
UNITED STATES DISTRICT COURT
FOR THE | | DISTRICT OF
• [Address; City, State Zip] •

[Name of Petitioner]
Petitioner

- against -

[Name of Respondents]
Respondents

JURISDICTION: Court of Record¹
Federal Case No. | |

ACTION AT LAW²
WRIT HABEAS CORPUS
Affidavit Attached

WRIT OF HABEAS CORPUS AD TESTIFICANDUM³
ORDER TO SHOW CAUSE AND WRIT CERTIORARI⁴

NOTICE IS HEREBY GIVEN to the Court and all interested parties that Statutory Case No. | | in the de facto [Name of Court of Origin] is removed to the above “De jure United States District Court of Record,”⁵ under Article III Section 2⁶ and the rules of common law, for Habeas Corpus for denial of due process⁷ in a statutory court not of record lacking jurisdiction.

¹ “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; Ex parte Gladhill, 8 Metc. Mass., 171, per Shaw, C.J. See, also, Ledwith v. Rosalsky, 244 N.Y. 406, 155 N.E. 688, 689.

² **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.

³ **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.

⁴ **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.

⁵ **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.

⁶ **Article III Section 2** *The judicial power shall extend to all cases, in law and equity, arising under this Constitution...*

⁷ **Amendment V** *No person shall be held to answer for a capital, or otherwise infamous crime ... nor be deprived of life, liberty, or property, without due process of law;*

Because the originating court violated the petitioner(s) unalienable right of due process protected under the 5th Amendment, unalienable right of an untainted Grand and/or Trial Jury protected under the 5th and 6th Amendment, and the unalienable right to be heard in a common law⁸ court of record which, are all violation of rights arising under the Bill of Rights the Jurisdiction for the filing and hearing of Habeas Corpus is in a Court of Record vested with power by the de jure 1789 Constitution for the United States of America, unadulterated which is to hear all cases at law and justness⁹ that may arise under this Constitution.

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

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

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.*

JUDICIAL NOTICE

NON-STATUTORY WRIT OF HABEAS CORPUS [*requiring a fee to proceed in a Court of Record is extortion*] This action is a court of record. 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, 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*

⁸ **COMMON 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.];

⁹ **United States Constitution Article III Section 2** The judicial power shall extend to all cases, in law and equity, arising under this Constitution...

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.

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.

The 41st Congress acted without constitutional authority an act of fraud, conspiracy and subversion against the United States of America when they enacted the Organic Act of 1871. Only the People can ordain and establish Law¹⁰ and government¹¹. 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

¹⁰ **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.”

¹¹ **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

the Act itself, any court resting upon the same is a de facto court¹² and any judge acting under such fiction of law¹³ denies due process¹⁴ and is acting in excess of their judicial authority¹⁵ under color of law¹⁶ thereby losing judicial immunity¹⁷ and therefore, any judicial reliance upon the said act is injudicious.

IT APPEARING THAT THE APPLICANT IS ENTITLED THERETO, Respondents are directed, in accordance with 28 U.S.C. §2243, whereas a court, justice or judge entertaining an application for a writ of habeas corpus **SHALL FORTHWITH AWARD THE WRIT OR ISSUE AN ORDER DIRECTING THE RESPONDENT TO SHOW CAUSE WHY THE WRIT SHOULD NOT BE GRANTED.** 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;

¹² **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.

¹³ **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.

¹⁴ **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.

¹⁵ **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];

¹⁶ **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)

¹⁷ **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

RESPONDENTS MUST EACH STATE IN THEIR RETURN, PLAINLY AND UNEQUIVOCALLY:

- 1) State whether or not the party, herein-named as petitioner is in the respondent's custody, or under their power, or restraint.
- 2) If the party is in the respondent's custody, or power, or under restraint, respondents 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 on the hearing of such return. All unsworn documentary evidence shall 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 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 their official capacity, it must be verified by oath.
- 6) 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.
- 7) The Return, and all suggestions made against it, may be amended, by leave of court, before, or after being filed.
- 8) 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.
- 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) Answer all charges in petitioner's petition, attached.

- 11) Rebut petitioners Affidavit¹⁸, attached.
- 12) Is the court ordering the restraint a court of record.
- 13) Does the court of origins proceed under equity or Natural Law?
- 14) Does the judge determine the law or does the jury?
- 15) Was or is there a jury of twelve?
- 16) If the court ordering the restraint is a court of record show the Constitutional authority¹⁹ of the said court.
- 17) Did the court have Natural Law (Common Law) authority²⁰?
- 18) Was the petitioner convicted under summary proceedings?²¹
- 19) Was there a Grand Jury indictment?
- 20) Was an Indictment approved as to form without the signature of a Grand Jury Foreman?
- 21) Was a Grand Jury instructed that codes and or statutes are law?
- 22) Was documented proof of a crime submitted to the Grand Jury?
- 23) Was a Grand Jury advised of their unalienable right of nullification?

