

**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,

v.

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

Defendant-Respondent.

Index No. 902997-23

**VERIFIED AMENDED CLASS
PETITION AND COMPLAINT**

PRELIMINARY STATEMENT

1. In 2021, New York enacted the Humane Alternatives to Long-Term Solitary Confinement Act (“HALT Act” or “HALT”), the most significant reform to our state’s prison system in a generation. Some two years on, this lawsuit challenges entrenched practices by which prison officials persist in flouting HALT, subjecting thousands of New Yorkers annually to unlawfully prolonged periods of segregation and other disciplinary confinement in open defiance of the Legislature’s express will.

2. Consensus is now clear that solitary confinement—the use of extreme isolation as punishment—even for relatively short periods, inflicts profound, sometimes irreversible, psychological damage on incarcerated individuals. Yet for decades, DOCCS has persisted in imposing long periods of solitary confinement and other similar forms of restrictive disciplinary confinement, exacting a devastating toll on many thousands of incarcerated people.

3. In 2021, the State Legislature took action to stem this practice, passing the HALT Act, which imposes specific limits on who can be placed in segregated confinement and certain other forms of disciplinary confinement, and for how long and why.

4. Among its key provisions, the HALT Act caps placement in segregated confinement to three consecutive days or six days in any 30-day period in most circumstances. Under the Act, DOCCS may exceed those limits—imposing extended segregated confinement of up to 15 consecutive days total, or 20 days in any 60-day period—only on a written finding pursuant to an evidentiary hearing that two criteria—known as the “k(ii) confinement criteria” for the statutory provision that contains them¹—are met: first that an individual has committed one of seven specifically enumerated acts; and second, that the infraction was sufficiently “heinous or destructive” to create both a significant risk of serious physical injury and an unreasonable security risk. DOCCS must also satisfy these criteria to impose disciplinary confinement of *any* duration—even for less than three days—in a Residential Rehabilitation Unit, a setting intended under HALT to be a rehabilitative alternative to segregated confinement, and in several other specialized disciplinary confinement settings.

5. In practice, DOCCS has flouted these durational limits as a matter of course, imposing so-called “k(ii) confinement” for acts not specified in the k(ii) confinement criteria and without making individualized or written determinations that these statutory requirements are met. Instead, DOCCS has adopted a categorical approach by which all charges adjudicated in a Tier III disciplinary hearing—the most serious level in DOCCS’s tripartite disciplinary system—qualify as one the seven specifically enumerated acts and without making the individualized written findings that the conduct was heinous or destructive. This policy and practice (the “k(ii)

¹ See CL § 137[6][k][ii].

Confinement Policy”) ensures that, each year, thousands of incarcerated individuals continue to endure extended periods of segregated confinement, as well as other unlawful disciplinary confinement, in excess of the HALT Act’s carefully crafted constraints.

6. Plaintiffs-Petitioners are three individuals whom DOCCS’s k(ii) Confinement Policy directly and profoundly harms. Each has been sentenced to a lengthy period of disciplinary confinement—ranging from 90 days to as much as 730 days—for a Tier III violation. And, under DOCCS’s k(ii) Confinement Policy, they will each serve those sanctions in restrictive confinement settings that the Legislature subjected to the HALT Act’s k(ii) confinement criteria, despite the absence of any showing by DOCCS that the criteria are met in these instances.

7. Plaintiffs-Petitioners seek to stop this unlawful result. They seek to represent themselves and all similarly situated individuals in challenging these practices; and in so doing, to challenge DOCCS’s defiance of the Legislature’s reasoned judgment on when and for how long segregation and other forms of disciplinary confinement may be used. Plaintiffs-Petitioners seek declaratory relief and Article 78 review of the policies by which DOCCS subjects them to the harms of disciplinary confinement in violation of the HALT Act.

