

Unified United States Common Law Grand Jury:

P.O. Box 59, Valhalla, NY 10595; Fax: (888) 891-8977; US@uclgj.org

August 28, 2015

FAX TO: **Sheriff Vincent F. DeMarco**; Fax: 631-852-7342
100 Center Drive; Riverhead, 119013389

- AND -

Lane Bubka, esq., Auctioneer; Fax 631-208-5301
BUBKA Law Group; 214 Roanoke Avenue; Riverhead, New York 11901

FAX: 631 852 7342, hard copy in mail
631-208-5301

RE: Habeas Corpus for Maud Nordwald Pollock, Petitioner
Filed in the UNITED STATES DISTRICT COURT FOR THE EASTERN
DISTRICT OF NEW YORK, on August 22, 2015.

ATTACHED: Default Judgment, dated August 29, 2015;
Memorandum of Decision and Order, dated August 29, 2015
Entered: as per FRCP Rule 55(a); FRCP Rule 58(b)(2); 28 U.S.C. §2243.

MESSAGE: Sheriff Vincent F. DeMarco and Lane Bubka, esq. (Auctioneer) are
“ORDERED” under penalty of law, in accordance with 28 U.S.C. §2243, to abate from the sale,
under penalty of law, scheduled for September 2, 2015 of the premises known as 57 North Road,
Hampton Bays; District 190.00, Block: 01.00, Lot 017.003, a/k/a Shinnecock Hills, NY. Failure
to comply will be interpreted as contempt of court.

CRIME TO INTERCEPT

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK**

225 Cadman Plaza East; Brooklyn, NY. 11201

Maud Nordwald Pollock,,

Petitioner

Against

INDEX NO. 12-3259, statutory

Howard Milstein, Richard C Wald, William M.
Rifkin, Judge Joseph Farneti, Attorney General Eric T
Schneiderman, Sheriff Vincent F. DeMarco,

Respondents

**DEFAULT JUDGMENT
CORAM IPSO REGE**

Default Judgment; Entering a Default: *“When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by Affidavit or otherwise [under seal], the clerk must enter the party’s default.”* FRCP Rule 55(a); FRCP Rule 58(b)(2); 28 U.S.C. §2243.

DEFAULT JUDGMENT

The Respondents, against whom a judgment for affirmative relief is sought, have failed to plead or otherwise defend as provided by these rules; and, that fact is made to appear by Affidavit. **NOW, THEREFORE, THIS COURT OF RECORD** issues this Default Judgment Coram Ipso Rege to dispose of the matter as law and justice require, to wit:

IT IS ORDERED AND ADJUDGED that Petitioner be released from custody immediately; and, that the respondents, namely STATE OF NEW YORK, COUNTY OF SULFFOLK, Howard Milstein, Richard C Wald, William M. Rifkin, Judge Joseph Farneti, Attorney General Eric T Schneiderman, Sheriff Vincent F. DeMarco, shall abate at law all proceedings in and relating to SUPREME COURT OF NEW YORK, COUNTY OF SUFFOLK, INDEX NO. 12-3259. No damages, costs, or attorneys’ fees are awarded.

THE COURT, August 29, 2015



Unified United States Common Law Grand Jury Administrator

Unified United States Common Law Grand Jury:¹

P.O. Box 59; Valhalla, New York 10595; Phone: (845) 229-0044; Fax: (888) 891-8977; US@uclgj.org

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK

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Maud Nordwald Pollock,

Petitioner

Against

Howard Milstein, Richard C Wald, William M. Rifkin,
Judge Joseph Farneti, Attorney General Eric T
Schneiderman, Sheriff Vincent F. DeMarco,

Respondents

INDEX NO. 12-3259, statutory

**DEFAULT JUDGMENT
CORAM IPSO REGE¹**
FRCP Rule 55¹; Rule 58 (b) 2¹
28 USC 2243

COMES NOW THE ABOVE-ENTITLED COURT OF RECORD, to review the record, summarily determine the facts, and dispose of the matter as law and justice require.²

