

PETITION

WE THE PEOPLE SUPPORT MR. NELSON RODRIGUEZ'S ENTITLEMENT TO BE IMMEDIATELY RELEASED FROM HIS ESTABLISHED ILLEGAL CAPTIVITY FORTHWITH:

COMPLAINT:

With irrefutable documentary proof attached to file complaint, appropriately filed in the Northern District of New York, Filed under the Civil Case No. 9:13-CV-1233 (MAD), submitted in Ex Parte, for mandatory relief in the nature of a Peremptory Writ Of Mandamus to compel the performance of a duty owed to Mr. Nelson Rodriguez "Complainant" under the All Writs Statute, 28 USCA § 1651(2), which has been totally ignored by the District Court, and forced to brought to the United States Court of Appeals for the Second Circuit and the United States Court of Appeals for the District Of Columbia Circuit, to command the immediate cease of the civil disobedience committed by the actors and/or Judicial Administrator(s) named in the complaint, who willfully and unreasonably have delayed and/or refused to expedite the issuance of Mr. Nelson Rodriguez's prevailing entitlement to be free from his established Illegal captivity, to perform the issuance of the Warrant of Attachment that lies, compelling obedience to Writ of Habeas Corpus, filed in N.Y.S.CT./ under The Civil Case Dkt. #2012-0358. A mandatory non-discretionary duty.

- 1) We the People, who after carefully examining the irrefutable incriminating documentary evidence online www.freenelsonrodriguez.com/ and in person, where Mr. Nelson Rodriguez not only undisputedly establishes the gross and intentional misconduct committed by the trial prosecutor (for which Mr. Nelson Rodriguez was forced to endure throughout three (3) separate illegal trials, two that ended in hung juries, and in the third trial before the jury caved in to the court's misguidance, wrongfully convicting Mr. Rodriguez. The Jury sent a note to the court making inquiries if they could find one defendant guilty and acquit the other (Mr. Rodriguez, because the prosecution failed to place him at the scene) but he also irrefutably establishes that when he was illegally arrested in this case, and stood before a Bronx County Supreme Court, throughout three (3) separate trials claiming his innocence, no valid accusatory instrument/indictment had been had and/or issued by a Bronx County Grand Jury against him, nor was one filed and/or recorded to have been filed with the court and county clerk's office. (CPL § 190.65 (3)), as the prosecution in open court proclaimed.
- 2) It is evident that what We the People (who are in support of Mr. Rodriguez's prevailing entitlement to be free from his established illegal incarceration/captivity, as fully explained in his currently filed Peremptory Writ of Mandamus, commanding a non-discretionary duty, for mandatory relief, under the Administrative Procedure Act, 5 USCA § 551 (10) (A) and (B), authorized and/or compelled by the Declaratory Judgment Act, 28 USCA § 1361) find so mind boggling in Mr. Rodriguez's case, is that once one review all the exculpatory evidence that Mr. Rodriguez has been able to amass, which supports his actual innocence claim and, that of his prevailing entitlement to be free from his wrongful incarceration

and illegal captivity and not to mention, the incriminating documentary evidence that blatantly exposes the atrocious and intentional misconduct/crimes committed by the trial prosecutor in this case. Yet, not one State and/or Federal official nor a prosecuting office, or even the Governor's office itself, that have been provided with such incriminating evidence, have ever ordered a full blown hearing to be had, or a thorough investigation regarding such serious claims. IT IS EXTREMELY MIND BOGGLING!

- 3) This lends further reason as to why the respondent and its legal representative (N.Y.S. Attorney General) named in Mr. Rodriguez's appropriate filed State Habeas Corpus, upon being properly and timely served with the Court's Order to Show Cause, dated April 5, 2012, commanding the following: "Why an order should not be entered herein releasing the petitioner (Mr. Rodriguez), from the respondent's custody at Auburn Correctional Facility, and why the petitioner (Mr. Rodriguez) 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, they failed and/or refused to appear, answer/respond, or otherwise defend against Mr. Rodriguez's assertions as set forth in his petition for Habeas Corpus in this case. Therefore, conceding to the assertions made providing the judgment by default.
- 4) It is for this reason that We the People who are members of the community namely the People of New York, feel compelled to get behind Mr. Rodriguez and hereby petition for his immediate release.
- 5) We the People feel that it is the obligation and duty of every American citizen living in our free Democratic Society to bring this petition to the attention of those who are elected to the highest of responsibilities in representing the people of the great State of New York and assure them that We, the People will not stop demanding from them to compel and/or command that Mr. Rodriguez be immediately released from his illegal captivity. As governed by the laws of New York State and protected by our Federal Constitution.
- 6) We the People must admit that it is truly sad and extremely heart felt when we read from beginning to end what Mr. Rodriguez, an American born citizen, has endured. An atrocious miscarriage of Justice!!!
- 7) But what We the People seem to be more saddened is when the sanctimonious actions of several appointed judges and their law clerks, who are sworn to uphold the law under the robe of honor and they dishonor that worthy trust by their contentious acts to conceal the atrocious official misconduct done in this case, as they aid to conceal Mr. Nelson Rodriguez's Prevailing entitlement to be free from his illegal incarceration/captivity, in hope that the committed official misconduct in this case, would not be exposed.
- 8) In fact, there can't never be any words to express this kind of official misconduct fit to print. If we were to compare the devil and his gang of followers with those officials who as to date continue to aid in concealing the committed atrocious official misconduct in this case, the devil and his gang of followers would appear as angels under the totality of the official corruption that's involved in this case.
- 9) Lastly, We the People urge you (if you are not online) to go online to www.freenelsonrodriguez.com and read Mr. Nelson Rodriguez's filed Federal Peremptory Writ of Mandamus, commanding a non-discretionary duty, for mandatory relief, under the APA ACT, owed to Mr. Rodriguez, for his immediate release. Please support Mr. Nelson Rodriguez, to be immediately released from his established illegal incarceration/captivity, by signing this petition.

