

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

FUQUAN FIELDS and LUIS GARCIA,

Plaintiffs-Petitioner,

v.

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

**VERIFIED ANSWER TO
AMENDED PETITION
AND COMPLAINT**

Index No. 902997-23

Respondent-Defendant.

Respondent-Defendant, Anthony J. Annucci, the Acting Commissioner of the New York State Department of Corrections and Community Supervision (hereafter, “Respondent-Defendant”),¹ by his attorney, Letitia James, Attorney General of the State of New York, and Michael G. McCartin, of counsel, answers Petitioner’s Verified Amended Petition and Complaint as follows:

1. Denies the allegations contained in ¶ 1 of the Verified Amended Petition and Complaint, except admits that the HALT Act was passed by the Legislature in 2021 and respectfully refers the Court to the statute as the best evidence of its content.
2. Denies the allegations contained in ¶ 2 of the Verified Amended Petition and Complaint.

¹ Respondent-Defendant Annucci has retired from the New York State Department of Corrections and Community Supervision (“DOCCS”), and effective June 9, 2023, Daniel F. Martuscello III has assumed operational oversight of DOCCS as the Acting Commissioner. Thus, pursuant to C.P.L.R. § 1019, Acting Commissioner Martuscello should be substituted for Respondent-Defendant Annucci.

3. Denies the allegations contained in ¶ 3 of the Verified Amended Petition and Complaint, except admits that the HALT Act was passed by the Legislature in 2021 and respectfully refers the Court to the statute as the best evidence of its content.

4. Denies the allegations contained in ¶ 4 of the Verified Amended Petition and Complaint to the extent they are inconsistent with, or contrary to, the contents of the HALT Act, and respectfully refers the Court to the HALT Act as the best evidence of its content.

5. Denies the allegations contained in ¶ 5 of the Verified Amended Petition and Complaint.

6. Denies the allegations contained in ¶ 6 of the Verified Amended Petition and Complaint.

7. Denies the allegations contained in ¶ 7 of the Verified Amended Petition and Complaint to the extent they assert that Plaintiffs-Petitioners are entitled to any relief and deny knowledge or information sufficient to form a belief as to what Plaintiffs-Petitioners seek.

8. As to ¶ 8 of the Verified Amended Petition and Complaint, admits that Fuquan Fields has been incarcerated since 2007 and is currently housed in the RRU at Great Meadow Correctional Facility, and respectfully refers the Court to the final decision as the best evidence of what is stated and contained therein.

9. As to ¶ 9 of the Verified Amended Petition and Complaint, admits that Luis Garcia has been incarcerated since 2018 and is currently housed in the Residential Mental Health Unit (RMHU) at Five Points Correctional Facility, and respectfully refers the Court to the final decision as the best evidence of what is stated and contained therein.

10. Admits the first sentence of ¶ 10 of the Verified Amended Petition and Complaint; admits the second sentence of that paragraph, and affirmatively asserts that the brown liquid

contained feces; admits the third sentence of that paragraph; the last sentence of that paragraph is an issue of law for the Court to decide.

11. As to ¶ 11 of the Verified Amended Petition and Complaint, admits only that Defendant-Respondent Anthony Annucci assumed the role and powers of the Acting Commissioner position upon former Commissioner Fischer's resignation.

12. Denies the allegations contained in ¶ 12 of the Verified Amended Petition and Complaint.

13. Denies the allegations contained in ¶ 13 of the Verified Amended Petition and Complaint.

14. Denies the allegations contained in ¶ 14 of the Verified Amended Petition and Complaint, but admits that the lawsuit *Peoples v. Fischer*, No. 11-cv-2694 (SAS), 2012 WL 1575302 (S.D.N.Y. 2012) resulted in a settlement. See SDNY No. 11-cv-2694 (SAS) Dkt. No. 136.

15. Denies the allegations contained in ¶ 15 of the Verified Amended Petition and Complaint.

16. As to ¶ 16 of the Verified Amended Petition and Complaint, admits only that the HALT Act was passed by the Legislature in 2021 and respectfully refers the Court to the statute as the best evidence of its content.

17. Denies the allegations contained in ¶ 17 of the Verified Amended Petition and Complaint to the extent they are inconsistent with, or contrary to, the contents of the HALT Act, and respectfully refers the Court to the HALT Act as the best evidence of its content.

18. Denies the allegations contained in ¶ 18 of the Verified Amended Petition and Complaint to the extent they are inconsistent with, or contrary to, the contents of the HALT Act, and respectfully refers the Court to the HALT Act as the best evidence of its content.