- 10 Habeas Corpus has been called “The Great Writ of Liberty”. Historically, that is a side issue. In the early days, Habeas Corpus was not connected with the idea of Liberty. It was a useful device in the struggle for control between common law and equity courts. By the middle of the fifteenth century, the issue of Habeas Corpus, together with privilege, was a well-established way to remove a cause from an inferior court where the defendant could show some special connection with one of the central courts, which entitled him to have his case tried there.³ In the early seventeenth century, The Five Knights’ Case⁴ involved the clash between the Stuart claims of prerogative and the common law; and, was, in the words of one of the judges, “*the greatest cause that I ever knew in this court*”.⁵ Over the centuries the Writ became a viable bulwark between the powers of government and the rights of the people in both England and the United States.
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¹ “The grand jury is an institution separate from the courts over whose functioning the courts do not preside... the grand jury is mentioned in the Bill of Rights, but not in the body of the Constitution. It has not been textually assigned, therefore, to any of the branches described in the first three (3) Articles. It is a constitutional fixture in its own right. In fact, the whole theory of its function is that it belongs to no branch of the institutional government, serving as a kind of buffer or referee between the Government and the people... The grand jury’s functional independence from the judicial branch is evident, both in the scope of its power to investigate criminal wrongdoing, and in the manner in which that power is exercised. ‘Unlike [a] [c]ourt, whose jurisdiction is predicated upon a specific case or controversy, the grand jury ‘can investigate merely on suspicion that the law is being violated, or even because it wants assurance that it is not.’” United States v. John H. Williams; 112 S.Ct. 1735; 504 U.S. 36; 118 L.Ed.2d 352; 1992.

² 28 U.S.C. §2243.

³ De Vine (1456) O. Bridg. 288; Fizzerbert, Abridg., sub tit. “Corpus Cum Causa”.

⁴ Darnel’s Case, 3 St. Tr. 1.

⁵ Ibid., at 31 per Doderidge J.

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I. SUMMARY

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Oliver Wendell Holmes once wrote, *“I long have said there is no such thing as a hard case. I am frightened weekly, but always when you walk up to the lion and lay hold, the hide comes off and the same old donkey of a question of law is underneath.”*⁶ Duty falls upon this court of record to lay hold of the lion, unhide the underlying question of law, and dispose of the matter as law and justice require.⁷

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On August 22, 2015, Maud Nordwald Pollock, a People of the United States, filed in the above-entitled court of record a Petition for Writ of Habeas Corpus by a People in State-constructive custody. The Petition invited this court’s inquiry into the following:

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- A. The cause of the property seizure
- B. The jurisdictional basis of the property seizure
- C. Prosecutorial vindictiveness
- D. Reasonable apprehension of property seizure
- E. Strict compliance with statutory requirements
- F. Diminishment of rights

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The Petition presented issues of both fact and law. It did not appear from the Application that the applicant was not entitled thereto; therefore, this court ordered the respondents to show cause why the Writ should not be granted. Explicit Return instructions were included as part of the Order to Show Cause to enable the respondents to fulfill the Order. All respondents were duly⁸ served with the Petition and Order to Show Cause. The record shows that no respondent made any Return; no respondent requested more time to answer; and, no respondent provided any objection to the proceedings.

⁶ 1 *Holmes-Pottock Letters* 156.

⁷ 28 U.S.C. §2243.

⁸ Duly: According to law, in both form and substance. Black’s 6th.

55 **ANALYSIS:**

II. JURISDICTION OF THIS COURT

It is the duty of any court to determine whether it has jurisdiction even though that question is not raised, in order for the exercise of jurisdiction to constitute a binding Decision that the court has jurisdiction.⁹ We fulfill that duty by examining the sovereign power creating the court.

60 But, first, what is a court? It is the person and suit of the sovereign; the place where the sovereign sojourns with his regal retinue, wherever that may be. Further, a court is an agency of the sovereign, created by it directly or indirectly under its authority, consisting of one or more officers, established and maintained for the purpose of hearing and determining issues of law and fact regarding legal rights and alleged violations thereof; and, of applying the sanctions of the law; authorized to exercise its powers in the course of law at
65 times and places previously determined by lawful authority.¹⁰ The source of the authority is acknowledged by the Preamble of the Constitution for the United States of America.¹¹ The People of the United States, acting in sovereign capacity, “ordain¹² and establish¹³ this Constitution for the United States of America.” The Constitution contains nothing that would diminish the sovereign¹⁴ power of the People, and no State may presume to do so.¹⁵

70 Further, the United States of America, and each member State, is a Republic,¹⁶ which means that the People may act either directly or through their representatives.¹⁷ Here the sovereign People are acting directly. Beyond ordaining and establishing the Constitution, what are the powers of the People? The People retain all powers to self-determine and exercise rights.¹⁸ The essence of the People’s sovereignty distills to this: The decree of the sovereign makes law.¹⁹

⁹ State ex rel. Missouri Gravel Co. v. Missouri Workmen’s Compensation Commission, 113 S.W.2d 1034, 234 Mo.App. 232.

¹⁰ Isbill v. Stovall, Tex.Civ.App., 92 S.W.2d 1067, 1070; Black’s 4th, p425.

¹¹ U.S. CONSTITUTION, PREAMBLE: “We the people of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.”

¹² ORDAIN: ...to enact a constitution or law. Black’s 6th.

¹³ ESTABLISH: ...to create, ratify, or confirm... Black’s 6th.

