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

SUPPLEMENTAL MEMORANDUM OF LAW

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Dated: January 5, 2018
New York, New York

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes, Regulations, and Ordinances

PRELIMINARY STATEMENT

Pursuant to the Court's letter of December 13, 2017, the petitioner respectfully submits this memorandum of law to supplement the arguments in the petitioner's memorandum of law filed with the Court on December 11, 2017. Although the respondent has not yet submitted a memorandum of law in this case, it has submitted a sworn affidavit describing its detention of Susai Francis and a copy of a contract it has with United States Immigration and Customs Enforcement (ICE) to house ICE detainees. This memorandum addresses those documents and the rationales for Mr. Francis' detention that they ostensibly offer.

The undisputed facts of this case show that Mr. Francis would have been free to leave the courthouse after his plea and sentence to time served but for the respondent detaining him at the request of ICE. As set forth in the petitioner's opening memorandum of law and further argued below, such detention constitutes a warrantless arrest that New York officers possess no authority to perform. Moreover, the respondent's contract with ICE does not and could not furnish any arrest authority. The detention of Mr. Francis thus constituted an unlawful arrest.

Because this important, narrow legal issue is recurring but ephemeral, it is critical that the Court address it, lest it evade judicial review. Although the Court cannot provide habeas relief directly to Mr. Francis given his transfer to federal custody, it can and should convert this proceeding to an action for declaratory

judgment and hold that New York officers possess no authority under state or federal law to perform civil immigration arrests.

BACKGROUND

The petitioner's original Verified Petition ("Pet.") and Memorandum of Law ("Mem."), both dated Dec. 11, 2017, provide the context giving rise to this case. To summarize briefly before turning to the facts and procedural history since those filings, the Suffolk County Sheriff's Office (SCSO) maintains a policy and practice of detaining individuals after they would otherwise be released from custody in response to requests from ICE officers alleging the individual is subject to civil removal from the United States (Pet. ¶ 14). This detention is based solely on an immigration detainer and another agency form labeled as a "warrant" (*id.*). Also known as "Form I-200," the administrative "warrant" directs immigration officers to effectuate a civil immigration arrest (Pet. ¶¶ 10-11; Mem. at 2). As with the detainer, Form I-200 is issued by federal law enforcement employees and is not reviewed or signed by a judicial officer (*id.*). This case presents the issue whether detaining an individual based only on these forms constitutes an unlawful arrest under state law.

On December 11, 2017, Susai Francis pleaded guilty to disorderly conduct and was sentenced by the Suffolk County District Court in Central Islip to time served (Pet. ¶ 8; Supplemental Verified Petition, dated January 5, 2018, ¶ 5

("Suppl. Pet.")). Although at that point there no longer existed any state-law basis for SCSO officers to detain him, they did so because he was the subject of an ICE detainer and administrative warrant (Pet. ¶ 10; Affidavit of Kenneth Bockelman, dated Dec. 12, 2017, ¶ 4 ("Bockelman Aff."), attached as Exhibit C to Suppl. Pet.). The SCSO officers held him at the courthouse in Central Islip until approximately 7:00 P.M. that day, after which they transported him to Riverhead Correctional Facility (Pet. ¶ 9; Suppl. Pet. ¶ 8, Affirmation of Michelle Caldera-Kopf ¶ 12 ("Caldera-Kopf Aff."), attached as Exhibit B to Suppl. Pet.).

While the SCSO officers were holding Mr. Francis at the courthouse, the petitioner, by an order to show cause, brought on this proceeding under Article 70 of the Civil Practice Law and Rules (CPLR), which grants the Appellate Division original jurisdiction over petitions for writs of habeas corpus (CPLR § 7002[b][2]; *see* Suppl. Pet. ¶ 9). Associate Justice Hector D. LaSalle signed the order to show cause, scheduling the case to be heard by the Court the next morning, Tuesday, December 12, 2017 (*id.* ¶ 10).

Before a panel of the Court on December 12, 2017, an attorney from the Suffolk County Attorney's Office, appearing as counsel for the respondent, stated that the SCSO had a "287[g]" agreement with ICE (Suppl. Pet. ¶ 11). Under such an agreement, pursuant to 8 USC § 1357[g][1], *et seq.*, local officers have authority under federal law to perform certain immigration enforcement functions (*id.*).

