

**UNITED STATES DISTRICT COURT
FOR EASTERN DISTRICT OF VIRGINIA**

• 701 East Broad Street, Richmond VA 23219 •

Unified United States Common Law Grand Jury;
P.O. Box 59, Valhalla, NY 10595; Fax: (888) 891-8977.



**Sureties of the Peace
WE THE PEOPLE**

AL, AK, AZ, AR, CA, CO, CT, DE, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY:

COVER SHEET

JURISDICTION NATURAL LAW

COURT OF RECORD: Judicial Oversight – Unified United States Common Law Grand Jury
United States District Court for the Northern District of New York
445 Broadway, Albany, NY. 12207-2936
Law Case No. 1776-1789-1791-2019; Depository Case No. 1:16-CV-1490

TO: Chief Judge Mark S. Davis

RE: Habeas Corpus

AUTHORITY: *“The judicial power shall extend to all cases, in law and equity, arising under this Constitution,”*¹ whereas; the originating court has violated petitioners right of Due Process.²

28 U.S.C. §2242: Every person unlawfully committed, detained, confined or restrained of his Liberty or Property, under any pretense whatsoever, may prosecute a Writ of Habeas Corpus to inquire into the cause of such imprisonment or restraint.

SO ORDERED: You are ordered to summarily hear and determine the facts and dispose of the matter as law and justice require under the rules of common law as provided for under 16 American Jurisprudence 2d., Sec. 114, and not chancery, and shall mail by United States Post Office a certified copy of decision immediately (within 24 hours) to the petitioner/next friend, and fax a copy of the same to the Grand Jury at (888) 891-8977.

SEAL

February 20, 2020

Tribunal, Jury Foreman

¹ United States Constitution Article III Section 2

² Bill of Rights Amendment V: No person shall be deprived of life, liberty, or property, without due process of law; And, Bill of Rights Amendment VII: In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved,

“The most celebrated writ in the English law, and the great and efficacious writ in all manner of illegal confinement.” - Sir William Blackstone. The *"great writ of liberty,"* issuing at common law out of courts of Chancery, King's Bench, Common Pleas, and Exchequer. Ex parte Kelly, 123 N.J.Eq. 489, 198 A. 203, 207.

ORIGINATING COURT: Virginia Circuit Court of the City of Virginia Beach; Statutory Case No: CR13-2364, CR13-2817, CR13-3527
2425 Nimmo Parkway #10, Virginia Beach, VA 23456

Petitioner Jessd Lugaro
132 Kendall Mill Rd, Thomasville, NC 27360

Next Friend April Esposito
132 Kendall Mill Rd, Thomasville, NC 27360

- AGAINST -

Respondents Judge Edward W. Hanson, Judge H. Thomas Padrick
2425 Nimmo Parkway #10, Virginia Beach, VA 23456

Michael Defricke
2401 Courthouse Dr., Virginia Beach, VA 23456

Sheriff Ken Stolle
2501 James Madison Blvd., Virginia Beach, VA 23456

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**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA**

• 701 East Broad Street, Richmond VA 23219 •

UNIFIED U.S. COMMON LAW GRAND JURY on behalf of
Jesse Lugaro

Petitioner

- against -

Edward W. Hanson, H. Thomas Padrick, Michael Defricke,
Ken Stollef

Respondents

JURISDICTION: Court of Record
Federal Case No. _____

Chief Judge Mark S. Davis

**ACTION AT LAW¹
WRIT HABEAS CORPUS**

Originating Court: Virginia Circuit Court of the City of Virginia Beach; Originating Court No:
CR13-2364, CR13-2817, CR13-3527

Court of Record: Judicial Oversight – Unified United States Common Law Grand Jury
United States District Court for the Northern District of New York
445 Broadway, Albany, NY. 12207-2936
Law Case No. 1776-1789-1791-2019; Depository Case No. 1:16-CV-1490

**Writ of Habeas Corpus Ad Testificandum²
Order to Show Cause And Writ Certiorari³**

NOTICE IS HEREBY GIVEN to the Court and all interested parties that above Court of Origin is removed to the above said United States District Court of Record for Habeas Corpus for Cause in violation of Amendments IV, V, VI & VII. All said violations arose from the Bill of Rights and therefore, the proper venue for hearing a Habeas Corpus is an Article III Court that was vested with the jurisdiction via the Constitution for the United States of America.

Respondents violated petitioners unalienable Right⁴ of Due Process,⁵ unalienable Right to an untainted Grand Jury, unalienable Right to an Untainted Petit Jury, and unalienable Right to be heard in a Natural Law⁶ Court of Record.

¹ **AT LAW:** [Bouvier's] This phrase is used to point out that a thing is to be done according to the course of the common law; it is distinguished from a proceeding in equity.

² **HABEAS CORPUS AD TESTIFICANDUM:** At common law, the writ, meaning “you have the body to testify,” used to bring up a prisoner detained in a jail or prison to give evidence before the court. Hottle v. District Court in and for Clinton County, 233 Iowa 904, 11 N.W.2d 30, 34; 3 Bl. Comm. 130; 2 Tidd, Pr. 809. Ex parte Marmaduke, 91 Mo. 250, 4 S.W. 91, 60 Am.Rep. 250.

³ **Writ Certiorari:** Latin meaning to be informed of; to be made certain in regard to; the name of a Writ of Review or Inquiry. Leonard v. Willcox, 101 Vt. 195, 142 A. 762, 766; Nissen v. International Brotherhood of Teamsters, Chauffeurs, Stablemen & Helpers of America, 229 Iowa 1028, 295 N.W. 858.

Writ Habeas Corpus

JURISDICTION

Each federal judicial district court shall be a court of record known as the United States District Court for the district.⁷ A court of record⁸ is a judicial tribunal having attributes and exercising functions independently of the person of the magistrate designated generally to hold it and proceeds according to the course of common (natural) law.” Because the petitioner is detained by an inferior court “not of record” that has no subject matter or personam jurisdiction over the petitioner being unlawfully restrained by said court, without a lawful warrant from a competent court. Whereas, the petitioners’ restraint, under the color of law, by said inferior court violated petitioners’ unalienable right of due process protected under Amendment V.⁹ Therefore the above said United States District Court of Record has jurisdiction in this case in “law” that arose under the Constitution,¹⁰ petitioner has the unalienable right of habeas corpus.¹¹ The Common Law so permits the destruction of the abatement of nuisances by summary proceedings.¹²

COURT IS TO TAKE JUDICIAL NOTICE

This is a Natural Law Proceeding under the rules of common law and not a civil law proceeding. Rules are not law; rules are nothing more than prescribed conduct in a particular area. Furthermore, Congress wrote legislation under §2072(b) rendering rule 2 is of no force or effect and thereby null and void.

⁴ **Declaration of Independence:** We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.-- That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed.

⁵ **Amendment V:** *No person shall be... deprived of life, liberty, or property, without due process of law;*

⁶ **Common Law** a/k/a Natural Law - As distinguished from law created by the enactment of legislatures [admiralty], the common law comprises the body of those principles and rules of action, relating to the government and security of persons and property, which derive their authority solely from usages and customs of immemorial antiquity, or from the judgments and decrees of the courts recognizing, affirming, and enforcing such usages and customs; and, in this sense, particularly the ancient unwritten law of England. [1 Kent, Comm. 492. *Western Union Tel. Co. v. Call Pub. Co.*, 21 S.Ct. 561, 181 U.S. 92, 45 L.Ed. 765; *Barry v. Port Jervis*, 72 N.Y.S. 104, 64 App. Div. 268; *U. S. v. Miller*, D.C.Wash., 236 F. 798, 800].

