Pro Se

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Marcy C.F. Must Comply with Constitutionally and Statutorily Required Out-of-Cell Time and Programming for RMHU Residents

In response to a putative class action complaint for injunctive and declaratory relief filed by PLS and Disability Rights New York (DRNY), Judge Mae D'Agostino, U.S. District Judge, Northern District of New York, ordered immediate changes to bring Marcy Correctional Facility's Residential Mental Health Unit (RMHU) into compliance with the United States Constitution, the Americans with Disabilities Act, and The Rehabilitation Act. *James Dunn, et al v. NYS DOCCS, et al*, 9:25-cv-01242, Docket No. 21 (NDNY Sept 15, 2025)

The *Dunn* complaint alleged that the RMHU, a unit created to offer treatment,[1] resembled solitary confinement, with residents experiencing nonstop isolation. These conditions, the Plaintiffs alleged, violated mental health care standards and their Eighth Amendment right to be free from cruel and unusual punishment.

The Judge in *Dunn* granted Plaintiffs' motion for a **preliminary** (temporary) injunction, **on consent** (both parties agreed). The order requires prison officials to provide Marcy RMHU residents at least seven hours outside of their cell each day. On weekdays, at least four of the seven required hours must consist of mental health treatment and/or therapeutic programming. The order also requires Defendants to offer Marcy RMHU residents a mental health evaluation as part of their ongoing care.

Footnote 1: The RMHU at Marcy was created as part of the SHU Exclusion law, which arose from the settlement of *DAI v. NYS Office of Mental Health,* 1:02-cv-04002, (S.D.N.Y.) a 2002 lawsuit brought by PLS, DRNY (then named Disability Advocates, Inc.), Prisoners' Rights Project and Davis Polk Wardwell.

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This project is supported by a grant administered by the New York State Division of Criminal Justice Services (DCJS). Points of view in this document are those of the author and do not necessarily represent the official position of DCJS.

IMPORTANT NEWS:
PLS Launches New Disciplinary Representation Unit for Tier III Hearings
A Message from the Executive Director, Karen L. Murtagh

Prisoners' Legal Services of New York (PLS) is pleased to announce the launch of a new **Disciplinary Representation Unit (DRU)**. Thanks to funding provided by **New York State**, PLS has established this pilot project to **provide legal representation at Tier III disciplinary hearings**, as envisioned under the **HALT Solitary Confinement Law**.

What This Means for You

Starting soon, individuals incarcerated at **Albion and Shawangunk Correctional Facilities** will be eligible to request **free telephonic or in-person legal representation** from PLS for Tier III misbehavior hearings. Our new DRU will be staffed by **attorneys and paralegals** who will assist individuals in navigating the disciplinary process, ensuring due process, and helping to protect your rights.

This initiative is a step toward improving fairness and justice within the DOCCS disciplinary system by making sure that disciplinary proceedings comply with **statutory and constitutional law**. Our goal is to improve access to **fair and meaningful representation** for people incarcerated at the selected facilities.

What You Need to Know

- **Representation is not automatic.** Due to limited resources, **PLS cannot take every case**. Each request will be reviewed individually.
- **All PLS services are free.**
- If you are incarcerated at one of the two selected facilities and receive a **Tier III misbehavior report**, DOCCS will serve you with the misbehavior report and the Tier Assistance Form, which provides you the opportunity to check yes for legal representation. You must attend the commencement of the hearing and indicate your desire for legal representation on the record.

How the Process Will Work

1. **Notice Attached to Misbehavior Report**
   When you receive a Tier III misbehavior report at the selected facilities, it will include a **Tier Assistance Form**. You must indicate on the Tier Assistance Form that you want legal representation and attend the commencement of the hearing to indicate your desire for legal representation on the record.

NOTE: A separate notice will be circulated at the pilot facilities, posted in housing units, and the general and law libraries. This notice will include PLS' DRU contact information, including a **dedicated phone number** and instructions for requesting help. You'll be asked to provide details such as:

- Date, time, and location of the incident
- The charges against you
- A brief description of the incident

2. **Opportunity to Call PLS**

   After the misbehavior report and Tier Assistance Form is served, and you attend the commencement of the hearing and declare such, **DOCCS will postpone the hearing and will provide you with access to a phone** so you can contact PLS' DRU as soon as possible and provide PLS with the above information.

3. **Case Review and Legal Call**

   If PLS agrees to represent you, PLS will contact the facility via the disciplinary office mailbox pursuant to Department Directive #4932 to request documents and schedule a confidential legal call.

4. **PLS Receives Documents & Scheduling of Legal Call**

   Upon the receipt of the PLS notice to the facility disciplinary office mailbox, **DOCCS will send the misbehavior report (MBR)** and all other relevant disciplinary documents, videos and photographs pursuant to Department Directive #4932, to a special PLS email address listed on the Notice, so we can review your case. After review of the documents PLS will work with DOCCS pilot facilities to schedule a confidential legal call with you as soon as possible.

5. **What Representation Includes**

   If PLS agrees to represent you, we will do so for the **disciplinary hearing itself**. Please note:

   - **Representation at the hearing does not guarantee representation on appeal.** A separate decision will be made about whether PLS can assist with an appeal, and you will be notified in a timely manner.

In Summary

- **Where?** Albion and Shawangunk Correctional Facilities
- **What?** Free telephonic legal representation for Tier III hearings
- **How?** Request representation using the Tier Assistance Form provided by DOCCS and subsequently attend the commencement of the hearing.
- **Who?** PLS attorneys and paralegals
- **When?** Beginning November 1, 2025

We hope this new program will help ensure **greater fairness and transparency** in the disciplinary process and offer more people access to legal support when they need it most.

If you have questions, please reference the more detailed notice that will be posted in housing units, and the general and law libraries.

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The Court's ruling will automatically expire after 90 days unless the two sides agree to extend it or submit their arguments to renew it. This complaint seeks a court order permanently restoring the minimum out-of-cell time and programming required in the RMHU. It does not seek money damages.

The SHU Exclusion Law mandated that individuals with serious mental illness be diverted from SHU into specialized units and provided with "four hours of structured out-of-cell therapeutic programming and/or mental health treatment along with three hours out-of-cell congregate programming, services, treatment, recreation, activities, and/or meals, with an additional one hour of recreation, for a total of seven hours of out-of-cell on a daily basis." 7 NYCRR 320.2.

