No. 13-5008

In The
United States Supreme Court
Fifth Judicial Circuit

In Re Gary Hunt

Gary Hunt, as "next friend",
and on behalf of Larry Mikiel Myers

Demandant,

v.

Jeffery K. Adkins, Supervisor of New Cases,
through
William K. Suter, Clerk,
United States Supreme Court

Respondents

Emergency Petition for Writ of Mandamus to Compel the Clerk of the United States Supreme Court to Deliver a Demand For Writ of Habeas Corpus to Justice Scalia, Fifth Circuit Justice

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Next Friend for Larry Mikiel Myers

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Statement of the Basis for Jurisdiction in the Fifth Circuit Justice of the United States Supreme Court.

A "**Demand for Writ of Habeas Corpus"**, captioned **"In Re Larry Mikiel Myers**" (currently docketed No. 13-5008), has been submitted to the Clerk of the Court, in various forms, beginning in November 2012. It was applied to, both in addressing and in cover letters, the Fifth Circuit Justice (Justice Scalia). In a decision by the named Respondent, it was docketed and directed to the entire Court, foreclosing the Demand being heard as a writ of right and in a timely manner. This is contrary to Rule 22.1, **Rules of the Supreme Court of the United States**. Also, this is established as precedence, by **Ex Parte Merryman**, 17 F. Cas. 144, and, **In Re Lane**, 135 U.S. 443, that the appropriate Justice may hear an Habeas Corpus.

The matter being original jurisdiction to this Court and Circuit, there is no lower court that can provide a remedy.

Statement of Facts

The "Demand for Writ of Habeas Corpus", *ad subjiciendum* was filed under the Common Law, as any statutory or administrative law would deviate from the intent of the Framers of both state and federal constitutions.

This **Emergency Petition for Writ of Mandamus** is also filed under the Common Law.

Larry Mikiel Myers is a citizen of Florida, currently in federal detention.

Gary Hunt, "next friend", holds a Power of Attorney to speak on behalf of Larry Mikiel Myers (Exhibit 1)

Gary Hunt is a citizen of Florida, residing in California.

The "*in forma pauperis*" status has been established in this matter.

A chain of correspondence accompanied submittal of the Demand to this Court:

November 26, 2012 – Hunt to Clerk (Exhibit 2). Petition first submitted, cover letter clearly states that "Larry Mikiel Myers is currently imprisoned in Texas", and requests that the "Petition be given to the appropriate Justice".

December 3, 2012 – Barnes to Hunt (Exhibit 3). Provided instruction regarding requirements for submittal. Did not address caption, nor appropriate Justice.

December 26, 2012 – Hunt to Clerk (Exhibit 4). Argued certain points and addressed delay created by the court. Included the Petition. Note: this letter was returned with the petition, without a cover by the clerk.

March 23, 2013 – Hunt to Scalia (Exhibit 5). Included the Petition.

March 28, 2013 –Travers to Hunt (Exhibit 6). Returned with petition and request for *in forma pauperis* paperwork. Did not address caption, nor appropriate Justice.

April 4, 2013 – Hunt to Travers (Exhibit 7). Referenced phone call and explained why the "Demand for a Writ of Habeas Corpus" should not be docketed, rather, should go to Justice Scalia. Suggested that he contact Justice Scalia regarding docketing. Included *in forma pauperis* paperwork.

April 9, 2013 – Travers to Hunt (Exhibit 8). Returned with "Demand" and claimed that I must be a member of the Bar to file.

May 6, 2013 – Hunt to Clerk (Exhibit 9). Cited Whitmore v. Arkansas, 495 US 149, in support of my right to file as "next friend" to Larry Mikiel Myers. Requested delivery to Justice Scalia, along with a cover letter to Justice Scalia (Exhibit 10).

May 10, 2013 – Barnes to Hunt (Exhibit 11). Returned with reference to letter of December 3, 2012.

May 20, 2013 – Hunt to Atkins (Exhibit 12). Cited 28 USC §2241 – 2243, regarding habeas corpus being heard by any justice, and pointed out timeliness, as per §2243. Requested delivery to Justice Scalia.

