STATE OF NEW YORK
SUPREME COURT ALBANY COUNTY

FUQUAN FIELDS et al

Petitioners,

-against-

DECISION & ORDER
Index No.: 902997-23

DANIEL F. MARTUSCELLO III

Respondent.

Supreme Court, Albany County
Present: Hon. Kevin R. Bryant, J.S.C.

Appearances:

Petitioners:
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Fuquan Fields, Inmate # 07-B0-859
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Comstock, New York

Luis Garcia, Inmate # 18-A-4619
Five Points Correctional Facility
Romulus, New York

Jimmy Barner, Inmate # 18-B-2873
Gouverneur Correctional Facility
Gouverneur, New York

Respondent:
Letitia James
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NYS ATTORNEY'S OFFICE
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Bryant, K.:

On May 26, 2023, an amended Petition and Complaint having been filed by Petitioners Fuquan Fields, Luis Garcia and Jimmy Butler (hereinafter referred to as "Petitioners") identified as a putative class action "hybrid" Article 78 and declaratory judgement proceeding; and

In said proceeding, Petitioners seek to challenge, *inter-alia,* the Department of Corrections and Community Supervision (hereinafter referred to as "DOCCS") confinement policy as being contrary to the provisions of the Humane Alternatives to Long-Term Solitary Confinement Act (hereinafter referred to as "HALT Act"); and

A Motion to Dismiss, Answer and Memorandum of Law in support having been filed by counsel for DOCCS requesting that the relief sought in the petition be denied and that the petition be dismissed in the entirety; and

A further Notice of Motion having been filed requesting that this Court certify the matter as a class-action pursuant to CPLR §901(a); and

By Decision and Order dated September 12, 2023, class certification was granted and the Motion to Dismiss was denied; and

Further submissions having been received by thus Court; and

A purported administrative record having been submitted by counsel for DOCCS; and

A Notice of Motion having been filed by Petitioners requesting an Order directing DOCCS to complete the administrative record, or, in the alternative, determining the Article 78 portion of the proceeding on the allegedly insufficient record presently before the Court; and

Petitioners having further requested an Order directing discovery in the declaratory action portion of the proceeding; and

A response having been received from DOCCS.

NOW, it is the finding of this Court that the petition is granted to the extent outlined herein and the motion seeking supplementation of the record and discovery is hereby denied as moot[1].

Findings of Fact

On January 12, 2023, while incarcerated at the Fishkill Correctional Facility and experiencing a mental-health crisis, Petitioner Fields allegedly exposed himself, urinated on the floor, threatened a Corrections Officer and threw "wet looking sugar packets" at the officer. He was charged with "assault on staff, lewd conduct and unhygienic acts". He was found guilty at a Tier III disciplinary hearing and received a one hundred twenty-day penalty which he served in a "Special Housing Unit" (hereinafter referred to as "SMU"). Petitioners allege that the Presiding Hearing Officer failed to issue a written decision containing findings regarding the conduct at issue rising to the level required under the HALT act[2].

[1] In determining this motion, this Court has considered documents filed on NYSCEF as cited herein as well as all other filings in this matter that have been electronically filed with the Court.

[2] Whereas section (H) of the Hearing Disposition Report indicates that reasons "must be found and clearly articulated", the Hearing Officer's report merely makes the conclusory assertion that "[b]eing violent towards, and assaulting, staff members threatens the safety of staff. The imposed confinement sanction will serve to limit incarcerated individual Field's ability to be violent towards staff members".

As correctly argued by Petitioner, there are no specific findings that the acts committed were "so heinous or destructive that placement of the individual in general population creates a significant risk of imminent serious

On or about September 20, 2022, while being held in a Residential Mental Health Unit at Coxsackie Correctional Facility, Petitioner Garcia allegedly threw an "unknown brown feces smelling liquid that purportedly hit two officers". A Tier III disciplinary hearing was held, he was found guilty of two counts of assault on staff and two counts of committing an unhygienic act and sentenced to a seven-hundred-and-thirty-day sanction to be served in a Residential Mental Health Unit ("RMHU"). The Presiding Hearing Officer's written determination did not include a specific determination that the acts that he committed constituted a heinous or destructive act nor that they "created a significant risk of imminent serious physical injury to staff or other incarcerated persons and created an unreasonable risk to the security of the facility" as required by CL §137(6)(k)(ii) (A-G)[3].