The out-of-cell time requirements outlined in the HALT Act also apply to the RMHU. Correction Law 401(1).

For a more detailed description of HALT and the SHU Exclusion Law, see the article below "Court Confirms Limits on Segregated Confinement Sanctions on People in RMHU" under Disciplinary and Administrative Segregation.

NEWS & NOTES

Public Comment Sought for Judicial Prison Visits

The Advisory Committee on Criminal Law for the New York State Office of Court Administration has developed a proposed regulation amending 22 NYCRR Part 17 "Judicial Education and Training." The amendment requires all New York State judges with responsibility for sentencing and/or detaining defendants to make an annual, meaningful visit to a penal facility.

The Office of Court Administration released the Advisory Subcommittee's proposed regulation for public comment. The comment period ends on November 21, 2025. If adopted, this rule would **mandate** (require) hundreds of substantive visits to prisons and jails each year by New York State judges.

Prior to proposing this amendment, the Advisory Subcommittee conducted four prison visits. What Subcommittee members observed during these visits underscored the significance the incarcerated population placed on receiving visits from judges and the opportunity to engage with them.

Kings County Supreme Court Judge Dineen Riviezzo, a member of the Subcommittee that developed the proposal, wrote:

> Only by observing many kinds of facilities can a judge truly appreciate the benefits and drawbacks, strengths and weaknesses, the challenges and successes of each facility and use that knowledge when working out an appropriate outcome in any particular case. The cost to send judges to prisons and jails and any disruption to court proceedings are minor inconveniences when compared to the tremendous benefits to the integrity of our criminal justice system and the trust such visits build between our communities and the judiciary. The visit protocols our committee drafted will help to ensure that the visits are meaningful and not perfunctory.

The Notice states that the new rules would take effect on January 1, 2027, to allow time for implementation, and concludes with these remarks:

> The CPL Committee believes the benefits to the Judiciary, to incarcerated individuals, and to the entire criminal justice system of adopting these reforms far outweigh any costs. Visits to jails and prisons allow judges to gain direct insight into the experiences of incarcerated persons and those charged with securing and administering the facilities in which they are held. Moreover, annual judicial visits will strengthen the connection between the public-facing judiciary and the corrections system, helping to dismantle existing barriers and increase transparency. Finally, these visits signal to incarcerated individuals that judges are aware of and concerned about them even after sentence is imposed, which may foster rehabilitation and eventual reintegration into society.

Persons wishing to comment on the proposal should submit their comments no later than November 21, 2025 to rulecomments@nycourts.gov or David Nocenti, Esq., Counsel, Office of Court Administration, 25 Beaver Street, 10th Fl., New York, NY 10004.

Educational Release: A Second Chance in Motion

On January 27, 2025, Karreim Richardson stepped out of Queensboro Correctional Facility, boarded the #7 train, and made his way to John Jay College of Criminal Justice. Like thousands of other students returning to campus for the spring semester, he was eager to get to class. But unlike any of them, Mr. Richardson is still incarcerated—and will remain so until February 2026.

What made this seemingly ordinary commute extraordinary is that Mr. Richardson became the first incarcerated person in over 15 years—possibly since 1993—to be approved for educational release, a long-overlooked part of New York's temporary release program.

What Is Educational Release?

According to the New York State Department of Corrections and Community Supervision (DOCCS) regulations (7 NYCRR 1903.1(b)), educational release allows eligible incarcerated individuals to leave their facility for up to 14 hours a day to attend academic classes. In theory, this

policy offers a critical bridge between incarceration and reintegration, providing people with the skills, credentials, and confidence to succeed after release.

But in practice, the program has been virtually dormant. A review of DOCCS annual reports from 2010 to 2020 reveals a telling statistic: out of 82 applications for education release, not one was approved.

A Breakthrough Years in the Making

Mr. Richardson's approval wasn't a fluke—it was the result of two things: First, Mr. Richardson's tenacity, and second, four years of advocacy by the New York State Prison Crisis Response Coalition. The first challenge the Coalition faced was a lack of awareness: many incarcerated individuals had never even heard of educational release. The Coalition launched outreach campaigns, including appearances on the radio show "Beyond the Walls," to publicize the program and demystify the application process.

Incarcerated individuals also confronted misinformation. Many incarcerated individuals were discouraged from applying for educational release and were told that work release—which allows people to earn money while taking college classes part-time—was a better option. But while work release may offer short-term financial gain, educational release offers something deeper: the chance to fully immerse in education, build community connections, and accelerate academic goals.

Even after Mr. Richardson was approved, the logistical hurdles didn't stop. DOCCS initially required him to attend John Jay College while housed at Otisville Correctional Facility—located nearly 70 miles from Manhattan with no access to public transportation. It took months of persistent advocacy before DOCCS agreed to transfer him to Queensboro, a facility just a subway ride away from campus.

Why On-Campus Education Matters

Some might argue that since many New York State prisons already offer college programs, educational release isn't necessary. But this view overlooks the unique and life-changing benefits of attending school in person.

Mr. Richardson had already begun college while incarcerated, but key courses required for his Philosophy degree weren't available in the prison curriculum. Through educational release, he gained access to those classes and is now on track to graduate in May 2026, just three months after his release. Without this opportunity, he would have been released mid-semester—losing academic credits, momentum, and possibly the motivation to continue at all.

Beyond coursework, being on campus gives students:

- Access to a broader range of classes and electives
- Opportunities to join clubs and organizations and to take on leadership roles
- Connections to employers, mentors, and housing support
- A gradual reintegration into the rhythms of public life

In short, educational release offers more than education—it offers reinvention.

The Stakes Are High

As of now, Mr. Richardson is the only person in New York State participating in educational release. If others don't apply and get approved, this hard-won opportunity could vanish once again into bureaucratic obscurity.

The eligibility requirements for educational release are clear. Applicants:

- Must be within two years of release
- Cannot have a violent felony conviction
- Must receive an acceptance letter from a college
- Must show that tuition, books, and travel are covered by scholarships, the college itself, or family support.

These barriers are surmountable—but only if people know the door is open.

A Program Worth Fighting For

Educational release is one of the most powerful tools we have to support successful reentry. Research consistently shows that education dramatically reduces recidivism, improves employment outcomes, and strengthens families and communities. Yet for too long, this pathway has been neglected.

