DOMINIC M. FRANZA
92A3659
FISHKILL CORRECTIONAL FACILITY
P.O. BOX 1245
BEACON, N.Y. 12224
nypdprosecutorcorruption.com

2/6/2015

Hon. Andrew M. Cuomo
Governor of New York
Executive Chamber
State Capitol
Albany, N.Y. 12224

RENEWED
DEMAND FOR RELEASE
RESTORATION OF LIBERTY INTEREST

Dear Gov. Cuomo:

I hereby make this Renewed Demand For Release and Restoration of Liberty Interest based upon the following facts:

Previously, **your Honor personally and immediately took action** upon my Verified Demand For Release And Restoration Of Liberty Interest application, supported with exhibits, as it was admitted by the N.Y. State Attorney General's office and the N.Y. County D.A.'s office, as a matter of law and fact that, I have been held to answer for an infamous crime without an indictment being filed, as the indictment was filed as a **"waived"** instrument constituting a **"waived case."** This being a major N.Y. Const. Art., I, §6 violation, mandating my immediate release from imprisonment. As well, revealing my conviction was procured by the knowing use of false evidence and false testimonies, in violation of N.Y. Const. Art., I §6 [Due Process of Law] and the 14th Amendment of the U.S. Constitution [Due Process of Law] (Attached hereto and marked as Exhibit "1"

[Letter showing your Honor's personal knowledge]; Attached hereto and marked as Exhibit "2" [Served Demand For Release Restoration Of Liberty Interest application]).[1]

As your Honor is aware of, I made a Verified Response and Application for a Full Pardon, supported with exhibits. To refresh your recollection, I complained of the way Mr. Richard de Simone (DOCCS) handled the matter, who your Honor and Acting Commissioner Annucci **"asked"** to respond to me. His response was that DOCCS is unable to grant the relief I requested which was denied to me by the judicial branch of government. As for the Full Pardon aspect, based upon the same facts and evidence within my Demand For Release Restoration Of Liberty Interest application, I asked your Honor for a Full Pardon. To date my Pardon application is still pending (Ex. "1"; Attached hereto and marked as Exhibit "3" [Served Verified Response And Application For A Full Pardon]; Attached hereto and marked as Exhibit "4" [Letter revealing Pardon application is still pending]).

I make this renewed application due to a recent court proceeding, in Dutchess County, which conclusively proved as a matter of fact and law that, I have been held to answer for an infamous crime without an indictment being filed, in violation of N.Y. Const. Art., I, §6. As well, proving the court's

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1- If you Honor does not release me from my unconstitutional imprisonment, I will have to go to my initial Parole Board hearing this October. I will most assuredly get denied, and many more times thereafter based upon the nature of my alleged crimes, which were based upon false evidence and testimonies. I now attach my proposed CPL §440 motion, which goes far beyond the previous proposed CPL § 440 motion within my initial Demand For Release application (Ex. "2" pp. 23-26; Attached hereto and marked as Exhibit "5" [CPL §440 motion with exhibits]).

decision/order/judgment being in direct violation of N.Y. Const. Art., I, §4 [Habeas Corpus], Art., I, §6 [Due Process], Art., I, §14 [Common Law And Acts Of The State Legislature], Art. VI, §30 [Regulation Of Jurisdiction, Practice And Procedure Of The Courts], and statutory provisions enacted by the Legislature.

Since the People of the State of New York (Of which I am a Citizen of) by specific provision in the Constitution (N.Y. Const. Art., IV, §3), have charged your Honor with the duty to **"take care that the laws are faithfully executed,"** I call, once again, upon your Honor, in connection with this renewed demand, to faithfully fulfill this Constitutional duty.

Once again, as you Honor said on T.V., quote, "we all deserve a Government that we can trust," I hold you to your words. I expect your Honor to uphold your Oath of Office to the fullest, with absolute integrity, as further evidence of your words. N.Y. Const. Art., 13, §1; Civil Service Law §62.

RECENT COURT PROCEEDING

In April of 2014, I initiated a CPLR Article 70 [Habeas Corpus] proceeding, supported with exhibits. I claimed verbatim (Attached hereto and marked as Exhibit "6" [Habeas Corpus application with Exhibits]).

> 8. That, Dominic M. Franza is unconstitutionally imprisoned and restrained of his Liberty within the State of New York, as revealed by the N.Y. County District Attorney office's F.O.I.L. responses, proving the indictment was filed under the document status designation of "waived case", therefore petitioner not being Constitutionally and statutorily legally prosecuted, in violation of Article I, §6

of the New York State Constitution; CPL §40.30(1)(2)(a); CPL 200.10; CPL §210.05; People v. Correa, 15 N.Y.3d 213, 228 (2010), as a result rendering the mandates null and void, as the mandates were issued under said filed waived indictment (Ex. "6" p. 2 ¶8).

I presented the same facts and evidence that were before your Honor in the Demand For Release And Restoration Of Liberty Interest application. Thus, the court was fully apprised of the following facts and evidence below (Ex. "2" pp. [Facts]: 2-3, 17-22):

That, Mr. Michael Franza at my request, on April 24th of 2009, acquired copies of my indictments, numbered 1647/91 and 11987/91, Certified and under the seal of the court. My presenting such documents to the court (Ex. "6" p. 7 ¶11).

That, Miss Rose Marie Gonzalez at my request, on June 4th of 2010, acquired numerous copies of my indictments, numbered 1647/91 and 11987/91, Certified and under the seal of the court. My presenting such documents (Ex. "6" p. 7 ¶12).

That, Miss Gonzalez by letter made a F.O.I.L. request to the N.Y. County D.A.'s office, requesting the definition of the letters "CCI", which appear in indictment 1647/91. Miss Gonzalez making an attestation as to her inquiry. My presenting a copy of her F.O.I.L. request and attestation (Ex. "6" p. 8 ¶12).

