MICHAEL A. SIRAGUSA
ERIE COUNTY ATTORNEY

COUNTY OF ERIE

MARK C. POLONCARZ
COUNTY EXECUTIVE

DEPARTMENT OF LAW

MICHELLE M. PARKER
FIRST ASSISTANT COUNTY ATTORNEY

JEREMY C. TOTH
SECOND ASSISTANT COUNTY ATTORNEY

October 12, 2012

Mr. Robert M. Graber, Clerk
Erie County Legislature
92 Franklin Street. 4th Floor
Buffalo, New York 14202

Dear Mr. Graber:

In compliance with the Resolution passed by the Erie County Legislature on June 25, 1987, regarding notification of lawsuits and claims filed against the County of Erie, enclosed please find a copy of the following:

File Name:	*Andino, Luis v. Erie County Sheriff's Office (re parole & access to visual disability accommodation)*
Document Received:	Order to Show Cause
Name of Claimant:	Luis Andino #60944, #05-B-1233 Erie County Correctional Facility 11581 Walden Avenue Alden, New York 14004
Claimant's attorney:	Claimant is *pro se*.

Should you have any questions, please call.

Very truly yours,

MICHAEL A. SIRAGUSA
Erie County Attorney

By: Michelle Parker
Michelle M. Parker
First Assistant County Attorney

MMP:dld
Enclosure

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

IN THE MATTER OF THE APPLICATION OF
LUIS ANDINO, #60944, #05-B-1233

Petitioner,

-vs-

ROBERT KOCH, SUPERINTENDENT,
ERIE COUNTY CORRECTIONAL FACILITY,
ANDREA W. EVANS, CHAIRPERSON, NYS
DIVISION OF PAROLE,

Respondents.

ORI# NY 014015J

ORDER TO
SHOW CAUSE

Index No.
I-2012-3234

SUPREME COURT, ERIE COUNTY

HON. PAULA L. FEROLETO , JUSTICE PRESIDING

APPEARANCES:

Petitioner, Pro Se
LUIS ANDINO, #60944, #05-B-1233

This *ex parte* matter was referred to my attention at a Term of the Supreme Court, Erie County.

Upon the reading of the petition for relief pursuant to Article 78 of the Civil Practice Law and Rules, undated and unverified, with accompanying exhibits, and it appearing that the above referenced petitioner, **LUIS ANDINO,** a sentenced inmate, having made application pursuant to section 1101(f) of the CPLR, seeking poor person status and requesting a reduced filing fee,

LET RESPONDENTS SHOW CAUSE at a Special Term of the Supreme Court to be held in and for the County of Erie on **NOVEMBER 16, 2012** before the **HON. M. WILLIAM BOLLER,** Acting Justice of the Supreme Court, in Part 13 at 25 Delaware Avenue, Buffalo, New York, **WHY** the relief requested in the Petition should not be granted.

IT IS ORDERED that Robert Koch, Superintendent of the Erie County Correctional Facility in Alden, New York where petitioner is now confined will produce the body of **LUIS ANDINO** only if the court submits a letter to the superintendent ordering the production of the petitioner; and it is further

ORDERED that since the petitioner lacks sufficient means to pay the full filing fee ordinarily required in the prosecution of an action pursuant to Article 78 of the CPLR, the petitioner's application for reduced filing fee is hereby granted; and it is further

ORDERED that the petitioner will be permitted to pay a reduced filing fee of fifteen dollars ($15.00) to proceed with this action. This fee shall be assessed against the petitioner as an outstanding obligation and collected by the facility in which the petitioner is lodged; and it is further

ORDERED that the petitioner is not required to make an initial payment of a portion of the reduced filing fee; and it is further

ORDERED that in the event the petitioner should receive an unfavorable decision, said petitioner is hereby granted poor person relief pursuant to Article 11 of the Civil Practice Law and Rules for the limited purpose of filing a Notice of Appeal in the Erie County Clerk's Office without paying the fee required by CPLR 8022(a); and it is further

ORDERED that a waiver of fees for service by publication, for stenographic transcripts, or for any other cost or fee related to this proceeding in this Court shall only be granted upon a separate application to the Court, on notice to the County Attorney of Erie County, pursuant to CPLR 1101, showing the need therefor; and it is further