Mr. Richardson's story is proof that it doesn't have to be that way. It shows what can happen when policy is matched with persistence, and when second chances are put into motion—not just in theory, but in action.

What You Can Do

If you meet the eligibility criteria for educational release, now is the time to act. PLS and the New York State Prison Crisis Response Coalition are available to assist with applications and answer questions.

For those outside the system:

- Share this story to raise awareness
- Encourage local colleges to partner with correctional facilities
- Advocate for expanded access and funding
- Support incarcerated students through scholarships, transportation aid, and mentorship.

Let's not let this opportunity disappear again. Let's amplify Mr. Richardson's trailblazing example—and make sure educational release becomes the norm, not the exception. Because when we invest in education behind the walls, we build stronger, safer, and more just communities beyond them.

A Letter from Karreim Richardson to Those Inside

To those reading inside, my name is Karreim Richardson, and I want to speak to you directly—not as some polished success story, but as someone who knows what it feels like to want more but not know where to start.

I was the first philosophy major ever accepted into the Educational Release Program at John Jay College—and I don't want to be the last.

At first, I wasn't even sure what I could do with a philosophy degree. I had ideas, but no clear direction. But being on campus changed everything. I met people. I built relationships. I joined student organizations—martial arts clubs, philosophy groups, and others that opened me up socially and professionally. And through those connections, I was introduced to career paths I had never even considered—like data analysis, project management, and coding in Python.

Now I'm on a path. I have a clear vision. I know where I'm going, and I've got the tools to get there.

This program didn't just give me a classroom—it gave me access, community, and momentum. I used to feel stuck. Now I feel like I'm building a future brick by brick.

And that's what I want for you.

The Educational Release Program allows incarcerated individuals to attend real, in-person college classes during the day at any CUNY school that accepts you—for free. Once you're accepted, the limitations you face inside begin to fall away.

You can take hands-on science classes, learn programming, explore video production, art, music, business, and more. You can join clubs, meet professionals, build your resume, and actually start living the life you want while you're still inside.

There are other programs inside the facility too—use those to your advantage. Stack your skills. Build your experience. That's what I've done, and it makes me stand out in every room I walk into now.

This program is not a favor—it's a real opportunity. And you have every right to take it.

Don't let the gate define your future. Let this be the step where everything changes.
Apply. Ask questions. Build something.

With belief in your power,

Karreim Richardson

By Claudette Spencer and Karreim Richardson

For further information regarding Education Release please write to Maria E. Pagano, Education Director, PLS, 14 Lafayette Square, Suite 510, Buffalo NY 14203.

Your Right to an Education

For questions about access to GED support, academic or vocational programs, or if you have a learning disability, please write to: Maria E. Pagano – Education Unit, 14 Lafayette Square, Suite 510, Buffalo, New York 14203.

PRO SE VICTORIES!

***Williams v. Hill*, 2025 WL 2419333 (W.D.N.Y. 2025)** Randy Williams filed this federal 1983 asserting retaliation and due process violations against facility officials and the Director of Special Housing and Disciplinary Programs.

The following facts are from the Court's decision. Mr. Williams was an elected member of the Attica IILC. After a facility wide search of concern to the Attica population, Mr. Williams shared a letter complaint with another IILC member during a meeting in the Attica school building. Addressed to then-Deputy Commissioner O'Gorman and Executive Deputy Commissioner Martuscello, the letter specifically criticized the conduct of one sergeant in the search.

Mr. Williams and his IILC colleague asked the office assistant to make copies of the letter. The office assistant also provided a copy of the letter to the Deputy Superintendent for Security. On the same day, Mr. Williams was moved to SHU. Transport officers told Mr. Williams that it was for conduct in the school building. Mr. William's IILC colleague submitted an affidavit recounting that he was also transported to SHU on that day, and told that it was for "attempt[ing] to write letters to the Commissioner."

While Mr. Williams was found guilty of the charges related to the incident, the Third Department reversed the demonstration charge at issue as it was not supported by substantial evidence. *Matter of Williams v. Annucci*, 211 A.D.3d 1222 (3d Dept 2022).

Mr. Williams' federal 1983 complaint alleged 1) First Amendment claims against the Director of Special Housing and facility staff who transported him to SHU, investigated the charges, and conducted the hearing; and 2) Fourteenth Amendment due process claims against the Director of Special Housing, the facility investigator and hearing officer.

Defendants moved for summary judgment. To prevail on a summary judgment motion, Defendants had the burden to establish "that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. Rule 56(a).

The Court agreed with the Defendants that Plaintiff failed to produce evidence of Director of Special Housing's personal involvement. There was no evidence before the Court to show that the

Director of Special Housing actively participated in reviewing or affirming the hearing at issue, but instead 'rubber stamped' the decision.
The Court also found that:

1. Plaintiff's Fourteenth Amendment due process claims to be duplicative of his First Amendment retaliation claims;
2. The record contained reasonable explanations for witness denials satisfying due process; and
3. The Plaintiff was not prejudiced by any delay in notice of the charges. The Court thus granted Defendants' motion as to the due process claims.

Mr. Williams' First Amendment retaliation claims against facility officials, however, survived summary judgment. The Court noted a SHU logbook entry which contradicted 1) one defendant's assertion that he was not personally involved; and 2) the timeline declared by another defendant who stated Mr. Williams was moved to SHU days after an investigation.

For a prison retaliation claim, the plaintiff must first show that he engaged in protected speech or conduct. Defendants conceded that Plaintiff satisfied this element as voicing grievances as a member of a grievance body, such as the IILC, is constitutionally protected activity.

Prison retaliation claims must also be supported by allegations that the defendants took adverse action against the plaintiff and that there was a causal connection between the protected speech and the adverse action. For the second criteria, the Court concisely concluded that the Plaintiff's SHU confinement was sufficient to demonstrate the adverse action element.

The third element to prove retaliation is a causal connection. With respect to this element, Defendants argued that they simply acted on orders to investigate allegations of the charges against Mr. Willimas and conduct a Tier III hearing. The Court noted the heightened burden for showing a retaliatory adverse action when the officer carrying out the action is not the subject of protected speech.

