasts Plaintiffs’ position as a demand for a “precise date” for ending the HALT suspension—something Plaintiffs have never sought—and then labels that imagined demand “not pragmatic” (Fourth Martuscello Aff ¶ 22). Meanwhile, his own predictions about the timeline for ending what was initially framed as a 90-day suspension have only grown vaguer, shifting from a “goal” of “early fall” to a statement that DOCCS will merely “continue to progress” towards compliance by “commencement of the upcoming fiscal year,” with no differentiation among facilities (Second Martuscello Aff ¶ 22; Fourth Martuscello Aff ¶ 25).

And although the Court already rejected Defendant’s reliance on longstanding staff vacancies, without more, as a sufficient basis for the HALT suspension, *see* PI Decision & Order, NYSCEF Doc No. 67 [Jul. 1, 2025], at 7, Defendant continues to point to those figures without explaining why they now warrant suspending HALT when they did not prior to the strike.<sup>5</sup>

---

<sup>4</sup> In an affirmation filed in conjunction with this letter, class member Shane Hyatt, housed in Clinton’s Diversion Unit, describes being allowed to leave his cell for only one hour each day.

<sup>5</sup> In particular, Defendant has yet to explain why staff vacancy rates around 30%—a threshold he has referenced repeatedly—now amount to an emergency when, only days before the correction officers’ strike, he set those very same levels as a *target* (*compare, e.g.*, Fourth Martuscello Aff ¶ 9 [describing vacancy rates that “exceed 30%”]; Rockwood Aff ¶ 6, NYSCEF Doc No. 147 [basing assertion of facility-wide emergency at Gouverneur on vacancy rate of “nearly 29%”]; Torres Aff ¶ 7, NYSCEF Doc No. 148 [same at Greene on vacancy rate of “nearly 31%”] *with* Commissioner’s Mem on Security Staffing

Defendant undermines the preliminary injunction by failing to provide meaningful timelines or facility-specific rationales and thus by preventing the Court from determining whether the continued suspension is reasonably tied to conditions at any facility.

Collectively, these deficiencies confirm that Defendant's submissions cannot be trusted and that the Court cannot meaningfully review the HALT suspension without stronger, facility-specific reporting requirements and methods to check the veracity of that reporting.

II. Defendant persists in advancing a sweeping interpretation of his emergency authority that conflicts with the statute.

Defendant's latest filing also confirms that he continues to assert a suspension authority far broader than HALT permits. First, he appears to claim power, based on "challenges" at a handful of maximum-security facilities, to ignore HALT's out-of-cell requirements for individuals in general population at every such facility in the state (Fourth Martuscello Aff ¶ 8). Second, even in the 29 minimum- and medium-security facilities where he claims DOCCS is providing the required out-of-cell time in general population, he now suggests that falling short of that requirement may still be justified in unspecified "specific situations" attributed to "our ongoing staffing emergency" (Fourth Martuscello Aff ¶ 7). These positions would allow DOCCS to suspend HALT's protections whenever generalized operational pressures arise—contrary to section 2(23)'s requirement of an actual, facility-specific emergency.

To defend this claimed authority, Defendant again invokes the Governor's strike-related emergency declaration (Fourth Martuscello Aff ¶ 4), just as when he first suspended HALT (*see* Commissioner Martuscello Mem, Path to Restoring Workforce [Feb. 20, 2025], NYSCEF Doc No. 16). But the Governor's declaration—issued to suspend other laws, not HALT—is not coextensive with HALT's narrow emergency exception (*see* Executive Order No. 47.12, Nov. 21, 2025).<sup>6</sup> And as the Court has already recognized, section 2(23) does not permit Defendant to substitute statewide staffing or operational concerns in place of a facility-specific finding of an emergency (*see* PI Decision & Order at 6). The Governor's proclamation does not expand Defendant's power to suspend HALT beyond what the Legislature authorized.

Defendant's position shows that, despite the preliminary injunction, he continues to rely on the same sweeping assertion of suspension authority that originally prompted this litigation. In practice, his interpretation of section 2(23) would allow DOCCS to recreate the very statewide suspension he has disclaimed simply by labeling routine staffing or operational pressures as "specific situations" or "challenges" warranting departure from HALT's requirements. Indeed, his most recent filing suggests he is already doing so across DOCCS's 13

---

Review [Feb. 10, 2025], NYSCEF Doc No. 75 [establishing reduced target staffing levels because "[t]he broader community is discussing that 70% of our original staffing model is the new 100%"].

<sup>6</sup> <https://perma.cc/7DMH-WXUF>

maximum-security facilities. That approach is incompatible with HALT's text, structure, and purpose, and inconsistent with the Court's preliminary injunction. Because Defendant continues to justify noncompliance based on an authority HALT does not confer, strengthened measures are necessary to enforce the preliminary injunction.

\*\*\*

The problem here is straightforward: The Court cannot assess whether any asserted facility-wide emergency is lawful unless Defendant provides the facility-specific information the preliminary injunction requires—what is suspended, where, and for how long. He still has not done so.

Even now, months after the Court issued its preliminary injunction, Defendant's submissions remain inconsistent, incomplete, and unsupported by the facility-level facts section 2(23) demands. His statements about HALT compliance continue to shift, contradict one another, or omit critical information. And his renewed reliance on a theory of sweeping, statewide suspension authority confirms that, without clear safeguards, Defendant will continue to justify departures from HALT's core requirements based on generalized conditions rather than actual, facility-specific emergencies.

The enforcement provisions in Plaintiffs' amended proposed order supply those safeguards. Among its key provisions, the proposed order:

- Requires prompt identification of every facility where DOCCS asserts a facility-wide emergency (*see* Proposed Order, § A);
- Requires sworn, facility-specific information describing the asserted basis, scope, and expected duration of each emergency (*see id.*, § B);
- Requires biweekly updates on each facility-wide emergency (*see id.*, § C);
- Establishes a mechanism for determining HALT compliance at facilities where DOCCS does not assert an emergency (*see id.*, § D); and
- Establishes a process for addressing allegations of future noncompliance (*see id.*, § E).

