SUPREME COURT 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,

v.

ANTHONY J. ANNUCCI, as Acting Commissioner of the New York State Department of Corrections and Community Supervision,

Respondent-Defendant.

Index No. 902997-23

Bryant, J.

MEMORANDUM OF LAW IN SUPPORT OF RESPONDENT-DEFENDANT'S MOTION TO DISMISS AND VERIFIED ANSWER

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Respondent-Defendant, Anthony Annucci, in his official capacity as Acting Commissioner of the New York State Department of Corrections and Community Supervision ("DOCCS") ("Respondent-Defendant"),[1] by his attorney, Letitia James, Attorney General of the State of New York, respectfully submits this memorandum of law, along with the Affidavit of Anthony Rodriguez, the DOCCS Director of the Special Housing and Incarcerated Individual Disciplinary Programs ("Rodrigues Aff."), and the Affidavit of Afsar Ali Khan, M.D., Clinical Physician 2 at the DOCCS Walsh Regional Medical Unit and DOCCS Central Office ("Khan Aff."), in support of Respondent-Defendant's Verified Answer to the Verified Amended Petition and Complaint, NYSECF No. 24, and Respondent-Defendant's motion to dismiss pursuant to CPLR 3211 as to the declaratory judgment claim.

PRELIMINARY STATEMENT

Plaintiffs-Petitioners Fuquan Fields, Luis Garcia, and Jimmy Barner ("Petitioners") bring this hybrid Article 78 proceeding and declaratory judgment action as a putative class action seeking to challenge the way that DOCCS is applying the Humane Alternatives to Long-Term Solitary Confinement Act ("HALT Act"). However, Petitioners make two procedural errors in trying to do so. First, a declaratory judgment action is simply not the proper vehicle to challenge administrative determinations where judicial review by way of Article 78 proceeding is available, as it is here. In other words, because Petitioners are not challenging the HALT Act, but are instead challenging the administrative determinations of DOCCS in applying the HALT Act, this type of challenge must be brought under Article 78, not as a declaratory judgment action. Second, there

[1] Respondent-Defendant Annucci retired from DOCCS and he has been replaced as Acting Commissioner by Daniel F. Martuscello III. Thus, pursuant to C.P.L.R § 1019, Acting Commissioner Martuscello should be substituted for Respondent-Defendant Annucci.

is controlling case law that holds that class actions are not considered to be a superior method for the fair and efficient adjudication of a controversy against a governmental agency like DOCCS. Thus, class action certification is inappropriate in Article 78 proceedings like the one that Petitioners attempt to bring here. Therefore, the declaratory judgment action and attendant class allegations are procedurally improper and must be dismissed.

As concerns the merits of the Article 78 proceeding, Petitioners wrongly assert that the HALT Act makes them practically immune from any substantial punishment while they are in DOCCS custody, even for their acts of throwing urine and/or feces at DOCCS correction officers, like Petitioners Fields and Garcia did, or, in the case of Petitioner Barner, throwing a brown liquid substance smelling of feces on three other incarcerated individuals.

As a preliminary matter, the HALT Act does not impose limitations on the length of sanctions imposed for misconduct. Rather, it defines where those sanctions can be served, and it limits the time an individual can be placed in segregated confinement. Rodriguez Aff., ¶ 4.

Under Correction Law §137(6)(k)(ii)(A), DOCCS can place an incarcerated individual in segregated confinement for up to 15 days, or in a Residential Rehabilitation Unit ("RRU"), for an offense that "attempt[s] to cause serious physical injury" and 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) and 137(6)(k)(ii)(A).

In segregated confinement, an incarcerated individual must be offered at least four hours of out-of-cell programming, including one hour of recreation, daily. The HALT Act contemplates using an alternative to segregated confinement, the RRU. Under the HALT Act, incarcerated

individuals housed in an RRU must be offered up to six hours of out-of-cell programming, and an additional hour of recreation, daily. Correctional Law §137(6)(j)(ii).

While the HALT Act imposes well defined durational limitations on sanctions served in segregated confinement, *see* Correction Law § 137(6)(i), the durational limitations for certain disciplinary sanctions served in an RRU may be extended based upon specific criteria and a review process. Correction Law § 137(6)(m)(ii).

