No. _____

In The
United States Supreme Court

In Re Larry Mikiel Myers

Gary Hunt (next friend),
on behalf of Larry Mikiel Myers

Demandant,

v.

Scott Young, Warden,
Texarkana Federal Correctional Institute

Respondent

Sheriff Bob Gualtieri, Pinellas County

Judge Steven Merryday,
U. S. District Court for the Middle District of Florida

John Ley, Clerk of Court,
U.S. Court of Appeals for the 11th Circuit

Thomas D. Hall, Clerk of the Court
Supreme Court of Florida

Co-Respondents

Demand for Writ of Habeas Corpus

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Next Friend for Larry Mikiel Myers

June 19, 2013

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Statement of the Basis for Jurisdiction in this Court.

On, or before, January 27, 2012, Larry Mikiel Myers attempted service of his Demand for habeas corpus (see Appendix Exhibit 1). This same Demand was then mailed to Sheriff Bob Gualtieri. No answer was ever received.

The trial of Larry Mikiel Myers began on February 6, 2012, after his demand to challenge jurisdiction. Proceeding with the trial was ignorant of the right protected by the Constitution.

Subsequently, the Demandant, acting on behalf of Larry Mikiel Myers, under authority of a Power of Attorney (see Appendix Exhibit 14), served Sheriff Gualtieri, Judge Merryday of the United States District Court for the Middle District of Florida, the Clerk of the 11th Circuit Court of Appeals, and the Clerk of the Florida Supreme Court, which service was received on February 12, 2012. See Appendix Exhibits 2, 3, 4, and 5.

Efforts to achieve intervention by the Florida Supreme Court continued through April 18, 2012. That Court refused to intervene, claiming lack of jurisdiction. See Appendix Exhibits 6, 7, 8, 9, 10 and 13.

The 11th Circuit Court of Appeals, in violation of their own **Federal Rules of Appellate Procedure** (FRAP) 22, returned the Demand for Habeas Corpus to the Demandant, rather than to the District Court, as required by said rules. See Appendix Exhibits 11 and 12.

Finding only ignorance, with regard to the Demand for Habeas Corpus, this left only the venue of the United States Supreme Court, in which to seek remedy (a right under the Constitution). Absent original jurisdiction, in this matter, in this Court, we find no access to judgment on the validity of the Demand for Habeas Corpus. Finding no legislative suspension of "the Privilege of the Writ of Habeas Corpus", and the failure of the lower courts to answer and return this Demand for Habeas Corpus, there can be no alternative than to assume, from the facts, that original jurisdiction can only be had in this Court.

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In an effort to seek this remedy, the Demandant has run into a wall of bureaucratic obstruction, with regard to the Demand for Habeas Corpus, within the United States Supreme Court, as well. Rather than elucidating the details of this obstruction, I will refer the Court to the correspondence files of clerk Redmond K. Barnes, clerk Jacob C. Travers, and supervisor Jeffrey Atkins, from November 26, 2012 to present.

With regard to these impediments to justice, I will note that in an effort to secure the rights protected by the Constitution, one must submit to a particular grade of people, rather than to be able to present his own case, in support of those rights, makes one less than a freeman and wholly dependent upon another, for rights that are his own.

Where, in the Constitution, is the requirement of submission to that other grade? If rights are secured by the Constitution, they cannot be subordinated to a reliance on an attorney and the inherent costs thereto, dependent upon his abilities -- which abilities are greater proportionate to the fee required, leaving only for the wealthy a proper access to the judicial system.

In this current matter, 16 months of detention, and effort, to secure the right of Larry Mikiel Myers to Habeas Corpus, amounts to suspension of that right, without the requisite conditions required by Article I, Section 9, clause 2 (Rebellion or Invasion).

At the time of the ratification of the Constitution, penalties were imposed for failure, by agents of government, to respondent, timely, to Habeas Corpus.

In **28 U.S.C. §2242**, we find that the "court, justice or judge" must award the writ, "forthwith" (immediately). We also find that the person having custody shall return, "within three days unless for good cause additional time, not exceeding 20 days, is allowed."

However, unlike most statutes directed at the common people, which define both type of crime and penalty, we find that statutes imposing time limits upon officers or agents of government fail to

address type of crime or punishment, causing one to wonder whether there was ever any intent to make these time limits enforceable.

Statement of Facts

This Habeas Corpus *ad subjiciendum* is 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.

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

Gary Hunt holds a Power of Attorney to speak on behalf of Larry Mikiel Myers (Exhibit 14)

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

August 18, 2011, Larry Mikiel Myers was booked into the Pinellas County, Florida, Jail, under presumed federal authority.

Prior to January 27, 2012, Larry Mikiel Myers attempted service of his Demand for Habeas Corpus to at least two corrections officers (gaolers), who refused to accept service (Exhibit 1).

On January 27, 2012, Larry Mikiel Myers mailed, through the jail system, his Demand for Habeas Corpus to Sheriff Bob Gualtieri.

From February 6 through February 9, 2012, Larry Mikiel Myers stood trial in the United States District Court for the Middle District of Florida, Judge Steven Merryday presiding,

On February 9, 2012, Larry Mikiel Myers was convicted of violation of: 18 U.S.C. §371; 18 U.S.C. §372; 18 U.S.C. §876; and, 18 U.S.C. §1503.

On February 12, 2012, Sheriff Gualtieri, Judge Merryday, the Clerk of the 11th Circuit Court of Appeals, and the Florida Supreme Court were served Habeas Corpus via Certified Mail, Return Receipt (Exhibits 2, 3, 4 and 5).

Larry Mikiel Myers was released to the U. S. Marshall Service on February 18, 2012 and transferred to Citrus County Detention Facility, 2604 West Woodland Ridge Drive, Lecanto, Florida. After sentencing, he was removed to, and is currently detained at, Federal Correctional Institution, Texarkana, Texas.

Correspondence with the Florida Supreme Court February 20 through April 18, 2012 (Exhibits 6, 7 and 8)

The Clerk of the 11th Circuit Court of Appeals replied to the Demand as if it were a matter other than the Sacred Writ (Exhibit 11)

On May 14, 2012, the Florida Supreme Court received and filed a Motion for Habeas Corpus stamped "FILED", dated, though no signature affixed thereto. (Exhibits 9 and 10).

Response to 11th Circuit Court of Appeals, May 21, 2012 (Exhibit 12)

On May 30, 2012, the Florida Supreme Court refused to hear a Motion for Habeas Corpus (Exhibit 13)

On March 12, 2012, Larry Mikiel Myers Power of Attorney to Gary Hunt (Exhibit 14)

Authority

With regard to the role of the judiciary in Habeas Corpus:

Florida Constitution, Article I, Declaration of Rights, Section 13:

> *"Habeas corpus.--The writ of habeas corpus shall be grantable of right, freely and without cost. It shall be returnable **without delay**, and shall never be suspended unless, in case of rebellion or invasion, suspension is essential to the public safety.*

United States Constitution, **Article I, Section 9, clause 2**:

> *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.*

In order to establish a foundation from which this Court might answer and return this Habeas Corpus, we must visit both Florida Constitution and precedence established by the United States Supreme Court.

To the former, the applicable section of the **Florida Constitution** is Article V, Section 3(b) (6):

> *May review a question of law certified by the Supreme Court of the United States or a United States Court of Appeals which is determinative of the cause and for which there is no controlling precedent of the supreme court of Florida.*

In this instance, since the United States Court of Appeals for the 11th Circuit has failed to answer and return the Demand for Habeas Corpus, it would appear that: (1) They do not recognize this Demand as within their jurisdiction; or, (2), the have failed to abide by the United States Constitution. Since it has not been answered and returned, that absence speaks clearly of either of the above. And, surely, there is no controlling precedence in the Florida Supreme Court.

Further, Article V, Section 3(b) (7), (8), & (9):

> *May issue writs of prohibition to courts and all writs necessary to the complete exercise of its jurisdiction.*
>
> *May issue writs of mandamus and quo warranto to state officers and state agencies.*
>
> *May, or any justice may, issue writs of habeas corpus returnable before the supreme court or any justice, a district court of appeal or any judge thereof, or any circuit judge.*

The issuance of the appropriate writ, to any officers or agencies of the state is the proper exercise under the circumstances set forth herein. Larry Mikiel Myers was in the custody of State officers at the first service of this Petition.

Regarding Precedence, there are a number of United States Supreme Court decisions that establish the extent of federal jurisdiction in such cases. The first is **Abelman v. Booth,** 62 U.S. 506 (1858). Justice Taney, in the Decision of the Court, said, [at 519]:

> *The same purposes are clearly indicated by the different language employed when conferring supremacy upon the laws of the United States, and jurisdiction upon its courts. In the first case, it provides that 'this Constitution, and the laws of the United States* ***which shall be made in pursuance thereof,*** *shall be the supreme law of the land, and obligatory upon the judges in every State.' ...****The sovereignty to be created was to be limited in its powers of legislation, and if it passed a law not authorized by its enumerated powers, it was not to be regarded as the supreme law of the land, nor were the State judges bound to carry it into execution.*** ...

Clearly, if it is not regarded as the "supreme law of the land", there is an absence of federal jurisdiction, at 520,521, he says:

> *This judicial power was justly regarded as indispensable, not merely to maintain the supremacy of the laws of the United States,* ***but also to guard the States from any encroachment upon their reserved rights by the General Government****. And as the Constitution is the fundamental and supreme law,* ***if it appears that an act of Congress is not pursuant to and within the limits of the power assigned to the Federal Government, it is the duty of the courts of the United States to declare it unconstitutional and void****. The grant of judicial power is not confined to the administration of laws passed in pursuance to the provisions of the Constitution, nor confined to the interpretation of such laws; but, by the very terms of the grant, the Constitution is under their view when any act of Congress is brought before them, and it is their duty to declare the law void, and refuse to execute it, if it is not pursuant to the legislative powers conferred upon Congress. . .*

The United States Supreme Court, then, is to judge the Constitutionality of any law. However, to do so, the must also hear the matter. Habeas Corpus being the proper means of challenging such jurisdiction, only by Habeas Corpus can such a challenge be made. However, in Abelman there is no record that Booth attempted to serve a Habeas Corpus in the federal courts. Had he done so, the wording of the decision of the Court would have been decided differently. However, the Wisconsin Supreme Court did see fit to challenge the constitutionality of the Fugitive Slave Act.

Clearly, the **Fugitive Slave Act of 1850** has that nexus, for the Constitution states, in Article IV, Section 2, clauses 2, 3:

> *A Person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on Demand of the executive Authority of the*

> *State from which he fled, be delivered up, to be removed to the State having Jurisdiction of the Crime.*
>
> *No Person held to Service or Labour in one State, under the Laws thereof, escaping into another, shall, in Consequence of any Law or Regulation therein, be discharged from such Service or Labour, but shall be delivered up on Claim of the Party to whom such Service or Labour may be due.*

Finally, as has been referred to by this Court, in **Abelman**, at 515,516:

> *There can be no such thing as judicial authority, unless it is conferred by a Government or sovereignty; and if the judges and courts of Wisconsin possess the jurisdiction they claim, they must derive it either from the United States or the State. It certainly has not been conferred on them by the United States; and it is equally clear it was not in the power of the State to confer it, even if it had attempted to do so; for no State can authorize one of its judges or courts to exercise judicial power, by habeas corpus or otherwise, within the jurisdiction of another and independent Government. And although the State of Wisconsin is sovereign within its territorial limits to a certain extent, yet that sovereignty is limited and restricted by the Constitution of the United States. And the powers of the General Government, and of the State, although both exist and are exercised within the same territorial limits, **are yet separate and distinct** sovereignties, acting separately and independently of each other, within their respective spheres.*

Here, we must ask where that line of distinction falls? Who is to determine that fine line, if not the judiciaries of both governments? And, absent involvement by the state government, is it to be left solely to the federal government to define just how far over that line they wish to reach?

Just thirteen years later, the same Court, the Wisconsin Supreme Court, saw fit, once again, to challenge the constitutionality of another detention by federal agents. However, the United States Supreme Court ruled that since he had enlisted and was a member of the Army, the Constitutional nexus was existent.

In Re Tarble, 80 U.S. 397 (1871), deals with a Habeas Corpus filed in Wisconsin and upheld by the Supreme Court of the State of Wisconsin. So, once again, Wisconsin trod upon ground previously tread upon in **Abelman**, where they had been overturned. Evidently, that Court saw fit to challenge federal jurisdiction whenever it was perceived to exist in contradiction to the Constitution, and, only by such test could they obtain a definitive ruling to that effect.

At 397,398:

> *This was a proceeding on habeas corpus for the discharge of one Edward Tarble, held in the custody of a recruiting officer of the United States as an enlisted soldier, on the alleged*

> *ground that he was a minor, under the age of eighteen years at the time of his enlistment, and that he enlisted without the consent of his father.*

Surely, this second decision by the Wisconsin Court was decided, as explained, because the youth, Tarble, was not yet 18 years of age, so the question arose as to whether the contract to enter the military service was valid. That would leave question, if the Wisconsin Court were correct, as to the existence of the nexus directly to the United States Constitution. The decision, however, establishes the validity of that nexus.

That nexus to the Constitution is quite clear in Article I, Section 8, clause 12, and, Article II, Section 2, clause 1, to wit:

> *To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years;*
>
> *The President shall be Commander in Chief of the Army and Navy of the United States...*

For Congress to raise and support Armies, there must be a degree of control over the resources and obligations of that Army. As the President, as Commander in Chief, there can be no doubt as to the implications of jurisdiction over the members of the Army, once they have enlisted and are still under that enlistment.

Though the Court opinion also implied that there was no circumstance where a state could grant Habeas Corpus that was within the narrow confines of Tarble. Even so, the Chief Justice, in a dissenting opinion, stated [at 412]:

> ***I have no doubt of the right of a State court to inquire into the jurisdiction of a Federal court upon habeas corpus, and to discharge when satisfied that the petitioner for the writ is restrained of liberty by the sentence of a court without jurisdiction.*** *If it errs in deciding the question of jurisdiction, the error must be corrected in the mode prescribed by the 25th section of the Judiciary Act;* ***not by denial of the right to make inquiry.***

Absent such ability of the states to challenge jurisdiction, at least when there is no direct Constitutional nexus, would result in the states and the people subjecting themselves to absolute federal despotism. This, clearly, was not the intent in either **Tarble**, or, the Constitution.