⁷ **USC Title 28 §132:** Creation and composition of district courts: (a) There shall be in each judicial district a district court which shall be a court of record known as the United States District Court for the district.

⁸ “**A Court of Record** is a judicial tribunal having attributes and exercising functions independently of the person of the magistrate designated generally to hold it, and proceeding according to the course of common law, its acts and proceedings being enrolled for a perpetual memorial.” *Jones v. Jones*, 188 Mo.App. 220, 175 S.W. 227, 229;

⁹ **Amendment V:** No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

¹⁰ **Article III Section 2:** *The judicial power shall extend to all cases, in law and equity, arising under this Constitution...*

¹¹ **Article I Section 9 Clause 2:** “*The privilege of the writ of habeas corpus shall not be suspended, ...*”

¹² **DESTRUCTION OF THE ABATEMENT OF NUISANCES:** 16Am Jur 2d., Sec. 114 - As to the construction, with reference to Common Law, an important canon of construction is that constitutions must be construed to reference to the Common Law.” The Common Law, so permitted destruction of the abatement of nuisances by summary proceedings and it was never supposed that a constitutional provision was intended to interfere with this established principle and although there is no common law of the United States in a sense of a national customary law as distinguished from the common law of England, adopted in the several states. In interpreting the Federal Constitution, recourse may still be had to the aid of the Common Law of England. It has been said that without reference to the common law, the language of the Federal Constitution could not be understood.

§2072(b) such rules shall not abridge, enlarge or modify any substantive right. All laws in conflict with such rules shall be of no further force or effect after such rules have taken effect.

The Rules Enabling Act and all construction of law upon it is TREASON, governments are instituted among Men, by the People, to secure rights. Whereas, neither congress nor the judiciary has the power or authority to abrogate the unalienable right of Natural Law, this would be Absolute Despotism!

Indictment of a Common Law Grand Jury - Amendment V: *No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, nor be deprived of life, liberty, or property, without due process of law;*

Infamous crime - “A crime punishable by imprisonment in the state prison or penitentiary, with or without hard labor, is an infamous crime, within the provision of the fifth amendment of the constitution that “no person shall be held to answer for a capital or otherwise infamous crime unless on a presentment or indictment of a grand jury.”¹³ It is not the character of the crime but the nature of the punishment which renders the crime “infamous.”¹⁴ “Whether an offense is infamous depends on the punishment which may be imposed therefor, not on the punishment which was imposed.”¹⁵

Common Law Impartial Jury - Amendment VI: *In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury...* Amendment VII *In suits at common law ... the right of trial by jury shall be preserved...*

Law of the Land - Article VI Clause 2: *This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.*

Fiction of Law - The 41st Congress acted without constitutional authority an act of fraud, conspiracy and subversion against the United States of America. Only the People can ordain and establish Law¹⁶ and government.¹⁷ Only the People are endowed by the Creator with certain unalienable rights, governments are not! Consequently all latter construction upon the Organic Act of 1871 is as null and void as the Act itself, any court resting upon the same is a de facto court¹⁸ and any judge acting under

¹³ Mackin v. U. S., 117 U.S. 348, 6 S.Ct. 777, 29 L. Ed. 909; Brede v. Powers, 263 U.S. 4, 44 S.Ct. 8, 68 L.Ed. 132.

¹⁴ Weeks v. United States, C.C.A.N.Y., 216 F. 292, 298, L.R.A. 1915B, 651. But see Drazen v. New Haven Taxicab Co., 95 Conn. 500, 111 A. 861, 864.

¹⁵ United States v. Moreland, 258 U.S. 433, 42 S.Ct. 368, 370, 66 L.Ed. 700; De Jianne v. U. S., C.C.A.N.J., 282 F. 737, 740; Le Clair v. White, 117 Me. 335, 104 A. 516, 517.

¹⁶ **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 defense, 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.”

¹⁷ **GOVERNMENT:** “Republican Government; one in which the powers of sovereignty are vested in the people and are exercised by the people” 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 Law Dictionary, Fifth Edition, p. 626,

¹⁸ **DE FACTO GOVERNMENT:** One that maintains itself by a display of force against the will of the rightful legal government and is successful, at least temporarily, in overturning the institutions of the rightful legal government by setting up its own in lieu thereof. Wortham v. Walker, 133 Tex. 255, 128 S.W.2d 1138, 1145.

such fiction of law¹⁹ denies due process²⁰ and is acting in excess of their judicial authority²¹ under color of law²² thereby losing judicial immunity²³ and therefore, any judicial reliance upon the said act is injudicious.

Denial is Treason: The denial of Habeas Corpus is a denial of due process, protected by the 5th Amendment and specifically ordained and demanded by Article I Section 9 Clause 2 “*The privilege of the writ of habeas corpus shall not be suspended*” This is the well-known remedy for deliverance from illegal confinement, called by Sir William Blackstone “*the most celebrated writ in the English law, and the great and efficacious writ in all manner of illegal confinement.*” 3 Bl. Comm. 129. The “*great writ of liberty,*” issuing at common law out of courts of Chancery, King's Bench, Common Pleas, and Exchequer. Ex parte Kelly, 123 N.J.Eq. 489, 198 A. 203, 207.

IT APPEARING THAT THE APPLICANT IS ENTITLED THERETO

Respondents are directed, in accordance with 28 USC §2243, to forthwith release Petitioner(s) from custody. If Petitioner(s) are not forthwith released from custody, then within **THREE (3) CALENDAR DAYS** after service of this Writ, Respondents shall make a Return, certifying the true nature and cause of the detention; and, shall show cause why the Writ should not be granted; faxing the same to (888) 891-8977 no later than 5pm on the last day of the above-stated, three-day (3) period allowed for response.

American Jurisprudence Constitutional Law §326: Free Justice and Open Courts; Remedy for All Injuries: In most of the State Constitutions there are provisions, varying slightly in terms, which stipulate that justice shall be administered to all without delay or denial; without sale or prejudice; and,

¹⁹ **FICTION OF LAW**: Something known to be false is assumed to be true. Ryan v. Motor Credit Co., 130 N.J.Eq. 531, 23 A.2d 607, 621. that statutes which would deprive a citizen of the rights of person or property without a regular trial, according to the course and usage of common law, would not be the law of the land. [Hoke vs. Henderson, 15, N.C.15,25 AM Dec 677]. A rule of law which assumes as true, and will not allow to be disproved, something which is false, but not impossible. Best, Ev. 419.

²⁰ **DUE COURSE OF LAW**, this phrase is synonymous with “due process of law” or “law of the land” and means law in its regular course of administration through courts of justice. - Kansas Pac. Ry. Co. v. Dunmeyer 19 KAN 542.

²¹ **EXCESS OF JUDICIAL AUTHORITY**: Acts in excess of judicial authority constitutes misconduct, particularly where a judge deliberately disregards the requirements of fairness and due process. [Cannon v. Commission on Judicial Qualifications, (1975) 14 Cal. 3d 678, 694]; Society's commitment to institutional justice requires that judges be solicitous of the rights of persons who come before the court. [Geiler v. Commission on Judicial Qualifications, (1973) 10 Cal.3d 270, 286].

²² **COLOR OF LAW**: The appearance or semblance, without the substance, of legal right. [State v. Brechler, 185 Wis. 599, 202 N.W. 144, 148] Misuse of power, possessed by virtue of state law and made possible only because wrongdoer is clothed with authority of state, is action taken under “color of state law.” (Atkins v. Lanning, 415 F. Supp. 186, 188).

