

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION: SECOND DEPARTMENT

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The People of the State of New York ex rel. : **VERIFIED PETITION**
Jordan Wells on Behalf of Susai Francis, : **FOR WRIT OF**
 : **HABEAS CORPUS**

Petitioner, :
 :
-against- : App. Div. Docket No.
 : 2017-12806

VINCENT F. DEMARCO, Sheriff of Suffolk :
County, :
 :
Respondent. :
-----X

The People of the State of New York, upon the relation of Jordan Wells, Esq.,
counsel to Susai Francis, make this petition to the Supreme Court of the State of
New York, Appellate Division, Second Department:

PRELIMINARY STATEMENT

1. This habeas corpus proceeding challenges the latest in an ongoing series of
unlawful warrantless arrests by the Suffolk County Sheriff’s Office pursuant to a
policy and practice by which it detains individuals based solely on “detainer”
requests by immigration officers seeking to enforce federal civil immigration law.

2. I am an attorney with the New York Civil Liberties Union and am counsel to
Mr. Susai Francis, on whose behalf this petition for a writ of habeas corpus is
made, and am by him authorized to institute this proceeding. Mr. Francis is
presently detained under the custody of the respondent, Suffolk County Sheriff
Vincent DeMarco. Sheriff DeMarco exercises control and direction over officers

employed by the Suffolk County Sheriff's Office.

3. The respondent's arrest of Mr. Francis based solely on an alleged civil immigration violation is illegal for reasons set forth in the petitioner's accompanying memorandum of law.

4. The timely intervention of this Court is necessary to grant Mr. Francis his liberty. Moreover, it is necessary to prevent future unlawful deprivations of liberty at the hands of the Suffolk County Sheriff's Office. Thus, if Mr. Francis is released from the respondent's custody before the Court can adjudicate this petition, the petitioner respectfully requests that the Court apply the well-recognized mootness exception given that this controversy presents (1) a "likelihood of repetition, either between the parties or among other members of the public; (2) a phenomenon typically evading review; and (3) a showing of significant or important questions not previously passed on" (*Hearst Corp. v Clyne*, 50 NY2d 707, 715 [1980]; *see also People ex rel. McManus v Horn*, 18 NY3d 660, 663-64, n 2 [2012] [applying mootness exception and converting habeas proceeding into declaratory judgment action]; *People ex rel. Brown v. New York State Div. of Parole*, 70 N.Y.2d 391, 398 [1987] [converting habeas proceeding "to one brought pursuant to CPLR article 78"]).

5. As required by CPLR § 7002[c][3], the petitioner avers that no court or judge of the United States has exclusive jurisdiction to order the release of Mr.

Francis. Indeed, no warrant or mandate issued by any court, judge or person acting as a judicial officer exists to justify the arrest and detention of Mr. Francis.

6. No previous application for the writ requested herein has been made. A proposed writ of habeas corpus commanding the respondent to “produce forthwith the body of Susai Francis” before this Court along with the “cause of such imprisonment and detention” is attached to this petition as Exhibit A.

BACKGROUND

7. Susai Francis is a twenty-one-year resident of Long Island, where he has raised two sons, including one who is a United States citizen. Mr. Francis was born in India but is in the process of seeking to obtain lawful permanent resident status, which eventually would enable him to become a United States citizen himself.

8. Today, December 11, 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. Upon information and belief, today he pleaded guilty to disorderly conduct and was sentenced to time served. At that point, upon information and belief, there was no longer any state law basis to detain Mr. Francis. But for the detainer naming him as its subject, he would have been free to go pending any brief period it would take to process his release.

9. In spite of the Suffolk County First District Court releasing Mr. Francis, SCSO officers arrested and have continued to detain him. Upon information and belief, the respondent is being detained in a holding cell at the courthouse in Central Islip until approximately 7 P.M. today, at which time SCSO officers will bring him to a Suffolk County jail, either Riverhead Correctional Facility or Yaphank Correctional Center, and continue to hold him there.

10. At some point after Mr. Francis was arrested by local law enforcement officers on state law charges, immigration officers with the United States Department of Homeland Security (DHS) transmitted an “immigration detainer” to the SCSO, requesting that it detain Mr. Francis for up to forty-eight hours upon his release from state custody on the basis that, according to those federal officers, “probable cause exists that [he] is a removable alien” (*see* US Department of Homeland Security, Form I-247A, *Immigration Detainer – Notice of Action*, available at <https://www.ice.gov/sites/default/files/documents/Document/2017/I-247A.pdf> [accessed Dec. 8, 2017]). A blank example of the immigration detainer form currently in use is attached as Exhibit B.

11. Upon information and belief, federal immigration officers included with the detainer an internal DHS Form I-200 bearing the word “warrant” (*see* US Department of Homeland Security, Form I-200, *Warrant for Arrest of Alien*, available at [4](https://www.ice.gov/sites/default/files/documents/Document/2017/I-</p></div><div data-bbox=)

200_SAMPLE.PDF [accessed Dec. 8, 2017]). Form I-200 is issued by DHS and is not reviewed or signed by any judicial officer. The form itself does not purport to authorize anyone other than immigration officers to detain the person named therein. A blank example of this administrative “warrant” form is attached as Exhibit C.

12. Upon information and belief, the immigration detainer and Form I-200 are the sole “cause or pretense of [Mr. Francis’] detention.” (CPLR § 7002[c][2]).

13. ICE directs hundreds of detainer requests to the SCSO annually, including 405 in the first ten months of Fiscal Year 2017 (*see* Transactional Records Access Clearinghouse, *Tracking Immigration and Customs Enforcement Detainers*, available at <http://trac.syr.edu/phptools/immigration/detain/> [accessed Dec. 8, 2017]). That figure is up from 262 total in Fiscal Year 2016 (*see id.*). A computer screenshot of the aforementioned website displaying the number of detainers issued to the SCSO in Fiscal Year 2017 is attached as Exhibit D.

14. The SCSO maintains a policy and practice, memorialized in a written directive of the Sheriff, 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* Sheriff Vincent F. DeMarco, *Memorandum ICE Detainers* [Dec. 2, 2016], attached as Exhibit E).

15. The SCSO maintains this policy over the objection of community groups

and advocates who have asked him to abandon it. Earlier this year, seven such entities addressed a letter to Sheriff DeMarco citing legal and policy concerns about the Sheriff's policy on arrests pursuant to detainers and requesting that he "reconsider" the policy and "nullify it, at least until the federal courts have decided its legality." A true and correct copy of that letter is attached as Exhibit F.