This, then, leads us to a consideration of the extent of federal legislative authority. This question of challenge of jurisdiction, based upon Constitutional authority, comes to us just four years afterword in **U. S. v. Reese,** 92 U.S. 214 (1875). Though this case does not deal with Habeas Corpus, it does address the matter of nexus to the Constitution and legislative authority. It will demonstrate that even with the nexus, absent explicit authority, the nexus is not sufficient to establish proper jurisdiction.

At 215, 216:

> *This case comes here by reason of a division of opinion between the judges of the Circuit Court in the District of Kentucky. It presents an indictment containing four counts, under sects. 3 and 4 of the act of May 31, 1870 (16 Stat. 140), against two of the inspectors of a municipal election in the State of Kentucky, for refusing to receive and count at such election the vote of William Garner, a citizen of the United States of African descent.*

Since the **Fifteenth Amendment** had been ratified prior to **Reese**, the nexus was created by that Amendment to the Constitution. The nexus exists, and, is confirmed by the decision of the Court, at 217,218:

> ***Rights and immunities created by or dependant upon the Constitution of the United States can be protected by Congress.*** *The form and the manner of the protection may be such as Congress, **in the legitimate exercise of its legislative discretion**, shall provide. These may be varied to meet the necessities of the particular right to be protected.*
>
> ***The Fifteenth Amendment does not confer the right of suffrage upon any one.*** *It prevents the States, or the United States, however, from giving preference, in this particular, to one citizen of the United States over another on account of race, color, or previous condition of servitude. Before its adoption, this could be done. It was as much within the power of a State to exclude citizens of the United States from voting on account of race, &c., as it was on account of age, property or education. Now it is not. If citizens of one race having certain qualifications are permitted by law to vote, those of another having the same qualifications must be. Previous to this amendment, there was no constitutional guaranty against this discrimination: now there is. **It follows that the amendment has invested the citizens of the United States with a new constitutional right which is within the protecting power of Congress.** That right is exemption from discrimination in the exercise of the elective franchise on account of race, color, or previous condition of servitude. This, under the express provisions of the second section of the amendment, Congress may enforce by 'appropriate legislation.'*

However, in the decision, it is determined that the statutory enactment based upon the nexus, the Fifteenth Amendment, is to broadly written as to come within the authority granted by the Amendment. The decision brings into question whether Sections three and four of the **Act of**

Congress, Act of May 31, 1870 (16 Stat; 140), are within the authority of the Congress based upon the Fifteenth Amendment. At 218:

> . *It has not been contended, nor can it be, **that the amendment confers authority** to impose penalties for every wrongful refusal to receive the vote of a qualified elector at State elections. It is only when the wrongful refusal at such an election is because of race, color, or previous condition of servitude, that Congress can interfere, and provide for its punishment. If, therefore, the third and fourth sections of the act are beyond that limit, they are unauthorized.*

And, at 219:

> *The statute contemplates a most important change in the election laws. Previous to its adoption, the States, as a general rule, regulated in their own way all the details of all elections. They prescribed the qualifications of voters, and the manner in which those offering to vote at an election should make known their qualifications to the officers in charge... This is a radical change in the practice, and the statute which creates it should be explicit in its terms. Nothing should be left to construction, if it can be avoided. The law ought not to be in such a condition that the elector may act upon one idea of its meaning, and the inspector upon another.*

And, at 220 - 222:

> *There is no attempt in the sections [of the Amendment] now under consideration to provide specifically for such an offence. If the case is provided for at all, it is because it comes under the general prohibition against any wrongful act or unlawful obstruction in this particular. We are, therefore, directly called upon to decide whether a penal statute enacted by Congress, with its limited powers, which is in general language broad enough to cover wrongful acts without as well as within the constitutional jurisdiction, can be limited by judicial construction so as to make it operate only on that which Congress may rightfully prohibit and punish. For this purpose, we must take these sections of the statute as they are. **We are not able to reject a part which is unconstitutional, and retain the remainder, because it is not possible to separate that which is unconstitutional, if there be any such, from that which is not**... The language is plain. There is no room for construction, unless it be as to the effect of the Constitution. The question, then, to be determined, is, whether we can introduce words of limitation into a penal statute so as to make it specific, when, as expressed, it is general only.*
>
> *It would certainly be dangerous if the legislature could set a net large enough to catch all possible offenders, and leave it to the courts to step inside and say who could be rightfully detained, and who should be set at large. This would, to some extent, substitute the judicial for the legislative department of the government. The courts enforce the legislative will when ascertained, **if within the constitutional grant of power**. Within its legitimate sphere, Congress is supreme, and beyond the control of the courts; but if it steps outside of its constitutional limitations, and attempts that which is beyond its reach, the courts are authorized to, and when called upon in due course of legal proceedings, must, annul its encroachments upon the reserved power of the States and the people.*

Therefore, in Reese, we see that though a nexus does exist between the Constitution and the matter before the Court, the authority of the Congress, to act within the explicit grant of power, or

authority, within the Constitution (15th Amendment), does not grant them legislative authority outside of that which was explicitly granted.

With regard to both habeas corpus and jurisdiction, we can look at **In Re Lane,** 135 U.S. 443 (1890), which will touch on the very heart of the instant matter.

Justice Miller provided the decision to deny habeas corpus.

> *1 This is a petition by Charles Mason Lane, addressed to the original jurisdiction of this court, for a writ of habeas corpus. Upon the filing of the petition a rule was issued upon Charles H. Case, warden of the penitentiary of the state of Kansas, who, it was alleged, held the petitioner in unlawful imprisonment. Case made a return to this rule, in which he said that the prisoner was held under a mittimus issued from the office of the clerk of the district court of the United States in and for the district of Kansas, and accompanying the return was a certified copy of the proceedings in that court under which Lane was held. From this it appears that the following indictment was found in that court at its September term, 1889:*

Original Jurisdiction was affirmed and the habeas corpus was answered and return by one Justice. Lane was convicted by jury trial and sentenced to serve 5 years in prison.

> *5 There is really but one question, out of the several grounds of relief sought in this case, that is a proper subject for this court. By the act of congress approved February, 9, 1889, c. 120, (25 St. 658,) under which defendant is indicted and convicted, it is provided 'that every person who shall carnally and unlawfully know any female under the age of sixteen years, or who shall be accessory to such carnal and unlawful knowledge before the fact, in the District of Columbia or other place, except the territories, over which the United States has exclusive jurisdiction, or on any vessel within the admiralty or maritime jurisdiction of the United States, and out of the jurisdiction of any state or territory, shall be guilty of a felony, and when convicted thereof shall be punished by imprisonment at hard labor, for the first offense, for not more than fifteen years, and for each subsequent offense not more than thirty years.' The offense with which the petitioner is here charged is alleged in the indictment to have been committed within that part of the Indian Territory commonly known as 'Oklahoma,' and it is alleged in the indictment that this a district of country under the exclusive jurisdiction of the United States, and within the jurisdiction of the district court of Kansas. The counsel for prisoner contend that this is a territory, within the exception of the act of congress of 1889; that, therefore, this act does not apply to the case; and that, there being no other act of congress punishing a party for carnal and unlawful knowledge of a female under the age of 16 years, the court was without jurisdiction to try or to sentence the prisoner. But we think the words 'except the territories' have reference exclusively to that system of organized government long existing within the United States, by which certain regions of the country have been erected into civil governments. These governments have an executive, a legislative, and a judicial system. They have the powers which all these departments of government have exercised, which are conferred upon them by act of congress; and their legislative acts are subject to the disapproval of the congress of the United States. They are not in any sense independant governments. They have no senators in congress, and no representatives in the lower house of that body except what are called 'delegates,' with limited functions. Yet they exercise nearly all the powers of government under what are generally called 'organic acts,' passed by congress, conferring such powers on them. It is this class of governments, long known by the name of 'territories,' **that the act of congress excepts from the operation of***

> ***this statute, while it extends it to all other places over which the United States have exclusive jurisdiction.*** *Oklahoma was not of this class of territories. It had no legislative body. It had no government. It had no established or organized system of government for the control of the people within its limits, as the territories of the United States have, and have always had. We are therefore of opinion that the objection taken on this point by the counsel for prisoner is unsound.*

The statute provides a limitation on the jurisdiction of the enactment, which is also apparent in the statute of 1825 , to wit:

> ***An Act more effectually to provide for the punishment of certain crimes against the United States, and for other purposes.*** (March 3, 1825
>
> *"That if any person or persons, within any fort, dock-yard, navy-yard, arsenal, armory, or magazine, the site whereof is ceded to,* ***and under the jurisdiction of the United States****, or on a site of any lighthouse, or other needful building belonging to the United States, the sight whereof is ceded to them [United States},* ***and.under their jurisdiction****, as aforesaid, shall, willfully..."*

and is presumed, by this Act, to be a limitation on the jurisdiction for enactment of statutes, by the Congress, to avoid duplicity in jurisdiction. If a State or Territory has executive, legislative, and judicial branches, it is theirs to exercise the administration of justice. With that in mind, is it possible that absent such a qualifier, "*in the District of Columbia or other place, except the territories, over which the United States has exclusive jurisdiction, or on any vessel within the admiralty or maritime jurisdiction of the United States, and out of the jurisdiction of any state or territory*" that the qualification is still valid and applicable to any law enacted by the Congress which would otherwise presume to override the legislative authority reserved by the States, and is indicative of the limitation of the powers and authorities granted to the general government by the Constitution, absent the establishment of an individual's relationship to the general government by other means?

Absent such authority, either that presumed by statehood or conferred by Congress to a Territory, the jurisdiction is granted by the Constitution by either Article I, Section 8, clause 17, or, by Article IV, Section 3, clause 2. These, then, are the extent of jurisdiction by the District Courts, absent a clear authority granted by the Constitution.

With regard to Habeas Corpus (*ad subjiciendum*):

When we look at the history of Habeas Corpus, we can see the significance, and importance, of the writ as being a protection for the people from judicial misdeeds, even to the point of imposing severe penalties on those who did not answer 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.

> *In the court of king's bench **it was, and is still, necessary to apply for it by motion to the court, as in the case of all other prerogative writs** (certiorari, prohibition, mandamus, &c) which do not issue as of mere course, without shewing some probable cause why the extraordinary power of the crown is called in to the party's assistance. For, as was argued by*

> *lord chief justice Vaughan, "**it is granted on motion, because it cannot be had of course; and there is therefore no necessity to grant it: for the court ought to be satisfied that the party hath a probable cause to be delivered"**.... On the other hand, **if a probable ground be shewn, that the party is imprisoned without just cause, and therefore hath a right to be delivered, the writ of habeas corpus is then a writ of right, which "may not be denied, but ought to be granted to every man that is committed, or detained in prison, or otherwise restrained, though it be by the command of the king, the privy council, or any other."***
>
> *In a former part of these commentaries we expatiated at large on the personal liberty of the subject. It **was shewn to be a natural inherent right**, which could not be surrendered or forfeited unless by the commission of some great and atrocious crime, nor ought to be abridged in any case without the special permission of law. A doctrine co-eval with the first rudiments of the English constitution; and handed down to us from our Saxon ancestors, notwithstanding all their struggles with the Danes, and the violence of the Norman conquest: asserted afterwards and confirmed by the conqueror himself and his descendants: **and though sometimes a little impaired by the ferocity of the times, and the occasional despotism of jealous or usurping princes**, yet established on the firmest basis by the provisions of magna carta, and a long succession of statutes enacted under Edward III. To assert an absolute exemption from imprisonment in all cases, is inconsistent with every idea of law and political society; and in the end would destroy all civil liberty, by rendering it's protection impossible: but the glory of the English law consists in clearly defining the times, the causes, and the extent, when, wherefore, and to what degree, the imprisonment of the subject may be lawful. **This induces an absolute necessity of expressing upon every commitment the reason for which it is made; that the court upon an habeas corpus may examine into its validity; and according to the circumstances of the case may discharge, admit to bail, or remand the prisoner.***

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. By which admirable regulations, judicial as well as parliamentary, the remedy is now complete for removing the injury of unjust and illegal confinement. **A remedy the more necessary, because the oppression does not always arise from the ill-nature, but sometimes from the mere inattention of government.***

As a soon to be Great Nation is founded, those who framed the Constitution saw fit to specifically carry forward, and secure rights against "inattentive government", as a part of the Constitution.

From the Constitutional Convention, we have **Madison: Records of the Federal Convention**, 2:334; Journal, 20 August.

> *"The privileges and benefits of the writ of habeas corpus shall be enjoyed in this government in the most expeditious and ample manner: and shall not be suspended*

by the Legislature, except upon the most urgent and pressing occasions, and for a limited time, not exceeding [blank] months."

"Expeditious and ample" are easily understood, and, clearly, the intention of the inclusion of the "Sacred Writ" within the protection of the Constitution. Being the only "right" defined as a "privilege", we need simply understand that it is the only enumerated right that is subject to legislative suspension, though only legislative.

William Rawle, in **"A View of the Constitution of the United States"** 117--19 (1829), provides us insight into the perception of the Writ just forty years after the Ratification of the Constitution, and, clearly, as it was envisioned at the time.

•

Reasons will be given hereafter for considering many of the restrictions, contained in the amendments to the Constitution, as extending to the states as well as to the United States, but ***the nature of the writ of habeas corpus*** *seems peculiarly to call for this construction.* ***It is the great remedy of the citizen or subject against arbitrary or illegal imprisonment; it is the mode by which the judicial power speedily and effectually protects the personal liberty of every individual, and repels the injustice of unconstitutional laws or despotic governors. After erecting the distinct government which we are considering, and after declaring what should constitute the supreme law in every state in the Union, fearful minds might entertain jealousies of this great and all-controlling power, if some protection against its energies when misdirected, was not provided by itself.***

The national code in which the writ of habeas corpus was originally found, is not expressly or directly incorporated into the Constitution.

If this provision had been omitted, the existing powers under the state governments, none of whom are without it, might be questioned, and a person imprisoned on a mandate of the president or other officer, under colour of lawful authority derived from the United States, might be denied relief. *But* ***the judicial authority, whether vested in a state judge, or a judge of the United States, is an integral and identified capacity; and if congress never made any provision for issuing writs of habeas corpus, either the state judges must issue them, or the individual be without redress... that congress, which has authorized the courts and judges of the United States to issue writs of habeas corpus in cases within their jurisdiction, can alone suspend their power, and that no state can prevent those courts and judges from exercising their regular functions, which are, however, confined to cases of imprisonment professed to be under the authority of the United States. But the state courts and judges possess the right of determining on the legality of imprisonment under either authority.***

So, **Rawle** has explained to us that the federal government can, "*under colour of lawful authority*", imprison a person. And, that only the state court can provide a remedy for such unlawful detention.