That, A.D.A. Susan Roque, record access officer, responded to Miss Gonzalez's F.O.I.L. request. Explaining what the "CCI" designation "usually means," and the "on the other hand" version as follows, that before a defendant has been released from custody, this person's attorney will "waive" to the case to Supreme Court, as a result obviating the need to involve the Clerk of the Criminal Court in a formal notice of indictment and transfer. Further explaining, "waived" and "WGJ" constitute a "waived case" (Emphasis Added). Revealing there are three types of indictment designations: "CCI"; "waived", and; "WGJ". A.D.A. Roque further stating as well, the designation "CCI" having only a clerical significance. Miss Gonzalez making an attestation as to receiving this response. My presenting such documents to the court (Ex. "6" p. 8 ¶14).[2]

2- In a waived case there is no case to waive to the Supreme Court. In other words, you can't waive to the case to Supreme Court when there is no case.

That, Miss Gonzalez, by letter dated November 13th of 2012, asked A.D.A. Roque, what does "WGJ" precisely stand for. Making an attestation as to her inquiry. My presenting such documents to the court (Ex. "6" p. 9 ¶15).

That, A.D.A. Roque, in response, answered Miss Gonzalez that "WGJ" meant "waived grand jury." Miss Gonzalez making an attestation as to receiving this response. My presenting such documents to the court (Ex. "6" p. 9 ¶16).

I directed the court to view indictment 1647/91. That such reveals the file date, thereafter to the direct right the typewritten letters "CCI" which is crossed out by hand, and a handwritten "W" placed above the crossed out letters (Ex. "6" p. 9 ¶17).

I thereafter directed the court to view indictment 11987/91. That such reveals the file date, thereafter to the direct right the typewritten word "waived" (Ex. "6" p. 9 ¶18).

I claimed the handwritten letter "W" on indictment 1647/91 meant "waived", as A.D.A. Roque identified the "W" in "WGJ" as waived (Ex. "6" p. 10 ¶19).

Based upon the foregoing I made the following factual argument:

> **20.** By the words of the N.Y. County D.A.'s office, the meaning of the clerical significance of "WAIVED" and "WGJ" (Waived Grand Jury) is "waived case", the document status designation. Thus, petitioner's prosecution under indictment 1647/91 and 11987/91 were indeed discontinued, via indictment, according to the D.A. office's document status designation (Ex. "6" p. 10 ¶20).
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> **21.** Most definitely the above is so. Just as a **waived grand jury** creates no indictment for prosecution, Hughes v. Hughes, 11 Misc.3d 1067 (A)(N.Y. County 2006)("[D]efendant **waived grand jury** indictment and was prosecuted by a ...

> superior court information."); People v. Wilson, 12 Misc.3d 1195(A)(Kings County 2006)("He **waived grand jury** action and pleaded guilty ... to Kings County Superior Court Information."), so does the word "WAIVED" have the same effect of a Waived Grand Jury, thus constituting a "Waived Case", as the clerical significance's "WAIVED" and "WGJ" are jointly mentioned with the same document status designation "WAIVED CASE", signed by the Grand Jury Foreman. This is indisputable, the Grand Jury Foreman signed off on the clerical significance, the filing made it final, e.g., People v. Montanez, 90 N.Y.2d 690, 694 (1997)(Grand Jury dismissal not final until filed thereby constituting a final finding)(Ex. "6" p. 10 ¶21).
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> **22.** Irrespective of whether or not petitioner waived grand jury action the same result obtains. Once again, the Grand Jury Foreman signed off on the clerical significance, a final finding as the accusatory instrument was filed (Ex. "6" p. 11 ¶22).

I further made a factual argument, support with evidence, that proved the letters "W", "WGJ", and the word "WAIVED" have nothing to do with the Supreme Court:

> **23.** The below is further proof the letters "W", "WGJ", and the word "WAIVED" have nothing to do with Supreme Court (Ex. "6" p. 11 ¶23).
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> **24.** On February 12th of 1991, petitioner was arraigned in the Criminal Court of N.Y.C., Part AR3. The court held your petitioner for the action of the grand jury, setting bail and the CPL §180.80 date for Part "F" on February 15th of 1991. Before concluding the court asked counsel if petitioner wished to testify before the grand jury, answering, "Well, we have not decided yet" (Exhibit "10"; Attached hereto and marked as Exhibit "17" [2/12/91 arraignment transcript]).

25. Miss Gonzalez, at petitioner's request, on October 18th of 2012, acquired from petitioner's court file the "RECORD OF COURT ACTION." Various copies were Certified and placed under the seal of the court. Miss Gonzalez has made a sworn attestation as to acquiring the Record of Court Action sheet. The originals will be produced in open court (Attached hereto and marked as Exhibit "18" [Copy of Certified Record of Court Action sheet]; Attached hereto and marked as Exhibit "19" [Copy of sworn attestation]).

26. A viewing of the "RECORD OF COURT ACTION" sheet reveals, there was court action on February 15th of 1991 in Part "F", before the Hon. Sheryl L. Parker. The Record of Court Action sheet further stated, "INDICTED TRANSFERRED TO SUPREME COURT." The present section box revealed petitioner's attorney and petitioner were present. This pertained to indictment 1647/91.

27. It is beyond question, there was a proceeding with your petitioner's counsel and petitioner being in attendance, with direction by the court, thus involving the Clerk of the Court as there was a formal notice of indictment and transfer, as ordered.

28. It is beyond question, the showings above reveal indictments 1647/91 and 11987/91 were "waived cases", discontinued via indictment, and had nothing to do with a waiver to the case to supreme court, as evidenced by the N.Y.C. Criminal Court documents and the arraignment transcript.

I also presented the same law that was before your Honor in the Demand For Release And Restoration Of Liberty Interest application. Such proving, it is the N.Y. State Legislature's intent, as acknowledged by the N.Y. Court of Appeals, to allow jurisdictional claims to be reached on habeas corpus, even when the jurisdictional issue in not raised on direct appeal or in a

post conviction motion. As well, apprising the court that a failure to release me would be unconstitutional. Thus, the court was fully apprised of the law (Ex. "2" pp. [Law]: 10-17).

Based upon the above the court issued an Order to Show Cause. The court set the return date for July 25th of 2014 (Attached hereto and marked as Exhibit "7" [Order to Show Cause]).

N.Y. State Assistant Attorney General Barry Kaufman, respondent's attorney, completely failed to file an answer (return). Instead, he filed a motion to dismiss and affirmation in place of an answer, raising CPLR §3211(a)(5)(7) defenses, "on the grounds that the cause of action is barred by reason of the principles of collateral estoppel and res judicata and [that], the petition fails to state a cause of action for habeas corpus relief" (Attached hereto and marked as Exhibit "8" [Motion to Dismiss and Affirmation]).