Skeptical of this representation but accepting it *arguendo*, the petitioner responded that local officers operating under a 287[g] agreement nonetheless still must have state law arrest authority to conduct civil immigration arrests (*id.*; *see also* Petitioner's Memorandum of Law, dated Dec. 11, 2017 at 14 n 7).

Shortly after the parties appeared in Court, the Suffolk County Attorney's Office submitted the sworn affidavit of SCSO Sergeant Kenneth Bockelman (*see* Bockelman Aff., Ex. C to Suppl. Pet.). The affidavit explains that after receiving a sentence of time served, Mr. Francis "was returned to the Riverhead Correctional Facility and he was re-written from an 'adult male misdemeanor' to 'adult male warrant,' based on the ICE warrant" (*id.* ¶ 4).

On that same afternoon, December 12, 2017, the petitioner submitted a letter in response to Sergeant Bockelman's affidavit, arguing that the affidavit supported the claim that the respondent's officers had unlawfully arrested Mr. Francis and that the Court therefore should order his release (*see* Letter from Jordan Wells to Clerk of the Court, dated Dec. 12, 2017, attached as Exhibit E to Suppl. Pet.). In the alternative, the petitioner asked the Court to apply the exception to mootness for important, recurring issues that are likely to evade review (*id.*).

Later that evening, in a letter to the Clerk of the Court, the County Attorney's Office withdrew its earlier contention that the SCSO had a 287[g] agreement (*see* Letter, with enclosures, from Leonard G. Kapsalis to Clerk of the

Court, dated Dec. 12, 2017, attached as Exhibit F to Suppl. Pet.). The County Attorney's Office explained that the Suffolk County Correctional Facility in fact has a "Detention Services Intergovernmental Agreement" with the United States Marshals Service (USMS) that "provides for the acceptance and housing of Federal detainees" (*id.* (emphasis added)). The County Attorney's Office enclosed the agreement, also known as an "IGA," as well as a modification, effective October 20, 2017, that adds ICE as a party to the agreement (*id.*).

The stated "Purpose of the Agreement" is "to house Federal detainees with the Local Government at the SUFFOLK COUNTY CORRECTIONAL FACILITY, 100 CENTER DRIVE, RIVERHEAD NY 11901" (*see* Exhibit F to Suppl. Pet., IGA at 3). The "Purpose" section further provides that "[t]he Local Government shall accept and provide for the secure custody, safekeeping, housing, subsistence and care of Federal detainees in accordance with all state and local laws" (*id.*). The IGA contemplates that the respondent will receive prisoners from federal officers; a section entitled "Receiving and Discharge of Federal Detainees," provides that the "Local Government agrees to accept Federal detainees only upon presentation by a law enforcement officer of the Federal Government or a USMS designee with proper agency credentials" (*id.* at 6 (emphasis added)). The IGA does not contain any provision purporting to authorize "Local Government" officers (here, SCSCO officers) to make federal immigration arrests.

On December 13, 2017, at 2:54 PM, the Suffolk County Attorney's Office informed the Clerk of the Court and the petitioner by electronic mail that it had just learned that Mr. Francis had been "removed from the Suffolk County Correctional Facility earlier today by ICE personnel" (Suppl. Pet. ¶ 16). In a letter issued later that day, the Clerk of the Court wrote to invite the parties to file supplemental pleadings and further legal briefing and to invite the Office of the United States Attorney General and the Office of the New York State Attorney General to submit memoranda of law as *amici curiae* (*id.* ¶ 17).

Mr. Francis currently is in ICE custody (*id.* ¶ 19). He has not seen an immigration judge or any other neutral judicial officer since he was detained at the courthouse in Central Islip on December 11, 2017, and he does not yet have a date when he is scheduled to be brought to immigration court (*id*. ¶ 20). He is likely to face at least another month of detention before he goes before an immigration judge and has the opportunity to request release on bond (*id*.).

ARGUMENT

The petitioner's original memorandum of law argues that New York statutes comprehensively define and limit New York law enforcement officers' arrest authority and that no statute affords them authority to make civil immigration arrests. Those arguments, which the petitioner will not reproduce here, analyze the arrest of Mr. Francis as a warrantless arrest. That is the correct analytical approach,

but it appears from Sergeant Bockelman's affidavit as if the respondent incorrectly regards the arrest of Mr. Francis as having been pursuant to a warrant, on the authority of the Form I-200 "ICE warrant." As argued below, there is no basis under New York law to treat Form I-200 as an arrest warrant. Moreover, the SCSO's contract to house federal detainees does not provide its officers with any arrest authority, and in any event is irrelevant to the arrest at issue, which SCSO officers conducted at a courthouse in Central Islip. As the SCSO officers lacked any authority to arrest Mr. Francis after his plea and sentence to time served, their arrest of him was unlawful.