Finally, Petitioners contend that their disciplinary punishment must be reversed because the DOCCS hearing officers in their respective hearings failed to repeat the precise words from the HALT Act on the Tier III disciplinary determinations showing that they were guilty of a Correction Law § 137(6)(k)(ii)(A) offense of "attempting to cause serious physical injury", and that these offenses were "heinous or destructive", creating "an unreasonable risk to the security of the facility" under Correction Law § 137(6)(k)(ii). But Petitioners' arguments here are unavailing because the very things that they complain were missing on their disciplinary determinations were implicit findings that are self-evident in the record of their hearings. Additionally, case law instructs that, since there are detailed factual findings in the Affidavits that support the Answer in this case, a remand to DOCCS to make new formal decisions repeating the factual findings in the Affidavits would be entirely unnecessary.

Thus, for these reasons, this matter must be dismissed in its entirety.

STATEMENT OF FACTS

A. The HALT Act

On March 31, 2021, the Governor of New York signed the HALT Act into law. Under the HALT Act, segregated confinement is a type of confinement in which the incarcerated individual

is offered fewer than seven (7) hours of out-of-cell programming or other out-of-cell activities daily. Correction Law § 137(6)(j)(ii).

The HALT Act limits segregated confinement to not more than 15 consecutive days, or 20 days total in any 60-day period. Correction Law § 137(6)(i).

The HALT Act prohibits segregated confinement of special/vulnerable populations (*e.g.* those who are 21 years or younger; those who are 55 years or older; anyone with a physical, mental, or medical disability; anyone pregnant; anyone in the first 8 weeks of post-partum recovery period; or anyone who is a new mother or caring for a child while in a correctional facility). *Id*., §§ 2(33), 137(6)(h). The HALT Act provides that RRUs be used as alternatives to segregated confinement. *Id*., § 2(34). These units, that were created by DOCCS prior to the passage of the HALT Act, provide access to support, services, and programs for behavioral needs, as well as six (6) hours out-of-cell programming plus one (1) hour of out-of-cell recreation. *Id*.; Rodriguez Aff., ¶ 9.

B. The Prison Offenses of Petitioners Fields, Garcia, and Barner

Petitioner Fields was found guilty at a disciplinary hearing for, among other things, assault on staff and unhygienic acts in connection with his urinating on the floor and throwing a urine-soaked item that hit a correction officer in the chest. Rodriguez Aff. ¶¶ 14-16; Answer, Exhibit A at 1, 5, 7, 9, 14, 24, 25, 26 and 52. He received a 120-day sanction, which he is serving in an RRU. Rodriguez Aff. ¶¶ 15, 18; Answer, Exhibit A at 1.

Petitioner Garcia was found guilty at a disciplinary hearing for assault on staff and an unhygienic act for throwing a "brown feces smelling liquid" on two correction officers and hitting one of them on the head, back, and shoulder. Rodriguez Aff., ¶¶ 19-23; Answer, Exhibit B at 4, 5, 6, 8 and 13. He received a 730-day sanction for these offenses, which is not in violation of the

HALT Act. Rodriguez Aff., ¶ 20; Answer, Exhibit B at 3, 24. He is serving the sanction in a Residential Mental Health Unit ("RMHU"), where he is offered four hours of structured, out-of-cell therapeutic programming seven days per week, in addition to three hours of other out-of-cell activities that are offered daily. Rodriguez Aff., ¶ 21. Petitioner Garcia was never housed in segregated confinement in connection with this matter. *Id*.

Petitioner Barner was found guilty at a disciplinary hearing for assault on incarcerated individuals and unhygienic acts for spraying three incarcerated individuals with a "brown liquid substance [that] had the odor of feces." Rodriguez Aff., ¶ 24; Answer, Exhibit C at 4, 5, 7, 12 and 14. He received a 210-day sanction, which he is serving in an RRU. Rodriguez Aff., ¶ 25; Answer, Exhibit C at 1. Petitioner Barner was never housed in segregated confinement in connection with this matter. Rodriguez Aff., ¶ 24.

The hearing officers for all three of these Tier III disciplinary hearings, which are the type of hearings reserved for the most serious of prison offenses,[2] issued written determinations containing objective findings of fact that were permissible and appropriate under the circumstances.

