

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: CRIMINAL TERM: PART 81

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PEOPLE OF THE STATE OF NEW YORK
EX REL. ANTHONY ELITCHER
on behalf of John Miller, et al.,
and an unknown number of JOHN DOES and JANE DOES,

Petitioners,

- against -

**STIPULATION OF
SETTLEMENT AND
DISCONTINUANCE**

RAYMOND KELLY, Commissioner, New York City
Police Department; or ANYONE HAVING CUSTODY OF
PETITIONERS,

Index No. 402759/04
Index No. 112673/04

Respondents.

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PEOPLE OF THE STATE OF NEW YORK EX. REL.
THE NATIONAL LAWYERS GUILD on behalf of Carol
Dudek, Paul Royal, Connie Steensma, parent of Richard
Prins, et al., and unknown numbers of JOHN and JANE
DOES, Nos. 1-1541,

Petitioners,

- against -

RAYMOND KELLY, Commissioner, New York City
Police Department; MARTIN HORN, Commissioner,
New York City Department of Corrections; and
ANYONE HAVING CUSTODY OF PETITIONERS,

Respondents.

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WHEREAS, petitioners arrested in New York City in connection with protests during the
Republican National convention and held pending arraignment filed two Writs of Habeas Corpus
captioned *People ex. Rel. Elitcher v. Kelly* and *People ex. Rel. the National Lawyer's Guild v.
Kelly* on September 1, 2004 seeking to compel the release from custody of any person held over

24 hours on the ground that they had been detained in excess of a reasonable time necessary for arraignment in violation of New York State Criminal Procedure Law pursuant to *Roundtree v. Brown*, 77 NY2d (1991), and the United States and New York State Constitutions; and

WHEREAS, at approximately 1:00 p.m. on September 2, 2004, the court (Cataldo, J.) ordered that the 120 individuals in custody as listed on pages 1-12 of a chronological list (the “chrono”) be processed, released or in the feeder pen by 1:30 p.m., those 350 individuals listed on pages 12-47 of the chrono be released or in a feeder pen ready for arraignment by 3:00 p.m. and those 90 individuals listed on pages 47-56 of the chrono be released or in a feeder pen ready for arraignment by 5:00 p.m.; and

WHEREAS, at approximately 2:05 p.m., when the City reported that 27 of the 120 persons in the first group had been processed, and the rest “were either in the feeder pen or in the process of being transported to the feeder pens,” the court then directed that any person in the first group not actually in the feeder pen be released; and

WHEREAS, at approximately 2:15 p.m., the court denied petitioners’ request to set a time when everyone not released in accordance with its order be “cut loose” and;

WHEREAS, at approximately 4:00 p.m., when it appeared to the court that persons in the first two groups had not been produced in the feeder pens or released from custody, the court issued the following order: “The People are directed to release persons that have been in custody under the guidelines I have indicated. The 120 are to be released. The 350 are to be released, as well”; and

WHEREAS, at approximately 5:30 p.m. the court found that the respondents were in violation of its orders with respect to the individuals listed on pages 1-~~47~~⁵⁶ of the chrono and, upon petitioners' request, made a finding of contempt; and

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WHEREAS, on September 9, 2004, the court clarified that the September 2, 2004, finding of contempt had been a preliminary one, and in the order to show cause of September 9, 2004 stated that a prima facie case of contempt had been shown on September 2, 2004 for the violation of its lawful Release Orders, and ordered respondents to show at a plenary hearing why such a contempt finding should not be entered; and

WHEREAS, on September 9, 2004, the court vacated its prior preliminary finding of contempt and ordered a full plenary hearing on the issue of whether or not respondents should be held in criminal and civil contempt; and

WHEREAS, in this proceeding petitioners alleged that the City knowingly and intentionally substantially delayed petitioners' arraignments and release and thereafter willfully failed to comply with the order of the court for the purpose of preventing petitioners from exercising their constitutionally guaranteed First Amendment right to protest the policies of President George Bush; and

WHEREAS, in this proceeding respondents denied the petitioners' allegations and asserted affirmative defenses including, but not limited to, impossibility of complying within the time allowed, good faith efforts to comply, and substantial compliance under extraordinary circumstances; and

WHEREAS, on September 21, 2004 respondents successfully moved for a stay of the contempt hearing before the Appellate Division, First Department (Williams, J.); and

WHEREAS, on December 23, 2004, the First Department lifted the stay, denied the respondents' appeal in its entirety as moot and directed that a contempt hearing proceed; and

