SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

RICHARD ALCANTARA, LESTER CLASSEN, JACKSON METELLUS, CESAR MOLINA, CARLOS RIVERA, AND DAVID SOTOMAYOR,

Petitioners,

v.

ANTHONY J. ANNUCCI, ACTING COMMISSIONER, NEW YORK STATE DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION.

TINA M. STANFORD, COMMISSIONER, NEW YORK STATE BOARD OF PAROLE,

and

STEVEN R. BANKS, COMMISSIONER, NEW YORK CITY DEPARTMENT OF SOCIAL SERVICES AND NEW YORK CITY HUMAN RESOURCES ADMINISTRATION,

Respondents.

VERIFIED PETITION

INDEX NO. _____

ORAL ARGUMENT REQUESTED

PRELIMINARY STATEMENT

1. Petitioners bring this class action proceeding to put an end to Respondents' unlawful practice of confining in prison individuals who have already completed their prison sentences and are legally entitled to be released to community supervision.

2. Over the past two years, hundreds of people have been held in medium security prisons beyond their lawful release dates, some for many months. As of the date of this Petition, approximately 100 such persons are being illegally detained in the Fishkill and Woodbourne Correctional Facilities and others like it, and hundreds more will be held illegally in the future in

the absence of judicial intervention. This is so even though the courts – not Respondents– have sole authority over whether to alter or extend an offender's sentence.

3. The State Respondents have sought to justify their illegal conduct by relying on the Sexual Assault Reform Act, known as the "SARA Law." SARA prohibits persons convicted of certain sex offences from "enter[ing]" within 1,000 feet of "school grounds," and thus may not live within 1,000 feet of school grounds. According to the State Respondents, unless and until a person subject to the SARA law secures SARA-compliant housing, the State Respondents have the right to continue to detain them in prison and to treat them like any other prisoner as if their lawful release date has not yet occurred.

4. But neither the SARA law nor any other provision of law gives Respondents this power. Indeed, nothing in the SARA law even speaks to the issue of continuing to confine offenders beyond their lawful release date. In addition, although the State Respondents do have authority to designate certain facilities as "residential treatment facilities" (or "RTFs") where persons on community supervision may temporarily be held, nothing in those laws gives Respondents the right to simply designate prisons as RTFs and to treat those confined thereto like prisoners, which is what Respondents have done here. To the contrary, a statutorily-compliant RTF must provide services intended to ease the prisoners' transition back to society, such as education, vocational training, and assistance in locating housing.

5. New York City officials are complicit in this illegality. The City is obligated to provide shelter to indigent persons who require shelter, as many prisoners (including Petitioners) do. Among the many shelter locations spread throughout the City, there are enough beds located far enough from schools that persons requiring such shelter beds can be accommodated.

Nevertheless, citing administrative concerns, the City refuses to make a sufficient number of such beds available as needed to individuals as they are ready to be released from prison.

6. In sum, although the law requires state officials to take a "comprehensive approach" to reducing recidivism by assisting ex-offenders in finding suitable housing and making a successful transition back to community life, Respondents have utterly failed to meet their responsibilities. Instead, they have opted to warehouse Petitioners in prisons masquerading as "treatment facilities" and to foist on them the nearly impossible burden of locating appropriate housing before they can be released. Respondents' conduct is patently unlawful and must end.

VENUE

7. Venue is proper in Albany County pursuant to C.P.L.R. §§ 506(b) and 7804(b) because it is the county in which the principal offices of Respondents Annucci and Stanford are located.

JURISDICTION

8. This Court has jurisdiction pursuant to C.P.L.R. § 7803(1) because Respondents have failed to perform duties enjoined on them by law.

9. Petitioners further seek declaratory relief pursuant to C.P.L.R. § 3001, which this Court also has jurisdiction to grant. A person seeking a declaratory judgment may proceed either in the form of an action or a special proceeding. *In re State Div. of Human Rights v. State*, 77 Misc. 2d 597, 354 N.Y.S.2d 287 (Sup. Ct. Rensselaer Cty. 1973); *Shipman v. City of N.Y. Support Collection Unit*, 183 Misc. 2d 478, 703 N.Y.S.2d 389 (Sup. Ct. Bronx Cty. 2000). It is permissible to seek both declaratory and Article 78 relief in a single proceeding. *See, e.g., In re Rent Stabilization Ass'n of N.Y.C. v. State Div. of Housing and Cmty. Renewal*, 252 A.D.2d 111, 681 N.Y.S.2d 679 (3d Dep't 1998), and *In re Dannible and McKee, LLP v. New York Dep't of Econ. Dev.*, 110 A.D.3d 1166, 975 N.Y.S.2d 178 (3d Dep't 2013).

EXHAUSTION

10. While an Article 78 proceeding may require exhaustion of administrative remedies before filing in certain cases, *see Young Men's Christian Ass'n v. Rochester Pure Waters Dist.*, 37 N.Y.2d 371, 375, 334 N.E.2d 586, 588 (1975), the exhaustion rule "is subject to important qualifications," *Watergate II Apartments v. Buffalo Sewer Auth.*, 46 N.Y.2d 52, 57, 385 N.E.2d 560, 563 (1978) (internal citations omitted). "It need not be followed, for example, when an agency's action is challenged as either unconstitutional or wholly beyond its grant of power, or when resort to an administrative remedy would be futile or when its pursuit would cause irreparable injury." *Id. See also In re Hakeem v. Wong*, 223 A.D.2d 765, 636 N.Y.S.2d 440 (3d Dep't 1996); *People ex rel. Hicks v. James*, 150 Misc. 2d 950, 571 N.Y.S.2d 367 (Sup. Ct. Erie Cty. 1991).

11. Exhaustion of administrative remedies is not required here because the conduct challenged herein is wholly beyond the grant of authority of Respondents, resort to administrative relief would be futile, and pursuit of an administrative remedy would cause irreparable harm.

12. Under New York law, an inmate wishing to file a grievance must go through the Department of Correction and Community Supervision's ("DOCCS") three-stage grievance process. *See* Correct. Law § 137; 7 N.Y.C.R.R. § 701 *et seq*.; 7 N.Y.C.R.R. § 702 *et seq*. While persons similarly situated to Petitioners have attempted to employ that grievance procedure to challenge Respondents' conduct as alleged herein, each of those grievances has been denied. Any attempt to seek relief administratively would therefore be futile. Further, given the wrongs alleged herein, the delay in pursuing an administrative remedy would cause Petitioners irreparable harm. *See People ex rel. Nikko Simmons v. Superintendent*, No. 4771-14, at *3-4 (Sup. Ct. Dutchess Cty. Nov. 18, 2014) ("it is clear from Respondents' opposition that they are resolute in their position that the Fishkill Correctional Facility RTF fully comports with Correction Law § 2(6). Under such

circumstances, the Court finds that exhaustion would be futile, and that the delay in pursuing an administrative remedy would cause petitioner irreparable injury.").

13. In any event, in prior individual Article 78 and habeas corpus proceedings brought by persons similarly situated to Petitioners, Respondents have defended their conduct on the merits and have not sought to invoke the "exhaustion" doctrine. Petitioners should not be required to exhaust administrative remedies before bringing suit when Respondents have not insisted that similarly situated persons seeking similar relief do the same.

PARTIES

A. Petitioners

14. Petitioners are residents of the State of New York who are subject to the 1,000-foot residency restrictions contained in New York's Sexual Assault Reform Act ("SARA") and who are currently in the custody of Respondent Annucci and DOCCS at the Fishkill Correctional Facility ("Fishkill") in Beacon, New York. The Petitioners also represent members of the proposed classes, described herein, who are currently in the custody of Respondent Annucci and DOCCS at the Woodbourne Correctional Facility ("Woodbourne") in Woodbourne, New York.

15. Petitioner Richard Alcantara is currently incarcerated at Fishkill. Petitioner Richard Alcantara was sentenced to a period of six years of imprisonment, which expired on November 22, 2015, followed by seven years of post-release supervision. As of the date of this Petition, Petitioner Richard Alcantara has been incarcerated unlawfully for more than five months.