²³ **JUDICIAL IMMUNITY**: “. . . the particular phraseology of the constitution of the United States confirms and strengthens the principle, supposed to be essential to all written constitutions, that a law repugnant to the constitution is void, and that courts, as well as other departments, are bound by that instrument.” ... “In declaring what shall be the supreme law of the land, the Constitution itself is first mentioned; and not the laws of the United States generally, but those only which shall be made in pursuance of the Constitution, have that rank.” ... “All law (rules and practices) which are repugnant to the Constitution are VOID.” ... Since the 14th Amendment to the Constitution states “NO State (Jurisdiction) shall make or enforce any law which shall abridge the rights, privileges, or immunities of citizens of the United States nor deprive any citizens of life, liberty, or property, without due process of law, ... or equal protection under the law,” this renders judicial immunity unconstitutional. Marbury v. Madison, 5 U.S. (2 Cranch) 137, 180 (1803); There is a general rule that a ministerial officer who acts wrongfully, although in good faith, is nevertheless liable in a civil action and cannot claim the immunity of the sovereign. Cooper v. O'Conner, 99 F.2d 133.

that the courts shall always be open to all alike. These provisions are based largely upon the Magna C[h]arta, Chap. 40, which provides: "*We will sell to no man. We will not deny to any man either justice or right.*" The chief purpose of the Magna C[h]arta provision was to prohibit the King from selling justice by imposing fees on litigants through his courts; and, to deal a death blow to the attendant venal and disgraceful practices of a corrupt judiciary in demanding oppressive gratuities for giving or withholding decisions in pending causes. It has been appropriately said that in a free government the doors of litigation are already wide open; and, must constantly remain so. The extent of the constitutional provision has been regarded as broader than the original confines of Magna C[h]arta; and, such constitutional provision has been held to prohibit the selling of justice, not merely by magistrates, but by the State itself.

Respondents shall mail the Return by United States Post Office their response within three days to the petitioner/next friend and fax a copy of the same to the Grand Jury at (888) 891-8977. The Return must be signed, and sworn to by the person making the same; and, except when such person is a sworn public officer, and makes such Return in his official capacity, it must be verified by their oath. The applicant, or the person detained, may, under oath, deny any of the facts set forth in the Return, or allege any other material facts. Respondents must each state in their Return under oath, plainly and unequivocally:

- 1) Whether or not they have the party, herein-named as petitioner, in their custody, or under their power, or restraint.
- 2) If they have the party in their custody, or power, or under his restraint, they must state the authority, and cause of such imprisonment, or restraint.
- 3) If the party is detained by virtue of any sworn Writ, Warrant, or other written authority, a sworn copy thereof must be annexed to the Return; and, the original produced, and exhibited to the Court, or Magistrate on the Hearing of such Return. All unsworn documentary evidence will be refused for cause as hearsay.
- 4) If the person upon whom the Writ is served had the party in their power, or custody, or under their restraint at any time prior, or subsequent to the date of the Writ of Habeas Corpus; but, has transferred such custody, or restraint to another, the Return must state particularly to whom, at what time and place, for what cause, and by what authority such transfer took place.
- 5) The Return, and all suggestions made against it, may be amended, by leave of court, before, or after being filed.
- 6) When the Writ or Order is returned, a day shall be set for a Hearing that is not more than three (3) days after the Return, unless for good cause additional time is allowed.
- 7) Provide proof of jurisdiction for the originating court.
- 8) Does the originating court proceed by statutes and rules or does the originating court proceed according to natural law?
- 9) Because the Petition presents issues of fact, as well as issues of law, if Petitioner(s) are constrained by actual physical force, then the Jailer is required to produce, at the Hearing, the body of the person detained.
- 10) Was an Indictment procured without the signature of a Grand Jury Foreman?
- 11) Did a Grand Jury answer a questionnaire before being chosen? If so, provide a copy.

- 12) Was a petit jury instructed that statute violations are law?
 - a. Was documented proof of a crime submitted to a jury? If so, provide a copy.
 - b. Was a petit jury advised of their unalienable right of nullification?
 - c. Did jury members answer a questionnaire before being chosen? If so, provide a copy.
- 13) Are there any Affidavits from a witness? If so, provide a copy.
- 14) Are there any Affidavits from an injured party? If so, provide a copy.
- 15) Answer all charges in petitioner's Petition, attached.
- 16) Rebut petitioners Affidavit, attached.
- 17) True or false concerning the originating court:
 - a. proceeded according to equity and not Natural Law,
 - b. is holding the petitioner to answer without an indictment,
 - c. the petitioner was tried by a untainted common law petit jury of 12 People,
 - d. a Petit Jury answer a questionnaire before being chosen? If so, provide a copy,
 - e. the court proceeded in jurisdictions unknown, if not state the jurisdiction,
 - f. is a Court of Record,
 - g. is an equity court,

The Court is to notify petitioner/next friend by mail and phone and the Grand Jury by fax (888) 891-8977 to inform them as to the time and date of the Hearing to be held at the above-said courthouse.

At the Hearing, the Chief Judge shall summarily hear and determine the facts, shall dispose of the matter as law and justice require under the rules of common law as provided for under 16 American Jurisprudence 2d., Sec. 114, and not chancery, and shall mail by United States Post Office a certified copy of decision immediately (within 24 hours) to the petitioner/next friend, and fax a copy of the same to the Grand Jury at (888) 891-8977.

The Chief Judge shall state clearly on the record proving a court of record jurisdiction.

If respondents default and therefore no hearing then the Chief Judge shall confirm release of petitioner(s) and abatement of the originating court and inform by United States Post Office a certified copy of decision immediately (within 24 hours) to the petitioner/next friend and fax a copy of the same to the Grand Jury at (888) 891-8977.

Seal

February 20, 2020



Grand Jury Foreman

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

• 445 Broadway, Albany, NY. 12207-2936 •

TO: Administrator Grand Jury Foreman
Unified United States Common Law Grand Jury
P.O. Box 59; Valhalla, New York 10595; Fax: (888) 891-8977;

Court of Record: Judicial Oversight – Unified United States Common Law Grand Jury
Law Case No. 1776-1789-1791-2019; Depository Case No. 1:16-CV-1490

Jesse Lugaro, Petitioner
132 Kendall Mill Rd, Thomasville, NC 27360,

April Esposito, Next Friend acting on behalf of petitioner, Rule 17, 28 U.S.C.
132 Kendall Mill Rd, Thomasville, NC 27360; Phone: 336-705-2736

RE: Virginia Circuit Court of the City of Virginia Beach, de facto
2425 Circuit Court, Nimmo Parkway #10, Virginia Beach, VA 23456
CR13-2364, CR13-2817, CR13-3527

PETITION FOR HABEAS CORPUS FOR CAUSE¹

COMES NOW Jesse Lugaro, one of the People of North Carolina, hereinafter petitioner, in this court of record under Article III, Section 2, of the Constitution, whereby the judicial power shall extend to all cases in law arising under the Constitution; and, Article IV, Section 4, whereby the United States shall guarantee to every State in this Union a Republican Form of Government; and, shall protect each of them against invasion of rights. The jurisdiction being the SUPREME LAW OF THE LAND under Article VI, Clause 2, petitioner hereby petitions the Unified United States Common Law Grand Jury,² hereinafter judicial tribunal,³ for the right of Writ of Habeas Corpus⁴ to inquire into the cause of imprisonment and restraint of Liberty of said petitioner who is not subject to the jurisdiction of the aforementioned respondents/custodians:

¹ **FOR CAUSE:** Means for reasons; which law and public policy recognize as sufficient warrant for removal; and, such cause is “legal cause”; and, not merely a cause which the appointing power in the exercise of discretion may deem sufficient. State ex rel. Nagle v. Sullivan, 98 Mont. 425, 40 P.2d 995, 998, 99 A.L.R. 321.