A.A.G. Kaufman as well filed a supplemental affirmation, asking that sanctions be imposed upon me (Attached hereto and marked as Exhibit "9" [Supplemental affirmation]).

I immediately filed an affidavit in opposition. I brought to the court's attention that the motion to dismiss was statutorily authorized as a matter of law, as shown (Attached hereto and marked as Exhibit "10" pp. 1-3 ¶'s 2-4 [Affidavit in Opposition]).

I brought to the court's attention that, as a matter of law, all my allegations within my habeas petition must be accepted as true and, that I am to be accorded the benefit of every possible favorable inference. As well, that it is the court's duty to

determine only whether my facts as alleged fit within any cognizable legal theory (Ex. "10" p. 3 ¶5):

> **5.** As respondent has moved under CPLR 3211(a)(5)(7), this "Court[] must accept the facts as alleged in the [petition] as true, [and] accord [petitioner] the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory." ABN AMRO Bank, N.V. v. MBIA Inc., 17 N.Y.3d 208, 227 (2011); see, Schwab v. McElligott, 282 N.Y. 183 (1900); Signature Bank v. Holtz Ruberstein Reminick, 109 A.D.3d 456, 466 (2nd Dept. 2013).

I apprised the court, regardless of any claimed impediment, I have met the statutory threshold for a forthwith discharge from custody, as the facts within my petition must be accepted as true as a matter of law. Such stating a cognizable ground for habeas relief under CPLR §§ 7002(a) & 7010(a), as held by the N.Y. State Legislature and the N.Y. State Court of Appeals)(Ex. "10" p. 3 ¶6):

> **6.** In light of the foregoing, irrespective of any claimed impediment, petitioner has met the statutory threshold for a forthwith discharge from custody, as the facts within petitioner's petition must be accepted as true, as a matter of law, which state a cognizable ground for habeas corpus relief as held by the Legislature and N.Y. Court of Appeals, CPLR §§7002(a), 7010(a)(Petition pp. 2-30 ¶¶ 8-64).

Based upon the above I asked the court to deny the motion to dismiss and the supplemental (Ex. "10" p. 4 ¶7).

I thereafter revealed to the court an intentional misrepresentation made to the court. As well, I disproved the defenses made under CPLR §3211(a)(5)(7), as a matter of fact and

law. It should be noted, nowhere in the affirmation submitted was the N.Y. State Legislature's intent (Public Policy as reflected by the statutes) and the N.Y. State Court of Appeals rulings disproved within my habeas corpus petition (Ex. "10" pp. 4-13 ¶'s 9-38).

Acting Supreme Court Justice Hon. Peter M. Forman, fully knowing my facts must be accepted as true, as a matter of law, proving I am unconstitutionally imprisoned, as well fully knowing habeas corpus is the proper remedy for my jurisdictional claim according to the N.Y. State Legislature's intent and the N.Y. Court of Appeals, dismissed my habeas corpus petition on a basis contrary to the N.Y. State Legislature's intent and the N.Y. Court of Appeals rulings. This was an intentional act (Attached hereto and marked as Exhibit "11" pp. 1-3 [Court's dismissal]:

> The habeas petition that is currently pending before this Court merely represents Petitioner's latest iteration of his challenge to the validity of the indictment based upon the handwritten notes and preprinted language appearing on the back of the indictment. It is well-settled that a writ of habeas corpus "is not an appropriate remedy for asserting claims that were or could have been raised on direct appeal or in a CPL Article 440 motion, even if they are jurisdictional in nature." [People ex. rel. Backman v. Walsh, 101 A.D.3d 1316 (3d Dept. 2012). See also People ex. rel. Chapman v. LeClair, 64 A.D.3d 1026 (3d Dept. 2009)]. This maxim has routinely been applied to dismiss habeas corpus petitions alleging that indictments are jurisdictionally defective. [See e.g., People ex. rel. Wallace v. LaValley, 102 A.D.3d 1038 (3d Dept. 2013); People ex. rel. Riley v. Bradt, 91 A.D.3d 1238 (3d Dept. 2012); People ex. rel. Gonzalez v. New York State Dept. of Correctional

> Services, 86 A.D.3d 886 (3d Dept. 2011); People ex. rel. Hall v. Bradt, 85 A.D.3d 1422 (3d Dept. 2011); People ex. rel. Jackson v. Rock, 67 A.D.3d 1080 (3d Dept. 2009); People ex. rel. Spaulding v. Napoli, 50 A.D.3d 1330 (3d Dept. 2008)]. Petitioner's prior applications challenging the validity of the indictment have been uniformly denied on these same grounds. It is therefore, ORDERED, ADJUDGED AND DECREED that the petition is dismissed; and it is further
>
> ORDERED, ADJUDGED AND DECREED that the motion for sanctions is denied.
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> The foregoing constitutes the Decision, Order and Judgment of this Court.

The maxim above applied by the appellate courts of this State is not the law of this State, thereby being unconstitutionally applied, and relied upon. I will now conclusively prove what the Law of this State is according to the Constitution of this State.

CONSTITUTION / STATUTORY CONSTRUCTION

This State's Constitution, under N.Y. State Const. Art., I, §14, held parts of the common law and acts of the Legislature which are now in force shall be and continue to be the law of this State:

> Such parts of the common law, and of the acts of the legislature of the colony of New York, as together did form the law of the said colony, on the nineteenth day of April, one thousand seven hundred seventy-five, and the resolution of the congress of the said colony, and of the convention of the State of New York, in force on the twentieth day of April, one thousand seven hundred seventy-five, which have not since expired, or been repealed or altered; and such acts of the legislature of this State as are now in

> force, shall be and continue the law of this State, subject to alterations as the legislature shall make concerning the same. But all such parts of the common law, and such of the said acts, or parts thereof, as are repugnant to this constitution, are hereby abrograted.