¹⁴ ...at the Revolution, the sovereignty devolved on the people; and, they are truly the sovereigns of the country; but, they are sovereigns without subjects...with none to govern but themselves.... Chisholm v. Georgia (U.S.) 2 Dall 419, 454, 1 LEd 440, 455, 2 Dall (1793) pp471-472.

¹⁵ Where rights secured by the Constitution are involved, there can be no rule making or legislation which would abrogate them. Miranda v. Arizona, 384 U.S. 436, 491; The State cannot diminish rights of the people. Hertado v. California, 100 U.S. 516; The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people. Constitution for the United States of America, Amendment IX; The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people. Constitution for the United States of America, Amendment X.

¹⁶ “The United States shall guarantee to every State in this Union a Republican Form of Government...” Constitution for the United States, Article IV, Section 4.

¹⁷ GOVERNMENT: Republican government: One in which the powers of sovereignty are vested in the People; and, are exercised by the People, either directly, or through representatives chosen by the People, to whom those powers are specially delegated. In re Duncan, 139 U.S. 449, 11 S.Ct. 573, 35 L.Ed. 219; Minor v. Happersett, 88 U.S. 21, Wall 162, 22 L.Ed. 627. Black’s 6th.

¹⁸ The people of this State, as the successors of its former sovereign, are entitled to all the rights which formerly belonged to the King by his prerogative. Lansing v. Smith, 4 Wend. 9 (N.Y.) (1829), 21 Am.Dec. 89 10C Const. Law Sec. 298; 18 C Em.Dom. Sec. 3, 228; 37 C Nav.Wat. Sec. 219; Nuls Sec. 167; 48 C Wharves Sec. 3, 7.

¹⁹ The very meaning of “sovereignty” is that the decree of the sovereign makes law. American Banana Co. v. United Fruit Co., 29 S.Ct. 511, 513, 213 U.S. 347, 53 L.Ed. 826, 19 Ann.Cas. 1047.

75 Some have argued that the People have relinquished sovereignty through various contractual devices in
which rights were not expressly reserved. However, that cannot hold because rights are unalienable.²⁰ The
People retain all rights of sovereignty at all times.²¹ The exercise of sovereignty by the People is further
clarified when one considers that the Constitutional government agencies have no genuine sovereign power
of their own. All just authority of the Constitutional government agencies is solely that to which the People
80 consent.²² In the Petition, the petitioner identifies himself as “a People²³ of the United States”. As such he
decrees the law for this court; and, ultimately, for this court as a court of record. This, then, is the sovereign
power by which this court is created. The Constitution for the United States of America mandates that: “The
judicial Power²⁴ shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the
United States, and Treaties made, or which shall be made, under their Authority...”²⁵ This is a case in law,
85 i.e., proceeding according to the common law in a court of record. This case arises under the Constitution
and the Laws of the United States. It follows that “the judicial power” of [the People of] the United States
“shall extend” to this case. Therefore, it is the Grand Jury, as arbiter, that shall be enforcer of the law. We
read:

90 *“If any of our civil servants shall have transgressed against any of the people in any respect;
and, they shall ask us to cause that error to be amended without delay; or, shall have broken
some one of the articles of peace or security; and, their transgression shall have been shown
to four (4) Jurors of the aforesaid twenty five (25); and, if those four (4) Jurors are unable to
settle the transgression, they shall come to the twenty-five (25), showing to the Grand Jury
the error which shall be enforced by the law of the land.”* Magna Carta, June 15, A.D. 1215,
95 61.

Justice Powell, in *United States v. Calandra*, 414 U.S. 338, 343 (1974), stated: “The institution of the
grand jury is deeply rooted in Anglo-American history; [n3] In England, the grand jury [p343]
served for centuries, both as a body of accusers, sworn to discover, and present for trial, persons
suspected of criminal wrongdoing; and, as a protector of citizens against arbitrary and oppressive
100 governmental action. In this country, the Founders thought the grand jury so essential to basic
liberties, that they provided, in the Fifth Amendment, that federal prosecution for serious crimes can
only be instituted by a ‘presentment or indictment of a Grand Jury’. Cf. *Costello v. United States*,
350 U.S. 359, 361-362 (1956). *The grand jury’s historic functions survive to this day. Its*

²⁰ UNALIENABLE: Not subject to alienation; the characteristic of those things which cannot be bought, or sold, or transferred from one person to another, such as rivers, and public highways, and certain personal rights; e. g., Liberty. Unalienable: incapable of being alienated; that is, [not capable of being] sold and transferred. Black’s 4th. 1891.

²¹ RESERVATION OF SOVEREIGNTY: “[15](b) ...The Tribe’s role as commercial partner with petitioners should not be confused with its role as sovereign. It is one thing to find that the Tribe has agreed to sell the right to use the land and take valuable minerals from it, and quite another to find that the Tribe has abandoned its sovereign powers simply because it has not expressly reserved them through a contract. To presume that a sovereign forever waives the right to exercise one of its powers unless it expressly reserves the right to exercise that power in a commercial agreement, turns the concept of sovereignty on its head.” *Merrion et al., dba Merrion & Bayless, et al. v. Jicarilla Apache Tribe et al.* 1982.SCT.394.