June 7, 2013 – Atkins to Hunt (Exhibit 13). Requested *in forma pauperis*, referenced rules, and required service on opposing counsel.

June 19, 2013 – Hunt to Atkins (Exhibit 14). Cited 28 USC §2241 – 2243, and directed delivery to Justice Scalia. Provided *in forma pauperis* and Certificate of Service.

June 27, 2013 – Atkins to Hunt (Exhibit 15). Revised caption to "In Re Gary Hunt "and advised that it was "placed on the docket, June 27, 2013 as No. 13-5008."

July 9, 2013 – Hunt to Atkins (Exhibit 16). Questioned change of caption and docketing to the entire Court. Cited Rule 22.1, US code and various court decisions, explaining the right to be heard by an individual justice. Requested the changes be made. Received no response.

July 29, 2013 – Hunt to Atkins (Exhibit 17). Reiterated previous letter and requested four specific responses. No response received.

As of the date of this Motion, the Respondent has yet to respond to the aforesaid correspondence, and has not properly directed the "Demand" to the appropriate Justice, nor has he provided requested authority for his misdirection of the Demand for Writ of Habeas Corpus or the change in the caption.

Authorities

When we look at the history of Habeas Corpus, we can see the urgency required in the administration of this important writ, as well as the consequences of failure to respond, timely, to the Writ.

With the enactment of the **Habeas Corpus Act** [Act 31 Car. 2, c. 2, 27 May 1679], urgency of the Habeas Corpus was established. There appears to be a presumption that a Justice would grant the Writ and require appearance. Those holding the person detained risk severe penalties for failure to produce the body.

> *V. And be it further enacted by the authority aforesaid, That if any officer or officers, his or their under-officer or under-officers, under-keeper or under-keepers, or deputy, **shall neglect or refuse to make the returns aforesaid**, or to bring the body or bodies of the prisoner or prisoners according to the command of the said writ, **within the respective times aforesaid, or upon demand made by the prisoner or person in his behalf, shall refuse to deliver, or within the space of six hours after demand shall not deliver**, to the person so demanding, a true copy of the warrant or warrants of commitment and detainer*

> *of such prisoner, which he and they are hereby required to deliver accordingly, all and every the head gaolers and keepers of such prisons, and such other person in whose custody the prisoner* ***shall be detained, shall for the first offence forfeit to the prisoner or party grieved the sum of one hundred pounds****; (2) and for the second offence the sum of two hundred pounds, and shall and is hereby made incapable to hold or execute his said office; (3) the said penalties to be recovered by the prisoner or party grieved, his executors or administrators, against such offender, his executors or administrators*

In 1768, **William Blackstone, Commentaries** [3:129--37] provides even more insight into the necessity and requirements associated with this Writ of Right.

> *But the great and efficacious writ in all manner of illegal confinement, is that of habeas corpus ad subjiciendum; directed to the person detaining another, and commanding him to produce the body of the prisoner with the day and cause of his caption and detention, ad faciendum, subjiciendum, et recipiendum, to do, submit to, and receive, whatsoever the judge or court awarding such writ shall consider in that behalf. This is a high prerogative writ, and therefore by the common law issuing out of the court of king's bench* ***not only in term-time, but also during the vacation****, by a fiat from the chief justice or any other of the judges, and running into all parts of the king's dominions: for the king is at all times intitled to have an account, why the liberty of any of his subjects is restrained, wherever that restraint may be inflicted. . .*

Clearly, whether jurisdiction is obvious, or in question, the Court is compelled to Answer, even out of "term-time" or during the "vacation".

Blackstone concludes his Commentary in the Sacred Writ in unequivocal terms:

> *This is the substance of that great and important statute: which extends (we may observe) only to the case of commitments for such criminal charge, as can produce no inconvenience to public justice by a temporary enlargement of the prisoner: all other cases of unjust imprisonment being left to the habeas corpus at common law. But even upon writs at the common law it is now expected by the court, agreeable to antient precedents and the spirit of the act of parliament, that the writ should be immediately obeyed, without waiting for any alias or pluries; otherwise an attachment will issue.*

Not only must the Writ be issued during the vacation, or if outside of term-time, it shall also be "immediately obeyed". Isn't this sufficient to recognize that delay, either by the Court or by the person having custody, is not acceptable?