However, this does not seem to square with **Abelman v. Booth** (1858)], however, the context of **Abelman** does not dispute **Rawle's** conclusion.

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?

As a final resource of competent legal authority, we will visit **Bouvier's Law Dictionary** (1856), from about the time of the Abelman decision [1858], 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.*
>
> * * *
>
> *5. **...to pray a habeas corpus for his enlargement, may apply by any one in his behalf, ... to a judicial officer for the writ of habeas corpus, and the officer, upon view of the copy of the warrant of commitment, or upon proof of denial of it after***

due demand, must allow the writ to be directed to the person in whose custody the party is detained, and made returnable immediately before him. And ..., any of the said prisoners may obtain his writ of habeas corpus, by applying to the proper court.

* * *

7. The Constitution of the United State Article 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.***

9. - 1. ***The writ is to be granted whenever a person is in actual confinement, committed or detained as aforesaid, either for a criminal charge, or, ...under any color or pretence whatsoever****...*

10. - 2. ***The writ may be served by any free person, by leaving it with the person to whom it is directed, or left at the gaol or prison with any of the under officers, under keepers, or deputy of the said officers or keepers****...*

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****.*

12. - 4. When the prisoner is brought, before the judge, his judicial discretion commences, and he acts under no other responsibility than that which belongs to the exercise of ordinary judicial power. The judge or court before whom the prisoner is brought on a habeas corpus, examines the return and Papers, if any, referred to in it, and if no legal cause be shown for the imprisonment or restraint; or if it appear, although legally committed, he has not been prosecuted or tried within the periods required by law, or that, for any other cause, the imprisonment cannot be legally continued, the prisoner is discharged from custody....

With regard to Jurisdiction:

Now, let us look in to the matter of jurisdiction. First, we might look at what the Framers of the Constitution, and others of that era, perceived as limitation on jurisdiction. In an Act of Congress, ***"An Act more effectually to provide for the punishment of certain crimes against the United States, and for other purposes",*** the protection of government property, only on land ceded in accordance with the Constitution (*and under the jurisdiction of the United States*), could be protected

by laws, by the authority of Congress, with an act imposing penalties for damage or destruction to that property.

Article I, Section 8, clause 17 seems to have established severe limits on Congress in such enactments and authority:

> *To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings;*

Moving ahead in time, we come to another momentous decision by Justice Taney, in **Dred Scott v. Sandford**, 60 U.S. 393 (1856). In this decision, notwithstanding the subject of the case, rather, with consideration of a rather obscure portion of the decision, we find that Scott had no standing. The Court decided to hear the case, anyway.

> *"That plea denies the right of the plaintiff to sue in a court of the United States, for the reasons therein stated. If the question raised by it is legally before us, and the court should be of opinion that the facts stated in it disqualify the plaintiff from becoming a citizen, in the sense in which that word is used in the Constitution of the United States, then the judgment of the Circuit Court is erroneous, and must be reversed. It is suggested, however, that this plea is not before us; and that as the judgment in the court below on this plea was in favor of the plaintiff, he does not seek to reverse it, or bring it before the court for revision by his writ of error; and also that* ***the defendant waived this defence by pleading over, and thereby admitted the jurisdiction of the court.***"

Absent a challenge to the Court's jurisdiction, the Court may assume jurisdiction.

In **Barron v. City of Baltimore,** 32 U.S. 243 (1833), Barron sought relief from property taken by action of the City of Baltimore. He argued that the Fifth Amendment to the Constitution protected his property and required compensation for loss of use. In the Opinion of the Court, Justice Marshall makes clear that the Fifth Amendment does not extend to the states, nor does it afford any protection against the state enacting laws that might appear to be in conflict with certain provisions of the Constitution. He explains that there is a separation between the two governments, and that the Constitution is only applicable to the general (federal) government.

At 247, 248:

> *The question thus presented is, we think, of great importance, but not of much difficulty.* ***The constitution was ordained and established by the people of the United States for themselves, for their own government, and not for the government of the individual states.*** *Each state established a constitution for itself, and in that constitution, provided such limitations and restrictions on the powers of its particular government, as its judgment dictated. The people of the United States framed such a government for the United States as they supposed best adapted to their situation and best calculated to promote their interests.* ***The powers they conferred on this government were to be exercised by itself; and the limitations on power, if expressed in general terms, are naturally, and, we think, necessarily, applicable to the government created by the instrument.*** *They are limitations of power granted in the instrument itself; not of distinct governments, framed by different persons and for different purposes.*
>
> *If these propositions be correct, the fifth amendment must be understood as restraining the power of the general government, not as applicable to the states. In their several constitutions, they have imposed such restrictions on their respective governments, as their own wisdom suggested; such as they deemed most proper for themselves. It is a subject on which they judge exclusively, and with which others interfere no further than they are supposed to have a common interest.*

He explains the evidence in support of the proposition of that separation by reference to Article I, Sections 9 and 10, at 249:

> *If the original constitution, in the ninth and tenth sections of the first article,* ***draws this plain and marked line of discrimination between the limitations it imposes on the powers of the general government, and on those of the state.***

The concerns that lead to this separation are explained at 250, 251:

> *But it is universally understood, it is a part of the history of the day, that the great revolution which established the constitution of the United States, was not effected without immense opposition. Serious fears were extensively entertained, that those powers which the patriot statesmen, who then watched over the interests of our country, deemed essential to union, and to the attainment of those unvaluable objects for which union was sought, might be exercised in a manner dangerous to liberty. In almost every convention by which the constitution was adopted, amendments to guard against the abuse of power were recommended.* ***These amendments demanded security against the apprehended encroachments of the general government-not against those of the local governments.*** *In compliance with a sentiment thus generally expressed, to quiet fears thus extensively entertained, amendments were proposed by the required majority in congress, and adopted by the states. These amendments contain no expression indicating an intention to apply them to the state governments.* ***This court cannot so apply them.***
>
> *We are of opinion, that the provision in the fifth amendment to the constitution, declaring that private property shall not be taken for public use, without just compensation, is intended solely as a limitation on the exercise of power by the government of the United States, and is not applicable to the legislation of the states.*

If this "court cannot so apply them", then, clearly, this Court has no jurisdiction in those matters that are reserved to the states.

Also, in considering jurisdiction, we must also visit **Twining v. State of New Jersey**, 211 U.S. 78 (1908). In this case, the decision of the United States Supreme Court had to do with the extent of federal jurisdiction. The jurisdiction was based upon the Fourteenth Amendment to the Constitution.

Albert C. Twining and David C. Cornell were indicted by a Grand Jury, and, convicted of providing "false papers" to a state banking examiner. They were sentenced to prison terms, and Twining appealed the action of the New Jersey Court. He held that the requirement to turn over papers to the examiner, absent a court order, denied him "due process" under the Fourteenth Amendment.

Since Twining and Cornel were both citizens of New Jersey, and there was no other qualifier for federal intervention, they retained their status as state citizens, dealing with the laws of that state, without "Federal right[s]" being conferred to them.

Justice Moody provided the decision of the court. In summing up the case, he posed the following, at 116:

> *". . . whether such a law [state law] violates the 14th Amendment, either by abridging the privileges or immunities of citizens of the United States, or by depriving persons of their life, liberty, or property without due process of law. In order to bring themselves within the protection of the Constitution it is incumbent on the defendants to prove two propositions: First, that the exemption from compulsory self- incrimination is guaranteed by the Federal Constitution against impairment by the states; and, second, if it be so guaranteed, that the exemption was in fact impaired in the case at bar.* The first proposition naturally presents itself for earlier consideration. ***If the right here asserted is not a Federal right, that is the end of the case.*** *We have no authority to go further and determine whether the state court has erred in the interpretation and enforcement of its own laws.*

That last point, "If the right here asserted is not a Federal right, that is the end of the case", will lead to the final decision of the Court. Does it also hold that if no right is conferred, that there is an absence of jurisdiction, as well?

Finally, at 115:

> *We do not pass upon the conflict, because, for the reasons given, we think that the exemption from compulsory self-incrimination in the courts of the states* ***is not secured by any part of the Federal Constitution****.*

That suggests that there is, without a doubt, a limitation on the jurisdiction of the federal government. If the Constitution does not provide for it, they cannot assume to have jurisdiction.

That which was established in **Barron** is confirmed in **Twining,** with the sole exception of those who were not, for whatever reason, citizens of the State. At the time of the **Barron** decision, the Court did not have to deal with the subsequent addition of another class of citizen by the 14th Amendment.

Now, on to the separation of the judiciary into its dual function. Though Administrative Agencies had been in existence prior to, it was not until **Ashwander v. Tennessee Valley Authority**, 297 U.S. 288 (1936), that we find a concise explanation of the "rules" adopted by the United States Supreme Court.

The case involves an effort by shareholders of the Alabama Power Company to annul a contract that was selling large portions of the operation, facilities, and franchises, of the Power Company to the Tennessee Valley Authority, a federal agency.

The outcome was based upon principles (rules?) developed in previous decisions, and the final decision was that the contracts were binding.

Justice Brandeis, in a concurring opinion, gave us the meat that is so necessary to understand what has apparently eroded, over time, the limitations imposed on the federal government by the Constitution. At 346:

> *The Court developed, for its own governance in the cases confessedly within its jurisdiction, a series of rules under which it has avoided passing upon a large part of all the constitutional questions pressed upon it for decision. They are:*
>
> *1. **The Court will not pass upon the constitutionality of legislation in a friendly, nonadversary, proceeding, declining because to decide such questions 'is legitimate only in the last resort**, and as a necessity in the determination of real, earnest, and vital controversy between individuals. It never was the thought that, by means of a friendly suit, a party beaten in the legislature could transfer to the courts an inquiry as to the constitutionality of the legislative act.*
>
> *4. **The Court will not pass upon a constitutional question although properly presented by the record, if there is also present some other ground upon which the***

> ***case may be disposed of.*** *This rule has found most varied application. Thus, if a case can be decided on either of two grounds, one involving a constitutional question, the other a question of statutory construction or general law, the Court will decide only the latter.*
>
> *5. The Court will not pass upon the validity of a statute upon complaint of one who fails to show that he is injured by its operation. Among the many applications of this rule, none is more striking than the denial of the right of challenge to one who lacks a personal or property right. Thus, the challenge by a public official interested only in the performance of his official duty will not be entertained.*
>
> *6.* ***The Court will not pass upon the constitutionality of a statute at the instance of one who has availed himself of its benefits.***
>
> *7.* ***'When the validity of an act of the Congress is drawn in question, and even if a serious doubt of constitutionality is raised, it is a cardinal principle that this Court will first ascertain whether a construction of the statute is fairly possible by which the question may be avoided...***

However, in line with Ashwander Decision, the Congress enacted the **Administrative Procedure Act of 1946.**

The Bill, "Administrative Procedure Act", was submitted by Representative Pat McCarran, Democrat, Nevada, who gave us some insight into its purpose, when he said (from the Congressional Record, March 12, 1946):

> *"We have set up a* ***fourth order in the tripartite plan of government*** *which was initiated by the founding fathers of our democracy. They set up the executive, the legislative, and the judicial branches;* ***but since that time we have set up fourth dimension, if I may so term it, which is now popularly known as administrative in nature.*** *So we have* ***the legislative, the executive, the judicial, and the administrative.****"*
>
> *"Perhaps there are reasons for that arrangement. We found that the legislative branch, although it might enact a law, could not very well administer it. So the legislative branch enunciated the legal precepts and ordained that commissions or groups should be established by the executive branch with power to promulgate rules and regulations. These rules and regulations are the very things that impinge upon, curb, or permit the citizen who is touched by the law, as every citizen of this democracy is.*
>
> *"Senate bill 7, the purpose of which is to improve the administration of justice by prescribing fair administrative procedure, is a bill of rights for* ***the hundreds of thousands of Americans whose affairs are controlled or regulated in one way or another by agencies of the Federal government.*** *It is designed to provide guarantees of due process in administrative procedure.*
>
> *"The subject of the administrative law and procedure is not expressly mentioned in the constitution, and there is no recognizable body of such law, as there is for the courts in the Judicial Code.*
>
> *"Problems of administrative law and procedure have been increased and aggravated by the continued growth of the Government, particularly in the executive branch.*

Therefore, the question arises as to whether the administrative branch of government, "the fourth dimension', extends to all people, or just "*the hundreds of thousands of Americans whose affairs are controlled or regulated in one way or another by agencies of the Federal government*"? Given that the estimated population of the United States in 1946 was over 141 million people, that would mean that less than one percent were among those "hundreds of thousands of Americans".

Later, on May 24 (Congressional Record), Representative John Gwynne of Iowa provides insight into what "rule making" is, when he said:

> "*After a law has been passed by the Congress, before it applies to the individual citizens there are about three steps that must be taken. First, the bureau having charge of enforcement must write rules and regulations* ***to amplify, interpret, or expand*** *the statute that we passed; rulemaking, we call it. Second, there must be some procedure whereby the individual citizen who has some contact with the law can be brought before the bureau and his case adjudicated... Finally, there must be some procedure whereby the individual may appeal to the courts from the action taken by the bureau.*"

"Amplify, interpret, or expand"? Was the intention of the Act to apply only to the hundreds of thousands, who were among that less than one percent? Or, was the intention to circumvent the Constitution and establish a despotic regime that was no longer bound by the Constitution?

If we assume the latter, that it only applies to those who come under the Administrative Procedure Act of 1946 that leaves cause to wonder whether the remaining 99 percent have fallen under the influence of the Act by other means, or simple inattention.

If we recall what Taney said in Dred Scott v. Sandford, if one fails to challenge jurisdiction, the Court will assume that it has the authority to hear the matter before it. If so, then Habeas Corpus is the only means by which that overreaching government can be challenged as to the constitutionality of a law whereby they have sought to detain someone for a crime that is not within their jurisdiction.