Nelson Rodriguez who face the frightening prospect of spending a life time in prison for crimes that suppressed evidence undisputedly proves he was not present when the crime occurred finally prevailed by way of an appropriately filed State Habeas Corpus in this case. A naive trusting man, Nelson fell under the influence of a well seasoned con-criminal who knew how to use the system to get away with murder. Nelson did not know then that the person he used to collect money for -- who was acting with the cooperation of the Bronx District Attorney's office--who would ultimately frame him for murder. Yet, that is precisely what happened. **Nelson Rodriguez** sits today illegally incarcerated at Auburn Correctional Facility, a New York State Maximum prison, in a lonely cold dark cell because he was set up. The criminal kingpin who became a state and federal informant, turned the truth around at trial and made it appear as if **Nelson Rodriguez** himself was the head of a criminal enterprise. To meet Nelson and talk to him is to realize the ridiculousness of such a claim. In the instant case, with documentary proof and not merely bold allegations, **Nelson Rodriguez** is being unlawfully detained and restrained of his liberty as the result of a conviction where no Bronx County Grand Jury had issued/voted and/or filed a valid accusatory instrument against him. Worst still, the conviction resulted from a trial in which the office of the Bronx District Attorney intentionally deprived him of exculpatory material with regards to their key cooperating witness Louis Diaz. This exculpatory material undisputedly proves that the office of the Bronx District Attorney suborned perjured testimony of its "key witness" and engaged in a scheme to launder hundreds of thousands of illegal drug money through their office while they were prosecuting this case.

Moreover, despite all that he has been through, Nelson remains hopeful to soon be released from his established illegal incarceration/captivity, conviction and, from an illegal open court pronounced sentence in this case. Though Nelson is a man with a perceptible air of amazement at what has befallen him. Nevertheless, it is irrefutable that once one has reviewed all of the reports that Nelson has been able to amass prior to his established illegal incarceration and wrongful illegal conviction in this case, the transcript of his trials reads like a well - orchestrated exercise in fraud. The heartbreak of the case is that the fraud was known by everyone in the courtroom except the jury. The suppressed evidence establishes that the prosecution knew its key witness was a high level informant who ad provided information to the office of the United States Attorney. In fact, the suppressed evidence also undisputedly establishes that the prosecution's key witness paid for his freedom with shopping bags full of cash (\$200,000). Yet, this witness was permitted to testify in open court that he was not a criminal and that he had not profited through any criminal enterprise. It was many years after Nelson's wrongful and illegal conviction that he became fully aware that the witness paid thousands of dollars to the prosecution in this case, to walk away from what were his own crimes.

Further, as the trial prosecutor helped frame **Nelson Rodriguez** by placing him in the defendant's seat and aided and abetted Diaz in covering up his perjured testimony, Diaz walked away from what were his own crimes and left Nelson to pay for his crimes with his freedom. Worse still, there is evidence that gives reason to believe that Nelson's own trial attorneys had financial incentives to see him convicted. Though at the time, Nelson believed he could not be found guilty because he was innocent. Sadly, he now

realizes that actually innocence is irrelevant to the victim of a well orchestrated exercise in fraud and, in a plot to convict. Based upon the information and documentary evidence that the late Attorney Mrs. Ashirah S. Naphtali-Israel, provided Nelson with, prior to her passing on August 3rd, 2007, that reveals **Nelson Rodriguez** was not only without a doubt framed by a corrupted system who aided a well seasoned criminal like Louis Diaz, who would stop at nothing to avoid punishment for his own crimes, but also it reveals that the prosecutor who persecuted this case, knew that no Bronx Grand Jury had ever issued/voted and/or filed an accusatory instrument against Nelson Rodriguez in this case. See: Nelson Rodriguez's December 16, 2003, pending Federal Peremptory Writ of Mandamus Complaint. **Nelson Rodriguez** did not murder any one and any proof to the contrary was manufactured evidence. It's irrefutable that Nelson's multiple trials were total shams.

This case cries out "not only," for the support of the community where Nelson Rodriguez resided at the time the alleged crime occurred but also, for the support of all Americans living here in the United States and abroad. Nelson's story and multiple trials reads like a John Grisham Conspiracy Novel displaying the unconscionable and unconstitutional conduct of the office of the Bronx District Attorney and of those officials that as to date continue to aid in covering up this atrocious miscarriage of Justice.

I truly believe, that once every American reads the travesty of justice surrounding this case they will not only think twice before they say the American Criminal Justice System is the best in the world, they will also come to realize that it is the American Justice System that's depraved and indifferent to the American People.

Therefore, We the People are preparing to collect thousands of signatures to petition for Mr. Nelson Rodriguez's immediate release from his established prevailing entitlement to be free from an illegal incarceration/captivity and wrongful illegal conviction. Moreover, if need be, We the People are also prepared to march before the Courts, D.A.'s Office and the Governor's office until Mr. Rodriguez is released.