16. In the first ten months of Fiscal Year 2017, federal immigration officers also issued 379 detainers to Nassau County Correctional Center (*see* Transactional Records Access Clearinghouse, *Tracking Immigration and Customs Enforcement Detainers*, available at <http://trac.syr.edu/phptools/immigration/detain/> [accessed Dec. 8, 2017]). That is more than double the 177 detainers federal immigration officers issued to Nassau County Correctional Center in Fiscal Year 2016 (*see id.*). A computer screenshot of the aforementioned website displaying the number of detainers issued to the Nassau County Correctional Center in Fiscal Year 2017 is attached as Exhibit G.

17. The Nassau County Sheriff's Department, which operates the Nassau County Correctional Center, also maintains a policy and practice of detaining individuals pursuant to immigration detainers beyond the time when they would otherwise be released, over the objections of community members and legal advocates and despite several decisions by the Supreme Court of Nassau County finding that the detention of individuals based on immigration detainers violated

state and federal law (*see Walmer Salmeron v Sposato*, No. 2015NA011149 [June 22, 2015, Corrigan, J.] (attached hereto as Exhibit H); *Olga Garcia-Gregory v Sposato*, No. 2015NA013390 [July 31, 2015, Harrington, J.] (attached hereto as Exhibit I); *Marlon Herrera-Reyes v Sposato*, No. 2015NA011721 [Aug. 7, 2015, Harrington, J.] (attached hereto as Exhibit J)). Earlier this year, a spokesman for the Nassau County Sheriff's Department went on record to confirm that the Department holds noncitizens in response to immigration detainers (*see 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]).

18. Upon information and belief, Sheriff DeMarco erroneously regards SCSO officers as having authority to detain individuals based on immigration detainers, at least based on detainers accompanied by Form I-200, when those individuals otherwise would be released from the SCSO's custody.

19. Upon information and belief, the Nassau County Sheriff's Department also erroneously regards its officers as having authority to detain individuals based on immigration detainers, at least detainers accompanied by Form I-200, when those individuals otherwise would be released from the Department's custody. In a 2015 response to a Freedom of Information Law (FOIL) request from the NYCLU seeking records related to the Department's policy toward immigration detainers and warrants, the Department produced a policy document stating that a warrant

gives law enforcement “the right to search or arrest someone” and that a detainer “authoriz[es] the further detention of a person in custody, pending further action” (*see* Nassau County Sheriff’s Department Division of Correction, Policy and Procedure No. CD 04-02-06 [2006] (attached as Exhibit K)).

20. Upon information and belief, the SCSO does not have a “287[g]” agreement with ICE, which is an agreement under 8 USC § 1357[g][1], *et seq.*, under which local officers may lawfully perform certain immigration enforcement functions if various statutory requirements are satisfied.

21. Upon information and belief, once ICE officers assumes custody of an individual held by a New York law enforcement agency pursuant to a detainer, typically they continue to incarcerate that individual for several weeks or even months more before ever bring the individual before an immigration judge (or any judge).

22. Upon information and belief, the illegal arrest and detention of Mr. Francis may last for a matter of hours before he is transferred into ICE custody and removed from the Court’s jurisdiction. In habeas corpus cases in which lower New York courts have ordered the release of an individual being held on a detainer, (*see supra*, ¶ 17), the ordered relief has been frustrated by ICE assuming custody before the person could be released pursuant to the court’s order. In order to prevent this irreparable injury, the petitioner respectfully requests that the Court issue the writ

“without delay,” (CPLR [7003]), and order that it be returnable today. Moreover, to ensure compliance with the writ and the Court’s ability to provide effective relief, the petitioner respectfully requests that the Court issue a warrant of attachment to an appropriate officer requiring the officer to bring Mr. Francis before the Court immediately. (*See* CPLR 7007 [“Warrant preceding or accompanying writ”]). A proposed warrant of attachment is attached hereto as Exhibit L.

GOVERNING LAW

23. As further elaborated in the memorandum of law in support of this petition, there is no basis in law for the respondent’s arrest and detention of Mr. Francis.

24. The Criminal Procedure Law (“CPL”) delineates the arrest authority of New York police and peace officers. Here, given the absence of a judicial mandate or warrant, the respondent’s detention of Mr. Francis constitutes a warrantless arrest and therefore it must comply with the limits on officers’ authority to conduct a warrantless arrest contained in Article 140 of the CPL, entitled “Arrest Without a Warrant.” The arrest does not comply with those limits.

25. The CPL provides that a person “believed to have committed an offense . . . may, under circumstances prescribed in this article, be arrested for such offense although no warrant of arrest therefor has been issued.” CPL § 140.05 (emphasis added). The CPL further provides police and peace officers the power to make an

arrest without a warrant for an “offense” under certain prescribed circumstances.

See CPL §§ 140.10-140.25.

26. The term “offense” is limited to “conduct for which a sentence to a term of imprisonment or to a fine is provided.” NYPL § 10.00[1].

27. Immigration detainers allege merely that the subject is “a removable alien,” an allegation which if proven carries no sentence to imprisonment or a fine and thus does not constitute an “offense” under the CPL. The state law provisions granting officers authority to arrest persons “believed to have committed an offense,” CPL § 140.05, therefore provide no lawful basis for SCSO officers to arrest an individual merely for being “removable.”

28. No other provision of state law provides the Department’s officers with a lawful basis for such an arrest.

29. 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 state law authorizes such arrests, and then only in narrowly specified circumstances inapposite to the arrest here.

30. As an arrest without probable cause of any offense, the respondent’s

detention of Mr. Francis is an unreasonable seizure in violation of Article 1, Section 12 of the New York State Constitution.

31. The respondent's arrest of Mr. Francis contravenes the requirement that an officer making a warrantless arrest bring the arrested person "without unnecessary delay" before a local criminal court. CPL §§ 140.20[1] (police officers); 140.27[2] (peace officers).

VENUE

32. Pursuant to Section 7002[b][2] of the CPLR, the petitioner seeks the intervention of the Second Department of the Appellate Division, rather than the Supreme Court of Suffolk County, because this proceeding presents an important, recurring, legal issue that has evaded appellate review. The resolution of this legal issue does not depend on any disputed factual questions.