PARTIES

8. Plaintiff-Petitioner Fuquan Fields is a 44-year-old man who is diagnosed with mental illness. Mr. Fields has been incarcerated by DOCCS since 2007 and is currently confined at Great Meadow Correctional Facility in Comstock, New York. On March 20, 2023, Mr. Fields received a final decision on his guilty disposition for a Tier III violation for exposing himself and urinating on the floor while on suicide watch, resulting in a sentence of 120 days in disciplinary confinement. Under DOCCS’s k(ii) Confinement Policy, this confinement sanction has resulted

in Mr. Fields's confinement in an RRU, a placement for which compliance with the k(ii) confinement criteria is required.

9. Plaintiff-Petitioner Luis Garcia is a 41-year-old man who is diagnosed with mental illness. Mr. Garcia first entered DOCCS custody in 2018 and is currently confined at Five Points Correctional Facility in Romulus, New York. On December 5, 2022, Mr. Garcia received a final decision on his guilty disposition of a Tier III violation for throwing a liquid smelling like urine and feces, which landed on two officers. Mr. Garcia's guilty disposition resulted in a disciplinary sentence of 730 days in disciplinary confinement. Under the k(ii) Confinement Policy, this confinement sanction has resulted in Mr. Garcia's confinement in an RMHU, a placement for which compliance with the k(ii) confinement criteria is required.

10. Plaintiff-Petitioner Jimmy Barner is a 40-year-old man who is currently incarcerated at Gouverneur Correctional Facility in Gouverneur, New York. On March 27, 2023, Mr. Barner received a final decision on his conviction of a Tier III violation for taking a container out of his pants and spraying three incarcerated individuals with an unknown brown liquid. Mr. Barner's conviction resulted in a sentence of 210 days in disciplinary confinement. Under the k(ii) Confinement Policy, Mr. Barner is scheduled to serve this confinement sanction in a unit for which compliance with the k(ii) confinement criteria is required.

11. Defendant-Respondent Anthony J. Annucci is the Acting Commissioner of DOCCS.² As such, Defendant-Respondent Annucci has final responsibility for the development

² Defendant-Respondent Annucci recently announced his retirement, to be effective August 11, 2023. Following that date, and because he is sued solely in his official capacity as Acting Commissioner of DOCCS, Plaintiffs-Petitioners anticipate moving to substitute Defendant-Respondent Annucci with his successor (*see* Civil Practice Law and Rules ("CPLR") §§ 1019; 1023).

and execution of DOCCS policies and practices, including the k(ii) Confinement Policy. He is sued in his official capacity.

FACTUAL ALLEGATIONS

A. The New York State Legislature Passes the HALT Act to Limit DOCCS's Use of Solitary Confinement

12. Solitary confinement involves punishing incarcerated individuals by separating them from the general population and subjecting them to harsh isolation, severe deprivation, and forced idleness. Solitary confinement deprives people of meaningful human interaction and mental stimulation, causing severe, long-lasting, often irreparable harm.

13. For decades, DOCCS imposed solitary confinement sanctions with virtual impunity, exercising broad discretion to subject people to lengthy solitary confinement for even relatively minor infractions. DOCCS typically imposed this extended segregated confinement in special housing units ("SHU"), where individuals had no access to rehabilitation or other programming, and frequently suffered mental decompensation.

14. DOCCS's frequent use of solitary confinement received widespread condemnation and spurred lawsuits such as *Peoples v. Fischer*, 2012 WL 1575302 (SD NY 2012), which resulted in a settlement imposing reforms to solitary confinement practices across the state.

15. Despite the *Peoples* reforms and decades of other advocacy efforts to curtail DOCCS's use of solitary confinement, DOCCS continued to hold hundreds of people in solitary confinement for prolonged periods of time. For example, in 2018, 131 individuals incarcerated in DOCCS's facilities had segregated confinement sanctions of one year or more.

16. In early 2021, responding to significant public concern over the harmful impact of DOCCS's widespread use of solitary confinement, the New York Legislature passed the HALT

Act, imposing stringent limits on who can be placed in solitary, and for how long, and why. The Act came into full effect approximately a year later on March 31, 2022.