²² SOVEREIGN STATE: are cabalistic words, not understood [rejected] by the disciple of Liberty, who has been instructed in our constitutional schools. It is our appropriate phrase when applied to an absolute despotism. The idea of sovereign power [vested] in government of a Republic, is incompatible with the existence, and foundation, of civil Liberty; and, the rights of property. *Gaines v. Buford*, 31 Ky. (1 Dana) 481, 501.

²³ PEOPLE: ...considered as... any portion of the inhabitants of a city or country. Webster’s 1828 Dictionary. The word “People” may be either plural or singular in its meaning. The plural of “person” is “persons”, not “People”.

²⁴ JUDICIAL POWER: The power to decide and pronounce a judgment; and, carry it into effect between persons and parties who bring a case before court for decision. Power that adjudicates upon, and protects, the rights and interests of persons or property; and, to that end, declares, construes, and applies the law. Black’s 6th.

²⁵ Constitution for the United States of America, Article III, Section 2, Clause 1.

105 *responsibilities determination whether there is probable cause to believe a crime has been
committed, and the protection of citizens against unfounded criminal prosecutions.* Branzburg v.
Hayes, 408 U.S. 665, 686-687 (1972).”

III. EXHAUSTION OF ADMINISTRATIVE PROCEDURE

110 Ordinarily, exhaustion of state administrative procedures is a requirement before a court of another
jurisdiction will review the proceedings of another court. This is founded upon the principle of comity.²⁶ The
courts of the United States, and the courts of the various States, are independent of each other.²⁷ Federal
courts have no supervisory powers over State judicial proceedings,²⁸ State court systems,²⁹ or trial judges.³⁰
115 Thus, federal courts have no general power to correct errors of law that may occur from time to time in the
course of State proceedings.³¹

However, a federal court and a State court are not foreign to each other. They form one system of
jurisprudence, which constitutes the law of the land; and, should be considered as courts of the same country,
having jurisdiction partly different, and partly concurrent;³² and, as a matter of comity, one of such courts
will not ordinarily determine a controversy of which another of such courts has previously obtained
120 jurisdiction. In cases of apparent conflict between State and federal jurisdiction, the federal courts are the
exclusive judges over their jurisdiction in the matter.³³ That being a given, federal intervention is only proper
to correct errors of constitutional dimension,³⁴ which occurs when a State court arbitrarily, or
discriminatorily, applies State law.³⁵ The rule of comity does not go to the extent of relieving federal courts
from the duty of proceeding promptly to enforce rights asserted under the federal Constitution,³⁶ and, all
125 considerations of comity must give way to the duty of a federal court to accord a People of the United States
his right to invoke the court’s powers and process in the defense or enforcement of his rights.³⁷

²⁶ JUDICIAL COMITY: Blacks 4th. “The principle, in accordance with which, the courts of one State, or jurisdiction, will give effect to the laws and judicial decisions of another; not as a matter of obligation; but, out of deference and respect.” Franzen v. Zimmer, 35 N.Y.S. 612, 90 Hun 103; Stowp v. Bank, C.C.Me., 92 F. 96; Strawn Mercantile Co. v. First Nat. Bank, Tex. Civ.App., 279 S.W. 473, 474; Bobala v. Bobala, 68 Ohio App. 63, 33 N.E.2d 845, 849.

²⁷ Claflin v. Houseman, N.Y., 3 Otto 130, 93 U.S. 130, 23 L.Ed. 833.

²⁸ Smith v. Phillips, 102 S.Ct. 940, 455 U.S. 209, 71 L.Ed.2d 78, on remand 552 F.Supp. 653, affirmed 717 F.2d 44, certiorari denied 104 S.Ct. 1287, 465 U.S. 1027, 79 L.Ed.2d 689; Ker v. State of California, Cal., 83 S.Ct. 1623, 374 U.S. 23, 10 L.Ed.2d 726, 24 O.O.2d 201; Burrus V. Young, C.A.7 (Wis.), 808 F.2d 578; Lacy v. Gabriel, C.A.Mass., 732 F.2d 7, certiorari denied 105 S.Ct. 195, 469 U.S. 861, 83 L.Ed.2d 128; Smiths v. McMullen, C.A.Fla., 673 F.2d 1185, certiorari denied 103 S.Ct. 740, 459 U.S. 1110, 74 L.Ed.2d 961.

²⁹ U.S. ex rel. Gentry v. Circuit Court of Cook County, Municipal Division, First Municipal Dist., C.A.Ill., 586 F.2d 1142.