The Legislature in enacting laws made Statutory Construction Laws as their very first book (McKinneys Statutes Book 1). This was done in order to give the courts of this State guidance on how to interpret the statutory provisions enacted, in order to ascertain the Legislature's intent:

> Statutes §4: Neither the English nor Colonial statutes are of any effect, as such, today, and the practical effect of the present Constitution is to continue in force only the unwritten rules of the common law which have not been abrogated, although our courts still apply such common law.

This State's Constitution, under N.Y. State Const. Art., 6, §30, held the Legislature has the "power to alter and regulate the jurisdiction and proceedings in law." And, that court rules must be adopted in accordance with procedures prescribed by the Constitution and statute:

> The legislature shall have the same power to alter and regulate the jurisdiction and proceedings in law and in equity that it has heretofore exercised. The legislature may, on such terms as it shall provide and subject to subsequent modification, delegate, in whole or in part, to a court, including the appellate division of the supreme court, or to the chief administrator of the courts, any power possessed by the legislature to regulate practice and procedure in the courts. The chief administrator of the courts shall exercise any such power delegated to him or her with the advice and consent of the administrative board of the courts. Nothing herein contained

> shall prevent the adoption of regulations by individual courts consistent with the general practice and procedure as provided by statue or general rules.
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> Statutes §2. Lawmaking power vested in Legislature
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> Under the Constitution and provisions therein for distribution of govermmental powers, the Legislature is given the power to determine policy and make laws.
>
> Statutes §72. Construction as part of statue
>
> a. Generally
>
> Generally, a judicial interpretation of a statue, having once been made is binding on subsequent courts in accordance with the rule of stare decisis and the doctrine of precedence, so that the interpretation becomes as much a part of the enactment as if incorporated into the language of the act itself.
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> Statutes §126. Public, governmental, or legislative policy
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> Public policy of the State is evidenced by expression of the will of the Legislature, contained in statutory enactments, and such policy is material in the exposition of legislative intent in other statutes in cases of ambiguity.

It will be proven below the Constitutional laws of this State, as well the statutes enacted, are not being followed.

LAWS IN EFFECT GOVERNING MY HABEAS CORPUS PETITION

In 1920 civil procedure was governed by the Civil Practice Act, Roslyn, Free School Dist. v. Barken, 16 N.Y.3d 643, 651 (2011), which was replaced by the Civil Practice Law and Rules, Parochial Bus System, Inc. v. Board of Educ. City of New York, 60 N.Y.2d 539, 545 (1983)(Civil Practice Act repealed 9/1/63); Thomas v. Melbert Foods, Inc., 19 N.Y.2d 216, 223 (1967)(Civil Practice Law and Rules into effect in 1963).

During the enactment of the Civil Practice Act, the Court of Appeals in Morhous v. Supreme Court of New York, 293 N.Y., at 138-139 (1944) outlined the test and practice in this State for habeas relief based upon jurisdictional issues/grounds:

> "To bar applicant from a discharge from arrest by virtue of a judgment or decree, or an execution thereon, the court in which the judgment or decree is given must have had jurisdiction to render such judgment. The tribunal must be competent to render the judgment under some circumstance." (Italics are new.) That is the test which this court has consistently applied. See People ex rel. Carr v. Martin, supra. It accords with the historic nature and object of the writ, yet does not exceed those limitations upon its use which have been observed for centuries. "Upon the writ of habeas corpus, the court could not go behind the judgment, but upon the whole record, the question was whether the judgment was warranted by law, and within the jurisdiction of the court." That conclusion leaves untouched "the potency and efficiency of the writ of habeas corpus to test the jurisdiction of every court in the land, assuming, by its judgment, decrees and process, to deprive the citizen of his liberty."
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> What we have said is, of course, intended to apply only to the scope of the inquiry upon a writ of habeas corpus at common law, and under the practice of this State.

As well, during the enactment of the Civil Practice Act, two Court of Appeal rulings held habeas corpus relief for jurisdictional issues/grounds is available, even when the juris7ictional issue/ground is not raised on direct appeal:

> Although the challenge to the jurisdiction of the Magistrates' Court could have been raised by the defendant on appeal from the judgment of conviction (see People v. Scott, 3 N.Y.2d 148, 164

> N.Y.S.2d 707), and although that might have been a more orderly and regular method of procedure, the right to invoke habeas corpus, "the historic writ of liberty", the "greatest of all writs", is so primary and fundamental that it must take precedence over considerations of procedural orderliness and conformity. See U.S. Const. I, §9; N.Y. Const. art. I §4; People ex rel. Tweed v. Liscomb, 60 N.Y. 559, 591, supra; People ex rel. Sabatino v. Jennings, 246 N.Y. 258, 260, 158 N.E. 613, 614, 63 A.L.R. 1458. People v. Schildhaus, 8 N.Y.2d 33, 36 (1960).
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> No such challenge to the jurisdiction was made during relator's trial or on his appeal to the Appellate Division from the judgment of conviction, which appeal resulted in a affirmance by that court (259 A.D. 1065), or on a subsequent motion, denied by a Judge of this Court, for leave to appeal to this Court. We hold nonetheless, that the alleged jurisdictional question may properly be raised by these habeas corpus proceedings. (See People ex rel. Carr v. Martin, 286 N.Y. 27, 31, 32). People ex rel. Ray v. Martin, 294 N.Y. 61, 65 (1945).

The Court of Appeals in People v. Nicometi, 12 N.Y.2d 428, 431 (1963), made before CPLR took effect, even held a jurisdictional defect can be raised at any time and can never be waived, and upon being substantiated undoubtedly presenting a cognizable ground for the issuance of a writ of habeas corpus. As well, holding the issue can be remedied on appeal:

> Want of jurisdiction is a basic defect, not a trial error; it may be raised at any time and can never be waived. The record before us, therefore, contains a fundamental defect in the proceedings which could never be waived or cured, and such a defect in the record is disclosed "upon its face" (People v. Bradner, 107 N.Y. 1, 4, 13 N.E. 87; People v. Klein, 7

> N.Y.2d 264, 267, 196 N.Y.S.2d 964, 967, 164 N.E.2d 845, supra; cf. People v. Kischel, 276 N.Y. 116, 11 N.E.2d 559, supra). Since this defect would undoubtedly be grounds for the issuance of a writ of habeas corpus, it most assuredly can be remedied on this appeal.