17. Among other key reforms, the HALT Act limits placement in “segregated confinement”³—the Act’s term for solitary and other in-cell confinement exceeding 17 hours per day—to a maximum of three consecutive days, or six days in any 30-day period, in most circumstances (*see* Correction Law (“CL”) § 137[6][k][i]).

18. To extend segregated confinement beyond these durational limits—that is, to impose “extended segregated confinement”—the Legislature required that DOCCS meet two precisely defined requirements contained in CL § 137(6)(k)(ii), often referred to as the “k(ii) confinement criteria.” And DOCCS must also satisfy the k(ii) confinement criteria to impose placement of *any* duration in a Residential Rehabilitation Unit (“RRU”)—an alternative, ostensibly rehabilitative setting to solitary confinement created by the HALT Act—or in several other disciplinary confinement settings.⁴

19. The k(ii) confinement criteria are: first, that DOCCS finds, “by written decision” and “pursuant to an evidentiary hearing,” that an individual has committed one or more of seven acts specifically enumerated in the statute; and second, that DOCCS determines, “in writing” and “based on specific objective criteria,” that the acts “were so heinous or destructive” that placing

³ Under HALT, “segregated confinement” means “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” (CL § 2[23]).

⁴ For example, disciplinary placement in a Residential Mental Health Treatment Unit—a confinement setting for people with serious mental illness that includes Behavioral Health Units and Residential Mental Health Units—requires compliance with the k(ii) confinement criteria (*see* CL §§ 2[21], 401[1]).

the individual in general-population housing would create both a “significant risk of imminent serious physical injury” and an “unreasonable risk” to facility security.

20. The seven enumerated acts that qualify for extended segregated confinement or placement in an alternative form of disciplinary confinement under the k(ii) confinement criteria—often referred to as the “k(ii)” acts—are defined using narrow and precise language.

They include:

- (A) 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. [];
- (B) compelling or attempting to compel another person, by force or threat of force, to engage in a sexual act;
- (C) extorting another, by force or threat of force, for property or money;
- (D) coercing another, by force or threat of force, to violate any rule;
- (E) leading, organizing, inciting, or attempting to cause a riot, insurrection, or other similarly serious disturbance that results in the taking of a hostage, major property damage, or physical harm to another person;
- (F) procuring a deadly weapon or other dangerous contraband that poses a serious threat to the security of the institution;
or
- (G) escaping, attempting to escape or facilitating an escape from a facility or escaping or attempting to escape while under supervision outside such facility.

21. Even if DOCCS satisfies both prerequisites to extending segregated confinement under the k(ii) confinement criteria, the HALT Act places an absolute durational cap on extended

segregated confinement. Under no circumstances may DOCCS keep an individual in segregated confinement for more than 15 consecutive days or 20 days in any 60-day period.

22. Instead, at these absolute limits, the HALT Act requires that DOCCS transfer an individual in extended segregated confinement to an RRU.

B. DOCCS's k(ii) Confinement Policy

23. Despite the HALT Act's clear limits on placing people in extended segregated confinement and other disciplinary confinement, DOCCS has adopted a policy and practice that continues to subject hundreds of individuals to extended confinement sanctions for conduct that does not meet the k(ii) confinement criteria.

24. Over a year after the HALT Act became effective, DOCCS has achieved this unlawful result through at least two discrete policy decisions, embodied in the k(ii) Confinement Policy, to interpret the k(ii) confinement criteria in a manner that contravenes the HALT Act.

25. First, as reflected in its Review Officer Training Manual, DOCCS has determined, and instructed relevant disciplinary staff, to treat all conduct charged as "Tier III" infractions as categorically constituting one of the seven k(ii) acts. (*See* DOCCS Review Officer Training Manual, attached as Exhibit 1.) Accordingly, DOCCS routinely sentences individuals to extended confinement sanctions without any individuated determination that the particular conduct at issue constitutes any of the seven acts enumerated in the k(ii) confinement criteria ("k(ii) acts").

