

To be argued by
Jennifer Hose
(10 minutes)

Appellate Case No. 2024-02827

SUPREME COURT OF THE STATE OF NEW YORK

APPELLATE DIVISION – FIRST DEPARTMENT

THE PEOPLE OF THE STATE OF NEW YORK,

– against –

LATIQUA GIBBS,

Defendant-Respondent,

OFFICE OF MENTAL HEALTH,

Non-Party Respondent-Appellant

(New York County Ind. No. 01411/2020, 02118/2021)

BRIEF FOR DEFENDANT-RESPONDENT

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SUPREME COURT OF THE STATE OF NEW YORK
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The People of the State of New York,

– against –

Latiqua Gibbs,

Defendant-Respondent,

New York State Office of Mental Health,

Nonparty Respondent-Appellant.

BRIEF FOR RESPONDENT

INTRODUCTION

The Supreme Court properly found the New York State Office of Mental Health (OMH) in civil contempt under Judiciary Law § 753(A) for its failure to comply with an unequivocal court order mandating the transfer of Ms. Latiqua Gibbs to OMH custody for competency restoration. Despite receiving a valid commitment order on August 10, 2023, OMH delayed Ms. Gibbs’ transfer for over five months, leaving her incarcerated at Rikers Island without the court-ordered mental health treatment necessary for her restoration to competency. This inaction not only violated Ms. Gibbs’ legal rights but also disregarded the court’s clear directive that OMH accept custody “forthwith.” The Supreme Court correctly determined that OMH’s disobedience of the court order warranted a finding of civil contempt, and its decision

to hold the agency in contempt was a necessary measure to enforce compliance with the law and compensate Ms. Gibbs for the injury she suffered.

OMH's defense—that systemic challenges and resource constraints rendered compliance impossible—was properly rejected by the Supreme Court. The record demonstrates that OMH was aware of the increasing demand for forensic psychiatric beds for nearly a decade and failed to take adequate steps to address the issue. The court's reliance on precedent, including *Ayers v. Coughlin* and *McCain v. Dinkins*, underscores the principle that administrative difficulties do not excuse noncompliance with judicial mandates. As the Supreme Court found, OMH's longstanding failure to adjust to rising needs, despite its statutory obligations to plan for forensic mental health services, does not absolve it of responsibility in this case.

This Court must affirm the Supreme Court's decision, as OMH has not demonstrated that the Supreme Court abused its discretion in holding it in civil contempt. The Supreme Court properly weighed the evidence, considered OMH's arguments, and issued a decision in line with the question before the court. Given the significant prejudice suffered by Ms. Gibbs as a result of OMH's noncompliance, the contempt finding and accompanying sanctions were both warranted and necessary to compensate Ms. Gibbs for the injury she suffered.

QUESTION PRESENTED

Whether the Supreme Court abused its discretion by holding the Office of Mental Health in civil contempt after it failed to take custody of Ms. Gibbs for over five months after an order of commitment had been issued pursuant to CPL 730?

STATEMENT OF THE CASE

A. STATUTORY BACKGROUND

Article 730 of the Criminal Procedure Law sets forth a comprehensive procedure to determine whether defendants are unfit to be tried, by reason of mental disease or defect. The statute also sets forth procedures intended to assure treatment for unfit defendants that will restore them to fitness if that is possible and will set them on a path to long-term treatment if that is necessary. Dr. Ann Marie T. Sullivan, Commissioner, New York State Office of Mental Health, and Li-Wen Lee, Associate Commissioner, New York State Division of Forensic Services, play key roles in the statutory process.

Section 730.30(1) of the statute provides that when a defendant has been arraigned upon an accusatory instrument, the court wherein the criminal action is pending must issue an “order of examination” when it is of the opinion that the defendant may be an “incapacitated person.” Section 730.50(1) of the statute specifically relates to defendants who have been examined, and who have been indicted, and whose cases are pending in a superior court. When the court finds after a hearing that a defendant

is an incapacitated person, or alternatively when two examiners have found the defendant unfit and the parties consent to a finding of unfitness, and the defendant has been indicted for a felony, the court “must issue an order of commitment committing the defendant to the custody of the [state] commissioner [of mental health] for care and treatment in an appropriate institution for a period not to exceed one year from the date of such order.” CPL § 730.50(1).

