STATE OF NEW YORK
SUPREME COURT ALBANY COUNTY

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

Petitioner,

-against-

DECISION & ORDER
Index No.: 902997-23
Motion #2, 3

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

Respondent.

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

Appearances:

Petitioners:
Antony Philip Gemmell / Molly K. Biklen / Ifeyinwa Karen Chikezie
Attorneys for Fuquan Fields and Luis Garcia
New York Civil Liberties Union
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Fuquan Fields, Inmate # 07B0859
Great Meadow Correctional Facility
Comstock, New York

Luis Garcia, Inmate # 18A4619
Five Points Correctional Facility
Romulus, New York

Jimmy Barner, Inmate # 18B2873
Gouverneur Correctional Facility
Gouverneur, New York

Respondent:
Letitia James
ATTORNEY GENERAL OF THE STATE OF NEW YORK
NYS ATTORNEY'S OFFICE
By: Michael G. McCartin
Assistant Attorney General, of Counsel
The Capitol Justice Bldg. 320
Albany, New York 12224

Bryant, K.:

On May 26, 2023, an amended Petition and Complaint having been filed by Plaintiff-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,* Defendant- Respondent 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

An Answer and Memorandum of Law in support having been filed by counsel for Respondent requesting that the relief sought in the petition be denied and that the petition be dismissed in the entirety; and

A Memorandum in support having been filed with the Court: and

A Notice of Motion to Dismiss and Memorandum being filed by Respondent seeking dismissal of the declaratory judgment action and the attendant class allegations; and

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

Further submissions having been received opposing and supporting said certification.

NOW, it is the finding of this Court that the motion to dismiss is denied and the motion for class action certification is hereby granted[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"). According to the allegations in the petition, the Hearing Officer failed to issue a written decision containing findings regarding the conduct at issue rising to the level required under the HALT act.

On or about September 20, 2022, Petitioner Garcia while being held in a Residential Mental Health Unit at Coxsackie Correctional Facility, Mr. 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 Hearing Officer's written determination did not include a specific determination that the acts that he committed constituted a heinous or destructive act as defined in CL §137(6)(k)(ii) (A-G).

Jimmy Barner was found guilty at his disciplinary hearing for assault on incarcerated individuals and unhygienic acts for spraying three incarcerated individuals with a "brown liquid

[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.

substance [that] had the odor of feces"[2]. 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 a specific determination that Mr. Barner's conduct constituted a heinous or destructive act or that his placement in general population would create a significant risk as required by the provisions of the Corrections Law. He was sentenced to two-hundred and ten days in a SHU.

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 Respondent did not conduct a case-by-case analysis to determine whether the acts the Petitioner's 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 Respondent has adopted a "policy" whereby any offense identified as a Tier IIII violation meets the criteria set forth in the HALT act, that this policy is followed in all Tier III disciplinary proceedings and that this policy is in violation of the clear provisions of the HALT Act which require an evidentiary hearing and specific written findings set forth in a decision.

Petitioners further 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 Respondent's Hearing Officers routinely fail to make individual or written determinations that the statutory requirements have been met. Petitioners argue that they

[2] Mr. Barner, while allegedly a member of the purported class of individuals, is not a party to this action.

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. Petitioners seek to represent themselves and all those similarly situated individuals "with regard to a general challenge of these practices in defiance of the Legislature's reasoned judgment".

In response, Respondent initially argues that Petitioners made procedural errors by bringing this matter as a declaratory judgment action when they are not challenging the HALT Act itself but rather challenging specific administrative determinations that were made regarding the individual Petitioners. Respondent further argues that class actions are not considered to be a preferred method for the fair and efficient adjudication of controversies against a governmental agency like DOCCS and they argue that class action certification is inappropriate. They further argue that 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 also limits the time an individual can be placed in segregated confinement. Finally, with regard to the argument that Respondent failed to issue written decisions outlining specific findings, Respondent argues that their findings were implicit and self-evident from the record and that they are legally sufficient.

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[3]. HALT limits segregated confinement to not more than fifteen consecutive days or twenty total days in any sixty-day period[4].

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.

As noted above, Petitioners allege, *inter-alia*, that Respondent has adopted a "k(ii) confinement policy that "reflects a failure to perform a duty enjoined upon him by law", that the confinement policy is arbitrary and capricious, affected by an error of law and an abuse of discretion and that it violates CL §137(6)(k). Petitioners request that this Court certify this action as a class action and appoint counsel of record for Petitioners to represent the class.