Since the rulings above were made during the time habeas corpus was governed by the Civil Practice Act, the legislative enactment of CPLR §'s 7001-7012 governing habeas corpus proceedings neither cites to the rulings above, nor does the language of the legislation make any effort to affect these decisions. Under this circumstance, as a matter of law, these rulings are deemed "accepted", stating the correct Legislative intent. Matter of Knight-Ridder Broadcasting v. Greenberg, 70 N.Y.2d 151, 157 (1987):[3]

> It is well settled that the legislative history of a particular enactment must be reviewed in light of the existing decisional law which the Legislature is presumed to be familiar with and to the extent it left it unchanged, that it accepted. Id, at 157.

Thus, "it is a recognized principle that where a statue has been interpreted by the courts, the continued use of the same language by the Legislature subsequent to the judicial interpretation is indicative that the legislative intent has been Correctly ascertained Id., at 157.

3- The United States Supreme Court has held the same proposition in Forest Grove School Dist. v. T.A., 557 U.S. 230 (2009), 129 S.Ct. 2482, 2492 ("Congress is presumed to be aware of an administrative or judicial interpretation of a statue and to adopt that interpretation when it re-enacts a statue without change."); See, Meilink v. Unemployed Reserves Commission of the State of California, 314 U.S. 564, 569-570 (1942)("We must give credit to a state legislature acting within its Constitutional sphere like that accorded to Congress acting in its Constitutional sphere."); Townsend v. Yeomans, 301 U.S. 441, 451 (1937)("But the Legislature, acting within its sphere, is presumed to know the needs of the people of the state.").

> If the Legislature desires to change the prevailing rules of the common law, it must do so itself. Major v. Waverly & Ogden, Inc., 7 N.Y.2d 332, 336 (1960).
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> Statutes. §76. Statutes too clear for construction
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> Where the words of a statue are free from ambiguity and express plainly, clearly and distinctly the legislative intent, resort may not be had to other means of interpretation.
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> Statutes §114. General words not limited
>
> If there is nothing to indicate a contrary intent on the part of the lawmakers, terms of general import in a statue ordinarily are to receive their full significance.
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> Statutes §153. Change in long established rule
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> A change in long established rules of law is not deemed to have been intended by the legislature in the absence of a clear manifestation of such intention.

Even the Court of Appeals in People ex rel. Keitt v. McMann, 18 N.Y.2d 257, 263 (1966), made during the enactment of the Civil Practice Law and Rules, recognized all the principles above by reflecting the rulings in Morhous v. Supreme Court of N.Y., People v. Schildhaus, Ray v. Martin, and People v. Nicometi, state the correct and accepted legislative intent. In examining the history of CPLR §7002(a) and CPLR §7003(a), the ruling acknowledged the Legislature did not intent to change the instances in which the writ was available under the Civil Practice Act. That the Legislature did not make a new habeas corpus rule, recognizing the Court of Appeals decisional accretion in the increasing usage of habeas corpus. This is indisputable:

> Because this proceeding was brought under CPLR 7002 (subd. (a)) of which permits one 'illegally imprisoned or otherwise restrained in his liberty within the state' (see, also, CPLR 7003 (a)) to institute habeas corpus proceedings, we have examined the history of the section and have concluded that the Legislature did not intend to change the instances in which the writ was available under the now repealed Civil Practice Act. Rather, it seems to us, what the Legislature did was not make a new habeas corpus rule, but merely recognized that we have, by the slow process of decisional accretion, made increasing use of 'one of the hallmarks of the writ *** its great flexibility and vague scope' (Third Preliminary Report of Advisory Committee on Practice and Procedure (N.Y. Legis. Doc. 1959, No. 17), p. 49; see Paulsen, Post-Conviction remedies in N.Y., 1959 report of N.Y. Law Rev. Comm. (N.Y. Legis. Doc., 1959, NO 66(L)), p. 453 et seq.).

The above finding that, the Legislature did not make a new rule coincides with Statutes §373 (Simultaneous repeal and reenactment):

> The provisions of a law repealing a prior law, which are substantially reenactments of the provisions of the prior law, are to be construed as a continuation of such provision, and not as new enactments.

As well, the Court of Appeals in Keitt v. McMann, at 262-263, held in a non-jurisdictional case before it that, People v. Schildhaus is a case where "the right to invoke habeas corpus may take precedence over "procedural orderliness and conformity." Reaffirming habeas corpus is the proper remedy for jurisdictional issues/grounds. Further, that "departure from traditional orderly proceedings, such as appeal," on Constitutional / Statutory grounds must meet the "practicality

and necessity" prongs for habeas relief. That if the claim is substantiated, revealing the imprisonment is illegal, then habeas coprus is the proper remedy. Conversely holding, mere trial errors which are not fundamental Constitutional / Statutory deprivations are not proper for habeas corpus relief:

> Our holding today that habeas corpus is available to test a claim that the introduction of certain evidence violated both due process and the privilege against self incrimination requires us to acknowledge that habeas corpus is an appropriate proceeding to test a claim that the relator has been imprisoned after having been deprived of a fundamental constitutional or statutory right in a criminal prosecution, including, but not limited to, the right to be tried and sentenced by a court having jurisdiction over the charge and the person. Id., at 262.
>
> Lest anyone be mislead, we add this caveat. We have intimated that to adhere to the rigidities of traditional practice and procedure would be contrary to the spirit and purpose of the writ (see Matter of Morhous v. New York Supreme Ct., 293 N.Y. 131, 139-140, 56 N.E.2d 79, 83-84). While cases may arise where the right to invoke habeas corpus may take precedence over "procedural orderliness and conformity" (People v. Schildhaus, 8 N.Y.2d 33, 36, 201 N.Y.S.2d 97, 98, 167 N.E.2d 640, 641), we are not holding that habeas corpus is either the only or the preferred means of vindicating fundamental constitutional or statutory rights (e.g., People v. Huntley, 15 N.Y.2d 72, 76-77, 255 N.Y.S.2d 838, 841-843, 204 N.E.2d 179, 182-183). Departure from traditional orderly proceedings, such as appeal, should be permitted only when dictated, as here, by reason of practicality and necessity. We emphasize that this is not a case where review of a mere error, allegedly committed at trial, is sought. In such case, the writ may not be utilized as a substitute for appeal or to again review the errors already passed on in an earlier appeal. Id., at 262.