³⁰ Harris v. Rivera, N.Y., 102S. Ct. 460, 454 U.S. 339, 70 L.Ed.2d 530.

³¹ Buckley Towers Condominium, Inc. v. Buchwald, C.A.Fla., 595 F.2d 253.

³² Claflin v. Houseman, N.Y., 3 Otto 130, 93 U.S. 130, 23 L.Ed. 833.

³³ Craig v. Logemann, 412 N.W.2d 857, 226 Neb. 587, appeal dismissed 108 S.Ct. 1002, 484 U.S. 1053, 98 L.Ed.2d 969.

³⁴ Burrus V. Young, C.A.7 (Wis.), 808 F.2d 578; Lacy v. Gabriel, C.A.Mass., 732 F.2d 7, certiorari denied 105 S.Ct. 195, 469 U.S. 861, 83 L.Ed.2d 128; Smiths v. McMullen, C.A.Fla., 673 F.2d 1185, certiorari denied 103 S.Ct. 740, 459 U.S. 1110, 74 L.Ed.2d 961; INCONSISTENT VERDICTS: Court of Appeals erred when it directed State trial judge to provide explanation of apparent inconsistency in his acquittal of codefendant and his conviction of defendant, without first determining whether inexplicably inconsistent verdicts would be unconstitutional. Harris v. Rivera, N.Y., 102 S.Ct. 460, 454 U.S. 339, 70 L.Ed.2d 530.

³⁵ Jentges v. Milwaukee County Circuit Court, C.A.Wis., 733 F.2d 1238

³⁶ Everglades Drainage Dist. v. Florida Ranch & Dairy Corp., C.C.A.Fla., 74 F.2d 914, rehearing denied 75 F.2d 1013.

³⁷ Carpenter Steel Co. v. Metropolitan-Edison Co., D.C.Pa., 268 F. 980.

As to the principle of exhaustion of state remedies; the petitioner is not founding his Petition on the principle embodied in 28 U.S.C. §2254. The basis of petitioner's Petition is addressed in section V. **PETITION** below. However, we will address it here.

130 In *Friske v. Collins*,³⁸ the Court's view was that exhaustion was not a "rigid and inflexible" rule; but, could be deviated from in "special circumstances". In addition to the class of "special circumstances" developed in the early history of the exhaustion rule, exhaustion was not required where procedural obstacles make theoretically available processes unavailable; where the available state procedure does not offer swift vindication of the petitioner's rights; and, where vindication of the federal right requires immediate action.³⁹

135 Exhaustion today is a rule rooted in the relationship between the national and State judicial systems. The rule is consistent with the Writ's extraordinary character; but, it must be balanced by another characteristic of the Writ, to wit: its object of *providing "a swift and imperative remedy in all cases of illegal restraint upon personal Liberty."*⁴⁰ That is, it "*is not [a rule] defining power but one which relates to the appropriate exercise of power.*"⁴¹

140 The Court noted that where resort to State remedies has failed to afford a full and fair adjudication of the federal contentions raised, either because the State affords no remedy; or, because in the particular case, the remedy afforded by State laws, proves, in practice, unavailable, or seriously inadequate; a federal court should entertain a Petition for Habeas Corpus; otherwise, a petitioner would be remediless. In such a case, the applicant should proceed in the federal district court before resorting to the Supreme Court by Petition for
145 Habeas Corpus.⁴²

28 U.S.C. §2243 provides as follows: Issuance of Writ; Return; Hearing; Decision. A court justice or judge, entertaining an application for a Writ of Habeas Corpus, shall forthwith award the Writ; or, issue an Order directing the respondent to show cause why the Writ should not be granted; unless it appears, from the Application, that the applicant, or person
150 detained, is not entitled thereto. The Writ, or Order to Show Cause, shall be directed to the person having custody of the person detained. It shall be returned within three (3) days; unless, for good cause, additional time, not exceeding twenty (20) days, is [be] allowed.

The State has been duly served; and, the State has not made; and, apparently cares not to make a Return. This question of timeliness constitutes a special circumstance justifying deviation from the exhaustion rule.
155 Exhaustion is not required where procedural obstacles make theoretically available processes unavailable; where the available State procedure does not offer swift vindication of the petitioner's rights; and, where vindication of the federal right requires immediate action.⁴³ Until the case is resolved in the district court, the

³⁸ 342 U.S. 519 (1952).

³⁹ Amsterdam, "Federal Removal and Habeas Corpus Jurisdiction," 113 U. Pa. L. Rev. 793, 893-94; Developments, "Federal Habeas Corpus," 83 Harv. L. Rev. 1038, 1097-107. Cf. *Markuson v. Boucher*, 175 U.S. 189 (1899) with *Roberts v. LaVallee*, 389 U.S. 40 (1967).