Print Name	Signature	Address and/or Email
1. <u>Kevin Alfons</u>	<u>Kevin Alfons</u>	<u>22-10 New Haven</u>
2. <u>IRMA DIAZ</u>	<u>Irma Diaz</u>	<u>22-10 NEW HAVEN</u>
3. <u>Joseth Alfons</u>	<u>Joseth Alfons</u>	<u>22-10 New Haven</u>
4. <u>Michelle Aranda</u>	<u>Michelle Aranda</u>	<u>453 Court Avenue Cedarhurst</u>
5. <u>Ruksana Chopdat</u>	<u>Ruksana Chopdat</u>	<u>2214 Birdball Avenue</u>
6. <u>Pollet Ann Chopdat</u>	<u>Pollet Chopdat</u>	<u>2214 Birdball Avenue</u>
7. <u>Ines Diaz</u>	<u>Ines Diaz</u>	<u>22-10 Woodhaver Blvd</u>
8. <u>SHARON JAVAT</u>	<u>Sharon Javat</u>	<u>149-37-122 PLS southoro</u>
9. <u>Blanka Gores</u>	<u>Blanka Gores</u>	<u>270 Lawrence Ave</u>
10. <u>Cindy Hussain</u>	<u>Cindy Hussain</u>	<u>134-10 115 AV</u>
11. <u>Ebakurti</u>	<u>Ebakurti</u>	<u>215-12 15th Woodbury</u>
12. <u>Glenn Mathura</u>	<u>133-25 1 Glen Blvd</u>	<u>133-25 Leffert Blvd</u>
13. <u>CHRISTOPHER MURRAY</u>	<u>Christopher Murray</u>	<u>9427 120th St Richmond Hill 11430</u>
14. <u>ROZA KURTI</u>	<u>ROZA KURTI</u>	<u>215-12 15th Road Bayside NY 11430</u>
15. <u>DITA NIKA</u>	<u>Dita Nika</u>	<u>215-12 15th Road Bayside</u>
16. <u>KAYLINA TRAYKOV</u>	<u>Kaylina Traykov</u>	<u>Cedarhurst N.Y. 344 Rugby Rd</u>
17. <u>Alfons Alfons</u>	<u>Alfons Alfons</u>	<u>22-14 Cedarhurst Ave</u>
18. <u>Rechetti DIAZ</u>	<u>Rechetti Diaz</u>	<u>22-16 New Amsterdam Ave</u>
19. <u>FRANCISCO AMARANTE</u>	<u>Francisco Amarante</u>	<u>205 Clinton Ave</u>
20. <u>Clara Lopez</u>	<u>Clara Lopez</u>	<u>205 Jefferson Ave</u>
21. <u>Juis Tala</u>	<u>Juis Tala</u>	<u>103-03-106 Redbank Ave</u>
22. <u>Brandon Boris</u>	<u>Brandon Boris</u>	<u>9 Lawrence Lane NY</u>
23. <u>Anthony Boris</u>	<u>Anthony Boris</u>	<u>9 Lawrence Lane NY</u>
24. <u>Miguelina</u>	<u>Miguelina de Jesus</u>	<u>280 Pearl Ave NY</u>
25. <u>Joel de Jesus</u>	<u>Joel de Jesus</u>	<u>235 Lumbard NY</u>

NELSON RODRIGUEZ, 88A5497
COMPLAINANT - PRO-SE
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AUBURN, NEW YORK 13024

UNITED STATES DISTRICT COURT
SECOND CIRCUIT COURT OF APPEALS

IN RE NELSON RODRIGUEZ,

Complainant.

NO. 9:13-CV-1233(MAD)

NOTICE OF APPEAL

Notice is hereby given that Nelson Rodriguez, Complainant in the above-entitled matter, appeals to the United States Court of Appeals for the Second Circuit from the Decision and Order of the District Court dismissing Complaint submitted under the All Writ Statute 28 USCA § 1651 (a), in Ex Parte, in the nature of a Peremptory Mandamus for Mandatory relief, under the Administrative Procedure Act, 5 USCA § 551 (10)(A) and (B), authorized and/or compelled by the Declaratory Judgment Act, 28 USCA § 1361, for lack of Jurisdiction and, dismissed with prejudice. Said Decision and Order is endorsed by signature and entered on November 22, 2013 by Hon: MAE A. D'AGOSTINO, U.S. District Judge.

Filed contemporaneously with Notice of Appeal, Complainant respectfully submits an Application for Appealability from the District Court.

Dated December 16, 2013

Respectfully submitted,
by Nelson Rodriguez
Complainant

NELSON RODRIGUEZ, 88A5497
COMPLAINANT - PRO-SE
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135 STATE STREET - BOX 618
AUBURN, NEW YORK 13024

UNITED STATES DISTRICT COURT
SECOND CIRCUIT COURT OF APPEALS

IN RE NELSON RODRIGUEZ,
Complainant.

NO. 9:13-CV-1233(MAD)

APPLICATION FOR
CERTIFICATION OF
APPEALABILITY FROM THE
DISTRICT COURT; AND
STATEMENT OF REASON
IN SUPPORT

INTRODUCTION

Pursuant to the All Writ Act, 28 USCA § 1651 (a), and Second Circuit Rule 2, Complainant NELSON RODRIGUEZ (Hereafter "Complainant") who brought complaint in Ex Parte, in the nature of a Peremptory Mandamus for Mandatory Relief, Under the Administrative Procedure Act, 5 USCA § 551 (10) (A) and (B), authorized by the Declaratory Judgment Act, 28 USCA § 1361, duly executed and entered by default, nunc pro tunc on May 8, 2013, hereby respectfully claims by afforded right that a Certificate of Appealability be issue (hereafter "COA"), permitting Complainant to appeal from a Decision and Order that is endorsed by signature and entered by the Honorable MAE A. D'AGOSTINO, on November 22nd, 2013, dismissing with prejudice Complainant's Complaint in the above-entitled matter. Currently with this Application for COA, Complainant has filed a time Notice of Appeal.

ISSUE ON WHICH CERTIFICATE OF APPEALABILITY IS SOUGHT

ISSUE # 1.

Whether the District Court erred and/or misrepresented Complainant's Complaint when it erroneously dismissed the Complaint for lack of Jurisdiction alleging: Petitioner did not submit an application to proceed in forma pauperis and he did not pay the filing fee. This action will not, however, be dismissed solely on the ground that Petitioner failed to comply with filing fee requirements. Here, for the reasons set forth in this Decision and Order, the Court lacks jurisdiction over Petitioner's Complaint regardless of whether he has complied with the filing fee requirements, and dismissal is appropriate.

ISSUE # 2

Whether the District Court erred and/or committed intentional malfeasances when without notice it materially altered Complainant's Complaint submitted under the All Writ Act, in Ex Parte, in the nature of a Peremptory Mandamus for Mandatory Relief, Under the Administrative Procedure Act, 5 USCA § 551 (10) (A) and (B), authorized/compelled and/or commanded to carry out by the Declaratory Judgment Act, 28 USCA § 1361, a declaratory judgment which was duly executed and entered nunc pro tunc, on May 8, 2013 in this action.