16. Petitioner Lester Classen is currently incarcerated at Fishkill. Petitioner Lester Classen was given a time assessment of fifteen months for a parole violation, which expired on January 31, 2016. As of the date of this Petition, Petitioner Lester Classen has been incarcerated unlawfully for a period of approximately three months.

17. Petitioner Jackson Metellus is currently incarcerated at Fishkill. Petitioner Jackson Metellus was sentenced to an aggregate maximum of twelve years imprisonment, which expired on November 25, 2015. Petitioner Jackson Metellus is currently facing parole violation proceedings arising out of an alleged incident that occurred in December 2015. At the time of this alleged incident, however, Petitioner Jackson Metellus was already being detained unlawfully beyond the maximum expiration date of his sentence. As of the date of this Petition, Petitioner Jackson Metellus has been incarcerated unlawfully for a period of more than five months.

18. Petitioner Cesar Molina is currently incarcerated at Fishkill. Petitioner Cesar Molina was initially sentenced to three years of imprisonment followed by ten years of post-release supervision. He was later given a parole time assessment of 12 months, which expired on May 12, 2015. Petitioner Cesar Molina is currently facing parole violation proceedings arising out of alleged incidents that occurred in or about August 2015. At the time of these alleged incidents, however, Petitioner Cesar Molina was already being detained unlawfully beyond the maximum expiration date of his time assessment. As of the date of this Petition, Petitioner Cesar Molina has been incarcerated unlawfully for a period of more than one year.

19. Petitioner Carlos Rivera is currently incarcerated at Fishkill. Petitioner Carlos Rivera was sentenced to a period of two years of imprisonment, which expired on March 16, 2014, followed by five years of post-release supervision. Petitioner Carlos Rivera is currently facing parole violation proceedings arising out of an alleged incident that occurred in October 2015. At the time of this alleged incident, however, Petitioner Carlos Rivera was already being unlawfully detained beyond the maximum expiration date of his sentence. As of the date of this Petition, Petitioner Carlos Rivera has been incarcerated unlawfully for a period of more than two years.

20. Petitioner David Sotomayor is currently incarcerated at Fishkill. Petitioner David Sotomayor was given a parole time assessment of one year, which expired on October 22, 2015. As of the date of this Petition, Petitioner David Sotomayor has been incarcerated unlawfully for a period of more than six months.

B. Respondents

21. Respondent Anthony J. Annucci is the Acting Commissioner of DOCCS. As such, Respondent Annucci is responsible for both the actions of DOCCS and his subordinates in this matter. DOCCS is an agency of the State of New York with such powers and duties as are set forth by law.

22. Respondent Tina M. Stanford is the Chairperson of the Board of Parole. As such, Respondent Stanford is responsible for both the actions of the Board of Parole and her subordinates in this matter. The Board of Parole is an executive agency with such powers and duties as are set forth by law. The Board of Parole acted in conjunction with DOCCS in taking the actions alleged to be unlawful in this proceeding.

23. Respondent Steven R. Banks is the Commissioner of the New York City Department of Social Services and the New York City Human Resources Administration ("HRA"). The New York City Department of Homeless Services ("DHS") is an agency of the City of New York with such powers and duties as are set forth by law. Mayor de Blasio announced on April 11, 2016, that he will restructure the agencies so that both DHS and HRA will report to the Commissioner of Social Services. DHS is presently being administered by Respondent Banks.

THE STATUTORY AND REGULATORY REGIME

A. Applicable Sentencing Laws

24. Most felony sex offenders in New York receive "determinate" sentences. The salient feature of a determinate sentence is that it has a defined length, and therefore a defined end

point at the time the sentence is issued by the Judge. That date is the "Maximum Expiration Date" or "ME Date." Once an incarcerated person reaches his or her ME Date, the State has no authority to hold the person in prison.

25. Under the New York Penal Law, all persons convicted of a felony sex offense must be sentenced by the Judge to a term of post-release supervision ("PRS", which is also known as "community supervision") between three and twenty-five years, depending on the offense committed. Penal Law § 70.45(2-a). The term of PRS begins once an incarcerated person is released from a sentence of imprisonment. Penal Law § 70.45(5). While on PRS, the person must abide by conditions set by the Board of Parole, and is supervised by parole officers who are employees of DOCCS.

26. If a person is found to have violated PRS, he may be ordered by an Administrative Law Judge, pursuant to the Executive Law, to serve an additional period of imprisonment known as a "time assessment." Exec. Law § 259-i(3)(f); Penal Law § 70.45(1-a). Once the time assessment is completed, the person is entitled by law to be released to serve whatever remains of the term of PRS. Penal Law §§ 70.45(1-a), (d).

B. <u>Obligations of DOCCS and the Board of Parole to Persons on PRS</u>

27. A purpose of PRS is to foster the "reintegration" of former inmates into society "by [providing] services to the offender, such as assistance with employment or housing." Donnino, Practice Commentary, McKinney's Cons. Laws of N.Y., Penal Law § 70.45. This is in keeping with the policy of New York that "to reduce recidivism it is important that offenders be able to re-enter society and become productive and law-abiding citizens whenever possible. A stable living situation and access to employment and support services are important factors that can help offenders to successfully re-enter society." 9 N.Y.C.R.R. § 8002.7(d)(4).

28. To facilitate re-entry into society, the Board of Parole may require persons on PRS to reside in a Residential Treatment Facility ("RTF") for a period of up to six months following their release from imprisonment. Penal Law § 70.45(3). An RTF is defined as a "correctional facility *consisting of* a community based residence in or near a community where employment, educational and training opportunities are readily available for persons who are on parole or conditional release and for persons who are or who will soon be eligible for release on parole who intend to reside in or near that community when released." Correct. Law § 2(6) (emphasis added). While residing in the RTF, such persons are "subject to conditions of parole or release imposed by the [Board of Parole]." *Id.*

29. RTFs were intended by the legislature to serve as transitional facilities whose residents are already to some extent "integrated" into the community. RTF residents are "allowed to go outside the facility during reasonable and necessary hours." *Id.* at § 73(1). RTF residents are also entitled to "appropriate education, on-the-job-training and employment," which DOCCS is responsible for securing. *Id.* at §§ 73(2), (3). While DOCCS is permitted to use RTFs as residences for those under parole supervision, DOCCS must establish for such persons programs directed toward "the rehabilitation and total reintegration into the community." Correct. Law §§ 73(3), 73(10).

C. Obligations of DOCCS and the Board of Parole to Provide Assistance in Locating Housing

30. DOCCS and the Board of Parole are also legally obligated to assist released sex offenders on PRS in locating appropriate housing. Correct. Law § 203; *see Green v. Superintendent of Sullivan Correctional Facility*, 137 A.D.3d 56, 60, 25 N.Y.S.3d 375, 378 (3d Dep't Jan. 21, 2016) ("DOCCS remains statutorily obligated to assist in the [housing] process"). DOCCS and the Board of Parole must consider several factors in determining how best to assist

sex offenders in locating suitable housing, including "accessibility to family members, friends or other supportive services, including, but not limited to, locally available sex offender treatment programs." Correct. Law § 203(1)(d). Indeed, Section 76 of the Correction Law requires that "[w]here appropriate, [DOCCS] shall provide assistance to an inmate in contacting a program or service provider prior to such inmate's release to the community." Correct. Law § 76. "Service provider" is defined in the statue to include housing providers. *Id.*

31. DOCCS must also consider the "availability of permanent, stable housing in order to reduce the likelihood that such offenders will be transient." *Id*. at § 203(1)(e). Section 201 of the Correction Law provides that DOCCS:

- "*shall* assist inmates eligible for community supervision and inmates who are on community supervision to secure employment, educational or vocational training, and housing." *Id.* at § 201(5) (emphasis added).
- "*shall* encourage apprenticeship training of such persons through the assistance and cooperation of industrial, commercial and labor organizations" *Id.* at § 201(7) (emphasis added).

32. The reason for imposing such obligations could not be more simple or clear: the provision of a stable home, with the support of family and friends, is the critical first step in preventing recidivism among sex offenders.