Given Defendant's track record in this litigation, these measures are essential to enforcing the preliminary injunction and enabling meaningful judicial review of a suspension Defendant now predicts will last more than a year—at a profound cost to thousands of class members who remain in the highly restrictive isolation that HALT was enacted to prohibit, five months after the Court issued its order.

We thank the Court for considering this letter and remain available to address any questions the Court may have.

Respectfully submitted,

THE LEGAL AID SOCIETY  
PRISONERS' RIGHTS PROJECT

*/s/ Antony P. F. Gemmell*

Antony P. F. Gemmell

Riley D. Evans

Katherine E. Haas

Lauren P. Stephens-Davidowitz

agemmell@legal-aid.org

212-577-7941

*Counsel for Plaintiffs*

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ALBANY

---

ALFONSO SMALLS, KARIEM TOMLIN, JEROME  
LESLIE, TARON JACKSON, SAIWON ROBBINS, and  
MICHAEL WILLIAMS, on behalf of themselves and all  
similarly situated individuals

**REPLY  
AFFIRMATION**

*Plaintiffs-Petitioners,*

Index No. 903926-25

-against-

DANIEL F. MARTUSCELLO III, as Commissioner of the  
New York State Department of Corrections and Community  
Supervision,

*Defendant-Respondent.*

---

Daniel F. Martuscello III, affirms the following under the pains and penalties of perjury:

1. I am employed as the Commissioner for the New York State Department of Corrections and Community Supervision (DOCCS). As such, I am fully familiar with the facts and circumstances to which I testify herein.

2. I submit this Reply Affirmation in further opposition to Plaintiffs-Petitioners' motion for enforcement of the preliminary injunction and in reply to their November 7, 2025 submission. I also incorporate herein by reference my Affirmations and Supplemental Affirmation previously filed in connection with this matter.

3. This Reply Affirmation is based upon my personal knowledge and/or my review of documents and records maintained in the normal and ordinary course of DOCCS' business operations.

4. As previously mentioned, DOCCS is still under a Governor-issued State of Emergency, and our facilities continue to face significant staffing and operational challenges. We also continue to rely on the support of the National Guard to maintain basic safety and security operations in many facilities. These challenges are not static; rather, they often change on a weekly, daily or even hourly basis due to circumstances beyond our control. It is for this reason DOCCS' facilities need to have the flexibility and discretion to adjust and modify their schedules to best ensure the safety and security of their staff and the incarcerated individuals under their care and control. It is worth reiterating that based upon the reality of the ongoing and unprecedented emergency facing DOCCS, I believe it is within my discretion to deviate from the out-of-cell requirement for general population individuals on a facility-by-facility basis under Correction Law §2(23).

5. A summary of the status and challenges currently faced by each maximum-security facility is set forth below. Each facility is providing general population individuals with as much out-of-cell time as reasonably possible. Similarly, each facility continues to advance a bi-weekly reopening plan outlining the steps, challenges and plans to expand operations, including out-of-cell time.

6. As outlined in my previous Affirmation, maximum-security prisons have unique challenges as all incarcerated movement must be accompanied by significant security staff for all facility movement. These facilities, unlike medium-security facilities where there is significantly more freedom of movement, require more staff and security to ensure the safety of all individuals in our care. Despite these challenges, several maximum-security facilities have advanced their operations significantly and are, in fact, meeting the 7 hours out-of-cell threshold.

7. Attica Correctional Facility has a total population of 1837 incarcerated individuals. There is a 35% security staff vacancy, including individuals out on long-term leave, which places staffing at a critically low level. Operations are adjusted daily based on staffing levels to ensure that correction officers are strategically placed throughout the facility to maximize operations and out-of-cell time while ensuring safety and security. The number of out-of-cell hours for general population varies depending upon their housing unit and program assignments. For example, incarcerated individuals working in the mess hall, law library or as porters are typically out of their cells in excess of 7 hours per day. However, other individuals who do not take advantage of out-of-cell opportunities such as, for example, programming, library, religious services, and visitation, may only be out-of-cell for meals and recreation each day for approximately 3 to 4 hours.

8. Auburn Correctional Facility has a total population of 1121 incarcerated individuals. There is a 35% security staff vacancy, including individuals out on long-term leave. Correction officers are required to work twelve-hour shifts and do not receive vacations. Security staffing is used differently every day to adjust to the facility's needs. The staffing crisis has caused the facility to close the South Yard that was used for recreation (the Main Yard is still open) and it sometimes forces the closure or reduction of other programs and other activities (e.g., visitation). The number of out-of-cell hours for general population individuals varies depending upon what they choose to utilize. The facility offers 3 meal runs daily which span approximately 45 minutes to an hour each. Incarcerated individuals are also offered recreation every other day for an additional 4 hours of out-of-cell time. There are other out-of-cell opportunities, such as industry and school programs, law library and other callouts that can increase daily out-of-cell time by several hours.

9. Bedford Hills Correctional Facility has a total population of 628 incarcerated individuals. There is a 41% security staff vacancy, including individuals out on long-term leave. All posts are currently covered, and programs are operational at Bedford Hills in the morning, afternoon and evening modules. Volunteers are allowed back in the facility to conduct religious services, College, yoga and other activities. Visitation continues to be conducted a few days a week and the Law and General Libraries are opened as scheduled for use by the incarcerated population. As such, incarcerated individuals in general population are offered at least 7 hours of out-of-cell time every day.

10. Clinton Correctional Facility has a total population of 1523 incarcerated individuals. There is a nearly 30% security staff vacancy, including individuals out on long-term leave. Staff is assigned and adjusted to meet the ever-changing and essential needs of its population. Due to staffing shortages, Clinton cannot offer evening or weekend programming or religious studies, and it cannot reopen to volunteers due to safety and security concerns. Individuals in general population are offered a minimum of approximately 3.5 hours of out-of-cell time each day for meals and recreation. The number of hours of out-of-cell time offered to individuals in general population increases greatly depending upon an individual's assignments, programming status (some are refusing all programs), their medical and legal needs and if they receive visitation.