THOUGH THE LEGAL STANDARD FOR ISSUANCE OF COA IN PRISONERS' SEEKING HABEAS CORPUS RELIEF AS CLARIFIED BELOW MAY BE CONSIDERED DISCRETIONARY; COMPLAINANT'S FACTS FOR THE RELIEF CLAIMED IS NON-DISCRETIONARY:

In the U.S. Supreme Court decision Miller-El v. Coker 11 537 U.S. 322, 123 S.Ct. 1029 (2003), the Court asserts the following:

...A prisoner seeking a COA needs only demonstrate a "substantial showing of the denial of a constitutional right". A petitioner satisfies this standard by demonstrating that jurists of reason could disagree with the district court's resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further.

Id. 123 S.Ct. at 1034, citing Slack v. McDaniel, 529 U.S. 473, 484 (2000). Reduced to its essentials, the test is met where the petitioner makes a showing that "the petition should have been resolved in a different matter or that the issues presented were 'adequate to deserve encouragement to proceed further'." Id. at 1039; citing Barefoot v. Estelle 463 U.S. 880 (1983). This means that the petitioner does not have to prove that the district court was necessarily "wrong"-just that its resolution on the constitutional claim is "debatable":

"We do not require petitioner to prove, before the issuance of a COA, that some jurists would grant the petition for habeas corpus. Indeed, a claim can be debatable even though every jurist of reason might agree, after the COA has been granted and the case has received

full consideration, that petitioner will not prevail. As we stated in Slack, where a district court has rejected the constitutional claims on the merits, the showing required to satisfy § 2253 (c) is straightforward. The petitioner must demonstrate that reasonable jurists would find the district court assessment of the constitutional claims debatable or wrong."

Nevertheless, in the instant case, though Complainant is a prisoner being held against his will in a N.Y.S. Maximum Prison, for the reasons asserted below, Complainant's issues in which he seeks COA in this action are far more compelling and uncontradictable...[Because], Complainant who has irrefutably prevailed in his State Writ of Habeas Corpus proceeding by way of default, brought his action/complaint to district court, under the All Writ Act, in Ex Parte, in the nature of a peremptory writ of mandamus for mandatory relief, under the APA Act, 5 USCA § 551(10)(A) and (B), authorized by the Declaratory Judgment Act, 28 USCA § 1361, to enforce and/or compel his prevailing entitlement to be released forthwith from his established wrongful and illegal captivity and not by federal habeas corpus, and/or any other alternative petition as his complaint has been materially altered to appear. Moreover, district court's decision and Order in dismissing Complainant's complaint for failing to submit an application to proceed in forma pauperis, or for failing to pay the filing fee, it's in contrary to its' own federal civil rules of filing guidelines and/or at best, misrepresents Title 28 USCA § 1914, which provides, in apart:

"The Clerk of each District Court shall require the parties instituting any civil action, suit or proceeding in such Court, whether - by original process, removal or otherwise, to pay a filing fee of (the amount).... See; Wanamaker v. Columbian Rope Co., 713 F. Supp. 533 (N.D.N.Y. 1989).

Most significantly, it merits to mention that what the Court and its' Clerks leave absent and/or failed to note in Court's decision and Order, is that they never provided Complainant (prior to Complainant receiving Court's decision and Order) with any written notice upon receipt of his complaint, submitted September 27, 2013, by way of U.S. Postal Service, Certified Mail Return Receipt#, received October 3rd, 2013, forcing family members and supporters to make numerous phone calls to the Court and Clerk's Office, making inquiries regarding Complaint's status and, as to the filing fee required. For which they refused to provide. In fact, they also leave absent and/or failed to note that on November 15, 2013, they refused to accept and/or allow the Complaint's required filing fee payment to be paid on Complainant's behalf, in person. See; Certified Mail Return Receipt and Affidavit attached as Exhibits-(A)&(B).

Lastly, there are two factors that contradict the Court's aforesaid dual findings: "The Court lacks jurisdiction over Petitioner's Complaint regardless of whether he has complied with filing fee requirements, and dismissal is appropriate."

First, Complainant respectfully points out to this Court, that he did not come before district court as a Petitioner nor by a discretionary writ and/or any other alternative petition as the caption and body of Court's decision/Order has been altered to appear. See; Court's Decision and Order, attached as Exhibit-(C).

Second, Complainant's "Complaint" filed with attached supporting affidavit and irrefutable documentary evidence in support of the facts as set forth in complaint, provided Complainant his afforded right and/or entitlement to submit his complaint in district court, under the All Writ Act, in Ex Parte, for mandatory relief in the nature of a peremptory writ of mandamus to compel a non-discretionary performance of a duty owed to Complainant. See; Complainant's Complaint, attached as Exhibit-(D).

Thus, Complainant's Complaint was brought to district court under the Peremptory Writ of Mandamus command governed by two statutes which provided the district court with the appropriate [original] jurisdiction for mandamus review.

The first, is the more general statute, the All Writ Act, 28 U.S.C. § 1651. That Act States: The Supreme Court and all courts established by Act of Congress may issue all *84 writs necessary and appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.

In turn, Congress has separately conferred jurisdiction on the district courts to entertain suits "in the nature of"

mandamus in 28 U.S.C. § 1361: The district courts shall have original jurisdiction of any action in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff supported by Puerto Rico v. Branstad, 483 U.S. 219 which states:

"The second, and dispositive, holding of Kentucky v. Dennison, rests upon a foundation with which time and the currents of constitutional change have dealt much less favorably. If it seemed clear to the Court in 1861, facing the looming shadow of a Civil War, that "the Federal Government, under the Constitution, has no power to impose on a State officer, as such, any duty whatever, and compel him to perform it," > 24 How., at 107, basic constitutional principles now point as clearly the other way. Within 15 years of the decision in Dennison it was said that "when a plain official duty, requiring no exercise of discretion, is to be performed, and performance is refused, any person who will sustain personal injury by such refusal may have a mandamus to compel its performance," and it was no objection that such an order might be sought in the federal courts against a state officer. > Board of Liquidation v. McComb, 92 U.S. (2 Otto) 531, 541, 23 L.Ed. 623 (1876). [483 U.S. 228] It has long been a settled principle that federal courts may enjoin unconstitutional action by state officials. See > Ex parte Young, 209 U.S. 123, 155-156, 28 S.Ct. 441, 452, 52 L.Ed. 714 (1908). It would be superfluous to restate all the occasions on which this Court has imposed upon state officials a duty to obey the requirements of the Constitution, or compelled the performance of such duties; it may

suffice to refer to > Brown v. Board of Education, 349 U.S. 294, 75 S.Ct. 753, 99 L.Ed. 1083 (1955), and > Cooper v. Aaron, 358 U.S. 1, 78 S.Ct. 1401, 3 L.Ed.2d. 5 (1958). The fundamental premise of the holding in Dennison -- "that the States and the Federal Government in all circumstances must be viewed as coequal sovereigns -- is not representative of the law today." > FERC v. Mississippi, 456 U.S. 742, 761, 102 S.Ct. 2126, 2138, 72 L.Ed.2d. 532 (1982).

Therefore, the District Court's decision and Order must be reviewed on appeal as the Complainant is entitled to a C.O.A. on the issue set forth above.

STATEMENT OF REASONS FOR ISSUANCE OF COA

The District Court erred and/or refused to treat Complainant's appropriate filed Complaint under the All Writ Act, submitted Ex Parte, for mandatory relief in the nature of a peremptory writ of mandamus to compel a non-discretionary performance duty owed to Complainant when it failed to: 1) Recognize its authorized jurisdiction; 2) Foresee the irreparable injury that results from the deprivation of liberty; 3) Provide written notice upon receipt of filed Complaint; 4) On November 15, 2013, accept and/or allow the required filing fee payment to be paid on Complainant's behalf, in person. And; 5) Provide notice when court materially altered Complainant's filed Complaint.

CONCLUSION

The issues discussed above are uncontradictable and/or non-discretionary. Hence, it is for the aforesaid reason that Complainant respectfully claims his afforded right for this Court to grant a Certificate of Appealability on the issues identified at the outset of this application and/or in the alternative Order district court to issue the Peremptory Writ of mandamus command forthwith.

Dated December 16, 2013.

Respectfully submitted,



NELSON RODRIGUEZ
Complainant

EXHIBIT A

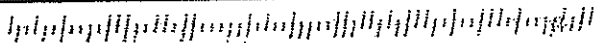


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• Sender: Please print your name, address, and ZIP+4 in this box •

Nelson Rodriguez
#88A5497
Auburn Correctional Facility
P.O. Box 618
Auburn, New York
13024

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SYRACUSE NY 13024

3. Service Type
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 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee) Yes

2. Article Number (Transfer from service label) 7012 2210 0000 6270 3317

EXHIBIT B

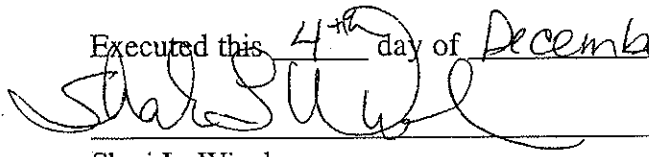
Affidavit of Shari L. Winebrenner

STATE OF NEW YORK
COUNTY OF CAYUGA

The undersigned, SHARI L. WINEBRENNER, being duly sworn, hereby deposes and says:

1. I am over the age of 18 and am a resident of the State of New York. I have personal knowledge of the facts herein, and, if called as a witness, could testify completely thereto.
2. I suffer no legal disabilities and have personal knowledge of the facts set forth below.
3. On November 15, 2013 at approximately two o'clock, I, Shari Winebrenner on behalf of Mr. Nelson Rodriguez, appeared at the James M. Hanley Federal Building in Syracuse, New York to pay the required filing fee regarding his September 27, 2013 filed complaint. The Complaint was submitted Ex Parte, in the nature of a Peremptory Mandamus for mandatory relief, under the Administrative Procedure Act, 5 USCA 551(10)(A) and (B), authorized and/or compelled by the Declaratory Judgment Act, 28 USCA 1361. Upon attempting to pay the required filing fee, I was told by the clerk that Mr. Rodriguez had to pay the required filing fee himself. I explained that Mr. Rodriguez is currently incarcerated and, therefore, cannot appear in person. I then asked again if I could pay the required filing fee on his behalf and have the receipt forwarded to Mr. Rodriguez. The clerk said that I could do this, however, she needed to get the proper documents. I provided her with the Docket Number and she then went into a back office where there were at least two other women. After approximately 20-30 minutes, an older woman came to the clerk's counter and said that they had received multiple calls regarding this case and that I would not be allowed to pay the filing fee on Mr. Rodriguez behalf, and that he needed to wait until a decision has been reached by the court. She also said that she was not sure if the complaint should even be filed in the Northern District. I asked if she could show me that in writing. She then gave me three packets of information titled: "Pro Se Handbook", "Civilian Forms Packet" and "Local Rules of Practice", of which I am in the process of forwarding to Mr. Rodriguez.

Executed this 4th day of December, 2013.



Shari L. Winebrenner

NOTARY ACKNOWLEDGEMENT

Sworn to before me this 4 day of December, 2013.