Pursuant to Section 730.60(1), when the court has issued an order of commitment, “it must forward such order and a copy of the examination reports and the accusatory instrument to the commissioner.” Upon receipt thereof, the commissioner “must designate an appropriate institution operated by the department of mental hygiene in which the defendant is to be placed...” The “sheriff,” *i.e.*, the Department of Correction (DOC) within New York City, “must hold the defendant in custody pending such designation by the commissioner,” and when notified of the commissioner’s designation, must deliver the defendant to the designated institution.

Upon information and belief, DOC will not deliver the defendant until OMH notifies DOC that the designated institutions have bed space to accept the defendant in contradiction to the lawful court order, which specifies that OMH must both designate and accept custody of the defendant forthwith.

Once the defendant has been transferred to the commissioner’s custody, the criminal action is suspended until the superintendent of the mental institution in

which the defendant is confined “determines that [s]he is no longer an incapacitated person.” § 730.60(2).

B. NEW YORK’S MENTAL HEALTH SYSTEM

The State, together with local government, is responsible for “comprehensively planned care, treatment, and rehabilitation” of people with diagnoses of mental illness. N.Y. Mental Hyg. Law § 7.01. New York State’s policy is to “develop a comprehensive, integrated system of treatment and rehabilitative services” for people with diagnoses of mental illness throughout the state. N.Y. Mental Hyg. Law § 7.01. This system “should include, whenever possible, the provision of necessary treatment services to people in their home communities; it should assure the adequacy and appropriateness of residential arrangements for people in need of service; and it should rely upon improved programs of institutional care only when necessary and appropriate.” *Id.*

The Office of Mental Health was established to implement these policy goals. *Id.* Further, state law explicitly charges OMH, as the state mental health authority, “with the responsibility for assuring the development of comprehensive plans, programs, and services in the areas of research, prevention, and care, treatment, rehabilitation, education, and training of [people with mental health diagnoses].” N.Y. Mental Hyg. Law § 7.07(a). At the same time, OMH must assure “that the personal

and civil rights of persons receiving care, treatment and rehabilitation are adequately protected.” N.Y. Mental Hyg. Law § 7.07(c).

Among the statutory responsibilities of the Commissioner of OMH are the responsibility to administer forensic services and accept custody of individuals who are committed under a provision of the criminal procedure law. N.Y. Mental Hyg. Law § 7.09(c).

State law also sets forth OMH’s planning responsibility. N.Y. Mental Hyg. Law § 5.07. OMH is required to develop a five-year statewide comprehensive plan, which must, among other things, “provide analysis of current and anticipated utilization of state and local, and public and private facilities, programs, services, and/or supports.” *Id.* at (b)(1)(e). The plan must also address “the anticipated future of the forensic psychiatric program . . . including a programmatic and fiscal review of clinical care needs for persons committed to such programs, identification of service gaps for this population, projected range of anticipated census over the next five years, and any recommendations for new service configurations.” N.Y. Mental Hyg. Law § 5.07(b)(2)(c).

Although OMH’s statewide plan reports high-level data on hospital capacity and 730 hospital admissions and lengths of stay, *see* Office of Mental Health, Forensic Mental Health Services, October 2024, at pp. 1, 3 *available at*

<https://my.visme.co/view/8r6gk8ne-forensic-mental-health-services-october->

[2024#s10](#) (last accessed Jan. 22, 2025), it is silent on a programmatic and fiscal review of clinical needs of individuals subject to CPL 730 orders, silent as to service gaps impacting such individuals—notably the service gaps contributing to excessive delays in competency restoration services, silent as to a projected census, and silent as to recommended service configurations to address these gaps.

