New York Supreme Court

Appellate Division – Second Department

THE PEOPLE OF THE STATE OF NEW YORK EX REL.
JORDAN WELLS ON BEHALF OF SUSAI FRANCIS,

Petitioner,

-against-

VINCENT F. DEMARCO, Sheriff of Suffolk County,

Respondent.

App. Div. Docket No. 2017-12806

MEMORANDUM OF LAW IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS

JORDAN WELLS
PAIGE AUSTIN
MOLLY KOVEL
CHRISTOPHER DUNN
NEW YORK CIVIL LIBERTIES UNION FOUNDATION
125 BROAD STREET, 19TH FLOOR
NEW YORK, NY 10004
(212) 607-3300

Counsel for Petitioner

Dated: December 11, 2017
New York, New York

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes, Regulations, and Ordinances

Other

PRELIMINARY STATEMENT

This habeas corpus proceeding seeks the release of Susai Francis, a longtime resident of Long Island in the custody of the Suffolk County Sheriff's Office ("SCSO") pursuant to an immigration arrest its officers had no authority to conduct. The SCSO maintains a policy of arresting individuals following their court-approved release from criminal custody in response to hundreds of "detainer" requests it receives each year from federal immigration officers alleging the individual is subject to removal from the United States. In New York such arrests are unlawful for a reason that the New York Office of the Attorney General described years ago: New York law does not grant any authority to New York officers to conduct civil immigration arrests. Moreover, federal law also does not independently authorize such arrests absent state law authority.

The petitioner seeks the Appellate Division's intervention in the first instance pursuant to Section 7002[b][2] of the CPLR, because this important, recurring legal issue has escaped appellate review, thereby leaving the respondent and other New York law enforcement agencies undeterred from continuing to make unlawful immigration arrests. Petitioner respectfully requests the immediate release of Susai Francis and a declaration that his arrest violates state law.

BACKGROUND

Immigration Detainers and the Respondent's Policy and Practice of Making Arrests Pursuant to Them

An immigration detainer is a form that Immigration and Customs Enforcement (ICE), the branch of the United States Department of Homeland Security (DHS) charged with immigration enforcement, sends to a law enforcement agency to request that the agency arrest and detain an individual on the basis of a civil immigration violation "beyond the time when he/she would otherwise have been released from [the agency's] custody" (*see* Verified Petition ("Pet.") ¶ 10 , Exhibit B). Along with the detainer, ICE frequently also sends the receiving agency an internal DHS form, Form I-200, that bears the words "Warrant for Arrest of Alien;" on its face, however, the I-200 does not authorize anyone other than immigration officers to arrest the person named on the form (Pet. ¶ 11, Exhibit C; *see also* 8 CFR § 287.5[e][3] [listing officers authorized to execute such "warrants"]). No neutral judicial officer signs off on the detainer or Form I-200; rather, DHS regulations permit a wide range of rank-and-file employees to issue these documents (*see* 8 CFR. §§ 287.7[b][1]-[8] [authorizing, inter alia, border patrol agents, deportation officers, and immigration enforcement agents to issue detainers]; 8 CFR. § 287.5[e][2] [authorizing more than fifty different types of DHS employees, including "immigration enforcement agents," to issue Form I-200]). The detainer and Form I-200 are boilerplate documents providing no

individualized facts to support the conclusory statement that "probable cause exists" that the named person is subject to removal (*see* Pet. Exhibits B, C).