ORDERED that service of a signed and executed copy of this Order to Show Cause, the petition and any supporting papers by ordinary First Class mail upon the named respondents, Robert Koch and Andrea W. Evans on or before **October 19, 2012** be deemed adequate. In addition, the petitioner, on or before said date, shall similarly serve the Erie County Attorney, 95 Franklin Street, Room 1634, Buffalo, New York 14202 and the Attorney General at the Buffalo Regional Office, Main Place Towers, 350 Main Street, Suite 300, Buffalo, New York 14202, ; and it is further

ORDERED that it shall be the responsibility of the party seeking an extension of time to serve papers or seeking an adjournment of this matter to make such request for an extension of time or an adjournment to Acting Justice Boller, and any party receiving an adjournment shall notify the other party or parties of said adjourned date; and it is further

ORDERED that it is the petitioner's responsibility to:

(a) Serve a signed and executed copy of this Order to Show Cause, the petition and any supporting papers as authorized above or by personal service. The reduction of the filing fee herein does not authorize court personnel to provide photo-reproduction services, nor service of papers on behalf of a *pro se* litigant, as these services are not statutorily authorized under a grant of poor person relief (CPLR 1102).

(b) Submit the original proof of service to the chambers of the **Hon. M. William Boller**, 25 Delaware Avenue-Second Floor, Buffalo, New York 14202 at least eight (8) days prior to the return date; and it is further

ORDERED that a copy of any answer or response shall be served upon the petitioner not less than five (5) days before the return date. The original of any such answer or response is to be delivered to the chambers of Acting Justice Boller not less than three (3) days prior to said return date.

DATED: Buffalo, New York
September 25, 2012

HON. PAULA L. FEROLETO
Justice of the Supreme Court

GRANTED:

GRANTED

SEP 25 2012

BY

MICHELE CARTER
COURT CLERK

INDEX NO. 2012-323

PETITIONER LUIS ANDINO SEEKS TO MOVE THIS COURT ORDERING IMMEDIATE RELEASE FROM INCARCERATION OF PETITIONER, THE STATE OF NEW YORK DIVISION OF PAROLE AND ERIE COUNTY CORRECTIONAL FACILITY IS A PUBLIC ENTITY. PAROLE SUPERVISOR M. JORDAN, PO SPEARMAN AND SUPERINTENDANT JOHN RODRIGUEZ ET AL. ARE AGENTS OF A GOVERNMENTAL BODY.

WHEREAS PETITIONER ANDINO ALLEDGES AMONG OTHER THINGS THAT THE AGENTS OF PAROLE AND COMMUNITY SUPERVISION PLACED PETITIONER IN THE CARE, CUSTODY AND CONTROL ELLF ON AUGUST 9, 2012 DUE TO VIOLATIONS OF CONDITIONS OF PAROLE SUBSEQUENTLY CAUSED BY ERRONEUEDUS CRIMINAL CHARGES LOGED AGAINST PETITIONER ANDINO

DURING THE TIME PETITIONER ANDINO WAS BEING TAKEN INTO CUSTODY ON 8/9/12 AT THE OFFICE OF NEW YORK STATE DIVISION OF COMMUNITY SUPERVISION (PAROLE) AT 460 MAIN STREET BUFFALO NY 14202. PETITIONER STATED TO PAROLE OFFICER SPEARMAN WHILE ON THE RECORD "HE WOULD NEED ALL PRINTED MATERIALS PERTAINING TO SULY FUTURE PROCEEDINGS IN AUDIO FOLMAT"

PETITIONER ALSO REQUESTED THAT P.O. SPEARMAN NOTIFY OFFICIALS AT E.C.C.F. THAT PETITIONER WAS GOING TO BE DETAINED AND HOUSED UNTIL FURTHER PROCEEDINGS AND PETITIONER WOULD NEED A TALKING COMPUTER WITH JAWS PROGRAM AND SPEAKING CAPABILITY, A SCANNING BOOK READER WITH KURSWELL 1000 PROGRAM AND ANY OTHER DEVICES AVALABLE IN ORDER FOR PETITIONER TO CONDULT LEGAL ~~[illegible]~~ RESEARCH TO PREPARE HIS DEFENSE AS TO PRESENT SUCH DEFENSE IN FURTHER PROCEEDINGS THESE REQUEST FALL WITHIN THE GUIDELINES OF THE ADA AND HIS CONSTITUTIONAL DUE PROCESS SEE (WOLFF VS MCDONELL (YESKEY VS STATE OF PA.)