ARGUMENT IN SUPPORT OF DISMISSAL OF THE DECLARATORY JUDGMENT AND CLASS ACTION

POINT I

THE DECLARATORY JUDGMENT ACTION MUST BE DISMISSED.

Petitioners bring this case as a hybrid Article 78 proceeding and declaratory judgment

[2] *See Pearson v. Annucci*, 2023 U.S. Dist. LEXIS 44118, at *45 (N.D.N.Y. Mar. 16, 2023) (Tier III infractions are "the most serious of three infraction levels in the DOCCS system").

action. However, when a petitioner "is essentially challenging a government agency determination", as the Petitioners are here, the "avenue for judicial relief lies in a CPLR article 78 proceeding." *Matter of Shore Winds, LLC v. Zucker*, 179 A.D.3d 1208, 1211 (3rd Dept. 2020). In other words, when "Petitioners are not challenging any legislation, but are instead challenging the determinations of an administrative agency applying such legislation," this type of challenge "should be brought under CPLR article 78." *Matter of Adirondack Med. Center-Uihlein v Daines*, 119 A.D.3d 1175, 1176 (3d Dept. 2014). "To that end, as a general matter, 'a declaratory judgment action is not the proper vehicle to challenge an administrative procedure, where judicial review by way of [a CPLR] article 78 proceeding is available.'" *Matter of Shore Winds*, 179 A.D.3d at 1211 (quoting *Greystone Mgt. Corp. v. Conciliation & Appeals Bd. of City of N.Y.*, 62 N.Y.2d 763, 765 (1984)). *See also Matter of Escalera v. Roberts*, 193 A.D.3d 1232, 1233-34 (3d Dept. 2021) (if a petitioner has "an adequate remedy in the form of a CPLR article 78 proceeding" he or she "is not entitled to any declaratory relief").

Consequently, the declaratory judgment action should be dismissed.

POINT II

CLASS ACTION CLAIMS SHOULD NOT BE PURSUED VIA AN ARTICLE 78 PROCEEDING.

Petitioners seek to bring this matter as a "class action." *See* Amended Petition, ¶¶ 75-80. However, under CPLR § 901, a class action is only appropriate if it "is superior to other available methods for the fair and efficient adjudication of the controversy." CPLR § 901(a)(5). Yet, in New York, "'[i]t is well settled that a class action is not considered the superior method for the fair and efficient adjudication of a controversy against a governmental body.'" *Matter of Jones v. Bd. of Educ. of Watertown City Sch. Dist.,* 30 A.D.3d 967, 970 (4th Dep't 2006) (quoting *Bd. of*

Educ. of City Sch. Dist. of New Rochelle v. Cnty. of Westchester, 724 N.Y.S.2d 422 (2d Dep't 2001)).

Accordingly, "[c]lass action certification is inappropriate in Article 78 proceedings." *Conrad v. Regan*, 155 A.D.2d 931, 958 (4th Dep't 1989); *see also Daniel v. N.Y. State Div. of Hous. & Cmty. Renewal*, 179 Misc. 2d 452, 459–60 (Sup. Ct. N.Y. Cty. 1998). Rather, potential class members are "adequately protected by principles of stare decisis." *Daniel*, 683 N.Y.S.2d at 460; *see also Ferguson v. Barrios-Paoli*, 279 A.D.2d 396, 398 (1st Dep't 2001) ("[T]his is a proceeding involving a challenge to administrative action, in which context class action status is deemed unnecessary – whether relief is sought by way of CPLR article 78 or a plenary action – on the reasoning that stare decisis operates to the benefit of any person or entity similarly situated.") (internal citations omitted); *De Zimm v. N.Y. State Bd. of Parole*, 135 A.D.2d 66, 68 (3d Dept. 1988) ("class relief is unnecessary where, as here, governmental operations are involved and subsequent inmates will be adequately protected under the principles of stare decisis").

Consequently, the Court should not permit this matter to proceed as a class action.

ARGUMENT IN SUPPORT OF THE ARTICLE 78 ANSWER

POINT I

PETITIONERS' DISCIPLINARY PENALTIES ARE NOT CONTRARY TO THE HALT ACT OR ANY OTHER PROVISION OF LAW.

