

**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,

Plaintiffs-Petitioners,

v.

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

Defendant-Respondent.

Index No. _____

**VERIFIED CLASS PETITION
AND COMPLAINT**

PRELIMINARY STATEMENT

1. Two months ago—just three days after media reporting of an indictment in the brutal killing of Robert Brooks, an incarcerated Black man, by 14 white prison employees¹—Department of Corrections and Community Supervision (“DOCCS”) officers across the state launched an illegal mass strike demanding the repeal of the Humane Alternatives to Long-Term Solitary Confinement Law (“HALT”), the most significant legislative progress towards protecting incarcerated New Yorkers in a generation.

2. This lawsuit challenges DOCCS’s response: a far-reaching and unlawful rollback of HALT through a purportedly temporary suspension of the statute to placate striking officers and entice them back to work.

¹ Brenda J. Lyons, *Sealed Indictment Handed Up Against Officers in Beating Death of Robert Brooks*, Albany Times Union, Feb. 14, 2025, available at <https://www.timesunion.com/capitol/article/sealed-indictment-handed-beating-death-robert-20167919.php> (last accessed Apr. 16, 2025).

3. That suspension (the “HALT Suspension” or “Suspension”) comprises two sweeping components whose vague contours threaten a boundless circumvention of HALT’s core protections: first, a de facto suspension of HALT’s limits on segregated confinement; and second, a suspension of all programming and recreation—two of few precious opportunities to spend time outside a cell and interact with other human beings each day.

4. Plaintiffs-Petitioners are six individuals who now, even weeks after the strike’s end, face precisely the harms the Legislature enacted HALT to curb. Plaintiffs-Petitioners Alfonso Smalls, Kariem Tomlin, and Jerome Leslie are subject to prolonged cell confinement every day, despite being housed in general population with no disciplinary confinement sanctions against them. Plaintiffs-Petitioners Taron Jackson, Saiwon Robbins, and Michael Williams, who are each in disciplinary confinement,² have gone weeks with little or no out-of-cell programming. Plaintiff-Petitioners, along with many thousands of similarly situated individuals, remain subject to these harmful conditions for as long as the HALT Suspension is allowed to go on.

5. Plaintiffs-Petitioners bring this hybrid Article 78 special proceeding and plenary action individually and on behalf of two putative classes of similarly situated individuals to challenge DOCCS’s open defiance of the Legislature’s reasoned judgment to restrict solitary confinement in New York prisons. They seek declaratory judgment and an order vacating the HALT Suspension to restore HALT’s protections for themselves and thousands of others.

² “Disciplinary confinement” means holding an incarcerated person in a separate housing unit—usually a cell—as a punishment for violating prison rules. DOCCS has several types of housing designed for disciplinary confinement, including Special Housing Units and Residential Rehabilitation Units, which are described elsewhere in this pleading. *See infra* ¶¶ 17, 25, 27.

PARTIES

6. Plaintiff-Petitioner Alfonso Smalls is a 29-year-old man from Harlem, New York, who entered DOCCS custody in 2018 and is currently incarcerated in a general population³ housing unit at Coxsackie Correctional Facility in Coxsackie, New York. Under the HALT Suspension, DOCCS is confining Mr. Smalls to a cell for over 17 hours a day.

7. Plaintiff-Petitioner Kariem Tomlin is a 46-year-old man from Staten Island, New York, who entered DOCCS custody in 2024 and is currently incarcerated in a general population housing unit at Clinton Correctional Facility in Dannemora, New York. Under the HALT Suspension, DOCCS is confining Mr. Tomlin to a cell for over 17 hours a day.

8. Plaintiff-Petitioner Jerome Leslie is a 28-year-old man who entered DOCCS custody in 2016 and is currently incarcerated in a general population housing unit at Sing Sing Correctional Facility in Ossining, New York. Under the HALT Suspension, DOCCS is confining Mr. Leslie to a cell for over 17 hours a day.

9. Plaintiff-Petitioner Taron Jackson is a 45-year-old man from the Bronx, New York. He entered DOCCS custody in 2020 and is currently incarcerated in the Special Housing Unit at Green Haven Correctional Facility in Stormville, New York. Under the HALT Suspension, DOCCS is confining Mr. Jackson to a cell for over 20 hours a day and offering him fewer than four hours of out-of-cell programming daily.

10. Plaintiff-Petitioner Saiwon Robbins is a 28-year-old man from Brooklyn, New York, who entered DOCCS custody in 2016 and is currently incarcerated in the Residential Reha-

³ “General population” refers to the standard prison housing status for incarcerated individuals who are not subject to disciplinary confinement, protective custody, or other special housing restrictions.

bilitation Unit at Mid-State Correctional Facility in Marcy, New York. Under the HALT Suspension, DOCCS is confining Mr. Robbins to a cell for over 17 hours a day and offering him fewer than seven hours of out-of-cell programming daily.

11. Plaintiff-Petitioner Michael Williams is a 25-year-old man from Rochester, New York. He entered DOCCS custody in 2025 and is currently incarcerated in a Residential Rehabilitation Unit in Greene Correctional Facility in Coxsackie, New York. Under the HALT Suspension, DOCCS is confining Mr. Williams to a cell for over 17 hours a day and offering him fewer than seven hours of out-of-cell programming daily.

12. Defendant-Respondent Daniel F. Martuscello III is the Commissioner of DOCCS. As such, he is the cabinet-level state executive official responsible for DOCCS's administration and operation, including ensuring DOCCS's compliance with state law. As DOCCS Commissioner, Defendant-Respondent Martuscello promulgated and oversees implementation of the HALT Suspension. He is sued in his official capacity.

FACTUAL ALLEGATIONS

A. The Harms of Solitary Confinement

13. Solitary confinement is the practice of isolating an incarcerated person in a small cell for a protracted period with minimal human contact and little or no environmental stimulation. It is the most extreme form of punishment in the United States outside of the death penalty.

14. Robust scientific evidence confirms that solitary confinement, even for brief periods, can cause profound and irreversible psychological and physical damage.

15. The United Nations has recognized solitary confinement exceeding 15 consecutive days as torture.⁴

16. Similarly, the National Commission on Correctional Health Care has called solitary confinement for longer than 15 consecutive days “cruel, inhumane, and degrading treatment, and harmful to an individual’s health.”⁵

B. The Humane Alternatives to Long-Term Solitary Confinement Law

17. For decades, New York’s prison system imposed solitary confinement with virtual impunity, subjecting people to solitary confinement in so-called Special Housing Unit (“SHU”) cells for up to 23 hours a day, often for months or even years at a time.⁶

18. In response to growing public concern over the harmful impact of DOCCS’s widespread use of solitary confinement the New York State Legislature passed HALT by a supermajority on March 18, 2021.

19. HALT was signed into law by then-Governor Andrew Cuomo on March 31, 2021.

20. The reforms embodied in HALT represent the culmination of a years-long deliberative process within the Legislature and reflect the Legislature’s judgment about how best to respond to longstanding concerns about DOCCS’s overuse of isolative confinement, including solitary.

⁴ G.A. Res. 70/175, United Nations Standard Minimum Rules for the Treatment of Prisoners, at Rules 44–45 (Dec. 17, 2015), available at <https://docs.un.org/en/A/RES/70/175> (last accessed Apr. 16, 2025).

⁵ *Position Statement: Solitary Confinement (Isolation)*, National Comm’n on Corr Health Care (Apr. 2016), <https://www.ncchc.org/wp-content/uploads/Solitary-Confinement-Isolation.pdf> (last accessed Apr. 16, 2025).

⁶ See Michelle Shames & Philip Desgranges, *Trapped Inside: The Past, Present, and Future of Solitary Confinement in New York*, NY Civ Liberties Union at 6 (Oct. 2019), available at https://www.nyclu.org/uploads/2019/10/201910_nyclu_solitary_web.pdf (last accessed Apr. 16, 2025).

21. In passing HALT, the Legislature cited the scientific consensus that “subjecting people to segregated confinement for twenty-two to twenty-four hours a day without meaningful human contact, programming, or therapy can cause deep and permanent psychological, physical, developmental, and social harm.”⁷

22. The Legislature also noted that restricting segregated confinement would *enhance* the safety of prison facilities, explaining that “[o]ther states have dramatically reduced the number of people in segregated confinement, and seen positive benefits in terms of safety and decreased violence.”⁸

23. HALT defines segregated confinement—the law’s term for solitary and other similarly isolative confinement—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” (Correction Law (CL) § 2[23]).

24. HALT does not define “facility-wide emergency” or otherwise provide further guidance on determining circumstances that would constitute a facility-wide emergency.

25. HALT limits the amount of time *any* individual can be subjected to segregated confinement⁹ (*i.e.*, confined to their cell for more than seventeen hours a day) to three consecutive days in most cases, and 15 consecutive days for the most serious infractions (*id.* §§ 137[6][h], [6][k]).

⁷ Assembly Mem in Support, Bill Jacket, L 2021, ch 93.

⁸ *Id.*

⁹ Segregated confinement often occurs in SHU, DOCCS housing units specifically designed to hold people in segregated confinement as a disciplinary measure, but HALT’s limits on segregated confinement are not limited to people housed in SHU.

26. HALT also categorically prohibits imposing segregated confinement on certain “special population[s],” including people aged 21 and under or 55 and over, pregnant and post-partum individuals, and individuals with disabilities (*id.* § 137[6][h]).

27. HALT also established new Residential Rehabilitation Units (“RRUs”), intended as a therapeutic alternative to long-term segregated confinement. Under HALT, DOCCS must “divert” individuals to RRUs after 15 consecutive days of segregated confinement (*id.* § 137[6][h]).

28. HALT requires DOCCS to offer daily out-of-cell time, coupled with programming, to individuals subject to segregated confinement or housed in RRUs (*id.* § 137[6][j][i]).

29. For individuals in segregated confinement, DOCCS must offer at least four hours per day of out-of-cell programming, including at least one hour for recreation (*id.* § 137[6][j][ii]).

30. In RRUs, DOCCS must offer individuals at least seven hours per day of out-of-cell trauma-informed therapeutic programming, services, treatment, recreation, activities, or meals, including at least one hour for recreation (*id.* §§ 137[6][j][ii], 6[j][v]).

31. Programming in SHU and RRU can include education, vocational training, work assignments, anger management, substance abuse, and other therapeutic interventions. Although HALT requires that people in RRUs have access to so-called “core programs,” the specific offerings in a given unit vary and may in reality be quite limited (*id.* § 137[j][v]).

32. Absent a new disciplinary infraction for someone already in segregated confinement or RRU, the statute contains no exception to these mandatory temporal thresholds.

33. HALT mandates that the requisite out-of-cell offerings for individuals in RRUs take place in a congregate setting (*id.* § 137[6][j][ii]). An exception to this congregate requirement

applies to recreation—and only recreation—if “exceptional circumstances” mean congregate recreation would “create a significant and unreasonable risk to the safety and security of other incarcerated persons, staff, or the facility” (*id.*).

34. Individuals in segregated confinement and RRUs must be offered programming led by program or therapeutic staff five days per week, except on recognized state legal holidays (*id.*).

C. Opposition to HALT by DOCCS and NYSCOPBA

35. At no point since HALT went into effect has DOCCS ever abided by the statute’s requirements; instead, DOCCS has consistently and repeatedly resisted complying with the statute.

36. Just days before HALT went into effect, DOCCS issued emergency regulations that directly conflicted with several of the statute’s core provisions, including by broadening the conduct eligible for segregated confinement, failing to apply HALT’s time-in-cell limits to certain units, and limiting access to representation in disciplinary hearings. These regulations drew widespread public and legislative condemnation, yet DOCCS renewed them three times.¹⁰

37. On February 27, 2023, nearly a year after HALT took effect, 51 state legislators penned a scathing rebuke of DOCCS for its “ongoing violations” of the law.¹¹ They condemned DOCCS’s continued use of disciplinary confinement in a manner HALT “clearly prohibits,” DOCCS’s narrowing of protections for people with disabilities, and its regulations designed to impose “solitary by another name.”

¹⁰ See Chris Gelardi, *Prison Department Writes Its Way Out of Following Solitary Confinement Law*, NY Focus, Mar. 6, 2023, available at <https://nysfocus.com/2023/03/06/prison-rules-ignore-halt-solitary-reform> (last accessed Apr. 16, 2025).

¹¹ Ex. 2, Letter from Senator Julia Salazar et al., Feb. 27, 2023.

38. The legislators accused DOCCS of refusing to implement the law’s core protections and warned that its actions undermined HALT’s purpose. “DOCCS must shift from its longstanding punitive approach,” they wrote, “to one that is not only more humane . . . but also more rooted in evidence-based methods.”

39. Indeed, DOCCS’s noncompliance with HALT is well documented.

40. Since HALT went into effect, DOCCS’s failure to comply with the statute has been the subject of extensive litigation, with courts repeatedly finding that DOCCS has violated key provisions of the statute.

41. For example, on June 18, 2024, in a class-action lawsuit challenging DOCCS’s systemic violation of HALT’s limits on the types of conduct that can be punished with segregated confinement exceeding three days, a court vacated a DOCCS policy that contradicted HALT, overturning thousands of disciplinary sanctions imposed under the policy.¹²

42. Another class-action lawsuit is currently pending concerning DOCCS’s routine practice of subjecting people with disabilities to segregated confinement in violation of HALT.¹³

43. On August 5, 2024, the New York Inspector General issued a report documenting widespread non-compliance by DOCCS with HALT’s core mandates, underscoring the agency’s persistent failure to implement necessary reforms.¹⁴ Among the persistent HALT violations identified, DOCCS continues to sanction people to segregated confinement for conduct that does not meet the statutory requirements for such sanctions, fails to restore basic privileges to people housed

¹² NY St Cts Elec Filing [NYSCEF] Doc No. 83, Decision & Order, in *Fields v Martuscello*, Sup Ct, NY County, index No. 902997/2023.

¹³ *Anthony et al. v DOCCS*, Sup Ct, Kings County, 2024, Capell, J., index No. 512871/24.

¹⁴ *Review of the First Two Years of HALT at the at New York State Department of Corrections and Community Supervision*, NY St Off of the Inspector Gen (Aug. 2024), available at <https://ig.ny.gov/system/files/documents/2024/08/nys-oig-doccs-halt-report-8.5.24.pdf> (last accessed Apr. 16, 2025).

in SHU in excess of HALT's 15-day limit, places thousands of people with mental illness in segregated confinement, and systematically denies congregate recreation to people in RRUs.

44. At the same time, HALT has long been the subject of a concerted opposition campaign by the union that represents the state's prison officers, New York State Correctional Officers and Police Benevolent Association ("NYSCOPBA").

45. In March 2021, NYSCOPBA's president publicly opposed HALT, arguing that "fifteen days isn't enough time" in segregated confinement (Dan Clark, *NY Correction Officers Sue to Overturn New 'HALT' Solitary Confinement Law*, WRVO [May 10, 2021, 4:42 p.m.], <https://www.wrvo.org/politics-and-government/2021-05-10/ny-correction-officers-sue-to-overturn-new-halt-solitary-confinement-law>).

46. In May 2021, NYSCOPBA mounted a constitutional challenge to HALT in federal court. The lawsuit was dismissed for failing to state a claim (*New York State Corr. Officers & Police Benevolent Assn. v Hochul*, 607 F Supp 3d 231, 244–245 [ND NY 2022]).

47. Having failed to prevent the law from coming into force, in May 2022, NYSCOPBA pivoted, launching a public pressure campaign aimed at securing the repeal of HALT. This included holding multiple press conferences calling for the law's repeal, including in conjunction with the union's allies in the Legislature.

48. Although bills aiming to repeal HALT were introduced in both the 2021–2022 and 2023–2024 legislative sessions, the Legislature declined to enact them; all such bills have failed.¹⁵

¹⁵ NY Senate Actions on 2021-2022 NY Senate Bill S9378, available at <https://www.nysenate.gov/legislation/bills/2021/S9378> (last accessed Apr. 17, 2025); NY Assembly Actions on 2021-2022 NY Assembly Bill A10593, available at <https://www.nysenate.gov/legislation/bills/2021/A10593>. NY Senate Actions on 2023-2024 NY Senate Bill S3035, available at <https://www.nysenate.gov/legislation/bills/2023/S3035> (last accessed Apr. 17, 2025); NY Assembly Actions on 2023-2024 NY Assembly Bill A3196, available at <https://www.nysenate.gov/legislation/bills/2023/A3196> (last accessed Apr. 17, 2025).

49. Most recently, in February 2025, amid the strike, the New York Senate rejected a hostile amendment aimed at repealing HALT.¹⁶

50. Over this period of several years, NYSCOPBA has consistently criticized HALT and called for its repeal—the same demand that animated the strike precipitating DOCCS’s HALT Suspension.

D. DOCCS Respond to Illegal Striking by Suspending HALT

51. On December 27, 2024, video footage surfaced showing DOCCS officers fatally beating a handcuffed man, Robert Brooks, while he was incarcerated at Marcy Correctional Facility.¹⁷

52. The footage sparked widespread public outrage and calls from advocates for reforms to DOCCS’s union-negotiated staff disciplinary process.¹⁸

53. On February 14, the Albany Times-Union publicly reported that a grand jury had returned an indictment in the killing, with several DOCCS officers expected to face criminal charges.¹⁹

54. Three days later, on February 17, 2025, prison officers at two DOCCS facilities began an illegal strike. Their central demand was the repeal of HALT.