33. In recognition of the fact that "[a] stable living situation and access to employment and support services are important factors that can help offenders to successfully re-enter society," Respondents Annucci and Stanford are required to take a "comprehensive approach" in facilitating the re-entry of convicted sex offenders. 9 N.Y.C.R.R. § 8002.7(d), L. 2008, c. 568. As set forth in 9 N.Y.C.R.R. § 8002.7(e), DOCCS is required to "facilitate the successful re-entry of offenders into their communities and effect the successful placement of eligible offenders into residential services that can address identified needs."

34. Respondent Annucci is required to find suitable housing for persons to be released "with the objective of attaining the optimum residential placement that is available with the community proposed by the offender." 9 N.Y.C.R.R. § 8002.7(f)(1). In doing so, DOCCS must consider several non-exhaustive factors, including "the availability of permanent, stable housing in order to reduce the likelihood that such offenders will be transient." 9 N.Y.C.R.R. § 8002.7(f)(1)(vii). Courts have acknowledged that "the burden to establish a suitable residence to which [an ex-offender] may be released is not upon [the person], but rather that it is [DOCCS'] obligation, pursuant to 9 N.Y.C.R.R. § 8002 to assist him in locating such a residence." *People ex rel. Joe v. Superintendent,* No. 7985-14, at *4 (Sup. Ct. Columbia Cty. Oct. 30, 2014); *see also People v. Diack*, 24 N.Y.3d 674, 26 N.E.3d 1151 (2015) (discussing the regulatory scheme obligating DOCCS to find suitable housing for convicted sex offenders).

35. Respondent Stanford and the Board of Parole are likewise legally obligated "to assist the individual in locating [a SARA-compliant] residence." *People ex rel. Kahn v. Superintendent*, No. 7925-14, at *8 (Sup. Ct. Columbia Cty. Oct. 1, 2014) (citing 9 N.Y.C.R.R. §§ 8002 and 8002.7). These obligations, and the public policies they are meant to advance, are neither novel nor new. Before the Division of Parole was merged with DOCCS in 2011, established law acknowledged "the necessity to provide emergency shelter to individuals in need, including those who are sex offenders, and the importance of stable housing and support in allowing offenders to live in and re-enter the community and become law-abiding and productive citizens," 9 N.Y.C.R.R. § 365.3(c) ("Sex Offender Housing Procedural Guidelines"), and required the Division of Parole to find living situations for former sex offenders that promote a "stable living situation and access to employment and support services" in order to reduce recidivism, 18 N.Y.C.R.R. § 352.36(a)(4)(iv).

D. Obligations of DHS to Provide Assistance in Locating Housing

36. DHS is responsible for providing shelter for homeless New Yorkers. *In re Plaza v. New York*, 305 A.D.2d 604, 604, 759 N.Y.S.2d 748, 750 (2d Dep't 2003) ("The City of New York is mandated by law and consent decree to provide housing to the homeless which it does through its Department of Homeless Services.") (internal citations omitted); *Callahan v. Carey*, No. 42582-79 (Sup. Ct. N.Y. Cty. Oct. 18, 1979) (The consent decree in this case states that "[t]he City defendants shall provide shelter and board to each homeless man who applies for it provided that (a) the man meets the need standard to qualify for the home relief program established in New York State; or (b) the man by reason of physical, mental or social dysfunction is in need of temporary shelter."); *Eldredge v. Koch*, 98 A.D.2d 675, 676, 469 N.Y.S.2d 744, 745 (1st Dep't 1983) (single adult women also have a right to shelter); *McCain v. Koch*, 117 A.D.2d 198, 214, 502 N.Y.S.2d 720, 729-730 (1st Dep't 1986) (families with children have a right to shelter).

37. DHS is obligated to further the state's policy of locating stable housing for former sex offenders in order to reduce recidivism. 18 N.Y.C.R.R. § 352.36(a)(4)(iv).

RESPONDENTS HAVE EXCEEDED THEIR AUTHORITY AND FAILED TO PERFORM THE DUTIES IMPOSED UPON THEM BY LAW

38. SARA was enacted in 2000 by the New York Legislature and took effect on February 1, 2001. L. 2000, ch. 1. Among other changes, SARA added a new subdivision 14 to Section 259-c of the Executive Law which, as amended in 2005, imposed certain residency restrictions, as follows:

> where a person serving a sentence for an offense defined in article one hundred thirty, one hundred thirty-five or two hundred sixty-three of the penal law or section 255.25 of the penal law and the victim of such offense was under the age of eighteen at the time of such offense or such person has been designated a level three sex offender pursuant to subdivision six of section 168-1 of the correction law [the Sex Offender Registration Act, known as "SORA"], is released on parole or conditionally released . . . the board [of parole] shall require, as a mandatory condition of such release, that such sentenced offender shall refrain from knowingly

> entering into or upon any school grounds, as that term is defined in subdivision fourteen of section 220.00 of the penal law, or any other facility or institution primarily used for the care or treatment of persons under the age of eighteen while one or more of such persons under the age of eighteen are present.

Exec. Law § 259-c(14).

39. Penal Law Section 220.00(14) defines "school grounds" as:

> (a) in or on or within any building, structure, athletic playing field, playground or land contained within the real property boundary line of a public or private elementary, parochial, intermediate, junior high, vocational, or high school, or (b) any area accessible to the public located within one thousand feet of the real property boundary line comprising any such school or any parked automobile or other parked vehicle located within one thousand feet of the real property boundary line comprising any such school. For the purposes of this section an 'area accessible to the public' shall mean sidewalks, streets, parking lots, parks, playgrounds, stores and restaurants.

Penal Law § 220.00(14). Respondents measure this 1,000 foot distance "as the crow flies," even if a person would actually have to travel more than 1,000 feet to get from a residence to the school grounds.

40. For almost 10 years after the enactment of the 1,000-foot restriction of SARA, DOCCS and the Board of Parole allowed offenders who had completed their sentences and who were entitled to release, but subject to the residency restrictions of the SARA Law, to reside briefly at homeless shelters while they located SARA-compliant housing. For instance, Respondents regularly released individuals subject to SARA to the 30th Street Men's Shelter ("30th Street") in New York City, also known as "Bellevue," even though it is located within 1,000 feet of a SARA-protected school. *People ex rel. Johnson v. Superintendent*, 47 Misc. 3d 984, 987, 9 N.Y.S.3d 761, 763-764 (Sup. Ct. Dutchess Cty. 2015). Once released to 30th Street, individuals subject to SARA were later transferred, if necessary, to SARA-compliant shelters.

41. All of that changed on February 25, 2014 when, in apparent response to political pressure, Respondent Annucci caused DOCCS to issue a new policy – the "Pre-Release Screening

Policy and Procedure" – declaring that individuals subject to SARA would no longer be released to *any* shelter within 1,000 feet of school grounds, even temporarily. *See* Ex. 4. On information and belief, DOCCS also began applying the 1,000-foot residency restriction to people who are not subject to SARA at all, including offenders assigned a sex offense Level 1 and those whose victim was not a child.

42. The fallout from that policy change was swift and severe. Because the great majority of the dozens of New York City homeless shelters, like the primary intake shelter at 30th Street, are located within 1,000 feet of school grounds, the change in policy meant that none of those shelters would be available to house persons on PRS. To address the loss of NYC-shelter residences, DOCCS then designated certain prisons as "RTFs," claiming that it had the authority to house persons legally on post-release supervision in these prisons, potentially for the duration of their PRS sentence. *See* Joseph Goldstein, Housing Restrictions Keep Sex Offenders in Prison Beyond Release Dates, N.Y. TIMES, Aug. 21, 2014, at A18. As alleged herein, however, these prisons are not "residential treatment facilities" in any respect. They are prisons, and the persons housed there are treated as prisoners, contrary to established law.