There is another legal authority that can provide us with insight into the intention of Habeas Corpus, as per the Founding era and our legal heritage. The Honorable Justice **Joseph Story**, "**Commentaries on the Constitution**" [3:§§ 1333--36 (1833)] will provide that insight.

> *§ 1333. In order to understand the meaning of the terms here used,* ***it will be necessary to have recourse to the common law; for in no other way can we arrive at the true definition of the writ of habeas corpus****. At the common law there are various writs, called writs of habeas corpus. But the particular one here spoken of is that great and celebrated*

> *writ, used in all cases of illegal confinement, known by the name of the* ***writ of habeas corpus ad subjiciendum****, directed to the person detaining another, and commanding him to produce the body of the prisoner, with the day and cause of his caption and detention, ad faciendum, subjiciendum, et recipiendum, to do, submit to, and receive, whatsoever the judge or court, awarding such writ, shall consider in that behalf. It is, therefore, justly esteemed the great bulwark of personal liberty; since it is the appropriate remedy to ascertain, whether any person is rightfully in confinement or not, and the cause of his confinement; and if no sufficient ground of detention appears, the party is entitled to his immediate discharge. This writ is most beneficially construed; and is applied to every case of illegal restraint, whatever it may be; for every restraint upon a man's liberty is, in the eye of the law, an imprisonment, wherever may be the place, or whatever may be the manner, in which the restraint is effected.*

Can there be any doubt that absent the right of a citizen's to legal recourse, by Habeas Corpus, to remedy, is a denial of the most fundamental and sacred of all legal remedies? And, can there be any contemplation, at all, that we have somehow failed to carry to the present day this ultimate remedy against overreaching government? Delay, in itself, rises to suspension.

As a final resource of competent legal authority, we will visit **Bouvier's Law Dictionary** [1856], from about the time of the Abelman decision, in part:

> **HABEAS CORPUS**, *remedies A writ of habeas corpus is an order in writing, signed by the judge who grants the same, and sealed with the seal of the court of which he is a judge, issued in the name of the sovereign power where it is granted, by such a court or a judge thereof, having lawful authority to issue the same, directed to any one having a person in his custody or under his restraint, commanding him to produce, such person at a certain time and place, and to state the reasons why he is held in custody, or under restraint.*
>
> * * *
>
> *7. The Constitution of the United State art. 1, s. 9, n. 2, provides, that " the privilege of the writ of habeas corpus shall not be suspended, unless when, in cases of rebellion or invasion, the public safety may require it" and the same principle is contained in many of the state constitutions. In order still more to secure the citizen the benefit of this great writ,* ***a heavy penalty is inflicted upon the judges who are bound to grant it, in case of refusal****.*
>
> * * *
>
> *11. - 3.* ***The person to whom the writ is addressed or directed, is required to make a return to it, within the time prescribed****; he either complies, or he does not. If, he complies, he must positively answer, 1. Whether he has or has not in his power or custody the person to be set at liberty, or whether that person is confined by him; if he return that he has not and has not had him in his power or custody, and the return is true, it is evident that a mistake was made in issuing the writ; if the return is false, he is liable to a penalty, and other punishment, for making such a, false return. If he return that he has such person in his custody, then he must show by his return, further, by what authority, and for what cause, he arrested or detained him.* ***If he does not comply, he is to be considered in contempt of the court under whose seal the writ has been issued, and liable to a severe penalty, to be recovered by the party aggrieved****.*

So, again, we see the obligation of the Court as well as the punitive imposition on person to whom the writ is addressed.

Of the two Habeas Corpus cases filed with the Supreme Court as original jurisdiction, we can see that the appropriate Justice dealt with the matter, rather than the entire Court.

