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. 903926-25

MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR A PRELIMINARY INJUNCTION

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PRELIMINARY STATEMENT

In response to an illegal strike by New York correction officers, Defendant, the Commissioner of the Department of Corrections and Community Supervision ("DOCCS"), has suspended the Humane Alternatives to Long-Term Solitary Confinement Law ("HALT"), leaving thousands of people to languish in the isolation of small prison cells for more than 17 hours each day—precisely the outcome the Legislature enacted HALT to prevent.

The consequences have been devastating. Plaintiffs[1] and putative class members are experiencing a constellation of acute psychological, neurological, and physical symptoms that are the inevitable result of the profound isolation to which DOCCS is subjecting them. Those harms will continue as the suspension of HALT drags on. And they may linger indefinitely, inflicting lifelong damage across the classes. Already, Defendant's suspension of HALT has had tragic and intolerable results: Anthony Douglas, a 66-year-old man, was found hanging in his cell at Sing Sing in late February after being locked inside for a week straight.

Unless this Court intervenes, these harms will persist and intensify for thousands of incarcerated New Yorkers. More suffering and death will surely follow. Plaintiffs will likely succeed on their claims in the end, and the public interest could hardly weigh more heavily in favor of pausing Defendant's irrational and unconstitutional suspension of HALT in the meantime. Accordingly, the Court should grant this motion, enjoining the suspension on a preliminary basis until the Court can evaluate its lawfulness.

[1] For simplicity's sake, this brief refers to Plaintiffs-Petitioners as "Plaintiffs."

STATEMENT OF FACTS

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

For decades, New York prisons routinely subjected people to solitary confinement—extreme isolation—in Special Housing Units ("SHUs") for up to 23 hours a day, for prolonged stretches. Over the years, a growing scientific consensus has emerged concerning the devastating psychological and physiological harms solitary inflicts on people (*see* Argument § II, *infra*). In addition to causing acute suffering while in isolation, solitary confinement has lasting, sometimes irreversible psychological consequences and increases the long-term risk of morbidity and mortality (*id.*). People in solitary confinement are many times more likely to die by suicide than people in the general prison population, and exposure to these conditions increases the risk of premature death even after release from incarceration (*id.*). Recognizing the profound harm that solitary confinement causes, in 2021 the Legislature passed HALT to limit its use (*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 days for the most serious infractions (*id.* §§ 137[6][i], [6][k]).[3] When in segregated confinement, individuals still must receive at least four hours of out-of-cell time daily, including at least one hour for recreation (*id.* § 137[6][j][ii]). After 15 days, DOCCS must divert individuals to Residential Rehabilitation Units ("RRUs"), an alternative to segregated confinement where DOCCS must provide at least seven hours of daily

[2] Cited exhibits are attached to the Affirmation of Antony Gemmell, dated April 17, 2025, NYSCEF Doc. 5.

[3] Segregated confinement often occurs in SHUs, DOCCS housing units specifically designed to hold people in segregated confinement as a disciplinary measure, but HALT's limits on segregated confinement are not exclusive to people housed in SHU.

out-of-cell time, including programming, services, treatment, meals, and at least one hour of recreation (*id.*). 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.*). HALT further provides that certain "special populations"—people with disabilities, people 21 and younger or 55 and older, and pregnant or post-partum individuals—who are particularly vulnerable to the harmful effects of isolation, are categorically excluded from placement in segregated confinement (*id.* § 137[6][h]).

II. The HALT Suspension

A. DOCCS Responds to Illegal Striking by Suspending HALT

On February 17, 2025, officers at two New York state 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, with thousands of officers participating (*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).

On February 19, 2025, Governor Kathy Hochul responded with an executive order in which she declared a state of emergency, deploying the National Guard to respond to the "imminent danger of breach of the peace" created by "the illegal work stoppage [by corrections officers]." (Ex. 8, Executive Order [Hochul] No. 47 [9 NYCRR 9.47]). This Order and several follow-up Orders suspended or modified various state laws, but did *not* suspend, modify, or otherwise reference HALT (*see* Executive Order [Hochul] Nos. 47.1, 47.2, 47.3, 47.4 [9 NYCRR 9.47.1–9.47.4]).

On February 20, 2025, Defendant Daniel F. Martuscello issued a memorandum announcing that DOCCS had "suspend[ed] 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 suspended or for how long. Instead, it states that a "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 people, staff or the facility" (*id.*). The February 20 Memo cites no other legal authority, relying only on the Governor's February 19 declaration, which does not even mention HALT (*id.*).

B. DOCCS Extends the Unlawful Suspension of HALT

Although the New York State Correctional Officers and Police Benevolent Association ("NYSCOPBA"), the prison officers' union, did not officially sanction the strike, DOCCS began negotiating with the union in late February to end the strike (Ex. 12, Jan Ransom, *Seven Prisoners Die as New York Guard Strikes Cause Widespread Disarray*, NY Times [Mar. 4, 2025]). On March 8, DOCCS and NYSCOPBA reached an agreement to end the strike, contingent on 85% employee attendance by March 10 (the "March 8 Agreement"). Though attendance on March 10 fell shy of that threshold, Defendant 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" (Ex. 16, March 8 Agreement § 1[a]; DOCCS, *Commissioners Martuscello and Bray Provide an Update on the Correction Officer Strike*, YouTube [Mar. 10, 2025];[4] Ex. 17, Governor Hochul, *Recover, Recruit, Rebuild* [Mar. 11, 2025]). The March 8 Agreement identifies no legal basis for suspending HALT, instead offering only a conclusory reference to DOCCS's "existing . . . operational discretion" (Ex. 16). Nor does the March 8 Agreement identify the specific provisions that have been

[4] This video is available at: https://youtu.be/WCj_MkxFK80.

suspended. Indeed, the March 8 Agreement states only that the suspension will apply to "the programming elements of the HALT Act. . . that have been directly impacted by the staffing crisis and illegal strike" but "not [] the other elements of the HALT Act" (*id.*).

C. The True Breadth of the Unlawful HALT Suspension Is Revealed

Later in March, in a separate litigation over DOCCS's systemic violation of HALT, The Legal Aid Society Prisoners' Rights Project served discovery requests on DOCCS to clarify the scope and basis of Defendant's suspension of HALT. DOCCS's responses—which constitute the most detailed explanation of the suspension provided by DOCCS to date—reveal a broad suspension (the "HALT Suspension" or "Suspension") with two components.

First, the Suspension effectively eliminates the statute's durational limits on segregated confinement—namely, three days in most cases, or 15 for serious infractions. Contorting a narrow exception to these limits that applies only during a "facility-wide emergency," CL § 2[23], DOCCS has asserted blanket "legal authority to hold *any* incarcerated individual in cell confinement for more than seventeen hours a day, including those in general population" (Ex. 18, DOCCS Responses to Plaintiffs' Second Set of Interrogatories in *Anthony v DOCCS* [Apr. 4, 2025] ["April 4 Discovery"], 4 [emphasis added]). DOCCS asserts this sweeping authority at all of its 42 facilities across the state, seemingly irrespective of whether any actual emergency exists at a particular facility or will exist 90 days in the future (*id.*; Ex. 16, March 8 Agreement § 1[a]). Under the Suspension, DOCCS thus subjects incarcerated people statewide to segregated confinement for weeks beyond HALT's durational limits (*see e.g.* Ex. 20, Smalls Aff. ¶¶ 2, 4–7; Ex. 21, Leslie Aff. ¶ 9; Ex. 22, Jackson Aff. ¶¶ 5, 12; Ex. 23, Williams Aff. ¶¶ 6, 9, 11; Ex. 24, Robbins Aff. ¶¶ 6, 7, 9, 13; Ex. 25, Tomlin Aff. ¶¶ 2–8; Ex. 30, Cox Aff. ¶ 8; Ex. 31, Rivera Aff. ¶¶ 7, 13–14; Ex. 32,

Peloquin Aff. ¶ 6; Ex. 34, Hill Aff. ¶¶ 4–5).[5] Plaintiffs Smalls, Tomlin, and Leslie seek preliminary relief on behalf of the putative [2][23] Facility-Wide Emergency Class as to this element of the Suspension.[6]

Second, under the Suspension, DOCCS has suspended virtually all programming and recreation—including for people in segregated confinement and RRUs—thereby nullifying HALT's minimum requirements for programming and recreation under CL § 137[6][j][ii] (Ex. 19, DOCCS's Responses to Plaintiffs' Amended Expedited Interrogatories in *Anthony v DOCCS* [Mar. 26, 2025] ["March 26 Discovery"], 4, 6–7). DOCCS asserts no legal authority beyond HALT itself to justify this broad suspension (*id.*). Instead, the agency relies solely on a narrow statutory exception permitting recreation in RRUs—and only recreation in RRUs—to be non-congregate in "exceptional circumstances" posing a "significant and unreasonable risk to . . . safety and security" (*id.*; CL § 137[6][j][ii]). By its terms, the exception does not apply to programming or other activities, and does not give DOCCS blanket authority entirely to suspend or deny recreation or programming (CL §§ 137[6][j][ii]). Yet under the Suspension, DOCCS is depriving people in segregated confinement, RRUs, and similar units[7] of the programming and recreation to which HALT entitles them (*see* Ex. 24, Robbins Aff. ¶ 7, 9, 11, 14; Ex. 23, Williams Aff. ¶ 13; Ex. 22, Jackson

[5] Based on the same sweeping invocation of CL § 2[23], the Suspension also effectively eliminates HALT's categorical bar on placing people with mental illness and members of other "special populations" in segregated confinement (*see* CL § 2[33] [defining "special populations"]; *id.* § 137[6][h] [barring placement of people in special populations in segregated confinement]).

[6] The 2[23] Facility-Wide Emergency Class is defined as "[a]ll individuals in DOCCS custody who are or will be subject to cell confinement exceeding 17 hours per day under the HALT Suspension and who are not, at the time of such confinement, subject to placement in segregated confinement as a disciplinary sanction." It includes individuals who have not received a disciplinary sanction for which segregated confinement is a penalty, individuals who have received such a confinement sanction but who may not be held in segregated confinement due to being a member of a "special population," and individuals who received a sanction for which they could be held in segregated confinement for up to 15 consecutive days, but have now been held in segregated confinement beyond that durational limit.

[7] Examples of similar units, where conditions must at a minimum conform or be comparable to the requirements of RRUs, include protective custody and Residential Mental Health Treatment Units (*see* CL § 137[6][k][iv], 401[1]).

Aff. ¶ 8-12; Ex. 32, Peloquin Aff. ¶¶ 6–10; Ex. 30, Cox Aff. ¶¶ 8–10; Ex. 31, Rivera Aff. ¶¶ 2, 8, 10). Plaintiffs Jackson, Robbins, and Williams seek preliminary relief on behalf of the putative [j][ii] Class as to this element of the Suspension.[8]

The March 8 Agreement states the Suspension will last 90 days initially but leaves open the possibility it will continue indefinitely. The agreement leaves open this possibility by broadening the "emergency" on which the Suspension is based: Though initially limited to the illegal strikes, in the March 8 Agreement, the emergency purportedly underlying the Suspension now includes a "significant staffing deficit that existed prior to the illegal strike" (Ex. 16, March 8 Agreement § 1[a]). Under Section 1(b) of the March 8 Agreement, a so-called "circuit breaker" clause, DOCCS claims authority to suspend HALT by using a "staffing metric analysis" to "determine if a facility-wide emergency exists" on "high impact days," which include Friday through Sunday, or any other day Defendant Martuscello decides (Ex. 16, March 8 Agreement §§ 1–2). DOCCS has not yet invoked Section 1(b) but has confirmed the clause remains "under consideration" (Ex. 19, March 26 Discovery, 5–6).

III. The HALT Suspension's Impact on Named Plaintiffs and the Classes

As the affirmations of Plaintiffs and other members of the putative classes demonstrate, the HALT Suspension has inflicted the very harms the Legislature sought to prohibit on thousands of people incarcerated in facilities throughout New York (*see* Exs. 20–25, 30–32, & 34). And absent preliminary relief from the Suspension, and restoration of HALT's protections, Plaintiffs and members of both the 2[23] Facility-Wide Emergency Class and the [j][ii] Class will continue to suffer.

[8] The j[ii] Class is defined as "[a]ll individuals in DOCCS custody who are or will be in disciplinary confinement or housed in a setting whose conditions must at a minimum conform or be comparable to the requirements of RRUs under the Correction Law." It includes individuals housed in SHUs, RRUs, Residential Mental Health Treatment Units, and protective custody.

A. Alfonso Smalls

Plaintiff Alfonso Smalls, who is housed in general population at Coxsackie Correctional Facility and has not been found responsible for any disciplinary infraction, has nonetheless been locked in his cell for at least 22 hours per day under the Suspension (*see* Ex. 20, Smalls Aff. ¶¶ 2, 4–11). He describes the crushing pain: "It makes you want to go crazy. It absolutely kills my creativity and my spirit" (*id.* ¶ 12). Mr. Smalls describes the difficulty "turning off [his] mind," pacing, and trouble sleeping under the mounting stress that has no outlet in programming or recreation (*id.* ¶ 14). Mr. Smalls sometimes has the impulse to harm himself solely to get out of his cell (*id.* ¶ 12).

B. Jerome Leslie

Plaintiff Jerome Leslie, who is in general population, spends about 21 hours each day locked in his cell under the HALT Suspension. "Spending so much time in my cell makes me feel depressed, and like I should just sleep all day," he explains. "It makes me anxious and being idle makes it easier to get stuck on negative thoughts" (Ex. 21, Leslie Aff. ¶¶ 9, 11). Mr. Leslie also reports that the restriction on his ability to exercise is detrimental to his mental health and likely resulted in him gaining weight (*id.* ¶ 11).

C. Kariem Tomlin

Plaintiff Kariem Tomlin is in general population at Clinton Correctional Facility and has been locked in his cell for 21.5 to 24 hours a day under the HALT Suspension (*see* Ex. 25, Tomlin Aff. ¶¶ 2–8). Mr. Tomlin describes how prolonged isolation is "bad for you mentally, when you don't have goals and things to do or ways to interact" (*id.* ¶ 10). He describes feeling "out of character," and says the isolation and lack of exercise make "you feel like talking to yourself" (*id.*). Mr. Tomlin reports that under these conditions, tension is building in his unit, leading to arguments (*id.*).

D. Nasir Hill

Class Member Nasir Hill is currently housed in general population at Elmira Correctional Facility (Ex. 34, Hill Aff. ¶ 2). He has been locked in his cell for 23 to 24 hours per day under the Suspension and has been denied all access to programming (*id.* ¶¶ 4–5, 8). "If you're looking for something to help someone get rehabilitation or redemption, that isn't happening," says Mr. Hill (*id.* ¶ 8). A practicing Muslim, Mr. Hill has also been denied opportunities for congregate prayer, including Jum'ah and Ramadan services (*id.* ¶ 4). He takes medications for depression and anxiety and describes that "being treated inhumanely makes it difficult to see one's own humanity. It is disabling, not rehabilitative" (*id.* ¶¶ 10–11).

E. Michael Williams

Plaintiff Michael Williams is housed in the RRU at Greene Correctional Facility, where he has been isolated for nearly 24 hours per day (Ex. 23, Williams Aff. ¶ 11). He has mental illness—including PTSD, depression, and anxiety—for which he is prescribed medication (*id*. ¶ 17). "Being locked in has made my mental health worse," he explains (*id*.). He reports cutting himself in both SHU and RRU—behavior he last engaged in after his mother's death in 2017 (*id.*). Mr. Williams says that, in the RRU, "not a day goes by that I do not think about taking away my life" (*id.*). According to Mr. Williams, being deprived of programming has caused him to "lose [his] sense of purpose" because he "couldn't do anything productive with [his] time or better [himself]" (*id.* ¶ 8).

F. Saiwon Robbins

Plaintiff Saiwon Robbins, who received a disciplinary infraction at Mid-State Correctional Facility on February 9, is currently in the facility's RRU (Ex. 24, Robbins Aff. ¶ 2). Mr. Robbins has been diagnosed with PTSD and anxiety, and he takes mental health medication (*id.* ¶ 4). Being locked in his cell for 23 to 24 hours a day has worsened his mental health (*id.* ¶ 8). He describes

feeling "lost," seeing flashes of light, feeling paranoid that someone is watching him and taking pictures of him, and experiencing suicidal thoughts (*id.* ¶¶ 8, 12). In the RRU, he struggles to stop himself from "bugging out" (*id.* ¶ 19).

G. Taron Jackson

Plaintiff Taron Jackson has been in SHU at Green Haven Correctional Facility since March 12 and is locked in his cell between 23 and 24 hours a day (Ex. 22, Jackson Aff. ¶ 5). Mr. Jackson, who has depression, notes that his mental health is deteriorating in SHU (*id.* ¶ 13–14). "Before I got here," he explains, "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. . . . 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" (*id.* ¶ 13). Mr. Jackson's sleep has been terrible: "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" (*id.* ¶ 15).

