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

April 25, 2013

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:	*Pierce, Marcellus v. Robert Koch, Superintendent, Erie County Holding Center, Andrew W. Evans, Chairwoman, NYS Division of Parole*
Document Received:	Order to Show Cause
Name of Claimant:	Marcellus Pierce ICN #35210 Erie County Holding Center 40 Delaware Avenue Buffalo, New York 14202
Claimant's attorney:	Claimant is proceeding *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

AT a Special Term of Supreme Court, held in and for the County of Erie and State of New York, in the City of Buffalo, on the 2 day of April 2013.

PRESENT: **HON. PAULA L. FEROLETO**
Justice Presiding

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

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ERIE COUNTY
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PEOPLE OF THE STATE OF NEW YORK
ex rel. **MARCELLUS PIERCE,** #35210

ORI# NY 014015J

ORDER

Petitioner,

-vs-

ROBERT KOCH, SUPERINTENDENT,
ERIE COUNTY HOLDING CENTER,
ANDREA W. EVANS, CHAIRWOMAN,
NYS DIVISION OF PAROLE,

Index No.
I-2013-0960

Respondents.

Upon reading and filing the annexed petition for a writ of habeas corpus, filed by the above-named petitioner, verified the 26st day of February, 2013, together with supporting documents, and it appearing that the allegations in the petition, if taken as true, would not entitle the petitioner to release as a matter of law (CPLR Section 7003 (a); *see People ex rel Douglas v. Vincent, 50 NY2d 901, 903),* and it further appearing that petitioner should pursue any remedy he might have by way of a petition pursuant to Article 78 of the Civil Practice Law and Rules, it is

ORDERED that the said petition for a writ of habeas corpus be and is hereby denied; and it is further

ORDERED that the petition be and is hereby converted to a petition for relief pursuant to Article 78 of the CPLR; and it is further

ORDERED that the respondents named above Show Cause at a Special Term of this Court on **MAY 22, 2013** before the **HON. M. WILLIAM BOLLER,** Acting Supreme Court Justice, in Part 13 at 25 Delaware Avenue, Buffalo, New York, why judgment should not be made granting the relief demanded in the petition and why such other and further relief as may seem just and proper to the court should not be allowed; and it is further

ORDERED that Robert Koch, Superintendent of the Erie County Holding Center in Buffalo, New York where petitioner is now confined will produce the body of **MARCELLUS PIERCE** only if the court submits a letter to the superintendent ordering the production of the petitioner; and it is further

ORDERED that the petitioner's application for reduced filing fee pursuant to CPLR 1101(f) is granted since the petitioner has insufficient means to pay the full filing fee; 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 **April 24, 2013** be deemed adequate. In addition, the petitioner, on or before said date, shall similarly serve the Attorney General at the Buffalo Regional Office, Main Place Towers, 350 Main Street, Suite 300, Buffalo, New York 14202; and the Erie County Attorney, 95 Franklin Street, Room 1634, 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 Supreme Court 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

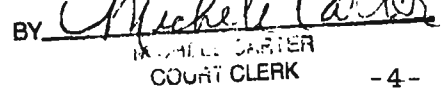
ORDERED that a copy of any answer or response shall be served upon the petitioner not less than five (5) days before the return date. The original of any such answer or response is to be delivered to the chambers of Acting Justice Boller not less than three (3) days prior to said return date.

DATED: Buffalo, New York
April 2, 2013

HON. PAULA L. FEROLETO
Justice of the Supreme Court

GRANTED: GRANTED

APR 02 2013

BY 
MICHELE CARTER
COURT CLERK

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF Erie

RECEIVED
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CHIEF CLERK'S OFFICE
SUPREME & COUNTY COURTS
ERIE COUNTY

In the matter of the Application of
Marcellus Pierce,
Petitioner,

v.

Erie county Sheriffs Dept / Division of Parole
, of ,
Respondent

Petition For Writ
of Habeas Corpus
Index No. 2013-0960

To The Supreme Court Of The State Of New York:

Your Petitioner respectfully alleges and shows:

1. That Marcellus Pierce, the petitioner makes application herein on [his/her] own for a writ of habeas corpus. That the place where said Marcellus Pierce is imprisoned and restrained of liberty, is ECHC Erie county Holding center in the City of Buffalo, County of Erie State of New York. That the people by whom petitioner is detained is Erie County Sheriff. That theimprisonment and restraint of said Marcellus Pierce is by virtue of a mandate, a copy of which is hereto annexed and marked xibit A

2. That the cause or pretence of detention of said Marcellus Pierce, according o the best knowledge and belief of the petitioner is

3. That a court or judge of theUnited States does not have exclusive urisdiction to order the said Marcellus Pierce released.

4. That the detention of said Marcellus Pierce is illegal in that CPL 410.91.

5. that no previous application has been made for the writ herein asked for.

6. That no appeal has been taken from any order or judgement in any action r proceedings against said Marcellus Pierce whereby petitioner has een imprisoned or restrained against [his/her] liberty.

Wherefore petitioner prays that writ of haeas corpus directed to said Erie county Sheriffs / Div of Parole issue requring the production of Marcellus Pierce before the urt for the purpose of inquiring into the imprisonment and resraint of said Marcellus Pierce and delivering petitioner therefrom, pursuant to statute such case made and provided.

Marcellus Pierce
Petitioner

State of New York
County Of Erie
) ss:

Marcellus Pierce, the above named petitioner, being duly sworn says that contents of the foregoing petition are well known to him [his/her] own knowledge, except as to those matters [he/she] believes it to be true.

Marcellus Pierce

Sworn to before me
this 26 day of February, ~~200~~ 2013

Sylvia M. O'Neal
Notary Public

SYLVIA M. O'NEAL
COMMISSIONER OF DEEDS
In and For the City of Buffalo, Erie County, NY
My Commission Expires Dec. 31, 2014