11. Coxsackie Correctional Facility has a total population of 672 incarcerated individuals. There is approximately a 50% security staff vacancy, including individuals out on long-term leave. The facility continually evaluates its staffing shortages and assigns staff in a manner that balances the needs of the entire population. Vocational programming for incarcerated

individuals is limited and dependent upon the resources available. Academic programming is provided each day. Law Library services are provided on reduced hours but are provided daily. Recreation hours are reduced for the general population but are offered every day. Programming for special populations is a priority, and staff are redirected when necessary to help meet programming and recreation mandates. Starting on Monday, Coxsackie will be running a new schedule that will extend its existing 2 modules for recreation and programming to 2.75 hours. This will give the population the option of 1 program module of 2.75 hours (longer if they are in school), a recreation module of 2.75 hours and 1.5 hours of meals for a total of 7 hours of out-of-cell time. This is in addition to other out-of-cell opportunities and callouts including, for example, showers, barbershop, commissary, religious services and library.

12. Eastern NY Correctional Facility has a total population of 836 incarcerated individuals. There is a nearly 45% security staff vacancy, including individuals out on long-term leave. Available security staff are assigned to the most critical posts first, such as the housing units, medical and mess hall. Correction officers are mandated to work twelve-hour shifts and are required to attend mandatory trainings on their regular days off. The facility does not have staff to run all programs and services in a safe and effective manner. It is, however, able to offer incarcerated individuals in general population with at least 7 hours of out-of-cell time daily.

13. Elmira Correctional Facility has a total population of 1762 incarcerated individuals including 671 in reception. There is a security staff vacancy in excess of 31%, including individuals out on long-term leave. This significant shortage has left Elmira in an emergency staffing posture that is utilizing twelve-hour shifts. Security staffing is evaluated on a daily basis to ensure adequate staffing in critical areas. Currently, security staff posts are not filled in

vocational shops and the academic building. The number of hours of out-of-cell time offered to individuals in general population varies greatly depending upon an individual's assignments, programming, medical and legal needs and if they receive visitation or other callouts. Regardless, general population individuals are offered a minimum of approximately 4 hours of out-of-cell time each day for meals and recreation. This is in addition to available out-of-cell opportunities such as programs, visitation, library and other callouts.

14. Five Points Correctional Facility has a total population of 1298 incarcerated individuals. There is a security staff vacancy of approximately 50%, including individuals out on long-term leave. Given the severe staffing crisis at Five Points, civilian staff has been required to expand their role by, among other things, working in the Mess Hall, running the Package Room, and delivering commissary, correspondence and legal mail. Nearly 30% of Five Point's staff is assigned to cover disciplinary housing unit programs and incarcerated individuals in these units are offered 7 hours out-of-cell time daily. Individuals in general population are offered a minimum of several hours of out-of-cell time for meals and recreation on a daily basis. They can also augment their out-of-cell time with programming, vocational or other callout opportunities.

15. Green Haven Correctional Facility has a total population of 1776 incarcerated individuals. There is a 31% security staff vacancy, including individuals out on long-term leave. Available security staff are assigned and prioritized to fill critical security and transportation posts and then program and industry posts. As of October 30, 2025, Green Haven made significant adjustments to its daily schedule to extend the times available for programs, recreation and religious services. Although certain activities may still be reduced or otherwise limited at times

due to staffing shortages (e.g., industry, transportation runs, visitation), the facility is able to offer incarcerated individuals in general population with at least 7 hours of out-of-cell time daily.

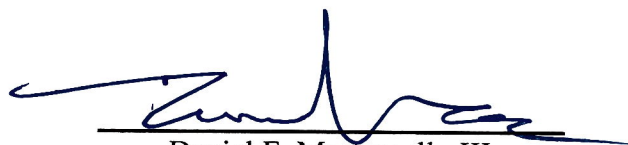
16. Shawangunk Correctional Facility has a total population of 496 incarcerated individuals. There is a 25% security staff vacancy, including individuals out on long-term leave. All posts are currently filled and incarcerated individuals are offered at least 7 hours of out-of-cell time daily in the form of meals, recreation, programs and/or library.

17. Sing Sing Correctional Facility has a total population of 1539 incarcerated individuals. There is a 34% security staff vacancy, including individuals out on long-term leave. Correction officers are mandated to work twelve-hour shifts and are assigned to provide the most critical services, including housing, medical and mess hall. Sing Sing has allocated a larger number of staff to the day shift in order to maximize the administration of required services. This, in turn, affects the facility's ability to run evening programming. Notwithstanding, Sing Sing is able to offer incarcerated individuals in general population with at least 7 hours of out-of-cell time daily.

18. Upstate Correctional Facility has a total population of 847 incarcerated individuals. There is a 31% security staff vacancy, including individuals out on long-term leave. Upstate is currently operating its normal educational programs and job assignments, but, given its limited staffing, has had to close its evening recreation. Incarcerated individuals in general population receive 2 hours of yard or gym time daily and the recreation area attached to their cells are opened at least 8 hours every day. Additional out-of-cell time is offered to individuals who participate in programs, have job assignments, or request callouts such as the library, religious services or medical.

19. Wende Correctional Facility has a total population of 1618 incarcerated individuals. There is a 35% security staff vacancy, including individuals out on long-term leave. The majority of officers are assigned to the 7 am – 7 pm shift which does not allow for movement after 7 pm due to limited security staffing. Staffing levels have significantly impacted the facility's ability to provide continuous recreation and programs and meal runs have been modified. Transportation has been affected, and visitation cannot be opened on weekdays. Generally, incarcerated individuals in general population are offered approximately 5 hours for meals and recreation. However, the total number of out-of-cell hours available to the general population varies depending upon their program assignments and other callout opportunities.

I affirm this 2nd day of December 2025, under the penalties of perjury under the laws of New York, which may include a fine or imprisonment, that the foregoing is true, and I understand that this document may be filed in an action or proceeding in a court of law.



Daniel F. Martuscello III  
Commissioner  
NYS DOCCS

STATE OF NEW YORK  
SUPREME COURT

COUNTY OF ALBANY

ALFONSO SMALLS, KARIEM TOMLIN  
JEROME LESLIE, TARON JACKSON,  
SAIWON ROBBINS, and MICHAEL  
WILLIAMS, on behalf of themselves and all  
similarly situated individuals,

**DECISION AND ORDER**  
**(Motions 2 & 4)**  
Index No: 903926-25

Plaintiffs-Petitioners,

-against-

DANIEL F. MARTUSCELLO III, as Commissioner  
of the New York State Department of Corrections and  
Community Supervision,

Defendant-Respondent.

