SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

FUQUAN FIELDS, LUIS GARCIA, and JIMMY BARNER, on behalf of themselves and all similarly situated individuals,

Plaintiffs-Petitioners,

-against-

Index No. 902997-23

DANIEL F. MARTUSCELLO III, in his official capacity as Acting Commissioner of the New York State Department of Corrections and Community Supervision,

(Bryant, J.)

Defendant-Respondent.

MEMORANDUM OF LAW IN OPPOSITION TO PETITIONERS' MOTION TO COMPEL DISCOVERY AND COMPLETION OF THE ADMINISTRATIVE RECORD

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PRELIMINARY STATEMENT

Petitioners move for leave to conduct discovery in this action, and for an order directing that Respondent provide responses to their Notice of Discovery and Inspection. Petitioners' motion to compel should be denied. It is well-established that discovery is presumptively unavailable in special proceedings under Article 78. Discovery in Article 78 special proceedings may be conducted only with leave of court upon a showing that is a need for discovery to resolve the issues before the Court. Petitioners make no such showing here, and their motion should be denied.

STATEMENT OF FACTS

A. *The Petition*

On April 5, 2023, Petitioners commenced this hybrid special proceeding and declaratory judgment action in which they challenge Respondent's implementation of the Humane Alternatives to Long-Term Solitary Confinement ("HALT Act" or "HALT"). NSYCEF Doc. No. 1. Specifically, Petitioners allege that Respondent failed to comply with Correction Law § 137(6)(k)(ii)["Section (k)(ii)"], a provision of the HALT Act which permits DOCCS to extend an incarcerated individual's period of segregated confinement upon a finding that the incarcerated individual committed an act that is "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." Correction Law § 137(6)(k)(ii). Petitioners allege that DOCCS violated Section k(ii) by: (1) treating all Tier III disciplinary infractions as a qualifying "heinous or destructive" act; and (2) by failing to make decisions as to what constitutes a qualifying "heinous or destructive" act "in writing based on specific objective criteria."

B. *The Answer and Administrative Record*

On June 23, 2023, Respondent served his Answer to the Petition, together with a motion to dismiss the "hybrid" request for a declaratory judgment under CPLR 3001. With his Answer, Respondent filed the Administrative Record, consisting of: (1) the Tier III Disciplinary record of Petitioner Fields; (2) the Tier III Disciplinary Record of Petitioner Garcia; and (3) the Tier III Disciplinary Record of Petitioner Barner. Respondent also submitted, in support of his Answer, the Affidavits of Anthony Rodriguez and Afsar Ali Khan, M.D. These Affidavits provide factual background on each individual Petitioner's relevant disciplinary charges and penalties, and the evidence supporting their segregated confinement under Section k(ii).

C. *The Court Grants Class Certification and Denies Respondent's Motion to Dismiss*

On June 30, 2023, Petitioners moved for class certification. NYSCEF Doc. Nos. 48-56. The proposed Plaintiff class consisted of "all individuals in DOCCS custody who are, or will be, placed in segregated confinement for more than three consecutive days, or six days in any 60-day period; a residential rehabilitation unit; or any unit for which compliance with CL § 137(6)(k)(ii) is required before placement." NYSCEF Doc. No. 24 at ¶ 75. Respondent opposed the motion, arguing that class certification is unnecessary because the principles of *stare decisis*, embodied in the so-called "government operations rule" would provide adequate to protection to the members of the proposed class should the individual Petitioners obtain any relief. NYSCEF Doc. No. 57 at 8-9.

On September 11, 2023, the Court issued a Decision and Order granting Petitioners' motion for class certification and denying Respondent's motion to dismiss. NYSCEF Doc. Nos. 58-59.

As to the motion to dismiss, the Court held that a declaratory judgment action was proper insofar as the Petitioners seek review of an allegedly continuing policy. NYSCEF Doc. No. 59 at 8. The Court further held that class certification is appropriate because the fundamental issue is the same for each individual Petitioner and class member, *i.e.* whether DOCCS is required to make case-by-case, written determination whether the charged misconduct meets Section k(ii)'s requirements. *Id.* at 9.

D. *Petitioners' Notice of Discovery and Inspection*

On January 5, 2024, Petitioner served a Notice of Discovery and Inspection pursuant to CPLR § 3101. Hickey Affirmation at Exhibit A. The Notice of Discovery and Inspection seeks disclosure of a broad array of documents pertaining to DOCCS' implementation of Section k(ii), including, *inter alia*, documents concerning the Tier III disciplinary infractions of *all* incarcerated individuals from March 31, 2021 to present. *Id.* To date, Respondent has not responded to these discovery demands because the Court indicated that it will not allow written discovery absent prior leave.