Petitioners fail to state a proper cause of action in this Article 78 proceeding because they fail to demonstrate that Respondent-Defendant violated any statutory or regulatory requirement or departmental policy in reaching and implementing the challenged three disciplinary determinations. Petitioners' factual allegations and legal claims lack merit, and the Petition should be dismissed.

A. Judicial review is limited in the Article 78 context, especially when it comes to prison disciplinary matters.

Preliminarily, in an Article 78 proceeding, a court is not authorized simply to substitute its judgment for that of a governmental agency. The standard to be applied by this Court when reviewing an administrative determination is therefore "severely limited" to the issue of whether the determination was "arbitrary and capricious," *i.e.*, "whether there was no rational basis for [the] decision." *Matter of Johnson v. Ambach*, 74 A.D.2d 986, 987 (3d Dept. 1980). *See also Matter of Snyder v. N.Y. State Bd. of Regents*, 31 Misc. 3d 556, 574 (Sup. Ct. Alb. Cty. 2010) (same). So "where a rational basis for the agency's determination can be discerned in the administrative record, there can be no judicial interference." *160 E. 84th St. Assocs., LLC v. N.Y. State Div. of Hous. & Cmty. Renewal*, 2021 N.Y. Misc. LEXIS 250 *26, 2021 N.Y. Slip Op 30176(U), ¶ 15 (Sup. Ct. N.Y. Cty. 2021). And a court can uphold an administrative decision, even when it is "of less than ideal clarity," as long as "the agency's path may reasonably be discerned." *Bowman Transp., Inc. v. Arkansas-Best Freight System, Inc.*, 419 U.S. 281, 286 (1974).

This deference is particularly appropriate with prison security matters because "[a] prison's internal security is peculiarly a matter normally left to the discretion of prison administrators." *Matter of Smith v. Goord*, 250 A.D.2d 946, 946-947 (3d Dept. 1998) (internal quotations and citations omitted). In fact, "[courts] must accord substantial deference to the professional judgment of prison administrators, who bear a significant responsibility for defining the legitimate goals of a corrections system and for determining the most appropriate means to accomplish them." *Overton v. Bazzetta*, 539 U.S. 126, 132 (2003). *See also Armwood v. State of N.Y.*, 70 Misc. 3d 1210(A), 136 N.Y.S.3d 840 (Ct. Cl. 2020) ("prison authorities should be afforded deference in

matters of internal security"); *People ex rel. Mackenzie v. Tedford*, 70 Misc. 3d 1111, 1119 (Sup. Ct. Essex County 2021) ("Courts must be sensitive to the State's interest in punishment, deterrence, and rehabilitation, as well as the need for deference to experienced and expert prison administrators faced with the difficult and dangerous task of housing large numbers of convicted criminals."). So "where, as here, the judgment of the agency involves factual evaluations in the area of the agency's expertise and is supported by the record, such judgment must be accorded great weight and judicial deference." *Flacke v. Onondaga Landfill Sys., Inc.*, 69 N.Y.2d 355, 363 (1987).

Furthermore, courts will generally defer to a governmental agency, "[w]here the interpretation of a statute or its application involves knowledge and understanding of underlying operational practices or entails an evaluation of factual data and inferences to be drawn therefrom." *Kurcsics v. Merchants Mut. Ins. Co*., 49 N.Y.2d 451, 459 (1980). Consequently, as long as an interpretation is rationally based, it will be upheld. *Id*. Said another way, "[i]f the court finds that the determination is supported by a rational basis, it must sustain the determination even if the court concludes that it would have reached a different result than the one reached by the agency." *Matter of Peckham v. Calogero*, 12 N.Y.3d 424, 431 (2009); *see Matter of Wooley v. New York State Dept. of Correctional Servs.*, 15 N.Y.3d 275, 280 (2010).

Additionally, DOCCS "has legitimate penological interests in seeing that disciplinary determinations are made quickly, both for security and rehabilitative reasons." *People ex rel. Vega v. Smith*, 66 N.Y.2d 130, 142 (1985). "Prison disciplinary proceedings take place in a highly charged atmosphere, and prison administrators must often act swiftly on the basis of evidence that might be insufficient in less exigent circumstances." *Superintendent of Mass. Correctional*

Institution at Walpole v. Hill, 472 U.S. 445, 456 (1985). DOCCS therefore "has both a need and general obligation to act swiftly to separate and discipline inmates who commit violent acts in prison, often before it can perform a comprehensive investigation." *Matter of Josey v. Goord*, 9 N.Y.3d 386, 391 (2007). The goal of prison disciplinary action is not "to vindicate public justice, but rather to further the separate and important public interest in maintaining prison order and safety." *People v. Vasquez*, 89 N.Y.2d 521, 529 (1997).