C. FACTUAL BACKGROUND

Ms. Gibbs was indicted on a felony charge of assault in the second degree, and related charges, under New York County Ind. No. 01411-2020 that related to an incident from August 23, 2020. Ms. Gibbs was also indicted on a felony charge of assault in the second degree, and related charges, under New York County Ind. 02118-2021 that related to an incident from September 8, 2021.¹

On June 8, 2023, a competency exam pursuant to C.P.L. § 730 was ordered on all her pending matters. This exam was completed on June 20, 2023, where defense counsel Sean Parmenter was present. After this exam, two psychiatric examiners determined that she was unfit to proceed. On consent, the Supreme Court, Part 51 (Newbauer, J.) issued an order of commitment on August 10, 2023, committing her to the commissioner’s custody. (R at 36).

¹ Ms. Gibbs also had a pending misdemeanor docket tracking these indictments under SCR-20922-2021 in New York County Supreme Court Part 51. A final order of observation was ordered, and the accusatory instruments dismissed on August 10, 2023. (R at 38).

Based on information and belief, the Supreme Court clerk promptly emailed the Order of Commitment to staff at OMH. The defendant was then designated to Mid-Hudson Forensic Psychiatric Center on August 11, 2023. (R at 40). Upon information and belief, OMH instructed DOC not to send the defendant to a facility. (R at 43; Email from Captain Anthony Monastero, New York City Department of Correction, (“We did receive a designation notification on 8/11/23, that she [be] designated to Mid-Hudson FPC. We are awaiting further instructions from Mid-Hudson regarding when they will accept her into custody based on the available bedspace in their facility.”)). On January 11, 2024, defense counsel reached out to staff at OMH including Mental Health Program Specialist Cassandra Dooley to inquire into when a bed would be available for Ms. Gibbs as it had been over five months since the order had been issued. Ms. Dooley indicated that there were two females ahead of Ms. Gibbs and then she should be admitted after that but gave no time frame. (R at 45).

On February 1, 2024, Ms. Gibbs, through counsel, moved for an order holding OMH in both civil and criminal contempt of court for willfully disobeying the lawful order of commitment by failing to take custody of her for care and treatment for close to 6 months after the order was issued. (R at 21-23). Ms. Gibbs was transferred into the custody of OMH on February 6, 2024.

A hearing was held in front of the Honorable April Newbauer on February 16, 2024 in Part 51 of New York County Supreme Court. At this appearance, the Court questioned why OMH had not responded earlier to the problem of significant

waitlists based on the affidavit from BITS director Matthew Schatzel, which seemed to indicate that OMH had been aware of the issue since 2015. (*See* R at 90-91, Transcript, March 29, 2025 (“COURT: Well, that is the sense that I got from your papers. I mean, must be fair and say that when your affidavit of your commissioner, actually, director, BITS, indicates that has been an exponential problem since 2015. With COVID interruptions, we get that part of it, but that the numbers have been growing since 2015.”)). The Supreme Court also questioned why OMH had not responded to the problem by repurposes existing underutilized facilities and asked why OMH is not employing other solutions that could have been pursued based on OMH’s knowledge that the number were growing. (R at 92). Ultimately, a motion schedule was set with each party being given an opportunity to reply and the case was adjourned for written decision.

On March 29, 2024, the Supreme Court issued a decision and order, finding that OMH was in civil contempt, but declined to hold OMH in criminal contempt. (R at 4). The Supreme Court found that OMH had violated a clear and unequivocal court order. (R at 6). The Supreme Court rejected OMH’s argument that the court’s order lacked a specific deadline and that the term “forthwith” was ambiguous, citing *Ayers v. Coughlin*, 72 N.Y.2d 346 (1988), which established that “forthwith” means “without delay, at once, promptly” and does not allow for discretion in compliance. (R at 6-8). The Supreme Court noted that the court’s interpretation in *Ayers* was based on several

prior decisions in which courts had interpreted the term similarly and that the term was defined similarly in many other contexts as well. (R at 7).