REQUESTED RELIEF

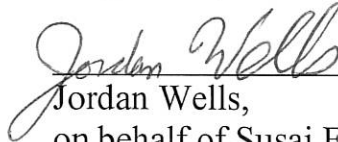
WHEREFORE, the petitioner respectfully requests that the Court:

- a. Pursuant to CPLR § 7003[a], issue a writ of habeas corpus directing the respondent, Sheriff Vincent DeMarco, or whoever has custody of Susai Francis, to bring and produce Mr. Francis before this Court forthwith so that the Court may inquire into the legality of his detention;
- b. Pursuant to CPLR § 7007, issue a warrant of attachment accompanying the writ requiring that an appropriate officer immediately bring Mr.

Francis before the Court;

- c. Pursuant to CPLR §§ 411, 3001, declare and hold the Suffolk County Sheriff's Office's arrest of Mr. Francis to be unlawful and in excess of the warrantless arrest authority its officers possess under state law;
- d. Pursuant to CPLR §§ 411, 3001, declare and hold the Suffolk County Sheriff's Office's arrest of Mr. Francis to be an unreasonable seizure in violation of Article 1, Section 12 of the New York State Constitution;
- e. Order the respondent to release Mr. Francis from custody immediately;
and
- f. Order such further relief as this Court may deem just and proper.

Respectfully Submitted,



Jordan Wells,
on behalf of Susai Francis
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

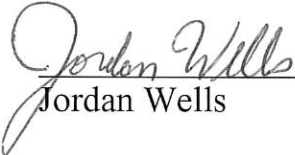
Dated: December 11, 2017
New York, New York

VERIFICATION

STATE OF NEW YORK)
) SS
COUNTY OF NEW YORK)

Jordan Wells, an attorney admitted to the practice of law in the State of New York, affirms under the penalties of perjury:

1. I am an attorney in the employ of the New York Civil Liberties Union and am counsel to Susai Francis in this habeas corpus proceeding.
2. I have read the foregoing petition and know its contents.
3. The statements in the petition are true to my knowledge, except as to statements alleged on information and belief, and as to those statements, I believe them to be true.



Jordan Wells

Dated: December 11, 2017
 New York, N.Y.

Sworn and subscribed to me this
11 day of December, 2017.



PAIGE PARKER AUSTIN
NOTARY PUBLIC-STATE OF NEW YORK
No. 02AU6323147
Qualified in New York County
My Commission Expires April 20, 2019

LIST OF EXHIBITS

- Exhibit A Writ of Habeas Corpus
- Exhibit B Blank example of Immigration Detainer Form I-247A
- Exhibit C Blank example of Administrative “Warrant” Form I-200
- Exhibit D Computer screenshot of website displaying number of detainees issued to Suffolk County Sheriff’s Office in FY 2017
- Exhibit E Sheriff Vincent F. DeMarco, Memorandum Ice Detainers (December 2, 2016)
- Exhibit F Letter from Advocates to Sheriff Vincent F. DeMarco (February 1, 2017)
- Exhibit G Computer screenshot of website displaying number of detainees issued to Nassau County Correctional Center in FY 2017
- Exhibit H Decision in *Walmer Salmerson v Sposato*, No. 2015NA011149 (June 22, 2015)
- Exhibit I Decision in *Olga Garcia-Gregory v Sposato*, No. 2015NA013390 (July 31, 2015)
- Exhibit J Decision in *Marlon Herrera-Reyes v Sposato*, No. 2015NA011721 (August 7, 2015)
- Exhibit K Nassau County Sheriff’s Department Division of Correction, Policy and Procedure No. CD 04-02-06
- Exhibit L Proposed Warrant of Attachment

EXHIBIT A

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION: SECOND DEPARTMENT

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The People of the State of New York ex rel. : **WRIT OF**
Jordan Wells on Behalf of Susai Francis, : **HABEAS CORPUS**
:
Petitioner, : App. Div. Docket No.
: 2017-12806
-against- :
:
VINCENT F. DEMARCO, Sheriff of :
Suffolk County, :
:
Respondent. :
-----X

**TO: VINCENT F. DEMARCO, SHERIFF OF SUFFOLK COUNTY,
STATE OF NEW YORK**

WE COMMAND YOU, that you have and produce forthwith the body of Susai Francis, by you imprisoned and detained, as it is said, together with the time and cause of such imprisonment and detention, by whatsoever name the said Susai Francis is called, before the Justice presiding at the Appellate Division, Second Department, of the Supreme Court of the State of New York, in the County of Kings, at 45 Monroe Place, Brooklyn, NY 11201, on December ____, 2017, at _____ of that day, to do and receive what shall then and there be considered concerning the said Susai Francis and you then and there have this writ.

Personal appearance for Susai Francis is not waived. In addition to bringing Susai Francis before this Court at the aforesaid date and time, the respondent is to take whatever steps may be necessary to enable Mr. Francis to leave on his own recognizance immediately and directly from the Court in the event that the Court orders his release from custody.

AND IT IS ORDERED that service of a copy of this writ of habeas corpus together with the petition and supporting papers upon the respondent, the Sheriff of Suffolk County, at the Suffolk County Sheriff's Office, at 110 Center Drive, Riverhead, NY 11901, or, if he cannot with due diligence be found, to any person having custody of Susai Francis, upon the office of the County Attorney of Suffolk County, at H. Lee Dennison Bldg., 100 Veterans Memorial Highway, P.O. Box 6100, Hauppauge, NY 1178-0099, and upon the Office of the District Attorney of Suffolk County, at William J. Lindsay County Complex, Building #77, Veterans Memorial Highway, Hauppauge, NY 11781, on or before today, December __, 2017, at _____, by _____, shall be deemed sufficient service.

ORDERED that within _____ of service of this writ upon the respondent, the respondent shall serve by _____ a return to it upon the petitioner and relator and file the same with this Court.

WITNESS the Honorable _____, one of the Justices of the Appellate Division, Second Department of the Supreme Court of the State of New York, this ____ day of December, 2017.

The above writ is hereby allowed this ____ day of December, 2017.

Enter,

JUSTICE OF THE APPELATE DIVISION,
SECOND DEPARTMENT, OF THE
SUPREME COURT

Dated: December __, 2017
Brooklyn, New York

EXHIBIT B

DEPARTMENT OF HOMELAND SECURITY
IMMIGRATION DETAINER - NOTICE OF ACTION

Subject ID:
Event #:

File No:
Date:

TO: (Name and Title of Institution - OR Any Subsequent Law Enforcement Agency)

FROM: (Department of Homeland Security Office Address)

Name of Alien: _____

Date of Birth: _____ Citizenship: _____ Sex: _____

1. DHS HAS DETERMINED THAT PROBABLE CAUSE EXISTS THAT THE SUBJECT IS A REMOVABLE ALIEN. THIS DETERMINATION IS BASED ON (complete box 1 or 2).