26. Yet while Tier III is the designation reserved for the most serious conduct in DOCCS's tripartite disciplinary designation scheme, it encompasses a variety of conduct extending well beyond the narrow confines of the seven k(ii) acts enumerated in CL § 137(6)(k)(ii). For example, charges such as 112.10 (causing a miscount) and 101.20 (lewd conduct) can be, and frequently are, charged as Tier III offenses.

27. DOCCS's own data confirms this interpretive decision. The HALT Incident List for January 2023 shows that individuals received SHU sanctions for incidents labelled only as "unhygienic act," "harassment," and "smuggling"—none of which are remotely similar to the seven qualifying k(ii) acts.

28. Second, DOCCS routinely fails to make determinations "in writing based on specific objective criteria" that a charged act was "so heinous or destructive" that the actor "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."

29. Instead, DOCCS appears to have determined on a blanket basis that all misconduct charged as a Tier III offense constitutes one of the seven k(ii) acts, irrespective of the nature of the particular act in question. DOCCS makes this categorical determination without acknowledging the HALT Act's additional prerequisite to extended segregated or other k(ii) confinement: charged acts must be "so heinous or destructive" to create both a "significant risk of imminent serious physical injury" and "an unreasonable risk to the security of the facility."

30. DOCCS's Review Officer Training Manual does not instruct or require officers to consider the "heinous or destructive" standard.

31. DOCCS's proposed regulations do not require officers to make a written determination that any particular act is "heinous or destructive" as required under the k(ii) confinement criteria.

32. Indeed, DOCCS's explanation in response to public comments on its proposed regulations was that though these do not mention the "heinous or destructive" standard, "the rule violations in which someone can be placed in segregated confinement meet the definition of such terms as defined in Correction Law § 137(6)(k)(ii)."

33. On information and belief, DOCCS has not developed or disseminated “specific objective criteria” for determining whether misbehavior is sufficiently “heinous and destructive.”

34. As a result, pursuant to its k(ii) Confinement Policy, DOCCS considers an individual who is charged with an offense subject to a Tier III hearing—such as an “unhygienic act” for spitting on the floor—to be eligible for segregated confinement in SHU or placement in an RRU, even though this is not one of the enumerated k(ii) acts for which the HALT Act allows segregated confinement and even in the absence of any individual determination that the conduct in question is heinous and destructive.

35. DOCCS’s k(ii) Confinement Policy has thus led to the confinement of individuals who have committed infractions that the Legislature did not make eligible for extended segregated confinement or placement in other k(ii) confinement settings.

36. As a result of its k(ii) Confinement Policy, DOCCS continues to hold hundreds of incarcerated individuals in segregated confinement for conduct and periods beyond those allowed by law.

37. Between January 1 to February 28, 2023, for example, 230 individuals—or 14% of all individuals serving SHU time during that period—were held in segregated confinement in excess of the 21-day limit within a 60-day period. And as of March 1, 2023, 90 individuals, or 22% of all individuals serving SHU time, had been kept in segregated confinement in excess of the 15-consecutive-day limit.

C. The Plaintiffs-Petitioners

Fuquan Fields

38. Plaintiff-Petitioner Fuquan Fields is currently incarcerated at Great Meadow Correctional Facility.

39. On January 12, 2023, Mr. Fields was incarcerated at Fishkill Correctional Facility when he began experiencing a mental-health crisis.

40. Early that morning, Mr. Fields first began making suicidal statements. Within approximately one hour, he was moved to a hearing room where he was placed in a restraint chair while awaiting escort to be seen by Office of Mental Health (“OMH”) staff, for a one-on-one suicide watch.

41. While waiting in the hearing room, Mr. Fields informed staff that he needed to use the restroom. Staff ignored this request. (Fields Appeal Form to the Commissioner, attached as Exhibit 2.)