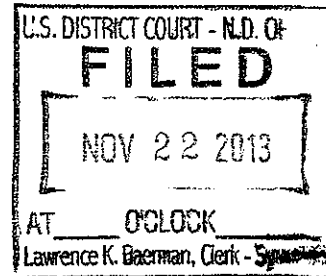
Notary Public

My commission expires March 13, 2015

Cynthia A. Scott
01SC5040490
Notary Public, State of New York
Qualified in Cayuga County
My commission expires MARCH 13th, 2015

EXHIBIT C

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK



IN RE NELSON RODRIGUEZ,

Petitioner,

9:13-CV-1233
(MAD)

APPEARANCES:

OF COUNSEL:

NELSON RODRIGUEZ

88-A-5497

Petitioner, *pro se*

Auburn Correctional Facility

P.O. Box 618

Auburn, New York 13021

MAE A. D'AGOSTINO

United States District Judge

DECISION and ORDER

I. INTRODUCTION

Petitioner Nelson Rodriguez has filed a document captioned "Complaint in Ex Parte, for Mandatory Relief in the Nature of a Peremptory Writ of Mandamus to Compel the Performance of a Duty Owed to Complainant," brought pursuant to the All Writs Act, 28 U.S.C. § 1651(a). Dkt. No. 1, Complaint. He has also filed an accompanying document captioned "Affidavit of Complainant in Support of Complaint in Ex Parte, For Mandatory Relief in the Nature of a Peremptory Writ of Mandamus to Compel the Performance of a Duty Owed to Complainant," and several exhibits. See Dkt. No. 1, Affidavit; Exhibits. For the reasons that follow, this action is dismissed for lack of

IV. CONCLUSION

WHEREFORE, the Court hereby

ORDERS that Petitioner's complaint requesting a writ of mandamus, Dkt. No. 1, is

DISMISSED WITH PREJUDICE; and the Court further

ORDERS that the Clerk of the Court shall serve a copy of this Decision and Order on
Petitioner in accordance with the Local Rules.

IT IS SO ORDERED.

The Court certifies that, pursuant to 28 U.S.C. § 1915(a)(3), any appeal from this Decision and Order would not be taken in good faith, and *in forma pauperis* status is, therefore, denied for the purpose of any appeal.

Dated: November 22, 2013
Albany, New York



Mae A. D'Agostino
U.S. District Judge

EXHIBIT D

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

In re Nelson Rodriguez,

Complainant,

) N.Y. S.CT. / CIVIL CASE DKT.# 2012-0358
)
) COMPLAINT IN EX PARTE, FOR MANDATORY
) RELIEF IN THE NATURE OF A PEREMPTORY
) WRIT OF MANDAMUS TO COMPEL THE
) PERFORMANCE OF A DUTY OWED TO
) COMPLAINANT
)
) ALL WRITS STATUTE, 28 USC § 1651(a)

INTRODUCTION

1. This is a [complaint] submitted Ex Parte, in the nature of a Peremptory Mandamus for Mandatory relief, Under The Administrative Procedure Act, 5 USCA § 551(10)(A) and (B), authorized and/or compelled by the Declaratory Judgment Act, 28 USCA § 1361. This action which challenged Mr. Nelson Rodriguez's (hereinafter Complainant) illegal detention/incarceration commenced on April 3rd, 2012, by virtue of a State Writ of Habeas Corpus, filed in the Cayuga County Clerk's Office, under Index No. 2012-0358. The Honorable Thomas G. Leone, Supreme Court of the State of New York Justice, County of Cayuga: Special Term, assigned to preside over the action, on April 5, 2012, issued an Order to Show Cause upon the Respondent Harold D. Graham, Superintendent of Auburn Correctional Facility. The Order issued mandated a Return by May 16, 2012. Both Respondent's legal representative (N.Y.S. Attorney General) and Respondent were duly served in accordance with the Court's instruction. Respondent having failed to go forward and/or contest Complainant's Article 70 petition pursuant to CPLR §§§ 7003(a), 7006(a) and 7008(a)&(b), made the matter to proceed thereafter Ex Parte. On May 8, 2013, Complainant after exhausting his State remedy sought to secure the one year statutory mandate to have his application for "Request to Clerk for Entry of Default" pursuant to CPLR §§ 2213(a) and 3215(a) filed, securing his prevailing entitlement and right to liberty in this action. Though immediately after the Entry of the

Default Judgment was entered and/or affixed in this case, the Court or, in his absence the Clerks upon their own initiative pursuant to 28 U.S.C. § 2712, should have issued the warrant of attachment in this action, this never happened! Complainant on June 27, 2013 submitted the warrant of attachment compelling obedience to the Writ of Habeas Corpus, served upon the Court and its County Clerk's Office by U.S. Postal Service "certified mail/return receipt" to be stamped received/filed and rightly executed as final determination per the certification of the Court's County Clerk Office records. See; Complainant's supporting affidavit "Exhibit (A)."

JURISDICTION

2. This Court has jurisdiction over the present action pursuant to 28 U.S.C. § 1331, Federal Question Jurisdiction; for the Mandatory relief, under the Ex Parte Young, F.P&P § 4231 and, The Administrative Procedures Act, 5 USCA § 551(10)(A) and (B), authorized by The Declaratory Judgment Act, Title 28 USCA §§ 1361 and 2201, regarding an action to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the Complainant.

VENUE

3. Under 28 U.S.C. § 1391(e), as amended, provides that in a civil action where the individual(s) are officers or employees

of the United States or any agency thereof acting in their individual official capacity, or under color of legal authority, or any agency of the United States, the action may be brought in any judicial district in which the named individuals in the action resides or the action mandated to be performed lies. Complainant is presently an illegal captive being held against his will at the Auburn Correctional Facility located at 135 State Street, P.O. Box 618, Auburn, New York 13024, and Cayuga County is the location where the "ministerial act" owed to the Complainant by the Court and/or its Clerks reside which operates within this Court's district.

JUDICIARY ADMINISTRATORS

4. This action which commenced on April 3rd, 2012, was processed, filed and/or recorded by Cayuga County Clerk, Ms. Susan M. Dywer. Thereafter, it was calendared to be heard at the Supreme Court of the State of New York, County of Cayuga: Special Term, by Chief Court Clerk, Ms. Kelly J. Wejko, assigned to Justice Thomas G. Leone, who on April 5, 2012, issued an Order to Show Cause, the same ORDER, that on May 8, 2013 the Default Judgment was entered upon, in this action. It is the aforementioned appointed "Judicial Administrators" that Complainant's warrant of attachment compelling obedience to the writ (a mandatory nondiscretionary duty owed to the Complainant without further delay) lies to be issued and/or executed, Ordering Complainant's release forthwith. See; "Exhibit (B)."