- A final order of removal against the alien;
- The pendency of ongoing removal proceedings against the alien;
- Biometric confirmation of the alien's identity and a records check of federal databases that affirmatively indicate, by themselves or in addition to other reliable information, that the alien either lacks immigration status or notwithstanding such status is removable under U.S. immigration law; and/or
- Statements made by the alien to an immigration officer and/or other reliable evidence that affirmatively indicate the alien either lacks immigration status or notwithstanding such status is removable under U.S. immigration law.

2. DHS TRANSFERRED THE ALIEN TO YOUR CUSTODY FOR A PROCEEDING OR INVESTIGATION (complete box 1 or 2).

- Upon completion of the proceeding or investigation for which the alien was transferred to your custody, DHS intends to resume custody of the alien to complete processing and/or make an admissibility determination.

IT IS THEREFORE REQUESTED THAT YOU:

- **Notify DHS** as early as practicable (at least 48 hours, if possible) before the alien is released from your custody. Please notify DHS by calling U.S. Immigration and Customs Enforcement (ICE) or U.S. Customs and Border Protection (CBP) at _____. If you cannot reach an official at the number(s) provided, please contact the Law Enforcement Support Center at: (802) 872-6020.
 - **Maintain custody** of the alien for a period **NOT TO EXCEED 48 HOURS** beyond the time when he/she would otherwise have been released from your custody to allow DHS to assume custody. The alien **must be served with a copy of this form** for the detainer to take effect. This detainer arises from DHS authorities and should not impact decisions about the alien's bail, rehabilitation, parole, release, diversion, custody classification, work, quarter assignments, or other matters
 - Relay this detainer to any other law enforcement agency to which you transfer custody of the alien.
 - Notify this office in the event of the alien's death, hospitalization or transfer to another institution.
- If checked: please cancel the detainer related to this alien previously submitted to you on _____ (date).

(Name and title of Immigration Officer)

(Signature of Immigration Officer) (Sign in ink)

Notice: If the alien may be the victim of a crime or you want the alien to remain in the United States for a law enforcement purpose, notify the ICE Law Enforcement Support Center at (802) 872-6020. You may also call this number if you have any other questions or concerns about this matter.

TO BE COMPLETED BY THE LAW ENFORCEMENT AGENCY CURRENTLY HOLDING THE ALIEN WHO IS THE SUBJECT OF THIS NOTICE:

Please provide the information below, sign, and return to DHS by mailing, emailing or faxing a copy to _____.

Local Booking/Inmate #: _____ Estimated release date/time: _____

Date of latest criminal charge/conviction: _____ Last offense charged/conviction: _____

This form was served upon the alien on _____, in the following manner:

- in person by inmate mail delivery other (please specify): _____

(Name and title of Officer)

(Signature of Officer) (Sign in ink)

NOTICE TO THE DETAINEE

The Department of Homeland Security (DHS) has placed an immigration detainer on you. An immigration detainer is a notice to a law enforcement agency that DHS intends to assume custody of you (after you otherwise would be released from custody) because there is probable cause that you are subject to removal from the United States under federal immigration law. DHS has requested that the law enforcement agency that is currently detaining you maintain custody of you for a period not to exceed 48 hours beyond the time when you would have been released based on your criminal charges or convictions. **If DHS does not take you into custody during this additional 48 hour period, you should contact your custodian** (the agency that is holding you now) to inquire about your release. **If you believe you are a United States citizen or the victim of a crime, please advise DHS by calling the ICE Law Enforcement Support Center toll free at (855) 448-6903.**

NOTIFICACIÓN A LA PERSONA DETENIDA

El Departamento de Seguridad Nacional (DHS) le ha puesto una retención de inmigración. Una retención de inmigración es un aviso a una agencia de la ley que DHS tiene la intención de asumir la custodia de usted (después de lo contrario, usted sería puesto en libertad de la custodia) porque hay causa probable que usted está sujeto a que lo expulsen de los Estados Unidos bajo la ley de inmigración federal. DHS ha solicitado que la agencia de la ley que le tiene detenido actualmente mantenga custodia de usted por un periodo de tiempo que no exceda de 48 horas más del tiempo original que habría sido puesto en libertad en base a los cargos judiciales o a sus antecedentes penales. **Si DHS no le pone en custodia durante este periodo adicional de 48 horas, usted debe de contactarse con su custodio** (la agencia que le tiene detenido en este momento) para preguntar acerca de su liberación. **Si usted cree que es un ciudadano de los Estados Unidos o la víctima de un crimen, por favor avise al DHS llamando gratuitamente al Centro de Apoyo a la Aplicación de la Ley ICE al (855) 448-6903.**

AVIS AU DETENU OU À LA DÉTENUÉ

Le Département de la Sécurité Intérieure (DHS) a placé un dépositaire d'immigration sur vous. Un dépositaire d'immigration est un avis à une agence de force de l'ordre que le DHS a l'intention de vous prendre en garde à vue (après cela vous pourrez par ailleurs être remis en liberté) parce qu'il y a une cause probable que vous soyez sujet à expulsion des États-Unis en vertu de la loi fédérale sur l'immigration. Le DHS a demandé que l'agence de force de l'ordre qui vous détient actuellement puisse vous maintenir en garde pendant une période ne devant pas dépasser 48 heures au-delà du temps après lequel vous auriez été libéré en se basant sur vos accusations criminelles ou condamnations. **Si le DHS ne vous prenne pas en garde à vue au cours de cette période supplémentaire de 48 heures, vous devez contacter votre gardien (ne)** (l'agence qui vous détient maintenant) pour vous renseigner sur votre libération. **Si vous croyez que vous êtes un citoyen ou une citoyenne des États-Unis ou une victime d'un crime, s'il vous plaît aviser le DHS en appelant gratuitement le centre d'assistance de force de l'ordre de l'ICE au (855) 448-6903**