B. Petitioners were properly placed in RRUs for their disciplinary violations.

Petitioners allege that their disciplinary sanctions were not made in compliance with the HALT Act or, more specifically, in accordance with the provisions of Correction Law § 137(6)(k)(ii). Petitioners are incorrect.

Under Correction Law § 137(6)(k)(ii), DOCCS may place a person in segregated confinement for up to 15 days, or a RRU, if pursuant to an evidentiary disciplinary hearing the individual is found guilty of one or more specified acts of misconduct under the law, and it is determined that the act (1) is so "heinous or destructive" that placement of the individual in general population would create a significant risk of imminent serious physical injury to others, and (2) creates an unreasonable risk to the security of the facility. Correction Law § 137(6)(k)(ii).

Disciplinary hearings are conducted in accordance with the procedures outlined in DOCCS regulation 7 NYCRR Part 254, known as Tier III hearings. Rodriguez Aff., ¶ 12. One of the specified acts of misconduct that may qualify for placement in segregated confinement for up to 15 days, or a RRU, is committing an offense that can be characterized as:

> **causing or attempting to cause serious physical injury or death to another person** or making an imminent threat of such serious physical injury or death if the person has a history of causing such physical injury or death and the commissioner and, when appropriate, the commissioner of mental health or their designees

> reasonably determine that there is a strong likelihood that the person will carry out such threat. …

Correction Law §137(6)(k)(ii)(A) (emphasis added). Each of the three Petitioners committed offenses that fall under this provision. Rodriguez Aff., ¶ 33. Indeed, the record establishes that the sanctions imposed upon Petitioners were permissible and appropriate, and were imposed only after a full evidentiary hearing, consideration of all the facts of the case, and an evaluation of the unreasonable risks posed if Petitioners were housed in general population. *Id*., ¶¶ 33-39.

Petitioners' offenses fall under Correction Law § 137(6)(k)(ii)(A) – that is, Petitioners were found guilty of "attempt[s] to cause serious physical injury" – and the acts were also inherently "heinous or destructive." *Id*. In 1996, the New York State Legislature determined that throwing urine and/or feces at DOCCS officials, like Petitioners Fields and Garcia did, is an offense that is a Class E felony under N.Y. Penal Law § 240.32, the Aggravated Harassment of an Employee by an Inmate. At that time, the Legislature noted that such offenses greatly increased "the possibility for the transmission of diseases" to correctional officers. *People v. Stokes*, 290 A.D.2d 71, 75 (3d Dept. 2002) (quoting Legislative Mem in Support, 1996 McKinney's Session Laws of NY, at 2060). *See also* Governor's Program Bill Mem, Bill Jacket, L. 1996, ch 92, found at https://digitalcollections.archives.nysed.gov/index.php/Detail/objects/35440. These same dangers apply equally to Petitioner Barner, since he purposely sprayed three other incarcerated individuals with a vile liquid mixture containing his feces. Rodriguez Aff., ¶ 24.

The dangers associated with throwing urine and/or feces on correction officers or other incarcerated individuals is considerable. Dr. Afsar Ali Khan states:

> Throwing bodily fluids or human waste in the form of urine and/or feces on another individual is a serious, dangerous, and damaging offense. … Such an act places individuals at an immediate risk of serious bodily harm, as such fluids can be a

> vector for transmitting communicable diseases such as, Hepatitis A, Hepatitis E, Typhoid Fever, C. Difficile, Cholera, E. Coli, campylobacteriosis, and parasitic infection. … Urine and/or feces contaminated with blood or other bodily fluids carries the risk of bloodborne infections such as HIV, Hepatitis B, and Hepatitis C. … Infection with a pathogen via urine and/or feces may carry lifelong health consequences for the infected individual. For example, an infection from Hepatitis can cause permanent damage to the liver, increase the risk of developing liver failure, cirrhosis, and cancer.

Khan Aff. ¶¶ 6-9.