ICE directs hundreds of detainer requests to the SCSO annually, including 405 in the first ten months of Fiscal Year 2017 alone (Pet. ¶ 13, Exhibit D). The SCSO maintains a policy and practice of detaining individuals "for up to 48 hours after the prisoner would otherwise be released" based only on an immigration detainer and Form I-200 (*see* Pet. ¶ 14, Exhibit E, Sheriff Vincent F. DeMarco, "Memorandum ICE Detainers," dated December 2, 2016). Thus, for hours or even overnight after a person would otherwise be released—whether on their recognizance, upon the posting of bail, or following the disposition of a criminal case—SCSO officers will incarcerate anyone subject to an immigration detainer and Form I-200 (*see id.*).[1]

The arrest of Mr. Francis is the latest in this ongoing series of immigration arrests by the respondent's officers. Advocates' pleas for the Sheriff to cease this practice have been rebuffed (Pet. ¶ 15, Exhibit F). Meanwhile, the legal issues presented in this proceeding have evaded this Court's review. This likely is due to the ephemeral nature of the detention pursuant to immigration detainers, given that

[1] ICE also directs hundreds of requests to the Nassau County Sheriff's Department annually, including 379 in the first ten months of Fiscal Year 2017 (Pet. ¶ 16). Like the SCSO, the Nassau County Sheriff maintains a policy and practice of detaining individuals after their judicially authorized release based only on an immigration detainer and Form I-200 (*see* Pet. ¶¶ 17, 19; Ron Nixon and Liz Robbins, *Law Enforcement Agencies Bristle at U.S. Report on Immigration Detention*, NY Times, https://nyti.ms/2mIyruA [Mar. 20, 2017]).

ICE often assumes custody before a court can provide effective habeas relief, and to the disincentive for the respondent as well as the Nassau County Sheriff's Department to appeal lower court habeas decisions running against them and thereby face the possibility of an appellate holding that their immigration arrest practices are unlawful (Pet. ¶¶ 20, 22). In the absence of a controlling appellate decision directly addressing the legal issues these warrantless immigration arrests present, the respondent and other sheriff's departments continue making warrantless immigration arrests (Pet. ¶¶ 13-19).

The Respondent's Arrest and Detention of Susai Francis

Mr. Francis' case illustrates the SCSO's typical practice. Today, December 11, 2017, officers with the Suffolk County Sheriff's Office ("SCSO") transported Mr. Francis from Riverhead Correctional Facility, where he was being held on bail pending the resolution of criminal case number 2016SU044438, to the Suffolk County First District Court in Central Islip (Pet. ¶ 8). Upon information and belief, today he pleaded guilty to disorderly conduct and was sentenced to time served (Pet. ¶ 8). At this point, there is no longer any state law basis to detain Mr. Francis; were he a United States citizen, he would be free to go pending any brief period it would take to process his release.

In spite of the District Court releasing Mr. Francis, SCSO officers have continued to detain him because he is the subject of an immigration detainer (Pet. ¶

10). Upon information and belief, the respondent is being held at the courthouse in Central Islip until approximately 7 P.M. today, after which SCSO officers will take him to a Suffolk County jail, either Yaphank Correctional Facility or Riverhead Correctional Facility. (Pet. ¶ 9). Absent this Court's intervention, the respondent will continue to detain him until ICE arrives to assume custody.

ARGUMENT

As court battles over the legality of arrests based on immigration detainers play out around the United States, one point that even the most strident proponents of such arrests concede is that to be lawful such arrests must be authorized under state law. In New York, the Criminal Procedure Law ("CPL") and other provisions of the state code comprehensively define and limit officers' arrest authority, and no provision affords authority to make arrests for civil immigration violations. Thus, as Massachusetts' highest court recently held in a case challenging such arrests under Massachusetts law, this Court should hold that under state law it is illegal for New York officers to make such arrests (*see Lunn v Commonwealth*, 78 NE3d 1143, 1160 [2017]). The arrest of Mr. Francis likewise finds no support in federal law, which permits local officers to conduct only certain immigration enforcement actions and only in narrow circumstances not present here. As the respondent has no basis to arrest and hold Mr. Francis, the Court should order his release.