NOTIFICAÇÃO AO DETENTO

O Departamento de Segurança Nacional (DHS) expediu um mandado de detenção migratória contra você. Um mandado de detenção migratória é uma notificação feita à uma agência de segurança pública que o DHS tem a intenção de assumir a sua custódia (após a qual você, caso contrário, seria liberado da custódia) porque existe causa provável que você está sujeito a ser removido dos Estados Unidos de acordo com a lei federal de imigração. O DHS solicitou à agência de segurança pública onde você está atualmente detido para manter a sua guarda por um período de no máximo 48 horas além do tempo que você teria sido liberado com base nas suas acusações ou condenações criminais. **Se o DHS não leva-lo sob custódia durante este período adicional de 48 horas, você deve entrar em contato com quem tiver a sua custódia** (a agência onde você está atualmente detido) para perguntar a respeito da sua liberação. **Se você acredita ser um cidadão dos Estados Unidos ou a vítima de um crime, por favor informe ao DHS através de uma ligação gratuita ao Centro de Suporte de Segurança Pública do Serviço de Imigração e Alfândega (ICE) pelo telefone (855) 448-6903.**

THÔNG BÁO CHO NGƯỜI BỊ GIAM

Bộ Nội An (DHS) đã ra lệnh giam giữ di trú đối với quý vị. Giam giữ di trú là một thông báo cho cơ quan công lực rằng Bộ Nội An sẽ đảm đương việc lưu giữ quý vị (sau khi quý vị được thả ra) bởi có lý do khả tín quý vị là đối tượng bị trục xuất khỏi Hoa Kỳ theo luật di trú liên bang. Sau khi quý vị đã thi hành đầy đủ thời gian của bản án dựa trên các tội phạm hay các kết án, thay vì được thả tự do, Bộ Nội An đã yêu cầu cơ quan công lực giữ quý vị lại thêm không quá 48 tiếng đồng hồ nữa. Nếu Bộ Nội An không đến bắt quý vị sau 48 tiếng đồng hồ phụ tội đó, quý vị cần liên lạc với cơ quan hiện đang giam giữ quý vị để tham khảo về việc trả tự do cho quý vị. Nếu quý vị là công dân Hoa Kỳ hay tin rằng mình là nạn nhân của một tội ác, xin vui lòng báo cho Bộ Nội An bằng cách gọi số điện thoại miễn phí 1(855) 448-6903 cho Trung Tâm Hỗ Trợ Cơ Quan Công Lực Di Trú.

被拘留者通知書

國土安全部(Department of Homeland Security, 簡稱DHS)已經對你發出移民拘留令。移民拘留令為一給予執法機構的通知書, 闡明DHS意欲獲取對你的羈押權(若非有此羈押權, 你將會被釋放); 因為根據聯邦移民法例, 並基於合理的原由, 你將會被遞解離美國國境。DHS亦已要求現正拘留你的執法機構, 在你因受到刑事檢控或定罪後, 而在本應被釋放的程序下, 繼續對你作出不超過四十八小時的監管。若你在這附加的四十八小時內, 仍未及移交至DHS的監管下, 你應當聯絡你的監管人(即現正監管你的機構)查詢有關你釋放的事宜。若你認為你是美國公民或為罪案受害者, 請致電ICE執法部支援中心(Law Enforcement Support Center)知會DHS, 免費電話號碼: (855)448-6903。

SAMPLE

EXHIBIT C

File No. _____

Date: _____

To: Any immigration officer authorized pursuant to sections 236 and 287 of the Immigration and Nationality Act and part 287 of title 8, Code of Federal Regulations, to serve warrants of arrest for immigration violations

I have determined that there is probable cause to believe that _____ is removable from the United States. This determination is based upon:

- the execution of a charging document to initiate removal proceedings against the subject;
- the pendency of ongoing removal proceedings against the subject;
- the failure to establish admissibility subsequent to deferred inspection;
- biometric confirmation of the subject's identity and a records check of federal databases that affirmatively indicate, by themselves or in addition to other reliable information, that the subject either lacks immigration status or notwithstanding such status is removable under U.S. immigration law; and/or
- statements made voluntarily by the subject to an immigration officer and/or other reliable evidence that affirmatively indicate the subject either lacks immigration status or notwithstanding such status is removable under U.S. immigration law.

YOU ARE COMMANDED to arrest and take into custody for removal proceedings under the Immigration and Nationality Act, the above-named alien.

(Signature of Authorized Immigration Officer)

(Printed Name and Title of Authorized Immigration Officer)

Certificate of Service

I hereby certify that the Warrant for Arrest of Alien was served by me at _____
(Location)

on _____ on _____, and the contents of this
(Name of Alien) (Date of Service)

notice were read to him or her in the _____ language.
(Language)

Name and Signature of Officer

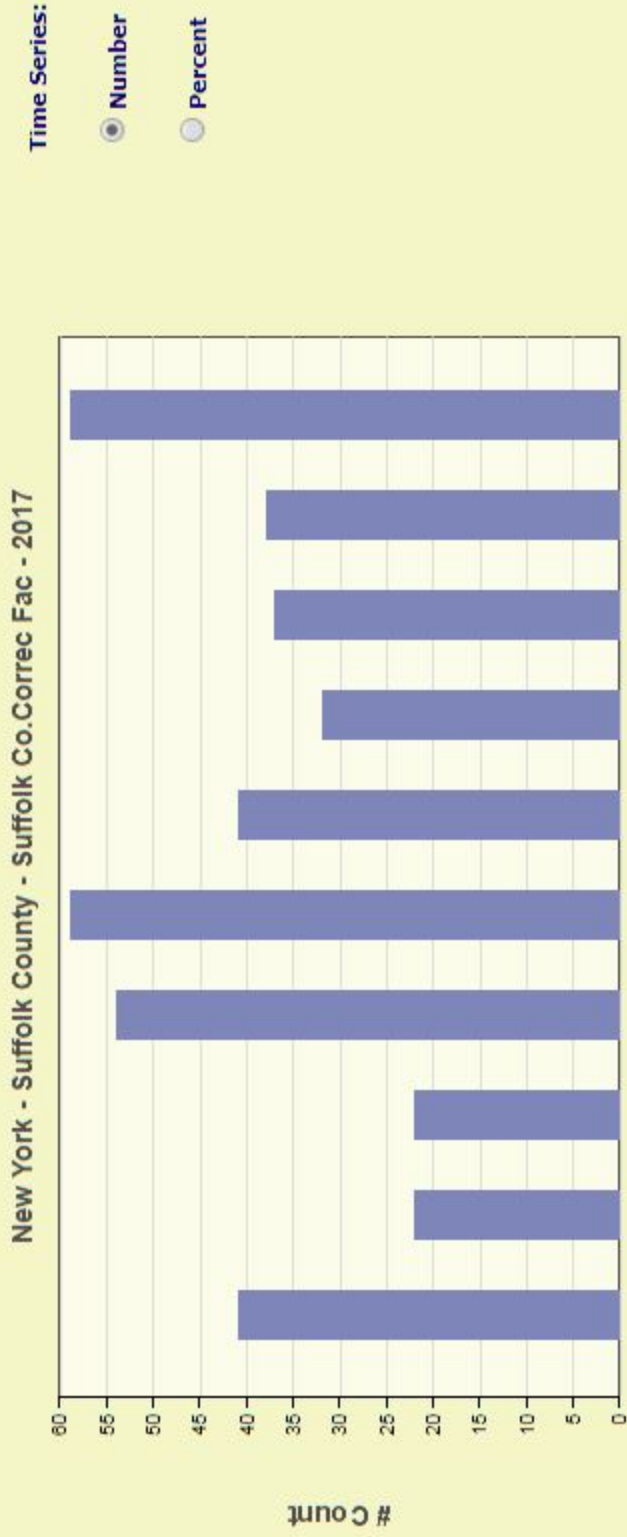
Name or Number of Interpreter (if applicable)