On January 13, 2023, while being held at the Gouverneur Correctional Facility, Petitioner Barner allegedly threw a "brown liquid substance [that] had the odor of feces". A Tier III disciplinary hearing was held, wherein he was found guilty of numerous charges, including, but not limited to assault on an inmate, unhygienic act and possession of contraband. Once again, the decision of the Hearing Officer did not include specific determinations as required by the provisions of the Corrections Law[4]. He was sentenced to two-hundred and ten days in a SHU.

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physical injury to staff or other incarcerated persons and creates an unreasonable risk to the security of the facility" (NYSCEF doc. 28, page 8).

[3] In Section H (2) of the Hearing Disposition report, the Hearing Officer wrote that "assaulting staff while they are dealing with another issue incapacitated them from doing their job. This causes a reduction in security staff, a direct threat to the safety and security of the facility". Again, the Hearing Officer's findings do not include the terms "heinous", "destructive", "imminent" or "serious harm" and no specific findings were made with-regard-to these statutory predicates (NYSCEF doc. 31.)

[4] Section H (2) of the Hearing Disposition report simply states that "assault of other's poses a risk to the safety of everyone". Again, the Hearing Officer's findings do not include the terms "heinous", "destructive", "imminent" or "serious harm" and no specific findings were made with-regard-to these statutory requirements.

Each Petitioner claims that he was disciplined in violation of the provisions of the HALT act and that he was placed in a setting that constitutes "segregated confinement" as that term is used in the CL §137. They each argue that DOCCS did not conduct a case-by-case analysis to determine whether the acts committed are "so heinous or destructive that placement of the individual in general population 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". They argue that DOCCS has adopted a "policy" whereby any offense identified as a Tier IIII violation meets the criteria set forth in the HALT act, and that this policy is followed in all Tier III disciplinary proceedings. They further allege that this policy is in violation of the provisions of the HALT Act which require an evidentiary hearing and specific written findings set forth in a decision.

Petitioners argue that as a matter of course, DOCCS exceeds the durational limits by imposing "k (ii) confinement" for acts not specified in the applicable provisions of the Corrections Law and that DOCCS Hearing Officers routinely fail to make individual or written determinations that the statutory requirements have been met. Petitioners argue that they have each been harmed by DOCCS policy as they were each sentenced to lengthy periods of confinement without required individualized written findings regarding their specific acts of misconduct.

The administrative record submitted by DOCCS consists of the Tier III disciplinary records of the three named Petitioners, an affidavit from Anthony Rodriguez and an affidavit from Afsar Ali Khan. In its motion, Petitioners request that this Court direct that DOCCS supplement the record, explaining that "a complete administrative record should encompass, for example, information DOCCS considered in arriving at the k(ii) Confinement Policy; materials

describing or explaining the policy DOCCS ultimately adopted, and any alternatives DOCCS considered to the k(ii) Confinement Policy, including the reasons for rejecting those alternatives; and materials DOCCS developed to implement the policy, such as training materials and policy guidance"[5].

With-regard to discovery, Petitioners argue that "[b]locking discovery here would hamstring Petitioners ability to pursue a declaratory judgment, imposing an enormous barrier to meaningful relief for vast swaths of the class. Through their outstanding discovery requests, Petitioners seek information about the existence and scope of the policy both before and after the filing of this suit - - matters of central importance in their challenge [to] the Confinement Policy here"[6]. Petitioners further argue that "[w]ith no evidentiary submission by DOCCS, the Court should not accept DOCCS bald assertion that the challenged policy does not exist; and the Court should reject any attempt by DOCCS on that basis to justify its deficient administrative record". Finally, Petitioners argue that "[a]lternatively, with DOCCS now having confirmed – twice – that its administrative record here is complete, it would be appropriate for the Court to decide Petitioners' Article 78 challenge to the k(ii) Confinement Policy based on that record"[7].

In response to the motion, DOCCS argues that there is no basis to Order them to submit additional documents to complete the record and that the documents that have been submitted establish that the actions on review were neither arbitrary nor capricious. DOCCS does not specifically address Petitioners' claim that a policy has been adopted whereby all Tier III violations are pre-determined to be heinous and destructive and that they pose a risk of imminent serious harm. They have also failed to submit anything to address the claim that DOCCS

[5] NYSCEF doc. 71, page 9
[6] Id., page 6
[7] Id., page 10

Hearing Officers routinely fail to make specific findings-of-fact to support determinations that are made under the HALT act.