¹⁶ Jimmy Vielkind, *NY Orders Prison Guards Back to Work as Gov. Hochul Considers Out-of-State Transfers*, Gothamist, Feb. 25, 2025, available at <https://gothamist.com/news/ny-prison-strike-ordered-back-to-work-transfers> (last accessed Apr. 16, 2025).

¹⁷ Attorney General Letitia James, *Investigation into the death of Robert Brooks*, Off of the NY St Atty Gen (2025), available at <https://ag.ny.gov/osi/footage/robert-brooks> (last accessed Apr. 16, 2025).

¹⁸ See e.g., Letter from Prisoners’ Rights Project to Governor Kathy Hochul and DOCCS Commissioner Daniel F. Martuscello [Jan. 16, 2025]. A copy of this letter is attached as Exhibit 36 to the Affirmation of Antony Gemmell in Support of Article 78 Petition (“Gemmell Aff.”).

¹⁹ Brenda J. Lyons, *Sealed Indictment Handed Up Against Officers in Beating Death of Robert Brooks*, Albany Times Union, Feb. 14, 2025, available at <https://www.timesunion.com/capitol/article/sealed-indictment-handed-beating-death-robert-20167919.php> (last accessed Apr. 16, 2025).

55. Within a matter of days, the strike had spread to all but one DOCCS facility, with thousands of prison officers participating across New York.

56. On February 19, 2025, Governor Hochul issued an executive order (the “February 19 Executive Order”) declaring a state of emergency arising from the strike and deploying the National Guard to DOCCS facilities.

57. The February 19 Executive Order made clear that the emergency circumstances necessitating the order were predicated on the “illegal and unlawful strike by correction officers” and the resulting “imminent threat to the safety of correction officers . . . on the job.”²⁰

58. In the ensuing weeks, Governor Hochul issued further, similar executive orders extending the state of emergency declared on February 19 and suspending or modifying other provisions of state law.²¹

59. Neither the February 19 Executive Order nor any of its successors reference HALT, and they certainly do not purport to suspend HALT or any of its provisions.

60. The day after Governor Hochul issued the February 19 Executive Order, Defendant-Respondent Martuscello issued a memorandum to superintendents of all DOCCS facilities entitled “Path to Restoring Workforce” (the “February 20 Memo”).²²

61. The February 20 Memo announces actions DOCCS had taken to encourage striking prison officers to return to work. In relevant part, the February 20 Memo explicitly announces that

²⁰ Executive Order (Hochul) No. 47 (9 NYCRR 9.47), available at <https://www.governor.ny.gov/executive-order/no-47-declaring-disaster-emergency-state-new-york-and-ordering-active-service-new> (last accessed Apr. 16, 2025).

²¹ Executive Order (Hochul) Nos. 47, 47.1, 47.2 (9 NYCRR 9.47-9.47.2), available at <https://www.governor.ny.gov/executiveorders> (last accessed Apr. 16, 2025).

²² A copy of the February 20 Memo is attached as Exhibit 11 to the Gemmell Aff.

DOCCS is “suspending the elements of HALT that cannot safely be operationalized under a prison wide state of emergency until [DOCCS] can safely operate the prisons.”

62. The February 20 Memo does not identify which provisions of HALT were suspended, or the duration of the suspension. Instead, it vaguely announces that there would be a “temporary suspension” of “specific elements” of HALT.

63. The February 20 Memo contends that such a suspension is permissible when “exceptional circumstances . . . create a significant and unreasonable risk to the safety and security of other incarcerated persons, staff or the facility.”

64. The February 20 Memo referenced the February 19 Executive Order, noting that “Governor Hochul signed an Executive Order,” but that Executive Order did *not* purport to suspend HALT or any of its provisions.

65. The February 20 Memo does not otherwise identify a legal authority for suspending HALT and does not declare or identify any other exceptional circumstances or emergency.

E. DOCCS Negotiates with NYSCOPBA

66. Although NYSCOPBA did not officially sanction the strike, DOCCS began negotiating with NYSCOPBA to end the strike on or around February 24.

67. A series of proposed agreements—including a proposed mediation consent award (the “February 27 Consent Award”) and a proposed Memorandum of Agreement (“the March 6 Proposal”)—failed to quell the strike, with a large majority of striking officers refusing to return to work.

68. On March 8, 2025, DOCCS and NYSCOPBA entered a Memorandum of Agreement (the “March 8 Agreement”) to “govern the end of the illegal strike.”²³

69. The March 8 Agreement set forth that the terms of the agreement would become effective only if employee attendance reached 85 percent of its pre-strike level by the morning of Monday, March 10, 2025.²⁴

70. Although employee attendance fell shy of that threshold—it reached only about 75 percent by the Monday-morning deadline—on March 10, Defendant-Respondent Martuscello nonetheless declared the strike over and announced DOCCS would honor certain provisions of the March 8 Agreement, effectively continuing the HALT Suspension.²⁵

71. Relevant here, Defendant-Respondent Martuscello agreed to honor a provision of the March 8 Agreement under which he would “exercise his existing discretion under [HALT] and continue the temporary suspension of the programming elements of [HALT] for 90 days from [March 8, 2025]”²⁶

72. The March 8 Agreement does not set forth the purported basis for Defendant-Respondent Martuscello’s discretion to suspend HALT.

73. This provision of the March 8 Agreement continuing the HALT Suspension does not identify specific statutory provisions being suspended. Rather, it asserts DOCCS will continue

²³ Mem of Agreement between State of NY and NY St Corr Off & Police Benevolent Assn (NYSCOPBA) § 1(a) (Mar. 8, 2025), available at <https://doccs.ny.gov/system/files/documents/2025/03/moa-doccs-nyscopba-3.8.2025.pdf> (last accessed Apr. 17, 2025).

²⁴ *Id.* § 12.

²⁵ Governor Kathy Hochul, *Recover, Recruit, Rebuild, Governor Hochul Updates New Yorkers on Future of State’s Correctional System Following End of Illegal Work Stoppage*, NY St Gov (Mar. 11, 2025), available at <https://www.governor.ny.gov/news/recover-recruit-rebuild-governor-hochul-updates-new-yorkers-future-states-correctional-system> (last accessed Apr. 16, 2025).

²⁶ March 8 Agreement § 1(a).

to suspend “programming elements” of HALT over which DOCCS purports to have “operational discretion,” without identifying which elements those are.

74. The same provision of the March 8 Agreement purports that DOCCS would “continue to follow all other elements of the HALT Act requirements.”²⁷

F. DOCCS Broadly Enforces Its Vague HALT Suspension

75. To clarify the scope of and basis for the HALT Suspension, The Legal Aid Society’s Prisoners’ Rights Project, counsel for Plaintiffs-Petitioners in this case, made discovery requests in a separate litigation concerning systemic violations of HALT.

76. DOCCS’s responses to those requests contained new details on the HALT Suspension. The responses, which are DOCCS’s most comprehensive explanation of the Suspension to date, reveal that the HALT Suspension was much broader than DOCCS had previously described, and comprised of two discrete components.

77. First, under the HALT Suspension, DOCCS is imposing a de facto suspension of HALT’s limits on segregated confinement, reasoning that “cell confinement during a facility-wide emergency does not constitute segregated confinement as defined by HALT.”²⁸ In effect, under the HALT Suspension, DOCCS asserts legal authority under the statute’s “facility-wide emergency” exception to the definition of “segregated confinement” (CL § 2[23]), to hold *everyone* in its custody—regardless of whether an individual is subject to disciplinary confinement—in cell confinement for longer than 17 hours per day.

²⁷ *Id.*

²⁸ Defendants’ Interrogatory Responses in *Anthony v DOCCS*, dated Mar. 26, 2025, at 1, 5, 6, Sup Ct, Kings County, index No. 512871/2024. A copy of these responses is attached as Exhibit 19 to the Gemmill Aff.

78. Second, under the HALT Suspension, “DOCCS has suspended programming and recreation for all incarcerated individuals. . . .”²⁹ This includes individuals in segregated confinement and RRU, for whom DOCCS purports to have suspended HALT’s mandatory programming and recreation requirements, contained in CL § 137[6][j][ii], in their entirety.

G. DOCCS Changes the Justification for the Suspension

79. Though suggesting the HALT Suspension will continue only as long as DOCCS claims an emergency persists, Defendant-Respondent has taken steps to redefine—and broaden—the emergency, leaving open the possibility that the suspension will continue indefinitely.

80. DOCCS initially justified the HALT Suspension with reference to Governor Hochul’s February 19, 2025 Executive Order, which declared an emergency exclusively based on “an illegal and unlawful strike by correction officers” that had “created an imminent threat to . . . safety.”³⁰

81. But the March 8 Agreement identifies a new, broader purported basis for the suspension: a “significant staffing deficit that existed prior to the illegal strike.”³¹

82. The March 8 Agreement does not define the “significant staffing deficit” it references or identify when it began.

83. NYSCOPBA has complained of a staffing deficit within DOCCS for years, including well before HALT passed.³²

²⁹ Defendants’ Interrogatory Responses in *Anthony v DOCCS*, dated Apr. 4, 2025, at 1, 5, Sup Ct, Kings County, index No. 512871/2024. A copy of these responses is attached as Exhibit 18 to the Gemmill Aff.

³⁰ See February 20 Memo, Exhibit 11 to Gemmill Aff.; Executive Order [Hochul] No. 47.

³¹ March 8 Agreement § 1(a).

³² See e.g. Jimmy Vielkind, *NYSCOPBA Claims Prisons are Bursting*, Albany Times Union, Jul. 23, 2012, available at <https://blog.timesunion.com/capitol/archives/141564/nyscopba-claims-prisons-are-bursting/> (last accessed Apr. 16, 2025); Tammy Sawchuk, *NYSCOPBA Executive Vice President’s Message*, The Independent, at 3 (Winter 2018-

84. Yet the available data reflect DOCCS is one of the most richly-staffed prison systems in the nation. As of March 2025, New York prisons had approximately double as many officers per incarcerated person as the national average of state prisons, and *five times* as many as federal prisons.³³ And DOCCS's officer-to-incarcerated individual ratio has *increased* significantly over the past two decades.³⁴

85. Given this reality, the purported pre-strike staffing deficits identified in the March 8 Agreement may be attributable to mismanagement of existing staff resources and abuse of paid leave time, as uncovered by the Office of Inspector General in 2023.³⁵

86. To permit DOCCS to justify the HALT Suspension by reference to a chronic, undefined, and possibly self-inflicted staffing shortage that is likely to persist without foreseeable end thus opens the door to a potentially indefinite circumvention of HALT's core protections.

H. DOCCS Opens the Door to Extending the HALT Suspension Indefinitely

87. The HALT Suspension is also subject to expand at any moment at the discretion of DOCCS.

2019), available at <https://www.nyscopba.org/wp-content/uploads/2018/12/Winter-18-19-Newsletter.pdf> (last accessed Apr. 17, 2025) (stating that “staffing shortages continue to plague us”).

³³ *DOCCS Fact Sheet*, Dept of Corr & Community Supervision (Mar. 1, 2025), available at <https://doccs.ny.gov/system/files/documents/2025/03/doccs-fact-sheet-march-2025.pdf> (last accessed Apr. 17, 2025); Emily D. Buehler & Laura M. Maruschak, *Census of State and Federal Adult Correctional Facilities, 2019* (Nov. 2021), available at <https://bjs.ojp.gov/content/pub/pdf/csfac19st.pdf> (last accessed Apr. 17, 2025).

³⁴ *A Moment of Reckoning: A Blueprint for Resolving the Ongoing Crisis and Transforming New York State's Prison System*, Just Policy Institute (Mar. 2025), available at <https://justicepolicy.org/wp-content/uploads/2025/03/A-Moment-of-Reckoning.pdf> (last accessed Apr. 17, 2025).

³⁵ *Review of the Lost Wage Benefit Provided to Security Services Unit Employees Within the New York State Department of Correction*, NY Off of the Inspector Gen (May 1, 2023) at 4, available at <https://ig.ny.gov/system/files/documents/2023/05/report-on-ssu-lost-wage-benefit-and-doccs-wc.pdf> (last accessed Apr. 16, 2025) (noting staffing shortages “greatly exacerbated by workers’ compensation related absences”).

88. A separate provision of the March 8 Agreement describes a so-called “circuit breaker” that DOCCS could use to “determine if a facility-wide emergency exists based on exigent and emergency circumstances associated with inadequate staffing levels that would create a significant and unreasonable risk to the incarcerated, staff, or facility.”³⁶ If DOCCS determines that this threshold is met at any point in the future, the HALT Suspension may be reinstated.

89. DOCCS could “deploy” the circuit breaker on “High Impact” days. “High Impact” days are defined to include Fridays, Saturdays, and Sundays, as well as *any* other day Defendant-Respondent Martuscello decides.

90. DOCCS has not yet agreed to honor the circuit-breaker provision of the March 8 Agreement, but DOCCS has confirmed the provision is “still under consideration.”³⁷

91. With its vague and shifting contours, the HALT Suspension could facilitate a return to the very regime that HALT sought to reform, under which thousands of people were held in prolonged solitary confinement for months or even years.

I. Continuing Impacts of the Strike on Plaintiffs-Petitioners and Other Class Members

92. Ever since Defendant-Respondent implemented it, the HALT Suspension has had devastating impacts on incarcerated individuals, including Plaintiffs-Petitioners and other members of the putative class, at DOCCS facilities throughout New York.

93. For some in DOCCS custody, the imposition of prolonged segregated confinement in response to the illegal strike has already resulted in the ultimate, tragic consequence. At least seven incarcerated people have died, including Anthony Douglas, a 66-year-old man who was

³⁶ March 8 Agreement § 1(b).

³⁷ Defendants’ Interrogatory Responses in *Anthony v DOCCS*, dated Mar. 26, 2025, at 3, Sup Ct, Kings County, index No. 512871/2024. A copy of these responses is attached as Exhibit 19 to the Gemmill Aff.

found hanging in his cell at Sing Sing Correctional Facility after being locked in his cell for 24 hours per day for the preceding week.³⁸

94. Plaintiffs-Petitioners and thousands of similarly situated individuals in prisons across the state will continue to suffer the harms of these restrictive conditions for as long as the HALT Suspension remains in effect.

Plaintiff-Petitioner Alfonso Smalls

95. Alfonso Smalls is a 29-year-old man from Harlem who is currently incarcerated in a general population unit at Coxsackie Correctional Facility.

96. Since the strike began, and continuing under the HALT Suspension, Mr. Smalls has been held in segregated confinement, isolated in his cell for between 22 and 24 hours per day.

97. During the strike, Mr. Smalls was locked in his cell continuously for about two and a half weeks, leaving only to take a total of three eight-minute showers. His requests to leave his cell were ignored or treated with hostility.

98. Since the strike has ended, Mr. Smalls is still only permitted to leave his cell for between 90 minutes and an hour and 45 minutes each day. He is offered recreation for about 45 minutes every other day, and the chance to leave his cell to shower for about 15 minutes every other day. He is permitted to leave his cell to eat in the mess hall, but is only given about eight minutes for each meal. He has been offered no out-of-cell programming since the strike began.

99. Mr. Smalls is eager for more recreation and programming. He wants to feel the sun, breathe fresh air, and relieve stress through recreation. He wants to interact with other incarcerated people and learn new things through programming.

³⁸ Jan Ransom, *Seven Prisoners Die as New York Guard Strikes Cause Widespread Disarray*, NY Times (Mar. 4, 2025), available at <https://www.nytimes.com/2025/03/04/nyregion/ny-prison-strike-guards.html> (last accessed Apr. 16, 2025).

100. Being locked in his cell for 22 or more hours per day has impacted Mr. Smalls physically and mentally. He has a hard time turning off his mind, has difficulty sleeping, and paces back and forth in his cell. The isolation makes him feel short-tempered and claustrophobic and has caused him to have thoughts of self-harm. He also believes he has gained weight since the strike began.

Plaintiff-Petitioner Kariem Tomlin

101. Kariem Tomlin is a 46-year-old man from Staten Island who is currently housed in general population at Clinton Correctional Facility.

102. Despite being housed in general population, since the strike began, and continuing under the HALT suspension, DOCCS has isolated Mr. Tomlin in his cell for between 21.5 and 24 hours every day.

103. During the strike, Mr. Tomlin was held in his cell 24 hours a day. For several days, hot water was distributed to the cells so people could bathe without leaving their cells. Eventually, people were offered 15-minute showers every two days but were otherwise locked in their cells.

104. Even now, nearly two months since the strike began, Mr. Tomlin's out-of-cell time is limited to at most two hours of outdoor recreation and two 10-to-15-minute trips to the mess hall for breakfast and lunch.

105. In total, under the HALT Suspension, Mr. Tomlin is out of his cell for at most two and a half hours per day. He spends the remaining 21.5 hours locked in his cell.

106. Mr. Tomlin is eager to participate in programming to secure his GED and learn a trade that will help him gain employment upon release. But DOCCS has denied him programming since the strike began, and that denial continues under the HALT Suspension.

107. As a result of being subjected to prolonged isolation under the HALT Suspension, Mr. Tomlin feels mentally checked out and out of character. Being locked in and unable to exercise makes him want to talk to himself. The isolation builds tension, making life difficult and leading to arguments among the people living in close quarters on his unit.