COMPLAINT

5. In order to prevail on a complaint brought Ex Parte Young, F.P&P § 4231, for Mandatory relief, under the Mandamus Act Codified at 28 USCA § 1361, compelling an administrative agency or a Judicial Officer to act, the Complainant must demonstrate that: 1) he or she has a clear right to relief; 2) the agency, has a clear duty to perform the act in question; and 3) no other adequate remedy is available. See; Lovallo v. Froehлке, 468 F.2d 340 (C.A.2d Cir.1972); Iddir v. INS, 301 F.3d 492, 499 (C.A.7 Ill. 2002). Herein, Complainant's complaint does meet the three (3) prongs: (1) Based upon Complainant's uncontested CPLR § 7002, Writ of Habeas Corpus claim, Complainant established a clear right to his liberty; (2) Absent of any triable issue and, the Request to Clerk for Entry of Default duly entered on May 8, 2013, by virtue of the oppositions failure to move forward with the case, Complainant established all that remains is a mandatory nondiscretionary ministerial duty/function and/or act, owed to him by virtue of issuing the warrant of attachment without any "further delay" compelling obedience to the writ as the final determination in this action; and (3) Absent of any appeal to decide any controversy, the matter thereafter becoming Ex parte, as Respondent failed to meet his obligatory mandate of responding necessary to controvert the prima facie showing, Complainant (as the prevailing party) established no appellate review and/or

appeal is necessary, thereby supporting the requiring of the extraordinary Writ of Mandamus in this action.

PEREMPTORY WRIT OF MANDAMUS

6. In the instant action Complainant seeks to establish that the Peremptory Writ of Mandamus is the appropriate remedy. It is well settled that the remedy of a Peremptory Mandamus is available to compel a governmental entity or officer to perform a mandatory nondiscretionary duty, but does not lie to compel an act which involves an exercise of judgment or discretion, see Matter of County of Fulton v. State of New York, 76 NY2d 675, 678, 563 NYS2d 33, 564 NE2d 643; Matter of Mullen v. Axelrod, 74 NY2d 580, 583, 549 NYS2d 953, 549 NE2d 144; Klostermann v. Cuomo, 61 NY2d 525, 539, 475 NYS2d 247, 463 NE2d 588; Matter of Legal Aid Society v. Scheinman, 53 NY2d 12, 16, 439 NYS2d 882, 422 NE2d 542; Ocutto Blacktop and Paving Crop., Inc. v. Perry, 492 F. Supp. 783 (1996), 28 U.S.C.A. § 1361.

7. Complainant has undoubtedly demonstrated that due to Respondent's failure to go forward with the case (¶ 1,4 & 5 supra), it rendered the assertions setforth in his Writ of Habeas Corpus ipso facto, the law of the case, removing any issue of material fact to be determined in this matter. Moreover, when County Clerk on May 8, 2013 duly entered Complainant's application for default judgment "nunc pro tunc" in this action, undoubtedly Peremptory Mandamus is

established....[because] a party seeking mandamus must show a "clear legal right" to relief Fulton supra; Matter of Legal Aid Society of Orange County, Inc. v. Patsalos, 185 A.D.2d 926, 587 NYS2d 943 (2d Dept. 1992); Matter of Legal Aid Society v. Scheimann, 439 NYS2d 882 supra; Lovallo v. Froehlke, 468 F.2d 340 supra. The availability of the remedy depends "not on the [Complainant's] substantive entitlement to prevail, but on the nature of the duty sought to be commanded - i.e., mandatory, nondiscretionary action" Matter of Hamptons Hospital & Med. Ctr. v. Moore, 52 NY2d 88, 97, 436 NYS2d 239, 417 NE2d 533; Lavallo supra. If the right performance is clouded by reasonable doubt or controversy, the petition should be denied. See e.g. New York Civ. Liberties Union v. State, 4 NY2d 175, 791 NYS2d 507, 824 NE2d 947 (2005); Association of Surrogate and Supreme Court Reporters within the City of New York v. Bartlett, 40 NY2d 571, 574, 388 NYS2d 882, 357 NE2d 353 (1976) only ministerial acts that no exercise of judgment or discretion are subject to mandamus to compel. Gimprich v. Board of Education of the City of New York, 306 NY 401, 188 NE2d 578 (1954); Heckler v. Ringer, 466 U.S. 602, 104 S.Ct. 2013 (1984), 28 U.S.C.A. § 1651(a).

8. Upon meeting all requirements for the issuance of immediate release authorized and/or compelled by the aforementioned Declaratory Mandatory relief Act, it requires not the least amount of persuasive argument to assert that once a dispute has been decided, whether the adjudication affixed in court records is certified to have been decided by default or by

trial, the prevailing party has a right for the relief sought to be performed forthwith, see (§ 1,4 & 5 supra). Here, Complainant's Writ of Habeas Corpus petition resulted in the Court issuing an Order to Show Cause, see (§ 1 supra), demanding of the Respondent to Show Cause why the relief sought should not be granted to Complainant. The failure for Respondent to respond to the aforesaid writ in its entirety, amounts to a concession to all the facts asserted therein. Said default can be considered arguendo, a form of stipulation by the silent Respondent, of the veracity of the Complainant's factual and legal claim. If nothing else, it certainly removes from the action any disputable matters, reducing the judges role thereafter, to a simple ministerial function of merely converting the Order to Show Cause into a final judgment. However, based upon the record made/had and certified by County Clerk, Complainant's application for "Request to Clerk for Entry of Default" was the appropriate procedure for final determination in this action, undisputedly establishing his prevailing entitlement on paper alone as the law mandates. New York Practice, 5th Edition § 293 Pg. 494, David D. Siegel. Establishing, all that's left is a mandatory nondiscretionary duty.... that envisions direct adherence to a governing rule or standard with a compulsory result. "Thus, an act is a ministerial act and a duty is ministerial in character where the law requires a body or officer to do a specified act in a specified way, upon a conceded state of facts, without regard to its or his own judgment as to the propriety of the act and with no power to

exercise discretion", leaving absolutely no rationale reason whatsoever for the aforementioned named Judicial Administrators (operating within this Court's district) to unreasonably continue to delay and/or refuse a mandatory issuance of the "warrant of attachment" as required by lawful State Statute under N.Y.A.P.A. § 204(1) and Federal Statute 28 U.S.C.A. § 2712, which all that remains is "a clear legal right" owed to the Complainant, the sole party in this action.