In **Ex Parte Merryman**, 17 F. Cas. 144 (1861) was filed by the Petitioner, John Merryman, with "Circuit Court, D. Maryland, April Term 1861" and was heard by then Chief Justice Roger B. Taney. This was a case with paramount concern regarding the authority to suspend Habeas Corpus, and made clear that only the Congress could suspend Habeas Corpus. The Petition was filed on May 25, 1861. A Writ of Habeas Corpus was issued the next day, on the 26th of May, 1861, commanding that the body be produced on the following day, the 27th of May, 1861. This demonstrates the urgency of proceeding with Habeas Corpus, when this "writ of right" is sought as a remedy, so that the matter can have proper hearing by the judiciary in as timely a manner as possible. It was heard only by Justice Taney, not the entire Court.

In the case, **In Re Lane**, 135 U.S. 443 (1890), filed as original jurisdiction to this Court, and was heard by Justice Miller, not the entire Court.

It is perhaps proper to note that in both of these cases, the caption of the case bore the name of the person detained, though they were represented by other parties. Therefore, the request to change the caption to that which was submitted.

Ableman v. Booth, 62 US 506 (1858) was brought up from the Supreme Court of the state of Wisconsin by a writ of error, and was heard by the entire court.

In Re Tarble, 80 US 397 (1871) was brought up from the Supreme Court of the state of Wisconsin by a writ of error, and was heard by the entire court.

US v. Reese, 92 US 214 (1875) was brought up on error, and heard by the entire court.

Dillon v. Gloss, 256 US 368 (1921) was brought up on appeal from an order denying a petition for writ of habeas corpus, and was heard by the entire court.

Whitmore v. Arkansas, 495 US 149 (1990) was brought on a petition for certiorari, and was heard by the entire court.

Those Habeas Corpus cases brought on Certiorari, Appeal, or Error, were heard by the entire Court.

Clearly, unless a previous decision was being appealed, the urgency of the initial hearing on an Habeas Corpus is the appropriate application of justice, as the urgency of this "sacred writ" warrants immediate action rather than the learned contemplation of the entire Court, along with the inherent delays thereto.

In support of this, we can look at the appropriate statutes regarding Habeas Corpus, to wit:

> **28 U.S.C. § 2241: Power to grant writ**
>
> *(a) Writs of habeas corpus may be granted by the Supreme Court, **any justice thereof**, the district courts and any circuit judge within their respective jurisdictions. The order of a circuit judge shall be entered in the records of the district court of the district wherein the restraint complained of is had.*

Regarding timeliness:

> **28 U.S.C. § 2243: Issuance of writ; return; hearing; decision**
>
> *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, 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 days unless for good cause additional time, not exceeding twenty days, is allowed.*

It appears, as we saw in **Merryman**, the urgency is both precedence and is required by this statute, in that it provides that the "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."

Further, it provides that no more than 20 days be allowed for the person having custody to respond. This, clearly, demonstrates the statutory urgency of hearing this matter - without delay.

As a final resort, we can look to the "**Rules of the Supreme Court of the United States**", which I would assume that the Respondent is familiar with, and bound by, wherein, it states, at **Rule 22.1**:

> *An application addressed to an individual Justice shall be filed with the Clerk, who will transmit it promptly to the Justice concerned if an individual Justice has authority to grant the relief sought.*

Arguments

It is understandable that the Court has certain forms, styles, captions, and other requirements for the proper administration of matters before that Court. However, whenever a prisoner, or merely a citizen has redress regarding a right specifically protected by the Constitution, that right cannot be abrogated as a result of limited financial means. To do otherwise would be to afford to one class the protection of the Constitution, while denying it to another.

Understanding that neither the Court, nor its clerks, can offer legal advice, it is clear by the correspondence that the Court, through the clerk, can provide technical advice. The technical advice provided by the clerk was arbitrarily limited, in that though it was made clear that the Habeas Corpus was submitted (applied to) an individual justice, and, that it was captioned with the name of the detained person, technical instruction was not provided to correct the Habeas Corpus to an acceptable form, though both the Demand for Habeas Corpus and the accompanying correspondence made clear in both these matters. Instead, the clerk changed the caption, noticed only in the letter on docketing, and directed the Demand to the entire Court, contrary to the Demand, as filed, and, contrary to the numerous instructions provided in the correspondence.