⁴⁰ *Price v. Johnson*, 334 U.S. 266, 283 (1947).

⁴¹ *Bowen v. Johnston*, 306 U.S. 19, 27 (1939). See Brennan, "Some Aspects of Federalism", 39 N.Y.U.L.Rev. 945, 957-58; Brennan, "Federal Habeas Corpus and State Prisoners", 7 Utah L. Rev. 423, 426.

⁴² *Ex parte Hawk*, 321 U.S. 114, 118; See also *Ex parte Abernathy*, 320 U.S. 219 (1943); *White v. Ragen*, 324 U.S. 760 (1945); *Wood v. Niersteimer*, 328 U.S. 211 (1946).

⁴³ Amsterdam, "Federal Removal and Habeas Corpus Jurisdiction", 113 U. Pa. L. Rev. 793, 893-94; Developments, "Federal Habeas Corpus", 83 Harv. L. Rev. 1038, 1097-107. Cf.; *Markuson v. Boucher*, 175 U.S. 189 (1899) with *Roberts v. LaVallee*, 389 U.S. 40 (1967).

160 petitioner will be unable to present his claims to the State Supreme Court.⁴⁴ This delay, and lack of
timeliness, is a further special circumstance. In the interim, the petitioner would be required to lose his
Liberty, because of the lack of swift State vindication of his rights.⁴⁵

IV. COMITY

165 Comity is one court giving full faith and credit to the judicial proceedings of another court, provided that
such proceedings do not violate its own rules. Though comity is not mandated, it is encouraged by The
Constitution for The United States, Article IV, Section 1.⁴⁶ However, comity does not mean that one court
involuntarily gives up its jurisdiction to another court. Comity does not mean that one court must respect the
improprieties of another court. Comity does not mean that one court must submit to the whim of another
court. Further, comity cannot enter the equation when the question before the courts concerns which of the
two courts has jurisdiction regarding the vindication of the rights of the petitioner. The protection of the
petitioner's rights from encroachment by the State is the innate responsibility of the federal courts.

170 In the United States, Habeas Corpus exists in two forms: Common Law and Statutory. The petitioner has
chosen Habeas Corpus at common law in a court of record. The Constitution for the United States of
America acknowledges the Peoples' right to the common law of England as it was in 1789. What is that
common law? It does not consist of absolute, fixed and inflexible rules; but, broad and comprehensive
principles based on justice, reason, and common sense...⁴⁷

175 The common law is also the Magna Carta,⁴⁸ as authorized by the Confirmatio Cartarum, if the accused so
demands.⁴⁹ The Confirmatio Cartarum succinctly says, "...our justices, sheriffs, mayors, and other ministers,
which, under us have the laws of our land to guide, shall allow the said charters pleaded before them, in
judgment in all their points; that is, to wit, the Great Charter as the common law and the Charter of the
forest, for the wealth of our realm."⁵⁰ In other words, the King's men must allow the Magna Carta to be
180 pleaded as the common law if the accused so wishes it.

Magna Carta says, "Henceforth the Writ which is called Praeceptum shall not be served on anyone for any
holding so as to cause a free man to lose his court."⁵¹ In this case, the free man's court is the court of record of
the petitioner, as above entitled. The Constitution for the United States of America, Article III, Section 2-1,
says, "The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the
185 Laws of the United States..." The judicial power is thusly extended to this Habeas Corpus case at law in the
above-entitled court of record.

⁴⁴ Magistrate's Report (#5), filed March 7, 2003, 6:46am, p3, L3-6.

⁴⁵ Amsterdam, "Federal Removal and Habeas Corpus Jurisdiction", 113 U. Pa. L. Rev. 793, 893-94; Developments, "Federal Habeas Corpus", 83 Harv. L. Rev. 1038, 1097-107. Cf.; Markuson v. Boucher, 175 U.S. 189 (1899) with Roberts v. LaVallee, 389 U.S. 40 (1967).

⁴⁶ Full Faith and Credit shall be given in each State to the public Acts, Records, and Judicial proceedings of every other State. And, the Congress may, by general Laws, prescribe the Manner in which such Acts, Records, and Proceedings shall be proved, and the Effect thereof. Constitution for the United States of America, Article IV, Section 1.

⁴⁷ Miller v. Mosen, 37 N.W.2d 543, 547, 228 Minn. 400.

⁴⁸ June 15, 1215, King John I.

⁴⁹ November 5, 1297, King Edward I.

⁵⁰ Confirmatio Cartarum, Article I, Clause 3.

⁵¹ Magna Carta, Article 34.