The Supreme Court found that Ms. Gibbs' rights were not only prejudiced but violated. (R at 8-11). In finding prejudice, the Supreme Court rejected OMH's argument that Ms. Gibbs could receive psychiatric care while at Rikers Island and stated,

[g]iven the current situation at Rikers, the court would be remiss if it did not acknowledge that Rikers is, at present, one of the worst places for mentally ill individuals such as Gibbs to be for any length of time, let alone a prolonged period. OMH does not counter in its papers or in a separate affidavit that Gibbs did in fact receive mental health treatment of any kind while at Rikers.
(R at 11).

The Supreme Court also rejected OMH arguments that it simply could not have transferred Ms. Gibbs to a psychiatric facility any sooner than it did due to the large increase in the number of defendants ordered to be committed under C.P.L. § 730 finding that OMH failed to demonstrate that it exercised due diligence in an attempt to comply with the court's order. The Supreme Court stated, "OMH was aware of rapidly increasing numbers of individuals requiring placement in forensic psychiatric hospitals-indeed, it kept careful track of the rising numbers-but then failed to respond adequately to an urgent problem that should have commanded its full attention." (R at 12). The Supreme Court cited *McCain v. Dinkins*, 84 N.Y.2d 216 (1994), where the City of New York was held in contempt for failing to provide emergency housing. (R at

13-15). In that case, the court rejected the city's argument that the housing shortage was beyond its control, emphasizing that a lack of resources does not excuse noncompliance with court orders. *Id.* at 15.

Ultimately, the Supreme Court declined to hold OMH in criminal contempt and found that Ms. Gibbs had failed to properly show the degree of willfulness to sustain that finding. (R at 16). The Supreme Court imposed a \$1000 fine acknowledging that penalties for civil contempt should be assessed with an eye toward their "remedial nature and effect." (R at 6, 15). The Supreme Court stated that this fine does not accurately address an issue of extreme concern but could only impose a fine based on Ms. Gibbs' injury as it was the only case before the court. (R at 15-16).

ARGUMENT

This Court Must Affirm The Holding Of The Supreme Court As OMH Has Failed To Show That The Supreme Court Abused Its Discretion In Holding OMH In Civil Contempt For Its Failure To Transfer Ms. Gibbs Into OMH Custody For Over Five Month After An Order Of Commitment Was Issued.

A. The Supreme Court did not abuse its discretion by holding OMH in contempt and properly rejected OMH's defense that it was impossible for the agency to comply with the court's order.

A court's determination finding a party in contempt of an order will not be disturbed absent an abuse of discretion. *See Beesmer v. Amato*, 162 A.D.3d 1260, 1261 (3rd Dept. 2018). To hold a party in civil contempt for disobeying a court order under Judiciary Law § 753(A), the movant must establish three things: 1) a court order

establishing an unequivocal mandate was in effect and was disobeyed 2) the party knew about the order, regardless of whether it was actually served on the party 3) the rights of the party to the litigation were prejudiced. *See McCain v. Dinkins*, 84 N.Y.2d 216 (1994). Civil contempt is meant to “compensate the injured private party or to coerce compliance with the court’s mandate.” *See Matter of Department of Env’tl. Protection of City of N.Y. v. Department of Env’tl. Conservation of State of N.Y.*, 70 N.Y.2d 233, 239 (1987).

The Supreme Court correctly held OMH in contempt and properly rejected OMH’s defense that it was impossible for the agency to comply with the Supreme Court’s order. Here, OMH concedes that it had knowledge of the order of commitment and that the over five-month delay in accepting custody of Ms. Gibbs to Mid-Hudson Psychiatric Center impeded her ability to receive restorative treatment. (OMH brief at 12 fn. 6).

Contempt may be inappropriate if it was impossible for the alleged contemtor to comply with the court’s mandate because of circumstances outside of the alleged contemtor’s control. *See Matter of Agnew v. New York City Dept. of Corr.*, 217 A.D.3d 490, 491 (1st Dep’t 2023). But that is not the case here. Had OMH complied with its statutory responsibility to engage in effective planning and system administration, OMH would have prevented Ms. Gibb’s from languishing in a jail on Rikers Island

for nearly six months after a court issued a commitment order. For this reason, this Court should affirm the civil contempt holding.