19. Denies the allegations contained in ¶ 19 of the Verified Amended Petition and Complaint to the extent they are inconsistent with, or contrary to, the contents of the HALT Act, and respectfully refers the Court to the HALT Act as the best evidence of its content.

20. Denies the allegations contained in ¶ 20 of the Verified Amended Petition and Complaint to the extent they are inconsistent with, or contrary to, the contents of the HALT Act, and respectfully refers the Court to the HALT Act as the best evidence its content.

21. Denies the allegations contained in ¶ 21 of the Verified Amended Petition and Complaint to the extent they are inconsistent with, or contrary to, the contents of the HALT Act, and respectfully refers the Court to the HALT Act as the best evidence of its content.

22. Denies the allegations contained in ¶ 22 of the Verified Amended Petition and Complaint to the extent they are inconsistent with, or contrary to, the contents of the HALT Act, and respectfully refers the Court to the HALT Act as the best evidence of its content.

23. Denies the allegations contained in ¶ 23 of the Verified Amended Petition and Complaint.

24. Denies the allegations contained in ¶ 24 of the Verified Amended Petition and Complaint.

25. Denies the allegations contained in ¶ 25 of the Verified Amended Petition and Complaint and respectfully refers the Court to the referenced exhibit as the best evidence of its content.

26. Denies the allegations contained in ¶ 26 of the Verified Amended Petition and Complaint.

27. Denies the allegations contained in ¶ 27 of the Verified Amended Petition and Complaint.

28. Denies the allegations contained in ¶ 28 of the Verified Amended Petition and Complaint.

29. Denies the allegations contained in ¶ 29 of the Verified Amended Petition and Complaint.

30. As to ¶ 30 of the Verified Amended Petition and Complaint, Defendant admits that the manual does not use the words “heinous or destructive,” but denies the remaining allegations and respectfully refers the Court to the referenced exhibit as the best evidence of its content.

31. As to ¶ 31 of the Verified Amended Petition and Complaint, respectfully refers the Court to the proposed regulations as the best evidence of its content. *See* <https://doocs.ny.gov/system/files/documents/2023/05/halt-tor-3.31.23.pdf>.

32. As to ¶ 32 of the Verified Amended Petition and Complaint, respectfully refers the Court to DOCCS’ response to public comments as the best evidence of its content. *See* <https://dos.ny.gov/system/files/documents/2023/01/011123.pdf> at pp. 20-21.

33. As to ¶ 33 of the Verified Amended Petition and Complaint, Defendant admits that DOCCS has not developed or disseminated a list of specific criteria.

34. Denies the allegations contained in ¶ 34 of the Verified Amended Petition and Complaint.

35. Denies the allegations contained in ¶ 35 of the Verified Amended Petition and Complaint.

36. Denies the allegations contained in ¶ 36 of the Verified Amended Petition and Complaint.

37. Denies knowledge or information sufficient to form a belief as to ¶ 37 of the Verified Amended Petition and Complaint.

38. Admits the allegations contained in ¶ 38 of the Verified Amended Petition and Complaint, as of June 15, 2023.

39. Admits that Fuquan Fields was incarcerated at Fishkill Correctional Facility on January 27, 2023, but denies knowledge or information sufficient to form a belief as to the remaining allegations contained in ¶ 39 of the Verified Amended Petition and Complaint.

40. Denies knowledge or information sufficient to form a belief as to the allegations contained in ¶ 40 of the Verified Amended Petition and Complaint.

41. Denies knowledge or information sufficient to form a belief as to the allegations contained in ¶ 41 of the Verified Amended Petition and Complaint.

42. As to ¶ 42 of the Verified Amended Petition and Complaint, admits that Fuquan Fields received a misbehavior report and respectfully refers the Court to the referenced exhibit as the best evidence of its content.

43. As to ¶ 43 of the Verified Amended Petition and Complaint, admits that Fuquan Fields received a misbehavior report and respectfully refers the Court to the referenced exhibit as the best evidence of its content.

44. As to ¶ 44 of the Verified Amended Petition and Complaint, respectfully refers the Court to the referenced exhibit as the best evidence of its content.

45. As to ¶ 45 of the Verified Amended Petition and Complaint, respectfully refers the Court to the referenced exhibit as the best evidence of its content.

46. As to ¶ 46 of the Verified Amended Petition and Complaint, respectfully refers the Court to the referenced exhibit as the best evidence of its content.