EXHIBIT D



Latest Data: Immigration and Customs Enforcement Detainers

ICE Data through July 2017 — see [About the Data](#)



Month and Year

State *click on column headings to sort*

County-Facility Detainer Sent *click on column headings to sort*

Fiscal Year *click on column headings to sort*

State	County-Facility Detainer Sent	Total
Arizona		107,575
Florida		97,399
Georgia		83,283
New York		77,571
Colorado		54,347
North Carolina		51,279
Illinois		41,729
Pennsylvania		41,568
Virginia		39,634
Washington		37,237
New Jersey		33,904
Ohio		27,559
Oregon		27,381
Tennessee		25,361
Nevada		25,313
Oklahoma		23,167
Queens County - Rikers Island, Queens, NY		77,571
Suffolk County - Suffolk Co. Correc Fac		22,414
Massau County - Nassau County Correctional Center		6,931
Kings County - Brooklyn Metropolitan Detention Cen		6,622
Westchester County - Westchester Co.Jail.valha		4,254
Queens County - Queens Central Booking		4,060
Kings County - Brooklyn Central Booking		2,710
New York County - Manhattan Central Booking		1,921
Dutchess County - Downstate Cf, Fishkill		1,556
Ulster County - Ulster Cf, Napanoch		1,544
Kings County - New York Mcc		1,473
Orange County - Orange County Correctional Facilit		1,353
Bronx County - Bronx Central Booking		1,315
Rockland County - Rockland Co Jail,new City		1,311
All	County-Facility Detainer Sent	Total
All		6,931
2012		866
2011		787
2008		776
2009		751
2010		716
2007		702
2014		652
2013		648
2017		405
2015		284
2016		262
2006		82

EXHIBIT E

COUNTY OF SUFFOLK



OFFICE OF THE SHERIFF

VINCENT F. DEMARCO
SHERIFF

TO: All Personnel
FROM: Sheriff Vincent F. DeMarco
DATE: December 2, 2016
SUBJECT: Memorandum ICE Detainers

Effective immediately any prisoners with an ICE Detainer (Form I-247D or Form I-247X) accompanied by a U.S. Department of Homeland Security Warrant Arrest of Alien (Form I-200) and/or U.S. Department of Homeland Security Warrant of Removal/Deportation (Form I-205) will be held for up to 48 hours after the time the prisoner would be otherwise released.

ICE is to be notified immediately prior to the time the prisoner would be otherwise released.

Listed below are regional contact persons:

Mayowa Bonojo (212) 863-3425
Charlie Batista (212) 886-1700
FAX (212) 863-3495

If you cannot reach a regional contact person, please contact the ICE Law Enforcement Support Center at (802) 872-6020

VFD/kcm

EXHIBIT F

February 1, 2017

Vincent DeMarco
Suffolk County Sheriff
200 Suffolk Ave,
Yaphank, NY 11980

Dear Sheriff DeMarco:

Thank you for meeting with us on December 12th regarding the recent changes in your department's ICE detainer policy. We are deeply troubled and disappointed that you have decided to again honor requests from ICE (U.S. Immigration and Customs Enforcement) by extending an inmate's detention solely based upon ICE's administrative request without requiring a judicial warrant.

We oppose this policy reversal on constitutional, statutory, ethical, and practical grounds. As you well know, several federal courts have repeatedly found ICE detainers to be legally defective on several grounds and subsequently then held the locality, not ICE, liable for damages resulting from the illegal detention. Most recently, a federal court in Illinois struck down the newly revised ICE detainer form this past fall, the same form cited by the Suffolk County Attorney's opinion as providing you the authority to detain someone (*Jimenez Moreno v. Napolitano*). This, and the other federal court decisions we have cited, supersede any putative NYS court ruling cited in the County Attorney's opinion. Please see the attached decision for your review.

You, Sheriff DeMarco, led the way among Suffolk County law enforcement in 2014 by announcing that your department would no longer honor ICE detainers without a judicial warrant. In a county with a history of being particularly inhospitable, and even violent, toward immigrants, this was a significant step toward reducing the fear immigrants had about speaking with and cooperating with local law enforcement officers. Cultivating trust and cooperation between local law enforcement and immigrants is essential to the wellbeing of all our communities. By changing your policy now, post-election, particularly during a period when there has been a rise in hate crimes toward immigrants, Muslims, and other people of color, you are sending a dangerous message to our communities that local law enforcement is not to be trusted.

We are also concerned that inmates who are facing charges for nonviolent crimes (such as those individuals who are jailed as a result of traffic violations) are going to be caught up in these illegal detentions resulting in their potential deportation, all facilitated by the Suffolk County Sheriff,. Many such individuals who may have prior orders of deportation have deep family and economic ties to Suffolk County, pose no danger to the community, and should not be priorities for deportation. In addition, the processing of these cases by clerks in your record

room, who may not be providing sufficient attention to each individual case, leaves room for costly and life -changing errors.

The monetary costs of this unlawful practice are in fact twofold: both for incurring liability for violating the detainee's Constitutional rights, as well as for paying for the staff, food, and overhead of keeping a person in jail for up to 48 hours beyond their County or State sentence. The resulting protracted legal challenge to this policy change by your office will also, no doubt, be costly.