H. Justin Peloquin

Class member Justin Peloquin has been locked in a cell for 24 hours a day with almost no reprieve since February 20 (Ex. 32, Peloquin Aff. ¶¶ 6–10). Mr. Peloquin is currently housed at the RRU at Gouverneur Correctional Facility, where he is receives no out-of-cell programming and the only "recreation" he is offered is in a partially outdoor portion of his cell, surrounded on three sides and above by thick walls (*id.* ¶¶ 6–9). He shares his approximately six-by-ten-foot cell with another man and notes that "it is not normal to be stuck in such a small area with someone else without a break. It makes me very irritable" (*id.* ¶ 12). Mr. Peloquin describes the RRU as "uncomfortably loud" because the only way people can communicate is by yelling—noise that can stretch into the early morning hours (*id.* ¶ 13). Under these conditions, his "mental health is

deteriorating" and he worries that he "will be uncomfortable being around others," including his family, after release (*id.* ¶ 16).

I. Kory Cox

Class member Kory Cox is in the RRU at Greene Correctional Facility, where he has been offered no out-of-cell programming or recreation since the strike began (Ex. 30, Cox Aff. ¶¶ 2, 8-10). Mr. Cox has been diagnosed with multiple mental health conditions, including PTSD, anxiety, and depression, and cell confinement has exacerbated his symptoms (*id.* ¶ 11). "I like to talk to people, get out and do things, and I can't," he explains. "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" (*id.*).

J. Billy Rivera

Class Member Billy Rivera is currently housed in the Residential Mental Health Unit at Marcy Correctional Facility (Ex. 31, Rivera Aff. ¶ 2). This Unit is an alternative disciplinary unit that serves people with serious mental health diagnoses (*id.* ¶ 5). Mr. Rivera has been locked in his cell for 24 hours nearly every day since the strike began (*id.* ¶ 7). He estimates that he has been out of his cell for a total of three hours during this time (*id.* ¶ 14). Mr. Rivera eats and showers in his cell and the only "recreation" he gets is access to a small, semi-outdoor portion of his cell with solid walls on three sides and a ceiling, and a wall with holes at the back (*id.* ¶¶ 10, 13). He cannot see or communicate with other people without yelling, and notes that "yelling and being yelled at is not good for your mental health" (*id.* ¶ 10). Mr. Rivera says that the prolonged isolation is causing all his diagnosed mental health conditions to worsen (*id.* ¶ 16). He further reports feeling "paranoid and depressed," "worrying too much," and "feel[ing] on edge" (*id.*).

ARGUMENT

For two months, Plaintiffs and other putative class members have languished in their cells, experiencing the punishing effects of severe isolation. That harm will continue for as long as the HALT Suspension remains in effect. To mitigate the damage the Suspension is currently wreaking across New York's prison system, Plaintiffs seek a preliminary order pausing the HALT Suspension until this Court can evaluate its lawfulness.

To obtain a preliminary injunction, a movant must demonstrate (1) a likelihood of success on the merits, (2) irreparable injury absent a preliminary injunction, and (3) a balancing of the equities in the movant's favor (*Doe v Axelrod*, 73 NY2d 748, 750 [1988]; CPLR 6301). Here, Plaintiffs are likely ultimately to succeed on their claims under both Article 78 and the Constitution, as their arguments in their Memorandum of Law in Support of their Petition reflect. Moreover, without a preliminary injunction, the HALT Suspension raises the "prospect of irreparable injury," and "the balance of equities tip[s]" heavily in Plaintiffs' favor (*Axelrod*, 73 NY2d at 750).

I. Plaintiffs Will Succeed on the Merits.

Plaintiffs seek preliminary relief on several claims under Article 78 and the New York State Constitution. For the reasons explained in the Memorandum of Law in support of their Article 78 petition, Plaintiffs can show a likelihood of succeeding on each of their claims (*see* NYSCEF Doc No. 4).[9]

[9] To avoid cumulative briefing, Plaintiffs incorporate by reference those merits arguments and do not otherwise restate them here.

II. The HALT Suspension Is Inflicting Profound, Irreparable Harm on Class Members Each Moment It Remains in Effect.

As ten affiants in this litigation attest, the HALT Suspension has inflicted profound suffering in prisons across New York, with class members experiencing acute psychological and physical harm caused by the extreme isolation DOCCS has imposed on them under the Suspension. That suffering will only intensify as the Suspension drags on—for at least 90 days, and perhaps much longer—exposing thousands of class members to markedly heightened risks of irreversible mental and physical illness, and even death. These consequences are the epitome of irreparable injury, the "single most important prerequisite" for preliminary injunctive relief (*Cyprium Therapeutics, Inc. v Curia Glob., Inc.*, 2022 NY Slip Op 51426[U] [Sup Ct, Albany County 2022] [quoting *Reuters Ltd. v United Press Intl., Inc.*, 903 F2d 904, 907 [2d Cir 1990]]; *see also Di Fabio v Omnipoint Comm'ns Inc.*, 66 AD3d 635, 636–37 [2d Dept 2009] ["Irreparable injury . . . mean[s] any injury for which money damages are insufficient."]).

Under the Suspension, DOCCS has isolated class members in small cells for months, stripping them of virtually all meaningful human contact and environmental stimulation. Members of the 2[23] class are subject to cell confinement up to 24 hours a day—conditions *worse* than those normally reserved for the most severe punishment—even if they have not been accused of, much less adjudicated for, any misconduct (*see* Ex. 18, April 4 Discovery at 4; Ex. 20, Smalls Aff. ¶¶ 2, 4–11; Ex. 21, Leslie Aff. ¶¶ 2, 9; Ex. 34, Hill Aff. ¶ 5). Members of the j[ii] class are subject to suspension of out-of-cell programming and recreation, depriving them of the most significant opportunities people in disciplinary confinement have for human interaction outside the confines of their cells (*see* Ex. 19, March 26 Discovery, 4, 6–7; Ex. 22, Jackson Aff. ¶ 8–12; Ex. 23, Williams Aff. ¶¶ 9, 13; Ex. 24, Robbins Aff. ¶¶ 14–17; Ex. 32, Peloquin Aff. ¶ 6-10; Ex. 31, Rivera Aff. ¶¶ 7–10; Ex. 30, Cox Aff. ¶ 8).

The toll of extreme isolation under the HALT Suspension cannot be overstated. Sixty-six-year-old Anthony Douglas hanged himself in his cell at Sing Sing in February after being locked in it 24 hours a day for a week.[10] Plaintiffs Michael Williams and Saiwon Robbins have both described experiencing suicidal ideation during their ongoing isolation, with Michael Williams cutting himself for the first time in years (*see* Williams Aff. ¶ 17 ["Not a day goes by that I do not think about taking away my life."]; Robbins Aff. ¶ 12 ["I called the suicide helpline many times to report my suicidal thoughts . . . . Those conversations helped me in the moment, but every day was the same struggle because I was suffering so much."]). Mr. Douglas's tragic death and the ongoing suffering class members describe reflect the extraordinary risk for suicide and self-mutilation the HALT Suspension creates. Indeed, robust data consistently show that exposure to comparably restrictive confinement sharply increases the risks of self-harm and suicide (*see* Fatos Kaba et al., *Solitary Confinement and Risk of Self-Harm Among Jail Inmates*, 104 Am J Pub Health 442, 445 [2014] [people in solitary 6.9 times more likely to self-harm than those in general population]; Bruce B. Way et al., *Factors Related to Suicide in New York State Prisons*, 28 International J L & Psychiatry 207, 211, 218 [2005] [30 percent of New York state prison suicides occurred in SHU or administrative segregation while only four percent of prison population housed in SHU]; *Review of Completed Suicides in the California Department of Corrections and Rehabilitation, 1999 to 2004*, 59 Psychiatric Servs, 676, 678 [2008] [about half of suicides in California prisons occurred in solitary]). Exposing class members to this risk itself warrants preliminary relief, for "[t]he ultimate relief may be rendered inadequate, as the loss of one life would render permanent injunctive relief, granted at a later date, ineffective" (*Doe v Dinkins*, 192 AD2d 270, 275 [1st Dept 1993]).

[10] 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.

But increased risk of suicide is far from the only irreparable harm class members face. They describe experiencing various harmful psychological symptoms during their ongoing isolation, ranging from depression and lethargy, to anxiety, paranoia and perceptual disturbances, with physical manifestations such as sweating, pacing, and trouble sleeping (*see* Robbins Aff. ¶ 8 ["When I'm inside my cell, I can see flashes because the light is on all day . . . I feel very paranoid"]; Smalls Aff. ¶¶ 12–14 [Isolation "makes you want to go crazy. It absolutely kills my creativity and my spirit . . . . I have trouble sleeping and pace back and forth in my cell."]; Leslie Aff. ¶ 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."]; Tomlin Aff. ¶ 10 ["Being in my cell so much makes me check out mentally a little bit. I start feeling out of character."]; Jackson Aff. ¶¶ 14–15 ["It's dirty, and there are roaches and big rats. It is painful to think about that all day, every day . . . . I think I might be going crazy in here . . . . I have a hard time going to sleep, and I wake up in the middle of the night to nightmares."]; Rivera Aff. ¶¶ 9, 16 ["I need to interact with people. It makes me feel like I'm still a human . . . . 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 . . . and it makes me feel on edge."]; Cox Aff. ¶ 11 ["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."]).

These experiences demonstrate what a substantial body of scientific research confirms: Prolonged exposure to isolation inflicts a devastating constellation of acute mental and physical injuries, including trauma-induced mental illness and neurocognitive degeneration of the sort described by Plaintiffs and putative class members here (*see* Craig Haney, *Restricting the Use of Solitary Confinement*, 1 Ann Rev Criminology 285, 290–91 [2017] [describing symptoms

including psychosis, depression, paranoia, and insomnia from prolonged solitary confinement]; Stuart Grassian, *Psychiatric Effects of Solitary Confinement*, 22 Wash Univ J L & Policy 325, 331, 335–37 [2006] [describing acute neurocognitive degeneration or "mental torpor" and "isolation delirium"]; Sharon Shalev, *A Sourcebook on Solitary Confinement* at 15 [2008] [describing heart palpitations, insomnia, and tremors caused by same]); *see also* Peter S. Smith, *The Effects of Solitary Confinement on Prison Inmates: A Brief History and Review of the Literature*, 34 Crime & Just 441, 480–81 [2006]; Craig Haney, *Mental Health Issues in Long-Term Solitary and "Supermax" Confinement*, 49[1] Crime & Delinquency 124, 133–37 [2003]).

Recognizing that such harms are irreparable, courts throughout the country routinely grant preliminary relief in the face of analogous injuries, including in the context of challenges to restrictive conditions of confinement (*see e.g. Jolly v Coughlin*, 76 F3d 468, 482 [2d Cir 1996] [irreparable injury established through "inability to stand without difficulty, rashes, headaches, shortness of breath, and hair loss" arising from prolonged keeplock—a form of solitary confinement used in DOCCS prisons before HALT]; *V.W. by and through Williams v Conway,* 236 FSupp3d 554, 588–89 [ND NY 2017] [finding irreparable injury in part due to "substantial, convincing evidence that . . . continued use of solitary confinement on juveniles puts them at serious risk of short and long-term psychological damage"]; *Reynolds v Arnone*, 402 FSupp3d 3, 44–45 [D Conn 2019] [finding irreparable harm due to "serious, continuing risk of harm to . . . mental health"], *vacated in part on other grounds* 990 F3d 286 [2d Cir 2021]; *Doe by and through Frazier v Hommrich*, 2017 WL 1091864, *2 [MD Tenn 2017] ["The harm suffered in solitary confinement is not easily undone."]; *see also e.g. Kallop v Board of Directors For Edgewater Park Owners' Coop. Inc.*, 155 AD3d 491, 492 [1st Dept 2017] [irreparable injury established based on worsening health and severe depression arising from uncertainty in conflict with co-op board]; *L.V.M. v*

Lloyd, 318 FSupp3d 601, 617–18 [SD NY 2018] [irreparable injury from "psychological trauma and . . . long-term depression, anxiety and PTSD" among unaccompanied migrant children in federal custody]; *Abdi v Duke*, 280 FSupp3d 373, 405–06 [WD NY 2017] [irreparable injury established by, among other things, "diminished physical and mental health conditions" suffered by those in prolonged immigration detention], *vacated on other grounds*, *Abdi v. McAleenan*, 405 FSupp3d 467 [WD NY 2019]; *John E. Andrus Mem., Inc. v Daines*, 600 FSupp2d 563, 573 [SD NY 2009] [irreparable injury from "behavioral disturbances, weight loss, increased risk of falls and injury, and possibly increased mortality rates" arising from "transfer trauma" among nursing home patients]; *Maczaczyj v State of NY*, 956 FSupp 403, 404–05, 408 [WD NY 1997] [irreparable injury established by "additional psychic harm" to plaintiff with anxiety if excluded from educational activities]).

Beyond the acute impacts class members experience while isolation is ongoing, the HALT Suspension also sets them up for lifelong health consequences and even death—increased risks of which alone constitute irreparable harm warranting preliminary relief (*see e.g. Bingham v Struve*, 184 AD2d 85, 89–90 [1st Dept 1992] [finding increased risk of serious psychological and emotional damage constituted irreparable harm]; *Shapiro v Cadman Towers, Inc.*, 51 F3d 328, 332–33 [2d Cir 1995] [same as to increased risks of injury, infection, and humiliation]). Prolonged isolation causes a host of long-lasting and potentially irreversible conditions, ranging from PTSD and neurological deterioration to hypertension (*see John E. Andrus Mem., Inc.,* 600 FSupp2d at 573 [finding increased risks of cognitive impairment, morbidity, and mortality constitute irreparable harm]; *L.V.M.*, 318 FSupp3d at 618 [same as to increased risk of long-term depression, anxiety, and PTSD]); *see also* Brian O. Ohagan et al., *History of Solitary Confinement Is Associated with Post-Traumatic Stress Disorder among Individuals Recently Released from Prison*, 95 J Urban

Health 141, 146–47 [2018]; Jules Lobel & Huda Akil, *Law & Neuroscience: The Case of Solitary Confinement,* 147[4] Daedalus 61, 69–70 [2018] [describing shrinking of hippocampus as a result of exposure to solitary confinement]; Brie Williams et al., *The Cardiovascular Health Burdens of Solitary Confinement*, 34[10] J Gen International Medicine 1977, 1977 [2019] [describing hypertension arising from same]). A heightened risk of premature death follows survivors of solitary even after they are released from prison: Research has found that exposure to restrictive housing is correlated with markedly higher rates of death by suicide, opioid overdose, and homicide in the community (*see* Lauren Brinkley-Rubenstein et al., *Association of Restrictive Housing During Incarceration With Mortality After Release*, Jama Network Open, at 8–9 [2019];[11] *see also John E. Andrus Mem., Inc.,* 600 FSupp2d at 573; *Oxford House, Inc. v City of Albany*, 819 FSupp 1168, 1173 [ND NY 1993] [increased risk of relapse into addiction constitutes irreparable harm]).

In addition to these harms, the classes are also experiencing the inherent harm of a constitutional violation. "When the government inflicts a constitutional injury on its citizens," there is a "presumption of irreparable injury" (*see Super Smoke N Save LLC v New York State Cannabis Control Bd.*, 226 NYS3d 847, 860–61 [Sup Ct Albany County 2025] [citing *Melody v Goodrich*, 67 AD 368 [3d Dept 1901]]; *Arias v Decker*, 459 FSupp3d 561, 569 [SD NY 2020] ["In the Second Circuit, it is well settled that an alleged constitutional violation constitutes irreparable harm"]; *see also Agudath Israel of Am. v Cuomo*, 983 F3d 620, 636 [2d Cir. 2020]). As the Court of Appeals has explained, "the State Constitution prohibits" separation-of-powers violations "to protect the *public's* interests" (*Delgado v State*, 39 NY3d 242, 255 [2022]). As explained in Section III of Plaintiffs' Memorandum of Law in Support of their Petition, the HALT Suspension is an illegal act of executive policymaking and a nullification of a duly enacted law, and thus a violation of the

[11] This article is available at https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2752350.

New York Constitution's separation of powers. In violating the separation of powers, Defendant has inflicted irreparable constitutional harm.

III. The Balance of Equities Favors Pausing the HALT Suspension During This Litigation.

Class members and the public share a compelling interest in averting the infliction of immediate and devastating harms on thousands of incarcerated New Yorkers until this Court can evaluate the lawfulness of the HALT Suspension. That interest outweighs any conceivable interest DOCCS has in enforcing its blanket suspension of HALT's protections in the meantime. The balance of equities—the third and final requirement for preliminary injunctive relief—thus favors pausing the Suspension during the pendency of this litigation.