A. <u>The Fishkill and Woodbourne "RTFs"</u>

43. Fishkill Correctional Facility is a medium security correctional facility located in Beacon, New York, in Dutchess County, 60 miles north of New York City. It houses approximately 1,800 male inmates. A razor wire-topped fence surrounds the facility. In addition to its general confinement facility, Fishkill has a maximum security 200-bed block of isolated confinement cells that comprises the Special Housing Unit ("SHU," also referred to as "solitary confinement"), a residential Intermediate Care Program for inmates with serious mental health needs, and a Regional Medical Unit. Petitioners are subject to the same institutional rules as other inmates and to the disciplinary infractions and penalties imposed for violating these rules.

Petitioners wear the same green uniforms as general population inmates, use the same gym as regular inmates, share the same exercise yard, eat in the same mess hall, and are subject to the same daily count as the general population inmates. Petitioners are only permitted to leave the facility under limited circumstances, such as supervised visits with their Parole Officers, for which they are shackled and transported in a correctional facility van. Persons visiting Petitioners must pass through a metal detector, locked steel doors and steel gates, and must follow all procedures applicable to visits to other prisoners. Petitioners have no opportunities to engage in any activity that remotely—let alone "reasonably"—relates to rehabilitation and reintegration into society. Petitioners have received no new programs designed to ease their transition back to their respective communities. The only program offered is identical in all material respects to the program provided for all incarcerated persons prior to their release (referred to as Transitional Phase III). In short, Petitioners are treated no differently than other inmates at Fishkill Correctional Facility.

44. Respondent Annucci has designated Fishkill to be used as an RTF (*see* 7 N.Y.C.R.R. § 100.90(c)(3)) but there is no separate building for the RTF; the only facility at Fishkill is the prison. Petitioners "released" to the Fishkill RTF remain in the same facility, subject to the exact same conditions as prisoners. Many of the RTF residents are housed in a dormitory, known widely throughout Fishkill as the "sex offender dorm," which is an open room with about 29 beds that connects by a door to a dormitory that houses inmates serving sentences of incarceration. On information and belief, there are dozens of other purported RTF "residents," however, on a waiting list for one of those 29 beds who are currently scattered throughout the facility among the general population or otherwise serving disciplinary time in isolation cells in SHU.

45. Woodbourne is a medium security correctional facility located in Woodbourne, New York, in Sullivan County, approximately 92 miles from New York City. Razor-topped wire surrounds the facility. The individuals at the Woodbourne RTF are subject to the same institutional rules as other inmates and to the disciplinary infractions and penalties imposed for violating these rules. They wear the same green uniforms as general population inmates, use the same gym as regular inmates, share the same exercise yard, eat in the same mess hall, and are subject to the same daily count as the general population inmates. Woodbourne RTF residents are only permitted to leave the facility under limited circumstances, such as supervised visits with field parole officers, for which they are shackled and transported in a correctional facility van. Persons visiting individuals at the Woodbourne RTF must pass through a metal detector, locked steel doors and steel gates, and must follow all procedures applicable to visits to other prisoners. The people at the Woodbourne RTF have no opportunities to engage in any activity that remotely—let alone "reasonably"—relates to rehabilitation and reintegration into society. They have received no new programs designed to ease their transition back to their respective communities. The only program offered is identical in all material respects to the program provided for all incarcerated persons prior to their release. In sum, the residents of the Woodbourne RTF are treated no differently than other inmates at Woodbourne.

46. Those assigned to the Fishkill and Woodbourne "RTF" are subject to the same disciplinary rules as other inmates who have not served their term of imprisonment and suffer the same penalties for violating these rules. The purported RTF residents can be placed in solitary confinement for a disciplinary infraction, just as if they had violated the rules while serving out a sentence of incarceration. Unlike the general population inmates, however, the purported RTF residents are *also* subject to the conditions of their community supervision, based on the fictitious

premise that they have been "released" to community supervision. In many cases, this means that an individual who receives a misbehavior ticket, is found guilty and receives a disciplinary sanction, *is then also* subjected to a parole/PRS violation proceeding.

47. Neither Fishkill nor Woodbourne is community-based because they are not "in or near" any of the counties that constitute New York City, where the majority of Petitioners are from and to where they intend to return. *See* Correct. Law § 2(6) (defining the legal requisites of an RTF). Fishkill is nearly 60 miles away from the northern border of Bronx County, the northernmost county of New York City. Woodbourne is approximately 92 miles from the border of Bronx County.

48. Neither Fishkill nor Woodbourne is "community-based" for another reason as well. Section 94(1) of the Correction Law allows Respondent Annucci to transfer an individual to "a county jail, workhouse or penitentiary" to participate in a residential treatment facility program, but only if the inmate "has resided or was employed or has dependents or parents who reside in the county" in which the jail or other institution is located, "or in a county that is contiguous to the county." None of the Petitioners resided or were employed in Dutchess County (where Fishkill is located) or Sullivan County (where Woodbourne is located) or in any county contiguous thereto. None of Petitioners' dependents or parents reside in Dutchess County, Sullivan County, or any county contiguous thereto either. To the contrary, Petitioners, their dependents, and parents all come from New York City. None of the named Petitioners—and none of the known individuals presently held in the alleged "RTFs"—plan to return to Dutchess or Sullivan counties.

49. Fishkill is two counties removed from even Bronx County, and Woodbourne is four removed. This distance has real effects. Not only are family members rarely able to visit because they do not live in or near Dutchess or Sullivan Counties, but any programming offered at Fishkill

and Woodbourne do not meet the statutory requirement as they are not offered "in or near" the community to which the individual will be released, as required by Correction Law § 2(6).

B. DOCCS Has Failed to Provide Meaningful Job Training or Education

50. Although the educational and job training programs are statutorily required for all RTFs, those programs are not made available at the purported Fishkill and Woodbourne RTFs. After a brief RTF "orientation," Fishkill and Woodbourne RTF inmates participate in a "28-day comprehensive program" delivered in a group setting, which consists of nine modules "dedicated to therapeutic education and community reintegration." The curriculum is identical in all material respects to that of the programming required of all inmates about to transition out of custody (referred to as Transitional Phase III), modified only to inform Petitioners of how their SORA registration requirements and related obstacles may affect them upon release.

51. Fishkill offers the following programs to the prison's general population: "academic education, vocational training, a college program, alcohol and substance treatment (ASAT), aggression treatment training (ART), a sex offender counseling treatment program (SOCTP), industrial training, counseling, volunteer services, transitional services that include the 'Thinking for a Change' program, the family reunion program, Puppies Behind Bars, and Hospice." *See* Ex. 1 (Howard Aff.) at 3. However, these programs are *not* available to Petitioners, whose requests for additional vocational and educational programming are routinely denied *solely* because of their "RTF status." ORCs have sought to justify such denials on the basis that purported RTF residents would not have enough time to complete such programs, given their contemplated length of stay and because, allegedly, there are other inmates who need such programming more.

52. The only employment generally available to purported RTF residents is the "porter pool," wherein the participants perform a variety of menial janitorial jobs, including sweeping, mopping and cleaning the hallways and staircases of the correctional facility. The porter pool is

scheduled daily from approximately 12:45 PM to 4:00 PM, but the tasks can ordinarily be completed in less than an hour. This work has historically been performed by inmates serving their judicially-imposed sentence of incarceration. In previous litigation, DOCCS officials have claimed that RTF residents can participate in a paid RTF work program wherein they can work outside the walls of the correctional facility. *See* Ex. 1 (Howard Affidavit) at 5-6. However, when Petitioners requested work outside of the facility, they were told that they could not do so until approval was received "from Albany." Petitioners never received a response "from Albany" or from anywhere else. Petitioners have also been told that their requests for community-based employment are denied because they are "still inmates." All Petitioners who have requested furlough days to seek work or employment have also been denied.

53. Respondent Annucci and DOCCS do not "assist inmates eligible for community supervision and inmates who are on community supervision to secure employment, educational or vocational training, and housing." Correct. Law § 201(5). Respondent Annucci and DOCCS do not "encourage apprenticeship training of such persons through the assistance and cooperation of industrial, commercial and labor organizations" *Id.* at § 201(7).