Although the Court cannot provide habeas relief directly to Mr. Francis given his transfer to federal custody, the exception to mootness for important legal issues that are capable of repetition yet typically evade review squarely applies to this case. Because SCSO officers routinely conduct civil immigration arrests without any judicial review, it is important for the Court to address the merits of this case. In so doing, the Court should hold that New York officers possess no authority to perform civil immigration arrests such as the one at issue here.

I. An Arrest by a New York Officer Based on an ICE Administrative "Warrant" Constitutes a Warrantless Arrest.

Although the respondent has not yet submitted a legal memorandum in this case, it appears from the Sergeant Bockelman's affidavit that the respondent relied on Form I-200 as authority for the arrest of Mr. Francis (*see* Bockelman Aff. ¶ 4).

But Form I-200 does not constitute a warrant under New York statutory law, which explicitly describe the types of warrants New York officers are authorized to execute and the procedures attendant thereto. Thus, despite bearing the word "warrant," Form I-200 does nothing to transform a warrantless arrest into one pursuant to a warrant.

Not only has the New York Legislature prescribed the precise limits of New York officers' warrantless arrests authority, (*see* Mem. at 6-14), it also has done so with respect to arrests pursuant to a warrant in both the criminal and civil contexts. In the criminal context, Article 120 of the Criminal Procedure Law (CPL) defines a "warrant of arrest" and provides what it must contain, who can issue it and when, to whom it may be addressed, who may execute it, the procedures for executing it, and the post-arrest procedures (*see* CPL § 120.10 *et seq*). It defines warrant of arrest as "a process issued by a local criminal court directing a police officer to arrest a defendant . . . and to bring him before such court" and provides that its "sole function" is "to achieve a defendant's court appearance in a criminal action" (CPL § 120.10 (emphasis added)). A warrant may be executed either by "any police officer to whom it is addressed" or, provided several conditions are met, another officer delegated the task (CPL §§ 120.60[1]-[3]). Following the arrest, the officer must take the arrestee "before the local criminal court in which such warrant is returnable" (CPL § 120.90[1]). Without belaboring the point further, it is

plain that a civil immigration arrest pursuant to an administrative form issued by federal employees and addressed to other federal employees does not conform to these provisions. Thus, Article 120 provides no authority for respondent's officers to perform arrests pursuant to Form I-200.

Moreover, under Article 570 of the CPL, which provides the procedures for arresting and delivering a person to a jurisdiction other than New York, even a valid warrant from another jurisdiction generally does not provide authority for New York officers to execute an arrest. Except in the case of a "crime punishable by death or imprisonment for a term exceeding one year," (CPL § 570.34), in order to make such an arrest, New York officers must also obtain an arrest warrant from a local criminal court (*see* CPL § 570.32). This Court recently applied this statute to hold that a detective "had no authority to arrest the defendant based on his information that there was an out-of-state violation of probation warrant, as the detective did not obtain a warrant from a local criminal court" (*People v Hernandez*, 106 AD3d 838, 839 [2013], citing CPL § 570.32).

The Legislature also has provided New York officers with authority to make certain civil arrests pursuant to a warrant issued by a neutral officer in certain specific circumstances (*see e.g.* CPLR § 2308[a]-[b][1] [failure to comply with subpoena]; CPLR § 5250 [judgment debtor absconding with property]; NY Judiciary Law § 772 [enforcement of punishment for contempt]; NY Family Court

Act § 312.2 [juvenile delinquency], NY Family Court Act § 428 [failure to provide child support]; NY General Municipal Law § 371[3] [failure to answer charge of traffic violation]; NY Mental Hygiene Law § 9.43 [individuals who appear mentally ill and are either engaged in disorderly conduct or likely to cause serious harm]). Again, none of these provisions speaks to the type of arrest at issue here or provides a basis to conclude that New York law regards Form I-200 as a valid arrest warrant.