I. New York Law Does Not Authorize the Respondent's Officers to Make Civil Immigration Arrests.

As a threshold matter, even temporary detention based on a detainer for an alleged civil immigration violation constitutes an arrest (*see e.g. Morales v Chadbourne*, 793 F3d 208, 216 [1st Cir 2015]; *see also United States v Place*, 462 US 696, 709-10 [1983] [observing that Supreme Court has never held detention of 90 minutes or more to be anything short of arrest]). The federal government conceded that detention pursuant to a detainer constitutes an arrest in *Lunn* (*see* 78 NE3d at 1153, citing oral argument), and has conceded it elsewhere (*see Moreno v Napolitano*, 213 F Supp 3d 999, 1005 [ND Ill 2016], citing DHS brief). Moreover, it is beyond cavil that locking a person in a county jail cell meets the definition of an arrest under state law, which turns on whether a reasonable person would feel free to leave (*see People v Arcese*, 148 AD2d 460, 460 [2d Dept 1989]; *see also People v Jones*, 172 AD2d 265, 266 [1st Dept 1991] ["An arrest occurs if the intrusion is of such magnitude that an individual's liberty of movement is significantly interrupted by police restraint."]).

To assess the legality of the respondent's arrest of Mr. Francis, the Court should examine whether state law provides the respondent's officers with authority to arrest a person without a warrant for a civil immigration violation (*see Lunn*, 78 NE3d at 1154-56; *see also Miller v United States*, 357 US 301, 305 [1958] ["[T]he lawfulness of [a state officer's] arrest without warrant is to be determined by

reference to state law."]). As New York law provides no such authority, the respondent's officers' detention of Mr. Francis is unlawful.

A. The Criminal Procedure Law's Warrantless Arrest Provisions Do Not Authorize the Respondent's Officers to Make Warrantless Immigration Arrests.

Over seventeen years ago, New York's Office of the Attorney General ("AG") explained that state law does not authorize New York officers to make warrantless immigration arrests. In a letter to the Suffolk County Attorney, the AG's Office explained that "the authority for state and local officers in New York to enforce the [Immigration and Nationality Act] comes from the Criminal Procedure Law."[2] Because the CPL authorizes New York officers to make a warrantless arrest only for "conduct punishable by a sentence of imprisonment or a fine," the letter explained, officers have "no authority to arrest" for an immigration law violation that imposes "just a civil penalty or deportation."[3] The respondent evidently has refused to heed this counsel.

[2] Letter from James D. Cole, Assistant Solicitor General, New York Office of the Attorney General, to Robert J. Cimino, Suffolk County Attorney, Mar. 21, 2000 at 4, available at https://ag.ny.gov/sites/default/files/opinion/I%202000-1%20pw.pdf [accessed Dec. 11, 2017].

[3] Although officers' authority to arrest for federal immigration-related crimes is not presented here and the Court need not reach the issue, the petitioner disagrees with the AG letter's suggestion that New York officers may make warrantless arrests for such crimes. As the letter acknowledges, (1) the CPL and Penal Law refer only to warrantless arrest authority for state and local (not federal) crimes, and (2) no state court has decided the question (Cole Letter at 2; *cf.* NY State Law § 314 ["A statute restraining personal liberty is strictly construed."]).

Earlier this year, the AG's Office reaffirmed its position on the limits of New York officers' arrest authority in guidance issued to local governments concerning the legality of honoring immigration detainers, explaining as follows:

> [U]nlawful presence in the U.S., by itself, does not justify continued detention beyond [an] individual's normal release date. . . . [T]his guidance recommends that [local law enforcement agencies] respond to ICE or CBP detainer requests only when they are accompanied by a judicial warrant, or in other limited circumstances in which there is probable cause to believe a crime has been committed.[4]

An examination of Article 140 of the CPL—which is entitled "Arrest Without a Warrant" and which delineates in detail New York officers' warrantless arrest authority (*see* CPL §§140.05-140.55)—bears out the AG's position. Article 140 authorizes New York officers to make warrantless arrests under prescribed circumstances—but only where a person is "believed to have committed an offense" (CPL § 140.05 (emphasis added)).[5] New York defines "offense" as "conduct for which a sentence to a term of imprisonment or to a fine is provided." NY Penal Law § 10.00[1]; *see also* CPL § 1.20 [incorporating NY Penal Law

---

[4] *See* New York Office of the Attorney General, Guidance Concerning Local Authority Participation In Immigration Enforcement And Model Sanctuary Provisions, dated Jan. 19, 2017, supplemented Mar. 12, at 5, available at https://ag.ny.gov/sites/default/files/guidance_and_supplement_final3.12.17.pdf [accessed Dec. 11, 2017].