With-regard-to the requested discovery, DOCCS argues that the claim raised is, in-actuality, "in the nature of a writ of mandamus" and that "mandamus is not available to compel a general course of official conduct or a long series of continuous acts, performance of which it would be impossible for a court to oversee". Counsel argues that "the requested disclosures are not material and necessary to the prosecution of Petitioners' claims" and that Petitioners are seeking "a voluminous amount of date and documents related to individual disciplinary claims of each class member". Counsel continues that "[t]o the extent the Court finds that DOCCS violated Section k(ii) at the individual Petitioner's disciplinary hearings, the Court may issue mandamus or declaratory relief stating so" and that "[a]ny relief due to the class members would apply under the principles of stare decisis". According to counsel for DOCCS, "[b]ased on the record before it, the Court can meaningfully review whether the DOCCS complied with Section k(ii) in rendering disciplinary determinations for the individual Petitioners and by extension the class members who they purport to represent"[8].

As addressed below, this Court agrees that the administrative record is sufficient to meaningfully review whether the DOCCS complied with the applicable statutory requirements and it is sufficient to determine Petitioners' requests that this Court "[d]eclare that the k(ii) Confinement Policy violates CL §137(6)(k)(ii)", that this Court compel DOCCS to comply with the requirements of CL §137(6)(k)(ii), that this Court "vacate, annul and enjoin the k(ii) Confinement Policy" and that this Court "vacate and annul DOCCS' determinations to place

[8] NYSCEF doc. 73, page 6

members of the proposed class in extended segregated confinement; a residential rehabilitation unit; or any other unit for which compliance with CL §137(6)(k)(ii) is required.

Applicable Law

The HALT act was enacted by the New York State Legislature in 2021. As set forth in Corrections Law §137, the HALT act imposes specific limits and regulations regarding the placement of individuals in segregated and other specific forms of disciplinary confinement. The HALT Act defines segregated confinement as a type of confinement in which the incarcerated individual is offered less than seven hours out-of-cell programming or other out-of-cell activities daily[9]. HALT limits segregated confinement to not more than fifteen consecutive days or twenty total days in any sixty-day period[10].

Specifically, CL §137[6][k] provides in relevant part that

> The department may place a person in segregated confinement beyond the limits of subparagraph (i) of this paragraph or on a residential rehabilitation unit only if, pursuant to an evidentiary hearing, it determines by written decision that the person committed one of the following acts and if the commissioner or his or her designee determines 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.

Petitioners argue herein that the actions of DOCCS with-regard-to the imposition of solitary confinement are arbitrary and capricious and request that this Court declare as null and void the alleged policy whereby Hearing Officers, as a matter of course, find that all Tier III violations meet the requirements of HALT for solitary confinement. With regard to the argument that DOCCS actions were arbitrary and capricious, as recently explained by the Court of Appeals in Matter of Brookdale Physicians v. Dept. of Finance, City of New York, ___

[9] Correction Law § 137 (6)(j)(ii)
[10] Correction Law § 137 (6)(i)

N.Y.3d ____, 2024 NY Slip Op 01593 (2024), "[i]n reviewing an administrative agency determination, courts must ascertain whether there is a rational basis for the action in question or whether is it arbitrary and capricious . . . Arbitrary action is without sound basis in reason and is generally taken without regard to the facts . . . If the reviewing court finds that the determination is supported by a rational basis, then it must sustain the determination even of the court concludes that it would have reached a different result than the one reached by the agency"[11]. See also, C.F. v. NYC Dept. of Health, 191 A.D.3d 52 (2nd Dept., 2022)). When reviewing the DOCCS's actions pursuant to CPLR article 78, "the inquiry is limited to whether the resolution was made in violation of lawful procedure, was effected by an error of law or was arbitrary and capricious or an abuse of discretion" (Matter of East End Hangars v. Town of E. Hampton, N.Y., ____ A.D.3d ____, 2024 NY Slip Op 01708 (2nd Dept., 2024)).

"It is settled that a court's review of the propriety of an agency's determination is confined to the particular grounds invoked by the agency in support of its action . . . neither evidence nor arguments outside the administrative record may be considered" Matter of L&M Bus Corp. v. NYC Dept. of Education, 71 A.D.3d 127 (1st Dept., 2009)). See also, Matter of Yarbough, 95 N.Y.2d 342 (2000). "Judicial review of administrative determinations is limited to the facts adduced and the record made before the administrative agency" (Matter of Nur Ashki Jerahi Comm. v. NYC Loft Board, 80 A.D.3d 323 (1st Dept., 2010)).

"[A]n agency determination is arbitrary and capricious where the agency provides only a perfunctory recitation of relevant statutory factors or other required considerations as a basis for its conclusions . . . provides no reason whatsoever for its determination . . . or provides only a post hoc rationalization therefor" (Helm v. N.Y. State Div. of Hous. And Cmty. Renewal, ____

[11] Internal quotations, citations and punctuation omitted from all case quotations herein.