OMH inappropriately attributes Ms. Gibbs' prolonged jail confinement without competency restoration services to "factors outside of [OMH's] control." But this oversimplifies the record in this case and OMH's statutory obligations. OMH had an obligation as the state mental health authority to provide care and treatment to Ms. Gibbs. It had knowledge of the upward trend, for over a decade, for competency restoration services and the resulting delays in hospital admissions; it received a commitment order committing Ms. Gibbs to OMH's custody for care and treatment; and it had an obligation to plan to ensure that Ms. Gibbs' needs were addressed and her civil rights not violated; and it failed to meet any of these obligations. The glaring omissions in OMH's planning documents of any proposed solutions to this systemic problem illustrates OMH's failure to plan for Ms. Gibbs' needs.²

OMH's argument that it could not "unilaterally increase the number of secure psychiatric beds available" (OMH Brief at 13) oversimplifies the Supreme Court's analysis. As the Supreme Court noted, there was no evidence that OMH pursued

² OMH's planning document, which is posted on OMH's government website, is properly the subject of judicial notice. *See Kingsbrook Jewish Medical Ctr. v. Allstate Ins. Co.*, 61 A.D.3d 13, 20 (2d Dep't 2009) (collecting cases). None of the initiatives discussed in OMH's most recent statewide comprehensive plan aim at reducing the CPL 730 wait times. *See* Office of Mental Health, Forensic Mental Health Services, October 2024, at p. 9.

adequate solutions to this long-standing serious problem. R at 12; *People v. L.G.*, 208 N.Y.S.3d 469, 476 (Sup. Ct. 2024) (noting OMH was aware of the “rapidly increasing number of individuals requiring placement in forensic psychiatric hospitals . . . but then failed to respond adequately to an urgent problem that should have commanded its full attention”); (R at 12; *id.* at 478) (“OMH has failed to take appropriate action in response to a years-old problem that continues to have dire consequences for the individuals in its care.”). OMH is mandated to pursue solutions, as indicated by state law provisions requiring OMH to identify service gaps and propose new service configurations in its planning documents, but has failed to.

Any number of service configurations—not involving new construction—could have been implemented to achieve timely competency restoration services. As OMH acknowledges in its briefing, OMH exercised its authority to dedicate beds at its non-secure hospital, Manhattan Psychiatric Center, for some individuals subject to CPL 730 orders for purposes of reducing the long waitlist for a hospital bed. (OMH Brief at 7; R at 69 (Schatzel Affidavit, para 3)). These efforts alone were too little and too late, and in any case not relevant for Ms. Gibbs.³ OMH could have implemented other targeted solutions, for example, by developing other “off-ramps” to free up beds in OMH secure psychiatric hospitals (R at 100) and/or in other civil psychiatric

³ The beds dedicated at Manhattan Psychiatric Center serve only men, not women

hospitals. Even if Ms. Gibbs herself was not a candidate for outpatient restoration, a more effective system of care, with outpatient or residential program “off ramps” for those who are appropriate for alternatives to inpatient hospitalization, would reduce the pressure on the secure hospitals. Such configurations, if well-planned, could have facilitated the timely transfer of Ms. Gibbs’ and many others who are committed to OMH’s custody for care and treatment.

OMH’s brief fails to articulate any basis for why it could not have taken remedial efforts before a crisis of this magnitude arose given that in its own briefings it acknowledges that it was aware of the significant issue based on its own meticulous record keeping. (R at 69). Rather than engaging in proactive solutions, OMH’s briefings highlights that it has been operating on a significant waitlist for many years and has accepted that individuals must be subjected to this prolonged wait, in contradiction of the lawful court orders, before they receive the court ordered restorative treatment to which they are entitled. (R at 70).