APPEARANCES: Antony P. F. Gemmell, Esq.  
Katherine E. Haas, Esq.  
Lauren P. Stephens-Davidowitz, Esq.  
Riley D. Evans, Esq.  
Samantha R. Coulson  
The Legal Aid Society  
Prisoners' Rights Project  
*Attorneys for Plaintiffs-Petitioners*  
49 Thomas Street, 10<sup>th</sup> Floor  
New York, New York 10013

Letitia James  
Attorney General of the State of New York  
Ryan W. Hickey, Esq. (Assistant Attorney General, of Counsel)  
Brian P. Henchy, Esq. (Assistant Attorney General, of Counsel)  
*Attorneys for Defendant-Respondent*  
*The State of New York*  
The Capitol  
Albany, New York 12224

LYNCH, J.:

This litigation arises from a dispute over the application of the Humane Alternatives to Long-Term Solitary Confinement Law (hereinafter referred to as "HALT"), which, as relevant

here, sets forth limitations on the amount of time incarcerated individuals can be confined to their cells. Plaintiffs-Petitioners (hereinafter referred to as “plaintiffs”) are members of two putative classes of individuals incarcerated in facilities across the State of New York run by the Department of Corrections and Supervision (hereinafter referred to as “DOCCS”). Defendant-Respondent Daniel F. Martuscello (hereinafter referred to as “defendant”) is the commissioner of DOCCS.

The specific facts leading up to the issues presented here are laid out more fully in the Court’s July 1, 2025 Decision and Order, which granted plaintiffs’ request for a preliminary injunction (hereinafter “the July Decision”). In sum, in February 2025, correction officers in 38 of the 41 facilities operated by DOCCS went on strike, causing Governor Kathy Hochul to declare a state of emergency and deploy the New York National Guard to assist DOCCS in operating its facilities. On February 20, 2025, defendant informed all DOCCS facility superintendents that he was “suspending the elements of HALT that cannot safely be operationalized under a prison wide state of emergency until [DOCCS] can safely operate the prisons” (NYSCEF Doc. No. 56, pg. 1). In March 2025, as part of a Memorandum of Agreement (hereinafter referred to as “the March 8 MOA”) between the State and the New York State Correctional Officers and Police Benevolent Association, Inc., which set forth conditions to end the strike and addressed the concerns that led to it, defendant continued the suspension of HALT for a further 90 days from March 8, 2025.

Plaintiffs thereafter commenced the instant hybrid CPLR article 78 proceeding and plenary action, asserting that these two documents – the February 20 Memorandum and the March 8 MOA – constitute an improper suspension by defendant of the protections accorded to incarcerated individuals under HALT. Accordingly, plaintiffs seek an order (1) certifying this action as a class action, (2) declaring defendant’s suspension of HALT to be in violation of the New York Constitution, article III, § 1 and article IV, § 3, as well as Correction Law § 137 (6) (j) (ii), and (3)

vacating and annulling the suspension of HALT programming and recreation under CPLR article 78, asserting that the suspension is arbitrary and capricious and violates HALT's plain language. In July 2025, the Court granted petitioner's request for a preliminary injunction, enjoining defendant from suspending any provisions of HALT in DOCCS facilities without a finding of a facility-wide emergency as set forth in Correction Law § 2 (23), and ordering that any such finding be filed publicly to the docket of this case together with the sworn affirmation of a DOCCS employee with personal knowledge as to its scope and expected duration.

Defendant thereafter submitted a lengthy affirmation to the Court discussing the conditions at each of DOCCS' facilities across the state, and reiterating that a state of emergency existed in many of them that required the continued suspension of certain provisions of HALT. Plaintiffs disputed whether this affirmation was sufficiently detailed, and, following some communication between the parties, plaintiffs filed a motion to enforce the preliminary injunction or, in the alternative, hold defendant in civil contempt. Defendant opposes, asserting that he is in compliance with the preliminary injunction. Currently pending before the Court, then, are two separate motions: plaintiffs' motion for class certification and plaintiffs' motion to enforce the preliminary injunction. The Court heard oral argument regarding both motions on October 22, 2025.<sup>1</sup>

I. Plaintiffs' Motion for Class Certification

Plaintiffs seek to certify two classes: one of "[a]ll individuals in DOCCS custody who are or will be subject to cell confinement exceeding 17 hours per day under the HALT Suspension and

---

<sup>1</sup> The Court notes that defendant has not responded to the hybrid petition/complaint itself. In a letter to the Court on May 30, 2025, counsel for defendant informed the Court that the parties had agreed to stay the deadline to answer until the motion for a preliminary injunction was resolved. That motion was decided in July 2025, but defendant has yet to answer the petition/complaint. As the Court and parties failed to set a specific date by which defendant's answer was due, defendant is hereby ordered to submit an answer to the petition/complaint within 30 days of the date of this Decision and Order.

who are not, at the time of such confinement, subject to placement in segregated confinement as a disciplinary sanction,” and one of “[a]ll individuals in DOCCS custody who are or will be in disciplinary confinement or housed in a setting whose conditions must at a minimum conform or be comparable to the requirements of RRUs under the Correction Law” (NYSCEF Doc. No. 43, pg. 1). Plaintiffs claim that these classes meet all the requirements for certification, as set forth in CPLR 901 and 902. Defendant responds that class certification should be denied under the governmental operations rule and that, even if it is not, plaintiffs have failed to establish either the prerequisites of commonality, typicality, or adequacy, or show that the factors set forth in CPLR 902 support the certification of the proposed classes.

In a class action, “[o]ne or more members of a class may sue . . . as representative parties on behalf of all if:

1. the class is so numerous that joinder of all members, whether otherwise required or permitted, is impracticable;
2. there are questions of law or fact common to the class which predominate over any questions affecting only individual members;
3. the claims or defenses of the representative parties are typical of the claims or defenses of the class;
4. the representative parties will fairly and adequately protect the interests of the class; and
5. a class action is superior to other available methods for the fair and efficient adjudication of the controversy.”