Misc.3d ____, 2023 NY Slip Op 34388(U) (Supreme Court, New York County, Dec. 13, 2023)). See also, Baychester Payment Ctr. V. N.Y.S. Dept. of Fin. Servs., ____ Misc.3d ____, 2023 NY Slip Op 34262(U) (Supreme Court, New York County, Dec. 7, 2023); Duarte v. Adams, ___ Misc.3d ____, 2023 NY Slip Op 30957(U) (Supreme Court, New York County, March 22, 2023)).

Discovery

With-regard-to the instant motion for discovery, it is well settled that "[u]nder CPLR article 78, a petitioner is not entitled to discovery as of right but must seek leave of court pursuant to CPLR 408. Because discovery tends to prolong a case and is therefore inconsistent with the summary nature of a special proceeding, discovery is granted only where it is demonstrated that there is a need for such relief" (see, Matter of Johnson v. Annucci, 208 A.D.3d 1403 (3rd Dept., 2022)). See also, Matter of Bramble v. New York City Dept. of Education, 125 A.D.3d 856 (2nd Dept., 2015); Pyramid Management Group v. Board of Assessors, 243 A.D.2d 876 (3rd Dept., 1997); Lynch v. Bd. of Education, ____ Misc.3d _____, 2023 NY Slip Op 30250 (Supreme Court, New York County, January 25, 2023)).

With-regard-to discovery in the declaratory portion of the proceeding, "[t]he supervision of discovery, and the setting of reasonable terms and conditions for disclosure, are within the sound discretion of the Supreme Court. The Supreme Court's discretion is broad because it is familiar with the action before it" (Hamed v. Alas Realty Corp., 209 A.D.3d 628 (2nd Dept., 2022))[12]. See also, Umana v. Tower E. Condo., 208 A.D.3d 710 (2nd Dept., 2022)).

[12] Internal citations, quotations and punctuation omitted in all quotations contained herein.

Discussion

Petitioners allege that with regard to each named inmate, after the Hearing Officers made findings on the specific charges, the "disposition did not contain a determination that any of the alleged conduct constituted an act defined under CL §137(6)(k)(ii)(A-G) nor did the dispositions contain written determinations that the inmate's conduct 'was so heinous or destructive that . . . placement in general population housing would create a significant risk of imminent serious physical injury to staff or other incarcerated persons and create an unreasonable risk of safety to others'"[13]. While DOCCS denies these specific allegations in their answer and "respectfully refers the Court to the referenced document as the best evidence of its content"[14], DOCCS fails to cite to any specific language in the Hearing Officer's dispositions that satisfy the statutory requirements. Moreover, assertions in the DOCCS submissions are consistent with the claim that fact specific determinations are not being made on a case-by-case basis by Hearing Officers, but rather being made in accordance with a policy or pre-determined outcome dictated by DOCCS[15].

This Court has reviewed the referenced documents as suggested in the answer and finds that contrary to DOCCS' assertions, there are no specific findings as required by the applicable legislation. In point-of-fact, neither the term "heinous" nor the term "destructive" appear anywhere in the referenced documents and there are no specific findings or explanations set forth regarding the apparent conclusion that the acts committed "created a significant risk of imminent serious physical injury to staff or other incarcerated persons" nor that they "create an

[13] NYSCEF Doc. 24, page 12
[14] NYSCEF Doc. 41
[15] See, NYSCEF Doc. 45, para. 36 wherein Anthony Rodriguez, the Director of the Special Housing and Incarcerated Individual Disciplinary Program, states that "DOCCS considers the throwing of urine and/or feces to be manifestly heinous or destructive".

unreasonable risk of safety to others"[16]. The controlling legislation specifically and unambiguously requires these factual determinations be made in writing prior to the imposition of the extreme measure of solitary confinement. Given the absence of anything in the record to establish that such specific findings were made, this Court is constrained to find that the DOCCS' determinations as challenged were void and unlawful.

Moreover, insofar as Petitioners have alleged that each named member of the class was subjected to an agency wide policy which results in a system wide failure to make findings, and the documents submitted corroborate this allegation, the burden was clearly on the DOCCS to demonstrate that this claim is inaccurate. DOCCS' initial administrative record included nothing to rebut the allegation that a policy exists and is followed by assigned Hearing Officers. Specifically, they failed to offer training materials, memorandum or other documentary evidence to show that Hearing Officers follow the relevant requirements of the HALT Act, nor have they submitted relevant affirmations from individuals with personal knowledge to establish that the alleged policy does not exist nor that it is followed precisely as alleged by Petitioners.