> Therefore, since relator is complaining that he is being incarcerated pursuant to a judgment of conviction which contains a deprivation of a substantial constitutional right on the face of the record, and since, if the claim is substantiated, his imprisonment would be illegal, we hold that habeas corpus is the proper remedy in these circumstances. Id., at 263.

Clearly, it is well established, because the Legislature is presumed to be aware of the rulings in Morhous v. Supreme Court of New York, People v. Schildhaus, Ray v. Martin, and People v. Nicometi, and as the Legislature did not comment on or make any changes to blunt the effects of these rulings, as a matter of law, it must be construed that the Legislature intended to incorporate these rulings - that habeas corpus relief is still nonetheless available to raise jurisdictional issues/grounds which were not raised on direct appeal, as reflected in Knight-Ridder Broadcasting v. Greenberg, Keitt v. McMann, and Statutes §§153, 373, Especially Statutes §72 (Construction as part of statue):

> a. Generally
>
> Generally, a judicial interpretation of a statue, having once been made is binding on subsequent courts in accordance with the rule of stare decisis and the doctrine of precedent, so that the interpretation becomes as much a part of the enactment as if incorporated into the language of the act itself.

It is indisputable, the Court of Appeals, the highest court in this State whose rulings must be adhered too by the lower courts, has interpreted Article 70 in the light of the conditions existing at the time of its passage, and held the

same construction after its passage. Thus, adhering to the Legislative intent and policy choice applicable to Article 70 proceedings, performing its judicial function to discern and apply the will of the Legislature, the proper work for the courts:

> The plain meaning of the language of a statue must be interpreted "in light of the conditions existing at the time of its passage and construed as the courts would have construed it soon after its passage. People v. Litto, 8 N.Y.2d 692, 697 (2007).
>
> Our objective in this regard is "to discern and apply the will of the Legislature, and not the court's own perception of what might be equitable." Orens v. Novello, 99 N.Y.2d 180, 185 (2002).
>
> As we have repeatedly recognized, "[i]n matters of statutory ... interpretation, 'legislative intent is the great and controlling principle, and the proper judicial function is to discern and apply the will of the [enactor].'" To that end, ascertaining legislative intent involves considering "'the spirit and purpose of the act and the object to be accomplished.'" Sedacca v. Mangano, 18 N.Y.3d 609, 615 (2012).
>
> We have consistently held that enforcement of a clear constitutional or statutory mandate is the proper work of the courts. Hurrell-Harring v. State, 15 N.Y.3d 8, 26 (2012).

Thus, the law of this State holds habeas corpus is the proper remedy for jurisdictional issues/grounds, even if the issue/ground was not raised on direct appeal, as seen fit by the public policy of the Legislature, not by the courts (N.Y. Const. Art., 6, §30).

> [F]or the Legislature has both the right and the authority to select the methods

> to be used in effectuating its goals, as well to choose the goals themselves. People v. Litto, 8 N.Y.3d, at 705.
>
> We have held that a statue "'must be read and given effect as it is written by the Legislature, not as the court may think it should or would be written if the Legislature had envisaged all the problems and complications which might arise.'" (Parochial Bus Sys. v. Board of Educ., 60 N.Y.2d 539, 548-549, 470 N.Y.S.2d 564, 548 N.E.2d 1241, quoting Lawrence Constr. Corp. v. State of New York, 293 N.Y. 634, 639, 59 N.E. 630.). People v. Tychanski, 78 N.Y.2d 909, 911 (1991).
>
> The public policy of the State is what the Legislature says it is, where the Legislature has spoken, and a policy so declared sometimes has to be followed by the courts in areas beyond the express reach of the statue for the sake of consistency in the administration of the law. Steinberg v. Steinberg, 18 N.Y.2d 492, 497 (1966).

With respect to post conviction relief the law of this State is as follows.

The N.Y. State Legislature in enacting the Statutes Law enacted the following below:

> Statutes §34. Affirmative or negative
>
> Statutes may be classified as affirmative or negative; and an affirmative statue generally operates merely to furnish an additional remedy for the enforcement of a right.
>
> Statutes 395. Cumulative or exclusive statutes
>
> A statue which provides a new remedy for an existing right does not abrogate the existing remedies for enforcing the same right.

The N.Y. State Legislature in enacting the Civil Practice Law and Rules enacted the following statutory provision:

CPLR §104. Construction

> The civil practice law and rules shall be liberally construed to secure the just, speedy and inexpensive determination of every civil judicial proceeding.

The New York Court of Appeals held the following below:

> It is well settled that "when the common law gives a remedy, and another remedy is provided by statue, the latter is cumulative, unless made exclusive by the statue" (Burns Jackson Miller Summit & Spitzer v. Lindner, 59 N.Y.2d 314, 324, 464 N.Y.S.2d 712, 451 N.E.2d 459 [1983][internal quotation marks and citations omitted]). We have emphasized that "a clear and specific legislative intent is required to override the common law" and that such a prerogative must be "unambiguous" (Hechter v. New York Life Ins. Co., 46 N.Y.2d 34, 39, 412 N.Y.S.2d 812, 385 N.E.2d 551 [1978]). Assured Guar. (UK) Ltd. v. J.P. Morgan Inv. Management Inc., 18 N.Y.3d 341, 350-351 (2011).

> "[T]he affirmative statue is merely declaratory and does not repeal the common law relating to the subject; on the contrary, the two rules coexist. In other words, where a remedy exist at common law for the wrong or injury against which a remedial statue is directed, if such statue *** does not in terms or by necessary implication deprive him of the remedy which existed at common law, the statutory remedy is considered as merely cumulative, and the party injured may resort to either at his election" (McKinney's Cons.Laws of N.Y. Book 1, Statutes § 34[citations omitted and emphasis added]; see also, Schuster v. City of New York, 5 N.Y.2d 75, 85, 180 N.Y.S.2d 265, 154 N.E.2d 534). Fumarelli v. Marsam Development, Inc., 92 N.Y.2d 298, 305-306 (1998).