190 The above-entitled court of record, invoking the extension of the judicial power of the United States upon a case in law, is proceeding according to the common law as sanctioned by the Constitution; and, considering the matter that has arisen under the Constitution and laws of the United States. As stated above, the rule of comity does not go to the extent of relieving federal courts from the duty of proceeding promptly to enforce rights asserted under the federal Constitution;⁵² and, all considerations of comity must give way to the duty of a federal court to accord a citizen of the United States his right to invoke the court's powers and process in the defense or enforcement of his rights.⁵³

195 This court accepts the duty obligation to proceed promptly to enforce rights asserted under the federal Constitution. Thus, this court has the subject matter jurisdiction to examine, and act, upon the Petition for Habeas Corpus. Further, the parties were duly served personally with a copy of the Petition and the Writ of Habeas Corpus thus this court has "in personam jurisdiction".

V. PETITION

200 Title 28 of the United States Code⁵⁴ acknowledges that it is not the responsibility of the petitioner to know by what claim or authority the State acts; but, that the petitioner may inquire as to the cause of the restraint. Petitioner has requested an inquiry into the cause of restraint; but, none of the respondents has returned any statement of cause of the restraint. Therefore, this court may presume that there is neither legal nor lawful cause of restraint.

205 Petitioner has isolated five (5) points upon which she bases her petition:

- 205 A. The lack of cause of the restraint
- B. The lack of jurisdictional basis of the restraint
- C. Prosecutorial vindictiveness
- D. Reasonable apprehension of restraint of property seizure
- E. Strict compliance with statutory requirements
- 210 F. Diminishment of rights

Because the respondents have made no Return, this court must rule solely upon the evidence before it, as provided by the petitioner. Seneca wrote, "*He who decides a case with the other side unheard, though he decide justly, is himself unjust.*"⁵⁵ Mindful of the wisdom of Seneca, we proceed.

215 This court has taken judicial notice of the Federal Rules of Civil Procedure, Title 28, United States Code, insofar as it is not repugnant to the common law. F.R.C.P. Rule 55 regarding default⁵⁶ is applied here.⁵⁷ The

⁵² Everglades Drainage Dist. v. Florida Ranch & Dairy Corp., C.C.A.Fla., 74 F.2d 914, rehearing denied 75 F.2d 1013.

⁵³ Carpenter Steel Co. v. Metropolitan-Edison Co., D.C.Pa., 268 F. 980.

⁵⁴ 28 U.S.C. §2242 states in part: Application for a Writ of Habeas Corpus... shall allege the facts concerning the applicant's commitment or detention, the name of the person who has custody over him, and by virtue of what claim or authority, if known.

⁵⁵ Seneca's *Medea*.

⁵⁶ Federal Rules of Civil Procedure, Rule 55. Default: (a) Entry. When a party against whom a Judgment for Affirmative Relief is sought, has failed to plead, or otherwise defend, as provided by these rules; and, that fact is made to appear [has been brought before the court] by Affidavit or otherwise, the clerk shall enter the party's Default. (b) Judgment: Judgment by Default may be entered as follows: (1) By the Clerk: When the plaintiff's claim against a defendant is for a sum certain, or for a sum which can, by computation, be made certain, the clerk, upon request of the plaintiff, and upon Affidavit of the amount due, shall enter Judgment for that amount and costs, against the defendant, if the defendant has been defaulted for failure to appear, and is not an infant or incompetent person. (2) By the Court: In all other cases, the party entitled to a Judgment by Default, shall apply to the court therefor; but, no Judgment by

220 record shows that the *Petition* was filed; a *Writ of Habeas Corpus to Show Cause* issued; the *Petition* and *Writ* were duly served upon the respondents; no Return was filed; a *Notice of Default* was filed. So, no claim may be made that the State court was unaware of this court's proceedings; nor, may the respondents claim they were unaware of the consequences for failure to make a Return on the *Writ of Habeas Corpus*. Simply stated; the parties against whom a Judgment for Affirmative Relief is sought, have failed to plead or otherwise defend, as provided by these rules; and, that fact has been brought before the court by Seal [*by otherwise*] in accordance with F.R.C.P. Rule 55(a).

VI. FINDINGS OF FACT

225 **THEREFORE, BASED UPON THE RECORD BEFORE THIS COURT:
THE COURT FINDS THAT:**

- (1) Maud Nordwald Pollock is one of the People as contemplated in the Preamble of the Constitution for the United States of America.
- (2) This above-entitled court is a court of record.
- 230 (3) All respondents were duly served; and, court personnel were apprised of the petitioner's claims and the Writ; all respondents had full Notice and fair opportunity to argue their cause; and, respondents did not argue their cause.
- (4) The respondents have not presented any legal or lawful cause of the restraint of Maud Nordwald Pollock.
- 235 (5) The respondents have not presented any jurisdictional basis for the restraint of Maud Nordwald Pollock. The court of the respondents did not fulfill the duty to determine whether it has jurisdiction in order for the exercise of jurisdiction to constitute a binding Decision.
- (6) The respondents have not presented any evidence to prove the absence of prosecutorial vindictiveness by the respondents against Maud Nordwald Pollock.
- 240 (7) Maud Nordwald Pollock has a reasonable apprehension of future restraint of property seizure arising from the same facts.
- (8) Strict compliance with statutory requirements was not met by the respondents.
- (9) Maud Nordwald Pollock has suffered an unlawful and illegal diminishment of rights.