Particularly when an agency defendant is the party opposing preliminary relief, the public interest is inseparable from a court's balancing of the equities (*see Destiny USA Holdings, LLC v Citigroup Global Mkts. Realty Corp.*, 69 AD3d 212, 223 [4th Dept 2009] ["[T]he courts must weigh the interests of the general public as well as the interests of the parties…"]; *Quinn v Cuomo*, 69 Misc 3d 171, 177 [Sup Ct, Queens County 2020] ["[T]he factor that must be satisfied before injunctive relief can be granted is a balancing of the equities, including the public interest."], *affd as mod*, 183 AD3d 928 [2d Dept 2020]; *see also SAM Party of NY v Kosinski*, 987 F3d 267, 278 [2d Cir 2021] [recognizing "balancing of the equities merges into [the court's] consideration of the public interest" in cases involving governmental defendant]). That analysis "does not occur in a vacuum": Where the other requirements for preliminary relief favor an injunction, the balance "tips in the movant's favor absent some greater hardship that the nonmovant would suffer" (*North Fork Distrib. Inc. v New York State Cannabis Control Bd.*, 81 Misc 3d 952, 964 [Sup Ct, Albany County 2023]).

The interests of class members and the public in preliminary relief here are substantial. Plaintiffs need not belabor the harms class members are now experiencing and will continue to sustain while the Suspension remains in effect statewide (*see supra* at Statement of Facts § III; *Brad H. v City of New York*, 185 Misc 2d 420, 431 [Sup Ct, New York County 2000], *affd* 276 AD2d 440 [1st Dept 2000] [holding equities balanced in favor of ordering incarcerated plaintiffs to receive mental health treatment, in part due to risk of "mental and physical health deterioration"]). And the public interest, too, lies with enforcing—rather than allowing an agency unconstitutionally to nullify—a duly enacted state law reflecting the Legislature's reasoned judgment that restricting DOCCS's use of segregated confinement would reduce harm to incarcerated New Yorkers while enhancing prison safety (*see* Ex. 1, Assembly Mem in Support, Bill Jacket, L 2021, ch 93 [describing Legislature's purpose in enacting HALT]; *Oneida County v Berle,* 49 NY2d 515, 522 [1980] ["[H]istory teaches that a foundation of free government is imperiled when any one of the co-ordinate branches absorbs or interferes with another."]; *see also Deide v Day*, 676 FSupp3d 196, 232 [SD NY 2023] ["Because the public interest lies with enforcing the Constitution, the balance ultimately tips in Plaintiffs' favor."] [cleaned up]).

By contrast, Defendant's interest in enforcing the HALT Suspension during the pendency of this litigation is minimal. To start, DOCCS has no legitimate interest in continued blanket enforcement of an irrational policy that violates the constitutional separation of powers (*see* Plaintiffs-Petitioners' Memorandum in Support of Article 78 Petition, NYSCEF Doc No. 4 [explaining unlawful nature of the Suspension]; *New York Progress & Protection PAC v Walsh*, 733 F3d 483, 488 [2d Cir 2013] ["[T]he Government does not have an interest in the enforcement of an unconstitutional law."] [quoting *Am. Civ. Liberties Union v Ashcroft*, 322 F3d 240, 247 [3d Cir. 2003]]).

Defendant's interest in the HALT Suspension is also limited because the statute itself affords DOCCS the flexibility it needs to manage the prisons without resorting to such drastic measures. CL § 2[23] affords Defendant discretion to temporarily set aside limits on segregated confinement *where a facility-wide emergency exists*, while CL § 137[6][j][ii] permits DOCCS to restrict congregate recreation in RRUs when exceptional circumstances so warrant. The Legislature provided these statutory tools, among others, to maintain order (*see e.g.* CL § 137[6][j][vii] [authorizing use of restraints in RRUs where necessary to avoid "significant and unreasonable risk" to safety and security]; *id.* § 137[6][k][ii] [authorizing segregated confinement up to 15 days in limited circumstances]). They are sufficient to manage the challenges DOCCS faces in the strike's wake, merely requiring Defendant to exercise discretion within reasonable boundaries, grounded in specific conditions at a given facility and only for so long as the emergency or exceptional circumstances last. Because DOCCS has these lawful tools at its disposal, Defendant has a minimal interest in a blanket, statewide suspension of HALT that goes well beyond the bounds of the law's reasonable exceptions.

In sum, the requested injunction seeks to require Defendant only to "comply with [his] statutory and constitutional obligations," and thus, "[a]ny inconvenience caused by compliance is outweighed by the harm which would be suffered [by Plaintiffs] otherwise" (*Dinkins*, 192 AD2d at 276; *see also Deide*, 676 FSupp3d at 232–33).

CONCLUSION

For these reasons, the Court should grant this motion and preliminarily enjoin the HALT Suspension until the Court can evaluate its lawfulness.

Dated: May 7, 2025
New York, New York

Respectfully submitted,

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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 6,817 words according to the word-count function in Microsoft Word, the word processing program used to prepare this document.

Dated: May 7, 2025
New York, NY

/s Riley D. Evans
Riley D. Evans

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

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

Plaintiffs-Petitioners,

-against-

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

Defendant-Respondent.

Index No. 903926-25

MEMORANDUM OF LAW IN OPPOSITION TO PETITIONERS' MOTION FOR A PRELIMINARY INJUNCTION

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Table of Contents

Defendant-Respondent Daniel F. Martuscello III, in his capacity as Commissioner of the New York State Department of Corrections and Community Supervision ("DOCCS" or "Department"), respectfully submits this memorandum of law in opposition to Plaintiffs-Petitioners' motion for a preliminary injunction (NYSCEF Nos. 48-50). Plaintiffs-Petitioners' motion must be denied because they fail to satisfy any of the requirements for a preliminary injunction.

PRELIMINARY STATEMENT

Plaintiffs-Petitioners[1] are six incarcerated individuals, who on behalf of themselves and a putative class of similarly situated incarcerated individuals, ask the Court to take the extraordinary and unwarranted step of enjoining Respondent from exercising its lawful authority to continue a limited, temporary suspension of certain provisions of the Humane Alternatives to Long Term Solitary Confinement Act ("HALT"). Disregarding the obvious ongoing emergency conditions within DOCCS facilities across the state in the wake of the recent correction officer strike, Petitioners ask for a preliminary injunction which would direct DOCCS to restore HALT's out-of-cell recreation and programming requirements. Petitioners request must be denied.

First, Petitioners fail to show a likelihood of success on the merits of their claims. Petitioners assert that the so-called "HALT Suspension"[2] violates the separation of powers embodied in the New York State Constitution. Petitioners further contend that Respondent's actions were arbitrary and capricious or that he failed to perform a duty enjoined upon him by law.

[1] For ease of reference, this memorandum will refer to Petitioners-Plaintiffs as "Petitioners," and to Respondent-Defendant as "Respondent."

[2] To maintain consistency with Petitioners' submissions, Respondent will refer to the "HALT Suspension" throughout its memorandum. However, Respondent never "suspended" any statutory provision of HALT. The term "suspension" refers to the temporary pause in certain out-of-cell programming and recreational elements of HALT that are authorized under HALT's own language during an emergency.

These claims are meritless as they depend on both an inaccurate depiction of DOCCS' ongoing actions in response to the strike, as well as a strained interpretation of the HALT's statutory language, which affords DOCCS ample discretion to continue the suspension of certain HALT requirements when faced with an emergency.

Second, Petitioners fail to show irreparable harm justifying issuance of a preliminary injunction. Petitioners cannot rely on anecdotal, speculative accounts of the supposed mental or physical effects of their confinement to prove irreparable harm. Such alleged harms, even if Plaintiffs could prove them, are not irreparable harms for purposes of a preliminary injunction motion. Further, Petitioners cannot resort to the circular argument that they alleged constitutional violation is itself "irreparable harm," when Respondent has not committed any such violation.

Finally, the balance of the equities weighs strongly in favor of Respondent. Petitioners' motion asks the court to direct DOCCS to immediately resume the very activities contemplated by HALT which it cannot safely implement at this time. Although the strike has ended, DOCCS' efforts to address the root causes of the strike remain ongoing. Petitioners' request is troubling and misguided in the face of DOCCS' demonstrated efforts to restore staffing levels so that the suspended aspects of HALT may be safely reintroduced. Forcing this result to happen at Petitioners' behest is unsafe for correction officers and incarcerated individuals and cannot be what the Legislature envisioned when it enacted HALT.

In sum, Petitioners' motion for a preliminary injunction must be denied.

STATEMENT OF FACTS

A. The Humane Alternatives to Long-Term Solitary Confinement Act

On March 31, 2021, Governor Cuomo signed the Humane Alternatives to Long-Term Solitary Confinement ("HALT") Act into law. Among other provisions, HALT places limitations

on the duration of time that an incarcerated individual may be held in "segregated confinement." *See* Correction Law § 137. Under HALT, "'[s]egregated confinement' means the confinement of an incarcerated individual in any form of cell confinement for more than seventeen hours a day **other than in a facility-wide emergency** or for the purpose of providing medical or mental health treatment." Correction Law § 2(23) (emphasis added). HALT also includes requirements for out-of-cell time and programming for incarcerated individuals while housed in segregated confinement. *Id.* at § 137

1. *Durational Limitations on Segregated Confinement under HALT*

Generally, an incarcerated individual may not be held in "segregated confinement" for more than fifteen consecutive days, or for more than twenty total days within a sixty-day period. *Id*. at § 137(6)(i). After these limits are reached, the incarcerated individual "must be released from segregated confinement or diverted to a separate residential rehabilitation unit." *Id.*

Further, DOCCS "may place a person in segregated confinement for up to three consecutive days and no longer than six days in any thirty-day period if, pursuant to an evidentiary hearing, it determines that the person violated department rules which permit a penalty of segregated confinement." *Id.* at § 137(k)(i). However, DOCCS "may place a person in segregated confinement beyond the limits of subparagraph (i) . . . or in a residential rehabilitation unit only if, pursuant to an evidentiary hearing, it determines by written decision that the person committed" certain acts as defined by statute, including physical and sexual assault, extortion, rioting, procuring a deadly weapon or escaping. *Id.* at § 137(k)(ii)(A). In addition to a qualifying act, the commissioner must determine "in writing based on specific objective criteria the acts were so heinous or destructive that placement of the individual in general population housing creates a

significant risk of imminent serious physical injury to staff or other incarcerated persons, and creates an unreasonable risk to the security of the facility." *Id.* at § 137(k)(ii).

2. *Out-of-Cell Time and Programming Requirements under HALT*

HALT requires that incarcerated individual in segregated confinement "be offered out-of-cell programming at least four hours per day, including at least one hour for recreation." *Id.* at § 137(j)(ii). Further, incarcerated individuals housed in residential rehabilitation units ("RRUs") "shall be offered at least six hours of daily out-of-cell congregate programming, services, treatment, recreation, activities and/or meals, with an additional minimum of one hour for recreation." *Id.* Recreation in RRUs "shall take place in a congregate setting, **unless exceptional circumstances mean doing so would create a significant and unreasonable risk to the safety and security of other incarcerated persons, staff, or the facility**." *Id.* (emphasis added).

B. The Correction Officer Strike and Partial Suspension of HALT

On the morning of February 17, 2025, Correction Officers at Elmira Correctional Facility and Collins Correctional Facility initiated an illegal strike. Affirmation of Daniel F. Martuscello III ("Martuscello Aff.") at ¶ 4. The strike quickly spread to correctional facilities across the state, ultimately affecting thirty-eight of the forty-one DOCCS correctional facilities and more than 8,000 of the 13,000 correction officers and sergeants employed by DOCCS. *Id.* at ¶ 5.

The strike decimated the operations of already short-staffed DOCCS facilities. On February 19, 2025, the Governor issued Executive Order 47, which declared a state of emergency due to the "imminent threat to the safety of correction officers who are currently on the job" and "the more than 33,600 individuals" in DOCCS' custody. *Id.* at ¶ 8 and Exh. A. The Governor activated the New York National Guard to assist non-striking DOCCS employees with operation of DOCCS facilities. *Id.* In response, more than 6,500 members of the National Guard deployed

to DOCCS correctional facilities. *Id.* at ¶ 10. The Governor renewed Executive Order 47 and it remains in effect. *Id.* at ¶ 9.

The strike put an incredible burden on the staff that remained working inside the facilities, forcing them to work impossibly long hours with no days off and take on roles and responsibilities outside the scope of their normal duties. *Id.* at ¶ 11. Many staff slept at the facilities for weeks. *Id.* Even with the assistance of the National Guard, DOCCS facilities across the state faced significant challenges maintaining security and continuing minimum operations. *Id.* at ¶ 14. National Guard members helped maintain order but were neither trained in a corrections environment nor capable of providing support for programming and recreation. *Id.* at ¶ 15.

On February 20, 2025, Commissioner Martuscello issued a Memorandum to all facility superintendents stating

> The provisions of the HALT legislation permit temporary suspension of specific elements of HALT under "exceptional circumstances" where these circumstances "create a significant and unreasonable risk to the safety and security of other incarcerated persons, staff or the facility." Accordingly, we are suspending the elements of HALT that cannot safely be operationalized under a prison wide state of emergency until we can safely operate the prisons.

Martuscello Aff. at ¶ 13 and Exh. D.

The State of New York participated in a multiday mediation with NYSCOPBA to find a resolution to the strike. *Id.* at ¶ 15. That mediation resulted in a Consent Award on February 27, 2025, that included improved safety measures for staff, eliminated mandatory 24-hour overtime shifts, fair scheduling, increased voluntary overtime pay, reduction on overtime shifts, suspension of programming when specific staffing targets cannot be met, improved screening of legal mail for contraband, a referral bonus program, and a wellness app for DOCCS workers. *Id.*

However, the February 27, 2025 Consent Award could not be executed until there was substantial compliance with the Court's Temporary Restraining Order[3] in *Department of Corrections and Community Supervision v. New York State Correctional Officers and Police Benevolent Association, Inc*., which did not happen as most of the correction officers remained on strike. *Id.* Accordingly, the terms of the February 27, 2025 were never operationalized. *Id.*

On March 6, 2025, the State proposed another resolution to the strike, memorialized in a Memorandum of Agreement ("MOA"), which included further measures to address safety and security, including creation of committee to evaluate and make recommendations concerning HALT, discussion of the use of Transportation Security Administration scanners in DOCCS facilities, and agreeing to take no disciplinary action against any correction officers who returned to work on March 7, 2025. *Id.* at ¶ 16 and Exh. F. NYSCOPBA rejected this proposal, and approximately 4,000 correction officers and/or sergeants failed to return to work on March 7, 2025 in defiance of the proposal in the March 6, 2025 MOA and the February 19, 2025 Temporary Restraining Order. *Id.* at ¶ 17

On March 8, 2025, the State made a fourth settlement proposal to NYSCOPBA requiring that all striking staff members return to work by 6:45 A.M. on Monday March 10, 2025, or be considered to have abandoned their posts and no longer an employee of the Department. *Id.* at ¶ 19. For that agreement to be valid, 85% of the striking employees had to return to work. *Id.*

On March 11, 2025, the strike officially ended. *Id.* at ¶ 20. Approximately 2,000 employees failed to return to work by the March 10, 2025 deadline set by the March 8, 2025 MOA.

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3 On February 19, 2025, the Erie County Supreme Court issued an Order to Show Cause in *Department of Corrections and Community Supervision v. New York State Correctional Officers and Police Benevolent Association, Inc.,* Index No. 802914/2025 which temporarily restrained DOCCS employees from striking or otherwise engaging in acts which violate the Taylor Law.

Id. at ¶ 19. This failed to meet the 85% threshold set by the MOA. *Id.* Accordingly, these individuals were considered to have abandoned their posts and no longer be employees of the Department. *Id.* at ¶ 20.