> An "affirmative" statue does not eliminate a preexisting right or remedy, but instead furnishes an additional

> remedy for enforcing the right (see, McKinney's Cons.Laws of N.Y., Book 1, Statutes § 34). A "remedial" statue provides a remedy where the common-law either provides no remedy or provides an imperfect remedy (see Matter of Mlodozeniec v. Worthington Corp., 9 A.D.2d 21, 23, 189 N.Y.S.2d 468, aff. 8 N.Y.2d 918, 204 N.Y.S.2d 163, 168 N.E.2d 834, cert. denied 364 U.S. 628, 81 S.Ct. 356, 5 L.Ed.2d 363; see also, McKinney's Cons.Laws of N.Y., Book 1, Statutes § 35). Id., at 306.
>
> It is a cardinal principle of statutory interpretation that the intention to change a long-established rule or principle is not to be imputed to the legislature in the absence of a clear manifestation [to change such rule or principle]...." In re Delmar Box Co., 309 N.Y. 60, 66 (1955).

Habeas corpus is a common law remedy, Tweed v. Liscomb, 60 N.Y. 559, 565 (1875), regulated by CPLR §§7001-7012. The purpose of habeas corpus is to enforce a Civil right, N.Y. Adv. Comm. on Prac. & Proc., Third Prelim. Rep., Legis. Doc. No. 17. p. 49 [1959](purpose of habeas corpus is to enforce a civil right), Hoff v. State, 279 N.Y. 490, 492 (1939). Thus, every person within this State who have elected to enforce their Civil rights under habeas corpus is entitled to a just, speedy, and inexpensive determination, CPLR §104.

> Relief from illegal imprisonment by means of this remedial writ is not the creature of any statue. The history of the writ is lost in antiquity. It was in use before the magna charta, and came to us as a part of our inheritance from the mother country, and exist as a part of the common law of the State. Tweed v. Liscomb, 60 N.Y., at 565.
>
> Our constitutional guaranties of liberty are merely empty words unless a person imprisoned or detained against his will

> may challenge the legality of his imprisonment and detention. The writ of habeas corpus is the process devised centuries ago for the protection of free men. It has been cherished by generations of free men who had already learned by experience that it furnishes the only reliable protection of their freedom. The right of persons, deprived of liberty, to challenge in the courts the legality of their detention is safeguarded by the Constitution of the United States and by the Constitution of the State. The Legislature could not deprive any person within the State of the privilege of a writ of habeas corpus. N.Y. Const. Art. 1 § 4. Hoff v. State, 279 N.Y., at 492.

As "[t]he Legislature is presumed to be aware of the law in existence at the time of an enactment," Amorosi v. South Colonie Independent Cent. School Dist., 9 N.Y.3d 367, 373 (2007), nowhere did the Legislature in enacting CPL §440, by clear and specific legislative intent, override the common law remedy for habeas corpus jurisdictional issues/grounds. There is simply no evidence of such an intent. Assured Guar. (UK) Ltd. v. J.P. Morgan Inv. Management, 18 N.Y.3d, at 351 (citing, ABN AMRO Bank, N.V. v. MBIA Inc., 17 N.Y.3d, at 224 (If the Legislature intended to extinguish common-law remedies, "we would expect to see evidence of such intent within the statue"). Thus, they both coexist.

Clearly, the Legislature did not make CPL §440 the exclusive remedy. Thus, CPL §440 is an affirmative statue, not a remedial statue as habeas corpus provided the proper remedy for jurisdictional issues/grounds, as previously shown.

It should be noted, there is no statutory provision, enacted by the Legislature anywhere, which overrides the common law of

Habeas corpus.

Thus, a failure to raise a jurisdictional issue/ground in a CPL §440 motion is not a bar to habeas corpus relief. Schuster v. City of New York, 5 N.Y.2d 75, 85 (1959)(The statue contains no language barring plaintiff's common-law remedy.). This is the law of the State.

In light of all the foregoing, for any court to hold a habeas petitioner should have raised the jurisdictional issue/ground on direct appeal, or in a post conviction motion, would be a failure of its judicial function to apply the will of the Legislature, as discerned by the Court of Appeals in Knight-Ridder and Keitt v. McMann. A court must not engage in its own perception of what is equitable, rendering Article 70 relief ineffective by creating a non-existent loophole for dismissal/denial, when the legislative intent is to the contrary. A prohibited act, as courts are to uphold the legislative intent of Article 70 regardless of consequences. This is so as the law in this State has never been that the clear and unambiguous legislative intent of a statue as interpreted, or Constitutional provision, may be overlooked entirely when it is seemingly inconsistent with the current practice and usage of the courts. Sedacca v. Mangano, 18 N.Y.3d, at 615; Frank v. Meadowlakes Development Corp., 6 N.Y.3d 687, 691 (2006); People v. Cahill, 2 N.Y.3d 13, 100 (2003); Orens v. Novello 99 N.Y.2d, at 185; City of New York v. Stringfellow's of New York, Ltd., 96 N.Y.2d 51, 56 (2001); Sutka v. Connors, 73 N.Y.2d 395, 403 (1989); Anderson v. Regan, 53 N.Y.2d 356, 362

(1981); Town of Smithtown v. Moore, 11 N.Y.2d 238, 244 (1962).

In light of the above, for any court to rule a petitioner should have raised the jurisdictional issue on direct appeal, or in a post conviction motion, such would amount to policy making, the functional equivalent of judicial legislation outside of a courts Constitutional law-making authority (N.Y. Const. Art., VI, §30), thereby legislating under the guise of interpretation when Knight-Ridder and Keitt v. McMann have already correctly interpreted the legislative intent, thereby leaving no room for construction as the interpretation is to be followed. As a result, no court has any right to add or take away from the legislative intent. Such an act would clearly be violative of the foundation of the separation of powers doctrine, as no court can enlarge or abridge rights conferred by statue, or invade recognized rights, nor impose additional procedural hurdles that impair statutory remedies. People v. Cahill, 2 N.Y.3d, at 100; People v. Owusu, 93 N.Y.2d 398, 408 (1999); People v. Ramos, 85 N.Y.2d 678, 687-688 (1995); People v. Finnegan, 85 N.Y.2d 53, 58 (1995); Knight-Ridder, 70 N.Y.2d, at 158; Sigety v. Hynes, 38 N.Y.2d 260, 266 (1975).