[5] A police officer may arrest for an offense committed in her presence and for a crime irrespective of whether it was committed in her presence (CPL §§ 140.10[1][a]-[b]). Peace officers' warrantless arrest authority is more narrow; they must be acting pursuant to their "special duties" to arrest for a non-felony offense committed outside their presence, and the offense must have been committed in the geographical area of their employment (*see* CPL § 140.25[2]-[3]).

definitions into CPL]). Thus, the CPL limits officers' warrantless arrest authority to instances where a person is suspected of conduct punishable by a sentence of imprisonment or a fine.

As this Court has recognized, no law imposes a sentence of imprisonment or a fine merely for being removable due to a civil immigration violation (*see People v Cesar*, 131 AD3d 223, 229 [2d Dept 2015] ["'[A]s a general rule, it is not a crime for a removable alien to remain present in the United States'"], quoting *Arizona v United States*, 567 US 387, 407 [2012]; *see also People v Alvarez*, 84 Misc 2d 897, 900-01 [Sup Ct New York County 1975] [holding warrantless arrest unlawful because "[s]tatus as an illegal alien does not per se constitute an offense or a crime for which a sentence to a term of imprisonment or a fine is provided as defined in [NY Penal Law § 10.00[1]]"]; *Swenson v Ponte*, 46 Misc3d 273 (Sup Ct Kings County 2014] [holding there is "no authority for a local correction commissioner to detain someone based upon a civil determination, as immigration removal orders are civil, not criminal, in nature"]). Being removable therefore is not an "offense" and provides no predicate for a New York officer to make a warrantless arrest. Thus, even assuming the immigration detainer in this case were to demonstrate to a certainty that Mr. Francis is removable for a civil immigration violation, SCSO officers' arrest of him is illegal in light of the CPL's limits on their arrest authority.

B. No Other Provision of State Law Authorizes the Respondent's Officers to Make Warrantless Immigration Arrests.

Not only does Article 140 of the CPL fail to provide any authority for New York officers to make warrantless immigration arrests, but a searching review of the state code shows that no other New York law provides such authority. The New York Legislature has enacted a variety of provisions authorizing warrantless arrests under specified circumstances, but none provides authority for officers to make immigration arrests. For example, in the somewhat analogous context of extradition, officers may only make a warrantless arrest "upon reasonable information that the accused stands charged in the courts of another state with a crime punishable by death or imprisonment for a term exceeding one year" (CPL § 570.34 (emphasis added)). Otherwise, an arrest for extradition purposes requires a warrant (*see* CPL § 570.02 *et seq.* [codifying Uniform Criminal Extradition Act]). None of the state code's other specific grants of warrantless arrest authority comes even close to authorizing the immigration arrest at issue here (*see e.g.*, NY Mental Hygiene Law § 9.41 [granting officers authority to arrest individual who "appears to be mentally ill" and is acting in way that may result in serious harm to another]; NY Family Court Act § 305.2[2] [granting officers power to arrest child under sixteen without warrant "in cases in which he may arrest a person for a crime under [Article 140 of CPL]"]; NY Executive Law § 223[1] [granting state police officers power to arrest without warrant "any person committing or attempting to commit

within their presence or view a breach of the peace or other violation of law"]; NY Education Law § 6435[1][a] [granting campus security officers arrest power under certain circumstances]).