Plaintiff-Petitioner Jerome Leslie

108. Jerome Leslie is a 28-year-old man who has been incarcerated by DOCCS since 2016. Since around November 2023, he has been housed in a general population unit at Sing Sing Correctional Facility.

109. Despite being in general population, under the HALT Suspension, Mr. Leslie is confined to his cell for at least 21 hours per day.

110. Mr. Leslie works two jobs, taking out the trash on his unit, and picking up dirty laundry and delivering it to the prison laundry in the morning and delivering clean laundry back to the unit in the evening. But each of these tasks take no more than one hour to complete, and he is required to return to his cell immediately after he completes them.

111. Although Mr. Leslie has signed up for a college program and for Aggression Replacement Therapy and Alcohol and Substance Abuse Treatment programs, he is not receiving them and instead has spent nearly all day, every day in his cell since approximately February 20, 2025.

112. Under the HALT Suspension, Mr. Leslie is offered at most one hour of recreation each day, either in the morning or evening, but if his work duties coincide with recreation time, he is not permitted to attend recreation, which leads him to spend even more time in his cell.

113. The isolation Mr. Leslie is experiencing has taken a toll on his mental and physical health. Mr. Leslie feels depressed, anxious, and hopeless not getting out of his cell, and has gained weight because his physical activity is so limited.

Plaintiff-Petitioner Taron Jackson

114. Taron Jackson, a 45-year-old father of three from the Bronx, has been housed in the SHU at Green Haven Correctional Facility since March 12, 2025.

115. Before he was granted a transfer to Green Haven to be closer to his family around January 2023, Mr. Jackson was housed in the Honor Block at Great Meadow Correctional Facility, a unit for people who are committed to rehabilitation. He also participated in a program that allowed him weekend visits with his wife and children.

116. Under the HALT Suspension, Mr. Jackson has been locked in his cell for between 23 and 24 hours per day.

117. Mr. Jackson is eager to participate in programming, which he believes will prepare him to help his family and raise his children upon release from incarceration.

118. Under the HALT Suspension, however, DOCCS has offered Mr. Jackson only a single hour of outdoor recreation per day and no other programming.

119. Moreover, DOCCS employees have told Mr. Jackson that he must choose between one hour of outdoor recreation or access to the telephone after five p.m. Because he prioritizes speaking with his children after school, Mr. Jackson chooses not to go to recreation, which means that his only time out of his cell is for a ten-minute shower three times per week.

120. Mr. Jackson has mental illness, but the only mental health treatment he is offered occurs at his cell door, within earshot of others, making any discussion of real issues impossible.

121. Since being in isolation under the HALT Suspension, Mr. Jackson has been experiencing insomnia and nightmares. Sometimes he does not want to sleep because he does not want to have nightmares. Being in isolation leads Mr. Jackson to think about how dire and horrible the situation is; he feels like he might be going crazy.

Plaintiff-Petitioner Saiwon Robbins

122. Saiwon Robbins is a 28-year-old man from Brooklyn who is currently housed in the RRU at Mid-State Correctional Facility, where he has been housed since approximately March 19, 2025.

123. Since the strike began, Mr. Robbins has been locked in a cell for 23 to 24 hours per day.

124. On February 9, 2025, Mr. Robbins received a disciplinary infraction for which he was sanctioned to 90 days of disciplinary confinement. Mr. Robbins was housed in the SHU from February 9, 2025, until he was transferred to the Step-Down Program (“SDP”)³⁹ at Mid-State Correctional Facility around February 23, 2025. Mr. Robbins was housed in the SHU when the strike began and, during his entire stay there, was locked in his cell for nearly 24 hours a day without any access to programming or recreation. The only out-of-cell time he had was a ten-minute shower.

125. While locked in his SHU cell, Mr. Robbins received cold meals four to five hours later than usual. His mental health medications were also delivered late and, one day, were not delivered at all.

³⁹ A Step-Down Program is a structured, phased program intended to help incarcerated individuals transition out of SHU and back into the general prison population or, in some cases, to the community.

126. Mr. Robbins' transfer to the SDP did not improve his situation. During his stay in SDP from approximately February 23 until March 19, 2025, Mr. Robbins was locked in his cold, filthy cell without a jacket for 24 hours each day. Mr. Robbins was not offered out-of-cell programming or recreation in SDP.

127. On March 19, after the strike had ended, Mr. Robbins was transferred to the RRU, but his conditions remain extremely isolating.

128. Under the HALT suspension, Mr. Robbins remains locked in his cell for 23 to 24 hours a day.

129. In late March, staff began offering 45 to 60 minutes of outdoor recreation a day where the only activity available is to stand around and talk to other people.

130. Mr. Robbins has not been offered any out-of-cell programming, so the only other time spent out of his cell is for ten-minute showers two to three times per week and occasional legal calls and a legal visit.

131. The isolation Mr. Robbins continues to endure under the HALT Suspension has exacted a devastating toll on his mental health. Mr. Robbins has been diagnosed with PTSD and anxiety, for which he takes medications.

132. In prolonged isolation, his mental health has deteriorated to the point that he has suffered bouts of suicidal thoughts prompting him to call the suicide hotline repeatedly. Mr. Robbins has suffered paranoia, visual hallucinations of flashing light, and struggles with feeling lost, his thoughts trapped inside the cell. Mr. Robbins has not seen his mental health counselor since January 2025 and other counselors have not been consistently available to him.

Plaintiff-Petitioner Michael Williams

133. Michael Williams is a 25-year-old man from Rochester and father to a six-year-old son. Mr. Williams is being held in the RRU in Greene Correctional Facility, where he has been since March 18, 2025.

134. Before his transfer to the RRU, he was held in the SHU at Greene from February 26, 2025 to March 17, 2025. Mr. Williams was locked in his cell for 23 to 24 hours per day throughout this period.

135. While in SHU, Mr. Williams was offered no programming, and the only opportunity to leave his cell was for one hour of recreation in an outdoor cage.

136. In RRU, Mr. Williams has been locked in his cell for 24 hours per day under the HALT Suspension. The only “recreation” Mr. Williams can access takes place in a semi-outdoor portion of his cell, the “rec pen,” attached to the indoor area of the cell by a door that is unlocked for about one hour each day. Sometimes his rec pen is not unlocked all day.

137. The rec pen is surrounded by brick walls on three sides and the ceiling, with a cage-like wall at the rear. While in the rec pen, Mr. Williams cannot interact with people other than the man he shares his cell with due to the brick walls.

138. Since being housed in the RRU, Mr. Williams estimates he has only left his cell to speak with lawyers and for mental health appointments for a cumulative five hours.

139. Mr. Williams is eager to attend programs to improve himself and was signed up for a college program until the strike derailed those plans. He has been offered no programming in either SHU or RRU.

140. The isolative conditions under which he is being held are causing profound and consequential harm to Mr. Williams' mental health. Being locked in his cell with a cellmate has worsened the situation; the lack of privacy prevents him from ever achieving a sense of peace.

141. Mr. Williams is diagnosed with PTSD, depression, and anxiety, for which he is prescribed medications. The stress and depression Mr. Williams has experienced in solitary confinement has caused his mental health to deteriorate to the point of self-harm, leading him to self-mutilate in both SHU and RRU. Not a day goes by in the RRU that Mr. Williams has not thought about taking his own life.

Class Member Kory Cox

142. Kory Cox is a 23-year-old man from Syracuse, New York, who is currently incarcerated in the RRU at Greene Correctional Facility.

143. Since the strike began, and continuing under the HALT Suspension, he has been offered no out-of-cell programming.

144. On most days, Mr. Cox spends 24 hours per day in cell confinement. He has only left his cell for about three or four hours in total since the strike began about two months ago. He was permitted to leave his cell for those few hours to speak with his lawyers or go to mental health appointments.

145. The only "recreation" he can access is time in a semi-outdoor part of his cell, where he is surrounded by brick walls on three sides and a ceiling. When in this semi-outdoor portion of his cell, he can see outside through one cage-like wall but cannot see any people other than his cellmate. The only way to communicate with others during this "recreation" is by screaming through the walls, making it impossible to have a real conversation.

146. Spending all day in his cell for about two months has impacted Mr. Cox's mental health. He feels claustrophobic and anxious, causing him to start sweating and feel like he is losing his mind. Because he has a cellmate who is also locked in his cell with him, he never has any privacy, which makes him feel stressed and agitated, making constant confinement to his cell even worse.

147. To Mr. Cox's knowledge, the approximately two dozen other people in the area of the Greene RRU where he is housed have been held in similar conditions since the strike began, leaving their cells only for legal calls, mental health appointments, or disciplinary hearings.

Class Member Nasir Hill

148. Nasir Hill, who is currently housed in a general population unit at Elmira Correctional Facility, has been subjected to highly restrictive conditions of confinement under the HALT Suspension, both during the strike and in the weeks since it ended.

149. Throughout the strike, Mr. Hill was confined to his cell 24 hours a day.

150. Mr. Hill was also denied critical medical care during the strike. Despite multiple requests, DOCCS did not provide him his prescribed medications for sarcoidosis, a respiratory condition that makes him prone to infections.

151. Even after the strike ended, Mr. Hill has remained locked in his cell for at least 23 hours each day.

152. For well over a month now, Mr. Hill's only opportunity to leave his cell has been for 45 minutes every other day. During that time, DOCCS permits him go to the prison "field house" where he can shower, use the telephone, and exercise. In such a short window, however, doing all three is nearly impossible.

153. Mr. Hill has no other access to programming.

154. The HALT Suspension is also impacting Mr. Hill's ability to participate fully in his own criminal defense. Although Mr. Hill has an active criminal appeal, his many requests to access law library have been unsuccessful.

155. Mr. Hill has also been deprived of access to religious services, including Jum'ah and Ramadan services.

156. The restrictions DOCCS has imposed on Mr. Hill are exacting a serious toll on his mental health. Mr. Hill has been treated for depression and anxiety in prison and, while his medications have been delivered since the strike ended, his repeated requests to speak with a mental health clinician about his deepening depression and frustration due to the prolonged isolation have gone unanswered.

Class Member Justin Peloquin

157. Justin Peloquin is a 37-year-old man from Massena, New York who is currently incarcerated in the RRU at Gouverneur Correctional Facility.

158. Since shortly after the strike began, Mr. Peloquin has been held in disciplinary confinement, first in the SHU at Riverview Correctional Facility for about 30 days, and then in the RRU at Gouverneur since approximately March 20.

159. During this period, Mr. Peloquin has generally spent 24 hours per day in cell confinement, even showering and eating his meals inside his cell. He estimates that he has only spent three or four hours outside of his cell, for reasons such as confidential calls with his attorneys, to attend his disciplinary hearing, and to be transported from one facility to another.

160. Since February 20, Mr. Peloquin has been offered no out-of-cell programming or recreation. The only "recreation" he is permitted is approximately 4 hours per day in a semi-out-door part of his cell, where he is surrounded by brick walls on three sides and a ceiling, but can

see outside through one cage-like wall. The only way to talk with anyone else in other cells during this “recreation” period is to try to scream to them.

161. Mr. Peloquin is locked in his small cell, which he estimates is about six feet by ten feet, with a cellmate. Being forced to constantly be around this cellmate in a small space, with no break, makes him irritable.

162. Mr. Peloquin’s mental health is deteriorating under these conditions. His family can’t understand what he is going through, which makes him feel frustrated. He has difficulty sleeping because now that there is no out-of-cell programming, incarcerated people in the RRU can only speak to one another by yelling between cells, which makes the RRU very noisy, sometimes until 1 or 2 a.m. He worries that after being in segregated confinement for so long, he will be uncomfortable being around other people.

163. To Mr. Peloquin’s knowledge, the people who have been confined with him at the Riverview SHU and the Gouverneur RRU have also been locked in their cells for 24 hours a day, because while he has been there, neither unit was running the programs that would allow incarcerated people to leave their cells.

Class Member Billy Rivera

164. Billy Rivera is a 38-year-old man from Rochester, New York, who is currently housed in the Residential Mental Health Unit⁴⁰ at Marcy Correctional Facility.

165. Before the strike Mr. Rivera received four hours of out-of-cell congregate programming each day, but since the strike he has been locked in his cell for nearly 24 hours a day.

⁴⁰ A Residential Mental Health Unit (“RMHU”) is a specialized housing unit designed to provide structured, therapeutic treatment and services for incarcerated individuals with serious mental illness who are also subject to disciplinary confinement. “The conditions and services” in RMHUs must be “at least comparable to those in all [RRUs]” and the out-of-cell programming requirements of Correction Law § 137 [6][j][ii] apply to RMHUs. *See id.* § 401 [1].

166. The only “recreation” Mr. Rivera is offered is access to a “rec pen”—a semi-out-door portion of his cell with solid walls on three sides and on the ceiling and a metal wall with holes at the back. Mr. Rivera cannot see anyone else while in the pen. He cannot communicate with people in neighboring rec pens except by yelling loudly.

167. Around the week of March 24, 2025, after the strike ended, officers began permitting Mr. Rivera to attend therapy appointments with the Office of Mental Health every other week for 30 minutes. But these visits are often cancelled when there is an incident in the unit, and as a result, Mr. Rivera has been able to attend only one such appointment since the strike began.

168. Since the strike began in February 2025, Mr. Rivera estimates that he has spent a total of three hours out of his cell for brief legal calls, and medical or mental health visits. He has otherwise spent nearly two months locked alone in the cell where he is fed and showers.

169. Mr. Rivera has several diagnosed mental illnesses and the prolonged isolation has exacerbated them all. He feels paranoid and depressed. He feels trapped in his thoughts, worrying too much about his family. He feels on edge.

170. Mr. Rivera has also witnessed how prolonged isolation is impacting other people in the RMHU, as he has seen the use of suicide watch increase since the strike began.

CLASS ACTION ALLEGATIONS

171. This case is brought as a class action under section 901 of the Civil Practice Law and Rules (“CPLR”) on behalf of two, partially overlapping classes:

- a. The General Population Class: 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
- b. The Special Confinement Class: 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.

172. The proposed classes are sufficiently numerous that joinder of all members is impracticable. Defendant-Respondent has subjected thousands of individuals to unlawfully restrictive confinement under the HALT Suspension; and will continue to do so with respect to more individuals while the suspension remains in place.

173. Members of each of the proposed classes are affected by common questions of law and fact that predominate over questions affecting only individual members. Without limitation, these common questions include:

- a. Whether members of the putative class are subject to the HALT Suspension;
- b. Whether the HALT Suspension violates the constitutional separation of powers;
- c. Whether the HALT Suspension is arbitrary and capricious; and
- d. Whether the HALT Suspension constitutes Defendant-Respondent's failure to perform a duty enjoined on him by law.

174. Plaintiffs-Petitioners' claims are typical of those of the proposed classes. Plaintiffs-Petitioners challenge the HALT Suspension on grounds that apply to all members of the proposed classes they respectively seek to represent.

175. Plaintiffs-Petitioners will fairly and adequately represent the interests of the proposed classes. Their interests in opposing the HALT Suspension align closely with those of other members of the proposed classes; and their counsel have extensive experience litigating similar matters on a class-wide basis.

176. A class action is superior to other available methods for fairly and efficiently adjudicating this controversy. The class-action device will minimize financial, administrative, and procedural burdens that individual actions would impose on the Court and the parties—and with particular severity on members of the proposed class, who are incarcerated and predominately indigent. Plaintiffs-Petitioners’ counsel anticipates no difficulty in managing this matter as a class action.

CLAIMS FOR RELIEF

First Cause of Action Violation of N.Y.S. Const. art. III, § 1 (All Class Members)

177. Defendant-Respondent’s acts and omissions alleged herein violate Article III, Section 1 of the New York State Constitution.

Second Cause of Action Violation of N.Y.S. Const. art. IV, § 3 (All Class Members)

178. Defendant-Respondent’s acts and omissions alleged herein violate Article IV, Section 3 of the New York State Constitution.

Third Cause of Action Violation of Correction Law § 137[6][j][ii] (Special Confinement Class Members)

179. Defendant-Respondent’s acts and omissions alleged herein violate Section 137[6][j][ii] of the Correction Law.

**Fourth Cause of Action
Article 78 Review, CPLR § 7801 *et seq.*
(All Class Members)**

180. Defendant-Respondent’s acts and omissions alleged herein reflect his “fail[ure] to perform a duty enjoined upon [him] by law” (CPLR § 7803[1]).

181. Defendant-Respondent’s acts and omissions alleged herein were and are “affected by an error of law[,]” “arbitrary and capricious[,]” and an “abuse of discretion” (*id.* § 7803[3]).

JURISDICTION AND VENUE

182. The Court has jurisdiction over this matter under CPLR §§ 3001 and 7801.

183. Under CPLR § 503 as to the declaratory judgment action and CPLR § 7804[b] as to the Article 78 petition, venue is proper in Albany County, where Defendant-Respondent’s principal office is located and where the HALT Suspension was promulgated.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that the Court:

- a. Certify this action as a class action and appoint the undersigned as class counsel under CPLR § 901;
- b. Declare that the HALT Suspension violates the New York State Constitution, Article III § 1 and Article IV § 3, and Correction Law § 137[6][j][ii];
- c. Vacate and annul the HALT Suspension;
- d. Preliminarily and permanently enjoin enforcement of the HALT Suspension;
- e. Award Plaintiffs-Petitioners reasonable attorney’s fees and costs; and
- f. Grant any other relief the Court deems just and proper.