With regard to the responsibility of the judiciary:

Alexander Hamilton, in **Federalist N° 78**, discuses the role of the independence of the judiciary in the concept of government with a separation of powers:

> *This simple view of the matter suggests several important consequences. It proves incontestably, that the judiciary is beyond comparison the weakest of the three departments of power; that it can never attack with success either of the other two; and that all possible care is requisite to enable it to defend itself against their attacks. It equally proves, that though individual oppression may now and then proceed from the courts of justice, the general liberty of the people can never be endangered from that quarter; I mean* ***so long as the judiciary remains truly distinct from both the legislature and the Executive****. For I agree, that "there is no liberty, if the power of judging be not separated from the legislative and executive powers." And it proves, in the last place, that as liberty can have nothing to fear from the judiciary alone, but would have every thing to fear from its union with either of the other departments; that as all the effects of such a union must ensue from a dependence of the former on the latter, notwithstanding a nominal and apparent separation; that as, from the natural feebleness of the judiciary, it is in continual jeopardy of being overpowered, awed, or influenced by it coordinate branches; and that as nothing can contribute so much to its firmness and independence as permanency in office, this quality may therefore be justly regarded as an indispensable ingredient in it constitution, and, in a great measure, as* ***the citadel of the public justice and the public security****.*

As was commonly understand at the end of the eighteenth century and the first few decades of the nineteenth century, the judiciary, not having obligations of patronage or continuing obligation to pursue reelection, it was, by the nature of its office, the branch the was most able to protect the rights of the people against encroachments and usurpations.

> *The complete independence of the courts of justice is peculiarly essential in a limited Constitution. By a limited Constitution, I understand one which contains certain specified exceptions to the legislative authority; such, for instance, as that it shall pass no bills of attainder, no ex post facto laws, and the like. Limitations of this kind can be preserved in practice no other way than through the medium of courts of justice, whose duty it must be to declare all acts contrary to the manifest tenor of the Constitution void. Without this, all the reservations of particular rights or privileges would amount to nothing.*
>
> *There is no position which depends on clearer principles, than that every act of a delegated authority, contrary to the tenor of the commission under which it is exercised, is void.* ***No legislative act, therefore, contrary to the Constitution, can be valid****. To deny this, would be to affirm, that the deputy is greater than his principal; that the servant is above his master; that the representatives of the people are superior to the people themselves; that men acting by virtue of powers, may do not only what their powers do not authorize, but what they forbid.*
>
> *If it be said that the legislative body are themselves the constitutional judges of their own powers, and that the construction they put upon them is conclusive upon the other departments, it may be answered, that this cannot be the natural presumption, where it is not to be collected from any particular provisions in the Constitution. It is not otherwise to be supposed, that the Constitution could intend to enable the representatives of the people to substitute their will to that of their constituents. It is far more rational to suppose, that the courts were designed to be an intermediate body between the people and the legislature, in order, among other things, to keep the latter within the limits assigned to their authority. The interpretation of the laws is the proper and peculiar province of the courts. A constitution is, in fact, and must be regarded by the judges, as a fundamental law. It therefore belongs to them to ascertain its meaning, as well as the meaning of any particular act proceeding form*

> *the legislative body. If there should happen to be an irreconcilable variance between the two, that which has the superior obligation and validity ought, of course, to be preferred; or, in other words,* ***the Constitution ought to be preferred to the statute, the intention of the people to the intention of their agents****.*
>
> *Nor does this conclusion by any means suppose a superiority of the judicial to the legislative power.* ***It only supposes that the power of the people is superior to both; and that where the will of the legislature, declared in its statutes, stands in opposition to that of the people, declared in the Constitution, the judges ought to be governed by the latter rather than the former****. They ought to regulate their decisions by the fundamental laws, rather than by those which are not fundamental.*

The United States Supreme Court has found means to circumvent the concept of "judicial review", as established by Justice Marshall in **Marbury v. Madison**, 5 US 137 (1803), and established the principles which would be, for over a century, protecting the citizens from an overreaching government. He made clear what the nature of a government, created and bound by a constitution, was when he said, at 177:

> *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.***

Antecedent to Marshall's adoption of judicial review, we find that the North Carolina Supreme Court, in **Bayard v Singleton**, 1 N.C. 42 (1787), provided elucidation, should the judiciary fail in correcting errors of the legislature:

> *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.*** *Consequently, the constitution (which the judicial was bound to take notice of as much as of any other law whatever) standing in full force as the fundamental law of the land, notwithstanding the act on which the present motion was grounded, the same act must of course, in that instance, stand as abrogated and without any effect.*

Argument

Revisiting the history and significance of the Sacred Writ, Habeas Corpus *ad subjiciendum*, it is clear that the purpose of this Writ is to assure that proper jurisdiction exists, in any matter, before any court. If the charges brought are without proper jurisdiction, the Court must reject the claim and release the person being held without proper jurisdiction. It is also clear that Habeas Corpus is

not to be filed and held for convenience, rather, must be acted upon by the Court in a timely manner, as set forth in the Habeas Corpus Act, with penalties applied if such timeliness is not met.

As William Blackstone advised us, in his Commentaries [3:129-37], to wit:

> *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. . .*

With absolute disregard, the lower courts and the Sheriff have denied Habeas Corpus to Larry Mikiel Myers. It is upon this Court to assure that Habeas Corpus, as intended by the Constitution, be upheld and the privileges inherent thereto be secured, in a timely manner.

Visiting now the intention of the securing of that Sacred Writ, we return to **Blackstone**, to wit:

> *A doctrine co-eval with the first rudiments of the English constitution; and handed down to us from our Saxon ancestors... and* ***though sometimes a little impaired by the ferocity of the times, and the occasional despotism of jealous or usurping princes****, yet established on the firmest basis by the provisions of magna carta, and a long succession of statutes enacted under Edward III. To assert an absolute exemption from imprisonment in all cases, is inconsistent with every idea of law and political society; and in the end would destroy all civil liberty, by rendering it's protection impossible: but the glory of the English law consists in clearly defining the times,* ***the causes, and the extent****, when, wherefore, and to what degree, the imprisonment of the subject may be lawful.*
>
> *...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. By which admirable regulations, judicial as well as parliamentary, the remedy is now complete for removing the injury of unjust and illegal confinement.* ***A remedy the more necessary, because the oppression does not always arise from the ill-nature, but sometimes from the mere inattention of government.***

This, of course, leads us to the cause of the imprisonment, and subsequent trial and conviction, and whether they were imposed, singularly, or completely, within the jurisdiction of the authority of that agency of government that brought and prosecuted the charges alleged.

As **William Rawle** informs us (1829), just thirty years after the ratification of the Constitution, wherein he said that Habeas Corpus:

> ***"effectually protects the personal liberty of every individual, and repels the injustice of unconstitutional laws or despotic governors."*** *[And, that]* ***"If this provision had been omitted... a person imprisoned on a mandate of the president or***

> ***other officer, under colour of lawful authority derived from the United States, might be denied relief... confined to cases of imprisonment professed to be under the authority of the United States. But the state courts and judges possess the right of determining on the legality of imprisonment under either authority."***

Have we been subjected to "***the injustice of unconstitutional laws or despotic governors***"? Has Congress exceeded its Constitutional authority, or power, in enacting laws that are the subject of this Demand? Are the "laws" to which this Habeas Corpus is addressed merely rules adopted outside of the conventions of the Constitution?

To answer these questions, we can look to the **Administrative Procedure Act of 1946**, wherein, in their own words, the Congress established a " fourth dimension" (branch of government) that was to affect "*the hundreds of thousands of Americans whose affairs are controlled or regulated in one way or another by agencies of the Federal government."*

These "hundreds of thousands" constitute less than one percent of the then population. Clearly, those "*whose affairs are controlled or regulated in one way or another by agencies of the Federal government*" can only enter that realm of being controlled or regulated by a voluntary act on their part. The Constitution does not provide for subjugation of the people by an act of government, though it does allow that they may voluntarily enter into such a relationship as would subordinate their protected rights to such "agencies". This would be voluntary servitude, if done with knowledge and intent. Absent knowledge and intent, it would, if imposed by force and laws contrary to the Constitution, be in violation of said Constitution. It is in this light that we must view the matter before us.

If we look to the circumstances that existed shortly after the framing of the Constitution, we can see that there were clear and distinct separations of power and authority. In **Barron v. City of Baltimore**, [32 U.S. 243 (1833)], Justice Marshall explains that the federal court cannot apply impositions upon the states, based upon the Constitution, as the Constitution was written to apply only to the "general" (federal) government, except in those specific provisions wherein the state government is either allowed or prohibited. If the federal jurisdiction is limited and certain matters

are outside of the realm of powers and authorities, likewise, enactment of laws that tread upon this forbidden ground would be equally prohibited.

Further, in discussion of the extent of federal jurisdiction, we can look at **An Act more effectually to provide for the punishment of certain crimes against the United States, and for other purposes** (March 3, 1825), in which the Congress realized that even though the land in question had been ceded to the federal government, there could not be an assumption of their authority to enact laws, unless that ceding was on land "under the jurisdiction of the United States", this, simply to punish criminal acts against government property. Limitations were recognized and abided by those legislators who were present at, or had personal communication with, those who scribed the words that were to become the Constitution. Clearly, they had an understanding of the extent of legislative authority, as was intended by the Constitution, and has not been changed been change by amendment thereto.

As in the Act of 1825, and the 1889 enactment cited in **Lane**, the Congress recognized, both before and after the Fourteenth Amendment, that there were limitations on their legislative authority. In the former, that limitation is that of Article I, Section 8, clause 17, and, in the latter, Article IV, Section 3, clause 2.

Can the simple avoidance of such a qualifying statement in an enactment of Congress enlarge its authority beyond that which is granted by the Constitution? As Justice Miller, in Lane, pointed out, both Territories and States have Executive, Legislative, and Judicial branches. It is for those respective governments to enact laws, enforce them, and bring violators to justice. It s not within the purview of the federal government to enact laws which are within the purview of those governments. It is only without such jurisdiction that the Framers granted legislative authority to the Congress (General Government), and it is only within those areas where no system of justice has been established, either by seceding or by the absence of a recognized government, that the Congress can enact laws that are not within the specifically granted powers of the Constitution. To even imagine that such laws could be enacted by two separate governments, where those laws may define

the crime, or the punishment, by different standards, is, at best, absurd -- as none would know by which laws they were bound.

Has Larry Mikiel Myers knowingly entered into a relationship with the government that would subordinate his rights protected by the Constitution and its Amendments, and entered a realm of *mala prohibita*, contrary to the Constitution? Has the government, by guile and deceit, imposed that which was intended only for those who voluntarily entered into a relationship with the government upon the unwary citizen, depriving him, by chicanery, into revoking the protection afforded by the Constitution? Has the government, by such means, achieved what the lowers courts have achieved, by their suspension of Habeas Corpus, in denial of those Constitutional protection provided for by the framers of the Constitution and subsequent ratification by the states, and suspended the Constitution, itself, at least in so far as it affords protection to the citizenry?

We can look to **Twining v. State of New Jersey** to see that after the Fourteenth Amendment was ratified, this Court recognized that there were those who fell without the jurisdiction of the federal government by the fact that the due process provision of that Amendment did not apply to those who were citizens of New Jersey (and, by extension, those citizens of any state). Has a subsequent action by the Congress, or the courts, absent an Amendment to the Constitution, revoked that separation of jurisdiction? Or is it still present, though, perhaps, lost in absence of usage and awaiting a revival, as intended by this instant Motion for Habeas Corpus?

The question also arises, based upon the Florida Supreme Court's rejection of the Motion submitted to them, as to whether a state may intervene on behalf of a citizen of that state. To answer this question, we can look to **Abelman v. Booth** wherein this Court ruled that the Wisconsin Supreme Court did not have jurisdiction, to wit:

> ***The sovereignty to be created was to be limited in its powers of legislation, and if it passed a law not authorized by its enumerated powers, it was not to be regarded as the supreme law of the land, nor were the State judges bound to carry it into execution.***

How can this test of whether an enactment, a law, falls within an enumerated power held by the federal government absent intervention by the State in challenging that jurisdiction, or excess thereof? After rejection of the Habeas Corpus in **Abelman** (1858), the Wisconsin Supreme Court granted, again, in **Tarble** (1871), Habeas Corpus, which was then reviewed by this Court. Again, it was rejected, based upon the determination, in both instances, that the laws challenged did fall within the powers granted to the Congress by the Constitution. This Court did not deny the state court from ruling; it merely overturned their judgmental call as to the Constitutional nexus of the laws in question. Clearly, the Wisconsin Supreme Court recognized their obligation to bring forth such challenge so that the proper Court (this Court) could make the final determination, as provided for in the Constitution and the concept of Judicial Review, as established by Justice Marshall.

Absent a Habeas Corpus challenge, this Court, in **U. S. v. Reese** (1875), provided a decision that clearly demonstrates the requisite for a nexus to the Constitution, or an Amendment, for the Congress to have jurisdiction in an enactment presumed to be under the authority and within the powers vested them by that Constitution. This instant Habeas Corpus is just such a challenge, and, though ignored by the lower courts, is now brought by the Petitioners, to this Court for a determination as to whether Congress and the Administrative Agencies have overreached their authority in enacting laws, or rules, absent such authority under the Constitution and absent a voluntary submission to such laws, or rules.

This Court, in **Ashwander v. Tennessee Valley Authority** (1936), provides insight into what might be considered complicity in denial of rights protected by the Constitution. Justice Brandeis, in his concurring opinion, provided insight into the "rules" adopted by this Court. Those rules provide that the Constitutionality of a matter before this Court be addressed only as a "last resort". That, along with the other "rules", provided an out, an exception, to the concept of Judicial Review. Whether those rules only applied when there was involvement of an Administrative Agency, or not, was not clear in the "narrow" presentation of those riles, though clearly, when there is no other option, this Court must rule on Constitutionality. In this instant matter, the Habeas Corpus, there

is no other option than that the Constitution, as the Supreme Law of the Land, is to be interpreted and ruled upon, as intended.

Another question arises as to timeliness of this Motion for Habeas Corpus. Has the privilege been lost due to an absence of filing prior to trial? Has the fact that Larry Mikiel Myers entered the court without objection removed any right to challenge the jurisdiction of the prosecution?

