



SUPREME COURT OF NEW YORK  
COUNTY OF CAYUGA: SPECIAL TERM

-----X  
In re Nelson Rodriguez, :  
: AFFIDAVIT IN SUPPORT OF A RE-  
: QUEST TO CLERK FOR ENTRY OF DE-  
: FAULT, UPON RESPONDENT'S FAIL-  
: URE TO APPEAR, PLEAD, OR OTHER-  
: WISE DEFEND, NUNC PRO TUNC  
: :  
: PURSUANT TO CPLR § 3215(a)  
: :  
Petitioner. : Index No. 2012-0358  
-----X

STATE OF NEW YORK )  
 ) ss.:  
COUNTY OF CAYUGA )

I, Nelson Rodriguez, being duly sworn deposes and says:

1) I am the Petitioner in the above-referenced matter and have personal knowledge of the facts as set forth below in this affidavit.

2) The Petitioner on April 3, 2012, did cause to be filed in the Cayuga County Clerk's Office, an Index No. (2012-0358) Application, a Writ of Habeas Corpus, a Memorandum of Law, a Verification, Supporters Signature Sheets, and a Petition, filed and/or Entered under the Receipt No. 47231, by the Cayuga County Clerk, Susan M. Dwyer, B.J. at 9:12a, which commenced the Special Proceeding in the Supreme Court of Cayuga County.

3) By way of Order to Show Cause dated April 5, 2012, the Petitioner was notified that Justice, Thomas G. Leone, Supreme Court of New York, Cayuga County: Special Term, was the Justice assigned to preside over the Habeas Corpus Special Proceeding, Ordering the Respondent(s) to Show Cause; "...why an Order should not be entered herein releasing the petitioner, from the respondent's custody at AUBURN CORRECTIONAL FACILITY, and why the petitioner, should not have such other and further relief as the court may deem just, proper, and equitable. Oral argument shall not be required on the return date of this proceeding. Sufficient

cause appearing therefore, let service of a copy of this Order to Show Cause, together with a copy of the petition, supporting affidavit and all other papers upon which it is based, on the Attorney General, Syracuse Regional Office, 615 Erie Boulevard West, Suite 102, Syracuse, New York, 13204, and on Respondent by regular mail, on or before the 25th day of April, 2012, be deemed good and sufficient service."

4) The afore-mentioned Order to Show Cause dated April 5, 2012, mandated the return date be May 16, 2012. The Attorney General and the Respondent were served in accordance with the Court's instructions in said Order to Show Cause, mandating that the Respondent make a Return to said Order to Show Cause pursuant to CPLR § 7006(a).

5) Based upon the irrefutable Certified record of Civil Index Number 2012-0358, "Search Results Report," dated December 26, 2012, by Susan M. Dwyer, Cayuga County Clerk, it is undisputed that the Respondent did fail to appear, answer/respond, or otherwise defend against the Petitioner's assertions as set forth in his petition for Habeas Corpus, by serving on the Petitioner, or filing any return to the afore-mentioned Order to Show Cause dated April 5, 2012, as mandated by CPLR §§ 7003(a), 7006(a), and 7008(a) & (b) (See, Attachment "A").

6) Herein, Petitioner being aware of the afore-mentioned facts that an assigned Justice, Thomas G. Leone, was presiding over the Special Proceeding and also aware that CPLR § 2102(a) says and/or mandates that; "Except where otherwise prescribed by law or Order of the Court, papers required to filed shall be filed with the Clerk of the Court in which the action is triable." (Emphasis added), Nevertheless, after the respondent failed to appear and/or respond on Court's alleged scheduled deadline of July 12, 2012, Petitioner did submit for filing with

the Supreme Court of New York, Cayuga County: Special Term, on July 23, 2012, an ex parte motion for summary judgment, by way of default (return receipt # 7009 3410 0000 4918 3812), "Although New York Court's agree with the frequently stated rule that litigation should be disposed on the merits rather than by default judgment, the Statute permits entry of default judgments, under certain circumstances, upon application to the Court Clerk, or upon application to the Court." (New York Jurisprudence, 2nd Edition; Judgments IV, Particular Kinds of Judgments, C. Judgment by Default, 1. General, § 119; Generally: Policy Considerations: National Background). For which Petitioner, did submit such application to the Supreme Court of New York, Cayuga County: Special Term, and its' Clerks in this action by way of the aforementioned certified return receipt mail/notice.