The strike exacted a significant financial toll on the State, costing an estimated $3.5 million per day. *Id.* at ¶ 21. Beyond the enormous financial toll, the strike and resulting loss of employees further exacerbated DOCCS' staffing crisis. DOCCS' pre-strike "fill level," or the number of correction officers and sergeants available to work shifts in the facilities or on approved leave, was 13,342. *Id.* at ¶ 22. This put DOCCS approximately 2,000 staff below what is needed to safely manage its current facilities. *Id.*

As of 9:00 a.m. on March 10, 2025, DOCCS had just over 10,000 correction officers and sergeants working or on approved leave. *Id.* at ¶ 23. At present, DOCCS is over 4,000 staff below where it needs to be to manage its facilities safely, or *double* the pre-strike shortage. *Id.* While it is true that DOCCS had staffing shortages before the strike, the strike only worsened these shortages with the loss of additional staff. *Id.* Although, DOCCS is taking steps to address staffing shortages, there remain shortages in facilities across the state to this day. *Id.* at ¶¶ 23, 28. Such shortages continue to interfere with the ability to safely and securely operate these facilities. *Id.*

C. DOCCS's Ongoing Efforts to Address Staffing Concerns and Safely Restore HALT Programming

Despite the drastic ongoing effects of the strike, DOCCS has made significant progress on a multifaceted strategy to address staffing issues and safely restore the suspended programing and recreational elements of HALT. First, as part of the March 8, 2025 MOA, DOCCS agreed to establish a HALT Review Committee comprised of representatives from NYSCOPBA and other state unions (Council 82, CSEA and PEF) as well as representatives from the DOCCS leadership team. *Id.* at ¶ 24. The Committee's focus is on evaluating potential modifications to the HALT

Act that could improve the safety of staff and the incarcerated population. *Id.* This does not include, nor has DOCCS ever suggested, the repeal of the HALT Act in its entirety. *Id.* The Committee will seek input from several independent advocacy groups before presenting their recommendations to the New York State legislature for consideration. *Id.*

Second, the March 8, 2025 MOA implemented a 90-day temporary suspension the programming elements of the HALT Act due to the ongoing emergency and exigent circumstances that exist within each facility and the significant staffing deficit. *Id.* at ¶ 25. The purpose of this suspension was to allow facilities time to recover and resume their basic operations. *Id.* This 90-day period, which is still ongoing, afforded leadership teams time to assess what programs are operationally viable and could safely resume within each facility. *Id.*

The March 8, 2025 MOA also requires the Commissioner, after 30 days from the date of the MOA, to conduct a facility-by-facility review of operations and staffing levels to determine whether the suspended elements of HALT staffing levels can be safely restored. *Id.* The Commissioner conducted such reviews and continues to do so every thirty days. *Id.* at ¶ 26. Further, each DOCCS facility submitted an operational plan to determine what can be done safely considering the impact of the strike and reduced staffing. *Id.* at ¶ 27. The facility operational plans are reviewed with the DOCCS leadership team to evaluate what can be safely reopened. *Id.*

Many DOCCS facilities continue to experience low staffing levels, making it operationally irresponsible and dangerous to attempt to quickly restore programming. *Id.* at ¶ 28. For example, Five Points, Upstate, and Mid-State CFs are all currently operating with less than forty-percent staffing as of May 19, 2025. *Id.*

Some facilities have not re-started programming for *any* incarcerated individuals, whether in general population or disciplinary housing, due to the exceptional circumstances that continue

to exist within the state prison system. *Id.* at ¶ 32. However, other DOCCS facilities have already resumed many operations, including HALT programming and recreation. *Id.* at ¶ 30. DOCCS has seventeen facilities with both a Special Housing Unit ("SHU") and Residential Rehabilitation Units ("RRU") where HALT programming and recreation is conducted. *Id.* Since the end of the strike, access to recreation increased across these facilities, with eight facilities now offering 7 plus hours a day of recreation (Lakeview, Upstate, Orleans, Collins, Fishkill, Five Points, Cayuga, and Mid-State) and another four facilities offering 4 plus hours per day of recreation (Greene, Coxsackie, Cayuga, and Governour). *Id.*

Further, four of these facilities have already resumed HALT programming (Hudson, Coxsackie, Bedford, and Albion) as of the filing of this submission. *Id.* at ¶ 31. Another four facilities have plans to re-open HALT programming shortly. *Id.* The remainder of the facilities continue to work toward resuming congregate programming once it is safe for both incarcerated individuals and staff. *Id.* These facilities continue to offer cell-study and program packets to individuals in disciplinary housing, as well as recreation. *Id.*

DOCCS initiated a "Recover, Recruit, and Rebuild" transition plan. *Id.* at ¶ 33. The plan has five pillars: (1) safe staffing at facilities, (2) transition to a new normal for the incarcerated population, (3) recruitment new security staff, (4) evaluation of opportunities to reduce the incarcerated population, and (5) developing the long-term vision for a next generation of corrections system. *Id.*

The State has already taken several concrete steps under this plan. First, the enacted 2026 State Budget includes legislation that allows the Commissioner to appoint 18-20-year-olds as corrections officers while the Department works to restore its staffing capacity to sustainable levels. *Id.* at ¶ 34. The legislation also removes the requirement that correction officers be

residents of New York, allowing DOCCS to attract candidates from border states. *Id.* Additionally, the Department of Civil Service approved an upward adjustment of pay grades and a statewide $5,000 "geographic pay differential," to increase the compensation of correction officers, sergeants, and lieutenants. *Id.* at ¶ 35. Finally, DOCCS began an aggressive recruitment campaign that has resulted in an 82% increase in individuals signing up to be a correction officer compared with 2024. *Id.* at ¶ 36.

STANDARD OF REVIEW

"The party seeking a preliminary injunction must demonstrate a probability of success on the merits, danger of irreparable injury in the absence of an injunction and a balance of equities in its favor." *Nobu Next Door, LLC v. Fine Arts Hous., Inc.*, 4 N.Y.3d 839, 840 (2005); *see also* N.Y. C.P.L.R. § 6301; *Doe v. Axelrod*, 73 N.Y.2d 748, 750 (1988); *Rural Community Coalition, Inc. v Vil. of Bloomingburg*, 118 A.D.3d 1092, 1095 (3d Dep't 2014). Each of these requirements must be satisfied by "clear and convincing evidence." *County of Suffolk v. Givens*, 106 A.D.3d 943, 944 (2d Dep't 2013). Though whether to grant a preliminary injunction is within the court's discretion, the "drastic remedy" of a preliminary injunction "should be issued cautiously." *Rural Community Coalition, Inc.*, 118 A.D.3d at 1094-95 (internal quotation marks omitted).

ARGUMENT

POINT I

PETITIONERS FAIL TO ESTABLISH THAT THEY ARE LIKELY TO SUCCEED ON THE MERITS OF THEIR CLAIMS

Petitioners' motion for a preliminary injunction must be denied because they fail to show that they are likely to succeed on the merits of their claims. Far from showing a likelihood of success, each of the claims falters in the face of the factual record and controlling legal authority.

A. The HALT Suspension is not arbitrary and capricious.

Petitioners contend that the HALT Suspension is arbitrary and capricious because it relies on an "overbroad invocation" of the "facility-wide emergency exception" to limitations on segregated confinement under Correction Law § 2(23) ("Section 2(23)"). NYSCEF No. 4 at 17. According to Petitioners, DOCCS's reliance on Section 2(23) is "unreasonable" and must be annulled on Article 78. Petitioners are incorrect and their argument must be rejected.

First, Petitioners acknowledge, as they must, that under Section 2(23) DOCCS "is not without discretion to pause typical limits on cell confinement in the event of a true, 'facility-wide emergency.'" NYSCEF No. 4 at 18. This is because under the unambiguous text of Section 2(23), "segregated confinement," is defined as "the confinement of an incarcerated individual in any form of cell confinement for more than seventeen hours a day **other than in a facility-wide emergency** or for the purpose of providing medical or mental health treatment. Correction Law § 2(3)(emphasis added). Thus, any limitations that HALT places on the duration of "segregated confinement" do not apply during a "facility-wide emergency." *Id.*

Confronted with this clear limit on the scope of "segregated confinement" under HALT, Petitioners resort to a strained and illogical argument about what they deem should suffice as a "facility-wide emergency." First, the record refutes Petitioners' suggestion that DOCCS is using the emergency exception to exercise "boundless" discretion to indefinitely suspend HALT based on unpredictable conditions within its facilities. The record shows that DOCCS implemented a partial suspension of the provisions of the HALT Act for ninety days from the March 8, 2025 MOA, with an evaluation of whether "re-instituting the suspended elements of HALT would create an unreasonable risk to the safety and security of the incarcerated individuals and staff" to begin

after thirty days. Martuscello Aff. at ¶ 19 and Exh. G. This is hardly the sort of exercise of "boundless" discretion Petitioners claim.

Second, Petitioners contend that staffing shortages existed before the correction officer strike, and therefore DOCCS cannot rely upon them to show a "facility-wide emergency" in the aftermath of the strike. This argument ignores the reality that the correction officer strike was *based on* the striking officers' complaints about staffing levels, and that staffing levels became worse *because of* the strike. As Commissioner Martuscello explains, the statewide staffing shortage in DOCCS facilities has *doubled* following the strike. *Id.* at ¶¶ 22-23. Contrary to Petitioners' view, the fact that staffing shortfalls existed before the strike does not somehow nullify the continuing (and much worse) staffing issues in DOCCS facilities.

Petitioners argue that the word "emergency" in Section 2(23) must be read to mean only "sudden, unforeseen circumstances," and cannot encompass "chronic, longstanding conditions." NYSCEF No. 4 at 19. This strained reading of "emergency" finds no support in the text of the statute, or in common sense. Nothing in the HALT Act constrains the scope of an "emergency" to only the most sudden, fleeting of occurrences. Indeed, the fact that Section 2(23) qualifies that only "facility-wide" emergencies to suffice suggests that the Legislature did not intend to limit the definition of "emergency" as narrowly as Petitioners suggest.

Third, Petitioners argue that the term "facility-wide" precludes DOCCS from invoking the emergency exception where there is a "systemwide" emergency. Here again, Petitioners try to constrain the meaning of the statute in a way that is convenient to their desired outcome, but unsupported by any logical reading of the statute, acknowledgment of the facts, or common sense. The "systemwide" emergency at issue in this case is a "facility-wide" emergency existing in numerous DOCCS facilities at once. Petitioners' assertion that there is a lack of "concrete,

localized conditions" is baseless. The correction officer strike affected thirty-eight of DOCCS's forty-one facilities across the entire state. Martuscello Aff. at ¶ 5. Many of those facilities continue to experience severe staffing shortfalls that interfere with their ability to safely perform basic operations. *Id.* at ¶ 28. For example, Five Points, Upstate, and Mid-State CFs are currently operating at approximately forty percent staffing levels. *Id.*

Further, DOCCS is taking a facility-based approach to restoring the suspended elements of HALT, with some facilities already restoring recreation and HALT programming, and others poised to do so soon. Martuscello Aff. at ¶¶ 30-31. Thus, contrary to Petitioners assertions, DOCCS is working at the facility-level to restore HALT programming based on the localized conditions of the facility and is not taking a one-size-fits-all approach.

Finally, Petitioners argue that the HALT Suspension may exacerbate safety issues within facilities, rather than helping them. Again, this argument fails to account for the factual reality that DOCCS must focus its limited staffing at certain facilities on providing services such as medical care, legal and family visits, and transportation to court appearances. *Id.* at ¶ 33. Moreover, restoration of HALT programming with insufficient staff poses a safety and security risk to staff *and* incarcerated individuals, including Petitioners. For example, lack of adequate supervision of incarcerated individuals in congregate recreation settings poses a significant safety risk *for the incarcerated individuals* participating in such recreation. Martuscello Aff. at ¶ 31.

In sum, while Petitioners may object to the HALT Suspension, DOCCS did not act in an arbitrary and capricious manner.

B. DOCCS has not failed to perform a duty enjoined by law.

Petitioners argue that the suspension of programming requirements for incarcerated individuals in segregated confinement and RRUs violates Correction Law § 137(6)(j)(ii).

According to Petitioners, DOCCS has a nondiscretionary duty to afford such programming and recreation to incarcerated individuals, and the HALT Suspension is "affected by an error of law." As such, Petitioners seek a mandamus to compel under CPLR 7803.

Mandamus "is an extraordinary remedy that, by definition, is available only in limited circumstances." *Klostermann v. Cuomo*, 61 N.Y.2d 525, 537 (1984). The remedy of mandamus "will lie only to compel the performance of a ministerial act, and only where there exists a clear legal right to the relief sought." *Matter of Wyche v. Haywood-Diaz*, 206 A.D.3d 748, 750 (2d Dep't 2022). Further, "the remedy of mandamus is available to compel a governmental entity or officer to perform a ministerial duty, but does not lie to compel an act which involve[s] an exercise of judgment or discretion." *Matter of Mensch v. Planning Bd. of the Vil. of Warwick*, 189 A.D.3d 1245, 1247-1248 (2d Dep't 2020).

Here, Petitioners are not entitled to mandamus relief because they do not have a "clear legal right" to the relief sought. First, the confinement of incarcerated individuals during a "facility-wide emergency" does not constitute "segregated confinement" within the meaning of HALT. Point I(A), *supra*. As such, Correction Law § 137(6)(j)(ii)'s requirement that incarcerated individuals in "segregated confinement" be afforded out-of-cell programming and recreation does not apply. Petitioners do not have a clear legal right to HALT programming under these circumstances, and the HALT Suspension is not "affected by an error of law."

Also, Correction Law §§ 137(6)(j)(ii) provides that "[r]ecreation in all residential rehabilitation units shall take place in a congregate setting, unless exceptional circumstances mean doing so would create a significant and unreasonable risk to the safety and security of other incarcerated persons, staff, or the facility." The ongoing staffing shortage constitutes an

exceptional circumstance under which incarcerated individuals in RRUs need not be afforded congregate recreation.

Further, the temporary suspension of elements of HALT during the ongoing emergency is not the sort of "ministerial act" that may be subject to mandamus relief. By its very nature, the decision to suspend certain elements of HALT based on emergency conditions requires "the exercise of reasoned judgment." *Matter of Mensch*, 189 A.D.3d at 1247-48. DOCCS exercised reasoned judgment in the decision to suspend certain elements of HALT based on its assessment that these requirements could not be safely followed during the correction officers strike. Point I(A), *supra*.

Although Petitioners may disagree with DOCCS's reasoning, or prefer that the Court adopt their own reasoning, their attempt to cast HALT's requirements as "ministerial" is unavailing. Petitioners apparently recognize this, as they assert in one breath that DOCCS has a ministerial duty to provide HALT programming, and in the next breath that the HALT Suspension was abuse of DOCCS' discretion. NYSCEF No. 2 at ¶¶ 180-181. Petitioners cannot have it both ways.

In sum, Petitioners are not likely to succeed on the merits of their Article 78 claim that DOCCS failed to perform a duty enjoined by law, or that the suspension of programming and out-of-cell requirements in Correction Law § 137(6)(j)(ii) was "affected by an error of law." Petitioners' request for a preliminary injunction must be denied on this basis.

C. The HALT Suspension does not violate the separation of powers doctrine.

Petitioners contend that the HALT Suspension is affected by an error of law because it violates the separation of powers enshrined in Article III, Section I and Article IV, Section 3 of the New York State Constitution. These constitutional provisions set out the powers and duties of New York's legislative and executive branches. Article III, Section 1 of the New York State

Constitution states that "The legislative power of this state shall be vested in the senate and assembly." Article IV, Section 3 sets forth the "powers and duties of the governor," including the duty to "take care that the laws are faithfully executed."

"The concept of the separation of powers is the bedrock of the system of government adopted by this State in establishing three coordinate and coequal branches of government, each charged with performing particular functions . . . ." *Matter of Maron v. Silver*, 14 N.Y.3d 230, 258 (2010). "It is a fundamental principle . . . that each department should be free from interference, in the discharge of its peculiar duties, by either of the others . . . ." *County of Oneida v. Berle*, 49 N.Y.2d 515, 522 (1980). In reviewing a legislative enactment, a court must construe the statute, if possible, "so that it is no broader than that which the separation of powers doctrine permits . . . ." *Boreali v. Axelrod*, 71 N.Y.2d 1, 9 (1987).

Separation of powers principles "require[] that the Legislature make the critical policy decisions, while the executive branch's responsibility is to implement those policies . . . ." *Matter of LeadingAge N.Y., Inc. v. Shah*, 32 N.Y.3d 249, 259 (2018). "[T]he duties and powers of the legislative and executive branches cannot be neatly divided into isolated pockets . . . ." *Bourquin v. Cuomo*, 85 N.Y.2d 781, 784 (1995). The Court of Appeals has "steadfast[ly] refus[ed] to construe the separation of powers doctrine in a vacuum, instead viewing the doctrine from a commonsense perspective . . . ." *Id.* at 785.

1. *The HALT Suspension does not usurp legislative policymaking authority*

Petitioners argue that the HALT Suspension is an act of "executive policymaking" that infringes on the powers of the Legislature. Petitioners are incorrect. DOCCS's actions are not "policymaking" of any sort. Rather, they are DOCCS's lawful interpretation and application of the language of HALT.

In *Boreali v. Axelrod*, 71 N.Y.2d 1 (1987), the Court of Appeals described the framework to determine whether an agency has "transgressed" the "difficult-to-define line between administrative rule-making and legislative policy-making." This evaluation includes consideration of four factors:

> [W]hether (1) the agency did more than balance costs and benefits according to preexisting guidelines, but instead made value judgments entailing difficult and complex choices between broad policy goals to resolve social problems; (2) the agency merely filled in details of a broad policy or if it wrote on a clean slate, creating its own comprehensive set of rules without benefit of legislative guidance; (3) the Legislature has unsuccessfully tried to reach agreement on the issue, which would indicate that the matter is a policy consideration for the elected body to resolve; and (4) the agency used special expertise or competence in the field to develop the challenged regulation.