Dated: April 17, 2025
New York, New York

Respectfully submitted,

THE LEGAL AID SOCIETY
PRISONERS' RIGHTS PROJECT

/s/ Antony P. F. Gemmell

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**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,

Plaintiffs-Petitioners,

v.

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

Defendant-Respondent.

VERIFICATION

I, Antony P. F. Gemmell an attorney duly admitted to practice before the courts of New York, hereby affirm under penalty of perjury that the following statements are true.

1. I am an attorney at The Legal Aid Society’s Prisoners’ Rights Project (“PRP”), located in New York, New York.
2. PRP serves as counsel for Plaintiffs-Petitioners in this proceeding.
3. I have read and know the contents of the foregoing Verified Class Petition and Complaint.
4. The contents of the foregoing Verified Class Petition and Complaint are true to my own knowledge.
5. The grounds for my belief as to all matters in the Verified Class Petition and Complaint are communications between PRP and Plaintiffs-Petitioners and documents prepared and/or provided by or on behalf of Defendant-Respondent.

6. I make this verification in place of Plaintiff-Petitioners because they are each presently incarcerated outside the county in which PRP's offices are located.

Dated: April 17, 2025
New York, New York

/s/ Antony P. F. Gemmell
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**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
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Index No. _____

Plaintiffs-Petitioners

v.

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

Defendant-Respondent.

**MEMORANDUM OF LAW IN SUPPORT OF
ARTICLE 78 PETITION**

THE LEGAL AID SOCIETY
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Dated: April 17, 2025
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PRELIMINARY STATEMENT

The Legislature enacted the Humane Alternatives to Long-Term Solitary Confinement Law (“HALT”) in 2021 to end longstanding overuse of harmful isolation in New York prisons. HALT sets firm boundaries: segregation only for the most serious conduct; a 15-day cap, and daily out-of-cell programming, even for those in disciplinary confinement.

But in February 2025, caving to prison officers’ illegal strike aimed at strongarming HALT’s repeal, the Department of Corrections and Community Supervision (“DOCCS”) announced a sweeping suspension of HALT (the “Suspension”). The Suspension guts HALT through two components: blanket use of the statute’s narrow “facility-wide emergency” exception, and suspension of HALT’s out-of-cell programming requirements.

Petitioners—six individuals representing two classes¹ of people still trapped in isolation more than a month after the strike ended—challenge the unlawful Suspension. Alongside thousands of others, they continue to suffer the very harms HALT was designed to end. Because they will continue to suffer these harms for as long as the Suspension remains in place, they now sue to challenge it.

FACTS

I. The Humane Alternatives to Long-Term Solitary Confinement Law

Solitary confinement is the practice of isolating an incarcerated person in a small cell for a protracted period with minimal human contact or stimulation (Craig Haney, *Restricting the Use of Solitary Confinement*, 1 Ann. Rev. Criminology, 285–310, 286–87 [2018]). Extensive scientific evidence shows that even brief periods of solitary confinement can cause lasting psychological

¹ See Petition, ¶¶ 172–77.

and physical harm (see Peter S. Smith, *The Effects of Solitary Confinement on Prison Inmates: A Brief History and Review of the Literature*, 34 *Crime & Justice*, 441, 471–493 [2006]).

For decades, New York prisons routinely subjected people to solitary confinement in so-called Special Housing Units (“SHUs”) for up to 23 hours a day, often for months or even years. In 2021, responding to growing concern over this practice, the Legislature passed HALT (see Ex. 1, Assembly Mem in Support, Bill Jacket, L 2021, ch 93 [“HALT Assembly Mem.”]).²

HALT restricts “segregated confinement,” defined as cell confinement exceeding 17 hours a day, except in a “facility-wide emergency” (Correction Law (CL) § 2[23]). HALT limits segregated confinement to three days in most cases, or 15 for the most serious infractions (*id.* §§ 137[6][i], [6][k]). After 15 days, DOCCS must divert individuals to Residential Rehabilitation Units (“RRUs”), an alternative to segregated confinement where it must provide at least seven hours of daily out-of-cell time, including programming, services, treatment, meals, and at least one hour of recreation (*id.* § 137[6][j][ii]). Out-of-cell time in RRUs must be congregate, except recreation, which may be non-congregate only in “exceptional circumstances” posing “a significant and unreasonable risk to . . . safety and security” (*id.*). And even individuals in segregated confinement must receive at least four hours of out-of-cell time daily, including at least one hour of recreation (*id.*). Segregated confinement is not permitted for members of vulnerable groups, such as people with disabilities (*id.* § 137[6][h]).

HALT was adopted by supermajorities in both houses after a yearslong deliberative process, reflecting the Legislature’s judgment that “subjecting people to segregated confinement for twenty-two to twenty-four hours a day without meaningful human contact, programming, or therapy can cause deep and permanent psychological, physical, developmental, and social harm”—

² Cited exhibits are attached to the April 17, 2025 Affirmation of Antony Gemmell.

and its assessment that “[o]ther states have dramatically reduced the number of people in segregated confinement, and seen positive benefits in terms of safety and decreased violence” (Ex. 1, HALT Assembly Mem.).

II. DOCCS’s and NYSCOPBA’s Opposition to HALT

DOCCS has consistently resisted complying with HALT, leading to frequent litigation against the agency and condemnation from legislators and the public (*see e.g. Fuquan F. v Annucci*, 81 Misc 3d 517 [Sup Ct, Albany County 2023]; Ex. 2, Letter from Senator Julia Salazar et al., Feb. 27, 2023; Ex. 3, Chris Gelardi, *Prison Department Writes Its Way Out of Following Solitary Confinement Law – Again*, NY Focus [Mar. 6, 2023]). The New York Inspector General (“OIG”) has also documented DOCCS’s widespread noncompliance with HALT (Ex. 4, OIG, *Review of the First Two Years of HALT* [Aug. 2024]).

Simultaneously, the New York State Correctional Officers and Police Benevolent Association (“NYSCOPBA”), the prison officers’ union, has waged a campaign against the law involving both unsuccessful litigation³ and consistent but unheeded calls for HALT’s repeal (*see e.g. Jay Mullen, Elected Officials, Union Call for HALT Act Repeal*, Adirondack Daily Enterprise [Jul. 22, 2022]).⁴

III. DOCCS Responds to Illegal Striking by Suspending HALT

In December 2024, video footage surfaced showing DOCCS officers at Marcy Correctional Facility fatally beating a handcuffed man, Robert Brooks (Ex. 5, Ed Shanahan, *Video Shows Prison Officers’ Fatal Assault of Inmate in ‘Shocking’ Detail*, NY Times [Dec. 27, 2024]). On February

³ *See NYSCOPBA v Hochul*, 607 F Supp 3d 231 (ND NY 2022).

⁴ <https://www.adirondackdailyenterprise.com/news/2022/07/elected-officials-union-call-for-halt-act-repeal>.

17, 2025, three days after public reports indicated that employees implicated in the killing would be indicted,⁵ officers at two prisons began an illegal strike (*see* Ex. 6, *Corrections Officers Strike at Collins, Elmira Facilities*, Post-Journal [Feb. 18, 2025]). Within days, the strike spread to nearly every DOCCS facility; thousands of officers participated (*see* Ex. 7, Maria Cramer, *N.Y. Prisons Loosen Solitary Confinement Rules as Wildcat Strikes Spread*, NY Times [Feb. 20, 2025]). Their central demand was the repeal of HALT (Ex. 6).

Governor Hochul responded with executive orders (“EOs”) declaring a state of emergency, deploying the National Guard, and suspending or modifying various state laws—but not HALT (*see* Exs. 8–10, EO [Hochul] Nos. 47, 47.1, 47.2 [9 NYCRR 9.47–9.47.2]).

Meanwhile, Respondent DOCCS Commissioner Daniel Martuscello issued a memorandum entitled “Path to Restoring Workforce,” announcing that DOCCS had suspended “the elements of HALT that cannot safely be operationalized under a prison wide state of emergency until [DOCCS] can safely operate the prisons” (Ex. 11, Commissioner Martuscello Mem, *Path to Restoring Workforce* [Feb. 20, 2025] [“February 20 Memo”]). The February 20 Memo does not identify which HALT provisions are being suspended or for how long. Instead, it notes “temporary suspension” of “specific elements” of HALT is permissible when “exceptional circumstances . . . create a significant and unreasonable risk to the safety and security of other incarcerated persons, staff or the facility” (*id.*). The February 20 Memo cites no other legal authority, relying only on the Governor’s declaration, which does not mention HALT (*id.*).

⁵ *See* Brenda J. Lyons, *Sealed Indictment Handed Up Against Officers in Beating Death of Robert Brooks*, Albany Times Union, Feb. 14, 2025, <https://www.timesunion.com/capitol/article/sealed-indictment-handed-beating-death-robert-20167919.php>.

IV. DOCCS Negotiates with NYSCOPBA

Although NYSCOPBA did not officially sanction the strike, DOCCS began negotiating with the union in late February (Ex. 12, Jan Ransom, *Seven Prisoners Die as New York Guard Strikes Cause Widespread Disarray*, NY Times [Mar. 4, 2025]). Multiple proposals—including a February 27 consent award (Ex. 13, “February 27 Consent Award”) and a March 6 Memorandum of Agreement (Ex. 14, “March 6 Proposal”) failed to resolve the strike (Ex. 15, Chris McKenna, *NY Prison Strikes: State Gives Final Offer with Deadline to Return or be Fired*, Lohud [Mar. 7, 2025]).

On March 8, DOCCS and NYSCOPBA signed an agreement (Ex. 16, “March 8 Agreement”) to end the strike, contingent on 85% employee attendance by March 10. Attendance only reached 75%, but Respondent Martuscello nonetheless agreed to honor parts of the deal, including by “continu[ing] the temporary suspension of the programming elements of [HALT] for 90 days from [March 8, 2025]. . . .” (Ex. 16, March 8 Agreement § 1[a]); NY St Dept. of Corr & Community Supervision, *Commissioners Martuscello and Bray Provide an Update on the Correction Officer Strike*, YouTube [Mar. 10, 2025];⁶ Ex. 17, Governor Hochul, *Recover, Recruit, Rebuild* [Mar. 11, 2025]).

The March 8 Agreement does not identify a legal basis for suspending HALT or specify which programming elements are being suspended, instead vaguely citing DOCCS’s “operational discretion” (Ex. 16). It also asserts DOCCS will otherwise continue complying with HALT (*id.*).

V. The HALT Suspension

To clarify the Suspension’s scope and basis, The Legal Aid Society Prisoners’ Rights Project, counsel for Petitioners, made discovery requests in a separate litigation over systemic HALT

⁶ https://youtu.be/WCj_MkxFK80.

violations in March 2025. DOCCS’s responses—the most detailed explanation of the Suspension to date—reveal a broad suspension with two components.

First, the Suspension effectively eliminates HALT’s durational limits on segregated confinement—three days, or 15 days for serious infractions—and its protections for vulnerable groups. Contorting HALT’s narrow exception for “facility-wide emergenc[ies],” DOCCS asserts sweeping “legal authority to hold *any incarcerated individual* in cell confinement for more than seventeen hours a day” (Ex. 18, DOCCS & Commissioner Martuscello’s Responses to Plaintiffs’ Second Set of Interrogatories in *Anthony v DOCCS* [Apr. 4, 2025] [“April 4 Discovery”], 4).

Second, DOCCS has suspended all programming and recreation—including for people in segregated confinement and RRUs—nullifying HALT’s minimum requirements for programming and recreation in those units under CL § 137[6][j][ii] (Ex. 19, DOCCS & Commissioner Martuscello’s Responses to Plaintiffs’ Amended Expedited Interrogatories [Mar. 26, 2025] [“March 26 Discovery”], 4, 6–7). DOCCS asserts no legal authority beyond HALT itself, relying on a narrow statutory exception to justify the broad suspension (*id.*).

Although the Suspension is initially set to last 90 days, the March 8 Agreement leaves open the possibility that it will continue indefinitely by broadening the “emergency” that purportedly justifies the Suspension to include both the strike *and* a “significant staffing deficit that existed prior to the illegal strike” (Ex. 16, March 8 Agreement, 1).

The Suspension could expand further under Section 1(b) of the March 8 Agreement—a so-called “circuit-breaker” clause—which would allow DOCCS to suspend HALT based on a “staffing metric analysis” that will “determine if a facility-wide emergency exists” on “high-impact days,” which include Friday through Sunday, or any other day Respondent Martuscello decides

(Ex. 16, March 8 Agreement, 1–2.) Although DOCCS has not yet invoked this clause, it has confirmed it remains “under consideration” (Ex. 19, March 26 Discovery, 5–6).

VI. The Suspension’s Impact on Petitioners

The HALT Suspension has inflicted serious harm on incarcerated individuals across DOCCS facilities. The consequences have been fatal. At least seven incarcerated people have died, including 66-year-old Anthony Douglas, who was found hanging in his cell at Sing Sing after being locked in it 24 hours a day for a week. (Ex. 12.)

The harms Petitioners have experienced because of the Suspension are summarized below, and detailed further in Exhibits 20–25, 30–31, and 34, affirmations from Petitioners and four other putative class members. Absent relief, Petitioners will continue to suffer these harmful conditions, as will thousands of others.

A. Alfonso Smalls

Alfonso Smalls is a 29-year-old man in general population at Coxsackie Correctional Facility (Ex. 20, Smalls Aff., ¶¶ 1–2.). Since the strikes began, he has been locked in his cell 22–24 hours a day (*id.* ¶¶ 4–7). DOCCS allows him out only for brief meals, a short shower every other day, and 45 minutes of recreation (*id.* ¶¶ 8–10).

Mr. Smalls has received no programming and longs for fresh air, sunlight, and meaningful interaction (*id.* ¶¶ 11, 13). The isolation has affected his physical and mental health—he struggles to sleep or quiet his mind and paces his cell (*id.* ¶¶ 12, 14).

B. Jerome Leslie

Jerome Leslie, a 28-year-old man in general population at Sing Sing, is locked in his cell for at least 21 hours a day. (Ex. 21, Leslie Aff. ¶¶ 1–2). He holds two jobs—trash collection and laundry delivery—but each takes only an hour at most, after which he must return to his cell (*id.* ¶ 6).

DOCCS offers Mr. Leslie at most one hour of recreation daily, but he often misses it due to work duties (*id.* ¶¶ 4, 7). The isolation has harmed his mental and physical health: he feels depressed, anxious, and hopeless, and has gained weight from inactivity (*id.* ¶ 11).

C. Taron Jackson

Taron Jackson, a 45-year-old father of three, has been held in the Green Haven SHU since March 12, 2025, where he is confined to his cell 23–24 hours a day. (Ex. 22, Jackson Aff. ¶¶ 1–2, 5, 12).

Mr. Jackson is eager to take programs to support his family after release but has been offered none (*id.* ¶ 8). DOCCS offers him one hour of daily recreation but forces him to choose between recreation and evening phone calls with his children (*id.* ¶ 9). Because he chooses the latter, his only out-of-cell time is ten-minute showers three times a week (*id.* ¶¶ 10–12).

Mr. Jackson has mental illness, but mental health treatment is limited to brief cell-front visits within earshot of others (*id.* ¶ 13). In SHU, he has suffered insomnia, nightmares, and a growing sense of despair, saying he feels like he’s “going crazy” (*id.* ¶ 14).

D. Michael Williams

Michael Williams, 25 years old, has been held in the RRU at Greene Correctional Facility since March 18, 2025. (Ex. 23, Williams Aff. ¶¶ 1, 6). Before that, he was in the Greene SHU (*id.* ¶ 6). He is typically locked in his cell 24 hours a day (*id.* ¶ 11).

His only “recreation” occurs in a small portion of his cell known as a “rec pen,” where he is surrounded by brick walls on three sides with a caged wall at the rear, cutting off all human interaction (*id.* ¶ 13). He can access this pen for one hour a day at most (*id.*). Mr. Williams has been offered no programming in SHU or RRU (*id.* ¶¶ 7, 13). He is diagnosed with PTSD, depression, and anxiety, and the isolation has caused his mental health to deteriorate to the point of self-harm and suicidal ideation (*id.* ¶ 17).

E. Saiwon Robbins

Saiwon Robbins, a 28-year-old man, has been confined in the Mid-State RRU since around March 19, 2025, following time in the SHU and another disciplinary unit. (Ex. 24, Robbins Aff. ¶¶ 1, 6). Since February 9, he has been locked in his cell 23–24 hours a day without programming (*id.* ¶¶ 5, 7, 9, 15–16).

Mr. Robbins, who has PTSD and anxiety, has experienced severe mental health deterioration under these conditions (*id.* ¶¶ 4, 8, 12, 19). He has had suicidal thoughts, feels paranoid, and struggles to maintain self-control (*id.* ¶ 8, 12, 19). He has not seen his mental health counselor since January (*id.* ¶ 18).

F. Kariem Tomlin

Kariem Tomlin, a 46-year-old man, is housed in general population at Clinton Correctional Facility but has been confined in his cell 21.5–24 hours a day since the strikes began. (Ex. 25, Tomlin Aff., ¶¶ 1–2, 4–8).

Mr. Tomlin is eager to earn his GED and learn a trade, but DOCCS has denied him programming (*id.* ¶ 9). His only out-of-cell time is for brief meals and up to two hours of recreation (*id.* ¶¶ 5–7).