² The sureties of the peace of faithful service: Magna Carta, paragraph 49.

³ Judicial Tribunal: ...having attributes; and, exercising functions independently of the person of the magistrate designated generally to hold it. Jones v. Jones, 188 Mo.App. 220, 175 S.W. 227, 229; Ex parte Gladhill, 8 Metc. Mass., 171, per Shaw, C.J.; Ledwith v. Rosalsky, 244 N.Y. 406, 155 N.E. 688, 689; Black's 4th, 425, 426.

⁴ The privilege of the Writ of Habeas Corpus shall not be suspended.

PETITIONER MAY PROSECUTE A WRIT OF HABEAS CORPUS TO INQUIRE INTO THE CAUSE OF THE RESTRAINT

- 1) Application for a Writ of Habeas Corpus shall be in writing, signed, and verified by the person for whose relief it is intended; or, by someone acting on his behalf. 28 U.S.C. §2242.
- 2) Every person unlawfully committed, detained, confined, or restrained of his Liberty or Property, under any pretense whatsoever, may prosecute a Writ of Habeas Corpus to inquire into the cause of such imprisonment or restraint.

“In the United States Habeas Corpus exists in two forms: Common Law and Statutory. The Constitution for the United States of America acknowledges the Peoples’ right to the common law of England as it was in 1789. It does not consist of absolute, fixed and inflexible rules; but, broad and comprehensive principles based on justice, reason, and common sense...” Miller v. Monsen, 37 N.W.2d 543, 547, 228 Minn. 400.

28 U.S.C. §2243: Issuance of Writ; Return; Hearing; Decision: A court justice, or court judge [tribunal] entertaining an Application for a Writ of Habeas Corpus, **shall forthwith award the Writ;** or, issue an Order directing the respondents to show cause why the Writ should not be granted; unless it appears from the Application that the applicant, or person 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.

The privilege of the Writ of Habeas Corpus shall not be suspended... United States Constitution, Article I, Section 9.

- 3) This Habeas Corpus is prosecuted because the taking of the People into custody was without due process in a court of law, a/k/a court of record. The respondents’ court acted under statutes; and, therefore, was not a court of record; but, rather, a nisi prius court. Thereby jurisdiction was fraudulently acquired without petitioner volunteering, or knowingly agreeing to the proceeding.
- 4) Petitioner was not indicted by an unbiased common law grand jury, if Respondents gathered a biased statutory jury; a jury not under common law; a jury under a court not of record, i.e., not at law⁵ it would be a jury which has no power to fine or imprison.⁶

⁵ **AT LAW:** This phrase is used to point out that a thing is to be done according to the course of the common law; it is distinguished from a proceeding in equity. Blacks 4th.

⁶ **COURTS OF RECORD and COURTS NOT OF RECORD:** “...the former [Courts of Record] being those whose acts and judicial proceedings are enrolled, or recorded, for a perpetual memory and testimony; and, which have power to fine or imprison for contempt. Error lies to their judgments; and, they generally possess a seal. Courts Not of Record are those of inferior dignity, which have no power to fine or imprison; and, in which the proceedings are not enrolled or recorded.” 3 Bl. Comm. 24; 3 Steph. Comm. 383; The Thomas Fletcher, C.C.Ga.,

- 5) No State can deprive any person of life, Liberty, or property, without due process of law; nor, deny any person within its jurisdiction the equal protection of the laws. Any court that ignores due process is not a common law court. Such action of a court that deprives or denies due process of law proves that court to be unlawful; and, consequently, having no legal authority over the petitioner without his consent.

Pursuant to Supreme Court Annotated Statute: *“The State citizen is immune from any and all government attacks and procedure.”* Dred Scott v. Sanford, 60 U.S. 19 How. 393. The Supreme Court has stated clearly: *“...every man is independent of all laws, except those prescribed by nature. He is not bound by any institutions formed by his fellowmen [fellowman] without his consent.”* Cruden v. Neale, 2 N.C. 338 2 S.E. 70.

- 6) The nisi prius court is, in fact, a nisi prius court falsa because respondents have taken unlawful dominion of petitioner so as to deprive him of his court of law. Petitioner should be immediately released so that he may return to the jurisdiction of his own court. Any charges of incompetence are fraud on the court. See Affidavit(s) attached.
- 7) Petitioner herein declares: He has seen no sworn documentary evidence from a competent fact witness to lawfully assert a challenge to his competency as one of the People; no servant has the authority to declare differently without evidence in a court of law; government servants cannot restrain or incarcerate people because they disagree with them.

Any constitutional provision intended to confer a benefit should be liberally construed in favor of the clearly intended and expressly designated beneficiary. *“Then [that] a constitution should receive a literal interpretation in favor of the Citizen is especially true with respect to those provisions which were designed to safeguard the Liberty and security of the Citizen in regard to person and property.”* 16Am Jur 2d, Sec. 97; Byars v. United States, 273 U.S. 128.

- 9) Petitioner has been subjected to unlawful imprisonment or restraint. Petitioner is thus petitioning [through his authorized agent, his next friend], for a Writ of Habeas Corpus to demand that his Liberty be restored.

24 F. 481; Ex parte Thistleton, 52 Cal 225; Erwin v. U.S., D.C.Ga., 37 F. 488, 2 L.R.A. 229; Heininger v. Davis, 96 Ohio St. 205, 117 N.E. 229, 231.

**BECAUSE THE RESPONDENTS' COURT SHOULD HAVE BEEN
A COURT OF RECORD BUT INSTEAD FRAUDULENTLY
CONCEALED ITS JURISDICTION UNDER COLOR OF LAW
A WRIT OF HABEAS CORPUS SHOULD ISSUE**

- 10) The Constitution for the United States of America, Article III, Section I, grants that judges, both of the Supreme and inferior courts, shall hold their offices during good behavior.⁷ No judge may act without jurisdiction; and, all lawful jurisdictions must be ordained and established⁸ by the People.
- 11) The Constitution for the United States of America, Article IV, Section 4, guarantees a Republican Form of Government,⁹ and protection against domestic Violence. When a judge enforces acts beyond his authority under color of law,¹⁰ judicial immunity is lost.¹¹ Such actions are nothing less than lawless violence.¹² Likewise, legislative jurisdiction that is not authorized by the United States Constitution is as inoperative as though it had never been passed;¹³ and, judges proceeding without jurisdiction are indictable for treason.¹⁴ Judges are expected to know the law.
- 12) The Constitution for the United States of America, Article III, Section 2, authorizes two (2) jurisdictions: Law and Equity.¹⁵ A court of equity follows the forms and procedure of

⁷ **GOOD BEHAVIOR:** “Good behavior” means conduct that is authorized by law. “Bad behavior” means conduct such as the law will punish. *State v. Hardin*, 183 N.C. 815, 112 S.E. 593, 594; *Orderly and Lawful Conduct*. *Huysler v. Com.*, 25 Ky.L. Rep. 608, 76 S.W. 175; *In re Spenser*, 22 Fed.Cas. 921; “Good behavior” means conduct conformable to law; or, to the particular law theretofore breached. *Ex parte Hamm*, 24 N.M. 33, 172 P. 190, 191, L.R. A.1918D, 694; *Baker v. Commonwealth*, 181 Ky. 437, 205 S.W. 399, 401.