9. Complainant having exhausted all administrative remedies available have determined that no adequate remedies exist. See; Complainant's supporting affidavit "Exhibit (A)".

10. As a result of the aforementioned named Judicial Administrator's willful and unreasonable delay to perform a clear mandated nondiscretionary duty owed to the Complainant, in the absence of issuing the warrant of attachment that lies, Complainant (who is an illegal captive being held against his will at the Auburn Correctional Facility, a New York State Maximum Prison), will be forced to continue to suffer the prejudice he has endured as a result of his unjust incarceration and wrongful/illegal conviction in this action.

STATUTORY AND REGULATORY FRAMEWORK

11. Pursuant to the Ex Parte Young Doctrine, FP&P § 4231, the term "doctrine" means a legal principle, a legal principle

that was adopted under the Young case, for Federal Courts to enforce the Constitution against State Courts and State Legislative and executive action.

12. Pursuant to Title 28 USCA § 1651(a), of the All Writ Act, the term "Peremptory writ of mandamus" means an absolute and unqualified writ (a formal written command) to the defendant/respondent to do the act in question. It is issued when the defendant/respondent defaults on, or fails to show sufficient cause in answer to, an alternative mandamus. A more exact definition of a peremporthy writ mandate is "a final order of a court to any governmental body, government official or a lower court to perform an act the court finds is an official duty required by law."

13. Pursuant to Title 5 USCA § 551(10)(A) and (B), of the Administrative Procedure Act, the term "Administrative Procedure Act" means an agency that is required to comply and/or apply to the proceeding the request or on its own initiative duly perform the mandatory nondiscretionary ministerial duty mandated.

14. Pursuant to Title 28 USCA §§ 1361, of the Declaratory Judgment Act, the term "Declaratory Judgement Act" means an Action to compel an officer/official to perform a duty owed to the Party and/or to the Complainant in the Action.

15. Although generally in many cases the usual practice by

Mandamus Act compelling an administrative agency or a judicial officer to perform a duty owed to the plaintiff and/or a Complainant is usually brought by way of petition under the alternative writ. Notwithstanding, in the instant case absent of a Respondent, the matter thereafter proceeding Ex Parte, the default judgment duly entered on May 8, 2013, by the County Clerk, who is the official Custodian of Court records, which undisputedly establishes all that's left in this matter is the issuance of the warrant of attachment that lies, allows this Complaint to be brought Ex Parte to this honorable Court under the Young Doctrine, supported and/or authorized by the All Writ Act pursuant to 28 USCA § 1651(a). A Complaint in the nature of a "Peremptory Writ of Mandamus" COMMANDING; the mandated duty to be compelled forthwith.

16. Accordingly, based upon the surrounding circumstances in this case supported by the irrefutable documentary evidence, this Court may exercise jurisdiction under the aforesaid All Writ Act, 28 U.S.C.A. § 1651(a), on the basis that Congress has granted original jurisdiction to Federal District Courts to hear any action in the nature of Mandamus and when established, the authority to issue such Writ to enforce the performance of full and complete duty devolved by law upon any official is commanded.

17. In any event, Complainant in bringing this complaint to this Honorable Court, he respectfully asserts that public

servant's in performing their mandatory nondiscretionary ministerial duty, their conduct can and should be controlled by the People who elected them under oath to serve them. In our constitutional form of government, the People are now, and have always been, Sovereign. As such, they are the source of all governmental authority in America. As "the People of the United States" of America, they are the power which ultimately created the offices of "Representative" and "Senator" to represent the People in the district elected..."When considering the nature and the theory of our institutions of government, the principles upon which they are suppose to rest... we are constrained to conclude that they do not mean to leave room for the play and action of purely personal and arbitrary power. Sovereignty itself is, of course, not subject to law, for it is the author and the source of law; but in our system, while sovereign powers are delegated to the agencies of government, sovereignty itself remains with the people, by whom and for whom all government exists and acts". [Yick Wo v. Hopkins, 118 U.S. 356 (1886), emphasis added].

18. Moreover, Complainant is not contesting the supreme right of the "United States" or its authority in how it should delegate the Constitution to all agencies, be it State or Federal. Complainant is hereby proclaiming his fundamental right to his prevailing entitlement and right to liberty in this action, taken by the unreasonable and unlawful delay. Complainant prays for this Honorable Court to take judicial

notice of such unreasonable delay by the aforesaid Judicial Administrators and/or Public Servants in this action, duly elected to represent the Cayuga County Public and/or residents, which lie inside the territorial jurisdiction of this Honorable Court, having no justification whatsoever for the deliberate neglect, refusal and/or failure to perform their mandatory nondiscretionary ministerial duty, a "legal obligation" owed to the Complainant in this action.

19. Even though they are State Public Servants, as such, they are elected officials to serve the People of Cayuga County. Accordingly, if the People of the Cayuga County which they were elected to represent have no control whatsoever over their "Public Servants", then the natural order of things has been turned on its head, to great detriment of the many, and to the great benefit of the few.

20. Nevertheless, the aforesaid documentary evidence attached undoubtedly proves the aforementioned "Public Servants" owes the mandatory nondiscretionary ministerial duty to Complainant. This duty is the Complainant's prevailing entitlement and right to liberty. To the extent that their deliberate neglect and/or refusal to execute the issuance of the Complainant's warrant of attachment that lies, compelling obedience to the Writ of Habeas Corpus, is an outright disobedience and/or violation to the very same oath they were sworned to uphold and serve upon being elected to their Judicial