42. According to the misbehavior report, roughly two hours later, Mr. Fields exposed himself and urinated on the floor before he could be escorted to the bathroom. The misbehavior report also claims that Mr. Fields began to threaten a Corrections Officer and throw “wet looking sugar packets” at him. (Fields Misbehavior Report dated January 12, 2023, attached as Exhibit 3.)

43. The report charged Mr. Fields with violating rules 100.11 (assault on staff), 101.20 (lewd conduct), 102.10 (threats), 106.10 (direct order), and 118.22 (unhygienic act). (Exhibit 3.)

44. Because Mr. Fields was placed on suicide watch, Mr. Fields’ Tier III disciplinary hearing was delayed several times. His hearing eventually began on January 18, 2023, and concluded on January 27, 2023. (Fields Hearing Disposition dated January 27, 2023,⁵ attached as Exhibit 4.)

⁵ For the hearing dispositions of each of the three named Plaintiffs—exhibits 4, 7, and 10—dates referenced in the exhibit description refer to the hearing end date rather than the date at the top of the document.

45. A hearing officer found Mr. Fields guilty of 100.11 (assault on staff), 118.22 (unhygienic act), and 101.20 (lewd conduct). (Exhibit 4.)

46. Among other penalties, the hearing officer sentenced Mr. Fields to 180 days of SHU. (Exhibit 4.)

47. The hearing officer's disposition did not contain a determination that any of the alleged conduct constituted an act defined under CL § 137(6)(k)(ii)(A)–(G).

48. The hearing officer's disposition also contains no written determination by DOCCS, based on specific objective criteria, that Mr. Fields's conduct was so heinous or destructive that his 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 to the security of the facility.

49. Mr. Fields submitted a timely administrative appeal of the hearing and co-counsel Prisoners' Legal Services of New York ("PLS") submitted a supplemental appeal. Among other issues, the supplemental appeal raised issues concerning DOCCS's failure to comply with the k(ii) confinement criteria.

50. On March 20, 2023, the Office of Special Housing issued a written determination affirming the disposition of Mr. Fields's hearing as to the 118.22 (unhygienic act) and 101.20 (lewd conduct) charges. The Office of Special Housing dismissed the 100.11 (assault on staff) charge and modified his penalty from 180 days to 120 days in SHU. (Fields Final Determination, attached as Exhibit 5.)

51. Mr. Fields began serving his sentence for this confinement sanction on May 1, 2023, and, under DOCCS's k(ii) Confinement Policy, is currently confined in an RRU.

Luis Garcia

52. Plaintiff-Petitioner Luis Garcia is currently incarcerated at Five Points Correctional Facility.

53. On September 20, 2022, Mr. Garcia was incarcerated at Coxsackie Correctional Facility where he resided in a Residential Mental Health Unit, a form of housing operated jointly by DOCCS and OMH for individuals with serious mental illness.

54. While in his cell, Mr. Garcia allegedly threw an “unknown brown feces smelling liquid” that purportedly hit two officers. (Garcia Misbehavior Report dated September 20, 2022, attached as Exhibit 6.)

55. A DOCCS employee filed two misbehavior reports charging Mr. Garcia with two counts of 100.11 (assault on staff) and two counts of 118.22 (unhygienic act). (Exhibit 6.)

56. Two days later, DOCCS transferred Mr. Garcia to Elmira Correctional Facility and placed on suicide watch upon arrival.

57. Mr. Garcia’s Tier III evidentiary hearing began—in Mr. Garcia’s absence—on September 28 and concluded on October 5, 2022. (Garcia Hearing Disposition dated October 5, 2022, attached as Exhibit 7.)

58. A hearing officer found Mr. Garcia guilty of two counts of 100.11 (assault on staff) and two counts of 118.22 (unhygienic act) as charged in the misbehavior reports. (Exhibit 7.)