The isolation has left Mr. Tomlin feeling mentally checked-out. He struggles with restlessness, talks to himself, and has noticed rising tension and conflict in his unit due to widespread isolation (*id.* ¶ 10).

ARGUMENT

The Suspension departs so markedly from HALT’s text and legislative intent as to warrant relief on several interrelated claims under Article 78. Article 78 permits a court to inquire whether agency decision-making is “affected by an error of law,” “arbitrary and capricious,” or “an abuse of discretion”; and whether it reflects the agency’s “fail[ure] to perform a duty enjoined . . . by law” (CPLR 7803[1], [3]). Petitioners and the class are entitled to relief from the Suspension under each of these provisions.

I. Blanket, Potentially Indefinite Suspension of HALT’s Limits on Segregated Confinement Is Irrational.

DOCCS’s sweeping suspension of HALT’s limits on segregated confinement, based on an overbroad invocation of CL § 2[23]’s “facility-wide emergency” exception, reflects textbook irrationality and cannot survive arbitrary-and-capricious review.

Under the HALT Suspension, DOCCS asserts authority—based on “ongoing emergency and exigent circumstances” it claims “exist within each facility”—to override typical limits on segregated confinement for at least 90 days (Ex. 16, March 8 Agreement § 1[a]). In other words, DOCCS claims the right to impose profoundly isolative confinement, typically reserved for the most serious disciplinary infractions and limited to 15 consecutive days, on *every* class member in the state—including thousands of individuals not accused of *any* misconduct—for *at least* three months (*see* Ex. 18, April 4 Discovery, 4).

This remarkable assertion of agency authority cannot pass muster under Article 78. Article 78 permits a court to review whether administrative action is “arbitrary and capricious” (CPLR 7803[3]). That review centers on the reasonableness—or rationality—of agency decision-making (*see Koppersmith v Dowling*, 93 NY2d 90, 96 [1999]; *see also Pell v Bd. of Educ. of Union Free Sch. Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County*, 34 NY2d 222, 231 [1974] [“Arbitrary action is without sound basis in reason and is generally taken without regard to the facts.”]). DOCCS’s sweeping invocation of CL § 2[23]’s emergency exception is unreasonable in several ways, any of which justifies annulling the Suspension (*see id.*).

First, DOCCS cannot reasonably rely on current conditions at its facilities to justify overriding HALT’s protections for *three months or more*. DOCCS is not without discretion to pause typical limits on cell confinement in the event of a true, “facility-wide emergency” (CL § 2[23]). But that discretion is not boundless, and DOCCS may invoke it only “with a sound basis in reason” and “regard to the facts” (*Pell*, 34 NY2d at 231). Because DOCCS cannot reliably predict highly fluid and variable conditions months in advance, the preemptive decision to override HALT’s limits for at least 90 days is arbitrary and capricious (*see Motor Veh. Mfrs. Assn. of U.S., Inc. v State Farm Mut. Auto. Ins. Co.*, 463 US 29, 43 [1983] [requiring a “rational connection between the facts found and the choice made” [citation omitted]]).

Second, DOCCS has distorted the nature of the “facility-wide emergency” in question, opening the door to a potentially *indefinite* circumvention of HALT. In first announcing the Suspension, DOCCS cited Governor Hochul’s EO declaring a state of emergency specifically—and exclusively—“arising from an illegal and unlawful strike by correction officers” (Ex. 11, February 20 Memo; Ex. 8, EO 47). Yet by the time of DOCCS’s negotiations with NYSCOPBA, the agency had identified a new, broader purported emergency: a “significant staffing deficit that existed *prior*

to the illegal strike” (Ex. 14, March 6 Agreement § B; Ex. 16, March 8 Agreement § 1[a] [emphasis added])).

NYSCOPBA has complained of staffing shortages for years (*see e.g.* Ex. 26, Jimmy Viel-kind, *NYSCOPBA Claims Prisons are Bursting*, Times Union [Jul. 23, 2012]; Ex. 27, NYSCOPBA Executive Vice President, The Independent at 3 [Winter 2018-2019] [“Staffing shortages continue to plague us.”]). Whatever the legitimacy of those complaints,⁷ Respondent’s newfound reliance on a chronic, pre-strike staffing shortage to justify the Suspension stretches CL § 2[23]’s emergency exception beyond reason and is not entitled to deference (*see Indus. Indem. Co. v Cooper*, 81 NY2d 50, 54 [1993] [recognizing interpretations that are “unreasonable, irrational or contrary to the clear wording of the statute” are not afforded deference]).

Under basic principles of statutory interpretation, DOCCS must give effect to the unambiguous meaning of Section 2[23]’s text (*see People v Floyd J.*, 61 NY2d 895, 896 [1984]). DOCCS’s own interpretation of the term “emergency” in the statute is not entitled to deference (*see Grube v Bd. of Educ. Spencer-Van Etten Cent. Sch. Dist.*, 194 AD3d 1222, 1224 [3d Dept 2021]). “Emergency” plainly refers to sudden, unforeseen circumstances requiring immediate action, not to chronic, longstanding conditions like a persistent staffing shortage (*see Emergency*, Merriam-Webster.com Dictionary, <https://www.merriam-webster.com/dictionary/emergency> [defining “emergency” as “an unforeseen combination of circumstances or the resulting state that calls for immediate action”]); *Emergency*, Black’s Law Dictionary [11th ed 2019] [“An unforeseen combination of circumstances that calls for immediate action”]). Such conditions, however serious, are by nature foreseeable and manageable through ordinary planning, not emergency powers (*see*

⁷ New York has one of the most richly staffed prison systems in the nation. As of March 2025, New York prisons had approximately double as many officers per incarcerated person as the national average of state prisons, and *five times* as many as federal prisons. (Ex. 28, DOCCS Fact Sheet March 2025; Ex. 29, Census of Correctional Facilities 2019.)

e.g. Jensen v Shinn, No. CV-12-00601-PHX-ROS, 2023 WL 431819, at *6 [D Ariz 2023] [“Failure to hire or retain adequate [prison] staffing is not an emergency situation.”]).

Because DOCCS’s purported staffing shortfall pre-dates the strike and likely will persist long-term, the agency’s effort to recast it as an “emergency” justifying the Suspension threatens an indefinite circumvention of HALT. Such an interpretation of CL § 2[23] is irreconcilable with the Legislature’s obvious goal in enacting HALT: to impose enforceable constraints on the use of segregated confinement (*see Patrolmen’s Benevolent Assn. v City of NY*, 41 NY2d 205, 208 [1976] [“It is fundamental that a court, in interpreting a statute, should attempt to effectuate the intent of the Legislature”] [citations omitted]). The Legislature presumably enacted HALT with full knowledge of DOCCS’s pre-strike staffing challenges and did not intend to create an expansive loophole permitting DOCCS to nullify the statute’s core protections (*Farrington v Pinckney*, 1 NY2d 74, 88 [1956] [recognizing Legislature is presumed to act “[with] full knowledge of the facts”]).

Third, DOCCS’s invocation of the emergency exception on a systemwide basis defies the statute’s plain text. The Legislature specifically limited the exception to “*facility-wide* emergencies,” signaling that any emergency must be tied to conditions within a particular facility, not imposed on a blanket, statewide basis. Yet DOCCS summarily asserts, without meaningful explanation, that an emergency exists “within each facility” across the state (Ex. 16, March 8 Agreement, 1). The Suspension’s lack of grounding in concrete, localized conditions falls short of the requirement that agency action be both “reasonable and *reasonably explained*” (*New York v Wolf*, No. 20-CV-1127-JMF, 2020 WL 6047817, at *5 [SD NY 2020] [emphasis added] [citation omitted]). Without a coherent, facility-specific explanation, a court cannot evaluate the legitimacy of

DOCCS's invocation of CL § 2[23]'s "facility-wide emergency" exception at any particular facility (*see Montauk Improvement, Inc. v Procaccino*, 41 NY2d 913, 914 [1977] [recognizing agency's failure to explain basis for decision "forecloses the possibility of fair judicial review"]; *Off. Bldg. Assocs. v Empire Zone Designation Bd.*, 95 AD3d 1402, 1405 [3d Dept 2012] [similar]). This alone justifies annulment of the HALT Suspension (*see State Farm*, 463 US at 48 ["We have frequently reiterated that an agency must cogently explain why it has exercised its discretion in a given manner[.]"]).

Fourth, DOCCS has "entirely failed to consider an important aspect of the problem" the HALT Suspension was purportedly implemented to solve. Though ostensibly intended to promote safety, it is foreseeable—obvious, even—that isolating thousands of people throughout New York's prison system for months on end will instead exacerbate unrest while harming class members (*see* Ex. 1, HALT Assembly Mem. [citing "positive benefits in terms of safety and decreased violence"]). The Court need not look far to appreciate the crushing toll that months of prolonged cell confinement will take on class members (*see e.g.* Ex. 23, Williams Aff. ¶ 17 [describing worsening mental health and suicidal ideation]; Ex. 21, Leslie Aff. ¶ 11 [describing depression and anxiety]; Ex. 30, Cox Aff. ¶ 11 ["I feel like I am losing my mind."]). And this is especially true for vulnerable groups, including people with mental illness, who are no longer protected from segregated confinement under the Suspension (*see e.g.* Ex. 31, Rivera Aff. ¶ 16 ["I have been diagnosed with multiple mental health conditions, and being alone makes all of them worse.])). DOCCS's failure to grapple with harms the Legislature sought to avoid in passing HALT is irrational.

II. Suspending HALT's Mandatory Programming Requirements Violates the Statute's Plain Language

The Suspension also violates mandatory programming requirements in segregated confinement and RRUs (*see* CL § 137[6][j][ii]). Article 78 permits a court to inquire whether an agency has “faile[d] to perform a duty enjoined . . . by law”; and whether the agency’s decision-making is “affected by an error in law” (CPLR 7803). Relief is warranted under each of these provisions.

An agency “fail[s] to perform a duty ‘enjoined upon it by law[.]’” by violating nondiscretionary requirements of a statute (*see e.g. Meyer v Zucker*, 185 AD3d 1265, 1266 [3d Dept 2020], *lv denied* 36 NY3d 904 [2021]). Courts reviewing for “error of law” inquire whether an agency has properly interpreted or applied a statute (*see NYC Health & Hosps. Corp. v McBarnette*, 84 NY2d 194, 205 [1994]). This is determined based on *de novo* review, without deference to the agency’s interpretation (*see Grube*, 194 AD3d at 1224). The Suspension fails both inquiries.

By dispensing with subsection j[ii]’s mandatory programming requirements, DOCCS has “failed to perform a duty enjoined . . . by law” (CPLR 7803[1]). To succeed on this claim, a party must demonstrate “a clear right to the relief sought” and be seeking the performance of duties that are ministerial and mandatory, not discretionary” (*Meyer*, 185 AD3d at 1266).

The programming requirements in SHU and RRU are mandatory. The plain language of CL § 137[6][j][ii] is unequivocal: Individuals in segregated confinement “shall be offered out-of-cell programming at least four hours per day, including at least one hour for recreation” (CL § 137[6][j][ii]). Individuals in RRU “shall be offered at least six hours of daily out-of-cell programming, services, treatment, recreation, activities, and/or meals, with an additional minimum of one hour for recreation” (*id.*). The Court is constrained by the statute’s plain meaning (*see Floyd J.*, 61 NY2d at 896; *Hernandez v State*, 173 AD3d 105, 111 [3d Dept 2019] [“[T]he clearest and ‘most compelling’ indicator of the drafters’ intent is the language itself[.]”]).

DOCCS has nonetheless dispensed with these requirements, suspending *all programming and recreation* across prisons, including in SHUs and RRUs. Petitioners' experiences confirm this: Petitioners Jackson, Robbins, and Williams have all been denied programming in SHU or RRU and have access to limited or no out-of-cell recreation, even long after the strike has ended (Ex. 22, Jackson Aff. ¶¶ 8–10; Ex. 24, Robbins Aff. ¶¶ 7, 9, 14–15; Ex. 23, Williams Aff. ¶¶ 7–9, 13). Other class members have experienced the same, including one who, despite being held in a unit exclusively for people with serious mental illnesses, has been denied access to all programming for nearly two months (Ex. 31, Rivera Aff. ¶¶ 5–14; *see also* Ex. 30, Cox Aff. ¶¶ 8–10; Ex. 32, Peloquin Aff. ¶¶ 7–9).

DOCCS's apparent justification for dispensing with its obligation rests on a fundamental legal error that also justifies vacatur (CPLR 7803[3]). DOCCS relies on an exception that applies only to a separate requirement of j[ii]: that recreation in RRUs occur in a congregate setting. HALT exempts DOCCS from providing *congregate* recreation in RRUs if “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” (CL § 137[6][j][ii]).

This narrow exception does not give DOCCS discretion to suspend congregate programming besides RRU recreation, much less to suspend *all* programming and recreation entirely. Had the Legislature wanted to include a broader exception, it could have done so. Instead, having enumerated in j[ii] the specific types and amounts of out-of-cell programming and recreation required in segregated confinement and RRU, the Legislature crafted an exception that applied only to recreation in RRU and only specifically to its congregate nature. That should be understood as a deliberate decision by the Legislature (*see Bd. of Educ. of Middle Country Sch. Dist. v Cohalan*, 135 Misc 2d 358, 362 [Sup Ct, Suffolk County 1987] [“The maxim *expressio unius est exclusion*

alterius, the specific mention of one person or thing implies the exclusion of other persons or things, holds true.”)].

By applying j[ii]’s exception to suspend all programming and recreation, DOCCS disregards the Legislature’s mandate, ensuring Petitioners Jackson, Robbins, and Williams, and the class they seek to represent,⁸ will continue to face isolation for 22–24 hours per day in their cells. Because this is precisely the result HALT prohibits, the Suspension reflects both a “fail[ure] to perform a duty enjoined . . . by law” and an “error of law” (CPLR 7803[1], [3]).

III. The HALT Suspension Subverts the Constitutional Separation of Powers.

The Suspension also violates the constitutional separation of powers and is thus “affected by an error of law” (CPLR 7803[3]).

The Constitution provides, “[T]he legislative power . . . shall be vested in the senate and assembly” (NY Const. art. III, s. 1). It also requires the Executive to “take care that the laws are faithfully executed” (*id.*, art. IV, s. 3). “[F]undamental policy choices” are what “epitomize” legislative power (*Saratoga County Chamber of Commerce, Inc. v Pataki*, 100 NY2d 801, 823 [2003]). Meanwhile, the “principal function of the executive is to carry out the laws of the state” (*Oneida County v Berle*, 49 NY2d 515, 523 [1980]). Accordingly, “the Legislature make the critical policy decisions, while the executive branch’s responsibility is to implement those policies” (*Bourquin v Cuomo*, 85 N.Y.2d 781, 784 [1995]).

This “separation of powers doctrine is the bedrock of the system of government adopted by this State” (*Delgado v State*, 39 NY3d 242, 255 [2022] [quotation marks omitted]). It has “deep, seminal roots in the constitutional distribution of powers among the three coordinate branches of

⁸ These petitioners seek to represent the Special Confinement Class, comprised of people in disciplinary confinement and similar settings where j[ii]’s requirements apply (*see* Petition, ¶¶ 172–77).

government” and is of fundamental importance (*Cohen v State*, 94 NY2d 1, 11 [1999]). Indeed, “history teaches that a foundation of free government is imperiled when any one of the co-ordinate branches absorbs or interferes with another” (*Oneida County*, 49 NY2d at 522). “It is not merely for convenience in the transaction of business that they are kept separate by the constitution, but for the preservation of liberty itself” (*People ex rel. Burby v Howland*, 155 NY 270, 282 [1898]).

The separation of powers requires the executive branch to “implement policy declarations of the Legislature, unless vetoed or judicially invalidated” and not to “override enactments which have emerged from the lawmaking process” (*Oneida County*, 49 NY2d at 523). But Respondent has overridden HALT, violating the separation-of-powers doctrine in two closely related ways. First, he has impermissibly made policy, invading the exclusive realm of the Legislature. Second, he has shirked the constitutional duties of the executive branch by refusing to implement, and thus nullifying, HALT. Because the State Constitution does not permit such overreach, this Court must vacate the HALT Suspension.

A. The HALT Suspension Usurps the Legislature’s Policymaking Authority.

The HALT Suspension is an illegal act of executive policymaking. The separation of powers “require[s] that no one branch be allowed to arrogate unto itself powers residing entirely in another branch” (*Under 21 v City of NY*, 65 NY2d 344, 356 [1985]). Thus, when the executive branch engages in policymaking, it acts *ultra vires*, and such policies must be vacated (*Saratoga County*, 100 NY2d at 822). The Court of Appeals has identified four factors to consider when inquiring whether an agency has transgressed the “difficult-to-define line between administrative rule-making and legislative policy-making” (*Boreali v Axelrod*, 71 NY2d 1, 11 [1985]). The *Boreali* factors are “overlapping, closely related factors that, taken together, support the conclusion that an agency has crossed th[e] line [into legislative territory]” (*NY Statewide Coal. of Hispanic*

Chambers of Commerce v NYC Dept. of Health & Mental Hygiene, 23 NY3d 681, 696–97 [2014]).

Here, they show why the Suspension is unconstitutional.