Leadingage N.Y., Inc. v. Shah, 153 A.D.3d 10, 17 (3d Dep't 2017) (internal quotations and citations omitted) (alteration added)

These so-called "coalescing circumstances," should not be regarded as "discrete, necessary conditions that define improper policymaking by an agency, nor as criteria that should be rigidly applied in every case in which an agency is accused of crossing the line into legislative territory." *New York Statewide Coalition of Hispanic Chambers of Commerce v. New York City Dept. of Health and Mental Hygiene*, 23 N.Y.3d 681, 696 (2014). Rather, they should be construed as "overlapping, closely related factors that, taken together, support the conclusion that an agency has crossed that line." *Id*. at 696-97.

Here, each of the *Boreali* factors weights in favor of DOCCS.

a. <u>The HALT Suspension was a lawful exercise of DOCCS's authority within the preexisting guidelines set by the Legislature.</u>

As a threshold matter, the HALT Suspension is not the product of the sort of formal

administrative rulemaking that is typically the target of challenges under *Boreali*. Instead, the HALT Suspension was merely an administrative action taken by DOCCS within preexisting guidelines set by the Legislature. As Petitioners acknowledge, HALT's very language contains provisions that grant DOCCS authority to pause certain elements of HALT. *See* NYSCEF No. 4 at 18. This language includes: (1) Correction Law § 2(23), which places confinement in the event of "a facility-wide emergency" outside the scope of "segregated confinement"; and (2) Correction Law § 137(6)(j)(ii), which allows deviations from programming requirements in exceptional circumstances.

The Legislature made the policy choice to include language in the HALT Act which limits programming and out-of-cell requirements during times of emergency or other exceptional circumstances affecting safety and security. While it is true that, in enacting HALT, the Legislature expressed its desire to reduce harms caused by prolonged disciplinary confinement, it balanced this policy goal with the need to maintain safe and secure correctional facilities. DOCCS acted within this preexisting scheme and did not engage policymaking.

Thus, the first *Boreali* factor resolves in favor of Respondent.

b. <u>DOCCS did not create a new policy without legislative guidance.</u>

Petitioners argue that the HALT Suspension constituted a new policy made without guidance from the Legislature. For the same reasons as detailed above, this argument is meritless. The HALT Suspension cannot fairly be characterized as a new policy, or a policy made without legislative guidance. The Legislature made policy judgments about the scope of HALT's requirements, including the judgment that, in certain emergency or exceptional circumstances, HALT's programming requirements may not be feasible. Acting within these parameters, DOCCS took permissible administrative action. The second *Boreali* factor favors Respondent.

c. DOCCS did not create a policy in an area in which the Legislature failed to reach agreement.

There is no area of legislative debate at issue because HALT was enacted by the Legislature. As such, this factor has no application to the circumstances of this case. Further, Petitioners' rehashed argument that DOCCS created new policy in the face of the Legislature's agreement about how to regulate disciplinary confinement fails for the same reasons as discussed. DOCCS did not make decisions as to governance of a hotly contested subject or an area where the Legislature was unable to reach an agreement.

The third *Boreali* factor should be resolve in favor of Respondent.

d. The HALT Suspension involved DOCCS special expertise and competency.

DOCCS relied on its special expertise regarding safe operation of its facilities in determining that the staffing shortage qualified as an "emergency" in the meaning of the statute and otherwise satisfied the "exceptional circumstances" provision. Petitioners wrongly assert that DOCCS failed to perform analysis of why particular facilities cannot comply. DOCCS engaged in a facility-based evaluation of whether HALT programming can safely be restored based on a number of factors within the agency's expertise. Martuscello Aff. at ¶ 33. The fourth *Boreali* factor favors Respondent.

In summary, the *Boreali* factors uniformly weigh in Respondent's favor. Petitioners are not likely to succeed on their claim that Respondent violated the separation of powers doctrine.

2. *The Suspension does not nullify the HALT Act*

Petitioners make a related, but equally meritless, argument that the HALT Suspension nullifies a duly enacted law. Petitioners' nullification argument rests on the same flawed premise as their other arguments, namely that the HALT Suspension is an attempt by DOCCS to permanently eliminate HALT's requirements. DOCCS does not, and has never, claimed authority

to eliminate the suspended provisions. The record wholly belies this assertion.

In summary, none of Petitioners legal theories have merit. Petitioners fail to meet their burden to show a likelihood of success on the merits. Petitioners' motion for a preliminary injunction must be denied.

POINT II

PETITIONERS FAIL TO ESTABLISH THAT THEY WILL SUFFER IRREPARABLE HARM

Petitioners fail to demonstrate that they will suffer "irreparable harm" in the absence of the requested preliminary injunction. "Irreparable harm" is "any injury for which money damages are insufficient." *McLaughlin, Piven, Vogel, Inc. v. W. J. Nolan & Co*., 114 A.D.2d 165, 174 (2d Dept. 1986). "Injunctive relief can and should be predicated only on the basis of a showing that the alleged threats of irreparable harm are not remote or speculative but are actual and imminent." *State of New York v. Nuclear Regulatory Commission*, 550 F.2d 745, 755 (2d Cir. 1977).

Petitioners allege that they are experiencing physical and mental health effects while in cell confinement following the HALT Suspension. Beyond their own anecdotal and self-serving accounts, however, Petitioners' submissions offer no competent proof of these alleged injuries. Moreover, Petitioners offer no evidence that these alleged injuries are causally related to the HALT Suspension, rather than the fact that Petitioners are incarcerated.

Further these alleged harms are not "irreparable harms" for a preliminary injunction. Rather, physical and emotional effects Petitioners describe are the sort of injuries for which Petitioners could be "made whole with money damages." *Musey v. 425 E. 86 Apartments Corp.*, 154 A.D.3d 401, 404 (1st Dep't 2017).

Petitioners cite a series of inapposite cases for the proposition that the alleged effects of cell confinement may be considered "irreparable harm." NYSCEF No. 49 at 23-24. For example, in *V.W. v. Conway*, the Court held that irreparable harm existed because the Plaintiffs, adolescents in juvenile detention, were allegedly being deprived of educational services. *V.W. v. Conway*, 236 F. Supp. 3d 554, 589 (N.D.N.Y. 2017) The Court held that deprivation of educational services in this particular setting could impede the plaintiffs' adolescent development in a manner that could cause irreparable injury. *Id.* These factual circumstances are not analogous to those at bar, in which the putative plaintiff classes do not contain any adolescent members. Further, as explained by Commissioner Martuscello, DOCCS facilities continue to offer educational materials like in-cell study and program packets. Martuscello Aff. at ¶ 31.

Likewise, Petitioners' characterization of the court's finding in *Jolly v. Coughlin* is misleading. In *Jolly*, the Court held that the Plaintiff had demonstrated a likelihood of success on the merits of his underlying claim that he was deprived of his right to freely exercise his religion. *Jolly v. Coughlin*, 76 F.3d 468, 482 (2d Cir. 1996). The Court relied on the denial of a constitutional right to find that Plaintiff suffered *per se* irreparable harm. *Id.* Here, unlike in *Jolly*, Petitioners do not show that they are likely to succeed on the merits of their constitutional claims. Accordingly, Petitioners cannot demonstrate that they suffered irreparable harm arising out of the deprivation of their constitutional rights.

In sum, Petitioners fail to meet their burden to establish that they will suffer irreparable harm in the absence of the requested injunction. Petitioners motion should be denied.

POINT III

THE EQUITIES BALANCE IN FAVOR OF THE RESPONDENT, AND ISSUANCE OF A PRELIMINARY INJUNCTION IS NOT IN THE PUBLIC INTEREST

Finally, Petitioners' motion must be denied because the balance of the equities weighs

heavily in favor of Respondent, and the requested injunction is not in the public interest. "It must be shown that the irreparable injury to be sustained … is more burdensome to the plaintiff than the harm caused to defendant through imposition of the injunction . . . ." *Destiny USA Holdings, LLC v. Citigroup Global Mkts. Realty Corp.*, 69 A.D.3d 212, 223 (4th Dep't 2009) (internal quotations omitted). "In balancing the equities, the court 'must weigh the interests of the general public as well as the interests of the parties to the litigation . . . .'" *City of New York v. Miller*, 20 Misc. 3d 1117(A) (Sup. Ct. Kings Cty. Jun. 27, 2008).

The requested preliminary injunction would have disastrous effects on New York's correctional facilities, their staff, and incarcerated individuals. *See* Martuscello Aff at ¶¶ 11-14, 18, 21-23. Petitioners ask the Court to direct DOCCS to immediately restore suspended HALT programs without regard to the safety and security of its facilities. DOCCS continues to face significant staffing shortages at many of its facilities in the wake of the strike. While DOCCS is working diligently to address the root causes of the staffing issues, it cannot safely restore HALT programming in all of its facilities at this time.

Petitioners ignore these realities, mischaracterizing DOCCS's plan as a "continued blanket enforcement" of the HALT Suspension. That is not true. DOCCS is taking a facility-based approach to restoring HALT programming and already restored programming in some facilities. *Id.* at ¶¶ 25-28. A preliminary injunction which forces DOCCS to restore HALT programming in facilities that are not able to safely implement it would return corrections staff and incarcerated individuals to very same conditions which precipitated the strike and resulted in loss of nearly 2,000 correction officers. That is not an equitable outcome for DOCCS, for its staff, for incarcerated individuals, or for the public. The equities weigh decidedly in favor of Respondent, and Petitioners' request for a preliminary injunction must be denied.

CONCLUSION

For the reasons set forth above, Petitioners' motion for a preliminary injunction should be denied.

Dated: Albany, New York
May 23, 2025

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TO: Counsel of record (*Via NYSCEF*)

STATEMENT PURSUANT TO 22 NYCRR 202.8-b

I, Ryan W. Hickey, affirm under penalty of perjury pursuant to CPLR 2106, that the total number of words in the foregoing memorandum of law, inclusive of point headings and footnotes and exclusive of pages containing the caption, table of contents, table of authorities, and signature block, is 6695. The foregoing memorandum of law complies with the word count limit set forth in 22 NYCRR 202.8-b. In determining the number of words in the foregoing memorandum of law, I relied upon the word count of the word-processing system used to prepare the document.

s/Ryan W. Hickey
Ryan W. Hickey

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

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

Plaintiffs-Petitioners,

-against-

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

Defendant-Respondent.

AFFIRMATION

Index No. 903926-25

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

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

2. I make this Affirmation in opposition to Petitioners' motion for a preliminary injunction. NYSCEF Nos 48-50.

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

4. On the morning of Monday February 17, 2025, DOCCS was made aware of an illegal correction officer strike taking place at Elmira Correctional Facility ("CF") in Chemung

County and Collins CF in Erie County. The strike was initiated by correction officers who are public employees and members of the New York State Correctional Officers and Police Benevolent Association, Inc. ("NYSCOPBA") union. NYSCOPBA is the recognized bargaining agent for correction officers in the state of New York.

5. While the strike began at two facilities, it quickly expanded to other facilities across the state. At its peak, the twenty-two-day illegal job action encompassed thirty-eight of the forty-one state correctional facilities and more than 10,000 of the 13,000 correction officers and sergeants.

6. The strike threatened irreparable harm to the operations of DOCCS, which was already experiencing staffing shortages. In addition to jeopardizing the operations within DOCCS facilities, the NYSCOPBA members involved jeopardized the safety and security of their co-workers and the thirty-three thousand incarcerated individuals in the custody and care of DOCCS. Simply put, their actions created great risk to the life and safety of both DOCCS employees and the incarcerated population.

7. On February 18, 2025, and in response to the unlawful work stoppage, Governor Hochul announced preparations to utilize the New York National Guard to protect correction officers and staff who continued to work within our facilities, the incarcerated individuals within DOCCS's care and the communities surrounding these correctional facilities.

8. On February 19, 2025, Governor Hochul issued Executive Order No. 47, declaring a disaster emergency in the State of New York and ordered into active service the New York National Guard to assist in guaranteeing public order and protection of public property at various correctional facilities. A copy of Executive Order No. 47 is attached as **Exhibit A**.

9. This executive order continues to be in force, as of May 19, 2025. The Governor reissued and extended the order since the strike ended, extending the facility-wide emergency due to the exceptional circumstances and continued risk to the safety and security of the incarcerated population and staff post-strike. Copies of Executives Orders Nos. 47.1 and 47.2, which renew Executive Order 47, are attached as **Exhibits B and C** respectively.

10. In response to the Governor's Executive Order, more than 6,500 members of the National Guard were deployed to all DOCCS correctional facilities. The facilities operated with minimal staff and the assistance of the National Guard to keep our facilities afloat.

11. The strike put an incredible burden on the staff that remained working inside the facilities, forcing them to work impossibly long hours with no days off and take on roles and responsibilities outside the scope of their normal duties. Many of the staff slept at the facilities for weeks out of necessity. Similarly, all the incarcerated population went weeks with minimal activity, recreation, or programming due to a lack of safety and security within our facilities. The lack of programming and recreation was not limited to any specific subset of the incarcerated population. The situation remained dire for all involved with significant risk of further deterioration.

12. Even with the National Guard embedded across all our facilities, the ability to maintain safety and security was tenuous and it continued to decline the longer the strike continued. The situation was unsafe for the staff, the incarcerated population, and the communities in which DOCCS operates.

13. Due to the significant and ongoing safety and security risks, I made the decision to suspend the programming and recreation elements of HALT. I also suspended programming and

recreation for *all* incarcerated individuals, as well as nearly all other elements of facility operations beyond the bare minimum to maintain safety. This was a difficult but necessary decision. With as many as 75% of our security staff on strike, this was done in order to minimize the chance of a volatile situation growing worse. This was also done as a matter of practicality – these facilities simply did not have the staff to conduct anything beyond the bare minimum operations (e.g. food, medical care) For many facilities, this continues to be the situation post-strike. A copy of my February 20, 2025 Memorandum to all DOCCS facility superintendents concerning the temporary suspension the programming and recreational elements of HALT is attached as **Exhibit D.**

14. The National Guard helped maintain order but were neither trained in a corrections environment nor capable of providing support around programming and recreation. Leadership's goal was simple: to avoid making an incredibly volatile and unsafe situation worse.

15. The State of New York participated in a multiday mediation with NYSCOPBA to find a resolution to this unlawful job action. That mediation resulted in a Consent Award on February 27, 2025, that included improved safety measures for staff, setting a goal of eliminated 24-hour overtime shifts, fair scheduling, increased voluntary overtime pay, reduction on overtime shifts, suspension of programming when specific staffing targets cannot be met, improved screening of legal mail for contraband, referral bonus program, and a wellness app for DOCCS workers. However, that Consent Award could not be executed until there was substantial compliance with the Court's Temporary Restraining Order in *New York State Department of Corrections and Community Supervision vs. New York State Correctional Officers and Police Benevolent Association, Inc. and John Doe and Jane Doe being public employees employed by the New York State Department of Corrections and Community Supervision*, Index No. 802914/2025,

which did not happen as most of the correction officers remained on strike. This consent award was never executed or operationalized. A copy of the February 27, 2025, Consent Award is attached as **Exhibit E.**

16. After NYSCOPBA members rejected the February 27, 2025, Consent Award, the State of New York proposed another resolution, memorialized in a Memorandum of Agreement ("MOA"), on March 6, 2025, which included further measures around safety and security including the formation of a committee to evaluate and make recommendations concerning HALT, looking into TSA scanners to reduce contraband entering the facility, and agreeing to take no disciplinary action against any correction officers who returned to work on March 7, 2025. A copy of the March 6, 2025 Memorandum of Agreement is attached as **Exhibit F**.

17. NYSCOPBA leadership rejected this deal as well, and approximately 4,000 correction officers and/or sergeants failed to return to work and failed to comply with a February 19, 2025, Temporary Restraining Order ("TRO").

18. These striking officers' failure to comply with a Court ordered TRO caused irreparable harm to the operations of DOCCS and exacerbated an already volatile situation.

19. On March 8, 2025, a final agreement was made with NYSCOPBA requiring that all striking staff members return to work by 6:45 A.M. on Monday March 10, 2025, or be considered to have abandoned their posts and no longer an employee of the Department. For that agreement to be valid, 85% of the striking employees had to return to work. The threshold was not met and approximately 2,000 employees who continued their illegal strike were deemed to have abandoned their posts. A copy of the March 8, 2025 Memorandum of Agreement is attached as **Exhibit G**.

20. As of March 11, 2025, the strike was officially over. The strike lasted for 22 days. During that time the New York State Department of Corrections and Community Supervision made four offers to end the strike. The fourth and final offer was made on Saturday, March 8, 2025.

21. Upon information and belief, the monthly cost of the strike was approximately $106 million, with a daily cost to the State of over $3.5 million.