(CPLR 901 [a]; *see Stewart v Roberts*, 163 AD3d 89, 94 [3d Dept 2018]). Respectively, “[t]hese factors are commonly referred to as the requirements of numerosity, commonality, typicality, adequacy of representation and superiority” (*City of New York v Maul*, 14 NY3d 499, 508 [2010]). “If all of the CPLR 901 prerequisites are satisfied, the court must then consider the discretionary factors listed in CPLR 902” (*Jenack v Goshen Operations, LLC*, 222 AD3d 36, 44 [2d Dept 2023]; *see Morrissey v Nextel Partners, Inc.*, 72 AD3d 209, 216 [3d Dept 2010]). Those factors are:

- “1. The interest of members of the class in individually controlling the prosecution or defense of separate actions;
2. The impracticability or inefficiency of prosecuting or defending separate actions;
3. The extent and nature of any litigation concerning the controversy already commenced by or against members of the class;
4. The desirability or undesirability of concentrating the litigation of the claim in the particular forum;
5. The difficulties likely to be encountered in the management of a class action.”

(CPLR 902; *see Jenack v Goshen Operations, LLC*, 222 AD3d at 44). “As proponents of the class action, plaintiffs [bear] the burden of demonstrating that [the] five prerequisites can be met” (*Burdick v Tonoga, Inc.*, 179 AD3d 53, 56 [3d Dept 2019] [citations omitted]); *see Olmann v Willoughby Rehabilitation & Health Care Ctr., LLC*, 186 AD3d 837, 855 [2d Dept 2020]). However, “these criteria must be liberally construed and any error, if there is to be one, should be in favor of allowing the class action” (*Hurrell-Harring v State of New York*, 81 AD3d 69, 72 [3d Dept 2011] [internal quotation marks, ellipsis and citations omitted]; *see Andryeyeva v New York Health Care, Inc.*, 33 NY3d 152, 183 [2019]).

The governmental operations rule does not preclude certification of the two classes proposed by plaintiffs. This rule “cautions against class certification where governmental operations are involved, since any relief granted to the named plaintiffs would adequately flow to and protect others similarly situated under principles of stare decisis” (*Hurrell-Harring v State of New York*, 81 AD3d at 74; *Stewart v Roberts*, 163 AD3d at 94). However, this is not an absolute rule, and classes may be certified even if governmental operations are involved when “the plaintiffs’ ability to commence individual suits is highly compromised, due to indigency or otherwise” or “the condition sought to be remedied by the plaintiffs poses some immediate threat that cannot await individual determinations” (*New York City Coalition to End Lead Poisoning v Giuliani*, 245 AD2d 49, 51 [1st Dept 1997]; *see Hurrell-Harring v State of New York*, 81 AD3d at 75). Here, plaintiffs are indigent incarcerated individuals, and as such it is clear that their ability

to commence individual suits is compromised. Moreover, if the allegations here – that DOCCS is violating HALT and keeping them in their cells hours beyond the legal limit without a rational basis – are true, there is clearly an immediate threat to incarcerated individuals across the State which cannot await individual determinations. As such, the governmental operations rule does not bar the certification of a class here (*see New York City Coalition to End Lead Poisoning v Giuliani*, 245 AD2d at 51-52; *Brad H. v City of New York*, 185 Misc 2d 420, 424-425 [Sup Ct NY County 2000], *affd* 276 AD2d 440 [1st Dept 2000]).

Turning then to the requirements and factors in CPLR 901, the two classes proposed by plaintiffs should be certified. Plaintiffs have clearly satisfied the numerosity prong, given the number of incarcerated individuals across DOCCS' facilities who fall within the ambit of the two proposed classes. Defendant challenges the issues of commonality, typicality, adequacy of representation, and superiority. The prerequisite of commonality "requires predominance of common questions over individual questions, not identity or unanimity of common questions, among class members" (*Ferrari v National Football League*, 153 AD3d 1589, 1591 [4th Dept 2017]; *accord Burdick v Tonoga, Inc.*, 179 AD3d at 56). "[C]ommonality cannot be determined by any mechanical test," and "the fact that questions peculiar to each individual may remain after resolution of the common questions is not fatal to the class action. Rather, it is predominance, not identity or unanimity, that is the linchpin of commonality" (*City of New York v Maul*, 14 NY3d at 514; *see Matter of Long Is. Power Auth. Hurricane Sandy Litig.*, 200 AD3d 1040, 1042 [2d Dept 2021], *lv dismissed* 39 NY3d 1175 [2023]).

Plaintiffs have met the requirement of commonality. One common question of law predominates over the individual questions presented by each putative class member's place of incarceration – namely, whether defendant's suspension of HALT since February 2025 is arbitrary

and capricious. Defendant argues that there is no commonality here because the suspension of HALT's protections requires a facility-by-facility analysis. This contention misses the mark, however, as plaintiffs contend that the challenged suspension was done at a statewide level. Accordingly, the analysis required to resolve this litigation is not a facility-by-facility one, but rather a single analysis of the rationality and constitutionality of the challenged determination. Because this one issue is integral to the instant action, a determination as to the propriety of defendant's challenged suspension of HALT would "resolve an issue that is central to the validity of each one of [plaintiffs'] claims in one stroke," and "generate common answers apt to drive the resolution of the litigation" (*Burdick v Tonoga, Inc.*, 179 AD3d at 56 [internal quotation marks and citation omitted]). Accordingly, plaintiffs have established the commonality prerequisite here (*see Jenack v Goshen Operations, LLC*, 222 AD3d at 45; *Hurrell-Harring v State of New York*, 81 AD3d at 72-73).