⁸ **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.*”

⁹ **U.S. CONSTITUTION, ARTICLE IV, SECTION 4:** “*The United States shall guarantee to every State in this Union a Republican Form of Government; and, shall protect each of them against Invasion; and, on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence.*”

¹⁰ **COLOR OF LAW:** The appearance or semblance of legal right without the substance. Black's 4th, *State v. Brechler*, 185 Wis. 599, 202 N.W. 144, 148; “*Misuse of power [is power] possessed by virtue of State law; and, [is] made possible only because [the] wrongdoer is clothed with authority of State; [and,] is action taken under ‘color of State law’.*” *Atkins v. Lanning*, 415 F. Supp. 186, 188.

¹¹ “*When a judge knows that he lacks jurisdiction, or acts in the face of clearly valid statutes expressly depriving him of jurisdiction, judicial immunity is lost.*” *Rankin v. Howard*, (1980) 633 F.2d 844, cert. den.; *Zeller v. Rankin*, 101 S.Ct. 2020, 451 U.S. 939, 68 L.Ed 2d 326.

¹² “*No judicial process, whatever form it may assume, can have any lawful authority outside of the limits of the jurisdiction of the court or judge by whom it is issued; and, an attempt to enforce it beyond these boundaries is nothing less than lawless violence.*” *Ableman v. Booth*, 21 Howard 506 (1859).

¹³ “*An unconstitutional act is not law; it confers no right; it imposes no duties; it affords no protection; it creates no office; it is, in legal contemplation, as inoperative as though it had never been passed.*” *Norton v. Shelby County*, 118 U.S. 425 p.442.

¹⁴ “*We (judges) have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given. The one or the other would be treason to the Constitution.*” *Cohen v. Virginia* (1821) 6 Wheat. 264; *U.S. v. Will*, 449 U.S. 200.

¹⁵ **U.S. CONSTITUTION, ARTICLE III, SECTION 2:** The judicial power 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.

chancery as distinguished from common law.¹⁶ A “court of equity” and a “court of chancery” are synonymous.¹⁷ A court of law means court of common law,¹⁸ a court for the People. In alleged¹⁹ criminal cases, when judges claim that they are bound by legislation authorized by the Constitution as they act under equity, rather than law, they commit fraud on the court. The Law of the Land is common law,²⁰ not equity; and, judges in every State are bound thereby.

13) Statutory courts are nisi prius²¹ courts; courts not of record; courts proceeding according to statutes. They have no power to fine or imprison; and, to do so is a crime. Courts of law are courts of record and proceed according to common law. Petitioner was falsely charged; petitioner objects to the nisi prius court herein on the record in writing, thereby rejecting statutory jurisdiction; and, proceeds according to common law.

14) Under Common Law the following maxims apply:

“For there to be a crime, there must be a victim (corpus delicti). In the absence of a victim there can be no crime.”

“For a crime to exist there must be an injured party. There can be no sanction or penalty imposed upon one because of this exercise of Constitutional rights.”
Sherar v. Cullen, 481 F. 945.

15) Constitutions must be construed to reference the common law; summary proceedings are null and void:²² *“As to the construction with reference to Common Law, an important canon of*

¹⁶ **COURT OF EQUITY:** A court which has jurisdiction in equity; which administers justice and decides controversies in accordance with the rules, principles, and precedents of equity; and, which follows the forms and procedure of chancery; as distinguished from a court having the jurisdiction, rules, principles, and practice of the common law. Thomas v. Phillips, 4 Smedes & M., Miss., 423.

¹⁷ **“EQUITY” and “CHANCERY”:** “Court of Equity” and “Court of Chancery” are constantly used as synonymous in the United States. It is presumed that this custom arises from the circumstance that the equity jurisdiction, which is exercised by the courts of the various States, is assimilated to that possessed by the English courts of chancery. Indeed, in some of the States, it is made identical therewith by statute, so far as conformable to our institutions. Wagner v. Armstrong, 93 Ohio St. 443, 113 N.E. 397, 401.

¹⁸ **AT LAW:** Is used to point out that a thing is to be done according to the course of the common law; it is distinguished from a proceeding in equity. Black’s 4th.

¹⁹ *“The law itself is on trial quite as much as the cause which is to be decided.”* Harlan F. Stone, 12th Chief Justice U.S. Supreme Court, 1941.

²⁰ **U.S. CONSTITUTION, ARTICLE VI:** This Constitution and the Laws of the United States which shall be made in Pursuance thereof; and, all Treaties made, or which shall be made, under the Authority of the United States, shall be the Supreme Law of the Land; and, the judges in every State shall be bound thereby, anything in the Constitution or Laws of any State to the Contrary notwithstanding.

²¹ **NISI PRIUS:** Where courts bearing the name “nisi prius” exist in the United States, they are instituted by statutory provision. “Nisi prius” is a Latin term. “Prius” means “first”. “Nisi” means “unless”. A “nisi prius” procedure is a procedure to which a party FIRST agrees UNLESS he objects. A rule of procedure in courts is that if a party fails to object to something, then it means he agrees to it. A nisi prius procedure is a procedure to which a person has failed to object. A “nisi prius court” is a court which will proceed unless a party objects. The agreement to proceed is obtained from the parties first. Bouvier’s Law; Black’s 5th.

²² **SUMMARY PROCEEDINGS:** Summary proceedings are those matters, which when in dispute, are decided without the intervention of a jury. Summary proceedings must be authorized by the legislature; except, perhaps, in cases of contempt, because summary proceedings are unknown to the common law. When cases are to be adjudged

construction is that constitutions must be construed to reference to the Common Law.’ The Common Law permitted destruction of the abatement of nuisances by summary proceedings; and, it was never supposed that a constitutional provision was intended to interfere with this established principle; and, there is no common law of the United States in a sense of a national customary law as distinguished from the common law of England, adopted in the several States. In interpreting the Federal Constitution, recourse may still be had to the aid of the Common Law of England. It has been said that without reference to the common law, the language of the Federal Constitution could not be understood.” 16Am Jur 2d, Sec. 114.

16) Respondent Judge acted without constitutional authority, thereby without jurisdiction and under color of law, using unconstitutional statutes and summary proceedings that are null and void under common law. Furthermore, respondent Judge refused to identify the jurisdiction he was operating under, which clearly was not under common law; and, therefore, was under statute, a court not of record, a court without the power to imprison, a court without the consent of petitioner, a court thereby acting under fraud; therefore, a Writ of Habeas Corpus should issue.

**BECAUSE NO JURISDICTIONAL BASIS FOR
CUSTODY HAS BEEN PROFFERED OR STATED
A WRIT OF HABEAS CORPUS SHOULD ISSUE**

17) Broad Meaning of Jurisdiction on Habeas Corpus: For purposes of the Writ of Habeas Corpus, as for purposes of prohibition or certiorari, the term “jurisdiction” is not limited to its fundamental meaning; and, in such proceedings, judicial acts may be restrained or annulled if they are determined to be in excess of the court’s powers, as defined by constitutional provision, statute, or rules developed by courts.

18) The Liberty of the People is restrained by the CUSTODIANS:

- a. Petitioner is in custody by color of the authority of the de facto court, and/or the custodians; and, is or was committed for trial before some court thereof. 28 U.S.C. §2241(c)(1).
- b. Petitioner is in custody, in violation of the Constitution or laws of the United States. 28 U.S.C. §2241(c)(3).