Courts within New York have also determined that violations of N.Y. Penal Law § 240.32 are considered to be serious, and they can be even considered to be violent acts against correction officers. *See*, e.g., *People v. Hernandez*, 198 A.D.3d 545, 545 (1st Dept. 2021) (holding that a violation N.Y. Penal Law § 240.32, the aggravated harassment of an employee by an inmate, by throwing urine or feces, was "serious"); *Liverpool v. Davis*, 442 F. Supp. 3d 714, 730 (S.D.N.Y. 2020) (citing N.Y. Penal Law § 240.32 and stating that "a reasonable juror could conclude that throwing human waste at another person constitutes an act of violence").

Accordingly, DOCCS did not act arbitrarily or capriciously when it determined that when Petitioners threw urine and/or feces at correctional officials, it was an "attempt[] to cause serious physical injury" under Correction Law § 137(6)(k)(ii)(A), and that it was also inherently "heinous or destructive" under Correction Law § 137(6)(k)(ii). *See* Rodriguez Aff., ¶¶ 33-36. In other words, by committing the kind of acts that the New York State Legislature previously determined are Class E felonies under N.Y. Penal Law § 240.32, Petitioners Fields and Garcia were properly and appropriately punished administratively with longer-term sanctions – *i.e.*, 120 days for Petitioner Fields and 730 days for Petitioner Garcia – in RRUs, just as the HALT Act explicitly allows under Correction Law § 137(6)(m)(ii). *Id.*, ¶¶ 18, 21-22. And the punishment of 210 days in a RRU for Petitioner Barner was also appropriate under the HALT Act because, as noted above,

he sprayed three other incarcerated individuals with a brown liquid mixture containing his feces while he was already in a RRU setting. *Id*., ¶¶ 24-26. That, too, was an offense that comes under Correction Law § 137(6)(k)(ii)(A) as an offense that "attempt[s] to cause serious physical injury," and it was also an offense that is inherently "heinous or destructive."

Moreover, each of the three Petitioners have a history of violent conduct, assault on staff, and unhygienic acts such as throwing urine and/or feces. Rodriguez Aff., ¶ 38. Therefore, given their propensity for such misconduct, their placement in a less restrictive environment such as general population would clearly constitute an unreasonable risk to the security of the correctional facility, the staff and incarcerated population. *Id.*, ¶ 39.

While the HALT Act imposes well defined durational limitations on sanctions served in segregated confinement, *see* Correction Law § 137(6)(i), the durational limitations for certain disciplinary sanctions served in a RRU may be extended based upon specific criteria and a review process. Correction Law § 137(6)(m)(ii). Correction Law § 137(6)(m)(ii) states, in part:

> If an incarcerated person has not been discharged from a residential rehabilitation unit within one year of initial admission to such a unit or is within sixty days of a fixed or tentatively approved date for release from a correctional facility, he or she shall have a right to be discharged from the unit **unless he or she committed an act listed in subparagraph (ii) of paragraph (k)** of this subdivision within the prior one hundred eighty days and he or she poses a significant and unreasonable risk to the safety or security of incarcerated persons or staff. In any such case the decision not to discharge such person shall be immediately and automatically subjected to an independent review by the commissioner and the commissioner of mental health or their designees. A person may remain in a residential rehabilitation unit beyond the time limits provided in this section if both commissioners or both of their designees approve this decision. ...

Correction Law § 137(6)(m)(ii) (emphasis added).

Also, as noted above, the HALT Act defines "segregated confinement" as confinement of an incarcerated individual in any form of cell detention for more than seventeen (17) hours per

day. Correction Law § 2(23). Time spent in RRUs, and RMHUs in the case of Petitioner Garcia, is not "segregated confinement" because, by statute and by DOCCS's practice, incarcerated individuals confined to the RRU or RMHU are offered at least seven hours of out-of-cell programming and/or other activities per day. *Id.*; *see also* Rodriguez Aff., ¶ 9. Thus, under the HALT Act, unlike segregated confinement, the amount of time that Petitioners can be placed in a RRU or RMHU may be extended as long as the requirements of Correction Law § 137(6)(m)(ii) are met. Consequently, because the Petitioners were housed in a RRU, or a RMHU in the case of Petitioner Garcia, the limitations placed on segregated confinement do not apply and the Petitioners' arguments are unavailing.