We can begin by understanding a principle established in **Dred Scott v. Sandford** (1856). Justice Taney, in the Court's decision, made clear that absent challenge by Sandford, the fact that Scott had no right to appeal to the Supreme Court had no merit because "*the defendant waived this defence by pleading over, and thereby admitted the jurisdiction of the court.*" Larry Mikiel Myers demanded Habeas Corpus prior to enter into trial. The Sheriff and the various courts have refused to hear that challenge. Myers has not plead over, however, under the suspension imposed by failure to answer and return, he was placed in the untenable situation of having to defend himself AFTER having been denied his protected privilege of Habeas Corpus. These denials are no less than criminal and should be treated as such, by this Court, to discourage future endeavors of government officials and agencies from endeavoring to deny that which the authority that created government (the Constitution) imposed upon them to secure such rights.

Clearly, Myers acted timely and the government failed in their obligation and responsibility. Myers, under threat of force and violence, had no choice but to enter the courtroom, represented by an attorney who had only theoretical, if even realistic, understanding of the true nature of Habeas Corpus. He cannot be considered to have relinquished any right; rather, the government is guilty of obfuscation of both truth and right.

During the first two decades of the Nineteenth Century, political debate over the new Constitution focused on which branch of government was best suited to protect the rights of the citizenry, in accordance with the Constitution. Without doubt, it was recognized that only the Court was secure in their position and would be the best, and, perhaps, the sole, protector of those rights. The

legislative branch relied upon patronage to secure their position (election). Their obligation, as was well understood at the time, was to those who had provided, by various means, the means of election. Likewise, the President had obligations under patronage, as did the other officers in the executive branch. Only the Supreme Court, appointed for life, subject to good behavior, was without the political obligations inherent in the other branches of government. They, alone, could be considered the protectors of the rights of the people. They, alone, having no continuing obligations to others, could act, in an unbiased manner, to protect those rights secured by the Constitution.

Habeas Corpus can only be suspended by the legislative branch of government. The Court cannot deny this sacred writ; it cannot suspend Habeas Corpus. Absent an act of the Legislative, Habeas Corpus stands, still sacred. This Court must act -- must answer and return -- on this Habeas Corpus, and to do so as intended by those who saw fit to afford this protection to the citizenry against overreaching government enactments.

Now, we come to the matter at hand, the detainment of Larry Mikiel Myers. The charges brought by the federal government are those that must be tested as to their constitutionality.

In each of these offenses, the burden falls upon the government to established jurisdictions; *in personam*; subject matter; and, territorial. This must also be in compliance with the Decisions cited above, as to whether they fall within federal or State jurisdiction.

The Charges, with comment:

18 U.S.C. § 371: Conspiracy to commit offense or to defraud United States

How can that be a crime that is only words (freedom of speech) and there is no manifestation of a crime (act against a party causing injury, damage, or loss)? Also absent is the test of whether means and ability to carry out such threat were existent. Is this not unlike many Hollywood and television movies, radio programs, and books, where a plot is laid out, for whatever purpose, though no action is taken, except words, to actually conduct some act? Where, in the Constitution, is such n act considered criminal in nature? What "offense" has been committed? Where is their any evidence to "defraud? Where is the constitutional nexus?

Further, if such actions were criminal, they would be criminal in the state and under their legislative and jurisdictional authority. The "***separate and distinct sovereignties, acting separately and independently of each other***", as stated in **Abelman** and confirmed in **Tarble**, demonstrates the necessity of this Court to confirm the limitation of federal jurisdiction, at least as it applies to a citizen of a state and one who has, by his own declaration, stated that he is not a United States Citizen.

18 U.S.C. § 372: Conspiracy to impede or injure officer

The legitimacy of any law enacted must meet the test of constitutionality and the recognition that jurisdictions cannot overlap -- separate and distinct jurisdictions do not allow for the federal government, absent a qualifier, to assume jurisdiction where the state has jurisdiction. As stated in **Twining**, "*If the right here asserted is not a Federal right, that is the end of the case.*" Where is the constitutional nexus?

Further, if such actions were criminal, where the means and ability to conduct such an activity, they would be criminal within in the state and under their jurisdiction. The "***separate and distinct sovereignties, acting separately and independently of each other***", as stated in **Abelman** and confirmed in **Tarble**, demonstrates the necessity of necessity of this Court to confirm the limitation of federal jurisdiction, at least as it applies to a citizen of a state and one who has, be his own declaration, stated that he is not a United States Citizen. This is also affirmed in **Barron**, "*Each state established a constitution for itself, and in that constitution, provided such limitations and restrictions on the powers of its particular government, as its judgment dictated*". The authority to prosecute such crimes must lie within the State, under their police powers -- not under the federal government, absent the creation of a tie to the federal government by an act or acquiescence on the part of the Petitioner.

18 U.S.C. § 876: Mailing threatening communications

The Constitution, Article I, Section 8, clause 7, imposes an obligation on government, "*The Power to... To establish Post Offices and post Roads.*"

As we saw in **Tarble**, the authority to enact laws has to be explicit. There is no presumption that laws can be enacted limiting what could be mailed through the postal system, whether that system is under constitutional mandate, or under the abrogated responsibility in the current privatized US Postal Service. Any limitation would have to be where such restriction was to prohibit danger to the carriers of the mails. The privacy envisioned by the Framers was such that mail could not be opened. If the mail arrived at its destination without consequence, the mail system, at least, functioned as it should. The assumption that those thoughts reduced to writing should be subject to criminal prosecution, because of their content, is absurd, without merit, and without constitutional nexus.

The intention of the Framers of the Constitution was to provide a necessary service to those People who formed that government. The Post Office was not mandated to grant the government a means of circumventing freedom of speech through that means of communication any more than it could make criminal such conversation by telephone or in person.

18 U.S.C. § 1503: Influencing or injuring officer or juror generally

The very wording of the Statute provides insight into the intention of the statue. It is to prohibit real acts that would influence a jury, not merely words. It states, in (b) (1) and (b) (2), that "*in the case of a killing*", and, "*in the case of an attempted killing*". Surely, only a threat to life, which minimally, would have to be beyond the very words in a letter, would have to be shown to provide substance to the crime. Perhaps, in this instance, a nexus can be demonstrated, since the integrity of the Judicial Process is at stake, though absent the elements of proof of the ability, the means, and, the intention, to commit the act, leaves the constitutional nexus deficient.

Any threat, which could realistically be carried out, would, if so enacted by the state, come within their jurisdiction. There is no more authority granted by the Constitution to enact such laws as this than there was in **Reese**. If there were any authority to enact such law, it would lie within Art I. Sec. 8, clause 17, and would be limited to activity conducted only upon lands where in both land and jurisdiction were ceded

Finally, the question arises as to whether the United States Supreme Court, as established by the Constitution for the United States can deny consideration of this matter, in a Constitutional light, or are mandated, by that same Constitution, to hear, answer and return this Habeas Corpus *ad subjiciendum*.

Mr. Hamilton (**Federalist No 78**)made clear the judiciary, especially the Supreme Court (which is the only court proposed at the date of his writing) was "***the citadel of the public justice and the public security***", and, that "***No legislative act, therefore, contrary to the Constitution, can be valid***".

Further, Justice Marshall, in **Marbury v. Madison**,·says that "***an act of the legislature repugnant to the constitution is void***".

Prior to the ratification of the federal Constitution, the North Carolina Supreme Court, in the first nullification of an enacted statutes contrary to the North Carolina Constitution (**Bayard v Singleton**), said that "***if they could*** [enact legislation contrary to the constitution], ***they would at the same instant of time destroy their own existence as a legislature and dissolve the government thereby established***".

There can be little doubt that the **John Locke's** "Two Treatises of Government" (Chapter 19 - Theory of Dissolution of Government), was embodied in the acts and in the minds of the Framers of both state and federal constitution.

If, however, the statutes in question in the instant matter are promulgated under the authority of Article I, Section 8, clause 17 (exclusive legislative jurisdiction), then the extent of jurisdiction created by that authority granted must be shown to be applicable upon the land whereupon the crime was alleged to have been committed; or, would have to otherwise demonstrate that it was applied properly upon a citizen of a State; or, only applicable to those who have become, by other means, under federal jurisdiction; if not, then the charges must be dismissed.

The Constitution has no severability clause; it is a whole, in and unto itself. Except by Amendment, in accordance with Article V, it is unchangeable. The government that exists in Washington, District of Columbia, exist only by its creation by that Constitution; and, only by obedience to that Constitution does that government continue to exist.

Error by omission or interpretation was anticipated by the Framers, and this Court, in particular -- this Supreme Court --, is the arbiter of whether any act of the Legislative or the Executive is consistent with, and within the powers and authorities granted by that Constitution. In that sense, the fuse to destruction of both Constitution and the government created by it lies in the hands of this Court, alone. Should this Court fail in its obedience to the Constitution, then it, alone, would be responsible for the dissolution of that government created under the authority of the people.

Further, that the Co-Respondents have, by commission or omission, effectively denied speedy relief, if so warranted, by granting a Writ of Habeas Corpus, to her the matter of Larry Mikiel Myers. The protection of constitutionally protected rights or privileges is a fundamental of the government established by the Constitution. Punitive action is warranted when individual employees/agents of government presume such authority to suspend/eliminate the *sacred writ*. As with any other violation of the Constitution, discouragement, through punitive measures, is, unquestionably, an obligation of this Court.

Finally, we come to the matter of something to which no precedence can be found -- that, of denial of habeas corpus *ad subjiciendum*, by other than an act of the Congress, in accordance with Article I, Section 9, clause 2. Absent such precedence, the case must be argued with reference to competent legal authority.

This Habeas Corpus *ad subjiciendum* has been served upon the jailer and the District Court as a Demand. That failing, it was served, again to the District Court, and to the Circuit Court and the Florida Supreme Court, as a Motion. Most recently, it was served on the United States Supreme

Court as a Petition. At each juncture, those judicial officers served failed to recognize their obligation under the Constitution, and the state constitution, with regard to the sacred writ.

To understand that "obligation", we must visit those competent legal authorities:

Blackstone refers to the writ as a motion, because "*it cannot be had of course*", though by serving it, there is sufficiency "*to be satisfied that the party hath a probable cause to be delivered*".

Upon that service, it becomes "*a writ of right*", which right has been denied by inaction, or improper action, by those named as Co-Respondents.

It also requires timeliness, not by days, weeks, or months, or in this particular case, more than a year, in which the liberty of Larry Mikiel Myers has been denied, without this Constitutional recourse. Inaction and delay are not options. Failure to respond in accordance with the law and the Constitution can be no less than a crime, though absent precedence, it now falls upon this court to establish the just punishment for those judicial officers who have failed in their oath and obligation.

Rawle confirms, also, that this right, through the judiciary, "*speedily and effectually protects the personal liberty of every individual, and repels the injustice of unconstitutional laws or despotic governors*". This necessity of protection of the right of Habeas Corpus extends, also, to every state.

> *[T]he nature of the writ of habeas corpus... is the great remedy of the citizen or subject against arbitrary or illegal imprisonment; it is the mode by which the judicial power* ***speedily and effectually*** *protects the personal liberty of every individual, and repels the injustice of unconstitutional laws or despotic governors. After erecting the distinct government which we are considering, and after declaring what should constitute the supreme law in every state in the Union, fearful minds might entertain jealousies of this great and all-controlling power, if some protection against its energies when misdirected, was not provided by itself.*

He further states that the judiciary of the state must intercede.

> *If this provision had been omitted, the existing powers under the state governments, none of whom are without it, might be questioned, and a person imprisoned on a mandate of the president or other officer, under colour of lawful authority derived from the United States, might be denied relief. But the judicial authority, whether vested in a state judge, or a judge of the United States, is an integral and identified capacity; and if congress never made any provision for issuing writs of habeas corpus,* ***either the state judges must issue them, or the individual be without redress****.*

He further states that even if the imprisonment is under the authority of the United States, "*the state courts and judges possess the right of determining on the legality of imprisonment under either authority*

Story makes clear that Habeas Corpus has " *recourse to the common law* " Those Co-Respondents who have ignored their obligation, or resorted to reference to administrative rules, have, by efforts to delay, or deny Habeas Corpus, committed acts against the Constitution and the rights of the citizenry.

> *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,***

Bouvier's allows that anyone can file on behalf of another, which would not require any special license or qualification, though the Demandant does hold a lawful Power of Attorney to speak on Larry Mikiel Myers' behalf. In such capacity, the Demandant has been insufferably imposed upon to attempt to secure protected rights by machinations far beyond the conception of the Framers who provided such protection by inclusion as a right, unless specifically suspended in accordance with the Constitution.

> *5. ... to pray a habeas corpus for his enlargement, may apply by any one in his behalf, ... to a judicial officer for the writ of habeas corpus, and the officer, upon view of the copy of the warrant of commitment, or upon proof of denial of it after due demand, must allow the writ to be directed to the person in whose custody the party is detained, and made returnable immediately before him. And ..., any of the said prisoners may obtain his writ of habeas corpus, by applying to the proper court.*

Because of the failure of those judicial officers to abide by the Constitution, we find that a means of remedy, that same sort of remedy imposed by government upon citizens, must also be imposed on agents of government when they are remiss in their duties -- especially when the liberty of a citizen is at stake.

> *7. ... 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.*

We are then given what is proper to consider, with regard to habeas corpus:
"The writ <u>is</u> to be granted" requires no sophistic interpretation.

> *9. - 1. The writ is to be granted whenever a person is in actual confinement, committed or detained as aforesaid, either for a criminal charge, or, ...under any color or pretence whatsoever...*

The simplicity of service is fundamental to the writ.

> *10. - 2. The writ may be served by any free person, by leaving it with the person to whom it is directed, or left at the gaol or prison with any of the under officers, under keepers, or deputy of the said officers or keepers...*

The requirement to make return is unquestionable, and failure to make return is unforgiveable.

> *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.*

The obligation to hear the matter and make a determination is without question. A question arises as to whether, since the delay of over one year has denied this right, whether a release because it was not heard "*within the periods required by law*", would warrant release without regard to the arguments presented above, which are the subject (jurisdiction) of this Habeas Corpus, as originally served.