In spite of the higher burden, relying on the inconsistencies between the evidence and Defendants' testimonies about when he was transported to SHU, what was said about why he was moved to SHU, and that the Third Department found Mr. Williams *not* guilty of Demonstration, the Court held that Mr. Williams had alleged sufficient facts to support a causal connection and denied the summary judgment motion as to Mr. Williams' retaliation claims against the facility Defendants.

***Alnutt v. State of New York,* Claim No. 142737 (Ct of Claims July 14, 2025)** In October 2024, Mr. Alnutt filed a damages claim in the Court of Claims alleging that he was negligently subjected to sixty-six days of improper medical keeplock. Mr. Alnutt based his claim on violations of the HALT Act and his Constitutional rights. This claim is currently in discovery.

After requesting the defendant to produce certain records, Mr. Alnutt filed a motion to compel the production of discovery material from the State Defendant, including specific logbook pages and two audio/video files. Defendant opposed the motion pleading that Mr. Alnutt did not serve the discovery demand before filing his motion.

Despite not submitting proof of service of his discovery demands, the Court deemed the demand served as Mr. Alnutt included his discovery demand with his motion and the Defendant received the demand by way of the motion to compel. The Court ordered Defendant to respond to the demand and directed Defendant to provide the recordings.

Practice Pointer: *Mr. Alnutt submitted a FOIL request for audio/video of his grievance hearing and footage from outside Mr. Alnutt's cell to preserve videos that he believed would support his claims. In his motion to compel discovery, he was able to include responses from the facility documenting that the videos existed, which likely prompted the Court to order that they be produced instead of simply ordering that the Defendant respond to the demand.*

***Alnutt v. State of New York*, Claim No. 142806 (Ct of Claims April 17, 2025).** In another procedural victory for Mr. Alnutt, the Court of Claims concluded his claim was verified, and allowed the claim to proceed.

In this damages action for injuries related to an assault and excessive force by officers, Mr. Alnutt filed a notice of intent within two months of the incident. Mr. Alnutt filed his claim within the one-year statute of limitations for intentional torts. The Court of Claims Act 11 requires that notices of intention and claims be verified.

CPLR 3020 sets forth the requirements and language for a proper verification. Rule 3020 provides that a verification is a statement, subscribed and affirmed by the individual making the statement (the deponent) to be true under penalty of perjury in accordance with Rule 2100 that the pleading is true to the knowledge of the deponent, except as to matters alleged on information and belief, and as to those matters, the deponent believes it to be true

If a claimant fails to verify the filing correctly or fails to verify at all, the recipient may rely on that failure to **nullify** (treat as though it was never filed) provided the recipient returns the pleading with notification of the reason for finding the verification defective.

Here, the recipient notified Mr. Alnutt that it rejected the Claim because it was "unverified" and "not made by an 'affidavit of verification.' However, Mr. Alnutt *had* placed an *affirmation* at the end of his claim. This affirmation used the "penalty of perjury" language found in CPLR 2106, and Mr. Alnutt signed and had notarized. CPLR 2106 allows for affirmations to be treated the same as a sworn affidavit but does not expressly provide that affirmations may be treated as verifications.

The Court found that because Mr. Alnutt swore in his affirmation to the truth of the Claim under penalty of perjury, his affirmation was comparable to verification. A verification requires the claimant to swear that they have read the claim, knows its contents and that it is true to the extent

of his knowledge. As both constituted a swearing to the truth of the claim, the Court concluded that Mr. Alnutt verified his claim.

For information about drafting and filing claims in the New York Court of Claims, write to the PLS office that provides legal services to individuals incarcerated at the prison from which you are writing and request the memos: "Lawsuits in the NYS Court of Claims."

Pro Se Victories! *features summaries of successful pro se administrative advocacy and unreported pro se litigation. In this way, we recognize the contribution of pro se jailhouse litigants. We hope that this feature will encourage our readers to look to the courts for assistance in resolving their conflicts with DOCCS. The editors choose which unreported decisions to feature from the decisions that our readers send us. Where the number of decisions submitted exceeds the amount of available space, the editors make the difficult decisions as to which decisions to mention. Please submit copies of your decisions as Pro Se does not have the staff to return your submissions.*

STATE COURT DECISIONS

Disciplinary & Administrative Segregation

Court Limits Segregated Confinement Sanctions for People in RMHU

In 2023, PLS filed an Article 78 challenging five hearings resulting in disciplinary confinement sanctions for an individual housed in a Residential Mental Health Unit (RMHU). Each hearing resulted in months of confinement sanctions, which the Petitioner was required to serve in the RMHU. The case is captioned *Matter of Walker v. Commissioner, N.Y. State Dept. of Corr. & Community Supervision*.

The petition argued that the sanctions were unlawful because DOCCS did not comply with requirements under the HALT Solitary Confinement Act and the SHU Exclusion Law (as updated by the HALT Act). Both of those laws impose strict limits on DOCCS' authority to impose confinement sanctions. The lawsuit sought to have the confinement sanctions either (1) **expunged** (removed), or (2) reduced to no more than 3 days per hearing.

To understand the issues in this case, it is helpful first to review some background concerning the HALT Act and the SHU Exclusion Law. Both of those laws set forth standards and procedures that DOCCS must follow to place people in disciplinary confinement.

The HALT Act prohibits segregated confinement—defined in in Correction Law (CL) 2(23) as cell confinement for longer than 17 hours a day—for more than 15 consecutive days. After fifteen days, a person must be moved to a Residential Rehabilitation Unit (RRU) to finish serving any remaining sanctions.

Correction Law 137(6)(k)(i) provides a person cannot be placed in segregated confinement for longer than 3 days—nor placed in an RRU—unless DOCCS meets two conditions set forth under CL 137(6)(k)(ii).

Known as the "(k)(ii) criteria," those conditions require that before an incarcerated individual may be sentenced to more than 3 days in segregated confinement, DOCCS must make a written determination that (1) a person has committed one of seven acts of particularly serious misbehavior defined under HALT (i.e., a "(k)(ii) act"), and (2) based on specific objective criteria, the conduct was so heinous (evil) or destructive that housing 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 prison."

The SHU Exclusion Law (Correction Law 401) predates the HALT Act. It limits DOCCS' authority to place people in segregated confinement if they have been designated by the Office of Mental Health (OMH) as someone with a serious mental illness (an "S-designation"). When someone with an S-designation receives a confinement sanction that could potentially exceed 30 days, they must be moved to a Residential Mental Health Treatment Unit (RMHTU) to serve the sanction.