Just last week, NY State Attorney General Schneiderman issued a guidance concerning local law enforcement participation in immigration enforcement which states, in part:

The mere fact that an individual is unlawfully in the U.S. is not a criminal offense. Therefore, Unlawful presence in the U.S., by itself, does not justify continued detention beyond that individual's normal release date. This applies even where ICE or CBP provide an LEA with administrative forms that use terms such as "probable cause" or "warrant." A determination of whether the LEA had probable cause to further detain an individual will turn on all the facts and circumstances, not simply words that ICE or CBP places on its forms. Accordingly, in several different lawsuits, federal courts have held that an LEA violated the Fourth Amendment rights of an individual whom the LEA held past his or her normal release date in response to an ICE detainer request.¹⁷ The courts reasoned that the ICE detainer requests did not constitute probable cause to believe that the individual had committed crime; therefore further detention was unconstitutional.

We urge you again to reconsider your current policy and to nullify it, at least until the federal courts have decided its legality. In the interim, please be aware that we are exploring the avenues necessary to challenge this new policy legally. Please feel free to contact us if you would like to discuss this matter further.

Sincerely,

Cheryl Keshner, Empire Justice Center

Foster Maier, Latino Justice/PRLDEF

Christina Gaudio, Legal Aid Society of Suffolk County

John Durso, Long Island Federation of Labor

Luis Valenzuela, Long Island Immigrant Alliance

Anita Halasz, Long Island Jobs with Justice

Walter Barrientos, Make the Road/NY

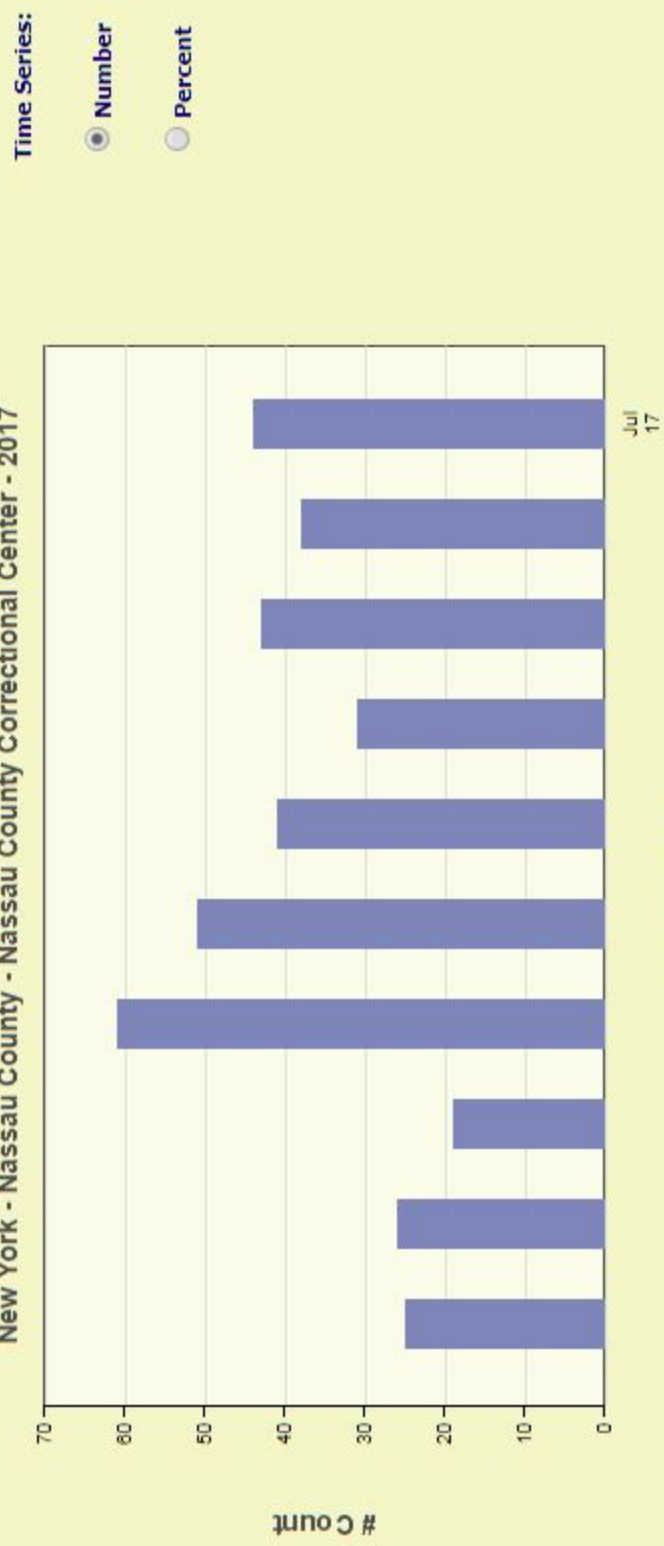
EXHIBIT G



Latest Data: Immigration and Customs Enforcement Detainers

ICE Data through July 2017 – see [About the Data](#)

New York - Nassau County - Nassau County Correctional Center - 2017



Graph Time Scale:
 by Month
 by Fiscal Year

Time Series:
 Number
 Percent

State
[click on column headings to sort](#)

County-Facility Detainer Sent
 State=**New York**
[click on column headings to sort](#)

Fiscal Year
 State=**New York, County-Facility Detainer Sent=Nassau County - Nassau County Correctional Center**
[click on column headings to sort](#)

State	Total
Arizona	107,575
Florida	97,399
Georgia	83,283
New York	77,571
Colorado	54,347
North Carolina	51,279
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Pennsylvania	41,568
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Nevada	25,313
Oklahoma	23,167

County-Facility Detainer Sent	Total
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Queens County - Rikers Island, Queens, NY	22,414
Suffolk County - Suffolk Co. Correc Fac	6,931
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Westchester County - Westchester Co. Jail, Valhalla	4,060
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Kings County - Brooklyn Central Booking	1,921
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Ulster County - Ulster Cf, Napanoch	1,473
Kings County - New York Mcc	1,353
Orange County - Orange County Correctional Facilit	1,315
Bronx County - Bronx Central Booking	1,311
Rockland County - Rockland Co Jail, New City	1,297

Fiscal Year	Total
All	6,622
2011	826
2007	753
2008	749
2012	742
2013	702
2009	672
2010	668
2014	570
2017	379
2015	265
2016	177
2006	115
2004	3
2003	1

EXHIBIT H

EXHIBIT I

SUPREME COURT, NASSAU COUNTY

CRIM. TERM: PART 46

PRESENT:

HON. PATRICIA A. HARRINGTON, AJSC

THE PEOPLE OF THE STATE OF NEW YORK, X
Ex Rel: Timothy Naples, Esq.; Victoria Starrett, Esq.
On behalf of: Olga Garcia-Gregory, DOB 3/27/1983

Docket No: 2015 NA 013390

-against-

MICHAEL SPOSATO, Sheriff of Nassau County,

Defendant

Defendant filed a Petition for a Writ of Habeas Corpus, which was served on the People and orally argued on the record on July 29 and July 30, 2015.