> *12. - 4. When the prisoner is brought, before the judge, his judicial discretion commences, and he acts under no other responsibility than that which belongs to the exercise of ordinary judicial power. The judge or court before whom the prisoner is brought on a habeas corpus, examines the return and papers, if any, referred to in it, and if no legal cause be shown for the imprisonment or restraint; or if it appear, although legally committed, he has not been prosecuted or tried within the periods required by law, or that, for any other cause, the imprisonment cannot be legally continued, the prisoner is discharged from custody....*

Conclusion

The Constitution provides only one Constitutional remedy against the enforcement of unconstitutional laws. It is not with the legislative, as they would be the source of an unconstitutional law. It cannot be the Executive, as they are charged with enforcing, or, in many instances, creating unconstitutional laws/regulations. It can only reside within the judicial branch and the only prescribed means is Habeas Corpus *ad subjiciendum*, "the sacred writ".

The argument that the state courts have a right to intervene, and, that the federal courts have an obligation to answer and return a writ of Habeas Corpus *ad subjiciendum* is clearly established. The obligation upon this Court to answer and return this writ is unquestionable.

The limitation of federal jurisdiction, with regard to one who is a Citizen of a State and not subject to any administrative rules, is clearly established.

That the right and obligation, for this Court to issue the Writ of Habeas Corpus *ad subjiciendum*, or to discharge the Petitioner, surely exists, especially under the circumstance of the instant matter.

That the burden of proof of the constitutionality of the charges lies squarely with the United States government.

That absent sufficient proof that the charges (statues) meet the test of constitutionality (constitutional nexus), and that all three jurisdictions (personam, subject matter, territorial) are met, without question, there can be no alternative other than freeing Larry Mikiel Myers from unlawful detention.

That regardless of the determination of proper jurisdiction, Larry Mikiel Myers be released immediately since he has been unlawfully denied the constitutionally secured privilege of Habeas Corpus *ad subjiciendum*, for over 16 months, without hearing -- *justice delayed is justice denied.*

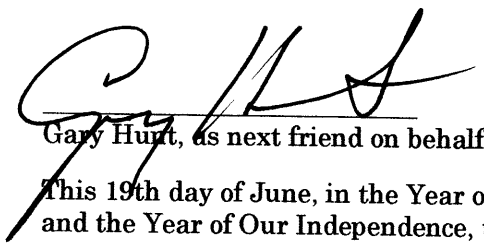
The particular circumstances of the five charges brought against Larry Mikiel Myers, and the objections thereto, with regard to whether there is a Constitutional nexus, are laid out in the Arguments. We pray that this Court recognize the absence of lawful jurisdiction and provide the following relief:

That all agents, officers, and judges who have participated in the unlawful detention should receive the full force of law (historical) so as to discourage future efforts to unlawfully detain and refuse to answer and return a Habeas Corpus; and to reduce the burden upon this Court to deal with flagrant violations of the United States Constitution.

That those who unlawfully detained Larry Mikiel Myers, regarding all property that was taken upon his arrest; taken from him after arrest, and all property acquired by him after arrest, that it be returned to him.

That he be returned to the location from whence his Liberty was denied, without cost or obligation.

In addition, that Larry Mikiel Myers seeks no remedy beyond those addressed herein.



Gary Hunt, as next friend on behalf of Larry Mikiel Myers (supported by Power of Attorney)

This 19th day of June, 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

Appendix – Table of Contents

Exhibit 1

Demand for Habeas Corpus

To the Pinellas County, Florida, Sheriff

I set forth this **demand for Habeas Corpus** (***habeas corpus ad subjiciendum***), in accordance with the Constitution for the United States of America (Article I, Section 9) and Constitution of the State of Florida (Article I, Section 13).

I set forth this demand for the following reasons:

Nature and cause (Sixth Article in Amendment to the Constitution for the United States and Article I, Section 16, Florida Constitution).

1. I cannot find an injured party, who, if he exists, must provide a sworn affidavit of the injury.

2. If this is civil rather than criminal, I cannot find the injured party, nor is he properly identified, and has he provided me with an original contract of which I am alleged to be party to and in violation of.

3. That I am being charged by information contained within the following documents, to wit:

> That it appears that I am being held to answer based upon an "Indictment" signed by Carol (last name illegible), as Foreman, which indictment is undated and incomplete as to being attested to by the Clerk and absent a case number.
>
> That it appears that I am being held to answer based upon an Indictment (unsigned) identified as from the United States District Court, Middle District of Florida, bearing Case No. 96-64-Cr-T-23(E), alleging Eighteen Counts, also undated and also not attested to by the Clerk.
>
> That it appears that I am being held to answer based upon a subsequent Case No. 8:09-Cr-64-T-23MAP, though this document was offered as a "Plea Agreement" that identifies Counts One and Four of the above alleged Indictment as applicable to me.

4. That the documents identified in #3, above, do not indicate any injury or breach of contract.

5. That I am not a citizen of the United States, though I am a citizen of Florida.

Jurisdiction

6. That this demand is set forth pursuant to an absence of jurisdiction over the party (me); the subject matter; and the venue.

7. That as to absence of jurisdiction over the party, I submit the following to your attention:

8. That in the Supreme Court decision in Dred Scott v. Sandford (60 US 393), the Court held that Scott had no standing to plea before that Court or a lower federal court, though his plea before a federal court was not challenged by Sandford, timely. That since the challenge was not brought timely, the Court could

hear the case as Sandford "waived his defense by pleading over, thereby admitted the jurisdiction of the court".

I do not waive, nor do I plead over, to admit to the above named federal court to assume jurisdiction over this party. Hence, an absence of jurisdiction over this party.

9. That the Fourteenth Article in Amendment to the Constitution for the United States, ratified in 1868, states:

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States..."

That the qualifier in said Amendment, "and subject to the jurisdiction thereof", was limited in its application and does not apply to me or my ancestors, thereby leaving me not as a citizen of the United States, rather, a citizen of Florida, and not subject to federal jurisdiction. Hence, I am not subject to federal jurisdiction.

10. That the limitation on jurisdiction over citizens of a state, who were not citizens of the United States, was clearly laid out in Twining v. State of New Jersey (211 US 78), when the Supreme Court ruled that there was a distinction between a citizen of the United States and a citizen of New Jersey, and that federal law did not extent to the citizens of New Jersey (Twining and Cornell). Hence, I am not subject to federal jurisdiction

11. That locational jurisdiction (venue) was established by the Constitution (Article I, Section 8, clause 17) as to include only specific locations, which is supported by an Act of Congress, enacted March 3, 1825, which reads, in part:

> ***An Act more effectually to provide for the punishment of certain crimes against the United States, and for other purposes***
>
> Section 1: *"That if any person or persons, within any fort, dock-yard, navy-yard, arsenal, armory, or magazine, the site whereof is ceded to, and under the jurisdiction of, the United States, or on a site of any lighthouse, or other needful building belonging to the United States, the sight whereof is ceded to them [United States}, and under their jurisdiction, as aforesaid, shall, willfully..."*

Clearly, to find acts to be criminal by federal law, even of damage to federal property, the act had to be committed on land described within the above said clause, AND, only when both land and jurisdiction were ceded to the federal government by the state. Hence, since the alleged crime in the Indictment was not alleged to have been committed on such ceded land and jurisdiction, the alleged crime is not subject to federal jurisdiction.

12. That this demand Habeas Corpus cannot be denied by any court, state or federal, under the series of rules explained by Justice Brendeis, in Ashwander v. Tennessee Valley Authority (297 US 288), which determine whether the Constitution may be applicable in any matter before that Court, and has been adhered to by lower courts, since that time.

> a. That there is no other ground upon which this matter may be considered, except the specific reference to Habeas Corpus in both the federal and state constitutions, referenced above (Rule 4);

b. That there is no doubt that my being denied my liberty is sufficient injury where such consideration must be made (Rule 5);

c. That I have not availed myself to any statute referred to in the Indictment whereby I sought a benefit (Rule 6);

d. That since the Habeas Corpus provisions of both Constitutions are not subject to statutorial revision, nor by revision by any Rules of Court, there is no construction other than that which was intended by the Framers of the constitutions and those who ratified them.

13. Unless the alleged Plaintiff, United States of America, in the matter described above, can establish jurisdiction, over the party and the venue, it cannot have jurisdiction over the subject matter any more than England or Afghanistan would have jurisdiction, without jurisdiction over both the party and the venue.

That I set forth this demand to be released from custody by the Pinellas County Sheriff and returned to the location, Black Springs, Arkansas, where I was denied my Liberty in August 2011. And, that all property that was taken on that date and that I have acquired since, including paperwork, be returned to me, forthwith.

That said release and return be provided for within 48 hours of the receipt of this demand.

So demanded by Larry Mikiel Myers, on his own behalf.

_____ (SEAL)

That this Demand was served on the Sheriff above said, or his agent, on the _____ day of _____, 2012, at _____:_____ __M.

Exhibit 2

Gary Hunt

25370 Second Avenue
Los Molinos, California 96055

February 10, 2012

Sheriff Bob Gualtieri
Pinellas County
10750 Ulmerton Road
Largo, Florida 33778

Certified Mail _____

RE: Habeas Corpus Demand

Dear Sheriff Gualtieri :

On January 27, 2012, Larry Myers, a person in your custody (federal custody), mailed to you a Demand for Habeas Corpus. Prior to mailing said Demand, he attempted service on your corrections officers, on at least two occasions. They refused service.

Their refusal of service is not within their authority, as your agents. This is a denial of Habeas Corpus and, as such, is a suspension of the Constitution (Article I, Section 9, clause 2), without cause of "Rebellion or Invasion".

Your obligation, as the person holding Larry Myers in custody, is clear. You have an obligation to bring the Habeas Corpus and Larry Myers before the proper Judge for consideration of the Habeas Corpus.

By your failure to perform your duty, you have, by your failure to act, suspended the Constitution, as have your agents.

The "sacred writ" is, without question, a mainstay of the judicial process, as defined by the Framers of the Constitution. The rights inherent under such writ, however styled, cannot be denied by any method except in accordance with the Constitution.

Article I, , Declaration of Rights, of the Florida Constitution provides, in Section 13, Habeas corpus.--The writ of habeas corpus shall be grantable of right, freely and without cost. It shall be returnable without delay, and shall never be suspended unless, in case of rebellion or invasion, suspension is essential to the public safety.

It would appear that you have been remiss in your duties to both the state and federal constitutions.

I hereby demand, on behalf of Larry Myers, currently detained in your jail, that the remedy set forth in the "Demand for Habeas Corpus" be applied and that he be returned to his proper place,

along with his property, at once. This refusal of due process is, without question, an abuse of power and justice. The only remedy, after such denial, is to make Larry Myers whole again, without delay. I herewith demand this remedy.

With due respect for the Constitutions,
I remain,
Respectfully,

Gary Hunt

Attachment: Demand for Habeas Corpus

CC: w/ cover

Judge Steven Merryday
United States District Court for the Middle District of Florida
Sam M. Gibbons U.S. Courthouse
801 North Florida Ave.
Tampa, Florida 33602

John Ley, Clerk of Court
U.S. Court of Appeals for the 11th Circuit
56 Forsyth St. N.W.
Atlanta, Georgia 30303

Florida Supreme Court
Attn: Clerk's Office
500 South Duval Street
Tallahassee, Florida 32399

Exhibit 3

Gary Hunt

25370 Second Avenue
Los Molinos, California 96055

February 10, 2012

Judge Steven Merryday
United States District Court for the Middle District of Florida
Sam M. Gibbons U.S. Courthouse
801 North Florida Ave.
Tampa, Florida 33602

Certified Mail _____

RE: Habeas Corpus Demand

Honorable Judge Merryday;

Attached are copies of a letter sent to the Sheriff of Pinellas County and the Demand for Habeas Corpus that has been served on said Sheriff.

Regardless of the current status of Larry Myers or the progress of any proceedings against him, at this point in time, and, since he has been denied the most sacred and fundamental legal right, you, as an official of the United States government, have sworn an oath to the Constitution and must remedy this miscarriage of justice, without delay. That oath was not selective, it was all inclusive.

Since due process has been denied by refusal to recognize and consider the Habeas Corpus, you have no legal recourse except to excuse Larry Meyers and release him from custody, under the provisions of the Demand.

Further, it would be in the best interest of the country for you to take whatever action necessary to assure that there is no future violation of that sacred writ.

With due respect for the Constitutions,
I remain,
Respectfully,

Gary Hunt

Attachment: Demand for Habeas Corpus
Letter to Sheriff Gualtieri

CC: John Ley, Clerk of Court
U.S. Court of Appeals for the 11th Circuit
56 Forsyth St. N.W.
Atlanta, Georgia 30303

Florida Supreme Court
Attn: Clerk's Office
500 South Duval Street
Tallahassee, Florida 32399

Exhibit 4

Gary Hunt

25370 Second Avenue
Los Molinos, California 96055

February 10, 2012

John Ley, Clerk of Court
U.S. Court of Appeals for the 11th Circuit
56 Forsyth St. N.W.
Atlanta, Georgia 30303

Certified Mail _____

RE: Habeas Corpus Demand

Dear Clerk Ley;

I hereby request that you lay before the Justices of the U.S. Court of Appeals for the 11th Circuit the attached Demand for Habeas Corpus and other relevant documents.

Each and every Court created under the Constitution for the United States of America and the Florida Constitution is bound by those documents. If any Court, or officer, under those constitutions, is remiss in his duties, it is the obligation of the courts to provide appropriate remedy.

Since due process has been denied by refusal to recognize and consider the Habeas Corpus, it would appear that the only legal recourse is to excuse Larry Meyers and release him from custody, under the provisions of the Demand.

Further, it would be in the best interest of the country for this Court to assure that there is no future violation of that sacred writ.

With due respect for the Constitutions,
I remain,
Respectfully,

Gary Hunt

Attachment: Demand for Habeas Corpus
Letter to Sheriff Gualtieri
Letter to Judge Merryday

Exhibit 6

Supreme Court of Florida

Office of the Clerk
500 South Duval Street
Tallahassee, Florida 32399-1927

THOMAS D. HALL
CLERK
TANYA CARROLL
CHIEF DEPUTY CLERK
SUSAN DAVIS MORLEY
STAFF ATTORNEY

PHONE NUMBER: (850) 488-0125
www.floridasupremecourt.org

February 20, 2012

Gary Hunt
25370 Second Avenue
Los Molinos, California 96055

Re: Larry Mikiel Myers

Dear Mr. Hunt:

Your letter filed with this Court on February 15, 2012, asks for relief from federal court action. Please be advised that, except in rare and very specialized circumstances; not present in your leter, the Florida Supreme Court has no jurisdiction over federal court cases. See art. V, § 3(b), Fla. Const.; Ableman v. Booth, 62 U.S. 506, 515-16 (1858) ("[N]o State can authorize one of its judges or courts to exercise judicial power, by habeas corpus or otherwise, within the jurisdiction of another and independent Government."). As your letter fails to invoke this Court's jurisdiction, we are returning it to you.