For similar reasons, plaintiffs have also established the prerequisite of typicality. "[T]he typicality requirement is satisfied if it is shown that a plaintiff's claims derive from the same practice or course of conduct that gave rise to the remaining claims of other class members and is based upon the same legal theory" (*Kozak v Kushner Vil. 329 E. 9th St. LLC*, 232 AD3d 542, 545 [1st Dept 2024] [internal quotation marks, brackets, and citation omitted]; *see Burdick v Tonoga, Inc.*, 179 AD3d at 60). While it is true that the putative class members are housed at different facilities, each of which has a different level of staffing, varying programming, and other unique challenges, these facility-by-facility considerations are not the dispositive analysis here. Instead, the issue presented is whether defendant's determinations in February and March 2025 were rational and constitutional, and the claims of the proposed classes are all based on the unifying legal theories that defendant's determinations were irrational and unconstitutional. Plaintiffs'

evidentiary submissions show that they were incarcerated when these determinations went into effect. Thus, plaintiffs have established that the claims of the representative parties are typical of the claims of the proposed classes (*see Ferrari v National Football League*, 153 AD3d at 1592; *Hurrell-Harring v State of New York*, 81 AD3d at 73).

The adequacy prerequisite has also been met. “The factors to be considered in determining adequacy of representation are whether any conflict exists between the representative and the class members, the representative’s familiarity with the lawsuit and his or her financial resources, and the competence and experience of class counsel” (*Ackerman v Price Waterhouse*, 252 AD2d 179, 202 [1st Dept 1998] [citations omitted]; *see Globe Surgical Supply v GEICO Ins. Co.*, 59 AD3d 129, 143 [2d Dept 2008]). Again, defendant attempts to draw distinctions between the putative class members based on where they are incarcerated, contending that conflicts of interest will arise between class members as this lawsuit requires DOCCS to reopen or increase services at some facilities but not others. Again, this argument is unavailing. As noted above, there is a common legal question between putative class members in every DOCCS facility, and there is no indication that the vacatur of any improper statewide suspension would pit the plaintiffs against each other. Instead, all members of the proposed class share a common interest in the lifting of any improper suspension of HALT’s protections. Plaintiffs’ affidavits demonstrate that they are familiar with the lawsuit and willing to serve as class representatives, and there is no dispute that counsel at the Legal Aid Society are sufficiently competent and experienced to represent the proposed classes throughout this litigation. Therefore, plaintiffs have satisfied the requirement of adequacy (*see Ferrari v National Football League*, 153 AD3d at 1592-1593; *Pruitt v Rockefeller Ctr. Props.*, 167 AD2d 14, 24 [1st Dept 1991]).

Finally, plaintiffs have established that class action is the superior method to adjudicate the issue here. The challenged suspension of HALT impacts every incarcerated individual who is in segregated confinement, as defined by HALT, meaning that the number of potential plaintiffs in this action is likely in the thousands. If class certification is denied here, each one of those potential plaintiffs could institute an action challenging defendant's suspension of HALT, consuming a plethora of judicial resources. It would also require each of these plaintiffs to navigate the challenges of litigating from prison, which poses communication and cost concerns. This would also create the possibility of multiple inconsistent rulings on the propriety of defendant's determination. Therefore, provided that the members of the class were incarcerated at the time defendant issued his challenged determinations suspending HALT, a class action is clearly the superior method for the purpose of adjudicating this dispute, as it "will allow one action to do a job, or a good part of it, that would otherwise have to be done by many" (*Burdick v Tonoga, Inc.*, 179 AD3d at 60 [internal quotation marks and citation omitted] *see Stewart v Roberts*, 193 AD3d 121, 125 [3d Dept 2021]).

The factors set forth in CPLR 902 also weigh in favor of certifying plaintiffs' proposed classes. "Claims of uniform systemwide violations are particularly appropriate for class certification" (*Andryeyeva v New York Health Care, Inc.*, 33 NY3d at 184 [citation omitted]; *accord Moreno v Future Health Care Servs., Inc.*, 186 AD3d 594, 596 [2d Dept 2020]). Such a claim is presented here. There is no indication that class members are interested in controlling the prosecution of their own claims, nor has the Court been made aware of any other pending litigation concerning defendant's February and March 2025 suspension of HALT. For the reasons set forth above, it would be inefficient for every potential class member to prosecute separate actions for this claim, and this action is suited for a class action. Albany County is an adequate forum in which

to concentrate this litigation, as it is the county wherein defendant's principal office is located. Therefore, in light of the policy that "New York's statutory class certification provisions are to be liberally construed" (*Andryeyeva v New York Health Care, Inc.*, 33 NY3d at 183; accord *Stewart v Roberts*, 193 AD3d at 125), these factors support the certification of the two proposed classes (see *Jenack v Goshen Operations, LLC*, 222 AD3d at 46-47; *Ferrari v National Football League*, 153 AD3d at 1593; *Fleming v Barnwell Nursing Home & Health Facilities*, 309 AD2d 1132, 1134 [3d Dept 2003]).

## II. Plaintiffs' Motion to Enforce the Preliminary Injunction

The other motion pending before the Court is plaintiffs' motion to enforce the preliminary injunction. Plaintiffs contend that defendant has not complied with the preliminary injunction issued by the Court in July 2025, as he has failed to identify which DOCCS facilities are experiencing a facility-wide emergency or provide sufficient information about the scope, existence and expected duration of such emergencies. As a result, plaintiffs ask the Court to order defendant to file a supplemental affirmation stating whether DOCCS is asserting a facility-wide emergency, the factors DOCCS relied on to make such a determination, whether staffing shortages are the primary basis for the emergency, the expected duration of such an emergency, and whether defendant is offering the out-of-cell time, programming, and congregate recreation mandated under HALT. Alternatively, plaintiffs ask the Court to hold defendant in contempt of court. Defendant opposes, contending that he has complied with the preliminary injunction and should not be held in contempt.

Under the relevant provisions of HALT, which was codified in amendments to the Correction Law that went into effect in March 2022, " '[s]egregated confinement' means the confinement of an incarcerated individual in any form of cell confinement for more than [17] hours

a day other than in a facility-wide emergency” (Correction Law § 2 [23] [emphasis added]). Additionally, “[p]ersons in segregated confinement shall be offered out-of-cell programming at least four hours per day, including at least one hour for recreation. Persons admitted to [RRUs] shall be offered at least 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. Recreation in all [RRUs] shall take place in a congregate setting, unless exceptional circumstances mean doing so would create a significant and unreasonable risk to the safety and security of other incarcerated persons, staff, or the facility” (Correction Law § 137 [6] [i] [ii]).