Once someone is already in an RMHTU, the SHU Exclusion Law (under CL 401(5)(a)) prohibits DOCCS from imposing any further confinement sanctions at all for misconduct on the unit—except in "exceptional circumstances" where their behavior "poses a significant and unreasonable risk to the safety of incarcerated individuals or staff, or to the security of the facility." The HALT Act then added an additional requirement to CL 401(5)(a): DOCCS now cannot impose a confinement sanction for misconduct in an RMHTU unless it also establishes that a person has committed a (k)(ii) act.

The petition alleged that DOCCS had violated both laws when it imposed long-term confinement sanctions against the Petitioner. First, none of his hearings established that he had committed any (k)(ii) acts, nor did they contain required findings under HALT's "heinous and destructive" standard. The petition argued that it was therefore unlawful to impose more than 3 days of confinement sanctions at any of his hearings under the HALT Act. Second, because the Petitioner was in an RMHU (a form of RMHTU) at the time of each incident, the petition argued that it was unlawful to impose any confinement sanctions at all, since DOCCS did not establish any (k)(ii) acts.

The case was initially "severed" into five separate proceedings. Albany County Supreme Court ordered the Petitioner to re-file the matter as five separate lawsuits, since it addressed five separate Tier III hearings.

After Petitioner submitted five individual petitions to challenge each hearing, however, the Court issued a single consolidated order that dismissed all of the cases at once, holding that the Petitioner was not entitled to any protections under the HALT Act because he was held in an RMHU at all relevant times.

The Court reasoned that because the direct text of the HALT Act mentions only "segregated confinement" and "residential rehabilitation units," HALT did not restrict DOCCS' authority to place people in RMHUs. The Court did not address Petitioner's SHU Exclusion Law arguments at all.

Petitioner appealed Supreme Court's decision to the Appellate Division, Third Department. On appeal, he argued that the HALT Act created a clear framework that provided identical limits on confinement for both RMHUs and RRUs. Specifically, CL 401(1) provides that all RMHTUs "shall be in compliance with all provisions of" CL 137(6)(k)(ii). He argued that because CL 137(6)(k)(ii) exclusively addresses why (and for how long) someone can be placed in segregated confinement or RRU, the statutes must be read to place the very same limits on RMHU and RRU confinement. In other words, he argued that DOCCS must meet both of the (k)(ii) criteria to place someone in an RMHU. The appeal also asserted that it was unlawful for DOCCS to have imposed any confinement at the hearings, since the underlying incidents occurred in RMHUs and DOCCS had not found that he committed any (k)(ii) acts.

DOCCS agreed on appeal that it was required under CL 401(5)(a) to establish a (k)(ii) act to impose a segregated confinement sanction for misconduct in an RMHU. But DOCCS further argued that the Court should not decide the issues on appeal because they were moot, as the Petitioner had been released from RMHU following a series of time cuts. Petitioner replied that the issues were not moot because references to his lengthy disciplinary sanctions remained on his institutional record, which could continue to harm him in the future. He argued that those references would suggest to anyone reviewing his records that DOCCS had validly found him to have committed very serious (k)(ii) acts—even though DOCCS never made such findings.

The Third Department issued an opinion and order with three notable holdings. *Matter of Walker v. Commissioner, N.Y. State Dept. of Corr. & Community Supervision*, 241 AD3d 1 (3d Dept. 2025). First, agreeing with Petitioner's argument that the claims for relief were not moot because the references on his disciplinary history to these confinement sanctions create a significant risk that Petitioner will face prejudicial inferences if the challenged sanctions are not expunged, the Court found that "enduring consequences potentially flow from [these sanctions remaining on petitioner's institutional record]" Based on this finding, the Court held that Petitioner's claims that DOCCS did not meet the requirements to impose those sanctions were not moot, even though he had completed the penalties.

Second, the Court confirmed that DOCCS could not impose a sanction of segregated confinement for misconduct in an RMHU unless it issued a determination that the Petitioner had committed a (k)(ii) act. Because the Petitioner "was sanctioned, in writing, with segregated confinement in the RMHU," the Court held that "the written disciplinary sanction was in violation of the SHU Exclusion Law" (emphasis in original).

Third, the Court held that DOCCS did not violate CL 137(6)(k)(ii) by placing Petitioner in RMHU for longer than three days without meeting both the HALT Act's (k)(ii) criteria. The Court stated that it could not infer that "the Legislature intended for RMHTUs to be encompassed as RRUs" for purposes of the HALT Act because "the Legislature distinctly defined both terms separately (compare Correction Law 2(21), with Correction Law 2(34))." The Court further held that the "broad provision" in CL 401(1) that RMHTUs must comply with all provisions of CL 137(6)(k)(ii) "does not infer that RMHTUs should be considered as RRUs throughout the HALT Act."

As a result of the confirmed SHU Exclusion Law violations, the Third Department ordered DOCCS to annul the sanctions imposed at each of the challenged hearings and impose sanctions of three days or less of segregated confinement.

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PLS represented the Petitioner in this Article 78 proceeding and Third Department appeal.

Inaudible Hearing Concerning Tier II Merits Reversal

The Petitioner challenged his Attica Tier II hearing by filing an order to show cause and commencement of an Article 78 proceeding in Wyoming County. *Matter of Gottsche v. Martuscello,* Index No. 22286-25 (Sup Ct Wyoming County July 14, 2025).

In signing the order to show cause, the Court assigned counsel for the Petitioner in this proceeding. Respondent's counsel acknowledged that the hearing recording was "inaudible." Respondent's counsel further conceded because the alleged misconduct was not serious in nature and that the Petitioner served the time, the hearing should be reversed and expunged instead of remitted for rehearing.

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Wyoming County - Attica Legal Aid Bureau, Inc. represented Marcus Gottsche in this Article 78 proceeding.

For information about Article 78 actions, write to the PLS office that provides legal services to individuals incarcerated at the prison from which you are writing and request the memo: "Drafting and Filing an Article 78."

FEDERAL COURT DECISIONS

Second Circuit Sends Due Process Back for Jury to Decide

In ***Walker v. Bellnier*, 146 F4th 228 (2d Cir 2025)**, the Second Circuit reversed the district court's decision granting the Defendants' motion for summary judgment with respect to the issue of whether the Plaintiff's long term confinement to SHU violated his rights to due process of law. The Court **remanded the case** (returned to the lower court) for trial on the due process challenge.