The foregoing provisions demonstrate that the New York Legislature has explicitly provided New York officers with specific, well-defined grants of authority for arrests pursuant to a warrant and has carefully regulated the procedures incident to such arrests. New York has not provided its officers the authority to make civil immigration arrests pursuant to Form I-200. The respondent may argue that the Court should declare some nebulous implied authority for such arrests, but that makes no sense in the context of an elaborate state statutory scheme addressing the full gamut of other arrests (*cf. Lunn v Commonwealth*, 78 NE3d 1143, 1158 [2017] ["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 unrecognized and undefined. The better course is for us to defer to the Legislature to establish and carefully define that authority . . ."]).

Because there is no basis under state law to treat the arrest of Mr. Francis as pursuant to a warrant, the Court should analyze it under state law as a warrantless arrest. And, as the petitioner argued in his opening memorandum of law and the New York Office of the Attorney General explained over seventeen years ago and reaffirmed earlier this year, New York law provides no authority for the respondent's officers to make warrantless civil immigration arrests, (Mem. at 6-14). The Court therefore should hold that the arrest of Mr. Francis was unlawful.

II. The Respondent's Contract to House Federal Detainees Does Not Provide Its Officers With Any Arrest Authority and Is Completely Irrelevant to the Legality of the Arrest at Issue.

To the extent that the Respondent relies on its contract to house federal detainees as authority for the arrest of Mr. Francis, such reliance would be misplaced. That agreement does not and could not provide SCSO officers with any arrest authority and thus is irrelevant to the legal question at issue.[1]

First, by its own terms, the contract does not purport to confer any authority on SCSO officers to make arrests. As the County Attorney's Office explained in its letter to the Court, the "Detention Services Intergovernmental Agreement" that Suffolk County Correctional Facility has with the United States Marshals Service

[1] Moreover, the respondent abandoned its previous policy of declining detainer requests, (*see* Sheriff Vincent F. DeMarco, Memorandum - ICE Detainers [Sept. 8, 2014], attached as exhibit A to Suppl. Pet.), and began arresting individuals pursuant to such requests, in December 2016 (Suppl. Pet. ¶ 4; Pet. ¶ 14), long before it entered into the contract with ICE (Suppl. Pet. ¶ 15).

(USMS) "provides for the acceptance and housing of Federal detainees" (*see* Exhibit F to Suppl. Pet. (emphasis added)). It does not provide for any arrests. Indeed, the stated "Purpose of the Agreement" is simply "to house Federal detainees" (*see id.*, IGA at 3). It provides that SCSO "shall accept . . . Federal detainees in accordance with all state and local laws," (*id.* (emphasis added)), but "only upon presentation by a law enforcement officer of the Federal Government or a USMS designee with proper agency credentials" (*id.* at 6). It contains no provision purporting to authorize the SCSO to make any arrests or to present federal detainees to itself to be housed at the jail.

Second, the federal statute enabling ICE to enter into such an agreement does not confer any authority on state or local officers to make arrests. The Immigration and Nationality Act provides that ICE may pay local jails for detention space to hold noncitizens who have been lawfully arrested, but the relevant provision confers no authority on state or local officers to make civil immigration arrests themselves (*see* 8 USC § 1103[a][11][A] ["The Attorney General, in support of persons in administrative detention in non-Federal institutions, is authorized . . . to make payments from funds appropriated for the administration and enforcement of the laws relating to immigration, naturalization, and alien registration for necessary clothing, medical care, necessary guard hire, and the housing, care, and security of persons detained by the Service pursuant to

Federal law under an agreement with a State or political subdivision of a State."]). In sum, the contract and its authorizing statute does not do not furnish SCSO officers with authority to make immigration arrests at all, let alone in circumstances where they lack state-law arrest authority.

Third, even if the respondent were to assert (incorrectly) that preventing an otherwise free person from leaving Riverhead Correctional Facility and confining that person to a jail cell rented to ICE does not constitute an arrest, that is not what happened here; Mr. Francis was arrested by SCSO officers at a court in Central Islip and detained in handcuffs for several hours before he was transported to Riverhead (Suppl. Pet. ¶¶ 7-8). The jail was not the initial setting for the arrest in this case. Mr. Francis was arrested in the courthouse in Central Islip shortly after his plea to time served when—but for the civil immigration detainer and Form I-200—he would have been free to go (*see id.* ¶ 8; Calder-Kopf Aff. ¶¶ 12-13). Indeed, after acknowledging that that the lone charge against Mr. Francis "was resolved" and that Mr. Francis received a sentence of time served, Sergeant Bockelman's affidavit states that Mr. Francis was "returned" to Riverhead Correctional Facility (*see* Bockelman Aff. ¶ 4, Exhibit C to Suppl. Pet.). This is a euphemistic way of stating that, instead of being permitted to leave following his plea, Mr. Francis was forcibly held against his will in the respondent's custody and brought to a jail. Whereas absent the detainer he would have been free to leave the