First, the Suspension “entailed difficult and complex choices between broad policy goals” rather than merely “balancing costs and benefits according to preexisting guidelines” set by the Legislature (*id.* at 698). There are at least three different “broad policy goals” intertwined in the decision to suspend core elements of HALT. HALT was designed to “make New York’s prison and jail practices more humane” (Ex. 1, HALT Assembly Mem.). Meanwhile, the March 8 Agreement states that it was designed to address “concerns regarding employee safety and quality of working life inside DOCCS facilities” (Ex. 16, 1). The Governor’s press release announcing the Suspension cites yet another motivating concern: “public safety” and “making our prisons safer for all” (*see* Ex. 17).

Through the Suspension, Respondent prioritizes his notion of what will serve “employee safety and quality of working life” over the Legislature’s stated concern about humane treatment of incarcerated people and ignores the Legislature’s determination that limiting isolation *improves* safety (*see* Ex. 1, HALT Assembly Mem. [discussing “positive benefits in terms of safety and decreased violence”]). The Suspension thus “reflect[s] a choice between competing public policy interests, rather than mere implementation of the Legislature’s chosen goal” (*LeadingAge NY, Inc. v Shah*, 32 NY3d 249, 269 [2018]). Such “broad question[s] of policy” in areas of “public concern” are “hardly resolvable by other than the representatively elected lawmaking branch of government, the Legislature” (*Rapp v Carey*, 44 NY2d 157, 159, 165 [1978]). Because Respondent has “cho[sen] between public policy ends” and engaged in “complex value judgments,” the first *Bo-reali* factor is met, indicating that Respondent has “engaged in law-making” beyond his authority (*Hispanic Chambers of Commerce*, 23 NY3d at 699).

Second, the Suspension creates its own rule “without the benefit of legislative guidance,” writing on a “clean slate” rather than filling in blanks the Legislature has left (*id.* at 692). As noted above, *supra* pp. 11–13, while HALT does provide some discretion to DOCCS in the case of a true “facility-wide emergency,” DOCCS is not responding to such an emergency in maintaining a systemwide, 90-day or indefinite suspension of the law. Rather, DOCCS has attempted to write a new exception into the law: that widespread, long-term isolation is permissible in the case of a chronic staffing shortage. But there is no such exception in the text of HALT. Rather, this new exception was invented by Respondent when he announced the Suspension, “bereft of legislative guidance” (*Ahmed v City of NY*, 44 Misc3d 228, 233 [Sup Ct, NY County 2014]). Accordingly, Respondent has “create[d] out of whole cloth the very policy [he] seeks to implement,” and has thus “overstepped [his] authority,” fulfilling the second *Boreali* factor (*Matter of Vapor Tech. Ass’n v Cuomo*, 66 Misc3d 800, 806 [Sup Ct, Albany County 2020]).

Third, there was no “special expertise or technical competence . . . involved in the development” of the Suspension (*Hispanic Chambers of Commerce*, 23 NY3d at 701). Under this factor, “a court might be alerted to the broad, policy-making intent” of an executive action when the action is taken “with very little technical discussion” (*id.*). As noted above, *see supra* pp. 13–14, none of DOCCS’s various statements describing the Suspension analyze why any particular facility cannot safely operate in compliance with HALT. Instead, they simply assert—without analysis or evidence—that this is true for every facility, even in the face of evidence that solitary confinement is harmful to public safety, and that *reducing* its use improves safety in prisons (*see e.g.* Kristen Zgoba et al., *Assessing the Impact of Restrictive Housing on Inmate Post-Release Criminal Behavior*, 45 Am. J. of Crim. Justice 102 [2020]; Ex. 1, House Assembly Mem.) The “record is

devoid of any specialized expertise having been necessary in the crafting” of the Suspension (*Vapor Tech*, 66 Misc3d at 808), thus fulfilling another *Boreali* factor.

Finally, the remaining *Boreali* factor “relates to whether the challenged rule governs an area in which the Legislature has repeatedly tried to reach agreement in the face of substantial public debate” (*Hispanic Chambers of Commerce*, 23 NY3d at 692). A years-long debate resulted in the passage of HALT by supermajorities of 42–21 in the Senate and 101–49 in the Assembly (Senate Actions on 2021-2022 Senate Bill S2836; Assembly Actions on 2021-2022 Assembly Bill A2277A). Although opponents have proposed bills seeking to repeal HALT—each of which, if passed, would have eliminated the same reforms the Suspension has effectively undone—every such bill has failed (Senate Actions on 2021-2022 Senate Bill S9378; Assembly Actions on 2021–2022 Assembly Bill A10593; Senate Actions on 2023–2024 Senate Bill S3035; Assembly Actions on 2023-2024 Assembly Bill A3196). Indeed, on February 24, 2025, the Senate rejected a hostile amendment aimed at HALT’s repeal, thus declining to roll back HALT’s protections even at the height of the officers’ strike (Ex. 33, Jimmy Vielkind, *N.Y. Orders Prison Guards Back to Work*, *Gothamist* [Feb. 25, 2025]). DOCCS has not merely created a policy where the Legislature had not. Rather, the Legislature *did* reach an agreement on how solitary confinement should be limited, which it reaffirmed in the face of the strike. Nevertheless, Respondent has unlawfully nullified that legislative mandate, a far graver invasion of the Legislature’s domain than typical executive overreach.

The *Boreali* factors thus demonstrate that the Suspension is a “usurpation of the legislative function” that “cannot receive judicial sanction” (*Oneida County*, 49 NY2d at 523). As the Court of Appeals has done several times before in analogous circumstances, the Court here should find that Respondent’s actions crossed the boundary from permissible executive implementation into

unconstitutional policymaking, and must therefore be vacated (*see e.g. Saratoga County*, 100 NY2d 801 [overturning compact permitting legal gambling]; *Rapp*, 44 NY2d 157 [vacating EO limiting political activity by public employees]; *LeadingAge*, 32 NY3d 249 [vacating regulation limiting health care executive compensation]; *Oneida County*, 49 NY2d 515 [overturning impoundment of funds set aside by Legislature for local sewage treatment]).

B. The HALT Suspension Nullifies a Duly Enacted Law.

The Suspension not only makes policy, which alone is impermissible, but also makes a policy choice that conflicts with one already made by the Legislature. The Suspension thus implicates yet another separation-of-powers concern: failure to execute a duly enacted law, or in other words, impermissible nullification of HALT.

In passing HALT, the Legislature made a clear policy choice: incarcerated New Yorkers would no longer be held in prolonged isolation (*see* Ex. 1, HALT Assembly Mem. [explaining that, pre-HALT, “people routinely suffer[ed] in segregated confinement” and “this bill takes up the growing call to limit segregated confinement and provide more humane and effective alternatives”]). The law set forth specific requirements to ensure that its policy goal was met: hard durational limits on segregated confinement, and categorical exclusion of vulnerable populations from the practice (CL §§ 137[6][h], [i][i], [k][i]). HALT did give DOCCS discretion to depart from these limits temporarily in extraordinary circumstances, but these minimal exceptions did not contemplate a wholesale, long-term erasure of the law’s core protections (*supra*, pp. 11-13, 15-17). The Legislature believed each of these protections, and the existence of only minimal exceptions to accompany them, was necessary to prevent the “tremendous harm caused by massive isolation of thousands of incarcerated persons” (Ex. 1, HALT Assembly Mem.).

The executive branch is “duty bound” to execute the laws the Legislature passes. (*Oneida County*, 49 NY2d at 523). Indeed, “a failure to fulfill this obligation violates the unequivocal command of the Constitution” (*id.*). Here, DOCCS has confirmed it will ignore core requirements of HALT for three months, if not longer, exceeding the limited discretion provided in the statute. The Court of Appeals has not hesitated to strike down purported “implementation[s]” of laws that in fact “nullif[y] . . . without [the] benefit of legislative action” (*Rapp*, 44 NY2d at 164–65). Vacatur of such executive overreach is not only permissible, but necessary, because the “separation [of powers] is violated” where “the Executive acts inconsistently with the Legislature” (*Clark v Cuomo*, 66 NY2d 185, 189 [1985]).

The breadth of authority Respondent has claimed leaves no doubt that the Suspension nullifies the law. DOCCS explicitly claims “the legal authority to hold any incarcerated individual in cell confinement for more than seventeen hours a day” (Ex. 18, April 4 Discovery, at 4). Thus, neither HALT’s 15-day limit on isolation nor its ban on the isolation of vulnerable populations are in effect today. Nor will they be for as long as DOCCS claims an “ongoing staffing crisis” (*id.*), an indefinite period that could last months or even years. In essence, DOCCS has commandeered authority to return for the foreseeable future to its pre-HALT isolation practices—practices the Legislature banned due to the massive harm they cause.

The reality of class members’ daily lives demonstrates just how fully the Suspension has corroded HALT’s protections. Although the strike has been over for more than a month, people in DOCCS custody are still spending as many as 24 hours a day locked in their cells, with little to no meaningful human interaction (*see e.g.* Ex. 22, Jackson Aff. ¶ 12; Ex. 34, Hill Aff. ¶ 5; Ex. 24, Robbins Aff. ¶¶ 15–16). They are denied access to the programs they need for their mental health and rehabilitation, in which they are eager to participate (*see e.g.* Ex. 31, Rivera Aff. ¶¶ 6–9; Ex.

22, Jackson Aff. ¶ 8; Ex. 23, Williams Aff. ¶¶ 7–8, 13). All of this results in serious mental, emotional, and physical harm that HALT was meant to prevent (*see e.g.* Ex. 28, Cox Aff. ¶ 11 [“Being enclosed in my cell all the time gives me anxiety and makes me feel claustrophobic.”]; Ex. 25, Tomlin Aff. ¶ 10 [“It’s bad for you mentally when you don’t have goals and things to do or ways to interact.”]; Ex. 20, Smalls Aff. ¶ 12 [“It makes you want to go crazy. It absolutely kills my creativity and my spirit.”]). And Respondent openly permits this, in direct contravention of the Legislature’s intent. This is not a valid exercise of discretion, but a derogation of the Executive’s primary duty: to faithfully implement the laws of this State. Accordingly, this Court must vacate the HALT Suspension.

CONCLUSION

For all these reasons, the Court should grant the petition.

Dated: April 17, 2025
New York, New York

Respectfully submitted,

THE LEGAL AID SOCIETY
PRISONERS’ RIGHTS PROJECT
/s/ Antony P. F. Gemmell
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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 6,996 words according to the word-count function in Microsoft Word, the word processing program used to prepare this document.

Dated: April 17, 2025
New York, New York

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

EXHIBIT 20

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,

Defendants-Respondents.

Index No. _____

**AFFIRMATION OF ALFONSO
SMALLS**

STATE OF NEW YORK

COUNTY OF GREENE, ss.

I, Alfonso Smalls, affirm this 10th day of April, 2025, under the penalties of perjury under the laws of New York, which may include a fine or imprisonment, that the following is true, and I understand that this document may be filed in an action or proceeding in a court of law:

1. My name is Alfonso Smalls. I am 29 years old, and am originally from Harlem, New York.

2. I have been incarcerated by DOCCS since 2018 and am currently confined in a cell in general population at Coxsackie Correctional Facility. I have been here since around August 28, 2024.

3. I submit this statement to describe my experience in segregated confinement after the DOCCS prison officers went on strike in February 2025.

4. During the strike, we were on lockdown for about two and a half weeks. Programming and recreation stopped completely. Rather than going to the mess hall for chow, National Guard officers brought meals, which were cold, to my cell. And during the entire length of the lockdown during the strike, I think I took a total of three eight-minute-long showers. Otherwise, I was locked in my cell completely all day from the time I woke up to the time the lights went out with no way to physically leave my cell. Also, the wi-fi was turned off at certain times so I wasn't able to reach out to my family to tell them what was happening to me during this strike.

5. When I tried to ask the sergeants to let me out, they would ignore me. They wouldn't allow me to go to the mess hall. They would walk right past me or speak to me with hostile language. Sometimes, when I asked for mental health attention, the sergeants ignored me, too.

6. Even now that the strike has ended, things are not back to normal at all. It's still way more restrictive than before the strike.

7. In total, I can go out of my cell for between about 90 minutes to an hour and 45 minutes a day, depending on if I am offered a shower.

8. Since the strike ended, we're offered rec for about 45 minutes every other day.

9. I can also leave my cell for a shower, which lasts no more than 15 minutes, every other day.

10. Guards are taking us to the mess hall again, but we are only getting eight minutes to eat each of our meals. I want to be able to eat my food, not choke on it.

11. I haven't been offered programming since the strike began and we've been told programs are suspended until further notice.

12. The isolation is very stressful. Being in my cell all day affects my mind. It makes you want to go crazy. It absolutely kills my creativity and my spirit. I feel more short-tempered now because I'm in my cell more than ever with no other outlets. It is claustrophobic. Sometimes, I am in my cell, and I want to harm myself just to be able to go somewhere else. Some people do not have anyone to speak to or a way to distract their mind. I am grateful that I am able to at least communicate with my brother and sister.

13. If I could get more time for recreation, I would take it. It would make me feel good. Recreation is an outlet to relieve stress. I want to feel the sun, breathe the fresh air, play basketball, work out, walk around, and chill. The strike affected me physically. I gained weight during it. I think I have gained about ten or fifteen pounds since the strike started.

14. If I could get more programming, I would go. Programs are a way to interact with other incarcerated individuals, learn new things that can help me reenter society, and not have my mind locked in my cell just thinking 24/7. I have a hard time turning off my mind. I have trouble sleeping and pace back and forth in my cell. Programs would make that a lot better for me. I also need programming because I am close to my conditional release date. When I ask officers about programming and time cuts, it seems like nobody knows when programming is going to come back. We are all wondering. I want to go back to my regular schedule. I am also in fear of the guards going back on strike.

15. I want this class-action lawsuit to stop DOCCS from using the officers' strike or DOCCS's claims that it does not have enough officers on staff as an excuse to keep me and others in segregated confinement. I think it is unfair that DOCCS has decided not to follow parts of HALT, and I think DOCCS should be required to follow the law.

16. I have spoken with attorneys at the Prisoners' Rights Project of The Legal Aid Society about what it means to be a class representative, and I have decided that I want to take on that role if the Court will permit me to do so.

17. I know that being a class representative is not just about my case but also involves representing other incarcerated people who are harmed by the HALT suspension challenged in this lawsuit. I do not want myself or anyone else in DOCCS's custody to experience segregated confinement or lose programs because of the HALT suspension.

18. I am making this affirmation to show my interest in serving as a class representative in this lawsuit to represent other people who are also in segregated confinement because of the HALT suspension.

19. I am aware that I am asking the Court to allow me to represent other people in situations similar to mine, and I am willing to remain in this lawsuit until it's over.



Alfonso Smalls

Dated: 4/10, 2025

EXHIBIT 21

**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,

Defendants-Respondents.

Index No. _____

AFFIRMATION OF JEROME LESLIE

STATE OF NEW YORK

COUNTY OF WESTCHESTER, ss.

I, Jerome Leslie, affirm this 7th day of April, 2025, under the penalties of perjury under the laws of New York, which may include a fine or imprisonment, that the following is true, and I understand that this document may be filed in an action or proceeding in a court of law:

1. My name is Jerome Leslie. I am 28 years old.

2. I have been incarcerated by DOCCS since 2016. Since approximately November 2023, I have been incarcerated at Sing Sing Correctional Facility. I am currently housed in a cell in a general population unit.

3. I write this affirmation to explain some of the conditions I have faced in my unit since the officers went on strike.

4. In my unit, recreation alternates between morning and night. One day it will be in the morning and the next day it will be at night. Most of the time, recreation is only about 1 hour

per day. Sometimes it takes so long to arrange the outdoor recreation that I can only be out there for 20 or 30 minutes.

5. There is limited programming available in my unit, but I don't get to go. They say I am on the waitlist for the college program, which is currently running three days a week for certain students. I am also on the waitlist for ART and ASAT.

6. I have jobs here working in laundry and sanitation. These jobs allow me to leave my cell sometimes. I usually leave my cell to do my jobs for about one hour or less per day. This includes the time I am out of cell to take a shower, which I am permitted to do each day after my sanitation duties.

7. Sometimes my job duties take place at the same time as recreation, so I miss recreation because I have to do my job. On those days, I have to spend even more time in my cell.

8. Aside from my recreation and my jobs, the only other time I'm allowed to leave my cell on a normal day is for chow. Each of these three meals are extremely rushed and last around ten minutes each.

9. On most days, I am only able to leave my cell for about three hours. For the other 21 hours, I am in my cell.

10. I am currently housed in a cell with solid walls and a barred front. My cell has a toilet and sink. It does not have a rec pen attached to it and it does not have a window. Through the bars of my cell, I can see, across the gallery walkway and at some distance on the building wall opposite, a window that overlooks the recreation area. I do not have a cell mate. I can hear others across the gallery and there is constant noise.

11. Spending so much time in my cell makes me feel depressed, and like I should just sleep all day. It also makes me anxious and being idle makes it easier to get stuck on negative thoughts. I feel like I have gained weight as a result of being locked in my cell so much and not being able to exercise enough. Exercise also is good for my mental health so I am missing that benefit, too.

12. If I were offered more time out of cell, I would take it. I want to complete ART and ASAT, especially because I need these for entry into the Family Reunion Program, which I applied for in December so I can spend time with my wife and son. I also want to complete the college program, because I already obtained my GED while in custody and I want to continue my education. I would also attend Narcotics Anonymous, which before the strikes I attended at night in the school building. Finally, I would exercise more and play more basketball.

