

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ONEIDA

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THE PEOPLE OF THE STATE OF NEW YORK,
ex rel. Stefen R. Short, Esq., on behalf of JOHN
FRATESCHI, DIN 11B0827; ALBERT JACKSON,
DIN 18A4662; THOMAS JACKSON, DIN 20R0016;
RICARDO LOPEZ, DIN 18R1196; and MICHAEL
YANCY, DIN 16A4993,

Petitioners,

- against -

WILLIAM FENNESSY, Superintendent, Mid-State
Correctional Facility; PATRICK REARDON,
Superintendent, Marcy Correctional Facility; and
ANTHONY J. ANNUCCI, Acting Commissioner,
New York State Department of Corrections and
Community Supervision,

Respondents.

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STATE OF NEW YORK)
COUNTY OF ALBANY) SS:

CHARLES J. QUACKENBUSH, an attorney duly admitted to practice law before all of the
Courts of the State of New York, affirms the following to be true under penalties of perjury pursuant
to CPLR 2106:

1. That I am Deputy Counsel for the New York State Department of Corrections and
Community Supervision (hereinafter referred to as "**DOCCS**"). Upon a review of available records,
I am familiar with the facts and circumstances outlined below.

2. This Affirmation is submitted in support of the instant motion for an Order denying
Petitioners' application and granting Respondents' motion dismissing the above-captioned Petition
pursuant to CPLR §§ 3211 (a)(7), on the ground that it fails to state a cause of action.

3. Historically, DOCCS has successfully managed infectious outbreaks such as
tuberculosis, AIDS, and Hepatitis C. Furthermore, DOCCS has a comprehensive Pandemic Flu

AFFIRMATION IN SUPPORT

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Hon. David A. Murad, J.S.C.

protocol that has been modified for COVID-19. Indeed, DOCCS takes the spread of any infectious disease very seriously and has protocols in place to promote the health and safety of staff, incarcerated individuals, visitors and volunteers in the event that such a spread should take place. Each facility maintains an emergency control plan that is reviewed annually and is uniquely designed to meet the facility's needs, including preparedness measures, response mechanisms and short- and long-term recovery provisions.

4. Additionally, at all times, DOCCS retains supplies, equipment and other resources that can be readily available, if needed, to those impacted in correctional facilities during the spread of an infectious disease. As with the occurrence of any widespread public health threat, DOCCS is involved in ongoing discussions and preparations - including protocol review and emergency supply inventory - to ensure that DOCCS' policies and procedures are as up to date as possible.

5. Also, DOCCS has medical staff specially trained in infection control employed in facilities across the state. DOCCS also has negative air flow isolation rooms, and Regional Medical Units.

6. DOCCS has been conducting table top exercises and has developed plans for facilities to implement, should there be significant staff absences. For security reasons, DOCCS cannot give specific details on plans and provisions.

7. Both staff and incarcerated individuals have received information on preventative measures to stay healthy, including the top recommendation by the CDC and State Department of Health - the regular use of soap and water, which is readily available throughout DOCCS correctional facilities. DOCCS has also implemented several other measures, such as, but not limited to:

- Temporarily suspending all intake of incarcerated individuals from county facilities;
- Internal transfers of incarcerated individuals has been stopped except for medical, disciplinary and other exigent circumstances to ensure the continued health and safety of DOCCS staff and incarcerated population;

- Temporarily suspending visitations;
 - Requiring non-security and many other civilian staff to remain home until directed to return;
 - Implementing a health/travel questionnaire for staff entering facilities;
 - Regularly distributing guidance from the Department of Health to all staff and the inmate population about the important steps to take to combat the virus;
 - Displaying posters with information on COVID-19 and safety tips throughout DOCCS facilities;
 - Regularly showing a video to the incarcerated population and staff at the facilities on proper handwashing entitled "Put your hands together.";
 - Issued enhanced cleaning/sanitizing measures, consistent with CDC guidelines, for office surfaces, devices and disinfecting procedures.
- <https://doccs.ny.gov/suspensions-restrictions-cancellations-response-covid-19>.

8. Upon information and belief, these measures are all in line with the Centers for Disease Control and Prevention's ("CDC") recommendations for correctional facilities in the United States. See <https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html>. ("Cases of COVID-19 have been documented in all 50 US states. Correctional and detention facilities can prevent introduction of COVID-19 from the community and reduce transmission if it is already inside by reinforcing good hygiene practices among incarcerated/detained persons, staff, and visitors (including increasing access to soap and paper towels), intensifying cleaning/disinfection practices, and implementing social distancing strategies.).

9. Based upon the foregoing we respectfully submit that Petitioners' applications should be denied and Respondents' motion to dismiss the Petition pursuant to CPLR §§ 3211 (a)(7), on the ground that it fails to state a cause of action, should be granted.

Dated: Albany, New York
May 1, 2020



Charles J. Quackenbush, Esq.
Deputy Counsel, New York State Department of
Corrections and Community Supervision