C. <u>DOCCS Has Failed to Provide Assistance in Locating Housing</u>

54. Despite the clear obligations imposed upon Respondents, each has failed to meet its obligation to facilitate the successful re-entry of Petitioners into their communities.

55. Respondents Annucci and Stanford do nothing at all to help Petitioners locate housing until Petitioners are "released" from incarceration to the purported RTFs, even though Respondents are well aware, far in advance of each Petitioner's ultimate release date that the Petitioner will be required to seek SARA-compliant housing, which can be difficult to locate.

56. Upon arrival at the purported RTF, Petitioners were not provided with any orientation materials except for a one-page handout outlining the limited assistance Petitioners can

expect in finding housing. *See* Ex. 2. Petitioners were informed that they would meet with their Offender Rehabilitation Coordinator ("ORC" or "counselor") twice per month to discuss potential residences. *Id.* In practice, those meetings last minutes. During the meetings, the ORCs ask if the person has located a new address to propose. If he has, the ORC submits the address to the DOCCS staff in Albany, who use a computer algorithm called "Critical Infrastructure Response Information System" to determine whether the address is SARA-compliant. Respondents Annucci and Stanford have refused to disclose the algorithm or the maps that it generates. This makes it all but impossible for Petitioners to identify SARA-compliant housing because (i) inmates have no access to computers—tools utilized today by nearly every non-prisoner searching for housing—and (ii) even where Petitioners or their representatives have access to computers, publicly available programs like "Google Maps" do not reliably indicate SARA compliance due to differences in the way that Google and DOCCS measure the distance between two locations.

57. If a proposed address is not compliant, or the person has not found an address, the person is told to locate another address to propose at the subsequent bi-monthly meeting. The ORCs do not provide any guidance on locating SARA-compliant areas, what resources are available to seek housing, or what sort of shelter or halfway house options are available. In its employees' affidavits in other cases, such as *Johnson v. Superintendent,* DOCCS officials have taken the position that the burden to locate housing rests upon the incarcerated person, which is not the law. *See* Ex. 3 (affidavit of Assistant Commissioner McGrath, stating that the petitioner would be "placed in a Residential Treatment Facility until such time *as [the petitioner] proposed and DOCCS has approved* a residence that is verified to be located outside of the Penal Law definition of school grounds"); Ex. 1 (affidavit of David Howard, a Senior Offender Rehabilitation Coordinator ("SORC") for DOCCS, stating that the petitioner had been transferred to the purported

Fishkill RTF because the "*petitioner had not identified* an address compliant with [SARA]. . . . As such, petitioner was placed in Fishkill C.F., a residential treatment facility (RTF).").

58. DOCCS' Pre-Release Screening Policy and Procedure states that for a person who has been required to reside at an RTF for up to five months while nominally on PRS, but who has been unable to locate SARA-compliant housing, the SORC must inform Respondent Annucci, who may decide to extend the required stay in the RTF "until such time· as an approved residence has been identified." *See* Ex. 4.

59. Although the field Parole staff, and not the correctional facility-based ORC, is responsible for investigating proposed residences once they have been determined to be SARA-compliant, the Petitioners who intend to reside in New York City are not allowed to visit or otherwise communicate with the Parole Officer who conducts the investigation and who supervise the individual once he is released. All the person can do is wait to be advised of the outcome of the field parole investigation though, in many cases, they are not even advised of the reason that their proposed residences are rejected.

60. Even for the minority of incarcerated persons who have financial means to obtain their own housing, or who have friends or loved ones willing to house them, the approval process is cumbersome, time consuming, and often unavailing. In several cases, for example, persons housed in the purported RTFs proposed addresses in counties where they had family who would provide support, or that were the individuals' original home county. But the field parole officer denied the proposed addresses anyway because it was not in the county in which the person's instant offense occurred even though there is no statute or regulation that bars one's release to a county other than the county of his or her original offense (referred to as a "county of commitment").

61. Throughout a period of more than 18 months, the number of persons in DOCCS-designated RTFs has hovered around 80. At the end of July 2015, it increased to 95. The median length of stay in the RTF prior to release was 61 days, but nine inmates had been in the RTFs for more than six months. As of January 26, 2016, Respondent reported that 92 persons were in the purported RTFs, awaiting placement in New York City.

D. DHS Has Failed to Provide Assistance in Locating Housing

62. DHS maintains approximately 200 shelters in New York City. In the normal course, a homeless single adult who seeks shelter from DHS goes to an intake office, of which there are currently three: two for women and one for men. At intake, the individual is assigned to an "assessment shelter" for a period of approximately three weeks. The assignment is based on current shelter availability. After the assessment is complete, the person is transferred to a "program shelter" that meets their needs, where they may remain until they are able to return to the community.

63. As noted above, in 2014, DOCCS changed its policy and stopped releasing persons subject to SARA to the *only* DHS intake shelter for men in New York City, 30th Street.

64. Another result of the 2014 DOCCS policy change was that large numbers of offenders already under community supervision in DHS shelter were forced to move into one of the small number of homeless shelters that are SARA-compliant and in which DOCCS and DHS agreed the offenders could live. DHS limited the number of offenders who would be referred to any one shelter. As a result, the designated beds set aside for offenders at these shelters were soon filled to capacity and DHS refused to accept additional inmates at these shelters. This caused a backlog in DOCCS facilities, because DOCCS refused to release inmates who were unable to confirm, in advance of their release, that DHS will place them in a SARA-compliant shelter that has been approved by Parole field staff.

65. On information and belief, in or about 2014, DOCCS and DHS developed a process whereby around the first of each month, DHS would accept a limited number of individuals subject to SARA. DOCCS placed a full-time parole officer at four SARA-compliant shelters, and each month, up to ten released individuals were placed at one of these shelters. However, these measures failed to alleviate the backlog of prisoners because the demand for spaces in SARA-compliant DHS facilities was greater than ten beds per month.

66. From July through December 2015, approximately 75 persons were added to the population of "RTF" residents awaiting placement in New York City. During that period, only 15 of those persons were released to New York City shelters, and 10 of those were in July. From August 2015 through February 2016, only five "RTF" residents were released to DHS shelters. Thus, in recent months, DHS did not even accept the number of offenders it had previously committed to accept. Although DHS stated that in March 2016 it would resume accepting ten prisoners per month who are subject to SARA conditions, this commitment will not clear the backlog or meet the ongoing need.

67. DHS currently reports that there are nine SARA-compliant shelters in its system, not just the four at which DOCCS has placed parole officers. These shelters have a combined capacity of 1,651 beds. As of July 2015, only 275 of these beds were occupied by sex offenders. DHS therefore has enough capacity in the SARA-compliant shelters to accommodate all members of the plaintiff class who are reliant on the shelter system as their only means of obtaining SARA-compliant housing.

68. DHS is failing to perform the duties enjoined upon it by law because it has arbitrarily and artificially limited the number of individuals subject to SARA that it will accept to ten per month, despite the fact that it knows the demand is much greater, and that it could make

room in those shelters that are SARA-complaint. There is no basis in law for DHS to limit the number of individuals subject to SARA that it will accept. All are in need of and entitled to shelter.

THE PETITIONERS

69. Petitioner Richard Alcantara has proposed numerous residences to his ORC, but all have been rejected. For example, Petitioner Richard Alcantara proposed the Ward's Island shelters operated by DHS as a suitable residence, but that proposal was rejected even though they are SARA-compliant. He also proposed apartments in upper Manhattan (his home county is New York County) and in the Bronx occupied by various relatives, including his uncle, cousins, and a sister-in-law, but those were rejected too, for inconsistent reasons. With respect to the Manhattan apartment, Richard Alcantara was first told that the apartment was rejected because an underage relative living in Albany *might* visit him there. When he later found a different apartment at the same address, he was told that it was not SARA-compliant. Another apartment was tentatively approved and then rejected because a person living there receives a public rent subsidy and sex offenders may not live in subsidized housing. His ORC forwarded proposed residences for investigation by Parole Officers, but has done nothing to actually help him locate a residence. The ORCs merely told him that he was on a waiting list for a shelter bed.