13. I am worried that even if things get better, DOCCS could take away recreation or programming again. I know from experience, including what is going on now, that DOCCS can give and take away time out of your cell, down to nothing, on its whim.

14. I want this class-action lawsuit to stop DOCCS from using the officers' strike or DOCCS's claims that it does not have enough officers on staff as an excuse to keep me and others in segregated confinement. I think it is unfair that DOCCS has decided not to follow parts of HALT, and I think DOCCS should be required to follow the law.

15. I have spoken with attorneys at the Prisoners' Rights Project of The Legal Aid Society about what it means to be a class representative, and I have decided that I want to take on that role if the Court will permit me to do so.

16. I know that being a class representative is not just about my case but also involves representing other incarcerated people who are harmed by the HALT suspension challenged in

this lawsuit. I do not want myself or anyone else in DOCCS's custody to experience segregated confinement because of the HALT suspension.

17. I write this affirmation to show my interest in serving as a class representative in this lawsuit to represent other people who are also in segregated confinement because of the HALT suspension.

18. I am aware that I am asking the Court to allow me to represent other people in situations similar to mine, and I am willing to remain in this lawsuit until its conclusion.



Jerome Leslie

Dated: APRIL 7, 2025

EXHIBIT 22

**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. _____

AFFIRMATION OF TARON JACKSON

STATE OF NEW YORK

COUNTY OF DUTCHESS, ss.

I, Taron Jackson, affirm this 14th day of April 2025, under the penalties of perjury under the laws of New York, which may include a fine or imprisonment, that the following is true, and I understand that this document may be filed in an action or proceeding in a court of law:

1. My name is Taron Jackson. I am 45 years old and am originally from the Bronx, New York, and I was living in Queens before my arrest. I am married and have three sons, ages 8, 11, and 18.

2. I have been incarcerated by DOCCS since 2020 and am currently confined in the Special Housing Unit (“SHU”) at Green Haven Correctional Facility.

3. I submit this statement to describe my experience in segregated confinement after the DOCCS prison officers went on strike in February 2025.

4. I was transferred to general population at Green Haven around January 2023 as a proximity transfer, to be closer to my family. Earlier in my time in DOCCS custody, I was in the honor block at Great Meadow Correctional Facility. The honor block is a place for people who

are trying to do what they need to do to better themselves and get home. You need to stay out of trouble for a long time to get there, and that's what I did. I also participated in DOCCS' Family Reunion Program, which allowed my wife and children to stay with me over the weekend.

5. I have been in the SHU at Green Haven since March 12, 2025, when I received a disciplinary infraction. I received a sanction of 60 days of disciplinary confinement for the infraction.

6. I feel like I'm being treated like an animal in the SHU. The meals they feed us are freezing cold, like they have been sitting outside. Since I have been in the SHU, there has only been one day that I had hot meals, which was after incarcerated individuals in the SHU protested about receiving cold food. I think I have lost about 8 or 10 pounds.

7. The water in the SHU is also horrible. I think it has bacteria in it. Officers have told me not to drink it, but I have no choice. I either drink the water or pass out from dehydration.

8. In the SHU, officers have not offered me any out-of-cell programming. I really want to do programs. Programs only help you. Programs educate me and will help me to be able to help my family financially when I get home. Also, if I can further educate myself, I can further educate my kids. Programs also help you get home as soon as possible.

9. In the SHU, officers offer me only about one hour of out-of-cell recreation each day. But the officers tell us that if we go to recreation, we can't use our tablets to make phone calls after 5 p.m. that day. I don't know if this is a real rule or one the officers made up. Without phone access after 5 p.m., I can't speak to my kids when they come home from school, so I choose not to go to recreation. If I did not have to make this choice, I would go more often because I would like some more fresh air.

10. Because I prioritize speaking with my family, I have only gone to recreation one time since I have been in the SHU. The rec yard is about 50 or 60 square feet with four tall concrete brick walls. You can look up and see the sky but you can't see over the walls. There's a bench in the space, but nothing else. The one time I was there, three other incarcerated people were there with me.

11. Other than to go to the rec yard, officers let me leave my cell three times a week to take a 10-minute shower. The officers bring me to and from the shower in handcuffs.

12. Other than rec and the shower, there is no other time I am permitted to leave my cell on a regular basis. As a result, I am usually in my cell for between 23 and 24 hours a day.

13. I suffer from depression and might be bipolar too. We don't talk about things like that where I'm from. I'm just starting to open up about them. When I first got to the SHU, I was speaking to a counselor about my mental health, but he talked to me through my cell in front of everybody. There was no privacy, so I could not talk about real issues. I don't want to open up in front of everybody like that, so I stopped speaking with him about two weeks ago.

14. My mental health is suffering in the SHU. Before I got here, I could interact with people face to face and do more human things. Now I'm basically locked in 24 hours a day. I have more time to think about myself and all the ways this situation is horrible and dire. I have to choose between an hour of sunlight and talking to my wife and kids. I can't go home as soon as I want to because I can't get programs. It's dirty, and there are roaches and big rats. It is painful to think about that all day, every day. It can drive a person crazy, and sometimes I think I might be going crazy in here.

15. I have been sleeping terribly in the SHU. I have a hard time going to sleep, and I wake up in the middle of the night to nightmares. Sometimes I don't want to sleep because I

don't want to have nightmares. People in the SHU also stay up all times at night yelling to each other from their cell gates. That also affects my sleep.

16. To my knowledge, all the other incarcerated people in the SHU at Green Haven, which I think has at least 30 people, are locked in their cells as well. I know this by speaking to other people about the conditions and looking out of my cell. I have also heard people complain that they did not get a full hour of recreation on a certain day.

17. I want this class-action lawsuit to stop DOCCS from using the officers' strike or DOCCS's claims that it does not have enough officers on staff as an excuse to keep me and others in segregated confinement. I think it is unfair that DOCCS has decided not to follow parts of HALT, and I think DOCCS should be required to follow the law.

18. I have spoken with attorneys at the Prisoners' Rights Project of The Legal Aid Society about what it means to be a class representative, and I have decided that I want to take on that role if the Court will permit me to do so.

19. I know that being a class representative is not just about my case but also involves representing other incarcerated people who are harmed by the HALT suspension challenged in this lawsuit. I do not want myself or anyone else in DOCCS's custody to experience segregated confinement or lose programs because of the HALT suspension.

20. I write this affirmation to show my interest in serving as a class representative in this lawsuit to represent other people who are also in segregated confinement because of the HALT suspension.

21. I am aware that I am asking the Court to allow me to represent other people in situations similar to mine, and I am willing to remain in this lawsuit until its conclusion.

A handwritten signature in black ink, appearing to read 'Taron Jackson', written over a horizontal line.

Taron Jackson

Dated: 4-14, 2025

EXHIBIT 23

**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. _____

**AFFIRMATION OF MICHAEL
WILLIAMS**

STATE OF NEW YORK

COUNTY OF GREENE, ss.

I, Michael Williams, affirm this 15th day of April, 2025, under the penalties of perjury under the laws of New York, which may include a fine or imprisonment, that the following is true, and I understand that this document may be filed in an action or proceeding in a court of law:

1. My name is Michael Williams. I am 25 years old.
2. I am originally from Rochester, New York. I have one son, who is six years old, who lives with my family in Rochester.
3. I have been incarcerated by DOCCS since January 7, 2025 and am currently confined in the Residential Rehabilitation Unit (“RRU”) at Greene Correctional Facility.
4. I submit this statement to describe my experience in segregated confinement after the DOCCS prison officers went on strike in February 2025.
5. I have been in disciplinary confinement since February 26, 2025. I believe I am scheduled to be released back to general population around May 18, 2025.

6. From February 26 until March 17, I was in the Special Housing Unit (“SHU”) at Greene. On March 18, I was transferred to the RRU at Greene, where I am now.

7. When I was in the SHU, officers did not offer me any programs.

8. Not having programs caused me to lose my sense of purpose. I couldn’t do anything productive with my time or better myself.

9. In the SHU, officers locked me in my cell for 23 hours each day. For the other hour, they would let me go to the rec yard, where I would be in an outdoor cage. When I went to the rec yard, I was usually by myself in the cage. Sometimes I would not go because I wanted to be around people, and I knew that wouldn’t happen. I thought that if I couldn’t interact with other people, I might as well just stay in my cell.

10. Being in the SHU is pretty hard on your mental health. You’re surrounded by four walls almost all day, except for your one hour at rec, when you’re in a cage. It’s depressing, and it’s also stressful. You’re by yourself all day, not being able to talk to anybody. You can only try to talk to the people in the cells next to you by yelling through the walls. It gets loud when everyone is trying to scream to each other, and it’s hard to rest. I wouldn’t wish this on anybody.

11. In the RRU, I have been locked in my cell for 24 hours every day.

12. I share my cell in the RRU with a bunkie. It’s like having a roommate, but the cell is smaller than a room. I have no privacy at all. That makes me feel exposed. It’s not comfortable having to use the toilet and shower with another man right there next to you. Having to be in the same room with someone, sleep with them, without knowing what they have on their mind is nerve-wracking. You never get the sense of a peace that a person needs.

13. I have not been offered any programs in the RRU. I also have not been given any out of cell recreation. The only “recreation” I get is about one hour of access each day to a semi-

outdoor portion of my cell, attached to the indoor part via a door, which is called a “rec pen.”

While in the rec pen, I am surrounded by brick walls on three sides and on the ceiling. The back of the rec pen is like a cage instead of concrete so I can see outside. Other than my bunkie, I cannot interact with other incarcerated people while I am in my rec pen due to the brick walls between us. On some days, I don’t get access to my rec pen at all.

14. Since I have been in the RRU, officers have let me leave my cell only to take legal calls and visits and go to mental health appointments. In total, I estimate that I have been out of my cell for only about five hours since I got to the RRU.

15. To my knowledge, the other incarcerated people in my area in the Greene RRU have been locked in their cells for 24 hours a day as well. I usually know when an incarcerated person leaves their cell because often the person announces when they are leaving it, and I can also hear officers’ keys jingle and cell doors open. I think there are more than 100 people in the area of the RRU that I am in, and from what I’ve observed, they are in conditions similar to mine.

16. The cells in both the SHU and the RRU are dirty. Officers don’t clean them from the last person who was there before you come in, and they don’t give you the things you need to clean them yourself often enough. We’re lucky if we get to do a cell clean up. This environment is not a place for any human being.

17. I am diagnosed with PTSD, depression, and anxiety and take mental health medication. I think my mental health diagnoses are related to both my parents dying between 2011 and 2017, and other traumatic experiences I have had. Being locked in has made my mental health worse. I cut myself in both the SHU and RRU. The last time I cut myself before being

placed in these units was when my mom died in 2017. In the RRU, not a day goes by that I don't think about taking away my life.

18. If officers offered me programs, I would absolutely do them. I want to use my time here in prison to better myself for the people that I care about, and programs can help me do that. Before I entered disciplinary confinement, I was signed up for a college program. I was also going to start taking other programs, like ART and ASAT. The strike stopped all of that.

19. I'm worried that even if officers start giving me some of my out-of-cell time or programming back, they will just take it away again. Officers can do whatever they want to do to us.

20. I want this class-action lawsuit to prohibit DOCCS from using the strike or DOCCS's claims about a staffing shortage as an excuse to keep me and others in restrictive conditions that HALT wouldn't otherwise allow. I think it is unjust that DOCCS has suspended aspects of HALT and taken away programming, and I think DOCCS should be required to follow the HALT Act.

21. I have spoken with attorneys at the Prisoners' Rights Project of The Legal Aid Society about what it means to be a class representative, and I have decided that I want to take on that role if the Court will permit me to do so.

22. I know that being a class representative is not just about my case but also involves representing other incarcerated people who are harmed by the HALT suspension challenged in this lawsuit. I do not want myself or anyone else in DOCCS's custody to experience segregated confinement or lose programs because of the HALT suspension.

23. I write this affirmation to show my interest in serving as a class representative in this lawsuit to represent other people who are also in segregated confinement because of the HALT suspension.

24. I am aware that I am asking the Court to allow me to represent other people in situations similar to mine, and I am willing to remain in this lawsuit until its conclusion.



Michael Williams

Dated: April 15, 2025

EXHIBIT 24

**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. _____

AFFIRMATION OF SAIWON ROBBINS

STATE OF NEW YORK

COUNTY OF ONEIDA, ss.

I, Saiwon Robbins, affirm this 14th day of April, 2025, under the penalties of perjury under the laws of New York, which may include a fine or imprisonment, that the following is true, and I understand that this document may be filed in an action or proceeding in a court of law:

1. My name is Saiwon Robbins. I am 28 years old, and am originally from Brooklyn, New York.
2. I have been incarcerated by DOCCS since 2019 and am currently confined in the Residential Rehabilitation Unit (“RRU”) at Mid-State Correctional Facility.
3. I submit this statement to describe my experience in segregated confinement after the DOCCS prison officers went on strike in February 2025.
4. I have been diagnosed with mental health conditions including PTSD and anxiety, and the Office of Mental Health (“OMH”) provides me with daily medication for my mental health.

5. On February 9, 2025, when I was incarcerated at Mid-State, I received a disciplinary infraction. I was sanctioned to 90 days of disciplinary confinement. Around April 11, I was informed that my time was cut by 10 days.

6. After I got my infraction, I spent 14 days in the Special Housing Unit (“SHU”) at Mid-State. I was moved to Mid-State’s Step-Down Unit around February 23, 2025, and I was transferred to the RRU around March 19, 2025.

7. I was in the SHU when the strike began. During the strike, officers kept me locked in my cell 24 hours a day. They did not offer me any out-of-cell programming or recreation. Meals were delivered about four or five hours later than normal, and they were cold. My mental health medication was delivered late and, one day, not at all. During that time, officers only let me leave my cell for one 10-minute shower.

8. Being locked in my cell all day made me feel lost. My mental health is different; I really was inside my head and my thoughts. It was horrible. When I’m inside my cell, I see flashes because the light is on all day. I feel like someone is watching me and taking pictures of me. I feel very paranoid.

9. In the Step-Down Unit, officers kept me locked in my cell 24 hours a day. They offered me no out-of-cell recreation or programming. I was not able to leave my cell for anything.

10. My cell in the Step-Down Unit, including the shower in the cell, was filthy. I don’t think it was cleaned after the last person left it. I was given no cleaning supplies. It was cold in the cell, and I didn’t have a jacket or shower shoes because DOCCS lost my property when I was transferred to the SHU.

11. The only “recreation” I got in the Step-Down Unit was access to a semi-outdoor part of my cell, attached to the indoor part through a door, which is called a “rec pen.” In the rec pen, I was surrounded by brick walls on three sides and a high ceiling. The back of the rec pen was like a cage instead of bricks, so I could see outside. I could not see any other incarcerated people when I was inside my rec pen, because of the brick walls. If I wanted to talk to anyone out there, I would have to scream to them. I had to be loud to hear the other person over all the other people screaming and talking. It snowed during that time and my rec pen was full of snow. We had access to our rec pen all day, but it did not feel like recreation in there.

12. In the Step-Down Unit, I was having suicidal thoughts. I needed mental health treatment, but I was getting none. I called the suicide helpline many times to report my suicidal thoughts. The person on the phone would console me and told me to call back again if I needed to. Those conversations helped me in the moment, but every day was the same struggle because I was suffering so much.

13. I was moved to the RRU after the strike ended. But I am still locked in my cell most of the time.

14. Officers have not offered me any programs in the RRU. I would go to programs if I could. I know it would benefit me. In DOCCS programs, they teach me cognitive behavior therapy which helps me. I have some anger issues that CBT can help me with. Doing programs could also cut my time in the RRU and my time in prison. And I could get some prison incentives, like being able to spend some more money at commissary.

15. Around the end of March, officers began to offer us at most one hour, but usually 45 minutes, of out-of-cell recreation. We get rec most days. Rec takes place in a large cage outside. There’s nothing to do in there except stand around and talk to the other people. I don’t

have a jacket or sweater because DOCCS lost my property, so I am freezing cold when I go to rec. But I always go because I want to breathe fresh air.

16. The only other time I can leave my cell is to take a 10-minute shower about two or three times a week. If there are not enough officers, they don't let us take a shower.

17. Since I have been in the RRU, the only times I have left my cell were for rec, showers, four legal calls, for a few minutes for a parole board hearing last month that was rescheduled, and for the legal visit where I signed this affirmation.

18. I haven't seen my OMH counselor since January 2025. That is who I am comfortable speaking with about my mental health. Now other OMH counselors walk by my cell sometimes, but they are not there every day or when you need them.

19. Some days are easier than others. Sometimes you can think hopeful thoughts, like maybe I'll make my board. Most days though my mind is in the cell, trying to figure out a way to get out by presenting good behavior to get a time cut. This RRU is horrible. Sometimes I have to stop myself from bugging out because this is hard living.

20. I want this class-action lawsuit to stop DOCCS from using the officers' strike or DOCCS's claims that it does not have enough officers on staff as an excuse to keep me and others in segregated confinement. I think it is unfair that DOCCS has decided not to follow parts of HALT, and I think DOCCS should be required to follow the law.

21. I have spoken with attorneys at the Prisoners' Rights Project of The Legal Aid Society about what it means to be a class representative, and I have decided that I want to take on that role if the Court will permit me to do so.