The Supreme Court properly relied on *Matters of Ayers v. Coughlin*, 72 N.Y.2d 346 (1988) and *McCain v. Dinkins*, 192 A.D.2d. 221 (1st Dept 1993), *aff’d as modified*, 84 N.Y.2d 216 (1994) as the situations in those cases are analogous to the situation here. In *Ayers*, the corrections commissioner argued that state facilities were dangerously overcrowded, and that courts must assess the degree of overcrowding at different state facilities before it could order DOC to take custody of inmates. 72 N.Y.3d 346, 354 (1988). The court rejected this practical argument explaining that the difficult

realities presented by the expanding prison population could have no bearing on its decision regarding the responsibilities DOCCS had for individuals in its custody. The court stated, “[s]uch a plea for change in the law is appropriately directed to the legislative and executive branches of government, not to the courts.” *Id.* OMH attempts to distinguish *Ayers* by stating that the lack of available bed space is not caused by any OMH regulation or policy. However, OMH acknowledges that it has been aware of this steady incline in need since 2015 and that it is a reality that individuals will be subjected to lengthy waits since the facilities consistently operate at capacity. (R at 69-70). Additionally, OMH is the sole agency in the state that is responsible for providing competency restoration treatment. Therefore, the issue which caused Ms. Gibbs to wait close to six months before she was transferred to OMH custody is directly caused by OMH’s own internal policies, regulations, and failure to adjust to a problem that the Supreme Court stated “should have commanded its full attention.” (R at 12.) This is again evidenced by the fact that OMH recently exercised its authority to change policy and dedicate beds at its non-secure hospital, Manhattan Psychiatric Center. This alone shows that OMH is not powerless in how it allocates its resources to address problems.

Similarly, in *McCain*, the court held the City of New York and four city officials associated with New York City Human Resources Administration (HRA) and the Department of Homeless Services (DHS) in contempt for failing to provide emergency housing for unhoused people in compliance with a New York State

directive. *McCain v. Dinkins*, 192 A.D.2s. 221 (1st Dept 1993). The directive ordered the city to provide emergency housing immediately to eligible unhoused individuals and prohibited the practice of having these individuals remain in welfare offices while awaiting placement. *Id.* at 221-23. The court found that “the [c]ity and the four cited officials repeatedly failed to measure up to the essential compliance goals of these court orders.” The defendants argued that they attempted in good faith to comply with the directive, but that it was simply impossible based on a lack of housing. *Id.* at 222-230. The court characterized the defendants’ arguments in the following way:

They plead for the Court's understanding of the seemingly insurmountable shortage of housing to meet the problem, the crisis and the emergencies. They note that the supply and the uncontrollable influx of families and the unmatched demand are the dominating societal forces driving the homeless problem and evading plenary solution. They argue that they acted in good faith and to the best of a municipal ability to fulfill the court orders. In support of this claim, appellants recite increased demand and a series of failed strategies. In effect, they throw up their hands and say they did all they humanly or officially could do.

Id. at 223.

While the court acknowledged that the problem of housing the homeless is “daunting,” it also explained that neither the “feasibility of obedience” nor the “intractable or herculean municipal efforts of a financial or political variety” were at issue. *Id.* at 226. Instead, the court had to consider “detailed and affirmed findings of a serious, significant and persisting failure to comply with judicial decrees.” *Id.* at 226-27. Ultimately, the court upheld the lower court’s determination that the defendants

were in contempt, and also upheld the fines against the defendants. The court concluded stating: “[w]hile political solutions for complex societal problems like homelessness test the foundations of government, the adjudication of contempt is all that this record presents in the judicial process and sphere.” *Id.* at 230.

Here, like in *McCain*, the question before the Supreme Court was whether OMH should be held in contempt for disobeying a court order that established an unequivocal mandate, that the party knew about the order, and the rights of the party to the litigation were prejudiced. The fact that the order from the court did not come out of a consent decree, like was the case in *McCain*, has no bearing on the ultimate analysis and that OMH had a duty to accept custody of Ms. Gibbs “forthwith” based on the lawful order of commitment. Here, the Supreme Court properly found,

OMH can no more blame rising numbers of restoration orders or COVID, than the defendants in *Ayers* and *McCain* could escape responsibility by pointing to an expanding prison population or a lack of emergency housing. The court need not disagree with OMH about the complex causes of the current bed shortage nor the challenges present in finding a workable solution; the question before the court is simply whether Gibbs proved the elements of civil contempt and the court finds that she did. OMH argues, incorrectly, that it should not be held in contempt because its conduct was not “willful.” OMH Opposition, p. 4. Willfulness is not a required element of civil contempt. *See Emigrant Bus. Credit Corp. v. Hanratty*, 2024 N.Y. Misc. LEXIS 429 (2024) (holding that “[i]ntent or willfulness is not required to hold a party in contempt for disobeying a court order or subpoena”) (quoting *Yalkowsky v. Yalkowsky*, 93 A.D.2d 834, 835 (2d Dept 1983)).