19) Although the true cause of custody of petitioner has not been stated by the respondents, petitioner, on information received, believes that the claim of authority is under color of law, in violation of the constitutions of the State, and the United States of America. The true basis for jurisdiction by the custodians has never been proffered or stated. Petitioner, as one of the People, has never knowingly or voluntarily agreed to such jurisdiction. Petitioner has disputed, and continues to dispute, any false allegation that he has so agreed.

promptly, without any unnecessary form, the proceedings are said to be summary. In no case can the party be tried summarily, unless such a proceeding is authorized by legislative authority; except, perhaps, in the case of contempt, because the common law is a stranger to such a mode of trial. Bovier’s Law; 4 Bl. Com. 280; 20 Vin. Ab. 42; Boscawen on Conv.; Paley on Convict.; vide Convictions.

- 20) The jurisdictional facts leading up to the custody and restraint are unknown to the petitioner. The jurisdictional facts by which the custodians presume authority to continue to deprive the petitioner of his court are unknown to the petitioner.
- 21) The petitioner, on information and belief, alleges that the custodians are funded in whole or in part by the STATE. Thus motivated, they are acting under color of law as contractual agents of their principal, the STATE.
- 22) The court lacks Personam Jurisdiction because it proceeds under statutes; is, therefore, a nisi prius court not of record; and, does not have petitioner's consent.
- 23) Petitioner did not consent; and, therefore, is immune from any and all government attacks and procedures.²³
- 24) Petitioner is independent of all laws, except those prescribed by nature; and, is not bound by any institutions formed by his fellowman without petitioner's consent.²⁴
- 25) The custodians do not state, and the proceedings do not show, any lawful authority or jurisdictional facts enabling the custodians to lawfully take dominion over a People of this State. Lacking such jurisdiction, their actions can only be under color of law, violating due process, in order to execute their own private agendas, whatever those may be. Therefore, a Writ of Habeas Corpus should issue.

**A WRIT OF HABEAS CORPUS IS A PROPER REMEDY BECAUSE
PETITIONER WAS DEPRIVED OF HIS LIBERTY WITHOUT DUE PROCESS**

- 26) Respondents proceeded as a court of equity, which is not a court of record; and, therefore, had no power to imprison petitioner.

Confirmatio Cartarum: ²⁵ *"...sovereign People shall not be taken, or imprisoned, or disseised, or outlawed, or exiled, or anywise destroyed... but by lawful judgment of his peers or by the law of the land."* Magna Carta, Chapter 39, sometimes referred to as Chapter 29.

- 27) Petitioner responded *obsta principiis*²⁶ from the beginning; and/or, continues the same, against said first of all courts not of record, state or federal.
- 28) Petitioner was denied due process of law, which denial of due process of law, violated petitioner's unalienable rights as protected by the 5th Amendment:

²³ **SUPREME COURT ANNOTATED STATUTE:** *"The state citizen is immune from any and all government attacks and procedure."* Cruden v. Neale, 2 N.C. 338 2 S.E. 70; Dred Scott v. Sanford, 60 U.S. 19 How. 393.

²⁴ *"...every man is independent of all laws, except those prescribed by nature. He is not bound by any institutions formed by his fellowman without his consent."* Cruden v. Neale, 2 N.C. 338 May Term 1796.

²⁵ **CONFIRMATIO CARTARUM 1297:** The Magna Carta must be accepted as the common law by government. The Magna Carta is the supreme law. All other contrary law and judgments are void.

²⁶ **OBSTA PRINCIPIIS:** (Latin) Withstand beginnings; resist the first approaches or encroachments. J. Bradley, Boyd v. U.S., 116 U.S. 635, 6 S.Ct. 535, 29 L.Ed. 746.

“No person shall be... deprived of life, Liberty, or property, without due process of law. Due course of law: this phrase is synonymous with due process of law, or ‘law of the land’; and, means law in its regular course of administration through courts of justice.” Kansas Pac. Ry. Co. v. Dunmeyer 19 Kan 542; *“Law in its regular course of administration through courts of justice [courts of record] is due process.”* Leeper v. Texas, 139 U.S. 462, 11 S.Ct. Rep 577, 35 L.Ed 225.

29) Petitioner was deprived of his unalienable right of due process in a “court of law”, a/k/a common law, as secured by the 5th Amendment; and, therefore, a Writ of Habeas Corpus should issue.

**BECAUSE PETITIONERS WERE THE VICTIMS OF
BARRATRY, MAINTENANCE AND CHAMPERTY
A WRIT OF HABEAS CORPUS SHOULD ISSUE**

30) Petitioners charge all respondents with conspiracy to execute common barratry²⁷, maintenance²⁸ and champerty.²⁹

**A WRIT OF HABEAS CORPUS IS A PROPER REMEDY BECAUSE
CUSTODIANS HAVE ENGAGED IN PROSECUTORIAL VINDICTIVENESS;
BURDEN IS UPON RESPONDENTS TO REBUT PRESUMPTION**

- 31) The incarceration, detainment, confinement, or restraint was vindictive because petitioner refused to cooperate statutory proceedings and demands common law.
- 32) Respondents conspired to break him through restraint or incarceration.
- 33) The court not of record that has no power to restrain, imprison, take property or fine and/or is holding petitioner for the action of the statutorily instructed and reactive grand jury.
- 34) Petitioner objects to the jurisdiction and process of the court not of record.
- 35) The court not of record that has no power to restrain, imprison, take property or fine; and, in violation of its own corporate charter, has, therefore, unlawfully restrained the liberty or property of petitioner.

²⁷ **BARRATRY:** In criminal law. Also spelled "Barretry." The offense of frequently exciting and stirring up quarrels and suits, either at law or otherwise. 4 Bla.Com. 134; State v. Batson, 220 N.C. 411, 17 S.E.2d 511, 512, 513.; "Common barratry is the practice of exciting groundless judicial proceedings." Pen.Code Cal. § 158; Lucas v. Pico, 55 Cal. 128; Corn. v. McCulloch, 15 Mass. 229; Ex parte McCloskey, 82 Tex.Cr.R. 531, 199 S.W. 1101, 1102.

²⁸ **MAINTENANCE:** consists in maintaining, supporting, or promoting the litigation of another.; "Act of maintaining, keeping up, supporting; livelihood; means of sustenance." Federal Land Bank of St. Louis v. Miller, 184 Ark. 415, 42 S.W.2d 564, 566.

²⁹ **CHAMPERTY:** is a bargain to divide the proceeds of litigation between the owner of the liquidated claim and a party supporting or enforcing the litigation. Draper v. Lebec, 219 Ind. 362, 37 N.E.2d 952, 956.; A bargain by a stranger with a party to a suit, by which such third person undertakes to carry on the litigation at his own cost and risk, in consideration of receiving, if successful, a part of the proceeds or subject sought to be recovered. Small v. Mott, 22 Wend., N.Y., 405; Gilman v. Jones, 87 Ala. 691, 5 So. 785, 7 So. 48, 4 L.R.A. 113; Jamison Coal & Coke Co. v. Goltra, C.C.A.Mo., 143 F.2d 889, 895, 154 A.L.R. 1191.; The purchase of an interest in a thing in dispute, with the object of maintaining and taking part in the litigation. 7 Bing. 378.