Habeas Corpus *ad subjiciendum*, the sacred writ, is one of the few rights included within the body of the Constitution. It was, as such, deemed necessary by the Framers, as an integral part of the government they were forming. So, the first question that must be answered is, does Habeas Corpus ad subjiciendum retain all of the power and force that was intended, absent an amendment removing all, or part, of what was intended by its inclusion? If so, then it must be considered with appreciation of its original intent. If not, then cause must be shown as to the means by which it was reduced to insignificance.

The former will be considered, while it would require someone with knowledge of the latter to justifiably argue its inapplicability.

The Habeas Corpus Act provided that anyone who "*shall neglect or refuse to make the returns aforesaid,...within the respective times aforesaid, or upon demand made by the prisoner or person in*

his behalf, shall refuse to deliver, or within the space of..." would be in violation of the Act, and that in so doing, they would incur, "*for the first offence forfeit to the prisoner or party grieved the sum of one hundred pounds."* How much more forcefully could obedience to the Act be shown, when failure resulted in compensation to the prisoner?

Just a few years prior to the creation of the United States, Blackstone provided that the Habeas Corpus must be heard "*not only in term-time, but also during the vacation*,", again demonstrating the need for urgency in responding to a demand for the Writ.

In 1833, while serving as a Justice on this Court Justice Story provides insight into the need and means by which to keep the sacred writ sacred, telling posterity that "*it will be necessary to have recourse to the common law; for in no other way can we arrive at the true definition of the writ of habeas corpus.*" He continues, *"This writ is most beneficially construed; and is applied to every case of illegal restraint, whatever it may be; for every restraint upon a man's liberty is, in the eye of the law, an imprisonment, wherever may be the place, or whatever may be the manner, in which the restraint is effected.*" Liberty, that object of reverence to those who wished to separate themselves from British despotism, was paramount, and if a question arose as to the legitimacy of such "restraint", it was to be heard by those who have upon them the obligation to assure that the Constitution is adhered to.

In 1858, **Bouvier's Law Dictionary** demonstrates the obligation of the court, where, "*a heavy penalty is inflicted upon the judges who are bound to grant it, in case of refusal."* When addressing the obligation of those detaining one, where the writ is granted, we find that "*If he does not comply, he is to be considered in contempt of the court under whose seal the writ has been issued, and liable to a severe penalty, to be recovered by the party aggrieved.*"

The question of original jurisdiction is addressed in the Demand, however, the distinction between consideration on Habeas Corpus on appeal, certiorari, or error, and, that of original jurisdiction, is at the heart of the current matter. Of the cases cited above, only two were original jurisdiction. One of them, **In Re Lane**, does not provide any insight into timeliness, and any effort to ascribe such would

be conjecture. However, in **Ex Parte Merryman**, we do have an indication of the urgency of hearing, answering and returning, an Habeas Corpus. Repeating what has previously been stated:

The Petition was filed on May 25, 1861. A Writ of Habeas Corpus was issued on the 26th of May, 1861 commanding that the body be produced on the 27th of May, 1861. This demonstrates the urgency of proceeding with Habeas Corpus, when this "writ of right" is sought as a remedy, so that the matter can have proper hearing by the judiciary in as timely a manner as possible.

Just three days, and the body was to be produced, and, that was under the cloud of war.

Now, we come to the modern age. In **28 U.S.C. § 2241**, we find " (a) Writs of habeas corpus may be granted by the Supreme Court, **any justice thereof**, the district courts and any circuit judge within their respective jurisdictions." The statute provides no insight into how the determination as to how the "Supreme Court, and justice thereof, the district courts and any circuit judge" is made. Absent some criteria, it would appear that this is within the desecration of the person filing.

