

No. 13-5008

In The  
**United States Supreme Court**

**In Re Gary Hunt**

Gary Hunt

Petitioner,

v.

Scott Young, *et al*

Respondents

**Demand for Writ of Habeas Corpus**

**PETITION FOR REHEARING**

Gary Hunt  
25370 Second Avenue  
Los Molinos, California 96055  
(530) 384-0375  
hunt@outpost-of-freedom.com  
Next Friend for Larry Mikiel Myers

October 22, 2013

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## PETITION FOR REHEARING

Petitioner, Larry Mikiel Myers, through "next friend" Gary Hunt, respectfully requests a rehearing of the Court's order dated October 7, 2013, denying his Demand for Writ of Habeas Corpus *ad subjiciendum*, Docket 13-5008.

A court has a legal and constitutional obligation to answer and return a Writ of Habeas Corpus, when demanded. When the District Court refuses to answer and return, the next step is the Circuit Court. When the Circuit Court refuses, in violation of their own Rules, to send the Demand for Habeas Corpus to the District Court, and refuses to answer and return, that leaves only this Supreme Court in which a citizen may find remedy, by answer and return.

This obligation is created by **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.*

*(b) The Supreme Court, any justice thereof, and any circuit judge may decline to entertain an application for a writ of habeas corpus and may transfer the application for hearing and determination to the district court having jurisdiction to entertain it.*

The Constitution is unambiguous in assuring the right of habeas corpus, unless suspended by the Congress. The wording of the Statute (28 U.S.C. § 2241), rather ambiguous with the "may" instead of "shall", however, does not revise the intent of the Constitution. It is merely a way of passing down to a lower Court, which would be an abrogation of responsibility on the part of this Court, as the lower courts have, by their inaction on the habeas corpus, become parties (named Respondents) in the matter before you. If you will not "entertain" this Demand for Habeas Corpus, then who will?

In **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.*

*The person to whom the writ or order is directed shall make a return certifying the true cause of the detention. When the writ or order is returned a day shall be set for hearing, not more than five days after the return unless for good cause additional time is allowed.*

Here, the timeliness of issuing the writ is clearly defined. However, with the chicanery that has been demonstrated by the servants of the public, from the Sheriff through this Court, has resulted in the suspension of habeas corpus from January 2012 through present (21 months), without the constitutionally required, for cause, suspension thereof. No explanation has been provided that the "*person detained is not entitled thereto.*"

An Emergency Petition for Writ of Mandamus was submitted, dated September 22, 2013. The Court received it on September 26, 2013. The Demand for Habeas Corpus was delivered to the entire Court on September 30, 2013. The Mandamus was ignored, without regard to justice. More chicanery?

Absent redress in this Court, Habeas Corpus, the "sacred writ", which right is guaranteed in the Constitution:

*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, (Article I, Section 9, clause 2)*

The Writ and the Constitution are effectively denied, making this Court a conspirator in denial of legal remedy accorded by the Constitution.

If there be technical errors, as the caption, which was arbitrarily changed by the Clerk, that are cause for the denial of the Demand, then we must consider whether justice can be denied to those who cannot afford, nor can they find, an attorney who will resort to the organic Constitution, as the "*supreme Law of the Land,*" (Article VI, clause 2) or whether his "*assistance of counsel for his defence*" (Amendment VI) must be a member of a fraternity that has been subjected to indoctrination by both schools of law and membership in the BAR association and the consequential obedience to a court. The concept of salvation being obtained only through the priesthood was set aside at the founding of this great nation.

If there be technical errors based upon service, not in compliance by the Rules of the Court, can those Rules abrogate a right secured by the Constitution?

In **Whitmore v. Arkansas**, 495 US 149 (1990). This Court, upholding an ancient right, held that another could petition, on behalf of the incarcerated party, for habeas corpus, under certain conditions. In that decision, at 150:

*(c) Whitmore's alternative argument that he has standing as Simmons' "next friend" is also rejected. The scope of any federal "next friend" standing doctrine, assuming that one exists absent congressional authorization, is no broader than the "next friend" standing permitted under the federal habeas corpus statute. Thus, one necessary condition is a showing by the proposed "next friend" that the real party in interest is unable to litigate his own cause due to mental incapacity, lack of access to court, or other similar disability...*

Understanding that Mr. Myers had attempted to demand habeas corpus, and was ignored, he sought a "next friend" whom he could trust, had respect for, and asked for the assistance thereof. He is, by virtue of his incarceration, unable to research, prepare, or submit, documents on his own behalf. His "incapacity" is his own, as well as a consequence of his incarceration. His "lack of access to court", has been demonstrated by his initial effort to demand habeas corpus, and subsequent actions by the lower courts.