courthouse within minutes of his plea (Caldera-Kopf Aff. ¶ 13), the respondent's officers held him in a holding cell for several hours at the courthouse before transporting him to Riverhead in a bus with other prisoners (*id.* ¶ 12; Suppl. Pet. ¶ 8). It is beyond cavil that these facts constitute an arrest (*see People v Arcese*, 148 AD2d 460 [2d Dept 1989] [stating that whether there was an arrest depends on whether a reasonable person would feel free to leave]). Thus, Mr. Francis was arrested well before the "re-writing" process at the jail that Sergeant Bockelman describes in his affidavit.

For all of these reasons, the IGA contract provided no authority or basis to arrest Mr. Francis. It therefore is irrelevant to the legal question in this case.

III. As the Propriety of New York Officers Conducting Civil Immigration Arrests Is an Important, Recurring Issue Likely to Evade Review, the Court Should Rule on It in This Case.

When federal officers took Mr. Francis into custody before the Court could adjudicate his claim of unlawful arrest, the habeas corpus relief the petitioner sought on his behalf became moot. The petitioner nonetheless respectfully urges the Court to proceed to decide the legal issue underlying that claim by finding that this case is within the exception to mootness applicable when the following factors are present: "(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, i.e.,

substantial and novel issues" (*Hearst Corp v Clyne*, 50 NY2d 707, 714-15 [1980]; *see also City of New York v Maul*, 14 NY3d 499, 507 [2010] [explaining that New York courts have "consistently applied [this] exception to the mootness doctrine . . . where the issues are substantial or novel, likely to recur and capable of evading review"]). The New York State Court of Appeals recently applied this exception to an analogous habeas proceeding challenging the practice of setting cash-only bail (*see People ex rel. McManus v Horn*, 18 NY3d 660, 663-64 [2012]). There, as a result of the petitioner pleading to the charged offense, his challenge to his pretrial detention was "technically no longer germane since that custody was terminated" (*id.* at 663). Nevertheless, finding cash-only bail to be "an important issue that is likely to recur and which typically will evade our review," the Court proceeded to reach the merits of the case (*id.* at 664). As in *McManus*, this case warrants the application of the exception to mootness.[2]

[2] New York appellate courts applying the mootness exception in habeas proceedings often convert the proceeding into another form of action. In *McManus*, for example, because the relator "no longer need[ed] affirmative habeas relief," the Court of Appeals converted the proceeding into a declaratory judgment action (*id.* at 664 n. 2; *see also Green v Superintendent*, 137 AD3d 56, 58 [3d Dept 2016] [applying mootness exception where challenge to detention of petitioner in maximum security facility past maximum expiration date became moot during appeal and converting proceeding to action for declaratory judgment, citing CPLR § 103(c) ["If a court has obtained jurisdiction over the parties, a civil judicial proceeding shall not be dismissed solely because it is not brought in the proper form, but the court shall make whatever order is required for its proper prosecution."]]). Indeed, "appellate courts are empowered to convert a civil proceeding into one which is proper in form under CPLR 103(c), making whatever order is necessary for its proper prosecution" (*People ex rel. Brown v New York State Div of Parole*, 70 NY2d 391, 398 [1987] [in case seeking to vacate parole warrant, where success on merits would not entitle petitioner to immediate release, finding habeas corpus unavailable and converting case to Article 78 proceeding]).

First, the issue of New York officers' authority to make civil immigration arrests is certain to recur. As detailed in the verified petition, ICE issued over 400 detainer requests to the SCSO in the first ten months of 2017 alone and nearly as many to the Nassau County Sheriff's Department (Pet. ¶¶ 13, 16). Both of these agencies maintain a consistent practice of conducting civil immigration arrests based on these detainer requests (Pet. ¶¶ 14, 17). Thus, it is fair to anticipate that in 2018 alone, hundreds of individuals could be affected by a decision in this case (*cf. City of New York v Maul*, 14 NY3d at 507 [applying mootness exception where practices at issue were alleged to affect 150 individuals beyond named plaintiffs]). Moreover, the respondent should not be heard to argue for mootness in this case given that it recently argued that this Court should deny interim relief in another case in part because "the very same issues" in that case "are currently being briefed" in Mr. Francis' case. (*See* Memorandum of Law in Opposition to Order to Show Cause, dated Dec. 27, 2017, at 5, 32, *Matter of Florez-Rojas v. Suffolk County Sheriff's Office, et al.*, Appellate Division Docket No. 2017-13213).