With regard to class action certification, CPLR §901[a] provides in relevant part that a party seeking class action certification must establish that

> 1. The class is so numerous that joinder of all members, whether otherwise required or permitted, is impracticable;
> 2. There are questions of law of fact common to the class which predominate over any questions affecting only individual members;
> 3. The claims or defenses of the representative parties are typical of the claims or defenses of the class;
> 4. The representative parties will fairly and adequately protect the interests of the class; and
> 5. a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

[3] Correction Law § 137 (6)(j)(ii)
[4] Correction Law § 137 (6)(i)

"[T]hese criteria must be liberally construed and any error, if there is one, should be in favor of allowing the class action" (Hurrell-Harring v. State of New York, 81 A.D.3d 69 (3rd Dept., 2011))[5]. "Courts have recognized that the criteria set forth in CPLR 901(a) should be broadly construed not only because of the general command for liberal construction of all CPLR sections, but also because it is apparent that the Legislature intended article 9 to be a liberal substitute for the narrow class action legislation that preceded it" (City of New York v. Maui, 14 N.Y.3d 499 (2010)).

"Class actions are deemed a superior method for adjudication of a controversy where, as here, the members of a proposed class are indigent individuals who seek modest benefits and for whom commencement of individual actions would be burdensome (Matter of Stewart v. Roberts, 163 A.D.3d 89 (3rd Dept., 2018)). While there are certain situations where governmental operations are involved, and where subsequent petitions will be adequately protected under the principles of s*tare decisis* . . . class action relief is not necessary" (Martin v. Lavine, 39 N.Y.2d 72 (1976)). In NYCHHC v. McBarnette, 84 N.Y.2d 194 (1994), the Court of Appeal clarified that the holding in Jones "concerns itself only with the inefficiency of using the class action form when the prospective rights of interested litigants can be safeguarded by other means". The determination of whether to grant class action status "ordinarily rests within the discretion of the trial court" (Small v. Lorilland Tobacco Co., 94 N.Y.2d 43 (1999)). See also, City of New York v. Maui, supra.,14 N.Y.3d 499.

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

Discussion

Motion to Dismiss

Respondent requests that this Court dismiss the action on the grounds that claims have been improperly brought in the form of a declaratory action. Specifically, they argue that Petitioner is "essentially challenging a government agency determination" and that "the avenue for relief lies in a CPLR article 78 proceeding". This Court has considered the arguments presented and agrees with counsel for Petitioner that insofar as Petitioners seek the review of an allegedly continuing policy, a declaratory judgment action is appropriate (see, Zuckerman v. Board of Education, 44 N.Y.2d 336 (1978); Matter of Dorst v Pataki, 167 Misc.2d 329, aff'd, 90 N.Y.2d 696 (1997)). As such, the motion to dismiss the declaratory portion of the petition is hereby denied.

Class Action Certification

This Court has considered the facts and circumstances, the applicable law and the arguments presented by counsel, and finds, based upon the specific allegations and claims raised in the pleadings, that class action certification is appropriate.

It is the finding of this Court that while the circumstances and alleged transgressions of each individual Petitioner are distinct, the fundamental issue that they all raise is the same. Essentially, they each claim that Respondent is obligated to make case-by-case determinations regarding specific misconduct and that the policy they allege is being followed is not in compliance with the terms of the HALT act. They also each allege that written findings of fact are required under the act and that Respondent has failed to provide such findings.

It is the further finding of this Court that under the circumstances, joinder of all members of the purported class is impracticable and there are questions of law and fact that are common to

the entire class which clearly predominate over the specific questions that affect only the individual members before the Court. Moreover, insofar as the petition questions an alleged policy of DOCCS regarding all disciplinary proceeding that result in a HALT-act confinement, the claims raised are typical of the claims or defenses of the class. This Court is also satisfied that the representative parties will fairly and adequately protect the interests of the class and that a class action is superior to any other available method for the fair and efficient adjudication of the issues before the Court. In making these findings, this Court also notes that the petition requests both prospective and retroactive relief, a factor that weighs in favor of granting class action status.

This Court has considered the arguments presented by Respondent in support of their motion to dismiss the petition on the merits and finds the arguments to be without merit. Notably, while Respondent cites to numerous decisions that address the deference that Courts are required to grant to an administrative agency, and also cite numerous decisions that speak to the "highly charged atmosphere" in a prison disciplinary proceeding and the "legitimate penological interests in seeing that disciplinary determinations are made quickly", they do not address the specific claim raised herein. Specifically, they do not directly address the allegations that they have adopted a policy that essentially leads to an automatic classification of all Tier III offenses as meeting the criteria for confinement under section 137 of the Corrections Law. They also do not dispute that following this policy, they do not render case-by-case determinations, nor do they make findings-of-fact that are set forth in written decisions.

This Court has considered Respondents argument that the particular acts committed by each Petitioner was, in fact, heinous or destructive and that these acts warranted the type of discipline that was administered. This Court has also considered Respondent's argument that

"the requisite findings were implicit in the hearing officer's determinations and finds that this argument is not persuasive, particularly given the thus far uncontested claim that hearing officers are currently following a "policy" adopted by DOCCS rather than making case specific determinations that particular conduct is "heinous or destructive". Under the circumstances, for the purpose of the motion to dismiss, Respondent has not established their entitlement to judgment as a matter of law

For the foregoing reasons, the motion to dismiss is denied and the motion for class-action certification is granted.

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: September 11, 2023
Kingston, New York

ENTER,

Kevin R Bryant

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