70. Petitioner Lester Classen has a substance abuse problem. Several months prior to the expiration of his time assessment, he requested DOCCS' assistance in locating a drug rehabilitation program to which he could be released upon the expiration of his time assessment, but his counselor told him they could do nothing to find him a residence except put him on a waiting list for shelter. Thereafter, Lester Classen reached out to social workers from both The Legal Aid Society and the Office of the Appellate Defender seeking to arrange placement in a therapeutic residential treatment program upon his release. To date, he has not been able to gain placement in a treatment program or any other residence.

71. Before his alleged parole violation, Petitioner Cesar Molina proposed at least three addresses, including a homeless shelter run by an organization called Project Renewal, and two private residences of family members. They were all denied for a variety of reasons, including a policy against sex offenders and the SARA law. His aunt's residence in the Bronx was rejected because there were three schools nearby. Neither Cesar Molina's counselors nor his parole officers have given him any assistance in locating suitable housing.

72. Petitioner Jackson Metellus proposed three potential Queens County addresses—the homes of aunts and uncles—while he was eligible for release subject to gaining approval of proposed SARA-compliant housing, but all were rejected because of the SARA law. Jackson Metellus has not received any housing-related assistance from either his Offender Rehabilitation Coordinator or his field parole officer.

73. Petitioner Carlos Rivera faces incredible difficulty finding housing because he is unable to read or write in English and lacks resources. He was confined in the Fishkill RTF for more than six months, during which time he received no help from Fishkill officials in securing housing. For instance, after submitting a proposed address, Carlos Rivera's ORC told him that his proposal had been sent to the parole board, but his parole officer told him that no housing proposal had been received. Similarly, although Carlos Rivera had asked for assistance in locating suitable housing, his ORC and his parole officer brushed him off, saying they would get back to Carlos Rivera but never followed through. Carlos Rivera proposed as many as fifteen addresses to the Parole Board, including addresses that Carlos Rivera believes are SARA-compliant, but all of them were rejected.

74. Petitioner David Sotomayor is a first-time offender who was sentenced to two and one-half years in prison followed by eight years of PRS. Once eligible for release, he proposed

living with a cousin at a SARA-complaint address, but his Parole Officer persuaded the cousin not to accept him. Thereafter, David Sotomayor proposed addresses at DHS facilities but remains in Fishkill and has been there for more than six months since the expiration of the time assessment with no indication when release will come.

CLASS ACTION ALLEGATIONS

75. Petitioners bring this action pursuant to C.P.L.R. § 901(a) on behalf of themselves and two classes of all others similarly situated (including one sub-class), defined as follows:

(a) Class 1 comprises persons who have completed their sentence of incarceration, are now serving their post release supervision sentences, are subject to the SARA residency restriction, and who are currently required to reside at one of the purported RTFs.

(b) Class 1a comprises members of Class 1 who have been required to reside at one of the purported RTFs for more than six months beyond the end of their term of imprisonment.

(c) Class 2 comprises persons who are currently required to reside at one of the purported RTFs after completing a parole/PRS violation time assessment imposed by an Administrative Law Judge.

76. The classes are so numerous that joinder of all members would be impracticable. C.P.L.R. § 901(a)(1). At any given time over the past year, the proposed classes have consisted of 75 or more members. Only defendant DOCCS is capable of identifying those prisoners who are part of the classes at any given time, as some individuals who are class members are released from imprisonment (ending their class membership), while other prisoners reach the ME Date of their sentences and are transferred to the Fishkill RTF or the Woodbourne RTF (causing them to become class members). The individual identities of persons who are class members at the filing

date will be different than the individual identities of persons who are class members when the case is ultimately resolved. Thus, it is impracticable to join all class members as plaintiffs.

77. There are questions of law and fact common to the classes which predominate over questions affecting only individual members, including: whether Respondents are meeting their statutory obligations to Petitioners and whether DOCCS is legally entitled to hold Petitioners in prison beyond the expiration dates of their determinate sentences or time assessments.

78. The claims of Petitioners are typical of the claims of the classes. C.P.L.R. § 901(a)(3). All class members, including Petitioners, are subject to the same SARA residency condition imposed by DOCCS and the Board of Parole, and DOCCS and the Board of Parole have taken the position that all class members' continued detention is lawful without regard to the individual circumstances of particular prisoners. Declaratory and injunctive relief is appropriate with respect to the classes as a whole because Respondents have acted on grounds applicable to the classes.

79. Petitioners will fairly and adequately protect the interests of the classes. C.P.L.R. § 901(a)(4). In supporting their own claims, Petitioners will simultaneously advance the claims of the other class members; each claim asserted in the Petition is asserted by one or more of the Petitioners, and relief granted to the Petitioners would benefit all members of the proposed classes represented by each of the Petitioners.

80. The Petitioners and the proposed class members are represented by Willkie Farr & Gallagher LLP, The Legal Aid Society, and Prisoners' Legal Services of New York, whose attorneys are experienced in representing incarcerated individuals and individuals subject to the SARA law restrictions relevant to this dispute, as well as in class action litigation generally, and will fairly and adequately represent the classes.

81. A class action is superior to other available methods for the fair and efficient adjudication of the controversy. C.P.L.R. § 901(a)(5). The members of the proposed classes—incarcerated individuals with little or no income or other economics means—are entirely without the resources that would be necessary to prosecute their claims in individual actions. Furthermore, members of the class are likely ignorant of the fact that Defendants' interlocking policies and practices are illegal, removing any incentive to seek legal redress. Under these circumstances, it would be "oppressively burdensome" to require members of the proposed class to seek relief individually. *Tindell v. Koch*, 164 A.D.2d 689, 695, 565 N.Y.S.2d 789, 792 (1st Dep't 1991) (holding that it would be "oppressively burdensome" for members of proposed class—indigent elderly individuals—to "commence[] individual actions").

FIRST CAUSE OF ACTION

(Respondents Annucci and Stanford have Failed to Perform Duties Enjoined Upon them by Law)

82. Petitioners repeat and re-allege each and every allegation contained in paragraphs 1 to 81 above, and incorporate each such allegation by reference as if fully set forth herein.

83. Under § 70.45(3) of the Penal Law, an offender may be placed in an RTF for the first six months of his period of PRS. To qualify as an RTF, a facility must be community based. Correct. Law § 2(6). Further, persons on PRS, including those housed within RTFs, must be provided with opportunities for education and vocational training, as well as assistance in locating stable housing. *See* Correct. Law §§ 73(2), 73(3), 201(5), 201(7). Respondents Annucci and Stanford have failed to meet these obligations.

84. Neither Fishkill nor Woodbourne is community based. Under Section 2(6) of the Correction Law, an RTF must be "in or near a community where employment, educational and training opportunities are readily available for persons who are on parole or conditional release

and for persons who are or who will soon be eligible for release on parole who intend to reside in or near that community when released." Correct. Law § 2(6).

85. New York courts have agreed that, to qualify as an RTF, a facility must be in close proximity to the community where the RTF-designated resident intends to reside after leaving the RTF. *See People ex rel. Joe v. Superintendent*, No. 7985-14, at *3 n.2 (Sup. Ct. Columbia Cty. Oct. 30, 2014) (holding that Hudson Correctional Facility, which is approximately 120 miles away from Petitioner's residence in New York City, was not "in or near the community in which [the Petitioner] intends to reside."); *In re Muniz v. Uhler*, No. 2014-531, 2014 WL 6991640, at *6 (Sup. Ct. Franklin Cty. Feb. 2, 2014) (holding that Woodbourne did not qualify as an RTF because it was not "in or near" Bronx County, the petitioner's intended residence upon his release).

86. Neither Fishkill nor Woodbourne is "in or near" any of the counties that constitute New York City, where Petitioners intend to reside upon their release. Fishkill is located nearly 60 miles away from the northern border of Bronx County, and Woodbourne is approximately 92 miles from the border of Bronx County. Petitioners have therefore been unlawfully incarcerated at Fishkill and Woodbourne, which are in fact prisons and not treatment facilities of any sort.