22. In addition to the financial cost, the strike and the loss of employees further exacerbates a Departmental staffing crisis. DOCCS' pre-strike "fill level," the number of correction officers and sergeants available to work shifts in the facilities or on approved leave, was 13,342. This put DOCCS approximately 2,000 staff below what is needed to safely manage our current facilities.

23. As of 9:00 a.m. on March 10, 2025, DOCCS had just over 10,000 Correction Officers and Sergeants working or on approved leave (Workers' Compensation, Family Medical Leave Act, Paid Parental Leave etc.). At present, DOCCS is over 4,000 staff below where it needs to be to manage our facilities safely. This is double the pre-strike number and a significant and unreasonable fill-level for safely operating our facilities. While it is true that we had staffing shortages before the strike, the strike and the subsequent loss of staff has created both exceptional circumstances and an unreasonable risk to both the incarcerated population and the staff that did not exist before the strike.

24. As part of the March 8, 2025, Memorandum of Agreement ("MOA"), DOCCS agreed to establish a HALT Review Committee comprised of representatives from NYSCOPBA and other state unions (Council 82, CSEA and PEF) as well as representatives from the State,

which includes representation of OER and DCJS. The Committee's focus is on evaluating potential modifications to the HALT Act that could improve the safety of staff and the incarcerated population. This does not include, nor has DOCCS ever suggested, the repeal of the HALT Act in its entirety. The Committee will seek input from several independent advocacy groups before presenting their recommendations to the New York State legislature for consideration.

25. As part of the March 8, 2025, MOA, DOCCS implemented a 90-day suspension of the programming elements of the HALT Act due to the ongoing emergency and exigent circumstances that exist within each facility and the significant staffing deficit. The purpose of this suspension was to allow facilities time to recover and resume their basic operations and for the leadership teams to assess what was operationally viable and could safely resume. Each facility was responsible for developing an operations reopening plan that included re-opening programming under the HALT Act.

26. The March 8, 2025 MOA requires the Commissioner to evaluate the operations, safety and security of our facilities relative to staff levels and to determine whether re-instituting the suspended elements of HALT would create an unreasonable safety and security risk. Since that time, I have conducted reviews, facility by facility, every thirty days to determine if DOCCS can restore HALT programming.

27. Each facility developed an operational plan to determine what can be done safely and securely considering the impact of the strike and reduced staffing. The facility operational plans are reviewed with the DOCCS leadership team to evaluate what can be safely reopened. There cannot be a one size-fits all approach to these plans that would adequately address the ongoing risk to the safety and security of the staff and the incarcerated individuals, which must be

the paramount consideration. This is not a decision I take lightly, as the risk of restoring programming too early is incredibly high.

28. Since the end of the strike, many facilities continue to experience dangerously low staffing levels, making it operationally irresponsible and dangerous to attempt to quickly restore programming. For example, Five Points, Upstate, and Mid-State CFs are all currently operating with less than forty-percent staffing as of May 19, 2025. Whether it is college classes, HALT programming, or legal visits, our priority must continue to be the safety and the security of all those within these facilities, and we cannot create an unreasonable risk to an unstable situation.

29. The National Guard remains in a support posture to ensure stability within our facilities as we attempt to recover and try to safely resume normal operations. However, the National Guard's overall support has drawn down and will remain under the Governor's discretion.

30. Despite the staffing limitations, ongoing emergency, and exceptional circumstances, DOCCS has made progress in re-opening operations. DOCCS has seventeen facilities with both a Special Housing Unit ("SHU") and Residential Rehabilitation Units ("RRU") where HALT programming and recreation is conducted. Since the end of the strike, access to recreation increased across these facilities, with eight facilities now offering 7+ hours a day of recreation (Lakeview, Upstate, Orleans, Collins, Fishkill, Five Points, Cayuga, and Mid-State) and another four facilities offering 4+ hours per day of recreation (Greene, Coxsackie, Cayuga, and Governour).

31. Since the end of the strike, three of these facilities have already resumed HALT programming (Hudson, Coxsackie, Bedford). Another four facilities have plans to re-open HALT programming shortly. The remainder of the facilities continue to work towards resuming

congregate programming once it is safe for both incarcerated individuals and staff. These facilities continue to offer cell-study and program packets to individuals in disciplinary housing, as well as recreation.

32. Some facilities have not re-started programming for *any* incarcerated individuals, whether in general population or disciplinary housing, due to the exceptional circumstances that continue to exist within the state prison system. The goal is to operationalize all elements of each facility, including HALT programming, but it must be done safely and effectively when the facility can reasonably do so. Factors in making that determination include staffing levels, fluctuating presence of the National Guard within our facilities, and other operational priorities (medical and legal transport, class and movement, legal and family visits, etc.).

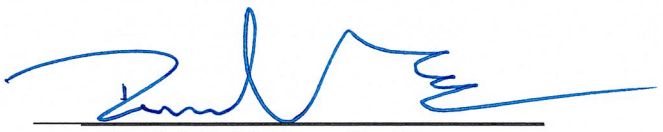
33. To alleviate the ongoing staffing crisis within our facilities, DOCCS has initiated a "Recover, Recruit, and Rebuild" transition plan. The plan has five pillars: (1) safe staffing at facilities, (2) transition to a new normal for the incarcerated population, (3) recruit new security staff, (4) evaluate opportunities to reduce the population, and (5) develop the long-term vision for a next generation of corrections system.

34. Legislation passed in the FY2026 State budget will also aid DOCCS in our ability to recruit staff in order to operate safe and secure facilities. Legislation was passed allowing the Commissioner to appoint persons aged 18-20 as correction officers while the Department works to restore its staffing capacity to sustainable levels. Additionally, The New York State residency requirement was also removed for the title of correction officer, allowing us to attract and hire candidates from border States.

35. To assist us in our recruitment and retention campaigns, the Department of Civil Service approved an upward reallocation for the titles of correction officer and sergeant, and a $5,000 geographic pay differential for the titles of correction officer, sergeant and lieutenant.

36. Through the Departments aggressive recruitment campaign, we have seen an 82% increase in individuals signing up to be a correction officer compared with 2024. If successful, the recruiting campaign, legislative changes, and reopening plans will allow us to safely re-open each of our facilities and resume all operations, including HALT programming, in a manner that both reflects the seriousness of the ongoing emergency, and sets the agency and the incarcerated individuals up for success.

I affirm this 21st day of May 2025, under the penalties of perjury under the laws of New York, which may include a fine or imprisonment, that the foregoing is true, and I understand that this document may be filed in an action or proceeding in a court of law.



Daniel F. Martuscello III

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. 903926-25

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

THE LEGAL AID SOCIETY
PRISONERS' RIGHTS PROJECT
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PRELIMINARY STATEMENT

For more than three months now, Defendant Commissioner Martuscello has claimed sweeping authority to ignore the Legislature's clear command, embodied in the Humane Alternatives to Long-Term Solitary Confinement Law ("HALT"), that he limit the Department's use of dangerous isolation. Defendant's initial suspension of HALT was precipitated by the unlawful strike of corrections officers across the state in February 2025, but that strike ended on March 11, more than two months ago. Thousands of staff have since returned to work, and Defendant himself explains that safe recreation and programming are now possible at numerous facilities. Nonetheless, Defendant's blanket, statewide suspension of HALT remains in place, stripping thousands of people of the law's protections and placing them at risk of the serious, long-lasting and potentially lethal psychological and physical damage caused by solitary confinement.

To mitigate this irreparable harm, Plaintiffs have sought a preliminary injunction. Contrary to Defendant's claims, the requested relief would neither endanger incarcerated people nor place an undue burden on Defendant. Defendant would still be able to invoke HALT's emergency exceptions where there is a true "facility-wide emergency" or "exceptional circumstance," as the statute allows. He simply would be enjoined to follow those statutory commands rather than continuing to grant himself unfettered authority to ignore the law's core tenets at *all* of his correctional facilities, perhaps indefinitely.

In order to protect thousands of incarcerated New Yorkers from the extreme harm caused by solitary confinement, the same harm the Legislature sought to limit through HALT, this Court should grant Plaintiffs' motion for a preliminary injunction.

ARGUMENT

I. Plaintiffs Will Succeed on the Merits.

A. Defendant Still Offers No Facility-Specific Basis for Suspending Limits on Segregated Confinement.

Defendant does not dispute that, for months, DOCCS has subjected thousands of class members—regardless of any disciplinary charges—to conditions indistinguishable from segregated confinement, the harshest form of punishment New York law allows. Instead, he leans on a series of flawed arguments, none of which excuse his failure to comply with HALT's unambiguous requirement: that limits on segregated confinement may be paused at any particular facility only in response to a "facility-wide emergency" (Correction Law ["CL"] § 2[23]).

To deflect from this failure, Defendant mischaracterizes Plaintiffs' position: He suggests Plaintiffs have claimed Section 2(23)'s "facility-wide emergency" exception can *never* be invoked in response to a systemwide emergency (*see* Df.'s Mem. of Law in Opp., NYSCEF No. 60 ("Opp."), at 12).[1] Not so. In reality, Plaintiffs make a far narrower point: that, under both bedrock principles of administrative law and the plain text of the statute, the scope of any such invocation must bear a rational connection to the facts on the ground at particular facilities (*see Pell v Bd. of Educ. of Union Free Sch. Dist. No. 1 of Towns of Scarsdale and 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."]; *see also Motor Veh. Mfrs. Assn. of U.S., Inc. v State Farm Mut. Auto. Ins. Co.*, 463 US 29, 43 [1983] [requiring an agency to "examine the relevant data and articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made"] [cleaned up]). DOCCS may not invoke a vague notion of overall system strain to justify imposing extreme isolation at every prison. Instead, if DOCCS wishes to suspend

[1] Citations to the parties' briefing refer to a brief's internal pagination, not PDF page numbers.

HALT's limits on segregated confinement systemwide, a "facility-wide emergency" must exist within each facility in the system.

Defendant's interpretation of Section 2(23)'s emergency exception must be rejected because it renders a key limiting phrase in the statutory text—"facility-wide"—"mere surplusage" (*Scott v Massachusetts*, 86 NY2d 429, 435 [1995]). Had the Legislature wanted to authorize DOCCS to suspend limits on segregated confinement during any "systemwide emergency," or even any "emergency," it could have said so. Instead, Section 2(23) allows that drastic step only in the event of an emergency that is "facility-wide" (CL § 2[23]). Under longstanding principles of statutory construction, that choice must be understood as deliberate and worthy of respect (*see Inhabitants of Montclair Tp. v Ramsdell*, 107 US 147, 152 [1883] ["It is the duty of the court to give effect, if possible, to every clause and word of a statute, avoiding, if it may be, any construction which implies that the legislature was ignorant of the meaning of the language it employed."]).

From the start, Defendant failed to base his systemwide invocation of Section 2(23)'s emergency exception on findings specific to any particular facility.[2] And even now that this failure is squarely before the Court, he still does not explain how conditions at individual facilities justify the sweeping, systemwide suspension he continues to impose. The limited facility-level information Defendant does provide only highlights that deficiency. He notes the strike "affected" 38 of 41 DOCCS facilities but largely declines to say how or to what extent (Opp. at 13). He cherry-picks three of the most impacted facilities—Five Points, Mid-State, and Upstate Correctional Facilities, where staffing is currently 40% of prestrike levels—but provides no data

[2] The Court should not credit Defendant's conclusory assertion that "ongoing emergency and exigent circumstances . . . exist within each facility" (Martuscello Aff. ¶ 25; *see also Dickson v Sec'y of Def.*, 68 F3d 1396, 1407 [DC Cir 1995] ["[C]onclusory statements ... do not meet the requirement that the agency adequately explain its result."]).

for other facilities, many of which have begun resuming services in response to improved conditions (Opp. at 8–9). What little publicly available data does exist—on aggregated staffing levels, not those levels at particular facilities—shows an incarcerated-to-staff ratio that has risen only from 2.39 incarcerated people per staff member before the strike to 2.79 now,[3] meaning that DOCCS remains one of the more richly staffed correctional systems in the country (*see* Ex. 29 to Aff. of Antony Gemmell, US Dep't of Justice, Census of Correctional Facilities 2019 [reflecting overall ratio of incarcerated people to security staff of 5 to 1 in state facilities, and 10 to 1 in federal facilities]).

Next, Defendant doubles down on the remarkable claim that DOCCS's current purported staffing shortage, which he admits was a problem long before the unexpected strikes began, constitutes an "emergency" that justifies the continuing suspension of HALT at every DOCCS prison (Opp. at 12), despite the fact that the strikes ended months ago. Defendant reaches this conclusion by distorting the term "emergency" beyond its ordinary meaning—sudden, unforeseen circumstances requiring immediate action—to reach chronic, longstanding conditions of DOCCS's own making.

Defendant dismisses Plaintiffs' reading of "emergency" in Section 2(23) as "strained" (*id.*), but Plaintiffs rely on the term's ordinary meaning as informed by common dictionary definitions—precisely the approach courts long have used when interpreting undefined statutory text. As the Court of Appeals has made clear, "In the absence of a statutory definition, we construe words of ordinary import with their usual and commonly understood meaning, and in that connection have

[3] *See* DOCCS Fact Sheet, May 1, 2025, https://doccs.ny.gov/system/files/documents/2025/05/doccs-fact-sheet-may-2025.pdf (showing 11,359 correction officers, sergeants, and lieutenants on May 1, 2025, compared to 31,694 incarcerated individuals, resulting in an incarcerated-to-staff ratio of approximately 2.79); DOCCS Fact Sheet, January 1, 2025, https://doccs.ny.gov/system/files/documents/2025/01/doccs-fact-sheet-january-2025_0.pdf (showing 14,095 correction officers, sergeants, and lieutenants on January 1, 2025, compared to 33,677 incarcerated individuals, resulting in an incarcerated-to-staff ratio of approximately 2.39).

regarded dictionary definitions as useful guideposts in determining the meaning of a word or phrase" (*Walsh v NY State Comptroller*, 34 NY3d 520, 524 [2019]). And any reading of Section 2(23) that expands "emergency" to encompass long-predicted, slow-developing resource issues runs headlong into HALT's legislative purpose, which was to limit segregation, not to allow bureaucratic failures to override HALT's protections on a long-term, potentially indefinite basis.[4]

Indeed, Defendant himself identifies a host of basic steps DOCCS had failed for years to take to address its purported staffing problems (Opp. at 9–10). An agency cannot ignore its own operational needs and then call the foreseeable consequences an "emergency" justifying extreme isolation for thousands of people for the foreseeable future. The Court should reject Defendant's invitation to transform DOCCS's chronic mismanagement into a blank check for suspending the statutory rights of class members.

B. Defendant Misreads HALT's Requirements for Out-of-Cell Programming.

Defendant's claim that HALT grants DOCCS unfettered discretion to ignore CL § 137(6)(j)(ii)'s out-of-cell programming requirement for people in segregated confinement and Residential Rehabilitation Units ("RRU") is meritless.

First, he argues that the requirement to provide out-of-cell programming and recreation to people in segregated confinement does not apply in a "facility-wide emergency" during which "the confinement of incarcerated individuals . . . does not constitute segregated confinement within the meaning of HALT" (Opp. at 14). But as Plaintiffs have shown, Defendant's invocation of the emergency exception is invalid—and thus so, too, is this argument.

Second, Defendant points to an exception in CL § 137(6)(j)(ii) permitting recreation in RRU to be non-congregate when "exceptional circumstances" pose serious safety risks (Opp. at

[4] As Plaintiffs have noted, Defendant does not commit to ending the HALT Suspension after 90 days (*see* Plaintiffs' Art. 78 Mem. of Law, NSYCEF No. 4, at 23; Martuscello Aff. ¶¶ 23, 28, 31–36).

14–15). But that exception applies only to the *congregate* aspect of *recreation* in RRU—not to programming overall (*see* Plaintiffs' A78 Mem. of Law, NYSCEF No. 4, at 16–17). HALT nowhere authorizes DOCCS to eliminate all out-of-cell programming or recreation in RRU.

Defendant sidesteps that argument altogether and instead makes a sweeping claim: because HALT gives DOCCS *some* discretion, *no part* of the HALT Suspension is subject to mandamus review (Opp. at 14–15). That is incorrect. Discretion over a single aspect of j(ii)'s requirements—whether recreation occurs in a congregate setting—does not eliminate j(ii)'s other requirements, for which no exception exists, that DOCCS provide out-of-cell programming. Those requirements remain binding on DOCCS and thus enforceable through mandamus.[5]

C. The HALT Suspension Is an Unconstitutional Usurpation of Legislative Power.

Defendant's only meaningful response to Plaintiffs' separation-of-powers arguments is the same faulty assertion he has made all along: that under his incorrect interpretation of the statute, HALT permits his actions. As this scant and deeply flawed response indicates, Plaintiffs are likely to succeed on the merits of their constitutional claim.