47. Denies the allegations contained in ¶ 47 of the Verified Amended Petition and Complaint and respectfully refers the Court to the referenced document as the best evidence of its content.

48. Denies the allegations contained in ¶ 48 of the Verified Amended Petition and Complaint and respectfully refers the Court to the referenced document as the best evidence of its content.

49. Denies knowledge or information sufficient to form a belief as to ¶ 49 of the Verified Amended Petition and Complaint and respectfully refers the Court to the referenced documents as the best evidence of their content.

50. As to ¶ 50 of the Verified Amended Petition and Complaint, respectfully refers the Court to the referenced exhibit as the best evidence of its content.

51. Denies the allegations contained in ¶ 51 of the Verified Amended Petition and Complaint.

52. Admits the allegations contained in ¶ 52 of the Verified Amended Petition and Complaint as of June 15, 2023.

53. Admits the allegations contained in ¶ 53 of the Verified Amended Petition and Complaint.

54. Denies the allegations contained in ¶ 54 of the Verified Amended Petition and Complaint, and affirmatively states that at a hearing at which he had notice and an opportunity to be heard, Petitioner was found guilty of throwing a brown feces-smelling liquid, hitting two officers.

55. Admits the allegations contained in ¶ 55 of the Verified Amended Petition and Complaint, and respectfully refers the Court to the referenced exhibit as the best evidence of its content.

56. Denies the allegations contained in ¶ 56 of the Verified Amended Petition and Complaint.

57. Admits the allegations contained in ¶ 57 of the Verified Amended Petition and Complaint, and respectfully refers the Court to the referenced exhibit as the best evidence of its content.

58. Admits the allegations contained in ¶ 58 of the Verified Amended Petition and Complaint, and respectfully refers the Court to the referenced exhibit as the best evidence of its content.

59. Admits the allegations contained in ¶ 59 of the Verified Amended Petition and Complaint, and respectfully refers the Court to the referenced exhibit as the best evidence of its content.

60. Denies the allegations contained in ¶ 60 of the Verified Amended Petition and Complaint and respectfully refers the Court to the referenced document as the best evidence of its content.

61. Denies the allegations contained in ¶ 61 of the Verified Amended Petition and Complaint and respectfully refers the Court to the referenced document as the best evidence of its content.

62. Denies knowledge or information sufficient to form a belief as to the allegations contained in ¶ 62 of the Verified Amended Petition and Complaint and respectfully refers the Court to the referenced documents as the best evidence of its content.

63. As to ¶ 63 of the Verified Amended Petition and Complaint, respectfully refers the Court to the referenced exhibit as the best evidence of its content.

64. As to ¶ 64 of the Verified Amended Petition and Complaint, admits that Petitioner Garcia began serving his sentence on March 19, 2023, and has been placed in an RMHU.

65. Admits the allegations in ¶ 65 of the Verified Amended Petition and Complaint, except affirmatively asserts that Petitioner Barner has been incarcerated on his current bid since 2018.

66. Admits the allegations contained in ¶ 66 of the Verified Amended and Complaint.

67. As to ¶ 67 of the Verified Amended Petition and Complaint, respectfully refers the Court to Exhibit 9 of the Amended Petition and Complaint for the best evidence of its content.

68. As to ¶ 68 of the Verified Amended Petition and Complaint, respectfully refers the Court to Exhibit 10 of the Amended Petition and Complaint for the best evidence of its content.

69. As to ¶ 69 of the Verified Amended Petition and Complaint, respectfully refers the Court to Exhibit 10 of the Amended Petition and Complaint for the best evidence of its content.

70. As to ¶ 70 of the Verified Amended Petition and Complaint, respectfully refers the Court to the document cited, the hearing officer's determination, for the best evidence of its content.

71. Denies the allegations contained in ¶ 71 of the Verified Amended Petition and Complaint, and respectfully refers the Court the document cited, the hearing officer's determination, for the best evidence of its content.

72. Denies knowledge or information sufficient to form a belief as to ¶ 72 of the Verified Amended Petition and Complaint and respectfully refers the Court to referenced document for the best evidence.

73. As to ¶ 73 of the Verified Amended Petition and Complaint, respectfully refers the Court to Exhibit 11 of the Amended Petition and Complaint for the best evidence of its content.