After serving fourteen years in SHU for disciplinary charges, in 2014 DOCCS placed the Plaintiff in administrative segregation (Ad Seg) for eight more years. After enactment of the HALT Act, DOCCS released the Plaintiff from SHU. The lawsuit challenges the adequacy of the process of reviewing the Plaintiff's need for segregated confinement for the first five years in Ad Seg.

When the Plaintiff was admitted to Ad Seg, the regulations provided that an incarcerated individual could only be placed in Ad Seg when their confinement in general population would pose a threat to prison security. Once in Ad Seg, an incarcerated individual was entitled to regular meaningful reviews of the continued need for administrative confinement.

In his 1983 action, the Plaintiff challenged whether he was provided with due process at these reviews; that is, the Plaintiff challenged the constitutional adequacy of the reviews that determined he was a continued security risk. The Northern District ruled that the Plaintiff did not demonstrate genuine issues of material fact regarding the constitutionality of the review process and granted summary judgment to the Defendants. On review, the Second Circuit disagreed.

The U.S. Supreme Court and the Second Circuit have held that because of the extreme effects of solitary confinement, "the Due Process Clause [of the Fourteenth Amendment] protects incarcerated individuals against the unjustified use of solitary confinement–particularly when its stated purpose is prevention not punishment." See, *Hewitt v. Helms*, 459 US 460, 477, n. 9 (1983); *Proctor v. LeClaire*, 846 F3d 597, 610-11 (2d Cir 2017); *H'shaka v. O'Gorman*, 758 F App'x 196, 199 (2d Cir 2019). The required due process includes meaningful periodic reviews, which requires that the result *not be* pre-determined, but based on an actual assessment and consideration of the individual's current threat level and any changes in behavior.

In deciding whether the Defendants were entitled to summary judgment, the Second Circuit found that 1) during the first five years the Plaintiff spent in Ad Seg, DOCCS conducted 46 reviews–roughly 9 reviews per year; and 2) each review referred to two violent assaults, the first committed in 1993 the second in 2000, and various prison rule infractions since then. However, the Court also noted that during the first five years in Ad Seg, Plaintiff was found guilty of only one disciplinary violation involving a minor offense, his behavior was consistently described as appropriate, and he caused no issues.

In addition, the Court noted, in the Plaintiff's reviews, DOCCS repeatedly used the same words in their assessments and failed to analyze the Plaintiff's "possible inclination to violence."

Based on the application of the law to these facts, the Court agreed that Plaintiff raised triable issues of fact as to whether his reviews were constitutionally meaningful. The Court also noted the Plaintiff's complaint that the process did not provide him a chance to improve his conduct or respond to misunderstandings in his record.

The Court emphasized that the question at issue was process, not the ultimate decision placing the Plaintiff in administrative segregation. Ultimately, the Court held that a jury should decide whether the DOCCS review process afforded the Plaintiff due process required by the Constitution.

Institute for Policy Integrity, New York, NY and Orrick, Herrington & Sutcliffe LLP represented Tyrone Walker in this 1983 appeal.

Habeas Relief for Unconstitutional Conditions

The Second Circuit in ***Diaz v. Kopp*, 146 F.4th 301 (2d Cir. 2025)** recognized that habeas relief may be available where a petitioner alleges unconstitutional prison conditions. Here, the Petitioner alleged that DOCCS custody deliberately placed him at risk of contracting COVID-19, which he argued, constituted cruel and unusual punishment, a violation of the Eighth Amendment.

The Court rejected Defendants' position that habeas relief—ordering that a petitioner be released from custody—is only available to challenge the constitutionality of convictions and sentences and is *not* available to challenge unconstitutional prison conditions. However, the Court affirmed that habeas relief in conditions cases is available where the conditions are unconstitutional ***and*** can only be remedied by release.

Here, the Court affirmed the district court's decision dismissing the complaint as the Petitioner had failed to allege facts to support his petition, namely that 1) he was at risk of death or serious disability; 2) DOCCS was incapable of protecting him from potential COVID-19 infection; 3) such conditions were cruel and unusual; and 4) the harm could only be remedied by immediate release.

Circuit Justice Lohier agreed that the case should be dismissed yet dissented as Petitioner's application was rendered moot when he transferred to another facility.

Law Office of Michael K. Bachrach, New York, NY represented Angel Diaz in this appeal.

Court Grants Defendants Qualified Immunity Except for Religious Claims

Baltas v Chapdelaine, 153 F.4th 328 (2d Cir. 2025) was brought by nine men incarcerated in a Connecticut Department of Corrections special housing unit. They sued alleging violations of the Eighth Amendment (unconstitutional conditions), the Fourteenth Amendment (due process), and the First Amendment (free exercise of religion). The Defendants moved for summary judgment, which the district court granted on qualified-immunity grounds.

A qualified immunity defense asserts that the plaintiff is not entitled to monetary damages because the official did not violate a statutory or constitutional right that was clearly established at the time of alleged conduct.

Here, the Second Circuit held that the Plaintiffs failed to demonstrate that the unit's specific conditions, namely isolation (22 hours in a double bunked cell) and toilets that were not flushable for at least two hours at a time, constituted cruel and unusual punishment or an atypical and significant hardship. Thus, neither had the Defendants violated the Plaintiff's Eighth or Fourteenth Amendment rights.

In contrast, the Second Circuit reversed the district court's finding of qualified immunity as to allegations that individuals in the unit were unable to participate in congregate religious services. The Court opined that the allegations concerning Native American religious congregate activities alleged clearly established rights and the Defendants' denial was without any penological justification.

The Court remanded the congregate free exercise of religion claims to the district court.

Paul, Weiss, Rifkind, Wharton & Garrison LLP, Washington, DC and New York, NY represented the Plaintiffs-Appellants in this appeal.

IMMIGRATION MATTERS

Nicholas Phillips

This column focuses on *Matter of J-H-M-H-*, 29 I. & N. Dec. 278 (BIA 2025), a case which resulted in a precedential opinion issued by the Board of Immigration Appeals ("the Board") on October 7, 2025. Litigated by Prisoners' Legal Services of New York, *Matter of J-H-M-H-* concerns the question of whether an immigration court is bound by **stipulations** (agreements between the parties) about particular legal or factual issues.