While these provisions self-evidently are inapposite to the arrest at issue here, together with Article 140 of the CPL they call for application of the *expressio unius est exclusio alterius* canon of construction, which New York has expressly adopted (*see* NY State Law § 240 ["[W]here a law expressly describes a particular act, thing or person to which it shall apply, an irrefutable inference must be drawn that what is omitted or not included was intended to be omitted or excluded."]; *see also* NY State Law § 74 ["[T]he failure of the Legislature to include a matter within the scope of an act may be construed as an indication that its exclusion was intended."]). That doctrine has additional force here for several reasons. First, most of today's CPL comprises the carefully considered product of a years-long endeavor by a legislative commission that comprehensively rewrote New York's criminal procedure provisions, including those governing officers' arrest authority (*see* Practice Commentaries, McKinney's Cons Laws of NY, CPL at III [1971] [describing work of Temporary Commission on Revision of the Penal Law and Criminal Code]). Second, unlike areas in which the Legislature passively defers to the courts to fill in a law's gaps through statutory interpretation, the Legislature frequently revises the CPL as the need arises, including by amending the

warrantless arrest provisions on numerous occasions in just the past two decades.[6] Third, the relative dearth of New York statutes providing civil arrest authority is not the result of mere legislative inaction but—at least in one instance bearing resemblance to the practice at issue here—is the result of a deliberate decision: Nearly forty years ago, the Legislature abolished what had been a widely derided civil-arrest regime that permitted sheriffs to arrest individuals accused of certain civil wrongs, (*see* L 1979, ch 409 [repealing civil arrest provisions]; *see also e.g. Repetti v Gil*, 83 Misc 2d 75, 84 [Sup Ct Nassau County 1975] ["Putting someone to the pain of jail without notice for a yet unproved civil claim is a bit much for our democratic heritage."]). This history supports reading the New York code's omission of any authority for officers to make civil immigration arrests to mean that no such authority exists, unless and until the Legislature affirmatively permits New York officers to step into the role of civil immigration enforcers (*cf. Lunn*, 78 NE3d at 1158 ["The prudent course is not for this court to create, and attempt to define, some new authority for court officers to arrest that heretofore has been

[6] *See* L 1998, ch 597, § 10; L 2004, ch 107, § 5; L 2009, ch 476, § 6; L 2011, ch 62, part C, subpart B, § 72; L 2013, ch 480, § 12; L 2015, ch 432, § 4. For example, the Legislature amended the CPL in response to a case in which a local officer traveling northbound observed a driver in the southbound lane violating the VTL (*see* Sponsor's Mem, Bill Jacket, L 2003, ch 300). The contraband recovered upon stopping the car was suppressed, because the southbound lane technically was in the next town, and Section 140.10 of the CPL limited the officer's petty-offense arrest authority to the town that employed him. *Id.* The Legislature revised that section to permit officers to make arrests for petty offenses committed "within one hundred yards" of their geographical areas of employment (*see* L 2003, ch 300, § 1).

unrecognized and undefined. The better course is for us to defer to the Legislature to establish and carefully define that authority . . . ."]).

Given that New York has elected to define its officers' warrantless arrest authority though a detailed, encompassing statutory scheme, they plainly possess no greater warrantless immigration arrest authority than the Massachusetts officers in *Lunn*, whose arrest authority is defined in significant part by Massachusetts common law (*see* 78 NE3d at 1154-55 [describing officers' warrantless arrest authority under Massachusetts common law]). New York courts consistently have held warrantless arrests that exceed state statutory authority to be unlawful without engaging in a separate common law analysis (*see e.g. People v Bratton*, 8 NY3d 637, 643 [2007] [while observing that it arguably "would make sense" to grant parole officers authority to make warrantless arrests for parole violations committed in their presence, nonetheless holding such arrests unlawful where violation does not constitute offense under NY Penal Law § 10.00[1]]; *In re Victor M*, 9 NY3d 84, 87 [2007] [holding warrantless arrest of juvenile for violation-level offenses unlawful because statute only authorizes such arrest "in cases where an adult could be arrested 'for a crime'"] [quoting Family Court Act § 305.2[2]]; *People v Hernandez*, 106 AD3d 838, 839 [2d Dept 2013] [holding warrantless arrest based on out-of-state probation violation unlawful since probation violation is not crime]). Because there is no statutory authority for the respondent's

warrantless arrest of Mr. Francis, the Court should order him released immediately and hold that under state law there is no authority for New York officers "to arrest and hold an individual solely on the basis of a Federal civil immigration detainer, beyond the time that the individual would otherwise be entitled to be released" (*Lunn*, 78 NE3d at 1160).