The Supreme Court’s analysis was properly focused on the question before the court and found that the elements of contempt were clearly established based on the record.

Additionally, the standard of review for this appeal is abuse of discretion. Here, the Supreme Court engaged in a thoughtful analysis as to why it was making these findings based on the record before the court and exercised its discretion in not holding OMH in criminal contempt. There is no question that the Supreme Court did not abuse its discretion in this case.

B. The Order of Commitment Contained a Clear, Unequivocal Mandate to Transfer Ms. Gibbs Forthwith

OMH also alleges that the Supreme Court abused its discretion because the order of commitment did not convey a clear and unequivocal mandate. (OMH brief at 21). This argument is without merit as under any reasonable interpretation of the word “forthwith” OMH failed to comply with the Supreme Court’s order and the lack of an explicit enumerated deadline did not render this order equivocal. As the Supreme Court stated in its decision, the *Ayers* court’s interpretation of “forthwith” was based on several prior decisions in which courts had interpreted the term similarly. *See Crespo v. Hall*, 56 N.Y.2d 856 (1982) (stating that “‘forthwith’ here means without delay”); *see also County of Nassau v. Cuomo*, 121 A.D.2d 428 (1986) (“‘forthwith’” means without delay, and cannot be read to permit the transfer of prisoners to the appellants respondents only when they deem it to be prudent or appropriate”). There is no question that delaying Ms. Gibbs care and treatment for

over six months based on OMH's failure to properly allocate resources and adjust to a foreseeable trend contravenes the meaning of the word forthwith. As the Supreme Court properly stated, "[t]here is simply no credible argument that this transfer can be said to have occurred "forthwith." (R at 8).

Additionally, OMH argues that before holding OMH in contempt the appropriate party should have sought clarification on this order. This argument is without merit as Ms. Gibbs did seek an order mandating immediate transfer as well as for contempt only after being subjected to a five month delay and after counsel reached out to OMH and was told there was still no definite timeline for when Ms. Gibbs could expect compliance with the court order. (R at 44).

C. Civil Contempt is the Appropriate Remedy

OMH argues that in any event OMH should not be held in contempt because the order of the court in this case was improperly punitive. This argument ignores that upon a finding of civil contempt, the court can impose a monetary fine upon the party in contempt. *See* New York Judiciary Law § 753(A) ("A court of record has power to punish, by fine and imprisonment, or either, a neglect or violation of duty, or other misconduct, by which a right or remedy of a party to a civil action or special proceeding, pending in the court may be defeated, impaired, impeded, or prejudiced"); *see also, e.g. McCain v. Dinkins*, 84 N.Y.2d 216 (1994)("for civil contempt purposes, governmental entities and their agents should, like any other party, be held to

compliance and sanctions for indifference, dereliction, or defiance of judicial decrees”).

The fine imposed was based on the prejudice and injury that Ms. Gibbs suffered as her rights were violated when she was subjected to incarceration for over five months where her criminal proceedings were ceased, she had no ability to pursue any due process or seek bail or release, and she was not receiving the restorative care that she was entitled to because of OMH’s defiance of the order of commitment. As the Supreme Court stated, imposing a fine of \$1,000 is “akin to a slap on the wrist” in comparison to the extreme concern of this issue, but the Court based its decision on the fact that OMH has failed to take appropriate action in Ms. Gibbs’ case which lead to dire consequences for Ms. Gibbs. The court also stated that the fine was based only on the injury to Ms. Gibbs as that was the only case before the court. (R at 16; *see also*, R at 13 (noting that “[i]n *McCain*, it was appropriate for the court to impose a more significant financial penalty because the relief was granted in response to entire class of harmed individuals”)).

