

EXHIBIT F

provide a legally sufficient reason for imprisoning him and then determine its legal sufficiency after full oral argument.

D. BECAUSE KIKO IS IMPRISONED ILLEGALLY HE IS ENTITLED TO IMMEDIATE DISCHARGE.

An illegally imprisoned person in New York must be discharged forthwith once he brings a common law writ of habeas corpus. *People ex re. Stabile v. Warden of City Prison*, 202 N.Y. 138, 152 (N.Y. 1911). Imprisoned children and incapacitated adults have been similarly discharged from slavery, industrial training schools or other detention facilities, mental institutions, and other unlawful imprisonments. Before the Civil War, children detained as slaves were discharged through common law writs of habeas corpus into another's care. *Lemmon*, 20 N.Y. at 632 (discharged slaves included two seven-year-olds, a five-year-old, and a two-year-old); *Commonwealth v. Taylor*, 44 Mass. 72, 72-74 (Mass. 1841) (seven or eight year old slave discharged into care of the Boston Samaritan Asylum for Indigent Children); *Commonwealth v. Aves*, 35 Mass. 193 (Mass. 1836) (seven year old girl discharged into custody of Boston Samaritan Asylum for Indigent Children); *Commonwealth v. Holloway*, 2 Serg. & Rawle 305 (Pa. 1816) (child discharged); *State v. Pitney*, 1 N.J.L. 165 (N.J. 1793) (child discharged).

Free minors, who had long been discharged from industrial training schools or other detention facilities through a common law writ of habeas corpus, remained subject to the care of their parents or guardians. *People ex rel. F. v. Hill*, 319 N.Y.S.2d 961, 965 (N.Y. App. Div. 2d Dept. 1971), *aff'd*, 29 N.Y. 2d 17 (1971); *People ex rel. Silbert v. Cohen*, 320 N.Y.S.2d 608, 609 (N.Y. App. Div. 2d Dept. 1971) *aff'd*, 29 N.Y. 2d 12 (1971) (juveniles discharged); *People ex rel. Margolis on Behalf of Carlos R. v. Dunston*, 571 N.Y.S. 2d 295, 296 (N.Y. App. Div. 1st Dept. 1991); *People ex rel. Kaufmann v.*

Davis, 393 N.Y.S. 2d 746, 747 (N.Y. App. Div. 2d Dept. 1977); *People ex rel. Cronin v. Carpenter*, 25 Misc. 341, 342 (N.Y. Sup. Ct. 1898); *People ex rel. Slatzkata v. Baker*, 3 N.Y.S. 536, 539 (N.Y. Super. 1888); *In re Conroy*, 54 How. Pr. at 433-34; *People ex rel. Soffer v. Luger*, 347 N.Y.S. 2d 345, 347 (N.Y. Sup. Ct. 1973).

Minors similarly have been discharged from mental institutions pursuant to the habeas corpus writ, *People ex rel. Intner on Behalf of Harris v. Surles*, 566 N.Y.S.2d 512, 515 (N.Y. Sup. Ct. 1991), as have child apprentices, *Hanna*, 3 How. Pr. at 45; *In re M'Dowle*, 8 Johns, even though they were required to return to their parent's care.

Courts apply these principles to the discharge of incapacitated adults, *Brevorka*, 227 A.D. 2d 969 (elderly and ill woman showing signs of dementia); *Connor*, 87 A.D.2d at 511-12; *Siveke v. Keena*, 441 N.Y.S. 2d 631 (N.Y. Sup. Ct. 1981) (elderly and ill man).

As the Respondents cannot provide a legally sufficient reason for imprisoning Kiko, who the NhRP will demonstrate is a legal person within the meaning of the common law writ of habeas corpus, this Court must discharge Kiko forthwith, and order him to be evaluated by NAPSA for placement in a member sanctuary that will care for his unique needs for the rest of his life.

1. Kiko is a legal person.

a. Kiko is a legal person within the meaning of EPTL § 7-8.1.

Kiko is the beneficiary of an *inter vivos* trust created by the NhRP pursuant to EPTL §7-8.1 for the purpose of his care.¹¹ This statute recognizes Kiko's capacity for

¹¹This is true for four reasons. First, New York courts agree that EPTL § 7-8.1 permits the creation of *inter vivos* trusts. *Feger v. Warwick Animal Shelter*, 870 N.Y.S.2d 124, 126-27 (N.Y. App. Div. 2d Dep't 2008) (New York "law now recognizes the creation of trusts for the care of designated domestic or pet animals upon the . . . *incapacitation* of their owner") (emphasis added); *In re Fouts*, 677 N.Y.S.2d 699 (N.Y. Sur. Ct. 1998)