First, Plaintiffs showed in their opening brief that the HALT Suspension amounts to an unlawful act of policymaking by the executive branch under the *Boreali v. Axelrod* framework (Plaintiffs' Art 78 Mem. of Law, NYSCEF No. 4, at 18–22). While Defendant suggests the *Boreali* test applies only to formal rulemaking, he cites no authority for that proposition, nor does he offer an alternative test (Opp. at 17–18). But *Boreali* was designed to answer precisely the question at issue here: whether "an agency . . . has improperly assumed for itself . . . the elected Legislature's role in our system of government" (*Boreali v Axelrod*, 71 NY2d 1, 11 [1987]). New York courts

[5] For similar reasons, Defendant's argument that it is internally inconsistent for Plaintiffs to claim that DOCCS has both abused its discretion *and* violated non-discretionary aspects of the statute (Opp. at 15) also fails. Those two claims apply to different statutory provisions and are thus reconcilable.

have applied *Boreali* outside the rulemaking context where, as here, the executive takes administrative action with legislative effect—and even where courts do not use the *Boreali* framework, they apply the same general principles (*see McKinney v Commr. of Dept. of Health*, 15 Misc3d 743, 755 [Sup Ct, Bronx County 2007] [explaining that *Boreali* "is instructive" in case involving executive branch decision to close medical facilities], *affd* 41 AD3d 252 [1st Dept]; *Ellicott Group, LLC v. Exec Dept. Off. of Gen. Servs.*, 85 AD3d 48, 54 [4th Dept 2011] [citing *Boreali* in support of determination that administrative body's adoption of policy violated separation of powers]; *Delgado v State*, 39 NY3d 242, 262 [2022] ["It is well settled that, where an agency or commission acts in a manner not contemplated by the legislative body, the administrative actions will be struck down."] [quotation marks omitted]); *Saratoga County Chamber of Commerce, Inc. v Pataki*, 100 NY2d 801, 823 [2003] [explaining that "fundamental policy choices . . . epitomize 'legislative power'"]; *Oneida County v Berle*, 49 NY2d 515, 524 [1980] [discussing "instances where the Legislature has provided no guidelines for the exercise of discretion"]).

Defendant also claims the *Boreali* factors favor him (Opp. at 17–19). They do not. On three of the four,[6] Defendant offers only his faulty interpretation of HALT to claim that he has merely followed the Legislature's instructions. But as Plaintiffs have already explained, that reading of the statute is incorrect (*see* Plaintiffs' Art 78 Mem. of Law, NYSCEF No. 4. at 11–13, 15–17; *see also supra*, Sections I.A, I.B). Defendant has invented a staff-shortage exception that appears nowhere in the statute and frustrates the Legislature's goals in passing HALT. His lack of any effective rebuttal to Plaintiffs' core arguments only reinforces that he has chosen between policy

[6] The three *Boreali* factors referenced are that the executive action at issue: 1) entailed difficult and complex choices between broad policy goals; 2) created its own rule without the benefit of legislative guidance; and 3) governs an area in which the legislature has repeatedly tried to reach agreement in the face of substantial public debate (Opp. at 17–19).

ends, creating a new rule out of whole cloth that overrides HALT and violates the separation of powers (*see NY Statewide Coalition Of Hispanic Chambers of Commerce v NYC Dept. of Health & Mental Hygiene*, 23 NY3d 681, 696–701 [2014] [describing *Boreali* analysis and enumerating relevant factors]).

As for the final *Boreali* factor—whether there was special expertise or technical competence involved in the decision—Defendant gestures to DOCCS's purported "facility-based evaluation . . . based on a number of factors within the agency's expertise" (Opp. at 19). But he never identifies what those evaluations entailed or what expertise they required. Indeed, the only evidence Defendant has submitted in support of this claim is a single paragraph of his affirmation, where he states that he "conducted reviews, facility by facility, every thirty days to determine if DOCCS can restore HALT programming" (Martuscello Aff. ¶ 26). This barebones statement offers no clarity on how those reviews justified continuing the HALT Suspension, or why the scope and duration of the Suspension remain fixed despite changing conditions.

Indeed, while asserting that DOCCS "is not taking a one-size-fits all approach" to the problems at hand (Opp. at 13), Defendant has promulgated a one-size-fits-all suspension of HALT. He concedes that some facilities were never affected by the strike, and that others have begun restoring services in response to improved staffing and conditions (*id.* at 4, 9). Yet the HALT Suspension remains in force: Defendant continues to assert the same blanket authority to disregard HALT's core requirements statewide—despite his own assessment that conditions vary significantly across facilities.

While Defendant may have operational expertise, he has failed to use it to craft a tailored policy. Instead, he clings to a rigid, systemwide suspension that bears little relation to the facts on the ground. As the Court of Appeals has explained, this failure is indicative of a violation of

separation of powers: "A court might be alerted to the broad, policy-making intent of a regulation, and the absence of any perceived need for agency expertise, by the fact that the rule was adopted with very little technical discussion" (*Hispanic Chambers of Commerce*, 23 NY3d at 701). Because Defendant has offered no meaningful explanation of how, if at all, his expertise was used in crafting the ongoing HALT Suspension, this *Boreali* factor, too, favors Plaintiffs.

Second, in addition to demonstrating that the HALT Suspension is an illegal executive policy, Plaintiffs have also shown that the Suspension effectively nullified key provisions of HALT, violating the executive's constitutional duty to faithfully execute laws enacted by the Legislature (Plaintiffs' Art 78 Mem. of Law, NYSCEF No. 4, at 22–24). In response, Defendant insists "DOCCS does not, and has never, claimed authority to eliminate the suspended provisions" (Opp. at 19–20). But this is a strawman. Plaintiffs never argued that Defendant claimed the power to repeal the statute. The issue is not formal repeal—it is functional nullification.

Under the HALT Suspension, Defendant adopts an interpretation of the statute's exceptions that renders the core of HALT inoperative. That is precisely the kind of executive overreach the Court of Appeals warned against in *Rapp v. Carey*: an executive action, under the guise of implementation, that so far undermines a statute that it becomes "not an implementation" of the statute, "but a nullification of it . . .without benefit of legislative action" (44 NY2d 157, 164–65 [1978]).

Because Defendant has offered no meaningful rebuttal to Plaintiffs' showing that the HALT Suspension is both an illegal act of executive policymaking and an unsanctioned nullification of a duly enacted law, Plaintiffs are likely to succeed on the merits of their claim that the HALT Suspension is unconstitutional.

II. The HALT Suspension Is Inflicting Ongoing, Irreparable Harm.

Disregarding the evidentiary record, Defendant asserts that Plaintiffs and other class members face no irreparable harm from the HALT Suspension (*see* Opp. at 20–21). But Defendant is mistaken, as the substantial—and mounting—evidence of the Suspension's impact lays bare.

Nearly a dozen class members have attested to the severe psychological and physical toll they have endured under the HALT Suspension (*see* Smalls Aff.; Leslie Aff.; Jackson Aff.; Williams Aff.; Robbins Aff.; Tomlin Aff.; Cox Aff.; Rivera Aff.; Peloquin Aff.; Hill Aff. [NYSCEF Nos. 20–25, 30–32, 34]). Defendant refutes none of these accounts in specific terms. Instead, he speculates—without evidence—that these harms arise from their incarceration, not the HALT Suspension (Opp. at 20). This guesswork is not only divorced from class members' sworn testimony—which describes the impacts of isolation in their cells, not their imprisonment—but is also contradicted by a robust body of scientific research documenting the lasting, and often life-threatening, consequences of solitary confinement (*see* Plaintiffs' PI Mem. of Law, NSYCEF No. 49, at 14–18 [cataloguing scientific research describing mental and physical impacts both during and after solitary confinement]).[7] Contrary to Defendant's suggestion, these are precisely the kinds of injuries that monetary damages cannot remedy (*see e.g. V.W. v Conway*, 236 FSupp3d 554, 588–89 [ND NY 2017]).

Consistent with this reality, courts around the country routinely recognize that solitary confinement causes irreparable harm (*see Jolly v Coughlin*, 76 F3d 468, 282 [2d Cir 1996] [irreparable injury established through "inability to stand without difficulty, rashes, headaches, shortness of breath, and hair loss" arising from solitary confinement in New York prison]; *V.W.*,

[7] It also conflicts with the Legislature's express findings in enacting HALT that solitary confinement inflicts "deep and permanent psychological, physical, developmental, and social harm." (Ex. 1 to Aff. of Antony Gemmell, Assembly Mem in Support, Bill Jacket, L 2021, ch 93).

236 FSupp3d at 588–89 [placing juveniles in solitary confinement caused them irreparable harm]; *see also Reynolds v Arnone*, 402 FSupp3d 3, 44–45 [D Conn 2019] [plaintiff's placement in solitary confinement caused irreparable harm due to "serious, continuing risk of harm to . . . mental health"], *vacated in part on other grounds* 990 F3d 286 [2d Cir 2021]; *Doe by and through Frazier v Hommrich*, 2017 WL 1091864, at *2 [MD Tenn 2017] ["The harm suffered in solitary confinement is not harm easily undone."]).

Unable to point to any authority to the contrary, Defendant misrepresents the cases on which Plaintiffs rely. He ignores that, in *V.W. v Conway*, the court found that "defendants' continued use of solitary confinement on juveniles puts them at serious risk of short- and long-term psychological damage" (236 FSupp3d at 588–59). He likewise omits that the Second Circuit held in *Jolly v Coughlin* that the physical effects of remaining in isolated confinement constituted an "independent basis" for a finding of irreparable harm (76 F3d at 482).

In short, Plaintiffs have shown they face irreparable harm absent the relief they seek—the "single most important prerequisite" for preliminary injunctive relief (*see Cyprium Therapeutics, Inc. v Curia Global, Inc.*, 2022 NY Slip Op 51426[U] [Sup Ct, Albany County 2022] [quoting *Reuters Ltd. v United Press Intl., Inc*., 903 F2d 904, 907 [2d Cir 1990]]).

III. The Equities and Public Interest Strongly Favor Preliminary Relief.

Defendant warns that granting Plaintiffs' request for a preliminary injunction would have "disastrous effects," claiming that Plaintiffs demand the immediate reinstatement of HALT's protections "without regard to safety and security" (Opp. at 22). But the Court need only look to Plaintiffs' Proposed Order to see that Defendant has distorted Plaintiffs' position. The preliminary relief Plaintiffs seek will not tie Defendant's hands in responding to conditions impacting safety in the prisons. On the contrary, Plaintiffs only ask the Court to ensure that Defendant responds to

present conditions on a *facility-wide* basis, as the statute requires (*see* Proposed Order Granting Request for Preliminary Injunction, NYSCEF No. 50; CL § [2][23]).

Plaintiffs agree with Defendant that "[t]here cannot be a one size-fits all approach" to operating the state prisons (*see* Martuscello Aff. ¶ 27). That is why they seek preliminary relief from Defendant's own one-size-fits-all policy: a sweeping *statewide* suspension of HALT's protections at all DOCCS facilities. Under Plaintiffs' Proposed Order, Defendant would retain discretion to impose cell confinement for more than 17 hours per day in any facility experiencing a bona fide facility-wide emergency (Plaintiffs' Proposed Order, NYSCEF No. 50, ¶ 4), and may likewise restrict congregate recreation where exceptional circumstances so require (CL § 137[6][j][ii]). The difference is that Defendant must ground the exercise of this discretion in facts—and show the Court he is doing so.

This is hardly burdensome. Defendant claims he is already undertaking "facility by facility" reviews of "operations, safety and security" (Martuscello Aff. ¶ 26). Relying on the systems and procedures in place to conduct such reviews, Defendant can reasonably be expected to determine whether a genuine emergency exists in a given facility, as required under CL § 2(23). Plaintiffs merely ask that Defendant establish the factual basis for such an emergency and its anticipated duration (Plaintiffs' Proposed Order ¶ 4). Similarly, the proposed order does not bar Defendant from restricting congregate recreation when justified—it simply prohibits him from using a discrete security risk as pretext to deprive entire populations of mandated out-of-cell time (*id*. ¶ 5).

DOCCS may be facing a chronic staffing problem, and there is little doubt that Defendant would prefer unfettered discretion to respond to that challenge as he wishes. But even in the face of considerable challenges, executive officials remain bound by the law, and HALT does not afford Defendant discretion to suspend its provisions on a statewide basis as he sees fit. Defendant cannot

claim that complying with the statute's lawful bounds constitutes an undue burden, and any additional burden posed by the proposed relief would be minimal (*see Doe v Dinkins*, 600 NYS2d 939, 943 [1st Dept 1993] [where plaintiffs sought "to have the municipal defendants comply with their statutory and constitutional obligations," "any inconvenience caused by compliance is outweighed by the harm which would be suffered otherwise"]).

By contrast, maintaining the Suspension during the pendency of this litigation would prolong severe and unlawful conditions for Plaintiffs and the putative classes. Defendant's one size-fits-all HALT Suspension has effectively inverted the lawful status quo under HALT: prolonged isolation has become the norm and meaningful social contact and programming the exception. This places thousands of incarcerated New Yorkers at risk of profound, irreversible harms, including disturbingly heightened risk of self-harm and suicide—with the risks compounding as time passes (*see* Plaintiffs' PI Mem. of Law, NYSCEF No. 49 at 13–19).

When balancing the burden of administrative effort required to comply with the law—much of which Defendant purports to be already undertaking—against the harms that Plaintiffs and putative class members will continue to endure, the equities tip decisively in favor of Plaintiffs (*see Deide v Day*, 676 FSupp3d 196, 232–33 [SD NY 2023] [holding that, despite arguments that preliminary injunction would cause financial or administrative burdens on the government, "[b]ecause the public interest lies with enforcing the Constitution, the balance ultimately tips in Plaintiffs' favor"]; *Brad H. v City of New York*, 185 Misc2d 420, 431 [Sup Ct, New York County 2000], *affd* 276 AD2d 440 [1st Dept 2000] [holding equities balanced in favor of incarcerated plaintiffs in part due to risk of their "mental and physical health deterioration" absent relief]).

CONCLUSION

For these further reasons, the Court should grant this motion and preliminarily enjoin the HALT Suspension until the Court can evaluate its lawfulness.

Dated: May 29, 2025
New York, New York

Respectfully submitted,

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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 4,135 words according to the word-count function in Microsoft Word, the word processing program used to prepare this document.

Dated: May 29, 2025
New York, NY

/s Katherine E. Haas
Katherine E. Haas

STATE OF NEW YORK
SUPREME COURT COUNTY OF ALBANY

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

Plaintiffs-Petitioners,

-against-

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

Defendant-Respondent.

DECISION AND ORDER
(Motion 3)
Index No: 903926-25

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LYNCH, J.:

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

(hereinafter referred to as "plaintiffs") are members of a putative class of individuals incarcerated in facilities across the State of New York run by the Department of Corrections and Supervision (hereinafter referred to as "DOCCS"). Defendant-Respondent Daniel F. Martuscello (hereinafter referred to as "defendant") is the commissioner of DOCCS.

On February 17, 2025, correction officers in 38 of the 41 facilities operated by DOCCS went on strike. According to defendant, this strike ultimately encompassed 8,000 of the 13,000 correction officers and sergeants employed by DOCCS. In response, on February 19, 2025, Governor Kathy Hochul issued Executive Order 47, which declared a state of emergency and deployed 6,500 members of the New York National Guard to assist in the operation of DOCCS facilities. On February 20, 2025, defendant issued a memorandum (hereinafter referred to as "the February 20 Memorandum"), entitled "Path to Restoring Workforce," to all DOCCS facility superintendents "suspending the elements of HALT that cannot safely be operationalized under a prison wide state of emergency until [DOCCS] can safely operate the prisons" (NYSCEF Doc. No. 56, pg. 1).

Similarly, in a March 8, 2025 Memorandum of Agreement (hereinafter referred to as "the March 8 MOA") between the State and the New York State Correctional Officers and Police Benevolent Association, Inc., which set forth conditions for an end to the strike and addressed the concerns that led to it, defendant agreed to "exercise his existing discretion under the HALT Act and continue the temporary suspension of the programming elements of the HALT Act for 90 days from [March 8, 2025] due to the ongoing emergency and exigent circumstances that exist within each facility due to the illegal strike and the significant staffing deficit that existed prior to the illegal strike" (NYSCEF Doc. No. 59, pg. 1). Defendant further agreed to, 30 days after March 8, 2025, engage in an ongoing, "facility-by-facility" evaluation of "the operations, safety, and

security of [DOCCS] facilities relative to staffing levels and determine whether re-instituting the suspended elements of HALT would create an unreasonable risk to the safety and security of the incarcerated individuals and staff" (NYSCEF Doc. No. 59, pg. 1).[1]

Plaintiffs contend that these two documents – the February 20 Memorandum and the March 8 MOA – constitute an improper suspension by defendant of the protections accorded to incarcerated individuals such as themselves by HALT. In affidavits submitted to the Court, plaintiffs assert that since the strike began, they have spent roughly 21 to 24 hours a day in their cells, with minimal time for meals, recreation and programming. Therefore, they have commenced the instant hybrid proceeding/action, seeking an order (1) declaring defendant's suspension of HALT programming and recreation requirements to be in violation of the New York Constitution, article III, § 1 and article IV, § 3, as well as Correction Law § 137 (6) (j) (ii), and (2) vacating and annulling the suspension of HALT programming and recreation under CPLR article 78, asserting that the suspension is arbitrary and capricious and violates HALT's plain language.