The Record will show that though the Respondents were served, none have made a response to the Demand. This leaves only the Demand on the Record, and upon that Demand, only, can determination be made as to the legitimacy of the Demand for Habeas Corpus.

Absent such response, and having only before the Court, the Demand, how is it that such a sacred doctrine of jurisprudence can be set aside by a swish of the pen, "Denied"? Are words of the document that created this august body, this Supreme Court, to be swept aside? If so, can that sweeping be selective, or is there a deeper consequence?

To review the relationship of the Constitution, the government created thereby, and the people, we can look to what Justice Marshall said, in **Marbury v. Madison**, 5 US 137 (1803):

*Certainly all those who have framed written constitutions contemplate them as forming the fundamental and paramount law of the nation, and consequently the theory of every such*

*government must be, that **an act of the legislature repugnant to the constitution is void.***

Obviously, his comment addressed only the Legislative Branch. However, we can do no less than recognize that it also applied to the Executive, and, especially, the Judicial Branch, whether by statute or by rules, as the latter is held to make final determination as to the constitutionality of any act, or, without question, any action, which is in violation of the Constitution.

What, then, is the consequence of such a failure of obedience to the Constitution, as Justice Marshall affirmed, at least with regard to an act of the legislature? In a case that predates the Constitution, the North Carolina Supreme Court provides an answer.

The North Carolina Supreme Court addressed the state legislature enacting a law that was in contradiction to the state constitution, when they said, in **Bayard v. Singleton**, 1 N.C. 42 (1787):

*But that it was clear that no act they could pass could by any means repeal or alter the constitution, because **if they could do this, they would at the same instant of time destroy their own existence as a legislature and dissolve the government thereby established.***

Interestingly, they recognized that should such a law be upheld, it would have the effect of dissolving the government created by the North Carolina Constitution, because that government violated the instrument of its own creation. Does that concept also apply to the United States Constitution? Does it also extend to the Judicial Branch, if they abrogate their responsibility to uphold the Constitution with regard to the rights protected thereby? Clearly, it cannot be perceived in any other way.

## CONCLUSION

This Court must grant the Rehearing requested, or it would abrogate its responsibility under Article III of the Constitution as the "judicial Power of the United States" (Article III, clause 1), as explained

by Justice Marshall and subsequent decisions by this Court. It would also, by inaction, be usurping the sole authority to suspend habeas corpus from the Congress, where the Constitution places it.

This Court must hear, answer, and return, the Demand for Habeas Corpus, based upon that which has been submitted to the Court in the Demand for Habeas Corpus, and any responses thereto by named Respondents, or give cause otherwise. To fail to do so would be a breach of the trust of the people in the creation of the Constitution, and would, as stated in both **Marbury** and **Bayard**, have the effect of dissolving the government created by the Constitution.

To Deny this Petition is to Deny the obligation on government created by Article I, Section 9, clause 2. To Deny to answer and return the Demand for Habeas Corpus is to Deny the Constitution, itself - and the government created thereby.

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Gary Hunt, as next friend, for Larry Mikiel Myers  
This 22nd day of October, in the Year of our Lord, 2013,  
and the Year of Our Independence, two hundred and thirty seven  
25370 Second Avenue  
Los Molinos, California 96055  
(530) 384-0375  
hunt@outpost-of-freedom.com



**CERTIFICATE OF COUNSEL**

As counsel of record in this matter, I hereby certify that this petition for rehearing is presented in good faith and not for delay and is restricted to the grounds specified in Rule 44.2.

I further certify that the grounds of this petition are limited to intervening circumstances of substantial or controlling effect or to other substantial grounds not previously presented.

By: \_\_\_\_\_

Gary Hunt, as next friend, for Larry Mikiel Myers

This 1st day of November, in the Year of our Lord, 2013,  
and of Our Independence, two hundred and thirty seven