¹⁸ *An affidavit uncontested un rebutted unanswered stands as truth.* United States v. Kis, 658 F.2d 526, 536 (7th Cir. 1981); Cert. Denied, 50 U.S. L. W. 2169; S. Ct. March 22, 1982 1982; “*Allegations in affidavit in support of motion must be considered as true in absence of counter-affidavit.*” Group v Finletter, 108 F. Supp. 327 Federal case of Group v Finletter, 108 F. Supp. 327

¹⁹ “Once challenged, jurisdiction cannot be ‘assumed,’ it must be proved to exist.” [Stuck v. Medical Examiners, 94 Ca2d 751,211 P2s 389] “Jurisdiction, once challenged, cannot be assumed and must be decided.” [Maine v. Thiboutot, 100 S. Ct. 250] “No sanction can be imposed absent proof of jurisdiction” [Stanard v. Olesen, 74 S. Ct.768] “The law requires proof of jurisdiction to appear on the record of the administrative agency and all administrative proceedings” [Hagans v. Lavine, 415 U.S. 528] Other cases also such as McNutt v. G.M., 56 S. Ct. 789,80 L. Ed. 1135, Griffin v. Mathews, 310 Supp. 341, 423 F. 2d 272, Basso v. U.P.L., 495 F 2d. 906, Thomson v. Gaskiel, 62 S. Ct. 673, 83 L. Ed. 111, and Albrecht v U.S., 273 U.S. 1, also all confirm, that, when challenged, jurisdiction must be documented, shown, and proven, to lawfully exist before a cause may lawfully proceed in the courts.

²⁰ “Trial court acts without jurisdiction when it acts without inherent or common law authority, ...” [State v. Rodriguez, 725 A.2d 635, 125 Md.App 428, cert den 731 A.2d 971,354 Md. 573 (1999)]

²¹ Summary proceeding. Any proceeding by which a controversy is settled, case disposed of, or trial conducted, in a prompt and simple manner, without the aid of a jury, without presentment or indictment, or in other respects out of the regular course of the common law. Sweet see Phillips v. Phillips, 8 N.J.L. 122.; The conviction of a person, (usually for a minor misdemeanor,) as the result of his trial before a magistrate or court,- without the intervention of a jury. In these proceedings there is no intervention of a jury, but the party accused is acquitted or condemned by the suffrage of such person only as the statute has appointed to be his judge. A conviction reached on such a magistrate’s trial is called a “summary conviction.” Brown; Blair v. Com., 25 Grat. (Va.) 853.; Summary proceeding. Any proceeding by which a controversy is settled, case disposed of, or trial conducted, in a prompt and simple manner, without the aid of a jury, without presentment or indictment, or in other respects out of the regular course of the common law. Sweet see Phillips v. Phillips, 8 N.J.L. 122.

- 24) Did Grand Jury members answer a questionnaire before being chosen? If so, provide a copy.
- 25) Was there an injured party?²²
- 26) Are there any affidavits from a witness?
- 27) Are there any affidavits from an injured party?
- 28) Did the court ordering the restraint prove on the record that it had jurisdiction²³?
- 29) Prove the jurisdiction of the restraining court.
- 30) Was a lawful warrant²⁴ with probable cause supported by oath with a judges wet ink signature used to secure evidence and/or make an arrest?
- 31) Was the party informed of their Miranda rights before interrogation?

At the Hearing, the Judge shall summarily hear and determine the facts; shall dispose of the matter as law and justice require under American Jurisprudence a/k/a the rules of common law, not chancery. If respondents default the Judge shall confirm release of petitioners and abatement.

Seal

Dated

Name, Petitioner

²² There is a Common Law principle which states that for there to be a crime, there has to be a victim (corpus delicti). In the absence of a victim there can be no crime. Corpus delicti. The body of a crime. The body (material substance) upon which a crime has been committed, e. g., the corpse of a murdered man, the charred remains of a house burned down. In a derivative sense, the substance or foundation of a crime; the substantial fact that a crime has been committed. People v. Dick, 37 Cal. 281; "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.

²³ "Court must prove on the record, all jurisdiction facts related to the jurisdiction asserted." Lantanav. Hopper, 102 F2d 188; Chicagov. New York, 37 F Supp 150.; "The law requires proof of jurisdiction to appear on the record of the administrative agency and all administrative proceedings" Hagans v. Lavine, 415 U.S. 528

²⁴ Amendment IV The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.