- 36) Respondents, in violation of 18 U.S.C. §241;³⁰ 18 U.S.C. §242;³¹ 42 U.S.C. §1983;³² and, 42 U.S.C. §1985,³³ exceeded their jurisdiction; acted under color of law, using statutes to willfully subject petitioner to retaliatory incarceration and/or restraint while conspiring to deprive petitioner of his rights; and, acted to injure, oppress, threaten, and intimidate petitioner in an attempt to prevent the free exercise and enjoyment of petitioner's unalienable rights of Liberty and due process.
- 37) Respondents, in violation of 18 U.S.C. §2382,³⁴ acted treasonously when they imprisoned or restrained petitioner and concealed both their actions and the hidden-court, bond-chattel, moneymaking enterprise operating under color of law; all acting knowingly in concert, with none dissenting.
- 38) Demand is now made to make full material fact disclosure; to see financial books of the Court Registry Investment System; make disclosure of the bid bond, payment bond, and the performance bond underwritten against this case; and, make an offer of proof in the aforesaid matters. Demand is also made to show how the court is not profiteering by way of petitioner's incarceration; show with clean hands how it does not have a strong financial interest to incarcerate the petitioner, and deprive petitioner of his constitutionally-protected due process rights; and, further explain how the court is not operating constitutionally infirm, and committing honest services fraud against We the People.
- 39) Respondents exceeded their authority, thereby acting under color of law to injure petitioner.
- 40) Petitioner has not waived common law venue; and, insists on proceeding in a court of record, which is petitioner's unalienable right.
- 41) Petitioner maintains his position as a natural [wo]man, and not a person or corporation.

³⁰ **18 U.S.C. §241 CONSPIRACY AGAINST RIGHTS:** If two (2) or more persons conspire to injure, oppress, threaten, or intimidate any person, in any State, in the free exercise or enjoyment of any right, they shall be fined under this title, or imprisoned not more than ten (10) years, or both.

³¹ **18 U.S.C. §242 DEPRIVATION OF RIGHTS UNDER COLOR OF LAW:** Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any person, in any State... to the deprivation of any rights... shall be fined under this title, or imprisoned not more than one (1) year, or both.

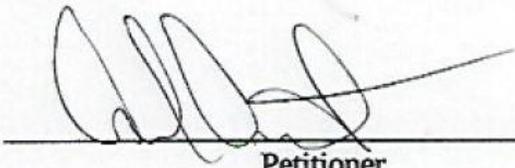
³² **42 U.S.C. §1983 CIVIL ACTION FOR DEPRIVATION OF RIGHTS:** Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State... subjects, or causes to be subjected, any... person within the jurisdiction thereof, to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law.

³³ **42 U.S.C. §1985 CONSPIRACY TO INTERFERE WITH CIVIL RIGHTS:** If two (2) or more persons in any State or Territory conspire for the purpose of depriving, either directly or indirectly, [of] any rights, the party so injured or deprived may have an action for the recovery of damages against any one (1) or more of the conspirators.

³⁴ **18 U.S.C. §2382 MISPRISION OF TREASON:** Whoever having knowledge of treason, conceals, and does not make known the same to some judge, is guilty of treason for contempt against the sovereign; and, shall be fined under this title, or imprisoned not more than seven (7) years, or both.

This application for a Writ of Habeas Corpus is signed by petitioner or on behalf of petitioner by Next Friend, acting on petitioners' behalf.³⁵ 28 U.S.C. §2242.

Next Friend: *"A next friend is a person who represents someone who is unable to tend to his or her own interest."* Federal Rules of Civil Procedures Rule 17, 28 U.S.C.A.



Petitioner

Date: November 21, 2019

³⁵ **NEXT FRIEND:** Based on Title 28 U.S.C. §454 1940 ed. (R.S. §754). Words *"or by someone acting in his behalf"* were added. This follows the actual practice of the courts, as set forth in *United States ex rel. Funaro v. Watchorn*, C.C. 1908, 164 F. 152; *Collins v. Traeger*, C.C.A. 1928, 27 F.2d 842, and cases cited.

Affidavit of April Esposito

I, April Esposito, Affiant, Next Friend of Jesse Lugaro, being of lawful age, qualified and competent to testify to, and having firsthand knowledge of the following facts, do hereby swear that the following facts are true, correct and not misleading:

On or about Friday, November 16th, 2012, my son, Jesse Lugaro, called me for a ride home to Thomasville, North Carolina from Virginia Beach, Virginia, after finishing traffic court in Virginia Beach Circuit court. He had some traffic tickets in Virginia Beach that he was attending to so he could return home and continue his job. I was at our home in Thomasville, North Carolina. I was unable to accommodate Jesse and pick him up.

On or about November 21st, 2012, Jesse finally returned home to 132 Kendall Mill Rd, Thomasville, NC 27360. Jesse told me what happened on November 16th, 2012 and I told him since he did nothing wrong, that everything would be fine.

On or about December 1, 2012, I was informed by Shannon Brown and Destiny White that they had warrants out for their arrest and I convinced them to contact the police. I then drove them to the police station in High Point, North Carolina. At around the same time Christopher Averette left my home and I did not see him again.

On or about January 10, 2013 at about late morning, my home was raided by Officers of the Thomasville Police Department, without presenting a search warrant. When they finished searching my home, I asked them what they were searching for. One of the officers told me that they got a call from Virginia Beach Police Department saying they had a warrant for my son, Jesse and they were told he was armed and dangerous. I was never told of the charges or showed a warrant. An officer gave me the name of the detective who called him and his number to reach him.

On or about January 10, 2013 Jesse Lugaro spoke with and stayed in contact with Detective Bryan T. Smolin until he could get back to Virginia Beach to make his statement. Jesse after his call with Detective Smolin was told by him that the charges would definitely be dropped after he made his statement. Jesse then worked hard the next several weeks to make the money to take the trip back to Virginia Beach to make his statement.

On or about February 7, 2013, Jesse Lugaro went to Virginia Beach 1st precinct to make a statement with Detective Smolin. When my son, Jesse called me, he said the Detective Smolin arrested him, but told him he was not to worry as the charges would be dropped within a couple days. That never happened.

On or about March 19, 2013, the charges were dismissed, but Jesse Lugaro was not released. About 5 months later, on or about August 11, 2013 new charges were filed against Jesse. Before these new charges, Jesse Lugaro sat in Virginia Beach Jail for more than 120 days without a hearing or knowing what he was being charged with. Jesse Lugaro was also denied bail.

On or about April 1, 2013, I called Detective Bryan T. Smolin again. He informed me the charges were neither being dismissed, nor was he releasing Jesse. During the conversation Detective Smolin also stated; He doesn't care if Jesse is innocent, with his past mistakes and tattoos on his face, he would be found guilty either way.

On or about June 2013 in Virginia Beach Jail, Jesse was accosted by two other inmates and his front teeth were knocked out. At no time, did they repair his teeth or press charges on the inmates whose names we were never told. Jesse also needed medication for his autistic bipolar, and anoxic brain injury and often times they did not have the medication to give him. Currently, at Keen Mountain Prison, Jesse Lugaro is not taking the medication as officers are crushing the pills he was given for his mental conditions to calm himself down. These pills are on the Institute For Safe Medication Practice's Do Not Crush list.

On or about July 1, 2013, they offered Jesse a plea bargain. If he pled to two (2) grand larceny charges he would do four (4) years. They coerced my son into taking the plea by saying if he went to trial he would be found guilty no matter the charge and he would do a very long sentence. Jesse Lugaro had a court appointed lawyer, Brook M. Thibault that told him if he didn't take the plea, the prosecuting attorney Michael DeFricke, would charge him with additional crimes and he would do even more time. Jesse refused to take the plea as he did not do the crime. Because of Attorney Brook M. Thibault refusing to assist Jesse properly with his defence, Jesse dismissed him. They then gave him Attorney Afshin Farashahi.

On or about August 11, 2013, Jesse and I found out without explanation that there were new charges instituted against Jesse. He was therefore in jail over 72 hours without charges.