IN LIEU OF THE ~~PETITIONERS~~ DISABILITY, THE COURTS HAVE HELD THAT "INMATES HAVE A RIGHT TO WHATEVER CARE IS NESCESSARY TO TREAT AND ACCOMADATE SERIOUS DISSABILITIES" DAVIS VS HALL, 992 F2d 151 8TH CIR 1993, WHERE INMATE WAS SENT TO A FACILITY NOT EQUIPPED TO ACCOMADATE DISABILITY. IT IS ALSO HELD THAT FAILURE TO PROVIDE SUCH ACCESSIBLE FACILITIES WILL OFTEN RESULT IN LIABILITY.

A FEW INMATES HAVE CHALLENGED DISCRIMINATION AGAINST THEM ON BASIS OF THEIR DISABILITIES IT IS CLEAR IN AN APPROPRIATE CASE DISCRIMINATION AGAINST INMATES COULD VIOLATE THE EQUAL PROTECTION CLAUSE OF THE 14TH AMENDMENT

PETITIONER ALLEDGES THAT PAROLE OFFICIALS AS WELL AS ECCF HAVING SUCH KNOWLEDGE OF PETITIONERS DISABILITY AND RIGHTS TO EQUAL PROTECTION, RECKLESLY DISREGARDED SUCH AND DISCRIMINATED AGAINST PETITIONER

FURTHERMORE PETITIONER ALLEDGES TO BE DEPRIVED OF HIS RIGHT TO DUE PROCESS IN RESPECT TO PETITIONERS RIGHT TO RECEIVE PROPER NOTICE OF PAROLE HEARINGS WITHIN THE 72 HOUR TIME FRAME IN AUDIO FORMAT AND TO DATE PETITIONER HAS NOT BEEN PROPERLY SERVED.

THE COURTS RECOGNIZE THE MINIMAL REQUIREMENTS OF NOTICE AND HEARING, GUARANTEED BY DUE PROCESS CLAUSES ESPESCIALY AS IN CASE WHERE DEPRIVATION OF LIFE LIBERTY AND PROPERTY INTEREST ARE CRITICAL FACTORS.

THE COURT NOTED THAT STATE PRISONS ARE PUBLIC ENTITIES AND THE TERM "QUALIFIED INDIVIDUAL WITH A DISABILITY" INCLUDES STATE PRISONERS SO LONG AS THEY QUALIFY AS DISABLED UNDER THE SAME DEFINITION AS FREE WORLD INDIVIDUALS.

ECCF IS A PUBLIC ENTITY THAT HAS CONSPIRED WITH NYS DIV OF PAROLE TO DEPRIVE PETITIONER AND INO OF HIS RIGHTS UNDER TITLE 2 OF THE ADA AND SUBSECTION 504 REHABILITATION ACT 42 USC 121.31 42 USC 121.32, 29 USC 794 THUS THE COURT NOTED.

process, ADA sub 504 of the Rehabilitation Act, During Administrative parole proceedings, deaf and Hearing impared inmates were entitled to sign language interpreters and Devices for such proceedings. However such inmates rights were violated, because such accomadations were never provided to those inmates. Petitioner who is a totally blind. Also was precluded from his Rights of Being protected because no such Audio material an Equiptment was ever provided therefore petitioner is requesting this court dismiss the parole violation and order the release of Luis Andino.

Petioner on August 20th 2012 was ordered to attend his preliminary hearing, while at the preliminary hearing the Honorable Lehman failed to be impartial During preliminary proceedings and denied petitioner the right to enter his defense on the record and violated petitioner due process during entire proceeding and discriminate against petitioner and ruled a pretense of guilt. Therefore depriving petioner of fair and partial hearing.

Respectfully Submitted

Luis Andino

FORM 9013 (REV. 10/94)

STATE OF NEW YORK - BOARD OF PAROLE
PRELIMINARY VIOLATION HEARING
DECISION AND SUMMARY

Adjourned Dates:

Warrant # 652708

Name	NYSID Number	Hearing Date	Place
Ancino, Luis	7484643Q	8/20/12	ECCF

Hearing Officer: Lawrence B Pomeleau Attorney:

1. List witnesses in order of appearance:

   ☒ Parole Officer Lashonya Spearman
   ☒ Releasee Luis Ancino
   ☒ Witnesses Andrew Amato