87. DOCCS has failed to provide job training at the purported RTFs as required. The Correction Law Sections require DOCCS to provide education, on-the-job-training and employment opportunities for RTF residents and all persons on PRS. *See* Correct. Law §§ 73(2), 73(3), 201(5), 201(7).

88. RTF residents are provided a "28-day comprehensive program" which is not materially different from the programming required of all inmates about to transition out of custody. The only employment generally available to RTF residents is the porter pool, which consists of *de minimis* ministerial janitorial work. RTF residents are not permitted to work outside

of the facilities. While DOCCS maintains a program of so-called "outside clearance" assignments in which some purported RTF residents are allowed to earn $10 rather than $5 a day, such work is entirely inside the prison perimeter and is not materially different from other prison-based jobs.

89. DOCCS has failed to assist Petitioners in locating SARA-compliant housing and otherwise has failed to facilitate Petitioners' reintegration into society as required. Under Corrections Law §§ 73(3) and 73(10), DOCCS is required to facilitate "the rehabilitation and total reintegration into the community" of released offenders, and to "effect successful placement of eligible offenders into residential services that can address identified needs." 9 N.Y.C.R.R. § 8002.7(e). At the least, DOCCS is required under Correction Law § 76 to "provide [offenders] with information on transitional services . . . which shall include programs," defined by the statute to include housing providers, "designed to promote the successful and productive reentry and reintegration . . . into society." Correct. Law § 76. DOCCS has failed to perform those obligations. DOCCS places the burden upon Petitioners to locate SARA-compliant housing, and often unreasonably or arbitrarily denies proposed residences, at times giving conflicting reasons as to why the locations were denied. DOCCS does not provide Petitioners with the resources needed to locate suitable housing, and takes no affirmative action to assist Petitioners in their housing search. DOCCS fails to meet its obligations even though it has acknowledged in its own Directive #9222 that it has the authority to provide temporary emergency rental assistance out of its own resources until other forms of public assistance become available.

90. DOCCS has purported to justify its failure to meet its legal obligations based on the SARA law, which imposes a mandatory condition of PRS that certain sex offenders "shall refrain from knowingly entering into or upon any school grounds." Penal Law § 220.00(14)(a). However,

nothing in SARA gives DOCCS or the Board of Parole the authority to evade their legal duties to Petitioners or to unlawfully detain them in a prison masquerading as an RTF.

91. For the foregoing reasons, the members of Class 1 and Class 2 are entitled to a judgment declaring that Fishkill and Woodbourne are not statutorily compliant RTFs, and an injunction directing Respondent DOCCS to meet its statutory duties to provide educational, employment, and housing assistance to all current and future members of Class 1 and Class 2.

SECOND CAUSE OF ACTION

(Respondent Banks has Failed to Perform Duties Enjoined Upon Him by Law)

92. Petitioners repeat and re-allege each and every allegation contained in paragraphs 1 to 91 above, and incorporate each such allegation by reference as if fully set forth herein.

93. The City Respondent, operating through DHS, has failed to meet its constitutional obligations to provide relocation assistance to Petitioners, in violation of 18 N.Y.C.R.R. § 352.36(a)(4)(iii). DHS, in conjunction with Respondent DOCCS, has instituted a policy of accepting only ten new individuals subject to SARA per month (the "DHS Policy"), despite the facts that (i) the need amongst the prisoners is far greater and (ii) DHS has sufficient capacity across all of its SARA-compliant shelters to house a total of 1,651 individuals.

94. For the foregoing reasons, the members of Class 1 are entitled to a judgment declaring that the DHS Policy violates 18 N.Y.C.R.R. § 352.36(a)(4)(iii) and is of no force or effect and an injunction directing Respondent DHS to meet its statutory duties to the members of Class 1 to house those incapable of locating SARA-compliant housing.

THIRD CAUSE OF ACTION

(Members of Class 1 are Being Incarcerated Unlawfully)

95. Petitioners repeat and re-allege the allegations contained in paragraphs 1 to 94 above, and incorporate such allegations by reference as if set forth herein.

96. Fishkill and Woodbourne are not RTFs. They are prisons, in every sense of the word. Petitioners are not assisted in transitioning to society, they are not allowed to leave the facilities, and they are not afforded any additional privileges or freedoms beyond what is available to general population inmates, despite the fact that the purported RTF residents have nominally been "released" to community supervision.

97. As multiple New York courts have found, Fishkill and other correctional facilities designated as RTFs by DOCCS are prisons, not treatment facilities. *See People ex rel. Scarberry v. Connolly*, No. 3963-14 (Sup. Ct. Dutchess Cty. Nov. 21, 2014) (holding that "[w]hile there are distinctions in the daily schedule and treatment of RTF [Fishkill] residents and the general population of inmates at the FCF, these are *de minimis* and insufficient to satisfy the requirements of CL §2(6) and §73" and that the petitioner, while nominally housed at the Fishkill RTF, was "still a prisoner."); *People ex rel. Joe v. Superintendent*, No. 7985-14 (Sup. Ct. Columbia Cty. Oct. 17, 2014) (holding that Hudson Correctional Facility was not an RTF, because, *inter alia*, the petitioner "has never been allowed to leave its grounds, is housed in a unit with inmates who are serving their sentences, and is subject to the same rules and punishments as other inmates who are serving sentences of imprisonment.").

98. Each of the Petitioners and the members of Class 1 are beyond their maximum expiration dates. Accordingly, DOCCS has no legal authority to hold them in prison. *Hill v. United States ex rel. Wampler*, 298 U.S. 460, 464 (1936) ("The only sentence known to the law is the sentence or judgment entered upon the records of the court.") (internal citation omitted); *see also People v. Sparber*, 10 N.Y.3d 457, 470, 889 N.E.2d 459, 464, 895 N.Y.S.2d 582, 587 (2008) (holding that sentencing is a "uniquely judicial responsibility").

99. As such, "DOCCS does not have the authority to retain an inmate beyond the inmate's maximum expiration date in order to finalize the terms of PRS" because it is bound by the inmate's judicially imposed sentence. *People ex rel. Green v. Superintendent of Sullivan Correctional Facility*, 137 A.D.3d 56, 58-60, 25 N.Y.S.3d 375, 377-378 (3d Dep't 2016) (ordering DOCCS to release Level 3 sex offenders to an approved residence or an RTF upon reaching their maximum expiration dates).

100. DOCCS has previously been admonished for usurping this judicial function. In *Earley v. Murray*, 451 F.3d 71 (2d Cir. 2006), the Second Circuit held that the Department of Correctional Services (DOCCS' predecessor) violated the due process right recognized in *Wampler* by administratively imposing post-release supervision terms on people who should, but did not, have PRS included as part of their sentence. "The only cognizable sentence is the one imposed by the judge," the Court of Appeals observed, and "[a]ny alteration to that sentence, unless made by a judge in a subsequent proceeding, is of no effect." *Id.* at 75; *see also, e.g.*, *People ex rel. Gerard v. Kralik*, 44 A.D.3d 804, 843 N.Y.S.2d 398 (2d Dep't 2007); *In re Dreher v. Goord*, 46 A.D.3d 1261, 848 N.Y.S.2d 758 (3d Dep't 2007). The Circuit later held that *Earley* "clearly established" the right to be sentenced by a judge as a matter of federal constitutional law. *Vincent v. Yelich,* 718 F.3d 157 (2d Cir. 2013).

101. In warehousing Petitioners at a state correctional facility, potentially for the duration of their terms of PRS, Respondents Annucci and Stanford have thus illegally converted Petitioners' terms of community supervision into sentences of imprisonment. All members of Class 1 are therefore entitled to an injunction ordering Respondents Annucci and Stanford to immediately release them from the purported RTFs at Fishkill and Woodbourne.

FOURTH CAUSE OF ACTION

(Members of Class 1(a) are Being Incarcerated Unlawfully)

102. Petitioners repeat and re-allege the allegations contained in paragraphs 1 to 101 above, and incorporate such allegations by reference as if set forth herein.