7) These Supreme Court of New York, Cayuga County: Special Term, Clerks asserted to the Petitioner's supporters, at the July 12, 2012, Court's alleged deadline/scheduled hearing date, that Justice Leone was in his chambers and will not see anyone nor entertain any oral argument in this matter, that the only papers before the Court were from Mr. Rodriguez/Petitioner, that the respondent had failed to respond and that there will not be any further extensions granted, as the Judge assured he would be entering his Judgment shortly in this matter (words to that effect). These afore-mentioned assertions are attested to by sworn affidavits and are attached to the Petitioner's timely and properly filed Writ of Mandamus dated September 24, 2012, filed with the Appellate Division: Fourth Judicial Department, through the Cayuga County Clerk's Office, electric filing service, and personally served upon Justice, Thomas G. Leone, by personal server, on September 24, 2012, who filed the Affidavit of Service with the Cayuga County Clerk's Office, on said date (See Attachment "A").

8) Furthermore, it merits to mention that an application (for

entry of default) to the Clerk is preferable and the clerk may enter the default if the "sum certain" criterion is satisfied. As (in the instant action) there is no issue of monetary award and as such, there is no need to determine the amount of damages to award. Here the respondent who defaults in appearance concedes only liability. As it is defined in Blacks Law Dictionary, 9th Edition; Liability here establishes the shifting of duty, where now the respondent is obliged to release the Petitioner from his established illegal captivity. And any party(ies), who act as an accomplice in denying the Petitioner his constitutional right to liberty, shall find that that liability attaches to them as well, for the extended injury of unlawful imprisonment, obstruction of justice, conspiring to conceal a fraud, committing a crime to cover up a crime, kidnapping, etc. (It must be noted that at this time Petitioner takes the liberty to point out that upon reflection of the Petitioner's ex parte motion, dated July 23, 2012, on record of being filed with this Cayuga County Clerk's Office and electronically filed with the Appellate Division: Fourth Judicial Department, it was found to contain a typo with regards to the section of the CPLR that is cited in that motion and any subsequent motions or references to that motion have also carried over that incorrectly cited statute from said typo in the ex parte motion. Let it hereinafter reflect that all references to CPLR § 2213(a) with respect to the afore-mentioned ex parte motion properly and timely filed in this action on July 23, 2012, should be changed and/or corrected to CPLR § 2212(b) nunc pro tunc).

9) Thereafter, Petitioner having filed the afore-mentioned ex parte motion for summary judgment by way of default, with the Supreme Court and its' Clerks on July 23, 2012, by way of certified return receipt as asserted above, and thereafter receiving notice that the Supreme Court and its' Clerks were in receipt of said motion. Petitioner then waited over 30 days to

hear and/or receive a ruling from the Court, accepting and/or striking the afore-mentioned ex parte motion, for which the Court had a mandated duty to rule expeditiously upon said ex parte motion for summary judgment by way of default. Petitioner, receiving no acknowledgment from the Court, then on or about August 28, 2012, did move the Court and its' Clerks for a Proposed Judgment Discharging A Person Detained pursuant to CPLR § 7010, filed by way of certified return receipt mail/notice (# 7011 1570 0001 1146 2700), and filing same with the Cayuga County Clerk's Office, also by way of certified return receipt mail/notice (# 7011 1570 0001 1146 2670), which the Cayuga County Clerk, Susan M. Dwyer, did sign for on August 31, 2012, where a copy of the ex parte motion for summary judgment, by way of default was attached as an exhibit thereto. This motion was served upon the defaulting parties as courtesy where the 60 day statutory time-frame for which the respondent could have addressed the Court by way of ex parte motion to strike any claims made and/or raised therein as improper or otherwise untrue was still tolling, nor did the Supreme Court of New York, Cayuga County: Special Term, Justice Thomas G. Leone, strike said ex parte motion upon its' submission sua sponta, rendering this matter/action thereafter ipso facto, the law of the case, and, inassuch, the doctrine of res judicata automatically attaches in this action.

10) Petitioner, aware that the doctrine of res judicata had attached upon the filing of the afore-mentioned motions, due to the fact that the 60 day statutory requirement to contest said motions had elapsed, Petitioner was within his right to secure his due entitled relief of liberty by moving to compel the lower Court by way of Writ of Mandamus dated September 24, 2012, to the Appellate Division: Fourth Judicial Department, thereby effectively staying the lower Court proceedings and seeking a

redress to the clear, irrefutably established due process violations; for which Petitioner made numerous timely and proper objections throughout the entire action in this matter.