To understand *Matter of J-H-M-H-*, it is helpful to understand the structure of immigration court proceedings and of the immigration system generally. Under federal law, the Department of Homeland Security ("DHS") plays a central role in administering the United States immigration system. As part of its responsibilities, DHS has been entrusted with many important immigration

functions, administered through a variety of sub-agencies. For example, the U.S. Citizenship and Immigration Services is a sub-agency within DHS which processes applications for immigration benefits, such as applications for lawful permanent resident status and United States citizenship. Another DHS sub-agency is the U.S. Customs and Border Protection, which is responsible for border security. Other DHS sub-agencies include the U.S. Secret Service, the U.S. Coast Guard, and the Federal Emergency Management Agency.

With respect to deportation proceedings, the most important federal actor is a DHS sub-agency called U.S. Immigration and Customs Enforcement ("ICE"). ICE is most well-known for its Enforcement and Removal Operations, the division of ICE responsible for apprehending and detaining noncitizens. But ICE is also responsible for initiating deportation proceedings, which it does by filing a Notice to Appear ("NTA") with the relevant immigration court. An NTA contains allegations against a particular noncitizen, as well as legal charges describing why ICE believes that the noncitizen is deportable. Once the NTA is filed, the immigration court will schedule a hearing and the noncitizen must then appear in immigration court, where DHS will be represented by a prosecuting attorney from ICE.

The immigration court itself, however, is not a part of DHS, but is instead operated by the Department of Justice ("DOJ"). DOJ is essentially a law enforcement agency, and it contains most of the United States federal law enforcement agencies, including the Federal Bureau of Investigation, as well as the Offices of the United States Attorneys, which prosecutes federal criminal cases and represents the federal government in civil litigation. DOJ operates the immigration court system through a sub-agency known as the Executive Office for Immigration Review, which employs immigration judges ("IJs") who preside over particular deportation cases, as well as the Board, which hears appeals from IJ decisions.

All of that brings us to *Matter of J-H-M-H-*, which concerns the deportation proceedings of a transgender woman from Honduras referred to by her initials, J-H-M-H-. In her deportation case, she applied for deferral of removal under the Convention Against Torture ("CAT"), a type of relief from deportation for persons who are more likely than not to suffer torture if deported to their home country. Based on the country conditions evidence, which detailed systemic violence against transgender women in Honduras, the ICE prosecutor agreed that J-H-M-H- was eligible for CAT deferral, and so the ICE prosecutor entered into a joint stipulation with J-H-M-H-'s attorney. The parties agreed that J-H-M-H- would more likely than not suffer torture in Honduras as a transgender woman and so was eligible for CAT deferral. However, the IJ rejected the stipulation and ordered that testimony be taken. When J-H-M-H- sought to rely on her application and on the joint stipulation alone, the IJ denied the application, concluding that testimony was required, that J-H-M-H- was not credible based on conflicting statements contained in her criminal records, and that CAT deferral was not warranted.

J-H-M-H- appealed to the Board, which affirmed the IJ's decision. In so holding, the Board noted that federal regulations require that IJs "shall exercise their *independent* judgment and discretion and may take any action . . . that is necessary or appropriate for the disposition or alternative resolution of such cases." 29 I. & N. Dec. at 280 (citing 8 CFR 1003.10(b)) (emphasis in original).[2] Thus, "[w]hile an [IJ] may accept the parties' stipulations in lieu of evidence, he or she is not

required to do so." *Id.* This is so because "[t]he authority to conduct removal proceedings and decide whether an alien is removable from the United States is delegated by statute to the [IJ], not to DHS or the respondent." *Id.* at 281.

The Board then turned to the merits of J-H-M-H-'s application for CAT deferral. The Board acknowledged that "the respondent has submitted substantial country conditions evidence of discrimination and ill treatment of LGBT persons, including transgender women, and that some of the harm is committed by public officials." *Id.* at 283. Ultimately, however, the Board concluded that "[w]hile some of this harm is severe, and the respondent has presented evidence of transgender women being killed, anecdotal evidence of some individuals suffering severe harm is not sufficient to show that a particular alien is more likely than not to suffer harm rising to that level." *Id.*

Matter of J-H-M-H- is consistent with the Board's recent decisions, largely ruling against noncitizens. In this year, the Board has found that:

- detained noncitizens, present in the United States without admission, are not eligible to be released on bond, *see Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025);
- an IJ committed clear error by granting CAT deferral to a Venezuelan women who fled the Venezuelan military and was threatened with torture for refusing a superior's order to falsify documents, *see Matter of O-Y-A-E-*, 29 I. & N. Dec. 190 (BIA 2025); and
- a noncitizen did not establish that he would suffer exceptional and extremely unusual hardship when his deportation would leave his United States citizen wife as the sole caretaker for their autistic daughter and two sons both diagnosed with developmental delays, *see Matter of Diego Geovanny Buri Mora*, 29 I. & N. Dec. 186 (BIA 2025).

In addition to the notable decisions above, in the past year, the Board has issued precedential decisions at a much faster pace — 46 precedential decisions since January 20, 2025, compared to 14 in the preceding one-year period.

Footnote 2: A recent CNN report estimates that 139 IJs—almost a quarter of the workforce—have been fired, taken an early-out offer, or been involuntarily transferred. *See* Priscilla Alvarez, *Inside the Trump administration's unprecedented purge of immigration judges*, CNN (Oct. 6, 2025). In March 2025, nine members of the Board, constituting approximately a third of the total Board, were fired.

WHAT DID YOU LEARN?

Brad Rudin

1. **The case of *James Dunn, et al v. NYS DOCCS* protected the rights of residents of the Residential Mental Health Unit at Marcy C.F. by:**

   a. striking down the Rehabilitation Act.
   b. permanently restoring minimum out-of-cell time.
   c. restoring minimum out-of-cell time for 90 days pending further legal action.
   d. giving the State of New York 90 days to seek a negotiated settlement regarding money damages.

2. **Under the SHU Exclusion Law, rule-violating individuals with serious mental illness are:**

   a. excluded from specialized mental health units.
   b. ineligible for recreation programming.
   c. diverted from SHU to 24-hour lock-down confinement if found guilty of offenses involving violence.
   d. placed in units offering structured out-of-cell therapeutic programming.