Currently before the Court is plaintiffs' request for a preliminary injunction barring defendant from enforcing or implementing his suspension of HALT's provisions and forcing him to comply with HALT's requirements for the time in which incarcerated individuals can be held in their cells. Defendant opposes. The Court heard oral arguments by the parties regarding plaintiffs' motion for a preliminary injunction on June 24, 2025, at the Albany County Courthouse.

Under the relevant provisions of HALT, which was codified in amendments to the Correction Law that went into effect in March 2022, " '[s]egregated confinement' means the

[1] The March 8 MOA never went into operation, as it required that 85% of pre-strike DOCCS employees return to work by March 10, 2025, and this did not occur. Despite this, DOCCS agreed to honor certain portions of the March 8 MOA, including the portion quoted above (*see* NYSCEF Doc. No. 24, pg. 12-13).

confinement of an incarcerated individual in any form of cell confinement for more than [17] hours a day other than in a facility-wide emergency" (Correction Law § 2 [23]). Additionally, "[p]ersons in segregated confinement shall be offered out-of-cell programming at least four hours per day, including at least one hour for recreation. Persons admitted to residential rehabilitation units shall be offered at least six hours of daily out-of-cell congregate programming, services, treatment, recreation, activities and/or meals, with an additional minimum of one hour for recreation. Recreation in all residential rehabilitation units shall take place in a congregate setting, unless exceptional circumstances mean doing so would create a significant and unreasonable risk to the safety and security of other incarcerated persons, staff, or the facility" (Correction Law § 137 [6] [j] [ii]).

As to the requirements in the motion currently before the Court, "a party seeking a preliminary injunction must demonstrate a probability of success on the merits, danger of irreparable injury in the absence of an injunction and a balance of equities in its favor" (*Petry v Gillon*, 199 AD3d 1277, 1278 [3d Dept 2021 [internal quotation marks and citations omitted]; *accord Camp Bearberry, LLC v Khanna*, 212 AD3d 897, 898 [3d Dept 2023]).

I. The Likelihood of Plaintiffs' Success on the Merits

Plaintiffs assert that they are likely to succeed on the merits of their actions for three reasons: (1) defendant's suspension of HALT's limitations on segregated confinement is irrational, as it is based on an overbroad use of the "facility-wide emergency" exception; (2) defendant's suspension of HALT's mandatory programming requirements constitutes a failure to perform a duty required by law; and (3) the suspension of HALT's provisions violates the separation of powers, as it constitutes policymaking by DOCCS, an executive agency, and impermissibly nullifies HALT, a duly enacted law. Defendant argues that plaintiffs are not likely to succeed on

of their claims, as the suspension was a reasonable exercise of the discretion accorded to defendant in the text HALT and does not violate the separation of powers.

The Court will turn first to petitioner's argument that the suspension is arbitrary and capricious. "An action is arbitrary and capricious when it is taken without sound basis in reason or regard to the facts. When a determination is supported by a rational basis, it must be sustained even if the reviewing court would have reached a different result" (*Matter of Evercare Choice, Inc. v Zucker*, 218 AD3d 882, 885 [3d Dept 2023] [internal quotation marks and citations omitted]; *accord Matter of John E. Andrus Mem., Inc. v Commissioner of Health of the N.Y. State Dept. of Health*, 225 AD3d 959, 961 [3d Dept 2024]).

As noted above, there are two explicit suspensions of HALT's provisions here – the February 20 Memorandum and the March 8 MOA. The former "suspend[ed] the elements of HALT that [could not] safely be operationalized under a prison wide state of emergency until [DOCCS could] safely operate the prisons," and the latter "continue[d] [this] temporary suspension of the programming elements of the HALT Act for 90 days from [March 8, 2025] due to the ongoing emergency and exigent circumstances that exist[ed] within each facility due to the illegal strike and the significant staffing deficit that existed prior to the illegal strike" (NYSCEF Doc. No. 56, pg. 1; NYSCEF Doc No. 59, pg. 1). The March 8 MOA – which DOCCS agreed to honor after the conclusion of the strike – further provided that "[a]fter 30 days from the date of the MOA, [defendant would] begin to evaluate the operations, safety, and security of [DOCCS] facilities relative to staffing levels and determine whether re-instituting the suspended elements of HALT would create an unreasonable risk to the safety and security of the incarcerated individuals and staff," and that "[t]his analysis would be done on a facility-by-facility basis and [would] be ongoing" (NYSCEF Doc. No. 59, pg. 1).

Plaintiffs have demonstrated a likelihood of success on their claim that these determinations are arbitrary and capricious. First, these two determinations rely on a system-wide emergency to suspend HALT's provisions in each facility, essentially permitting the exception to swallow the rule. HALT contemplates the confinement of incarcerated individuals in cells for more than 17 hours a day only in a "**facility**-wide emergency" (Correction Law § 2 [23] [emphasis added]). Giving effect to the plain language of this provision's text, as the Court must when that text is unambiguous (*see People ex rel. Negron v Superintendent, Woodbourne Corr. Facility*, 170 AD3d 12, 14-15 [3d Dept 2019], *affd* 36 NY3d 32 [2020]; *Matter of Talisman Energy USA, Inc. v New York State Dept. of Envtl. Conservation*, 113 AD3d 902, 904 [3d Dept 2014]), the confinement of incarcerated individuals for more than 17 hours a day requires the declaration of an emergency throughout the facility where said incarcerated individual is imprisoned. The February 20 Memorandum, on the other hand, rests upon a system wide state of emergency, and the March 8 MOA continued this suspension due to the staffing issues in every facility in the DOCCS system. While the March 8 MOA references exigent circumstances within each facility in justifying the suspension, it does so without any specific findings of fact related to the conditions in each facility – as demonstrated by its failure to note that three facilities did not have any striking correction officers – meaning that this determination is necessarily without a basis in the facts as they existed on a facility-wide basis on March 8, 2025 and so is likely to be determined arbitrary and capricious (*see Matter of Hudson Health Extracts, LLC v Zucker*, 206 AD3d 1515, 1519 [3d Dept 2022]; *Matter of C.S.E.A. v County of Dutchess*, 6 AD3d 701, 702 [2d Dept 2004]).[2]

[2] Certain interrogatory responses by DOCCS in an unrelated HALT litigation, submitted as Exhibit 18 to the hybrid complaint/petition herein, do appear to indicate that DOCCS has engaged in some facility-by-facility analyses of the situation (*see* NYSCEF Doc. No. 23, pgs. 4-5). However, "a rational explanation must be given at the agency level and cannot, therefore, be provided in response to a CPLR article 78 challenge" (*Matter of Collins v Governor's Off. of Empl. Relations*, 211 AD2d 1001, 1003 [3d Dept 1995]; *see Matter of Wills v Christian Nursing*

Second, insofar as the March 8 MOA also justifies the suspension by pointing to DOCCS' pre-strike staffing deficit, it fails to explain why these pre-existing staffing deficiencies were not the basis for facility-wide emergencies before the strike but now are sufficient to create such emergencies. This failure by defendant to explain "the departure from [DOCCS'] own precedent" also likely requires that the March 8 MOA and the suspension of HALT's programming and confinement rules therein "be deemed arbitrary and capricious" (*Matter of Collins v Governor's Off. of Empl. Relations*, 211 AD2d 1001, 1003 [3d Dept 1995]; *see Matter of Kopyt v Governor's Off. of Empl. Relations*, 55 AD3d 1179, 1182 [3d Dept 2008]).

Furthermore, even if these two determinations were found to be supported by a rational basis, there is a third, informal suspension of HALT at issue here: the 90-day time frame set forth in the March 8 MOA expired on June 6, 2025, and yet, as of the date of oral arguments, the suspension nevertheless remained in place, to varying degrees, throughout the DOCCS system. On June 23, 2025, counsel for defendant provided the Court with a letter update on the status of HALT programming in 14 facilities throughout the state, which indicated that different facilities have re-implemented various levels of programming and recreation, ranging from full reopening of programming to the continued suspension of HALT's programming and confinement requirements (*see* NYSCEF Doc. No. 65). Moreover, this letter addressed only conditions in special housing units and residential rehabilitation units; it did not address conditions in general population, where plaintiffs' counsel represented their clients remain in cell confinement for more than 17 hours a day. As such, while it is clear from this letter that the HALT suspension remains in place throughout the DOCCS system, this letter failed to set forth the reasoning for the re-

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Registry, 280 AD2d 810, 812 [3d Dept 2001]). As such, this evidence does not impact the determination that plaintiffs have demonstrated a likelihood of success on their arbitrary and capricious claim.

implementation, or lack thereof, of HALT's requirements on a facility-by-facility basis, and defendant provided no other document justifying the suspension beyond June 6, 2025.

Thus, nowhere within the record before this Court is any written determination that there are post-June 6 emergencies in each DOCCS facility sufficient to permit the continued suspension of HALT's programming requirements and limitations on segregated confinement. Therefore, defendant has wholly failed to demonstrate that the continuing suspension of HALT's programming requirements and cell confinement restrictions has a rational basis in fact. This failure is exacerbated by the admission at oral argument by defendant's counsel that DOCCS has no date certain by which it expects the existing emergency to end and the HALT suspension to be lifted. As such, plaintiffs have demonstrated a likelihood of success on their claim that the suspension is arbitrary and capricious.

II. The Danger that Plaintiffs Will Suffer an Irreparable Injury

Plaintiffs argue that they will suffer irreparable harm if the suspension of HALT is not enjoined, as remaining isolated in cell confinement puts them at risk of developing severe mental health issues, up to and including suicide. Defendant counters that plaintiffs have not made such a showing, as they offer no proof that their alleged mental health injuries are causally connected to the HALT suspension, and that the asserted physical and emotional injuries can be compensated with money damages, and so are not irreparable harms.

Plaintiffs have established that they will suffer an irreparable injury if their motion for a preliminary injunction is not granted. "[P]urely economic loss does not generally rise to the level of an irreparable injury, as it can be compensated through monetary damages" (*Darwish Auto Group, LLC v TD Bank, N.A.*, 224 AD3d 1115, 1118 [3d Dept 2024]; *see Eastview Mall, LLC v Grace Holmes, Inc.*, 182 AD3d 1057, 1058 [4th Dept 2020]). However, plaintiffs have set forth

far more than economic harm. In affidavits attached to the hybrid complaint/petition, plaintiffs each state that since the strike began, they have spent 21 to 24 hours in their cell, without most programming. Each stated that his increased cell confinement has caused him mental anguish, including depression, feelings of insanity, and thoughts of suicide, as well as physical harm, such as weight loss, weight gain and trouble sleeping. Plaintiffs aver that the confinement has also caused them to miss out on programming that they hoped to attend to assist their reintegration into society after their release from incarceration.

Defendant's contention that these injuries are not causally related to the suspension of HALT is meritless. Plaintiffs' affirmations are based on their own personal experiences, and clearly demonstrate that the drastic uptick in cell confinement – and its attendant harms – occurred at the same time as the strike and defendant's suspension of HALT's confinement and programming requirements. The causal connection between plaintiffs' injuries and the implementation of HALT is apparent from their affirmations, and so further proof of causation, such as expert testimony, is not required (*see DeMaille v State of New York*, 166 AD3d 1405, 1406-1407 [3d Dept 2018]; *Kohl v Green*, 235 AD2d 671, 672 [3d Dept 1997], *lv denied* 89 NY2d 1025 [1997]; *Barabash v Castellano*, 81 Misc 3d 1237[A], *10 [Sup Ct, Kings County 2024]).

Defendant's assertion that the alleged harms are compensable by money damages alone is equally meritless. Plaintiffs' affidavits demonstrate that their confinement during the HALT suspension resulted in, and will continue to result in, physical and mental injuries. Such a showing is sufficient to establish irreparable injury as required to be entitled to a preliminary injunction (*see Jolly v Coughlin*, 76 F3d 468, 482 [2d Cir 1996]; *Bingham v Struve*, 184 AD2d 85, 90 [1st Dept 1992]).

III. The Balance of the Equities

Finally, plaintiffs contend that the balance of the equities tips in favor of granting the preliminary injunction, as the harms to incarcerated individuals from increased cell confinement outweigh DOCCS' interest in enforcing the suspension of HALT's protections. Defendant retorts that the requested injunction is not in the public interest, as plaintiffs ask the Court to end the HALT suspension without regard for the safety and security of DOCCS' facilities and the individuals who work and reside there.

The balance of the equities favors granting the requested preliminary injunction. Defendant mischaracterizes plaintiffs' request – plaintiffs do not ask this Court to order an immediate restoration of all HALT programming, regardless of the situation in each facility. Instead, plaintiffs simply ask that defendant be required to follow the text of HALT and set forth facility-by-facility emergency determinations if HALT's protections are to be suspended. The Court understands defendant's concerns regarding DOCCS' staffing and the resulting safety risks to correction officers, DOCCS employees and incarcerated individuals. However, HALT is a duly enacted law, and the people of the State of New York have a strong interest in seeing the implementation of laws enacted by their democratically elected representatives. If the situation in a particular facility is such that HALT's programming requirements and confinement restrictions cannot be followed, HALT gives defendant the discretion to declare an emergency. Imposing the requested injunction only requires defendant to "comply with [his] statutory . . . obligations. Any inconvenience caused by compliance is outweighed by the harm which would be suffered otherwise" (*Doe v Dinkins*, 192 AD2d 270, 276 [1st Dept 1993]). To that effect, the granting of this preliminary injunction does not require defendant to flip a switch and open the cell doors in every facility immediately – defendant still possesses all the discretion granted to him under HALT. This injunction merely

compels him to follow the procedures set forth in Correction Law § 2 (23) and make rational determinations of emergencies on a facility-by-facility basis, which is also exactly what DOCCS already committed to do in the March 8 MOA.

In light of the above, then, plaintiffs are entitled to the issuance of a preliminary injunction. However, recognizing the grave impact the sudden re-implementation HALT's provisions could have on DOCCS' facilities, as well as the employees and the incarcerated individuals therein if DOCCS does not have sufficient staff to implement HALT, the Court finds that it is in the public interest to have the preliminary injunction take effect on July 11, 2025, to give DOCCS time to take measures to ensure the safety of its facilities and their inhabitants.

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

Accordingly, it is hereby

ORDERED that as of **July 11, 2025**, defendant Daniel F. Martuscello III is **preliminarily enjoined** from enforcing or implementing any suspension of the provisions of HALT in DOCCS facilities without a finding of a facility-wide emergency in each facility as set forth in Correction Law § 2 (23); and it is further

ORDERED that if defendant Daniel F. Martuscello III makes a finding of such a facility-wide emergency, that finding shall be filed publicly to the docket in this case within two business days of the onset of such reliance and be accompanied by the sworn affirmation of a DOCCS employee with personal knowledge setting forth detailed facts describing the facility-wide emergency, including its scope and expected duration; and it is further

ORDERED that any such filing will refer to incarcerated individuals by acronym only, as good cause exists to prevent the unnecessary public disclosure of sensitive information about any

incarcerated individual; however, if such acronyms are used, defendant Daniel F. Martuscello III shall separately and confidentially provide the Court and plaintiffs' counsel with the names of the individuals referred to by acronym.

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

SO ORDERED.

ENTER.

Dated: July 1, 2025
Albany, New York

HON. DANIEL C. LYNCH
Supreme Court Justice

07/02/2025

Papers considered:

1. Petition, dated April 17, 2025, together with Exhibits 1 – 36;
2. Memorandum of Law in Support of Petition, dated April 17, 2025;
3. Notice of Motion for Preliminary Injunction, dated May 7, 2025;
4. Memorandum of Law in Support of Motion for Preliminary Injunction of Riley D. Evans, Esq., dated May 7, 2025;
5. Affirmation of Daniel F. Martuscello III in Opposition, dated May 23, 2025, together with Exhibits A – G;
6. Memorandum of Law in Opposition of Ryan W. Hickey, Esq., dated May 23, 2025;
7. Memorandum of Law in Reply of Katherine E. Haas, Esq., dated May 29, 2025;
8. Letter to Judge Daniel C. Lynch by Ryan W. Hickey, Esq., dated June 23, 2025, and
9. Oral arguments before the Court on June 24, 2025.