II. Federal Law Does Not Affirmatively Authorize Local Officers to Make Civil Immigration Arrests.

In addition to there being no state law authority for New York officers to arrest based on an individual's merely being subject to removal based on a civil immigration violation, there is no federal law that might supply the authority missing from state law. The Immigration and Nationality Act (INA) permits local officers to make civil immigration arrests only where—unlike in New York—state law permits such arrests (*see Lunn*, 78 NE3d at 1158-59 [observing that federal government concedes this point]).[7] Even then, the INA contemplates local officers making immigration arrests only in narrowly specified circumstances. Congress created "a system in which state officers may not make warrantless arrests of aliens based on possible removability except in specific, limited circumstances" (*Arizona v United States*, 567 US 387, 410 [2012]). These "limited circumstances,"

[7] In the instances when the INA permits local officers to make immigration arrests, it conditions that permission on the existence of state law authority for such arrests (*see* 8 USC § 1252c[a] [limiting grant of arrest authority "to the extent permitted by relevant State and local law"]; § 1357[g][1] [even where "287[g]" agreement is in place, permitting local officers to perform immigration enforcement functions only "to the extent consistent with State and local law"]).

described in turn below, do not apply to generic arrests for civil immigration violations such as the one at issue here. Thus, the respondent's arrest of Mr. Francis finds no support in federal law.

By permitting formal the establishment of "287[g]" agreements—so named for the INA section corresponding to its codification at 8 USC § 1357[g]—Congress created the possibility that local officers might lawfully perform certain immigration enforcement functions once statutorily specified requirements are satisfied. These include the creation of a "written agreement" and a determination by the Attorney General that the local officers are "qualified" (8 USC § 1357[g][1]). Congress provided that the written agreement "shall" require that local officers acting pursuant to it have knowledge of the INA and "shall" certify that the local officers "have received adequate training regarding the enforcement of relevant Federal immigration laws" (8 USC § 1357[g][2]). The agreement must also specify "the specific powers and duties" that may be performed by the local officers (8 USC § 1357[g][3]). The respondent has no 287[g] agreement and has not met these congressionally mandated prerequisites for its officers to perform immigration enforcement functions pursuant to the program (Pet. ¶ 20).

In the two places where Congress has chosen to permit local officers to make civil immigration arrests absent a formal 287[g] agreement, it has explicitly allowed that power through narrowly drawn statutory grants, neither of which

authorizes arrest based simply on the person potentially being subject to removal. The INA permits local officers to perform immigration functions in the event that the Attorney General extends state officers' authority due to an "imminent mass influx of aliens" (8 USC § 1103[a][10]). It also authorizes local officers, in certain circumstances, to arrest noncitizens who previously have been deported after a felony conviction (*see* 8 USC § 1252c[a]). These provisions are inapposite when, as here, ICE issues a detainer seeking to have local law enforcement officers arrest a noncitizen merely on the basis that the individual is removable.

Finally, a savings clause in 8 USC § 1357[g] provides that absent a 287[g] agreement, local officers may "otherwise . . . cooperate . . . in the identification, apprehension, detention, or removal of aliens not lawfully present" (8 USC § 1357[g][10]). Despite the narrow, explicit grants of permission to arrest under the aforementioned INA provisions, the federal government has argued that this provision gives general permission for local officers to make immigration arrests pursuant to detainers (*see City of El Cenizo v State*, No. 17-CV-404, 2017 WL 3763098 [WD Tex, Aug. 30, 2017]). Whether or not that argument is correct, it is irrelevant here, because even the federal government does not claim that § 1357[g][10] affirmatively confers authority on local officers where, as here, state law provides none (*see Lunn*, 78 NE3d at 1158-59 ["[The government] does not claim that § 1357[g][10] is an independent source of authority for State or local

officers to make such an arrest."]; *see also id.* at 1159 ["In those limited instances where the act affirmatively grants authority to State and local officers to arrest, it does so in more explicit terms than those in § 1357[g][10]."]). Thus, even if Section 1357[g][10] could be read to permit local officers to make immigration arrests pursuant to state law authority, it undisputedly does not confer any independent authority for such arrests absent state law authority.