74. Admits the allegations contained in ¶ 74 of the Verified Amended Petition and Complaint.

75. Denies the allegations in ¶ 75 of the Verified Amended Petition and Complaint.

76. Denies the allegations in ¶ 76 of the Verified Amended Petition and Complaint.

77. Denies the allegations in ¶ 77 of the Verified Amended Petition and Complaint.

78. Denies the allegations in ¶ 78 of the Verified Amended Petition.

79. Denies the allegations in ¶ 79 of the Verified Amended Petition and Complaint.

80. Denies the allegations contained in ¶ 80 of the Verified Amended Petition and Complaint.

81. Denies the allegations contained in ¶ 81 of the Verified Amended Petition and Complaint.

82. Denies the allegations contained in ¶ 82 of the Verified Amended Petition and Complaint.

83. Denies the allegations contained in ¶ 83 of the Verified Amended Petition and Complaint.

84. As to ¶ 84 of the Verified Amended Petition and Complaint, it is admitted that the Court has jurisdiction over this matter pursuant to C.P.L.R. 7801; but deny the remainder of that paragraph.

85. As to ¶ 85 of the Verified Amended Petition and Complaint, it is admitted that venue is proper in Albany County to address this Article 78 matter brought pursuant to C.P.L.R. 7804(b); but deny the remainder of that paragraph.

86. Denies that Plaintiffs-Petitioners are entitled to the relief sought in the WHEREFORE clause.

87. Denies each and every allegation of the Verified Amended Petition and Complaint not specifically responded to above.

AFFIRMATIVE DEFENSES

88. Petitioners fail to state a claim that Respondent-Defendant failed to perform a duty imposed by law.

89. The class action allegations are improper as a matter of law.

90. The declaratory judgment action must be dismissed as a matter of law.

91. All actions taken by Respondent-Defendant are consistent with his lawful duties.

92. Some or all of Petitioners' claims are moot.

93. The Verified Amended Petition and Complaint fails to state a cause of action against Respondent-Defendant.

94. The Verified Amended Petition and Complaint should be dismissed for all of the reasons set forth in the Respondent-Defendant's Memorandum of Law submitted in opposition to the Verified Amended Petition and Complaint.

95. As further explained in the attached Affidavits of Anthony Rodriguez and Dr. Afsar Ali Khan, M.D., the Respondent-Defendant has not violated the HALT Act.

ADMINISTRATIVE RECORD

96. Included with these papers are the Affidavits of Anthony Rodriguez and Afsar Ali Khan, M.D., which address issues raised in the Verified Amended Petition and Complaint, along with the following Exhibits:

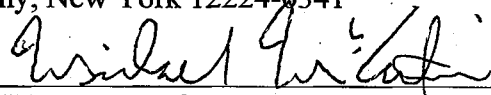
A. The Tier III Disciplinary Record for Petitioner Fields;

- B. The Tier III Disciplinary Record for Petitioner Garcia;
 - C. The Tier III Disciplinary Record for Petitioner Barner.
97. These documents constitute the entire administrative record of this matter.

WHEREFORE, Respondent-Defendant respectfully requests that the relief requested in the Verified Amended Petition and Complaint be denied, that the Verified Amended Petition and Complaint and this proceeding be dismissed, and that Respondent-Defendant be awarded costs and disbursements or, in the event that the Court grants the Verified Amended Petition and Complaint in any way, that the Court remand the matter for a review of the technical matters complained of by Petitioner, so that they may be remedied, together with such other relief as may be right and just.

Dated: Albany, New York
June 23, 2023

LETITIA JAMES
Attorney General of the State of New York
Attorney for Respondent-Defendant
The Capitol
Albany, New York 12224-0341

By: 
MICHAEL G. McCARTIN
Assistant Attorney General | Special Counsel
Telephone: (518) 776-2620

To: All counsel of record via e-filing

Verification

MARK G. RICHTER, being a duly licensed attorney in the State of New York and a Deputy Counsel for DOCCS, affirms the following under penalties of perjury pursuant to CPLR 2106:

I have been assigned to assist in defending the within proceeding and I am acquainted therewith, and I have personally examined the foregoing Verified Answer and accompanying papers provided herein.

I have read the foregoing Verified Answer. The same is true to my knowledge, except as to those matters alleged on information and belief, and as to those matters, I believe them to be true.

This verification is made by me, pursuant to C.P.L.R. § 3020(d)(2), because Respondent-Defendant is an officer of an agency of the State of New York, and I am acquainted with the facts of this proceeding.

Dated: Albany, New York
June 23, 2023



MARK G. RICHTER
Deputy Counsel