Second, because the time a detainee spends in local law enforcement custody after each civil immigration arrest is relatively brief, review by this Court would be all but impossible without applying the exception to mootness (*see* Mem. at 2-3; Pet. ¶ 22). The detention of Mr. Francis aptly illustrates this issue. His habeas petition was filed less than an hour after he was sentenced to time served in

criminal court (Suppl. Pet. ¶ 9). Fewer than 40 hours after his unlawful arrest, Mr. Francis was transferred out of the Suffolk County Sheriff's Office Riverhead Correctional Facility (*id.* ¶ 18). The brevity of his detention based on the immigration detainer was not unusual: indeed, the detainer form itself directs that a detention should last no more than 48 hours, (*see* Exhibit B to Pet.), and the SCSO's policy is to hold individuals "for up to 48 hours after the prisoner would otherwise be released" (Pet. ¶ 14). Although it was impossible for the Court to adjudicate the propriety of Mr. Francis' arrest in less than two days, it now can and should address that legal issue prospectively with adequate time and briefing. (*See In re Lucinda R.*, 85 AD3d 78, 84 [2d Dept 2011] [finding issue "capable of repetition and likely to evade review" where Family Court Act mandated hearing and determination within three court days because appellate review of denial of parent's request for hearing "could not be completed before three court days have elapsed"]; *see also People ex rel. Maxian on Behalf of Roundtree v Brown*, 164 AD2d 56, 58 [1st Dept 1990], *affd* 77 NY2d 422 [1991] [applying mootness exception where numerous individuals subject to warrantless arrests were detained for between 24 and 72 hours prior to arraignment]; *Mental Hygiene Legal Servs ex rel. Aliza K. v Ford*, 92 NY2d 500, 506 [1998] [applying mootness exception to challenge of "brief and temporary" involuntary hospitalizations]).

Third, this case involves "significant or important questions not previously passed on" (*Hearst Corp*, 50 NY2d at 715). ICE seeks to have local officers across New York conduct numerous civil immigration arrests each year, including hundreds in Nassau and Suffolk Counties alone (Pet. ¶¶ 13, 16). Each of these arrests deprives an individual of his or her personal liberty, an interest the Supreme Court of the United States has described as being "of transcending value" (*Speiser v Randall*, 357 US 513, 525 [1958]). Moreover, as in the case of Mr. Francis, these arrests often lead into prolonged detention by ICE without the individual being brought before any neutral judicial officer, (Suppl. Pet. ¶ 20), a result that is anathema to the procedures and legal norms governing New York arrests (*see* CPL § 140.20 [individual subject to warrantless arrest must be brought before court and charged "without unnecessary delay"]; *People v Ramos*, 99 NY2d 27, 36 [2002] ["CPL § 140.20 . . . is designed to protect against unlawful confinement"]).

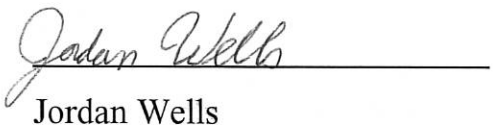
Despite the important interests at stake, no New York appellate court has addressed New York officers' authority to make these arrests (*cf. Bezio v Dorsey*, 989 NE2d 942, 947 [2013] [finding central legal issue "novel" and applying mootness exception due to "the dearth of New York precedent concerning" the issue]). The petitioner therefore respectfully urges the Court to use this case as an opportunity to address this novel legal issue (*See Lunn*, 78 NE3d at 1148 [explaining that Lunn's habeas petition, while moot, "raised important, recurring,

and time-sensitive legal issues that would likely evade review in future cases" and proceeding to decide case]).

CONCLUSION

For the foregoing reasons and those explained in the petitioner's initial memorandum of law, the Court should hold and declare that New York officers possess no authority to perform civil immigration arrests and declare the arrest of Susai Francis to be unlawful.

Respectfully Submitted,



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Dated: January 5, 2018
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CERTIFICATION OF COMPLIANCE

I certify that this memorandum of law 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 4,733.

Dated: January 5, 2018
New York, New York

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