On or about October 12, 2013, they filed new charges of robbery against him, for a case that was 13 years prior. Jesse Lugaro told me he once again, was not afforded a preliminary hearing. All the lawyers Jesse went through refused, at the request of Jesse, to subpoena witnesses for the defense, present evidence, or the filing of papers for false charges, and most of all, the moving of his case to be heard in a Mental Health Court which is available in Virginia to defend him properly. Jesse and I both stated, that he wanted a trial by jury.

On or about March 19, 2014, with the passing of over a year since his arrest, the day the jury trial was to begin, we were informed by Afshin Farashahi whom he was having communication issues with, that it was to be a Bench Trial. Farashahi, approached me and said, Jesse informed him he would attempt suicide before he would come out and take a bench trial. Afshin Farashahi asked me how to convince him to come out of his holding cell and take the bench trial. I stated it was not his wish to

have a bench trial. Afshin Farashahi stated that he knew Judge Edward W. Hanson Jr. and that this would be the best way for Jesse to have a trial. Farashahi, stated this at the hearing, but later denied this at the sentencing hearing. After conversations with the prosecuting attorney, Farashahi stated to Jesse Lugaro and myself that Jesse will receive harsher sentencing with a jury trial, guilty or not.

At the trial, I was scheduled to testify on my son's behalf. I was called back into the courtroom by an officer, who informed me in passing that they were making closing statements. I sat down behind Afshin Farashahi and asked him, "Why am I not testifying?" He stated, "We don't need your testimony." Then he shushed me and the closing statements started. Afshin Farashahi refused to let me testify therefore Jesse had no witnesses for his defense. No witnesses we gave to the lawyer were ever contacted.

During closing statements, Edward W. Hanson Jr. informed the prosecution not to bother making their final closing statement, that Miss Brown's testimony was the icing on the cake. even with her story changing several times disproving her credibility with her 3 statements and her testimony that all were stating different facts but with the common factor that Jesse did not touch a gun or rob anyone. Especially with Miss Browns testimony not once did she state Jesse Lugaro stole anything, threatened anyone nor held a weapon. I am baffled how they convicted my son.

At the conclusion of the trial, I questioned Attorney Farashahi again and he stated that Shannon Brown made the statement that I helped her make up her stories and therefore my testimony would do no good.

At this point in time I would like to state that my testimony had significant value in the defense at my son's trial, and that the accusation of me helping her make up stories is untrue. The prosecution offered Shannon Brown a deal to dismiss her conspiracy charge to a reduced charge of accessory after the fact and no prison time, for her cooperation with the prosecutor to testify against Jesse. I was told by Farashahi, Jesse and Ashley Cannon, a woman friend who was present during the trial, that Shannon Brown stated on the stand that she was only testifying to avoid a substantial amount of prison time. She also stated in her testimony that she did not like Jesse Lugaro at one time and contradicted herself during the same questioning that she did like him. Again, Shannon Brown's original charge was conspiracy, which was changed to Accessory after the fact of a felony with no prison incarceration.

On or about September 10, 2014, at the sentencing hearing, Farashahi motioned the court to be excused from the case and Judge Edward W. Hanson Jr., in granting this motion the Judge informed Jesse, if he did not like the next court appointed attorney he would be representing himself, and that his mother will not be defending him.

On or about June 3, 2013, Judge Edward W. Hanson Jr. sentenced Jesse Lugaro to 43 years, suspending 16 years leaving a reduced sentence of 27 years with no chance for early release. Christopher Averette, who did the crime and confessed to committing it, took a plea and got a reduced

sentence of 14 years yet Jesse Lugaro was charged with more charges and given more time, than Christopher Averette, whose statement says that Jesse was not a part of his actions. The witness's and victim's original statements failed to incriminate Jesse Lugaro but did incriminate Christopher Averette.

Jesse Lugaro was charged with a second set of charges, as promised by the prosecutor, Defricke. We did not learn what these charges were for several months and did not have a hearing till about 2 years after that. Jesse was not picked out in a lineup, and there were 4 witnesses to testify that Jesse Lugaro was home on the day in question. There was nothing but DNA as their proof, which could have gotten there by any means as Jesse Lugaro visited that Subway often, as it was around the corner from where he lived for over 9 years yet this was never mentioned during the trial. A picture of Jesse at the age he would have been at the time of the crime was given to his Attorney Neeley but never submitted. This picture showed the tattoo he had on his hand since he was about 15 years old. The victims stated there was no hand tattoos. This evidence was substantial proof of his innocence.

One of my witnesses that Jesse was home the day in question, Phillip Anthony, was accused of lying on the stand, he went to his car to retrieve a paper proving his credibility that he did not lie but Prosecutor DeFricke came outside and told him, right in front of me and my witnesses, that he would put him in jail if he did. This is a threat, that I and my other witnesses, Anthony Esposito, Carmine Esposito and Angelo Esposito, witnessed. This was to let him know to not get back on the stand to prove his credibility and scared my witness preventing him from proving his credibility as he was a witness to Jesse being home on the day in question.

Jesse's lawyer, Robert Neeley while giving his closing statement asked the jury to be lenient instead of arguing for his acquittal. Jesse clearly was denied his due process in many areas. As written earlier in this affidavit, Michael DeFricke threatened Jesse Lugaro with additional crimes if he didn't take his deal to plead guilty. As a result of that threat, on or about 3 years later they charged and prosecuted Jesse Lugaro for a crime that happened 13 years prior. They had nothing other than Jesse Lugaro DNA in a store he visited 4 or more times a week after doing tattoos, in which the store was right around the corner from our home. This explained why his DNA would be in that store.

Evidence that would have changed the outcome of both cases was never submitted and the only reason the 3 witnesses were at the second trial was because of me, April Esposito asking them to come testify to the truth because I knew his lawyer wasn't doing his job. No one else were contacted or subpoenaed, or given a chance to testify to support Jesse's alibi, and refute the charges of these crimes. How are these fair trial's? How does over a year make a speedy trial? And why did they throw a 13 year old case on him with only DNA found by garbage?

With Detective Smolin and Prosecutor Defricke tainting the jury coupled with threatening one of the witnesses with jail time in the hallway outside of the courtroom, evidence not presented, witnesses

never contacted and false charges, Jesse's chance of a fair trial were greatly reduced. Jesse Lugaro was given a total of 73 years with no chance of probation, parole or early release. His lawyers refused to do as he requested as to getting his case transferred to the Norfolk mental health courts, calling witnesses and submitting pictures proving what we all were saying. He was told he had to keep the next attorney even if he didn't like him.

Jesse Lugaro was given a total of 73 years with no chance of probation, parole or early release. At no time during either trial was his intent to commit these crimes proven. Jesse Lugaro did not have any reason for committing these crimes and at no time did the defense in either court case prove that Jesse Lugaro physically committed the crimes which they so hastily convicted him of. More importantly at neither trial was Jesse afforded due process.

Jesse Lugaro is a high functioning autistic with a brother and 2 cousins that are full autistics. He had worked hard to get his life together when he was charged with these crimes and did not deserve the outcome. They kept their promise that if he didn't take the deal he would do a lot of time. Jesse is currently in there 5 years for crimes that were not his and never proven. He has 68 years left. We used to believe in the justice system but for his wrongful convictions, that no longer is what we believe.


April Esposito next friend to Jesse Lugaro

NOTARY

In North Carolina State, Davidson County, on this 18 day of November, 2019, before me, Lynette King, the undersigned Notary Public, personally appeared April Esposito to me known to be the living (wo)man described herein, who executed the forgoing instrument, and has sworn before me that he/she executed the same as his/her free-will act and deed.

 Lynette King
Notary
My commission expires: Dec. 14, 2022