More significantly, even in response to the motion for discovery, when given an opportunity to supplement the record with some documentation to refute Petitioners allegation of a system wide failure to make required findings, DOCCS has provided the Court with nothing persuasive. This Court has reviewed the forms used by the Hearing Officers to elaborate on the findings made regarding the named representatives of the class and finds that the findings are consistent in approach and detail. Specifically, each of the findings are set forth in general conclusory fashion and they do not explain how the specific conduct of the prisoner meets the

[16] In reaching this conclusion, this Court is not finding that the circumstances and the offenses that were committed would not support the required findings of fact but rather, that specific findings are required, and they were not made in any of the three proceedings before this Court.

statutory requirements for the imposition of the sanction imposed. Moreover, each individual disposition report fails to articulate the seriousness or imminency of the potential harm that the prisoner's conduct risked or caused.

This Court has considered and herein rejects DOCCS' arguments that these findings are "inherent" in the acts committed. While this Court would generally be required to defer to the findings of the DOCCS as-long-as specific findings are made and supported by a rational explanation, here, no findings were made, and no explanations were set forth in the decisions at issue. Given the language of the statute, it is the finding of this Court that DOCCS cannot rely on alleged inherency or the nature of the offenses at issue. The required fact-specific findings have not been set forth in the documents before the Court and DOCCS presents no basis for this Court to reject the claim that these examples are representative of the entire class.

This Court has also considered the affidavit of Afsar Ali Khan, MD and finds that it does not satisfy DOCCS' burden, as there is no indication that this opinion was placed before the Hearing Officers in the cases presented to the Court. As such, it is not properly part of the administrative record and constitutes a *post hoc* justifications of the actions that are before this Court in this proceeding. With-regard-to the affidavit of Anthony Rodriguez, it is the finding of this Court that there is nothing in the affidavit to contradict the allegation made by Petitioners that DOCCS follows the alleged policy rather than making case specific findings of fact and conclusions as specifically required by the controlling statute.

Conclusions

For the foregoing reasons, it is the finding of this Court that the administrative record and affidavits submitted in support of the agency's action do not adequately refute the allegation in the complaint that DOCCS has failed to follow the mandates of the HALT Act. Moreover,

DOCCS has failed to sufficiently refute the claim that the "k(ii) Confinement Policy" has been adopted and is being followed by DOCCS' Hearing Officers. DOCCS has the responsibility to submit an administrative record that supports their actions and they have failed to meet this burden. In this regard, the deficiencies in the agency's record were specifically addressed by Petitioners in their motion seeking this Court's directive that the record be expanded. Despite this opportunity, DOCCS failed to submit any additional documentation or support for the policy at issue. Notably, at this late juncture, other than the general and ambiguous denial in their answer, DOCCS has still failed to specifically admit or deny that the challenged policy exists. They have also failed to outline in any submission the precise process that their Hearing Officer's follow when making required findings under the HALT Act.

It is therefore the finding of this Court, based on the administrative record submitted herein, that DOCCS is following a policy referred to by Petitioners as the "k (2) Confinement Policy" not authorized by statute. It is the finding of this Court that given the complete lack of support or justification for such a policy, it is hereby declared null and void as arbitrary and capricious and not in compliance with the requirements of the HALT Act.

It is the finding of this Court that DOCCS is hereby Ordered to comply with CL S137(6)(k)(ii) and to conduct fact-specific inquiries and make specific findings-of-fact in any hearings requesting an extended segregated confinement.

This Court further finds that any and all determinations made to place members of the certified class in extended segregated confinement, a residential rehabilitation unit, or any other unit requiring compliance with CL §137(6)(k)(ii), made pursuant to the k(2) Confinement Policy, or determinations made without required specific written findings of fact and conclusions, are hereby declared as null and void.

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With-regard-to the Notice of Motion filed by Petitioners requesting discovery, insofar as this Court has granted the relief requested in the petition and has made findings regarding all stated claims based upon the record submitted, the request for further discovery is denied as moot.

Finally, with-regard-to counsel fees, both parties are hereby granted leave to submit further affirmations and arguments regarding fees and this Court's determination of the fee portion of the petition is hereby held in abeyance pending further submission.

This shall constitute the Decision and Order of the Court.

The signing of this Decision and Order shall not constitute entry or filing under CPLR §2220. Counsel is not relieved from the applicable provisions of that rule regarding notice of entry.

Dated: June 18, 2024
Kingston, New York

ENTER,

Kevin R Bryant

HON. KEVIN R. BRYANT, J.S.C.

06/20/2024