E. *The Instant Motion to Compel*

On March 1, 2024, Petitioner's counsel filed a letter requesting an order compelling responses to the Notice of Discovery and Inspection. NYSCEF Doc. No. 66. On March 11, 2024, Respondent filed a letter opposing this request. NYSCEF Doc. No. 68. By email dated March 11, 2024, the Court advised counsel that Petitioners' request for discovery would not be addressed unless raised in a formal motion upon notice. Hickey Affirmation at Exhibit B.

On April 11, 2024, Petitioner filed the instant "Motion to Compel Discovery and Completion of the Administrative Record." NYSCEF Doc. Nos. 69-71. In their motion,

Petitioners seek an order: (1) compelling Respondent to provide responses to the Notice of Discovery and Inspection; (2) directing DOCCS to "complete" the administrative record for the k(ii) Confinement Policy, or else ruling on the Article 78 Petition based on already-submitted administrative record. NYSCEF Doc. 71 at 14.

STANDARD OF REVIEW

Under CPLR § 408, "[l]eave of court shall be required for disclosure" in special proceedings. Leave of Court is granted only where these is a demonstrated need, and Courts have considerable discretion in determining whether disclosure is appropriate. *Matter of Lally v. Johnson City Cent. Sch. Dist.*, 105 A.D.3d 1129, 1132 (3d Dep't 2013) (internal quotations and citations omitted). Discovery is presumptively unavailable in an Article 78 special proceeding. "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 need for such relief." *Town of Pleasant Valley v. New York State Bd. of Real Prop. Servs*., 253 A.D.2d 8, 15 (2d Dep't 1999). "When leave of court is given, discovery takes place pursuant to CPLR 3101 (a), which provides generally that '[t]here shall be full disclosure of all matter material and necessary in the prosecution or defense of an action.'" *Id.* (quoting CPLR 3101(a)).

ARGUMENT

POINT I

PETITIONER HAS NOT DEMONSTRATED ANY NEED FOR DISCOVERY TO RESOLVE THEIR REQUESTS FOR ARTICLE 78 RELIEF OR A DECLARATORY JUDGMENT

Petitioner's motion to compel should be denied because Petitioner has not demonstrated a need for the requested disclosure, or any disclosure, to resolve the issues before the Court in this proceeding.

In this hybrid proceeding, Petitioner seeks: (1) an order compelling Respondent to "comply with the requirements of [Section k(ii)]"; (2) an order vacating and annulling Respondent's alleged policy implementing Section k(ii)'s criteria for extended segregation; (3) an order vacating and annulling Respondent's determinations to place members of the plaintiff class in extended segregation under Section k(ii); and (4) a declaration that Respondent's alleged policy violates Section k(ii).

As such, Petitioners' essential claim is that Respondent has adopted a policy or practice of administering disciplinary proceedings that violates the requirements of Section k(ii). Such a claim is in the nature of a writ of mandamus under CPLR § 7803(1), which considers "whether the body or officer failed to perform a duty enjoined upon it by law." CPLR 7803(1). To resolve this claim, courts consider whether the petitioner has a "clear legal right" to the requested mandamus relief. *Legal Aid Soc'y of Sullivan Cty., Inc. v. Scheinman*, 53 N.Y.2d 12, 16, 439 (1981). However, "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." *Matter of Martinez v. DiFiore*, 188 A.D.3d 605, 607 (1st Dep't 2020).

The requested disclosures are not material and necessary to the prosecution of Petitioners claims. Petitioners seek disclosure of a voluminous amount of data and documents relating to individual disciplinary hearings of each class member. However, these disclosures relating to the individualized circumstances of the class members hearings are not necessary for the resolution of Petitioners' claims. With his Answer, Respondent filed the relevant disciplinary records of the individual Petitioners Fields, Garcia, and Barner. The individual Petitioners assert that their disciplinary hearings are exemplars of Respondent's unlawful application of Section k(ii) both to them and to other similarly situated incarcerated individuals.[1] NYSCEF Doc. No. 49 at 10 (asserting that "DOCCS has imposed disciplinary confinement on Plaintiffs Fields, Garcia, and Barner – and thousands of other individuals incarcerated in New York prisons – in a manner that the HALT Act specifically prohibits.").

To the extent the Court finds that Respondent violated Section k(ii) at the individual Petitioners' disciplinary hearings, the Court may issue mandamus or declaratory relief stating so. Any relief due to the class members would apply under the principles of *stare decisis*. *De Zimm v. N.Y. State Bd. of Parole*, 135 A.D.2d 66, 68 (3d Dept. 1988).