3. **Under the release program established by 7 NYCRR 1903.1[b], an incarcerated person is eligible for:**

   a. early release from prison upon completing the requirements for a college degree.
   b. release from custody up to 14 hours daily to attend academic classes.
   c. resentencing to time served if necessary for the completion of a college degree.
   d. education release if approved by a prospective employer.

4. **Which statement about the education release program is *false*?**

   a. The applicant will receive tuition assistance from DOCCS.
   b. The applicant must be within two years of release.
   c. The applicant cannot have a violent felony conviction.
   d. The applicant must possess an acceptance letter from college.

5. **To prevail in a prison retaliation claim involving the exercise of freedom of speech, the court in *Williams v. Hill* explained that incarcerated persons must show:**

   a. racial or ethnic or gender bias by correction officials.
   b. a causal connection between the protected speech and adverse action taken by correction officials.
   c. beyond a reasonable doubt that correction officials had a history of violating the free speech rights of incarcerated persons.
   d. a pattern of official conduct exhibiting deliberate indifference to the First Amendment.

6. **In the *Allnutt* case decided on April 17, 2025, the Court of Claims explained that the claimant could go forward because:**

   a. CPLR 3020 does not apply to litigation filed in the Court of Claims unless the Claim asks for damages in excess of $100,000.
   b. CPLR 2106 allows for unsworn affidavits.

c. the claimant swore in his affirmation to the truth of the claim.
d. the recipient of the claimant's papers excused any failure to comply with CPLR 3020.

7. Under Correction Law 137, segregated confinement for longer than 3 days is permissible:

a. if the incarcerated person has a history of misconduct while in DOCCS custody and more than one violent felony offense while not in custody.
b. at the discretion of the facility superintendent or the Central Office in Albany.
c. if the incarcerated person does not need psychiatric treatment.
d. if the incarcerated person has committed certain listed acts and engaged in conduct creating a risk to the security of the prison.

8. If an incarcerated person engages in misconduct while in the Residential Mental Health Treatment Unit DOCCS cannot impose a confinement sanction unless it establishes that the person:

a. has committed an act listed in Correction Law 137[6][k][ii].
b. is deemed suitable for SHU confinement under Correction Law 2[23].
c. constitutes a "clear and present danger" to the security of the prison.
d. voluntarily agrees to a confinement sanction.

9. In *Walker v. Bellnier*, the Second Circuit reversed the district court's decision granting the Defendants' motion for summary judgment on the ground that:

a. the district court showed it was biased against the Plaintiff.
b. the district court ignored the factual findings made by the jury.
c. the district court failed to consider the mental health effects of confinement in the Special Housing Unit.
d. The district court erroneously concluded that there was no fact issue as to whether the periodic reviews were meaningful.

10. As the Second Circuit stated in *Baltas v. Chapdelaine*, a qualified immunity defense protects a prison official from having to pay monetary damages unless the official:

a. violated a statutory or constitutional right that was clearly established at the time of the alleged conduct.
b. Demonstrated deliberate indifference to a plaintiff's serious medical condition.
c. failed to comply with the rules set forth in the New York Code of Rules and Regulations (the NYCRR).
d. caused a mentally ill incarcerated person to be confined in a special housing unit for any amount of time.

ANSWERS

1. c	**5. b**	**9. d**
2. d	**6. c**	**10. a**
3. b	**7. d**	
4. a	**8. c**	

IILC Feedback

PLS wants to hear from IILC reps about ways we can better assist the population at your facility! If you are an elected IILC member at one of the following facilities: Albion, Elmira, Fishkill, Lakeview, Marcy, Upstate or Wende, please contact us at 114 Prospect Street, Ithaca NY 14850.

PREP

PREP provides counseling and re-entry planning guidance for individuals who are within 6-18 months of their release date and returning to one of the five (5) boroughs of New York City or one of the following counties: Dutchess, Erie, Genesee, Monroe, Niagara, Orange, Orleans, Putnam, Rockland, Sullivan, Ulster, Westchester or Wyoming. Individuals serving their maximum sentence should automatically receive an application by legal mail. Individuals who will be on parole are eligible only if they have served at least one prior prison sentence. Individuals convicted of sexual crimes and those on the sex offender registry are ineligible. Write to 10 Little Britain Road, Suite 204, Newburgh, NY 12550.

The Family Matters Unit

The Family Matters Unit of Prisoners' Legal Services of New York is a specialized unit that assists incarcerated parents with certain family law matters. The FMU assists parents whose county of conviction is *Albany, Bronx, Dutchess*, *Erie, Kings, Monroe, Nassau, New York, Onondaga, Orange, Queens, Richmond,* or *Suffolk*, or who have children currently living in one of those counties. The Family Matters Unit attorneys assists eligible parents with child visitation petitions, child support modification petitions, accessing family court records, proximity to minor child transfer request denials, and prison disciplinary proceedings that result in interference with visitation or communication with minor children. If you would like the assistance of the Family Matters Unit and you meet the eligibility requirements described above, please write to the Family Matters Unit at: Prisoners' Legal Services of New York, Family Matters Unit, 41 State Street, Suite M112, Albany, NY 12207.

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PLS OFFICES

Requests for assistance should be sent to the PLS office that provides legal assistance to the incarcerated individuals at the prison where you are in custody. Below is a list of PLS Offices and the prisons from which each office accepts requests for assistance.

PLS ALBANY OFFICE: 41 State Street, Suite M112, Albany, NY 12207
Adirondack • Altona • Bare Hill • Clinton • CNYPC • Coxsackie • Eastern • Edgecombe • Franklin • Gouverneur • Greene • Hale Creek • Hudson • Marcy • Mid-State • Mohawk • Otisville • Queensboro • Riverview • Shawangunk • Ulster • Upstate • Wallkill • Walsh • Washington • Woodbourne

PLS BUFFALO OFFICE: 14 Lafayette Square, Suite 510, Buffalo, NY 14203
Albion • Attica • Collins • Groveland • Lakeview • Orleans • Wende • Wyoming

PLS ITHACA OFFICE: 114 Prospect Street, Ithaca, NY 14850
Auburn • Cape Vincent • Cayuga • Elmira • Five Points

PLS NEWBURGH OFFICE: 10 Little Britain Road, Suite 204, Newburgh, NY 12550
Bedford Hills • Fishkill • Green Haven • Sing Sing • Taconic

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