22. I know that being a class representative is not just about my case but also involves representing other incarcerated people who are harmed by the HALT suspension challenged in

this lawsuit. I do not want myself or anyone else in DOCCS's custody to experience segregated confinement or lose programs because of the HALT suspension.

23. I write this affirmation to show my interest in serving as a class representative in this lawsuit to represent other people who are also in segregated confinement because of the HALT suspension.

24. I am aware that I am asking the Court to allow me to represent other people in situations similar to mine, and I am willing to remain in this lawsuit until its conclusion.



Saiwon Robbins

Dated: April 14th, 2025

EXHIBIT 25

**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. _____

AFFIRMATION OF KARIEM TOMLIN

STATE OF NEW YORK

COUNTY OF CLINTON, ss.

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

1. My name is Kariem Tomlin. I am 46 years old, and I am originally from Staten Island, New York. I have a son who is 25 now. He lives in New Jersey.

2. I have been incarcerated by DOCCS since 2024. Since February 2025, I have been confined in general population in A Block at Clinton Correctional Facility. I got here about a week before the prison officers' strike started.

3. I submit this statement to describe my experience in DOCCS confinement after the DOCCS prison officers went on strike in February 2025.

4. During the strike, I was locked in my cell almost 24 hours a day. We couldn't go to the yard, which is where the phones were, so we couldn't use the phones. During the first week of the strike, the officers were not even letting us out to take showers; they were giving us

hot water to use to bathe ourselves in our cells. Once the National Guard arrived, they let us out of our cells one at a time, for about 15 minutes every two days. That was the only time we had to take a shower and to talk to our families using the kiosk. Some people couldn't use the kiosk and couldn't talk to their families at all. This period when I was in my cell almost 24/7 lasted for a few weeks.

5. Around March 10, 2025, officers started letting people in my housing unit out of our cells. They now let us go to the yard for about two hours each day. Before the strike, we could go to the yard for about three hours each day.

6. Currently, we are allowed out of our cells for about 10 to 15 minutes twice a day to have breakfast and lunch in the mess hall, for a total of about 20 to 30 minutes daily.

7. Before the strike, we also were allowed to go to the mess hall for dinner, but, since the strike, officers bring dinner to us in our cells.

8. In total, I am only able to leave my cell for about 2.5 hours per day at the most.

9. Officers have not offered me any out-of-cell programming since the strike began. I really want to engage in programming because that's how you better yourself and change your life. I want to get my GED and to learn a trade so that I can get a job when I'm released.

10. Being in my cell so much makes me check out mentally a little bit. I start feeling out of character. We can't get our exercise. It makes you start to feel like talking to yourself and creates tension all over the unit. People start to argue from the tension, and it makes life very difficult. When you have nothing to do, it's a hard time. It's bad for you mentally when you don't have goals and things to do or ways to interact.

11. I'm worried that even if DOCCS decides to make things better and gives us more opportunities, they could just take it all back and we could be back to square one all over again. We're already doing our time, and this is making our time harder.

12. I want this class-action lawsuit to prohibit DOCCS from using the strike or DOCCS's claims about a staffing shortage as an excuse to keep me and others in restrictive conditions that HALT wouldn't otherwise allow. I think it is unjust that DOCCS has suspended aspects of HALT and is placing people in general population in segregated confinement, and think DOCCS should be required to follow the HALT Act.

13. I have spoken with attorneys at the Prisoners' Rights Project of The Legal Aid Society about what it means to be a class representative, and I have decided that I want to take on that role if the Court will permit me to do so.

14. I know that being a class representative is not just about my case but also involves representing other incarcerated people who are harmed by the HALT suspension challenged in this lawsuit. I do not want myself or anyone else in DOCCS's custody to experience segregated confinement because of the HALT suspension.

15. I write this affirmation to show my interest in serving as a class representative in this lawsuit to represent other people who are also in segregated confinement because of the HALT suspension.

16. I am aware that I am asking the Court to allow me to represent other people in situations similar to mine, and I am willing to remain in this lawsuit until its conclusion.

Kariem Tomlin
Kariem Tomlin

Dated: April 2, 2025

EXHIBIT 30

**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,

Defendants-Respondents.

Index No. _____

AFFIRMATION OF KORY COX

STATE OF NEW YORK

COUNTY OF GREENE ss.

I, Kory Cox, affirm this 10th day of April, 2025, under the penalties of perjury under the laws of New York, which may include a fine or imprisonment, that the following is true, and I understand that this document may be filed in an action or proceeding in a court of law:

1. My name is Kory Cox. I am 23 years old, and am originally from Syracuse, New York.
2. I have been incarcerated by DOCCS since 2022 and am currently confined in the Residential Rehabilitation Unit (“RRU”) at Greene Correctional Facility.
3. I submit this statement to describe my experience in segregated confinement after the DOCCS prison officers went on strike in February 2025.
4. On December 2, 2024, I received a disciplinary infraction, for which I received a 180-day disciplinary confinement sanction.

5. After I got my infraction, I spent 15 days in the Special Housing Unit (“SHU”) at Riverview Correctional Facility. Around December 17, I was then moved to the RRU at Gouverneur Correctional Facility. After I received a referral to be moved to a “mental health facility,” I was transferred to Greene around January 27, 2025, a few weeks before the officers went on strike.

6. In the RRU at Greene before the strike, officers let me out of my cell for about two hours a day for programming. I would always go to programming so I could get out of my cell, get some freedom and interaction with other people, and because it could help me gain time cuts.

7. Not being able to go to programming while in the RRU means I will have to spend more time in the RRU, and maybe even more time in prison before I am released to go home. This is because I don’t have access to the things I need to make parole while I’m in the RRU.

8. Since the strike began in mid-February, I have been locked in my cell for 24 hours each day. Officers have not offered me any out-of-cell programming or recreation.

9. During the strike, I was only allowed out of my cell once. I had told DOCCS staff that I was feeling suicidal, and they referred me to a counselor. There were no mental health counselors available, and I met once with a jail counselor, or an ORC, instead.

10. The only “recreation” I get is access to a semi-outdoor part of my cell, attached to the indoor part via a door, which is called a “rec pen.” In the rec pen, I’m surrounded by brick walls on three sides and a ceiling. The back of the rec pen is like a cage instead of bricks, so I can see outside. I cannot see any other incarcerated people, aside from my bunkie, when I’m in the rec pen, because of the brick walls. The only way to interact with other people is to yell so

they can hear you through the wall. I don't like being in my rec pen because everyone is yelling, trying to talk to each other. It's too loud and it gives me a headache. You can't really have a real conversation.

11. I am diagnosed with multiple mental health conditions, including PTSD, anxiety, and depression, and this type of confinement has worsened my symptoms. I like to talk to people, get out and do things, and I can't. Being enclosed in my cell all the time gives me anxiety and makes me feel claustrophobic. I start sweating, and I feel like I am losing my mind.

12. I have a bunkie in my cell with me. Being locked in a cell with someone all day means I have no privacy. I need time to myself. Before the strike, my bunkie and I would alternate when we left the cell each day, giving us each some much-needed time alone. Now we can't do that anymore. Having no choice but to be with someone else all day, every day makes me feel stressed and agitated. It makes being locked in my cell all the time even worse.

13. Since the strike ended, officers have let me leave my cell only to take legal calls and go to mental health appointments. In total, I estimate that I have been out of my cell for only about three or four hours since the strikes began.

14. To my knowledge, the other incarcerated people in my tier at the RRU at Greene are locked in their cells as well. There's a window on my cell door that looks out on to the tier, and I don't see anyone being called out except for legal calls, mental health, and disciplinary hearings. I think there are about two dozen people in my tier.



Kory Cox

Dated: April 10th, 2025

EXHIBIT 31

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. _____

AFFIRMATION OF BILLY RIVERA

STATE OF NEW YORK

COUNTY OF ONEIDA, ss.

I, Billy Rivera, affirm this 14th day of April, 2025, under the penalties of perjury under the laws of New York, which may include a fine or imprisonment, that the following is true, and I understand that this document may be filed in an action or proceeding in a court of law:

1. My name is Billy Rivera. I am 38 years old, and am originally from Rochester, New York. I am married and have a 17-year-old daughter.
2. I have been incarcerated by DOCCS since 2015 and am currently confined in the Residential Mental Health Unit (“RMHU”) at Marcy Correctional Facility.
3. I submit this statement to describe my experience in segregated confinement after the DOCCS prison officers went on strike in February 2025.
4. I have been in the RMHU since November 4, 2024, when I received a disciplinary infraction. I am scheduled to be in the RMHU until June 20, 2025.

5. The RMHU is a unit for people with serious mental health diagnoses who receive disciplinary infractions. Everyone here, including me, has been diagnosed with a mental illness. I take medication for my mental health every day.

6. Before the strike, officers allowed me to get out of my cell for four hours each day to participate in programs, including those involving coping skills. In programs, I could interact with other people, and that is important to me.

7. Since the strike began, I have been locked in my cell nearly 24 hours each day.

8. Since the strike began, officers have offered me no out-of-cell programming. I have asked several officers on several occasions when programs would start, and they all said it's going to be a while.

9. If I were permitted to leave my cell to participate in programs, I would do that. I want to learn new skills, to get out of my cell, to walk and stretch my legs, and to be with people. I need to interact with people. It makes me feel like I'm still a human.

10. Since I have been in the RMHU, I have not been offered out-of-cell recreation. The only "recreation" I get is access to a small, semi-outdoor part of my cell, attached to the indoor part via a door, which is called a "rec pen." In the rec pen, I have solid walls on three sides of me and a ceiling above me. The back of the rec pen is metal with a lot of holes in it, so I can see outside. I cannot see any other incarcerated people when I'm in the rec pen, because of the walls around me. I am still alone. When we are in our rec pens, we have to yell at each other to be heard. It is not healthy for my voice, my throat, or mental health. Yelling and being yelled at is not good for your mental health.

11. I have barely received any medical care since the start of the strike. I was supposed to receive treatment for my TMJ because my jaw is dislocated, but it has not happened.


12. Around the week of March 24, officers started letting me leave my cell for my one-on-one therapy appointments with the Office of Mental Health. The appointments are cancelled whenever there is an incident in the unit, which happens pretty often. I get to go about once every two weeks, for about 30 minutes. I've only gone to one mental health appointment outside of my cell since the strike began.

13. Since the strike began, the only other times I have left my cell have been for occasional legal calls, and one time for about ten minutes for medical. I don't even get to leave my cell to take showers or eat my meals. My shower is inside my cell, and they bring food to me in the cell, too.

14. In total, I estimate that I have been out of my cell for only about three hours since the strikes began in February 2025.

15. Based on what I have seen and what other incarcerated people have told me, everyone in the RMHU is locked in their cells almost all the time as well. I have seen that being locked up alone all day impacts my neighbors, too. I have seen an increase in the use of suicide watch since before the strike began.

16. Being locked in my cell is not healthy at all. I feel paranoid and depressed. And my behavior has changed. I am worrying too much about what is going on with my wife and the rest of my family, and it makes me feel on edge. I have been diagnosed with multiple mental health conditions, and being alone makes all of them worse. I get caught in my own thoughts all the time.



Billy Rivera

Dated: April 14, 2025

EXHIBIT 32

**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. _____

**AFFIRMATION OF JUSTIN
PELOQUIN**

STATE OF NEW YORK

COUNTY OF ST. LAWRENCE, ss.

I, Justin Peloquin, affirm this 8th day of April, 2025, under the penalties of perjury under the laws of New York, which may include a fine or imprisonment, that the following is true, and I understand that this document may be filed in an action or proceeding in a court of law:

1. My name is Justin Peloquin. I am 37 years old, and am originally from Massena, New York. I have been incarcerated by DOCCS since 2007 and am currently confined in the RRU at Gouverneur Correctional Facility.

2. I submit this statement to describe my experience in segregated confinement after the DOCCS prison officers' recent strike.

3. On February 19, 2025, while I was incarcerated at Riverview Correctional Facility, the officers there went on strike.

4. The next day, I received a disciplinary infraction, for which I received a 45-day disciplinary confinement sanction. I have been in disciplinary confinement ever since February 20, 2025.

5. I spent the first 30 days of disciplinary confinement in the Riverview SHU. On or around March 20, I was transferred to the Gouverneur RRU, where I remain.

6. Even since I entered disciplinary confinement, DOCCS has held me in a highly restrictive environment. The officers have kept me locked in my cell for 24 hours per day. They provide my meals through a slot in my cell door, and I shower in my cell.

7. Since February 20, officers have not offered me any out-of-cell programming.

8. During this time, officers also have not offered me any out-of-cell recreation.

9. The only "recreation" I get is access to a semi-outdoor part of my cell, attached to the indoor part through a door, which is called a "rec pen." The door to my rec pen is open from about 5 p.m. to 9 p.m. every day. In the rec pen, I am surrounded by brick walls on three sides and a high ceiling. The back of the rec pen is like a cage instead of bricks, so I can see outside. If I want to talk to anyone out there, I would have to scream to them. It gets loud when the rec pens are open because people are screaming to each other.

10. Since I have been in disciplinary confinement, officers have taken me out of my cell only to attend my disciplinary hearing, to meet with the Office of Special Investigations, to participate in legal calls, to be transported from Riverview to Gouverneur, and to retrieve my property when I arrived at Gouverneur.

11. To my knowledge, all the other incarcerated people who have been confined with me in the Riverview SHU and Gouverneur RRU have been locked in their cells for 24 hours a day as well. I know this because DOCCS is not running programming in those units and, before the strike, programming was the only reason they let people out of their cells.

12. I am locked in my cell with a bunkie. Our cell is about 6 by 10 feet. It is not normal to be stuck in such a small area with someone else without any break. It makes me very irritable.

13. It is uncomfortably loud in the Gouverneur RRU. People in disciplinary confinement used to be able to speak to each other during programming. But, without programming, they can speak to each other only by yelling between cells, which makes the environment very noisy. Some people yell back and forth until 1 or 2 a.m., making it difficult for me to sleep.

14. I keep in contact with my father, my brother, and my sister. Being locked in my cell for 24 hours a day has impacted my relationship with them because they do not understand what I am going through. That makes me feel frustrated and like I do not have anyone to vent to.

15. When I am released from prison, I plan to live with my brother, his wife, and his children in West Virginia. I hope to find a job in a foundry. I worked in a foundry for four and a half years when I was in the industry program while incarcerated at Elmira Correctional Facility.

16. I am worried that being in segregated confinement will impact my ability to be around my family and to work when I am released. My mental health is deteriorating in segregated confinement, and I think I will be uncomfortable being around others.


Justin Peloquin

Dated: April 8, 2025

EXHIBIT 34

**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. _____

AFFIRMATION OF NASIR HILL

STATE OF NEW YORK

COUNTY OF CHEMUNG, ss.

I, Nasir Hill, affirm this 10th day of April, 2025, under the penalties of perjury under the laws of New York, which may include a fine or imprisonment, that the following is true, and I understand that this document may be filed in an action or proceeding in a court of law:

1. My name is Nasir Hill. I am 46 years old and am originally from New York City. I am engaged to be married.

2. I have been incarcerated by DOCCS since 2022 and am currently confined in general population at Elmira Correctional Facility. I am assigned to a cell in I Block.

3. I submit this statement to describe my experience in DOCCS confinement after the DOCCS prison officers went on strike in February 2025.

4. During the officers' strike, I was locked in my cell 24 hours a day. Meals were delivered to our cells in bags, cold, often consisting of expired or stale food. I did not have access to medical treatment despite putting in sick call requests and although I have a serious medical issue, sarcoidosis, a respiratory disease that makes me prone to infections. I was not

receiving my ordered medications. I also requested to speak with a mental health counselor but did not receive any response. I did not get access to Ju'mah and other Muslim services, including over Ramadan. I wasn't able to speak to my family during the strike, because the tablet I was provided did not have a phone connection and I did not have access to the tier kiosk to sync my messages to loved ones outside.

5. Since the strike has been over, I've barely been out of my cell. I'm locked in at least 23 hours per day.

6. I am offered 45 minutes to an hour out of my cell every other day, in an indoor "field house." Within this limited "recreation" time, I have to choose between showering, speaking with family, and exercising. It is nearly impossible to do all three.

7. I have requested to go to law library many, many times to work on my active appeal, but I have not been able to go.

8. There are no programs whatsoever. If you're looking for something to help someone get rehabilitation or redemption, that isn't happening. They have great programs here, but they aren't running them. This isn't helping people.

9. Around the end of March, they started letting us go to the mess hall for chow, but it's not on a regular schedule. We go down to the mess hall once a day for 15 to 20 minutes. When we don't get our meals in the mess hall, we receive "feed ups," which are meals delivered to our cells. Feed ups are never hot meals. Often the baloney is hard, the bread is stale, or the milk is expired.

10. Being in my cell almost all the time is frustrating. I'm learning how to self-discipline myself, but it's tough. I try to read and listen to music to relax. But it's not easy. Being

treated inhumanely makes it difficult to see one's own humanity. It is disabling, not rehabilitative.

11. I am being treated for depression and anxiety in prison. I take medications for this and only started receiving them since the strikes ended. It causes a lot of trauma seeing how staff have treated people. I have continued to request to be seen by mental health but I haven't been seen. I just need someone to talk to when I go into depression mode.

12. I am worried that even if DOCCS started to let us out of cell more, they could take away programs again or retaliate against us in some other way, especially if HALT is not in force.



Nasir Hill

Nasir Hill

Dated: 4/10/, 2025