Petitioners suggest that discovery is necessary to the prosecution of their claim for a declaratory judgment. However, the judgment sought by the Petitioners is simply a declaration that Respondent violated Section k(ii) by failing to make the necessary, case-by-case findings that

1 However, Petitioner-Plaintiff Garcia was housed in an RMHU for the period of his disciplinary sanction. *See* NYSCEF Doc. No. 45 at ¶ 21 (explaining that Garcia was housed at the Five Points RMHU). Garcia's confinement in the RMHU does not fall under the scope of Section k(ii), which applies to incarcerated individuals held in "segregated confinement," or in residential rehabilitation units ("RRUs"). RRUs are not the same as RMHUs. *Compare* Correction Law § 2[34] (defining an RRU), *with* Correction Law § 2[21] (defining an RMHU).

the charged disciplinary infractions are "heinous and destructive." Protracted discovery concerning the individual statistics and circumstances of the class members will not aid in resolving this question. Based on the record before it, the Court can meaningfully review whether the Respondent complied with Section k(ii) in rendering disciplinary determinations for the individual Petitioners and by extension the class members who they purport to represent.

Further, discovery should not be permitted just because Petitioners have employed the tactic of appending a request for a declaratory judgment to their Article 78 Petition. As explained above, the requested declaratory judgment is materially indistinguishable from Article 78 relief sought by Petitioners. Further discovery, whether characterized as discovery in the declaratory judgment action, or to supplement the administrative record for the Article 78 claims, is not necessary to resolve the questions raised by Petitioners in this proceeding.

Finally, leave for discovery should be denied because the extensive disclosures would be unduly burdensome and would delay the resolution of this case. *See Town of Pleasant Valley*, 253 A.D.2d at 16 (in assessing the need for discovery in an Article 78 proceeding, the court considers whether "the requested discovery would be prejudicial or unduly burdensome . . . or would unduly delay the case."). The burden of conducting this fruitless disclosure is apparent from the very nature of the demanded disclosures, which includes documents and data spanning over three years' worth of Tier III disciplinary infractions across all DOCCS facilities. As detailed in the accompanying Affirmation of Anthony Rodriguez, DOCCS' Director of Special Housing and Incarcerated Individual Disciplinary Programs, between April 2022 and April 2024, there were 30,432 Tier III disciplinary hearings that resulted in a disciplinary determination. Affirmation of Anthony Rodriguez at ¶ 9. Review and disclosure of even a portion of these records, or compiling

data from such records, would undoubtedly take many months, but would yield little to nothing with probative value in resolving the question of whether Respondent's implementation of Section k(ii) was lawful. *See id.* at ¶ 12.

POINT II

THE COURT SHOULD NOT DIRECT SUPPLEMENTATION OF THE ADMINISTRATIVE RECORD AS CONTEMPLATED BY PETITIONERS

Petitioners' request for an order directing Respondent to supplement the administrative record should be denied. This argument is based on the false premise that the record before the Court is somehow deficient for the purposes of resolving Petitioners' claims. As explained in Point I, *supra*, the record before the Court is adequate to address Petitioners' claims for relief under Article 78, and for a declaratory judgment. Supplementing the record with, for example, voluminous individual disciplinary records, or statistical data concerning the class members, would serve no useful purpose in evaluating these claims and would delay this proceeding substantially.

The record before the Court explains the Respondent's reasoning for why the individual Petitioners' disciplinary infractions qualified as "heinous and destructive" under Section k(ii), or, in Petitioner Garcia's case, why Section (k)(ii) would not apply to him because he was not housed in segregated confinement or in an RRU. *See* NYSCEF Doc. No. 45. The present record also permits the Court to review the issue of whether DOCCS made the necessary findings at the hearing to justify extended segregated confinement of the individual Petitioners under Section k(ii). To the extent Petitioners allege that the deficiencies in the individual Petitioners hearings are common to the class members, they will be adequately protected by the principles of *stare*

decisis and the government operations rule if the Court declares such practices to be violative of Section k(ii). Petitioners' contemplated supplementation of the administrative record to include more documentation or data about the individual class members will have no meaningful effect on the Court's consideration of these issues, and will serve only to unduly burden DOCCS and prolong the resolution of this case. The Court should deny Petitioners' request.

CONCLUSION

For the foregoing reasons, Respondent respectfully requests that the Court deny Petitioners' motion in its entirety.

Dated: Albany, New York
March 18, 2024

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To: Counsel of record (*Via E-filing)*

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 2174. 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