Most cordially,

Thomas D. Hall

TDH/wm
Enclosure

Exhibit 7

Gary Hunt

25370 Second Avenue
Los Molinos, California 96055

March 5, 2012

Florida Supreme Court
Attn: Thomas D. Hall, Clerk of the Court
500 South Duval Street
Tallahassee, Florida 32399

RE: Habeas Corpus Demand for Larry Mikiel Myers

Dear Clerk Hall;

In response to your letter of February 20, 2012, I am submitting this letter and including sufficient information to invoke the jurisdiction of the Supreme Court of Florida and to lay before this Court the "specialized circumstance" that warrant the consideration of this Court.

With regard to the Florida Constitution, it is apparent that under the exigent circumstance, the Constitution provides this Court the authority to act in this matter, to wit:

Article V, Section 3(b) (6):

> *May review a question of law certified by the Supreme Court of the United States or a United States Court of Appeals which is determinative of the cause and for which there is no controlling precedent of the supreme court of Florida.*

In this instance, since the United States Court of Appeals for the 11th Circuit has failed to answer and return the Demand for Habeas Corpus (proof of service attached), it would appear that: (1) They do not recognize this Demand as within their jurisdiction; or, (2), the have failed to abide by the United States Constitution. Since it has not been certified, that absence speaks clearly of either of the above. And, surely, there is no controlling precedence in this Court.

Article V, Section 3(b) (7), (8) & (9):

> *May issue writs of prohibition to courts and all writs necessary to the complete exercise of its jurisdiction.*
>
> *May issue writs of mandamus and quo warranto to state officers and state agencies.*

May, or any justice may, issue writs of habeas corpus returnable before the supreme court or any justice, a district court of appeal or any judge thereof, or any circuit judge.

The issuance of the appropriate writ, to an agent of the state (Sheriff), is the proper exercise under the circumstances set forth herein.

With regard to precedence, as addressed in your letter:

In Abelman [Abelman v. Booth, 62 U.S. 506 (1858)], Booth filed with the state court as a first, and only, resort for Habeas Corpus. Had Booth filed with the federal court, and that court refused to answer or return, Justice Taney's decision would, most assuredly, have been different from what the record shows. Justice Taney would have difficulty arguing that Booth had no remedy in filing with the State Court, and so that record is not on point.

In the case of the Demand for Habeas Corpus, by Larry Mikiel Myers, he attempted to serve the Demand on an agent of the state, while in federal custody in arrangement with the State agent, which would have required that the federal judge, the judge in the pending case against Myers, receive the Habeas Corpus from the state agent, and then answer. The Demand for Habeas Corpus was not served on the State; rather, through the State due to the nature of the confinement, however, this does not negate the remedy sought. That remedy is a ruling by this Court, which then stands to challenge by the federal court, and an answer to that challenge to establish that the federal court has an obligation, under the law, to respond to a Demand for Habeas Corpus.

The denial of Habeas Corpus under both state and federal constitutions leaves an insurmountable problem for the citizen who has every right to the due and proper consideration of that "sacred writ".

Myers' initial attempt to serve was made on January 24, 2012, prior to trial, which trial took place from February 6-9, 2012, and, should, with all due consideration of the law, have been answered, or returned, prior to commencement of trial. Instead, the trial proceeded with total disagreed to that enumerated right.

Subsequently, on behalf of Larry Mikiel Myers, copies of the Demand for Habeas Corpus were mailed, certified, receipt requested, to, respectively, the Sheriff, the Judge (Merryday), the 11th District Court of Appeals (Atlanta), and, the Florida Supreme Court.

To date, March 5, 2012, neither Sheriff Gualtieri, Judge Merryday, nor the 11th Circuit Court of Appeals, have returned or answered, since the date of their receipt, February 13, 2012. Three weeks have passed, and only the Florida Supreme Court, through its Clerk, Thomas Hall, has demonstrated due consideration of the judicial branch's lawful obligation, with regard to Habeas Corpus.

Clearly, then, absent active pursuit of justice by the Florida Supreme Court, every possible remedy, under the constitutions, will have been denied and both constitutions suspended, without the requisite constitutional condition for suspension being met.

It would seem that under these circumstances, the Florida Supreme Court is the only remaining recourse in seeking the lawful remedy, under the law, not to intervene and assume any authority not granted by the Constitution, rather, as the Judicial Branch of the state government, interceding, and assuring that justice is had, "without delay".

Interceding on behalf of a Citizen of Florida, and assuring that proper answer and return are made does not presume authority where none may exist, rather, it requires only that this Court determine and assure that there is no void, or abyss, in which Larry Mikiel Myers, and both constitutions, be swallowed up and disappear.

Can this Court perceive any other recourse than to intercede and assure that rights are maintained, even if their action is only to assure that the federal courts recognize their obligations under the United States Constitution?

Absent intervention, the Florida Supreme Court has failed in its obligation to pursue justice and uphold and defend both constitutions.

Based upon the arguments above, I hereby invoke the jurisdiction the Supreme Court of Florida in this matter of Habeas Corpus for Larry Mikiel Myers.

With due respect for the Constitutions,

I remain,

Respectfully,

Gary Hunt
Citizen of Florida, residing in California

Phone: (530) 384-0375
email: hunt@outpost-of-freedom.com

Attachments:

copy letter to Sheriff Gualtieri w/receipt
copy letter to Judge Merryday w/receipt
copy letter to 11th Circuit Court of Appeals w/receipt
copy of Habeas Corpus of Larry Mikiel Myers

Exhibit 8

Supreme Court of Florida

Office of the Clerk
500 South Duval Street
Tallahassee, Florida 32399-1927

THOMAS D. HALL
CLERK
SUSAN DAVIS MORLEY
CHIEF DEPUTY CLERK

PHONE NUMBER: (850) 488-0125
www.floridasupremecourt.org

April 18, 2012

Gary Hunt
25370 Second Avenue
Los Molinis, California

Re: Larry Mikiel Myers

Dear Mr. Hunt:

We have received the correspondence & memorandum you submitted on March 5, 2012. As stated in our previous correspondence, except in rare and very specialized circumstances not present in your letter, the Florida Supreme Court has no jurisdiction over federal court cases. See art. V, § 3(b), Fla. Const.; Abelman v. Booth, 62 U.S. 506, 515-16 (1858) ("[N]o State can authorize one of its judges or courts to exercise judicial power, by habeas corpus or otherwise, within the jurisdiction of another and independent Government.") Your filing fails to invoke this Court's jurisdiction.

Most cordially,

Thomas D. Hall

TDH/wm

Exhibit 09

Gary Hunt

25370 Second Avenue
Los Molinos, California 96055
(530) 384-0375
email: hunt@outpost-of-freedom.com

May 9, 2012

Florida Supreme Court
Attn: Thomas D. Hall, Clerk of the Court
500 South Duval Street
Tallahassee, Florida 32399

RE: Motion for Habeas Corpus on behalf of Larry Mikiel Myers

Dear Clerk Hall;

Enclosed is a Motion for Habeas Corpus.

If it is deficient, in any respect, I would appreciate a list of those deficiencies. I am not seeking legal advice, rather, a check list of deficiencies, if there are any.

Thanking you in advance for your timely consideration of this matter,,

I remain,

Respectfully,

Gary Hunt

Enclosure:
Motion for Habeas Corpus

Exhibit 10

Florida Supreme Court

Gary Hunt, on behalf of, and, Larry Mikiel Myers

Petitioners,

vs.

Russell Washburn, Warden; Corrections Corporation of America; Citrus County Detention Facility

Sheriff Bob Gualtieri, Pinellas County

Judge Steven Merryday,
U. S. District Court for the Middle District of Florida

John Ley, Clerk of Court,
U.S. Court of Appeals for the 11th Circuit

Respondents,

Case No. _____

USDC: 8:96-Cr-64-T-23TBM

MOTION FOR HABEAS CORPUS

STATEMENT OF FACTS

This Habeas Corpus is filed under the Common Law, as any statutory or administrative laws would dilute the intent of the Framers of both state and federal Constitutions.

Larry Mikiel Myers is a citizen of Florida.

August 18, 2011, Larry Mikiel Myers was booked into the Pinellas County, Florida, Jail.

Prior to January 27, 2012, Larry Mikiel Myers attempted service of his Demand for Habeas Corpus to at least two corrections officers (gaolers), who refused to accept service.

On January 27, 2012, Larry Mikiel Myers mailed, through the jail system, his Demand for Habeas Corpus to Sheriff Bob Gualtieri.

From February 6 through February 9, 2012, Larry Mikiel Myers stood trial in the United States District Court for the Middle District of Florida, Judge Steven Merryday presiding,

On February 9, 2012, Larry Mikiel Myers was convicted of violation of: 18 U.S.C. §371; 18 U.S.C. §372; 18 U.S.C. §876; and, 18 U.S.C. §1503.

On February 12, 2012, Sheriff Gualtieri, Judge Merryday, and the Clerk of the 11th District Court of Appeals were served Habeas Corpus.

Larry Mikiel Myers was released to the U. S. Marshall Service on February 18, 2012 and transferred to Citrus County Detention Facility, 2604 West Woodland Ridge Drive, Lecanto, Florida, where he is currently detained.

AUTHORITY AND ARGUMENT

With regard to Habeas Corpus (*habeas corpus ad subjiciendum*):

Florida Constitution, Article I, Declaration of Rights, Section 13:

> *"Habeas corpus.--The writ of habeas corpus shall be grantable of right, freely and without cost. It shall be returnable without delay, and shall never be suspended unless, in case of rebellion or invasion, suspension is essential to the public safety.*

United States Constitution, Article I, Section 9, clause 2:

> *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.*

In order to establish a foundation from which this Court might answer and return this Habeas Corpus, we must visit both Florida Constitution and precedence established by the United States Supreme Court.

To the former, the applicable section of the Florida Constitution is Article V, Section 3(b) (6):

> *May review a question of law certified by the Supreme Court of the United States or a United States Court of Appeals which is determinative of the cause and for which there is no controlling precedent of the supreme court of Florida.*

In this instance, since the United States Court of Appeals for the 11th Circuit has failed to answer and return the Demand for Habeas Corpus, it would appear that: (1) They do not recognize this Demand as within their jurisdiction; or, (2), the have failed to abide by the United States Constitution. Since it has not been answered and returned, that absence speaks clearly of either of the above. And, surely, there is no controlling precedence in this Court.

Further, Article V, Section 3(b) (7), (8), & (9):

> *May issue writs of prohibition to courts and all writs necessary to the complete exercise of its jurisdiction.*
>
> *May issue writs of mandamus and quo warranto to state officers and state agencies.*

May, or any justice may, issue writs of habeas corpus returnable before the supreme court or any justice, a district court of appeal or any judge thereof, or any circuit judge.

The issuance of the appropriate writ, to any officers or agencies of the state is the proper exercise under the circumstances set forth herein.

Regarding Precedence, there are three United States Supreme Court decisions that establish the extent of federal jurisdiction in such cases. The first is **Abelman v. Booth, 62 U.S. 506** (1858). Justice Taney, in the Decision of the Court, said, [at 519]:

> *The same purposes are clearly indicated by the different language employed when conferring supremacy upon the laws of the United States, and jurisdiction upon its courts. In the first case, it provides that 'this Constitution, and the laws of the United States **which shall be made in pursuance thereof**, shall be the supreme law of the land, and obligatory upon the judges in every State.'... **The sovereignty to be created was to be limited in its powers of legislation, and if it passed a law not authorized by its enumerated powers, it was not to be regarded as the supreme law of the land, nor were the State judges bound to carry it into execution.** ...*

Clearly, if it is not regarded as the "supreme law of the land", there is an absence of federal jurisdiction, at 520,521, he says:

> *This judicial power was justly regarded as indispensable, not merely to maintain the supremacy of the laws of the United States, **but also to guard the States from any encroachment upon their reserved rights by the General Government**. And as the Constitution is the fundamental and supreme law, **if it appears that an act of Congress is not pursuant to and within the limits of the power assigned to the Federal Government, it is the duty of the courts of the United States to declare it unconstitutional and void**. The grant of judicial power is not confined to the administration of laws passed in pursuance to the provisions of the Constitution, nor confined to the interpretation of such laws; but, by the very terms of the grant, the Constitution is under their view when any act of Congress is brought before them, and it is their duty to declare the law void, and refuse to execute it, if it is not pursuant to the legislative powers conferred upon Congress. . .*

The United States Supreme Court, then, is to judge the Constitutionality of any law. However, to do so, the must also hear the matter. Habeas Corpus being the proper means of challenging such jurisdiction; only by Habeas Corpus can such a challenge be made. However, in Abelman there is no record that Booth attempted to serve a Habeas Corpus in the federal courts. Had he done so, the decision of the Court would have been decided differently. However, the Wisconsin Supreme Court did see fit to challenge the constitutionality of the Fugitive Slave Act.

Clearly, the Fugitive Slave Act of 1850 has that nexus, for the Constitution states, in Art. IV, § 2, cl. 2, 3:

> *A Person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on Demand of the executive Authority of the*

State from which he fled, be delivered up, to be removed to the State having Jurisdiction of the Crime.

No Person held to Service or Labour in one State, under the Laws thereof, escaping into another, shall, in Consequence of any Law or Regulation therein, be discharged from such Service or Labour, but shall be delivered up on Claim of the Party to whom such Service or Labour may be due.

Finally, as has been referred to by this Court, in Abelman, at 515,516:

*There can be no such thing as judicial authority, unless it is conferred by a Government or sovereignty; and if the judges and courts of Wisconsin possess the jurisdiction they claim, they must derive it either from the United States or the State. It certainly has not been conferred on them by the United States; and it is equally clear it was not in the power of the State to confer it, even if it had attempted to do so; for no State can authorize one of its judges or courts to exercise judicial power, by habeas corpus or otherwise, within the jurisdiction of another and independent Government. And although the State of Wisconsin is sovereign within its territorial limits to a certain extent, yet that sovereignty is limited and restricted by the Constitution of the United States. And the powers of the General Government, and of the State, although both exist and are exercised within the same territorial limits, **are yet separate and distinct** sovereignties, acting separately and independently of each other, within their respective spheres.*

Here, we must ask where that line of distinction falls? Who is to determine that fine line, if not the judiciaries of both governments? And, absent involvement by the state government, is it to be left solely to the federal government to define just how far over that line they wish to reach?