11) As it is apparent from the afore-mentioned assertions recorded and/or made before the lower Court and now recently certified to have been recorded/filed with the Cayuga County Clerk's Office, by County/Court Clerk, Susan M. Dwyer, (See Attachment "A"), which supports that the Petitioner in this action upon his completion of all that was required of him to do (after the Court upon examination and/or close purview of the irrefutable documentary evidence attached thereto in support of Petitioner's filed Writ of Habeas Corpus, the Court did find sufficient cause appearing in Petitioner's verified petition and/or moving papers, granting and/or issuing an Order to Show Cause in this action [Cf. ¶ 3, infra] establishing that when the Petitioner was brought before three separate trials, he stood at Bar coram non iudice) to secure his entitlement of liberty after appropriately filing his timely filed ex parte motion, for a summary judgment by way of default, pursuant to CPLR §§ 3212(a) & (b); and 3215 (a) & (b), seeking a default judgment to be entered in this action, as the record made before the lower Court and now certified by this Cayuga County Clerk's Office, irrefutably establishes that the Respondent failed to contest Petitioner's CPLR Article 70 petition pursuant to CPLR §§ 7003(a); 7006(a); and 7008(a) & (b), on Court's alleged scheduled deadline, which the Petitioner and his supporters were led to believe was July 12, 2012, did file the afore-mentioned ex parte motion for summary judgment by way of default on July 23, 2012, where said original motion and every original submission of motions, letters, and/or documents regarding this action now said to be presently on file with this Cayuga County Clerk's Office, must be recorded and/or filed nunc pro tunc, to its' original filing date prior to Petitioner's properly and timely filed Writ of Mandamus dated September 24, 2012, which automatically stayed the

proceedings in this action, appearing on the certified "Search Results Report" dated December 26, 2012, (See Attachment "A"), in the Description column as "Affidavit of Service" which was the service of the afore-mentioned Writ of Mandamus, upon Justice Thomas G. Leone, by the personal server, Mrs. Sonia Bonilla, making any and all submissions made thereafter, by law, outside the scope of the proceeding in this action.

In conclusion, though the afore-mentioned irrefutable record made before the lower Court, and now certified by this Cayuga County Clerk's Office, permits the Petitioner a one year statutory mandate to have a default in this action entered, pursuant to CPLR § 3215(a), Petitioner hereby submits this sworn affidavit in support of his "Request to Clerk for Entry of Default," upon the Respondent(s) for failure to appear, plead/respond or otherwise defend, as mandated by the Supreme Court of New York, Cayuga County: Special Term, Justice Thomas G. Leone's, April 5, 2012, Order to Show Cause, pursuant to CPLR §§ 7003(a); 7006(a); and 7008(a) & (b), to be ENTERED nunc pro tunc on the \_\_\_ day of \_\_\_\_\_, 2013, to July 23, 2012, as supported by the record made.

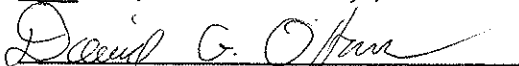
C A V E A T

Failure to enter this Default nunc pro tunc, to the ex parte motion properly filed on July 23, 2012, supported by documentary evidence, is an obstruction of justice and a deliberate denial of Petitioner's entitled right to liberty, and the liability that automatically attached to the defaulting party, will attach as an accomplice liability to any party who refuses their duty and/or conspires to impede that right.

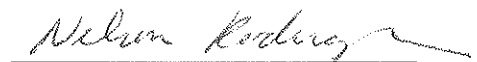
Dated: January 24, 2013  
Auburn, New York

Sworn to before me this

24 day of January, 2013

  
NOTARY PUBLIC

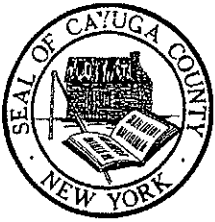
Respectfully Submitted,

  
Nelson Rodriguez, Pro se

DAVID G. O'HARA  
Notary Public, State of New York  
No. 01OH6233984  
Qualified in Onondaga County  
Commission Expires January 3, 2015



# EXHIBIT A

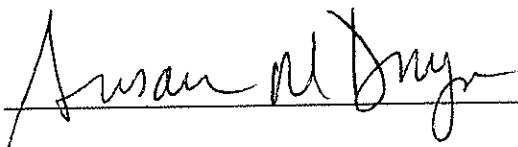


County of Cayuga

December 26, 2012

I, Susan M Dwyer, Cayuga County Clerk, make this affidavit to ascertain that the attached report regarding Civil Index # 2012-358 is accurate as of December 26, 2012 .

Said document is our record of papers filed in our office and is subject to change, for additions or corrections.

