

At a Civil Term, Part 20, of  
the Supreme Court of the State  
of New York, held in and for  
the County of New York, on the  
25 day of July, 1994.

Present: Hon. Joan B. Lobis, Justice

-----X  
In the Matter of the Application of :  
EDITH CALVIN and DEXTER CAPERS,  
et al., individually and on behalf :  
of all other persons similarly situated, :

Petitioners, :

For an Order pursuant to Article 78 :  
of the Civil Practice Law and Rules, :

- against - :

CATHERINE ABATE, Commissioner of the :  
New York City Department of Correction; :  
NORMAN GOODMAN, County Clerk of New :  
York County; GLORIA D'AMICO, County :  
Clerk of Queens County; WILBUR A. :  
LEVIN, County Clerk of Kings County; :  
LEO LEVY, County Clerk of Bronx County; :  
MARIO J. ESPOSITO, County Clerk of :  
Richmond County; THOMAS A. COUGHLIN III, :  
Commissioner of the New York State :  
Department of Correctional Services; :  
and RAUL RUSSI, Chair of the New York :  
State Division of Parole, in Their :  
Official Capacities, :

ORDER ADJUDGING  
RESPONDENT/DEFENDANT  
COUGHLIN IN CONTEMPT  
AND IMPOSING FINES

Index # 44831/91

Respondents. :

-----X  
WHEREAS, on September 21, 1992, this Court entered an Order in  
the above-captioned matter approving a Settlement Agreement which  
had been signed by counsel for Petitioners and for Respondents  
CATHERINE ABATE, Commissioner of the New York City Department of  
Correction, THOMAS A. COUGHLIN III, Commissioner of the New York  
State Department of Correctional Services, and RAUL RUSSI, Chair of  
the New York State Division of Parole; and

WHEREAS, this September, 21, 1992, Order requires, inter alia,

that Commissioner COUGHLIN accept the transfer within 10 business days of all "state ready" prisoners who have been newly sentenced to State prison sentences or finally adjudicated to be in violation of parole, or who are "court return" prisoners being returned to State custody following satisfaction of court orders; and

**WHEREAS**, on April 6, 1994, Petitioners moved for an order adjudging Respondent COUGHLIN in civil contempt, pursuant to Judiciary Law §753, for failing to accept the transfer of all "state ready" prisoners within 10 business days, in violation of the September 21, 1992, Transfer Order, and imposing fines or civil damages upon him, and this Court ordered Respondent COUGHLIN to appear at a hearing on April 21, 1994, to show cause why he should not be adjudged in contempt; and

**WHEREAS**, since that time the Court has received submissions from the parties and heard argument on the issues of whether Respondent COUGHLIN violated the Court's Transfer Order and whether he should be liable for fines or civil damages; and

**WHEREAS**, this Court previously adjudged Respondent COUGHLIN in contempt of its Transfer Order on November 13, 1992, and on May 17, 1993, but did not impose fines or civil damages upon him for those prior violations of the Order; and

**WHEREAS**, the Court finds and determines that Respondent COUGHLIN has once again violated his obligations under the Court's September 21, 1992, Transfer Order to accept transfer of "state ready" prisoners within 10 days, during a period commencing on or about March 31, 1994, and ending on or about April 21, 1994; and

WHEREAS, the Court finds that the rights of members of the Petitioner class to a timely transfer to state prison have been defeated, impaired, impeded and prejudiced, pursuant to Judiciary Law §770, as a result of Respondent COUGHLIN's violation of the Court's Transfer Order, and the imposition of fines is deemed necessary to coerce Respondent COUGHLIN's future compliance with the Court's Order,

IT IS HEREBY ADJUDGED AND ORDERED, that the motion by Petitioners for an Order adjudging Respondent COUGHLIN in contempt of the September 21, 1992, Transfer Order is granted and Respondent COUGHLIN is hereby adjudged in contempt;

AND IT IS FURTHER ORDERED, that Respondent COUGHLIN shall pay civil damages in the amount of \$35.00 to each of the 570 "state ready" prisoners listed in Exhibit A to this Order, each of whom has been identified by the parties as having been delayed in transfer during the period of this contempt;

AND IT IS FURTHER ORDERED, that Commissioner COUGHLIN shall forthwith deposit \$35.00 into the inmate account of each member of the Petitioner class identified in Exhibit A who is still detained in his custody in a New York State prison, and shall forthwith mail a check in the amount of \$35.00 to the last known address of each member of the Petitioner class identified in Exhibit A who has been discharged from his custody;

AND IT IS FURTHER ORDERED, that in the event that Commissioner COUGHLIN is unable to pay the damage award to any member of the Petitioner class identified in Exhibit A, he shall deliver that

Petitioner's payment to counsel for Petitioners, together with the name, NYSID number, DIN number, date of birth, last known address and other available identifying information for that Petitioner;

**AND IT IS FURTHER ORDERED,** that counsel for Petitioners shall deposit all unpaid damages in an escrow account and maintain that account for a reasonable period of time, to be set by the Court in consultation with the parties;

**AND IT IS FURTHER ORDERED,** that counsel for Petitioners shall use their best efforts, in consultation with the New York State Division of Parole, the New York State Department of Correctional Services and the New York City Department of Correction, to locate those members of the Petitioner class whose damage payments have been deposited in the escrow account and issue those payments to them.

ENTER,

  
\_\_\_\_\_  
J.S.C.