Consequently, the Amended Petition and Complaint challenging the length of Petitioners' confinement should be dismissed in its entirety.

C. The remainder of Petitioners' claims fail because the requisite statutory findings were implicit in the hearing officers' determinations.

Petitioners assert that the DOCCS hearing officers that handled their respective Tier III disciplinary hearings failed to adhere to Correction Law § 137(6)(k)(ii) because they failed to include the precise words of the statute in their written decisions. *See, e.g.*, Amended Petition, ¶¶ 25-28. Specifically, Petitioners argue that the hearing officers were required to write down on the disciplinary hearing paperwork that: (1) Petitioners committed an offense that fell under Correction Law § 137(6)(k)(ii)(A), *i.e.*, that it was an offense that attempted "to cause serious physical injury," (2) "the acts were so heinous or destructive that placement of the individual in general population housing" would create "a significant risk of imminent serious physical injury to staff or other incarcerated persons," *see* Correction Law § 137(6)(k)(ii), and (3) Petitioners also created "an unreasonable risk to the security of the facility." *Id.* While the hearing officers did

not use these precise words parroting the HALT Act during the Petitioners' disciplinary hearings, Petitioners are not entitled to a remand because each of those findings were implicit in the hearing officers' determinations.

Here, each of the Petitioners' offenses fell under Correction Law § 137(6)(k)(ii)(A) – *i.e.*, they committed offenses in which they were "attempting to cause serious physical injury" – thus, it would make no sense to remand to the DOCCS's hearing officers to explicitly state that finding, one that is implicit in their determinations. Likewise, the acts committed by Petitioners, combined with their propensity for such acts, were so "heinous or destructive" that placement of Petitioners "in general population housing" would create "a significant risk of imminent serious physical injury to staff or other incarcerated persons," and "an unreasonable risk to the security of the facility." Correction Law § 137(6)(k)(ii). *See also* Rodriguez Aff., ¶¶ 33-39.

Because these determinations are self-evident and are supported by the detailed factual findings in the Affidavits that support the Answer in this case, a remand to DOCCS to make new formal decisions repeating the factual findings in the Affidavits would be futile. *See, e.g., In re N.Y.C. Hous. & Redevelopment Bd.*, 23 A.D.2d 84, 86-87 (1st Dept. 1965) (holding that because the return to the petition "contains detailed factual findings sufficient to support the determination" and because "the return before [the court was] sufficient to decide the appeal", a remand "for the sole purpose of transposing the material in the return to a new formal decision would serve no useful purpose"); *Matter of Ohrenstein v. Zoning Bd. of Appeals of Canaan*, 39 A.D.3d 1041, 1043 (3rd Dept. 2007) ("In addition to the record, [courts] may also look to the administrative agency's formal return in the CPLR article 78 proceeding to ensure that the necessary record support for its decision exists."); *215 E. 72nd St. Corp. v. Klein*, 58 A.D.2d 751, 751 (1st Dept. 1977) (holding

that even when there are insufficient findings found in an agency's administrative determination, when there are sufficient findings found in the record supporting the return to the petition, "the practice, condoned, if not upheld, by the Court of Appeals has been to allow reliance on findings contained in the return to the petition") (citing *Elliott v. Galvin*, 33 N.Y.2d 594, 596 (1973)); *Iwan v. Zoning Bd. of Appeals*, 252 A.D.2d 913, 914 (3rd Dept. 1998) ("Although respondent's written findings are sparse, remittal is unnecessary since the record of the proceedings before respondent together with respondent's answer and return in Supreme Court contain sufficient facts to permit intelligent judicial review of the evidence it relied upon in reaching its determination.").

Therefore, Petitioners' claims in this regard are without merit.

CONCLUSION

For all of the reasons stated above, the Verified Amended Petition and Complaint in this matter should be dismissed in its entirety, with prejudice.

Dated: Albany, New York
June 23, 2023

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I, Michael McCartin, hereby certify that the word count of this document, written in 12-point font, as calculated by Microsoft Office Word, exclusive of the caption, tables, and signature block, is 4,801. Additionally, the word count of the accompanying Affidavits are likewise under 7,000 words.

By: /S/ *Michael McCartin*
Michael G. McCartin