This is supported by **Rules of the Supreme Court of the United States**", specifically, **Rule 22.1**, which states:

> *An application addressed to an individual Justice shall be filed with the Clerk, who will transmit it promptly to the Justice concerned if an individual Justice has authority to grant the relief sought.*

The original submittal to the Supreme Court requested that it be directed to "the appropriate justice". Subsequent submittals were directed to Justice Scalia, Fifth Circuit (Exhibits 2 - 15). Requests for an explanation why this was not done have gone unanswered. (Exhibits 16 - 17)

Regarding timeliness, **28 U.S.C. §** 2243 provides that *"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, unless it appears from the application that the applicant or person detained is not entitled thereto.*" If the Statute provides for an issuance of the writ (if warranted), "forthwith (immediately, as was the case in Merryman), then how can justice be served if the matter, after being accepted by the Clerk, is docketed to some future consideration?

Further, § 2243 provides that once "*directed to the person having custody of the person detained. It shall be returned within three days unless for good cause additional time, not exceeding twenty days, is allowed.*" Together, this statute provides for less than 30 days from application for the Writ to hearing the matter and determining whether the detention is lawful, or not.

The Respondent has arbitrarily redirected the Habeas Corpus to the entire court, in violation of both Statute and Rules, thereby extending the period of denial of liberty to extremes unheard of in our judicial history.

The Rules and Statutes cited are an imposition on the government. They do not act upon the citizen, rather, the are obligations impose upon the government, under the authority of the document that created that government.

In the current matter, the first (attempted) service of habeas corpus was prior to trial, and by every right embodied in the history of Habeas Corpus, should have been heard, answered and returned, prior to proceeding to trial. Instead, the Sheriff, the District Court, and the Circuit Court refused to acknowledge the writ, excusing themselves, or simply not even responding to the service. Through the final effort at the lower court, the Florida Supreme Court determined that they had no jurisdiction. This transpired between January 27, 2012 and May 30, 2012. This constitutes a delay of four months, and the loss of Liberty, without justification.

Subsequently, as the only source of remedy, the Demand was submitted to this court, first on November 26, 2012 (received on December 3, 2012). Subsequently, through six additional submittals, whereby Demandant, through his next friend, finally convinced the Clerk of the Court, the current Respondent, that the right to file the Demand was valid. However, the Respondent, though the application was made to the appropriate Justice for the Fifth Circuit, and was captioned "In Re Larry Mikiel Myers", the Respondent re-captioned the Demand to "In Re Gary Hunt" (as if an attorney's name would be in the caption) and docketed the matter to the entire Court (Docket 13-5008), this, on June 27, 2013. Thereby, six more months were lost in an effort to secure this sacred

right, and it will now sit on the docket until October, when the Court will determine not the cause, rather, whether they will even consider the matter.

Finally, since the Constitution only provides for suspension of Habeas Corpus by the Congress, and only for certain reasons, no other has the right to suspend it.

> **Webster's 1828 dictionary**:
> *Suspended: Hung up; made to depend on; caused to cease for a time; delayed; held undermined; prevented from executing an office or enjoying a right.*

Conclusion:

Demandant requests that the Respondent be directed to immediately remove the Demand for Habeas Corpus, currently docketed as 13-5008, from the Court's docket for review, and "transmit it promptly to the Justice concerned".

That to do otherwise would constitute an unlawful suspension of Habeas Corpus in that it has "delayed" and "caused to cease for a time" that right deemed so sacred by the Framers of our great government.

That he caption the Demand for Writ of Habeas Corpus, as was submitted, "In Re Larry Mikiel; Myers", be corrected in the Court records, as Gary Hunt is acting as a representative, though not an attorney, rather, under power of attorney and as "next friend" of Larry Mikiel Myers.

And, that the clerk do all necessary notice in the record, to the Respondent and Co-Respondents named in the Demand for Writ of Habeas Corpus, and to the Demandant, of the corrections made.

Beyond these above, we seek no further remedy.

_____

Gary Hunt, as next friend, on behalf of Larry Mikiel Myers

This 22nd day of September, in the Year of our Lord, 2013,
and the Year of Our Independence, two hundred and thirty seven

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