> Statutes §73. Avoidance of judicial legislation
>
> The courts in construing statutes should avoid judicial legislation; they do not sit in review of the discretion of the Legislature or determine the expediency, wisdom, or propriety of its action on matters within its power.

In sum, for any court to hold a petitioner should have raised the jurisdictional issue/ground on direct appeal, or in a post

conviction motion, would be violative of the Legislature's intent, in direct violation of the Constitutional mandate under N.Y. Const. Art., VI, §30.

As well, a court holding a petitioner should have raised the jurisdictional issue/ground on direct appeal, or in a post conviction motion, in violation of the Legislature's intent, would amount to an unconstitutional denial of due process of law under N.Y. Const. Art., I, §6 and the 14th Amendment of the U.S. Constitution, as a petitioner is entitled to a merit determination in light of habeas corpus being the proper remedy at law, as held by the Legialature, which cannot be denied. The U.S. Supreme Court and the N.Y. Court of Appeals have condemned such an act. Morhous v. Supreme Court of New York, 293 N.Y., at 134; Logan v. Zimmerman, 455 U.S. 422, 429-430, 433 (1982); Richard v. Jefferson County, Ala, 517 U.S. 793, 804 (1996); Caldwell v. State, 137 U.S. 692, 697 (1875).

As well, for any court to hold a petitioner should have raised the jurisdictional issue on direct appeal, or in a post conviction motion, in violation of the Legislature's intent, and due process of law, would amount to an unconstitutional suspension of the writ of habeas corpus, under N.Y. Const. Art., I, §4, the proper remedy of law. Just as the Legislature cannot deprive any person of the privilege of a writ of habeas corpus, so too a court may not do so. Hoff v. State, 279 N.Y., at 492.

> This writ cannot be abrogated, or its efficiency curtailed, by legislative action. Cases within the relief afforded by it at common law cannot, until the people voluntarily surrender the right to this, the greatest of all writs, by an

> amendment of the organic law, be placed beyond its reach and remedial action. The privilege of the writ cannot even be temporarily suspended, except for the safety of the State, in cases of rebellion or invasion. (Const., art. 1, §4). Tweed v. Liscomb, 60 N.Y. at 566.

It is abundantly clear my jurisdictional case falls within the relief afforded under the common law writ of habeas corpus, under the Constitution. N.Y. Const. Art., I, §4. This maxim of law routinely applied to dismiss habeas corpus petitions is unconstitutional, in every sense of the Constitution, under N.Y. Const. Art., I, §§§4, 6, 14; N.Y. Const. Art., 6, §30. As well, violative of the Legislative enactments.

It is disgusting that I should remain in prison based upon such a flagrant violation of the Constitution, under N.Y. Const. Art., I, §6, as it is an accepted as true fact as a matter of law that, I have been held to answer for an infamous crime based upon a waived indictment. I demand my immediate release forthwith under the laws of this State in effect. N.Y. Const. Art., I, §14.:

> [A] criminal, however shocking his crime, is not to answer for it with forfeiture of life or liberty till tried and convicted in conformity with law. People v. Levan, 295 N.Y. 26, 32 (1945)
>
> Like every other court in New York State, Supreme Court may not convict a defendant of a felony absent compliance with the indictment and waiver provisions in article I, §6 of the New York Constitution. People v. Correa, 15 N.Y.3d 213, 228 (2010).

As well, I demand my immediate release, due to my conviction being procured on false evidence and false testimionies, as

revealed in Exhibit "5" [New CPL §440 motion]), as the courts are allowing the corruption to stand (Attached hereto as Exhibit "12" [Pre-Trial transcripts & Trial transcripts on DVD]).

While not necessary I will state one major instance, showing your Honor how bad the corruption was in my case, as follows:

Two people were shot. One person stated as to being shot five times, the other once. That makes six gunshot wounds sustained between the two. The crime scene unit only recovered two bullets, a floral box with a red ribbon, and a floral delivery note used by the shooter to gain entry into the apartment. Crime scene photos were taken which reflected the two bullets, floral box with the red ribbon, and the floral delivery note. A documents examiner, Det. Breslin, stated my handwriting matched the handwriting on the floral delivery note, thereby connecting me to the shooter. The jury made only one request for a testimonial readback, asking for Det. Breslin's handwriting analysis concluding my handwriting matched the handwriting on the floral delivery note. I was thereafter convicted.

Well, the Certified Medical records for the victim who stated as to being shot five time revealed, she sustained well in excess of five gunshot wounds, and that all of the gunshot wounds were through and through.

The other victim's Certified Medical records of the victim who stated as to being only shot once revealed, this gunshot wound was also through and through.

Tell me your Honor, how in the hell could there only be two bullets recovered in the apartment, as reflected in the crime

scene photos. It is clear the crime scene was recreated, a complete fabrication as testified too, in particular the floral delivery note which the jury heavily considered, and convicted me upon.

I previously supplied these facts and evidence to the Attorney General's office in November 9th of 2009, while you were the Attorney General of N.Y.. The complaint number is 10-0701, to date nothing has been done, unbelievable. I ask that you personally direct an immediate investigation at once, also directing such person in charge of the investigation to immediately notify me of such investigation.

I demand my immediate release based upon all the foregoing. I also ask of your Honor to "take care that the laws are faithfully executed," so that other citizens of this State will not have to go through what I have endured. N.Y. Const. Art., IV, §3. I await your response.

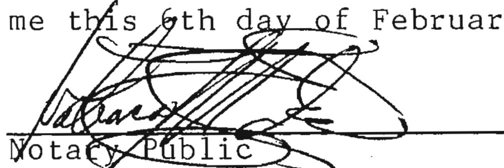
VERIFICATION

State of New York)
)ss.:
County of Dutchess)

Dominic M. Franza, the above-named demander, being duly sworn, says that the contents of the foregoing renewed demand are well known to him, and that the same is completely true.

Dominic M. Franza
92A3659

Subscribed to and sworn to before me this 6th day of February, 2015



Notary Public

Valencia M. Edwards
Notary Public State of New York
Reg. No. 01ED6261159
Appointed to Orange County
Term Expires 05/07/2016