In sum, as the *Lunn* Court concluded, federal law does not authorize local officers to arrest pursuant to an immigration detainer absent state law authorization (*Id.* at 1159-60).[8] It thus provides no authority for the respondent's officers to arrest Mr. Francis.

III. The Court Should Issue a Writ of Habeas Corpus and Order the Respondent to Release Mr. Francis Immediately.

The writ of habeas corpus has long served as a mechanism "to afford prompt relief from unlawful imprisonment of any kind and under all circumstances" (*People ex rel. Livingston v Wyatt*, 186 NY 383, 394–95 [1906]). The writ enables a court to "reach[] the facts affecting jurisdiction or want of power by the most direct method and at once release[] the applicant from restraint when it is shown to be unauthorized" (*Id.* at 395; *see also People ex rel. Duryee v Duryee*, 188 NY

[8] Were Congress to enact a law authorizing state and local officers to make arrests exceeding state law limits, that would run roughshod over New York's sovereign prerogative regarding the proper exercise of its police power and would present serious Tenth Amendment concerns. As the INA does not even purport to do that, the Court need not reach this issue.

440, 445 [1907] [“The writ of habeas corpus . . . strikes at unlawful imprisonment or restraint of the person by state or citizen, and by the most direct method known to the law learns the truth and applies the remedy. It tolerates no delay except of necessity”]).

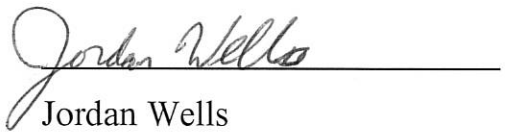
Here, the SCSO officers’ “restraint” of Mr. Francis—an arrest, the type of which the respondent’s officers make on a routine basis without any judicial oversight—is unauthorized because it exceeds their authority under state law. Moreover, as an arrest without probable cause of any offense, it is an unreasonable seizure in violation of Article 1, Section 12 of the New York State Constitution. For these reasons, the petitioner seeks the immediate release of Mr. Francis.

Absent the prompt intervention of this Court, effective relief may not be possible given the relatively short duration of the illegal detention at issue. Thus, the petitioner respectfully requests that the Court issue a writ of habeas corpus for the production of Mr. Francis as soon as possible so that the Court may rule on this petition and grant him his freedom.

CONCLUSION

For the foregoing reasons, the Court should hold that New York officers possess no authority under state or federal law to perform civil immigration arrests pursuant to detainers, declare the arrest and detention of Susai Francis to be unlawful, and order the respondent Suffolk County Sheriff to release Mr. Francis immediately.

Respectfully Submitted,



Jordan Wells
Paige Austin
Mariana Kovel
Christopher Dunn
NEW YORK CIVIL LIBERTIES UNION FOUNDATION
125 Broad Street, 19th Floor
New York, New York 10004
Telephone: (212) 607-3300
Facsimile: (212) 607-3318
jwells@nyclu.org

Counsel for Susai Francis

Dated: December 11, 2017
New York, New York

CERTIFICATION OF COMPLIANCE

I certify that the memorandum of law in support of the order to show cause was prepared on a computer, using Times New Roman (proportionally spaced) typeface, 14-point type, double-spaced, with 12-point single-spaced footnotes and 14-point single-spaced block quotations. The word count, as generated by Microsoft Word, is 5,404.

Dated: December 11, 2017
New York, New York

JORDAN WELLS