WHEREAS, a contempt hearing was scheduled to commence on April 18, 2005; and

WHEREAS, the court has indicated its intention to dismiss the criminal contempt proceeding ^{in the interest of justice} if the parties reach an agreement resolving the civil contempt; and

WHEREAS, both sides desire to resolve this proceeding without further litigation, and without ^a effecting the rights of any party in subsequent litigation;

NOW, THEREFORE, it is hereby stipulated and agreed as follows:

1. The court has jurisdiction over the contempt proceeding and the parties thereto.
2. This stipulation will become effective upon both the signature of the parties and the court issuing an order dismissing the contempt proceedings. The effective date of this stipulation for purposes of paragraphs 6, 8 and 16 below will be the date on which respondents are served with a copy of the court's order dismissing the criminal contempt.
3. Neither Petitioners nor Respondents will object to the dismissal of the criminal contempt or appeal from the order dismissing the criminal contempt.
4. Petitioners agree to discontinue the proceeding for civil contempt with prejudice.
5. The City of New York (the "City") shall pay the sum of \$150 to each of the

petitioners listed on exhibits A and B annexed hereto who were in custody beyond the time prescribed by the court in its order of September 2, 2004.

6. The City shall issue a check in the amount of \$2,700.00 in payment to petitioners listed in exhibit A payable to the Legal Aid Society's escrow account for distribution to petitioners listed in exhibit A and a check in the amount of \$13,500 in payment to petitioners listed in exhibit B payable to an escrow account to be designated by Petitioners within 30 days of the effective date of this stipulation for distribution to petitioners listed in exhibit B. These checks shall be issued within 90 days of the effective date of this stipulation. If the payment is not received by petitioners' counsel within ninety (90) days, then petitioners may seek interest and any other remedies provided for by law.

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7. The City agrees that now and in any future litigation acceptance of the monetary payment specified in paragraph 5 is not an election of remedies, is without prejudice, does not constitute a bar, except as required by paragraph 4 above, to any action seeking monetary damages in any other state or federal court alleging the violation of petitioners' rights under the common law, statutory law, and the Constitutions of New York and the United States, and will not be a set-off against any monetary recovery obtained from any such action.

8. The City shall pay petitioners' costs, including reasonable attorneys' fees in the amount of \$215,000.00 with a check payable to an escrow account to be designated by Petitioners within 30 days of the effective date of this stipulation. This check shall be delivered within 90 days of the effective date of this stipulation. If the payment is not received by petitioners' counsel within ninety (90) days, then petitioners may seek interest and any other remedies provided for by law.

9. Petitioners release Commissioners Raymond Kelly and Martin Horn, the City, its agencies, employees, agents, successors, heirs and assigns from any claims of criminal or civil contempt in connection with petitioners' arrest and detention as set forth in the petition, and for any ^{further} claims for costs or fees in connection with this proceeding.

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10. Nothing contained in this stipulation shall be deemed to be an admission that respondents have violated the rights of any person under the Constitution, statutes or rules of the United States, the State of New York or the City of New York.

11. In the event there is a material breach of this agreement, the party alleging such a breach may move on five days notice to the opposing party for specific performance and for enforcement consistent with the terms of this Stipulation before the Honorable John X. Cataldo.

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12. If the court finds a breach has occurred, the breaching party shall be liable for costs, including reasonable attorneys' fees.

provided for,

13. This stipulation shall not be admissible in any other litigation, except ^{as} provided for, and in accordance with, the terms of this stipulation. ~~connection with a motion pursuant to paragraph 11 above, or as evidence of the resolution of this proceeding as per paragraph 4 above.~~

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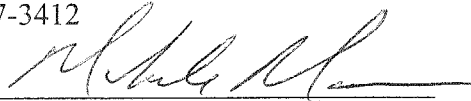
14. This stipulation represents the entire agreement between the parties and may only be modified in writing.

15. All parties have been represented by counsel and agree to the terms of this stipulation after being informed of its legal consequences.

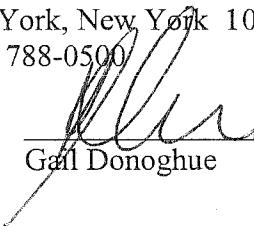
16. All documents provided to petitioners in this proceeding subject to a stipulation and order of confidentiality, and any copies thereof, will be returned to the City within 15 days of the execution of this stipulation.

Dated: New York, New York
April 15, 2005


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By: 
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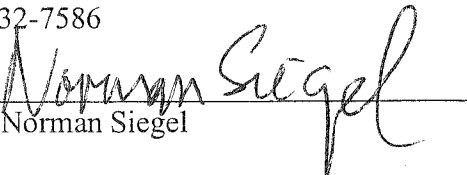
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