59. Among other penalties, the hearing officer sentenced Mr. Garcia to 730 days of SHU. (Exhibit 7.)

60. The hearing officer’s disposition did not contain a determination that any of the alleged conduct constituted an act defined under CL § 137(6)(k)(ii)(A)–(G).

61. The hearing officer's disposition also contained no written determination by DOCCS, based on specific objective criteria, that Mr. Garcia's conduct was so heinous or destructive that his 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 to the security of the facility.

62. Mr. Garcia submitted a timely administrative appeal of the hearing and co-counsel PLS submitted a supplemental appeal. Among other issues, the supplemental appeal raised issues concerning DOCCS's failure to meet the k(ii) confinement criteria.

63. On December 5, 2022, the Office of Special Housing issued a written determination affirming the disposition of Mr. Garcia's hearing. (Garcia Final Determination, attached as Exhibit 8.)

64. Mr. Garcia began serving his sentence for this confinement sanction on March 19, 2023, and is currently confined in an RMHU.

Plaintiff-Petitioner Jimmy Barner

65. Plaintiff-Petitioner Jimmy Barner is a 40-year-old man who has been incarcerated since 2008 and is currently incarcerated at Gouverneur Correctional Facility.

66. On January 13, 2023, a DOCCS Corrections Officer filed a misbehavior report against Mr. Barner. The report charged Mr. Barner with assault on inmate (100.10), violent conduct (104.11), smuggling (114.10), unhygienic act (118.22), and contraband (113.23). (Barner Misbehavior Report dated January 13, 2023, attached as Exhibit 9.)

67. The misbehavior report accused Mr. Barner of pulling an "unknown container" out of his pants and spraying an "unknown brown liquid" with an "odor of feces" onto three other incarcerated individuals. (Exhibit 9.)

68. Between January 17 and 19, 2023, DOCCS held a Tier III disciplinary hearing on the charges in the January 13 misbehavior report against Mr. Barner. Following that hearing, a hearing officer found Mr. Barner guilty of all charges in the misbehavior report. (Barner Hearing Disposition dated Jan. 19, 2023, attached as Exhibit 10.)

69. Among other penalties, the hearing officer sentenced Mr. Barner to SHU confinement for 210 days. (Exhibit 10.)

70. The hearing officer's disposition did not contain a determination that any of the alleged conduct constituted an act defined under CL § 137(6)(k)(ii)(A)–(G).

71. The hearing officer's disposition also contained no written determination by DOCCS, based on specific objective criteria, that Mr. Barner's conduct was so heinous or destructive that his 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 to the security of the facility.

72. Mr. Barner submitted a timely administrative appeal of the hearing and co-counsel PLS submitted a supplemental appeal. Among other issues, the supplemental appeal raised issues concerning DOCCS's failure to meet the k(ii) confinement criteria.

73. On March 27, 2023, the Office of Special Housing issued a written determination dismissing the violent conduct (104.11) and contraband (113.23) charges; but otherwise affirming the charges against Mr. Barner and affirming the penalty against him, including the sentence to 210 days in SHU. (Barner Final Determination, attached as Exhibit 11.)

74. Mr. Barner is scheduled to serve his confinement sanction from June 17, 2023 through January 13, 2024.

CLASS ACTION ALLEGATIONS

75. This case is brought as a class action pursuant to section 901 of the Civil Practice Law and Rules (“CPLR”) on behalf 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 other unit for which compliance with CL § 137(6)(k)(ii) is required before placement.

76. The proposed class is sufficiently numerous that joinder of all members is impracticable. Defendant-Respondent has subjected hundreds of individuals to unlawfully extended segregated confinement and other unlawful disciplinary confinement under the k(ii) Confinement Policy since the HALT Act took effect on March 31, 2022; and will continue to do so with respect to additional individuals while the k(ii) Confinement Policy remains in place.