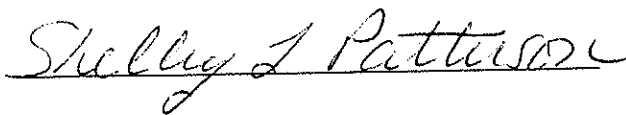


Susan M Dwyer  
Cayuga County Clerk

12-26-12

Date

Sworn to:  
December 26, 2012



Notary Public

SHELLEY L. PATTERSON  
Notary Public - State of New York  
No. 04PA6269344  
Qualified in Cayuga County  
My Commission Expires Sept. 24, 2016

SEARCH RESULTS REPORT

Courts  
 County Clerk  
 Cayuga County Clerk, Susan M Dwyer

Document No	Case Type	Case Date	Secure	Volume Page	Reten Yrs	Remarks	Court
11/02/2012	EX PARTE PURSUANT CPLR 2213 2217 7801		No				
11/02/2012	7803 & 7804		No				
11/02/2012	WRIT OF MANDAMUS EX PARTE PURSUANT CPLR		No				
11/02/2012	2213 2217 7801 7803 & 7804		No				
11/02/2012	AFFT IN SUPPORT OF A WRIT OF MANDAMUS EX		No				
11/02/2012	PARTE PURS CPLR 2213 2217 7801 7803 7804		No				
11/02/2012	VERIFICATION		No				
11/02/2012	EXH A THRU G		No				
11/02/2012	LETTER (2)		No				
11/02/2012	AFFT SUPP PETITIONERS WRIT HABEAS CORPUS		No				
11/02/2012	LETTER (2)		No				
11/02/2012	WRIT/ART 78 MISC CORRESPONDENCE		No				
11/02/2012	LETTER		No				
11/19/2012	LETTER		No				
11/27/2012	LETTER		No				
11/27/2012	LETTER		No				
12/05/2012	NOTICE OF PRECAUTIONARY PROTECTIVE APPEA		No				
12/13/2012	NOTICE OF ENTRY		No				
12/14/2012	LETTER		No				
12/21/2012	LETTER		No				

Courts  
 County Clerk  
 Cayuga County Clerk, Susan M Dwyer

**SEARCH RESULTS REPORT**

Document No: 2012-0000358    Case Type: CIVIL    Case Date: 04/03/2012    Volume Page:    Reten Yrs: \$ .00    Remarks:    Court: SUPREME

Defendant: GRAHAM HAROLD SUPERINTENDENT    Plaintiff: RODRIGUEZ NELSON  
 NEW BEGINNING INNOCENT PROJECT WE THE PEOPLE

Action Date	Description	Secure
04/03/2012	INDEX NUMBER APPLICATION	No
04/03/2012	WRIT OF HABEAS CORPUS	No
04/03/2012	MEMORANDUM OF LAW	No
04/03/2012	VERIFICATION	No
04/03/2012	SIGNATURE SHEET	No
04/03/2012	PETITION (6)	No
04/12/2012	ORDER TO SHOW CAUSE	No
09/24/2012	AFFIDAVIT OF SERVICE	No
11/02/2012	MEMORANDUM DECISION & ORDER	No
11/02/2012	LETTER	No
11/02/2012	NOTICE PROPOSED JUDG DISCHARGING PERSON	No
11/02/2012	DETAINED PURSUANT TO CPLR 7010	No
11/02/2012	AFFIDAVIT IN SUPPORT OF CORR TO EX PARTE	No
11/02/2012	MOTION CERT RET RECT 7009341000049183812	No
11/02/2012	AFFIDAVIT OF SERVICE	No
11/02/2012	VERIFICATION	No
11/02/2012	EXH A THRU C	No
11/02/2012	LETTER	No
11/02/2012	AFFT IN SUPPORT OF EX PARTE MOTION FOR A	No
11/02/2012	SUMMARY JUDGMENT PURSUANT CPLR 3212	No
11/02/2012	VERIFICATION	No
11/02/2012	EXH A THRU B	No
11/02/2012	LETTER	No
11/02/2012	PETITION SIGNATURES	No
11/02/2012	LETTER	No
11/02/2012	VERIFIED ANSWER & RETURN	No
11/02/2012	EXH A THRU B	No
11/02/2012	AFFIDAVIT IN SUPPORT OF WRIT OF MANDAMUS	No



SUPREME COURT OF NEW YORK  
COUNTY OF CAYUGA: SPECIAL TERM

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In re Nelson Rodriguez, :  
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Petitioner. :  
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DOCKET OF ENTRY OF DEFAULT  
PURSUANT TO CPLR §§  
3215(a) & 9702  
Index No. 2012-0358

Default entered against the Respondent, Harold H. Graham,  
nunc pro tunc, this \_\_\_ day of \_\_\_\_\_, 2013, to July 23,  
2012.