In the preliminary injunction issued in July 2025, the Court ordered that “as of July 11, 2025, defendant Daniel F. Martuscello III [was] preliminarily enjoined from enforcing or implementing any suspension of the provisions of HALT in DOCCS facilities without a finding of a facility-wide emergency in each facility as set forth in Correction Law § 2 (23),” and that “if defendant Daniel F. Martuscello III makes a finding of such a facility-wide emergency, that finding shall be filed publicly to the docket in this case within two business days of the onset of such reliance and be accompanied by the sworn affirmation of a DOCCS employee with personal knowledge setting forth detailed facts describing the facility-wide emergency, including its scope and expected duration” (NYSCEF Doc. No. 67, pg. 11 [emphasis in original]).

Plaintiffs’ motion to enforce the preliminary injunction is denied. First, the requirements to make a finding of civil contempt are not met, as plaintiffs have not demonstrated that defendant disobeyed the Court’s July 2025 preliminary injunction. “To make a finding of civil contempt, it must be shown that, to a reasonable degree of certainty, a party has knowingly disobeyed a clear and unequivocal mandate of the court which results in prejudice to the rights of another party” (*Matter of New York State Off. of Victim Servs. v Robinson*, 151 AD3d 1515, 1516 [3d Dept 2017])

[internal quotation marks and citations omitted]; *see* Judiciary Law § 753 [A]; *Matter of Bemis v Town of Crown Point*, 121 AD3d 1448, 1452 [3d Dept 2014]).

Defendant has submitted multiple affirmations regarding DOCCS' attempts to comply with HALT's requirements. In July 2025, defendant submitted a 96-page affirmation, in which he gave a detailed analysis of conditions at the 35 DOCCS facilities across the State which have a residential rehabilitation unit ("RRU") or special housing unit ("SHU") and so are required to offer certain programming under HALT. In this affirmation, defendant summarized each facility's staffing levels, allocation of staff, reliance on the New York National Guard, limitations from staffing shortages, and progress in returning to compliance with HALT. Defendant concluded that all "DOCCS facilities remain under a 'facility-wide' emergency" due to insufficient staffing to both implement HALT's provisions and perform DOCCS' vital functions (NYSCEF Doc. No. 69, pg. 8). As set forth in defendant's affirmation, this facility-specific information was obtained after working with an executive team, which included the superintendent of each relevant facility. Defendant did not include a specific time horizon for the termination of the emergency conditions at each facility, but he did explain steps that DOCCS has taken to recruit further correction officers and detailed some facilities in which HALT programming had been partially reinstated. He added that the situation was fluid in every facility on a day-by-day basis (*see* NYSCEF Doc. No. 69). In a supplemental affirmation submitted in September 2025, defendant reported that 24 DOCCS facilities were compliant with HALT's RRU and SHU programming requirements, and that the other 11 facilities were in partial compliance (*see* NYSCEF Doc. No. 95).

In November 2025, defendant submitted a third affirmation. In this affirmation, he reiterated that each of DOCCS' facilities were still operating under Governor Hochul's February 2025 state of emergency declaration, and stated that HALT programming was fully operational in

all SHUs throughout the State, and in 30 of 35 facilities with RRUs. He reiterated that the five RRUs not fully compliant with HALT programming continued to experience staffing shortages and other operational challenges. Defendant added that it was not possible for him to provide a precise date by which the emergency would end in each facility, based upon the fluid situation across DOCCS (*see* NYSCEF Doc. No. 143). In conjunction with this affirmation, defendant also submitted affirmations from the superintendents of the five facilities that had yet to restore full programming in their RRUs. These five superintendents explained that insufficient staffing at all five facilities caused them each to be in a facility-wide emergency, as, even with the National Guard, these facilities each had a vacancy rate between 29% and 47% of their expected staffing levels (*see* NYSCEF Doc. Nos. 144-148).

In December 2025 defendant submitted a final supplemental affirmation, explaining that DOCCS' 13 maximum-security prisons<sup>2</sup> remained under facility-wide emergencies, preventing them from meeting the seven-hour out-of-cell requirement in Correction Law § 2 (23) for individuals incarcerated in general population but housed in cells. In this affirmation, he provided analyses of the staffing levels at each of these 13 facilities, explaining the challenges posed by the security staff vacancies, which ranged from 25% to 50% of their expected levels at these facilities. In sum, defendant concluded that the security staff shortfalls at each facility constituted an emergency that necessitated a deviation from the requirements of Correction Law § 2 (23) (*see* NYSCEF Doc. No. 153).

---

<sup>2</sup> Defendant identified these facilities as: Attica Correctional Facility, Auburn Correctional Facility, Bedford Hills Correctional Facility, Clinton Correctional Facility, Cossackie Correctional Facility, Eastern NY Correctional Facility, Elmira Correctional Facility, Five Points Correctional Facility, Green Haven Correctional Facility, Shawangunk Correctional Facility, Sing Sing Correctional Facility, Upstate Correctional Facility, and Wende Correctional Facility.

Taken together, these affirmations from defendant and the facility superintendents are sufficient to satisfy the requirements of the July 2025 preliminary injunction. Defendant has explained in multiple ways that every facility in the DOCCS system remains in a state of emergency, and has provided individualized breakdowns for each facility as required by the language of Correction Law § 2 (23) and the preliminary injunction. While plaintiffs dispute defendant's representation that HALT programming has been restored in SHUs and RRUs across the State via affidavits from incarcerated individuals, and assert that individuals in general population are confined to their cells for more than 17 hours a day, these arguments miss the mark – the facility-wide emergencies laid out by defendant and the facility superintendents in their affirmations provide a rational basis for a suspension of HALT's programming and cell confinement requirements under the exception in Correction Law § 2 (23). Defendant has provided affirmations identifying a facility-wide emergency at every facility in the DOCCS system, as well as both individualized assessments of each facility in support of this conclusion and more detailed analyses for other specific facilities. In light of these voluminous submissions, even if the inconsistencies identified by plaintiffs were on-point, the Court cannot conclude that defendant knowingly disobeyed the Court's July 2025 preliminary injunction, and so will not hold him in civil contempt (*see Matter of Justice v Fischer*, 126 AD3d 1266, 1266 [3d Dept 2015]; *Tel Oil Co. v City of Schenectady*, 292 AD2d 725, 725-726 [3d Dept 2002]).