Default shall be entered against an infant, or incompetent person, unless represented in the action by a general guardian, committee, conservator, or other such representative, who has appeared therein. If the party against whom Judgment by Default is sought, has appeared in the action, the party, or, if appearing by representative, the party's representative, shall be served with written Notice of the Application for Judgment at least three (3) days prior to the Hearing on such Application. If, in order to enable the court to enter Judgment; or, to carry it into effect; it is necessary to take an account, or to determine the amount of damages, or to establish the truth of any averment by evidence, or to make an investigation of any other matter; the court may conduct such Hearings; or, Order such references, as it deems necessary and proper; and, shall accord a right of trial by jury to the parties, when, and as required, by any statute of the United States. (c) Setting Aside Default: For good cause shown, the court may set aside an Entry of Default; and, if a Judgment by Default has been entered, may likewise set it aside, in accordance with Rule 60(b).

⁵⁷ Courts of record have an inherent power, independently of statutes, to make rules for the transaction of business. 1 Pet. 604, 3 Serg. & R. Penn. 253; 8 id. 336, 2 Mo. 98.

VII. CONCLUSIONS OF LAW

FURTHER, THE COURT CONCLUDES THAT:

- 245 (1) This above entitled court, has the sovereign authority to proceed as a court of record with jurisdiction to act in the instant case and subject matter.
- (2) Because all respondents were duly served; and, court personnel were apprised of the petitioner's *Petition* and *Writ*; and, because all respondents had full Notice and fair opportunity to argue their cause; and, did not so do; and, because none of the aforementioned persons made a Return, 250 Objection, or Motion, the above-entitled court has acquired "in personam jurisdiction" of each of the respondents.
- (3) Because the respondents have not presented any legal or lawful cause of, or any jurisdictional basis for the restraint of Maud Nordwald Pollock's property, the respondents do not have any legal or lawful cause against or jurisdiction over Maud Nordwald Pollock.
- 255 (4) Because the respondents have not presented any evidence to prove the absence of prosecutorial vindictiveness by the respondents against Maud Nordwald Pollock, and because the burden of proof is upon the respondents when evidence of prosecutorial vindictiveness has been presented, as a matter of law the respondents have committed prosecutorial vindictiveness against Maud Nordwald Pollock.
- 260 (5) Strict compliance with statutory requirements were not met by the respondents, Maud Nordwald Pollock was denied due process, there is a reasonable probability that (s)he will be denied due process, and there is a reasonable probability that Maud Nordwald Pollock will be subjected to future restraint of Liberty arising from the same facts.
- 265 (6) Because Maud Nordwald Pollock has suffered an unlawful and illegal diminishment of rights Maud Nordwald Pollock will very likely continue to be subjected to further unlawful and illegal diminishment of rights if not immediately released.

VIII. CONCLUSION SUMMARY

The respondents, namely EMIGRANT MORTGAGE COMPANY, INC, Howard Milstein, Richard C Wald, William M. Rifkin, Judge Joseph Farneti, New York State Attorney General Eric T Schneiderman and Sheriff 270 Vincent F. DeMarco by their Default (their failure to Return the Writ of Habeas Corpus), have failed to prove their jurisdiction; therefore they each and all of them shall *abate at law* all proceedings in and relating to SUPREME COURT OF NEW YORK, COUNTY OF SUFFOLK, INDEX NO. 12-3259, statutory.

None of the Respondents is an infant or incompetent. None of the Respondents has appeared in the proceedings.

275 Default Judgment to be entered by this court in accordance with Federal Rules of Civil Procedure, Rule 55(b)(2).

Maud Nordwald Pollock is to take property possession immediately.

Emigrant Bank is to file a release of lien immediately and send a copy of same to Maud Nordwald Pollock.

Defendants are to return all extorted monies and attorney fees to petitioner immediately.

280 Sheriff Vincent F. DeMarco and Lane Bubka, Auctioneer are ordered to abate from the sale, under penalty of law, scheduled for September 2, 2015 of the premises known as 57 North Road, Hampton Bays; District 190.00, Block: 01.00, Lot 017.003, a/k/a Shinnecock Hills, NY.

Sheriff Vincent F. DeMarco is to enforce the Law of the Land, namely the United States Constitution and protect the unalienable rights of Maud Nordwald Pollock

285 No other damages are awarded; no costs are awarded.

THE COURT, August 29, 2015

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Unified United States Common Law Grand Jury Administrator