103. The Penal Law establishes that the Board of Parole may require a convicted sex offender to reside in an RTF for no more than six months past his release from imprisonment: "the board of parole may impose as a condition of post-release supervision that for a period not exceeding six months immediately following release from the underlying term of imprisonment the person be transferred to and participate in the programs of a residential treatment facility." Penal Law § 70.45(3).

104. Despite this clear limitation, many of the Petitioners, including the members of Class 1(a), have been imprisoned in a purported RTF for more than six months past their ME Date. DOCCS and the Board of Parole have informed them that they have the right to require them to reside in an RTF for the entirety of their term of PRS, which can run up to 25 years. Petitioners Richard Alcantara and Cesar Molina, for example, have PRS terms that last until the years 2022 and 2023 respectively. Several class members have already been "redesignated" for a subsequent six-month period of "residence" in the RTF without their consent.

105. DOCCS and the Board of Parole have sought to justify their unlawful exercise of authority on the basis of Correction Law Section 73(10), which authorizes the Commissioner to "use any residential treatment facility as a residence for persons who are on community supervision."

106. Section 73(10) does not give DOCCS or the Board of Parole any such authority, however, as numerous courts have recognized. *See People ex rel. O'Connor v. Berbary*, 195 Misc.2d 36, 756 N.Y.S.2d 714 (Sup. Ct. Erie Cty. 2002) (holding that Correction Law § 73(10)

does not justify the unlimited placement of persons on PRS in an RTF); *People ex rel. Scarberry v. Connolly*, No. 3963-14 (Sup. Ct. Dutchess Cty. Nov. 21, 2014) (same); *People ex rel. Joe v. Superintendent*, No. 7985-14, at *3 n.2 (Sup. Ct. Columbia Cty. Oct. 30, 2014) (same); and most recently, *People ex rel. McCurdy v. Warden,* No. 3358-15 (Sup. Ct. Westchester Cty. Jan. 11, 2016) (same).

107. The members of Class 1(a) are therefore entitled to judgment declaring that Respondents Annucci and Stanford may not require them to reside in any RTF facility, even a legally compliant one, for more than six months; an injunction ordering Respondents Annucci and Stanford to release the current members of Class 1(a) from custody immediately, and an injunction enjoining them from holding similarly situated persons in custody beyond the six-month limit specified in Penal Law § 70.45(3).

FIFTH CAUSE OF ACTION

(Members of Class 2 are Being Unlawfully Incarcerated)

108. Petitioners repeat and re-allege the allegations contained in paragraphs 1 to 107 above, and incorporate such allegations by reference as if set forth herein.

109. Persons who have been found to violate the terms of parole or post-release supervision must be released from incarceration at the end of their time assessment, and cannot be required to reside in an RTF at that time. Although New York Penal Law § 70.45(3) authorizes DOCCS to require individuals who have completed a sentence of incarceration to reside in a statutorily-compliant RTF for no longer than six months, there is no similar provision authorizing DOCCS (or any other government organization) to require individuals who have completed their time assessment to reside in an RTF for any period of time.

110. Executive Law § 259-i(3)(f)(x) states that a presiding officer at a revocation hearing who finds an alleged violator guilty may, among possible alternatives, direct that the violator be

placed "in a parole transition facility for a period not to exceed one hundred eighty days and subsequent restoration to supervision." Alternatively, the presiding officer may direct the violator's re-incarceration and fix a date for reconsideration for the violator's re-release, or if the violator is on PRS, direct his re-incarceration "up to the balance of the remaining period of [PRS]." Exec. Law § 259-i(3)(f)(x). The period of re-incarceration directed by the administrative law judge is known as a "time assessment." *Id.*

111. If the violator was serving an indeterminate sentence of imprisonment, he "***shall* be re-released on the date fixed at the revocation hearing**, if he has not been found by [DOCCS] to have committed a serious disciplinary infraction" while re-incarcerated for the parole violation. *Id*. (emphasis added).

112. Penal Law § 70.45(3) similarly addresses the re-release of persons who were given time assessments for violating the terms of PRS. The statute states that if a time assessment "of less than three years" was imposed upon a defendant on PRS, "the defendant ***shall* be released upon the expiration of such time assessment**, unless he or she is subject to further imprisonment or confinement under any other law." Penal Law § 70.45(3) (emphasis added).

113. Notwithstanding the lack of any statutory or regulatory authority from the Legislature granting the power to keep the Petitioners incarcerated beyond the judicially-imposed time assessment, Respondents have required Petitioners who have completed their time assessments to be returned to prison. That is unlawful.

114. The members of Class 2 are therefore entitled to a judgment declaring that Respondent Annucci and DOCCS may not imprison them past the expiration of their time assessment and an injunction directing Respondents Annucci and Stanford to release the members of Class 2 immediately.

PRAYER FOR RELIEF

115. **WHEREFORE**, Petitioners respectfully request that this Court:

(a) Enter a declaratory judgment declaring that:

(1) Respondents have failed to perform the duties enjoined upon them by law;

(2) Fishkill and Woodbourne are not statutorily compliant RTFs;

(3) DOCCS may not designate any facility as an RTF that does not meet the statutory requirements set forth in Correction Law § 2(6);

(4) Respondents Annucci and Stanford are illegally incarcerating the members of Class 1;

(5) Respondents Annucci and Stanford may not require the members of Class 1(a) to reside in an RTF facility for more than six months;

(6) Respondent Annucci and DOCCS may not imprison the members of Class 2 past the expiration of their time assessment;

(7) Respondent Banks and DHS are obligated to offer SARA-compliant shelter beds to all members of Class 1 and 2 who would be entitled to shelter if they appeared at DHS' intake office.

(b) Enter an injunction ordering:

(1) Respondents to meet their statutory duties to provide education, employment, and housing assistance to the members of Class 1;

(2) Respondents Annucci and Stanford to release the members of Class 1 from incarceration;

(3) Respondents Annucci and Stanford to release the members of Class 1(a) from incarceration;

(4) Respondents Annucci and Stanford to release the members of Class 2 from incarceration;

(5) Respondent Banks to provide a SARA-compliant shelter bed to any member of Class 1 or 2 who is entitled to shelter and is being held by DOCCS solely on account of his inability to obtain an approved residence.

(c) Award Petitioners such other and further relief as the Court may deem just and proper.

116. Consistent with C.P.L.R. § 3017(b), the Petitioners specify that they may be entitled to monetary damages as a result of the wrongs alleged herein. Such damages are not sought in the present action, but may be brought by one or more of the Petitioners in another action.

Dated: May 16, 2016
New York, New York

Respectfully submitted,

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Attorneys for Petitioners

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

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RICHARD ALCANTARA, LESTER CLASSEN, JACKSON METELLUS, CESAR MOLINA, CARLOS RIVERA, AND DAVID SOTOMAYOR,

Petitioners,

v.

ANTHONY J. ANNUCCI, ACTING COMMISSIONER, NEW YORK STATE DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION.

INDEX NO. _____

TINA M. STANFORD, COMMISSIONER, NEW YORK STATE BOARD OF PAROLE,

and

STEVEN R. BANKS, COMMISSIONER, NEW YORK CITY DEPARTMENT OF SOCIAL SERVICES AND NEW YORK CITY HUMAN RESOURCES ADMINISTRATION,

Respondents.

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VERIFICATION

State of New York)
) ss.
County of New York)

Robert C. Newman, being duly sworn, deposes and says:

I am an attorney with the Legal Aid Society, having offices at 199 Water Street, City of New York, County of New York. I am an attorney for the Petitioners in the above-entitled action. I have read the foregoing Petition, and can state that its factual contents are true based upon my personal knowledge and belief, except for those portions stated to be alleged on information and belief, and that as to those matters, I believe them to be true.

This verification is made by me instead of Petitioners because the Petitioners are not within the County of New York, which is the county where I have my office. I further state that the grounds for my belief as to all matters in the Petition not stated to be upon my knowledge are official records and conversations with Petitioners.

Dated: May __, 2016
New York, New York

_____
Robert C. Newman

Sworn to and subscribed before me
this __ day of May 2016

_____
Notary Public