As courts have recognized, each additional day of unjustified incarceration is an injury. The Supreme Court was aware that Ms. Gibbs had been subjected to 180 days of incarceration between when the order of commitment was issued and when OMH eventually transferred Ms. Gibbs to an OMH facility. As the Second Circuit observed almost 40 years ago and re-affirmed in *Kerman*, “New York cases uphold awards of up to \$10,000 for eve[n] short periods of confinement without proof of actual damages.”

see Raysor v. Port Auth. of N.Y. and N.J., 768 F.2d 34, 38-39 (2d Cir. 1985) (citations omitted); *Kerman v. City of N.Y.*, 374 F.3d 93, 124-125 (2d Cir. 2004). In a highly typical example from 2008, Magistrate Judge Pitman conducted (and Judge Cote adopted in full) a broad survey of loss-of-liberty damages awarded in cases involving “false imprisonment and involuntary civil commitment in hospitals” and concluded that \$10,000 per day for wrongful confinement in a hospital – or \$250,000 for 25 days of confinement – “was an appropriate measure of damages for ... loss of liberty. *Robinson v. Holder*, No. 07-CV-5992 (DLC), 2008 WL 2875291, *2-3 (S.D.N.Y. July 22, 2008).

Here, Ms. Gibbs was subjected to an additional five months of incarceration on Rikers Island when she should have been getting restorative care at an OMH facility. As the Supreme Court stated, DOC’s Rikers Island “is in a state of crisis and has been for years,” and that “DOC’s inability to provide adequate care to individuals with mental health needs housed at Rikers Island is well documented” and “[r]eports on and evaluations of Rikers make it clear that inmates suffering from acute mental illness, such as Ms. Gibbs, are at even greater risk there than others.”⁴ (R at 8-11). The

⁴ On October 8, 2024, the New York City Board of Corrections conducted a public meeting that highlighted the egregious practice known as “Deadlocking,” essentially another word for solitary confinement but reserved for those in “mental observation” (MO) or “Program to Accelerate Clinical Effectiveness” (PACE) units. *See* New York City Board of Corrections Public Hearing on October 8, 2024, available at <https://www.nyc.gov/site/boc/meetings/20241008.page> (last accessed March 19, 2025) at 23:30. Testimony recounted the practice, where “patients who are mentally ill are

Supreme Court also noted that on December 22, 2023, approximately four months after Gibbs was found unfit, the independent monitor tasked with evaluating the conditions at Rikers pursuant to a consent decree reached in *Nunez v. N.Y.C. Dept. of Correction*, 1:11-cv-05845 (S.D.N.Y. Oct. 21, 2015) (Dkt. No. 249), published a status report finding that the conditions at the jails remained “grave.” (R at 10).

Due to her extended incarceration based on the actions of OMH, Ms. Gibbs suffered unimaginable trauma while waiting for an opening at an OMH facility and a fine of \$1000 was warranted to compensate for this injury.⁵

CONCLUSION

For the Reasons Stated Above, the Supreme Court decision should be affirmed as the Appellant has failed to show that the Supreme Court’s decision was an abuse of discretion.

Respectfully Submitted,

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locked in for weeks without access to medication.” Individuals subject to deadlocking, primarily in the MO and PACE units, “began to decompensate rapidly.” *Id* at 23:57. While we are unaware of whether Ms. Gibbs was deadlocked, others similarly situated were confirmed to be deadlocked while waiting for openings at OMH facilities.

⁵ To the extent that this Court finds that the lower court’s record as to the amount fine imposed is unclear, the court should “remit the matter for a redetermination of the amount of the fine.” *Frankel v. Frankel*, 111 A.D.3d 447, 448 (3rd Dept 1985)(finding that the “plaintiff’s loss, if any, by reason of the . . . misconduct is conjectural . . . speculation” and remitting the matter for “a determination of the amount of the fine”).



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