Plaintiffs also ask that the Court find defendant in violation of the preliminary injunction under the Court's general powers as the court of record under Judiciary Law § 2-b (3). The Court declines to do so. Refocusing on the allegations in the petition, this is a hybrid proceeding and action asserting that defendant acted arbitrarily and capriciously in suspending HALT in February and March 2025, or, in the alternative, that these suspensions violated the New York Constitution.

The preliminary injunction was granted based, in part, on the Court's finding that plaintiffs were likely to succeed on the merits of their CPLR article 78 claim. The question in a CPLR article 78 proceeding is whether the challenged action was "taken without sound basis in reason or regard to the facts," and "[w]hen a determination is supported by a rational basis, it must be sustained even if the reviewing court would have reached a different result" (*Matter of Evercare Choice, Inc. v Zucker*, 218 AD3d 882, 885 [3d Dept 2023] [internal quotation marks and citations omitted]; accord *Matter of John E. Andrus Mem., Inc. v Commissioner of Health of the N.Y. State Dept. of Health*, 225 AD3d 959, 961 [3d Dept 2024]).

This standard must be front and center in the Court's review of defendant's actions. The Court's role in the instant litigation is not to oversee DOCCS, monitor defendant's decision-making as he acts as the commissioner of DOCCS, or substitute its own discretion for defendant's reasoned judgments. Instead, it is to determine whether defendant acted rationally in suspending HALT in February and March 2025, and enjoin him from implementing that potentially irrational suspension during the pendency of this litigation. The relief plaintiffs request in the instant motion – which includes requiring defendant to file to the Court's docket prompt identification of every facility where a facility-wide emergency is asserted, sworn information describing the basis, scope and duration of each emergency, biweekly updates on each emergency, a mechanism to determine HALT compliance at other DOCCS facilities, and a process for addressing allegations of future noncompliance (*see* NYSCEF Doc. No. 154) – asks the Court to go well beyond its judicial role. Granting such relief would surpass the requirements of the July 2025 preliminary injunction, and, critically, exceeds the Court's purview under the text of Correction Law § 2 (23), which requires only the finding of a facility-wide emergency for the suspension of HALT, not regular updates on the resolution of such an emergency or a temporal limitation on it. Defendant has submitted

sufficient information to the Court to conclude that he has a rational basis for the facility-wide emergencies asserted in the summer and fall of 2025, which is all that was required by the July 2025 preliminary injunction. Accordingly, plaintiffs' motion to enforce the preliminary injunction is denied.

Any remaining arguments not specifically addressed herein have been considered and found to be lacking in merit or need not be reached in light of this determination.

Accordingly, it is hereby

**ORDERED** that plaintiffs' motion for class certification is granted; and it is further

**ORDERED** that the classes are (1) all individuals in DOCCS custody who are or will be subject to cell confinement exceeding 17 hours per day under the HALT Suspension and who are not, at the time of such confinement, subject to placement in segregated confinement as a disciplinary sanction, and (2) of all individuals in DOCCS custody who are or will be in disciplinary confinement or housed in a setting whose conditions must at a minimum conform or be comparable to the requirements of RRUs under the Correction Law; and it is further

**ORDERED** that plaintiffs' motion to enforce the July 2025 preliminary injunction is denied; and it is further

**ORDERED** that defendant submit responsive papers to the hybrid petition/complaint within 30 days of the date of this Decision and Order.

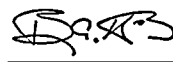
The foregoing shall constitute the Decision and Order of this Court. The signing of this Decision and Order shall not constitute filing, entry, service, or notice of entry under CPLR 2220 and § 202.5-b(h)(2) of the Uniform Rules for the New York State Trial Courts. The parties are not relieved from the applicable provisions of those rules with respect to service and notice of entry of the Decision and Order.

**SO ORDERED.**

**ENTER.**

Dated: February 17, 2026  
Albany, New York

  
HON. DANIEL C. LYNCH  
Supreme Court Justice



02/17/2026

Papers considered:

1. Notice of Motion for Class Certification, dated April 18, 2025;
2. Memorandum of Law in Support of Motion for Class Certification of Katherine E. Haas, Esq., dated April 18, 2025;
3. Affirmation in Support of Katherine E. Haas, Esq., dated April 18, 2025;
4. Affirmations in Support of Plaintiffs (NYSCEF Docs. No. 20 – 25);
5. Memorandum of Law in Opposition of Brian P. Henchy, Esq., dated August 22, 2025;
6. Memorandum of Law in Reply of Lauren Stephens-Davidowitz, Esq., dated September 4, 2025;
7. Notice of Motion to Enforce the Preliminary Injunction, dated August 19, 2025;
8. Memorandum of Law in Support of Riley D. Evans, Esq., dated August 19, 2025;
9. Affirmation in Support of Riley D. Evans, Esq., dated August 19, 2025, together with Exhibits A – E;
10. Memorandum of Law in Opposition of Ryan W. Hickey, Esq., dated September 26, 2025;
11. Affirmations of Daniel F. Martuscello, dated July 14, 2025, September 26, 2025, November 14, 2025, and December 3, 2025;
12. Affirmation of Ryan W. Hickey, Esq., dated September 26, 2025, together with Exhibit A;
13. Memorandum of Law in Reply of Antony P. F. Gemmell, Esq., dated October 2, 2025;
14. Oral argument, held in-person at the Albany County Courthouse on October 22, 2025;
15. Supplemental Submission in Support of Antony P. F. Gemmell, Esq., dated November 7, 2025, together with Exhibits 1 – 37;
16. Supplemental Submission in Opposition of Ryan W. Hickey, Esq., dated November 14, 2025, together with affirmations of Julie Wolcott, Thomas Gee, Leanne Latona, Mark Rockwood, and Aaron Torres; and
17. Reply Supplemental Submission of Antony P. F. Gemmell, Esq., dated December 3, 2025, together with Exhibits 1 – 5.