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

- a. Whether Defendants maintain the k(ii) Confinement Policy;
- b. Whether the k(ii) Confinement Policy violates CL § 137(6)(k); and
- c. Whether the k(ii) Confinement Policy is affected by an error of law, is arbitrary and capricious, or otherwise irrational.

78. Plaintiffs-Petitioners’ claims are typical of those of the proposed class. Plaintiffs-Petitioners challenge the same DOCCS policy on grounds that apply to all members of the proposed class.

79. Plaintiffs-Petitioners will fairly and adequately protect the interests of the proposed class. Their interests in opposing the k(ii) Confinement Policy align closely with those

of other members of the proposed class; and their counsel have extensive experience litigating similar matters on a class-wide basis.

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

CAUSES OF ACTION

First Cause of Action: Article 78 Review, CPLR § 7801 *et seq.*

81. Defendant-Respondent’s promulgation of and adherence to the k(ii) Confinement Policy reflects a “fail[ure] to perform a duty enjoined upon [him] by law.” CPLR § 7803[1].

82. Defendant-Respondent’s promulgation of and adherence to the k(ii) Confinement Policy was and is “affected by an error of law,” “arbitrary and capricious” and an “abuse of discretion.” *Id.* § 7803[3].

Second Cause of Action: Declaratory Judgment, CPLR § 3001

83. Plaintiffs-Petitioners are entitled to a declaration that the k(ii) Confinement Policy violates CL § 137(6)(k).

JURISDICTION AND VENUE

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

85. Under CPLR § 503 as to the declaratory judgment action, and CPLR §§ 506(b) and 7804(b) as to the Article 78 petition, venue is proper in Albany County, where Defendant-

Respondent's principal office is located and where the k(ii) Confinement Policy was promulgated.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs-Petitioners request that the Court:

- a. Certify this action as a class action and appoint the undersigned as class counsel;
- b. Declare that the k(ii) Confinement Policy violates CL § 137(6)(k)(ii);
- c. Compel Defendant-Respondent to comply with the requirements of CL § 137(6)(k)(ii) before placing any member of the proposed class in segregated confinement exceeding three consecutive days or six days in any 60-day period; a residential rehabilitation unit; or any other unit for which compliance with CL § 137(6)(k)(ii) is required;
- d. Vacate, annul, and enjoin the k(ii) Confinement Policy;
- e. Vacate and annul Defendant-Respondent's determinations to place 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;
- f. Award Plaintiffs-Petitioners reasonable attorney's fees and costs; and
- g. Grant any other relief the Court deems just and proper.

Dated: May 26, 2023
New York, New York

Respectfully submitted,

NEW YORK CIVIL LIBERTIES UNION FOUNDATION

/s/ Antony P.F. Gemmell

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**SUPREME COURT OF THE STATE OF NEW YORK
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VERIFICATION

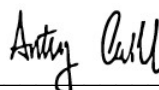
I, Antony Gemmell, an attorney duly admitted to practice before the courts of New York, hereby affirm under penalty of perjury that the following statements are true.

1. I am an attorney with the New York Civil Liberties Union Foundation (“NYCLU”) located in New York, New York.
2. The NYCLU, along with co-counsel Prisoners’ Legal Services of New York (“PLS”) serves as counsel for the Plaintiffs-Petitioners in this proceeding.
3. I have read and know the contents of the foregoing Verified Amended Class Petition and Complaint.
4. The contents of the foregoing Verified Amended Class Petition and Complaint are true to my own knowledge, except as to matters alleged on information and belief, which matters I believe to be true.
5. The grounds for my belief as to all matters not stated in the Verified Amended Class Petition and Complaint on information and belief are communications with Fuquan Fields, Luis Garcia, and Jimmy Barner; and documents prepared and/or provided by

Defendant-Respondent and the New York State Department of Corrections and
Community Supervision.

6. I make this verification in place of Messrs. Fields, Garcia, and Barner, because they are each presently incarcerated outside of the county in which the offices of the NYCLU and PLS are located.

Dated: May 26, 2023
New York, New York



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