2. List documents introduced into evidence:

   ☒ Notice of Violation Form 9011 dated: 8/9/12
   ☒ Certificate of Release to Parole Supervision dated: 3/5/09 (SE#2)
   ☒ Violation of Release Report dated: 8/8/12 (SE#1)
   ☐ Supplemental Violation of Release Report dated: (SE#3)
   ☒ Other On-Site Drug and alcohol Test Record 7/26/12

3. List reasons for determination and evidence relied on:

Charge #2 Rule #11 not guilty plea
Probable cause found Charge #2
I find that there is probable cause to
believe that on or about 7/26/12 you used
marijuana, which constitutes a violation
of Parole Rule #11 in an important respect
my findings and conclusions are based

State of New York
Erie County
State Supreme Court
----------x

Luis Andino 60944
Petitioner/Plaintiff

v

Honorable Leiman, Cynthia Mocney, ETAL.
Respondent/Defendant
----------x

Affidavit in Support of Application Pursuant to CPLR 1101 (f) (Reduces Filing Fee)

Index/File # 2012-9234 *
DIN # 05B1233
NYSID # 7484 643 Q

State of New York)
) SS:
County of Erie)

PAROLE WARRANT
652708

I, LUIS ANDINO, being duly sworn, hereby declare as follows:

1) I am the Petitioner/Plaintiff in the above-entitled proceeding, I am a sentenced inmate in a federal, state or local correctional facility (state place of incarceration: E.C.C.F, and I submit this affidavit in support of my application for a reduction of the filing fee pursuant to CPLR 1101 (f).

2) I currently receive income from the following sources, exclusive of correctional facility wages:
N/A

3) I own the following valuable property (other than miscellaneous personal property):

☒ NONE

1) List Property:	Value

4) I have no savings, property, assets or income other than as set forth herein.

5) I am unable to pay the total fee necessary to prosecute this procedure.
6) No other person who is able to pay the total filing fee has a beneficial interest in the result of this proceeding.
7) The facts of my case are described in my claim and other papers filed in the court.
8) I have made no prior request for this relief in this case.
9) My date of birth is 4-16-1973.
10) NYSID # 7484 643 Q
11) Aliases _____.

_____
(signature)

Sworn to before me this 4 day of September 2012

Joseph Hodan
Notary Public
New York State,
Qualified in Erie County
my commission expires
4-30-2014

AUTHORIZATION

I, _____, inmate number _____.
request and authorize the agency holding me in custody to send to the Clerk of the Court certified copies of the correctional facility trust fund account statement (or the institutional equivalent) for the past six months.

I further request and authorize the agency holding me in custody to calculate the amounts specified by CPLR 1101 (f)(2), to deduct those amounts from my correctional facility trust fund account (or the institutional equivalent) and to disburse those amounts as instructed by the Court.

This authorization is furnished in connection with the above entitled case and shall apply to any agency into whose custody I may be transferred.

I UNDERSTAND THAT THE ENTIRE FILING FEE AS DETERMINED BY THE COURT WILL BE PAID IN INSTALLMENTS BY AUTOMATIC DEDUCTIONS FROM MY CORRECTIONAL FACILITY TRUST FUND ACCOUNT EVEN IF MY CASE IS DISMISSED.

_____
(signature)

T R U S T A C C O U N T S T A T E M E N T

IC: 0000060944 Name: ANDINO, LOUIS A DOB: 04/16/1973
CATION: ECCF-MED-1233

COUNT BALANCES Total: 1.05 CURRENT: 1.05 HOLD: 0.00

IB ACCOUNT	08/09/2012 START BALANCE	09/14/2012 END BALANCE
ENDABLE BALANCE	0.00	1.05

DEBTS AND OBLIGATIONS

'PE PAYABLE	INFO NUMBER	AMOUNT OWING	AMOUNT PAID	WRITE OFF AMT.

TRANSACTION DESCRIPTIONS -- SPENDABLE BALANCE SUB-ACCOUNT

ATE	TYPE	TRANSACTION DESCRIPTION	TRANSACTION AMT	BALANCE
/10/2012	AD	Cash on Arrival	0.00	0.00
/22/2012	CASH	Cash-ECCF TOYA SIMMONS-V	10.00	10.00
/23/2012	PST	Postage/copies Disbursement-ECCF	(1.30)	8.70
/29/2012	CRS	CRS SAL ORD #608075CAN1	(7.45)	1.25
/14/2012	PST	Postage Disbursement-ECCF	(0.20)	1.05