Now upon reading the papers filed and hearing from all attorneys on the matter, defendant's Writ of Habeas Corpus is granted. Respondent is not to detain Olga Garcia-Gregory pursuant to DHS Form I-247D, the Immigration Detainer, and DHS Form I-200, the Warrant of Arrest of Aliens.

SO ORDERED.

Dated: July 31, 2015

ENTER

Patricia A. Harrington

HON. PATRICIA A. HARRINGTON, AJSC

ENTERED
AND
FILED

AUG
CLERK'S OFFICE
COUNTY COURT
NASSAU COUNTY

EXHIBIT J

SUPREME COURT, NASSAU COUNTY

CRIM. TERM: PART 46

PRESENT:

HON. PATRICIA A. HARRINGTON, AJSC

RECEIVED
11/5 2 2015

BY:

Docket No.: 2015 NA 11721

-----X
THE PEOPLE OF THE STATE OF NEW YORK,
Ex Rel: Timothy Naples, Esq.; Victoria Starrett, Esq.
On Behalf of: Marlon Herrera-Reyes, DOB 05/07/1987

-against-

MICHAEL SPOSATO, Sheriff of Nassau County

Respondent

-----X

Defendant filed a Petition for a Writ of Habeas Corpus, which was served on the People and orally argued on the record on August 5 and August 7, 2015.

Now upon reading the papers filed and hearing from both attorneys on the matter, defendant's writ of Habeas Corpus is granted. Respondent is not to detain Marlon Herrera-Reyes pursuant to DHS Form I-247, the Immigration Detainer, and DHS Form I-200, the Warrant of Arrest of Aliens.

SO ORDERED.


Dated: August 7, 2015

ENTER

ENTERED
AND
FILED
AUG 10 2015
CLERK'S OFFICE
COUNTY COURT
NASSAU COUNTY

Patricia A. Harrington
HON. PATRICIA A. HARRINGTON, AJSC

EXHIBIT K

<p>NASSAU COUNTY SHERIFF'S DEPARTMENT DIVISION OF CORRECTION</p> <p>POLICY AND PROCEDURES</p> 	NUMBER: CD 04-02-06
	REPLACES: New
	EFFECTIVE DATE: March 8, 2006
SUBJECT: WARRANTS (Handling of)	Page 1 of 2 Pages
AUTHORIZED BY: <u> /s/ E. Reilly </u> Sheriff	REVIEWED BY: <u> /s/ R. Rogers </u> Deputy Undersheriff REVIEWED BY: <u> /s/ E. Loconsolo </u> General Counsel
REFERENCES:	DISTRIBUTION: Sheriff, Undersheriff, Deputy Undersheriffs, Captains, Lieutenants, Sergeants, D-Operations, Control Desks, Academy

I. POLICY

It is the policy of the Nassau County Sheriff's Department to ensure accurate recording of inmate warrant information.

II. DEFINITIONS

Warrant - Document that gives law enforcement particular rights or powers, i.e., the right to search or arrest someone.

Detainer – A writ authorizing the further detention of a person in custody, pending further action.

Securing order – An order issued by the court when a principal whose further court appearance at a criminal action or proceeding is or may be required comes under the control of the court – this order either releases him/her on his/her own recognizance, fixes bail or commits the principal to the custody of the Sheriff.

Inmate Tracking System - Computerized system used to enter and record each inmate's information. For the purpose of this policy and procedure information includes data entered on the following screens: *V screen – Warrant Inquiry; W screen – Adding of Warrant Information.*

NYSPIN – New York State Prisoner Information Network

SUBJECT: Warrants (Handling of)	NUMBER: CD 04-02-06	EFFECTIVE DATE: March 8, 2006	Page 2 of 2
------------------------------------	------------------------	----------------------------------	-------------

III. PROCEDURE

- A. Any warrant or securing order that is lodged into the Inmate Tracking System (*W screen*) by Admissions or Court Desk Officers, i.e. – detainer, NYSPIN, facsimile or hard copy will be double-checked by a second Operations Officer.
- B. The second Officer will review the paperwork and computer entry (Inmate Tracking System, *V screen*) to ensure that it has been entered correctly.
- C. The second Officer will then initial the warrant jacket to certify that is has been checked and verified to be correct.
- D. The Admissions or Court Desk Officer will make a copy of the warrant and send it to Inmate Records. Upon receipt of the copy of the warrant, the Inmate Records Officer will check the Inmate Tracking System and ensure that the warrant was entered onto the Warrant screen (*V screen*) and place a copy into the inmate's Record file.
- E. On duty Admissions Officers will check the Warrant Box every Saturday between the hours of 0630-1500 to ensure that the computer printout (generated by Computer Operations) is reconciled with the warrants contained in the "Warrant Box".

EXHIBIT L

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION: SECOND DEPARTMENT

-----X
The People of the State of New York ex rel. : **WARRANT OF**
Jordan Wells on Behalf of Susai Francis, : **ATTACHMENT**
:
Petitioner, : App. Div. Docket No.
: _____
-against- :
:
VINCENT F. DEMARCO, Sheriff of :
Suffolk County, :
:
Respondent. :
-----X

To: _____:

It appearing by the petition of Jordan Wells, verified on the 11th of December, 2017, that a writ of habeas corpus is being applied for to produce before this court the body of Susai Francis, and it further satisfactorily appearing from said petition that there is good reason to believe that Mr. Francis may be moved out of the State of New York before the Court can order effective relief and that Mr. Francis is suffering irreparable injury,

NOW THEREFORE, you are commanded to take and immediately bring before this court, to be held at the courthouse, located at 45 Monroe Place, Brooklyn, Kings County, State of New York, Susai Francis, there to be dealt with according to law,

And it is further Ordered, that the officers and agents of _____ are hereby requested to assist in carrying out the purposes of this warrant.

Dated: December 11, 2017
Brooklyn, N.Y.

Enter,

JUSTICE OF THE APPELATE DIVISION,
SECOND DEPARTMENT, OF THE SUPREME
COURT