Just thirteen years later, the same Court, the Wisconsin Supreme Court, saw fit, once again, to challenge the constitutionality of another detention by federal agents. However, the United States Supreme Court ruled that since he had enlisted and was a member of the Army, the Constitutional nexus was existent.

In **IN RE TARBLE** [80 U.S. 397 (1871)], deals with a Habeas Corpus filed in Wisconsin and upheld by the Supreme Court of the State of Wisconsin. So, once again, Wisconsin trod upon ground previously tread upon in Abelman, where they were overturned.

At 397,398:

This was a proceeding on habeas corpus for the discharge of one Edward Tarble, held in the custody of a recruiting officer of the United States as an enlisted soldier, on the alleged ground that he was a minor, under the age of eighteen years at the time of his enlistment, and that he enlisted without the consent of his father.

Surely, this second decision by the Wisconsin Court was decided, as explained, because the youth, Tarble, was not yet 18 years of age, so the question arose as to whether the contract to enter the military service was valid. That would leave question, if the Wisconsin Court were

correct, as to the existence of the nexus directly to the United States Constitution. The decision, however, establishes the validity of that nexus.

That nexus to the Constitution is quite clear in Article I, Section 8, clause 12, and, Article II, Section 2, clause 1, to wit:

> *To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years;*
>
> *The President shall be Commander in Chief of the Army and Navy of the United States...*

For Congress to raise and support Armies, there must be a degree of control over the resources and obligations of that Army. As the President, as Commander in Chief, there can be no doubt as to the implications of jurisdiction over the members of the Army, once they have enlisted and are still under that enlistment.

Though the Court opinion also implied that there was no circumstance where a state could grant Habeas Corpus, that was within the narrow confines of Tarble. Even so, the Chief Justice, in a dissenting opinion, stated [at 412]:

> ***I have no doubt of the right of a State court to inquire into the jurisdiction of a Federal court upon habeas corpus, and to discharge when satisfied that the petitioner for the writ is restrained of liberty by the sentence of a court without jurisdiction.*** *If it errs in deciding the question of jurisdiction, the error must be corrected in the mode prescribed by the 25th section of the Judiciary Act;* ***not by denial of the right to make inquiry.***

Absent such ability of the states to challenge jurisdiction, at least when there is no direct Constitutional nexus, would result in the states and the people subjecting themselves to absolute federal despotism. This, clearly, was not the intent in either Tarble, or, the Constitution.

This, then, leads us to a consideration of the extent of federal legislative authority. This question of challenge of jurisdiction, based upon Constitutional authority, comes to us just four years later in **U S v. REESE, 92 U.S. 214** [1875]. Though this case does not deal with Habeas Corpus, it does address the matter of nexus to the Constitution and legislative authority. It will demonstrate that even with the nexus, absent explicit authority, the nexus is not sufficient to establish proper jurisdiction.

At 215, 216:

> *This case comes here by reason of a division of opinion between the judges of the Circuit Court in the District of Kentucky. It presents an indictment containing four counts, under sects. 3 and 4 of the act of May 31, 1870 (16 Stat. 140), against two of the inspectors of a municipal election in the State of Kentucky, for refusing to receive and count at such election the vote of William Garner, a citizen of the United States of African descent. All the questions presented by the certificate of division arose upon general demurrers to the several counts of the indictment. In this court the United States abandon the first and third counts, and expressly waive the consideration of all claims not arising out of the enforcement of the Fifteenth Amendment of the Constitution.*

Since the Fifteenth Amendment had been ratified prior to Reese, the nexus was created by that Amendment to the Constitution. The nexus exists, and, is confirmed by the decision of the Court, at 217,208:

> ***Rights and immunities created by or dependant upon the Constitution of the United States can be protected by Congress.*** *The form and the manner of the protection may be such as Congress, **in the legitimate exercise of its legislative discretion**, shall provide. These may be varied to meet the necessities of the particular right to be protected.*
>
> ***The Fifteenth Amendment does not confer the right of suffrage upon any one.*** *It prevents the States, or the United States, however, from giving preference, in this particular, to one citizen of the United States over another on account of race, color, or previous condition of servitude. Before its adoption, this could be done. It was as much within the power of a State to exclude citizens of the United States from voting on account of race, &c., as it was on account of age, property or education. Now it is not. If citizens of one race having certain qualifications are permitted by law to vote, those of another having the same qualifications must be. Previous to this amendment, there was no constitutional guaranty against this discrimination: now there is. **It follows that the amendment has invested the citizens of the United States with a new constitutional right which is within the protecting power of Congress.** That right is exemption from discrimination in the exercise of the elective franchise on account of race, color, or previous condition of servitude. This, under the express provisions of the second section of the amendment, Congress may enforce by 'appropriate legislation.'*

However, in the decision, it is determined that the statutory enactment based upon the nexus, the Fifteenth Amendment, is to broadly written as to come within the authority granted by the Amednment. The decision brings into question whether Sections three and four of the Act of Congress [Act of May 31, 1870 (16 Stat; 140)] are within the authority of the Congress based upon the Fifteenth Amendment. At 218:

> *This leads us to inquire whether the act now under consideration is 'appropriate legislation' for that purpose. The power of Congress to legislate at all upon the subject of voting at State elections rests upon this amendment. The effect of art. 1, sect. 4, of the Constitution, in respect to elections for senators and representatives, is not now under consideration. It has not been contended, nor can it be, **that the amendment confers authority** to impose penalties for every wrongful refusal to receive the vote of a qualified elector at State elections. It is only when the wrongful refusal at such an election is because of race, color, or previous condition of servitude, that Congress can interfere, and provide for its punishment. If, therefore, the third and fourth sections of the act are beyond that limit, they are unauthorized.*

And, at 219:

> *The statute contemplates a most important change in the election laws. Previous to its adoption, the States, as a general rule, regulated in their own way all the details of all elections. They prescribed the qualifications of voters, and the manner in which those offering to vote at an election should make known their qualifications to the officers in charge. This act interferes with this practice, and prescribes rules not provided by the laws of the States. It substitutes, under certain circumstances, performance wrongfully prevented for performance itself. If the elector makes and presents his affidavit in the*

form and to the effect prescribed, the inspectors are to treat this as the equivalent of the specified requirement of the State law. This is a radical change in the practice, and the statute which creates it should be explicit in its terms. Nothing should be left to construction, if it can be avoided. The law ought not to be in such a condition that the elector may act upon one idea of its meaning, and the inspector upon another.

And, at 220 - 222:

There is no attempt in the sections [of the Amendment] now under consideration to provide specifically for such an offence. If the case is provided for at all, it is because it comes under the general prohibition against any wrongful act or unlawful obstruction in this particular. We are, therefore, directly called upon to decide whether a penal statute enacted by Congress, with its limited powers, which is in general language broad enough to cover wrongful acts without as well as within the constitutional jurisdiction, can be limited by judicial construction so as to make it operate only on that which Congress may rightfully prohibit and punish. For this purpose, we must take these sections of the statute as they are. ***We are not able to reject a part which is unconstitutional, and retain the remainder, because it is not possible to separate that which is unconstitutional, if there be any such, from that which is not****. The proposed effect is not to be attained by striking out or disregarding words that are in the section, but by inserting those that are not now there. Each of the sections must stand as a whole, or fall altogether. The language is plain. There is no room for construction, unless it be as to the effect of the Constitution. The question, then, to be determined, is, whether we can introduce words of limitation into a penal statute so as to make it specific, when, as expressed, it is general only.*

It would certainly be dangerous if the legislature could set a net large enough to catch all possible offenders, and leave it to the courts to step inside and say who could be rightfully detained, and who should be set at large. This would, to some extent, substitute the judicial for the legislative department of the government. The courts enforce the legislative will when ascertained, ***if within the constitutional grant of power****. Within its legitimate sphere, Congress is supreme, and beyond the control of the courts; but if it steps outside of its constitutional limitations, and attempts that which is beyond its reach, the courts are authorized to, and when called upon in due course of legal proceedings, must, annul its encroachments upon the reserved power of the States and the people.*

Therefore, in Reese, we see that though a nexus does exist between the Constitution and the matter before the Court, the authority of the Congress, to act within explicit grant of power, or authority, within the Constitution (15th Amendment), does not grant them legislative authority outside of that which was explicitly granted.

When we look at the history of Habeas Corpus, we can see the significance, and importance, of the writ as being a protection for the people from judicial misdeeds, even to the point of imposing severe penalties on those who did not answer 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, by any action of debt, suit, bill, plaint or information, in any of the King's courts at Westminster, wherein no essoin, protection, privilege, injunction, wager of law, or stay of prosecution by Non vult ulterius prosequi, or otherwise, shall be admitted or allowed, or any more than one imparlance; (4) and any recovery or judgment at the suit of any party grieved, shall be a sufficient conviction for the first offence; and any after recovery or judgment at the suit of a party grieved for any offence after the first judgment, shall be a sufficient conviction to bring the officers or person within the said penalty for the second offence.*

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.

In the court of king's bench it was, and is still, necessary to apply for it by motion to the court, as in the case of all other prerogative writs (certiorari, prohibition, mandamus, &c) which do not issue as of mere course, without shewing some probable cause why the extraordinary power of the crown is called in to the party's assistance. For, as was argued by lord chief justice Vaughan, "it is granted on motion, because it cannot be had of course; and there is therefore no necessity to grant it: for the court ought to be satisfied that the party hath a probable cause to be delivered." And this seems the more reasonable, because (when once granted) the person to whom it is directed can return no satisfactory excuse for not bringing up the body of the prisoner. So that, if it issued of mere course, without shewing to the court or judge some reasonable ground for awarding it, a traitor or felon under sentence of death, a soldier or mariner in the king's

service, a wife, a child, a relation, or a domestic, confined for insanity or other prudential reasons, might obtain a temporary enlargement by suing out an habeas corpus, though sure to be remanded as soon as brought up to the court. And therefore Edward Coke, when chief justice, did not scruple in 13 Jac. I. to deny a habeas corpus to one confined by the court of admiralty for piracy; there appearing, upon his own shewing, sufficient grounds to confine him. On the other hand, if a probable ground be shewn, that the party is imprisoned without just cause, and therefore hath a right to be delivered, the writ of habeas corpus is then a writ of right, which ***"may not be denied, but ought to be granted to every man that is committed, or detained in prison, or otherwise restrained, though it be by the command of the king, the privy council, or any other."***

* * *

In a former part of these commentaries we expatiated at large on the personal liberty of the subject. It was shewn to be a natural inherent right, which could not be surrendered or forfeited unless by the commission of some great and atrocious crime, nor ought to be abridged in any case without the special permission of law. A doctrine co-eval with the first rudiments of the English constitution; and handed down to us from our Saxon ancestors, notwithstanding all their struggles with the Danes, and the violence of the Norman conquest: asserted afterwards and confirmed by the conqueror himself and his descendants: ***and though sometimes a little impaired by the ferocity of the times, and the occasional despotism of jealous or usurping princes,*** *yet established on the firmest basis by the provisions of magna carta, and a long succession of statutes enacted under Edward III. To assert an absolute exemption from imprisonment in all cases, is inconsistent with every idea of law and political society; and in the end would destroy all civil liberty, by rendering it's protection impossible: but the glory of the English law consists in clearly defining the times, the causes, and the extent, when, wherefore, and to what degree, the imprisonment of the subject may be lawful. This induces an absolute necessity of expressing upon every commitment the reason for which it is made; that the court upon an* habeas corpus *may examine into its validity; and according to the circumstances of the case may discharge, admit to bail, or remand the prisoner.*

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. By which admirable regulations, judicial as well as parliamentary, the remedy is now complete for removing the injury of unjust and illegal confinement. ***A remedy the more necessary, because the oppression does not always arise from the ill-nature, but sometimes from the mere inattention of government.***

As a soon to be Great Nation is founded, those who framed the Constitution saw fit to specifically carry forward, and secure rights against "inattentive government", as a part of the Constitution.

William Rawle, in **"A View of the Constitution of the United States** 117--19" [1829], provides us insight into the perception of the Writ just forty years after the Ratification of the Constitution, and, clearly, as it was envisioned at the time.

> *Reasons will be given hereafter for considering many of the restrictions, contained in the amendments to the Constitution, as extending to the states as well as to the United States, but the nature of the writ of habeas corpus seems peculiarly to call for this construction. It is the great remedy of the citizen or subject against arbitrary or illegal imprisonment; it is the mode by which the judicial power speedily and* ***effectually protects the personal liberty of every individual, and repels the injustice of unconstitutional laws or despotic governors****. After erecting the distinct government which we are considering, and after declaring what should constitute the supreme law in every state in the Union, fearful minds might entertain jealousies of this great and all-controlling power, if some protection against its energies when misdirected, was not provided by itself.*
>
> *The national code in which the writ of habeas corpus was originally found, is not expressly or directly incorporated into the Constitution.*
>
> ***If this provision had been omitted****, the existing powers under the state governments, none of whom are without it, might be questioned, and* ***a person imprisoned on a mandate of the president or other officer, under colour of lawful authority derived from the United States, might be denied relief****. But the judicial authority, whether vested in a state judge, or a judge of the United States, is an integral and identified capacity; and if congress never made any provision for issuing writs of habeas corpus, either the state judges must issue them, or the individual be without redress. The Constitution seems to have secured this benefit to the citizen by the description of the writ, and in an unqualified manner admitting its efficacy, while it declares that it shall not be suspended unless when, in case of rebellion or invasion, the public safety shall require it. This writ is believed to be known only in countries governed by the common law, as it is established in England; but in that country the benefit of it may at any time be withheld by the authority of parliament, whereas we see that in this country it cannot be suspended even in cases of rebellion or invasion, unless the public safety shall require it. Of this necessity the Constitution probably intends, that the legislature of the United States shall be the judges. Charged as they are with the preservation of the United States from both those evils, and superseding the powers of the several states in the prosecution of the measures they may find it expedient to adopt, it seems not unreasonable that this control over the writ of habeas corpus, which ought only to be exercised on extraordinary occasions, should rest with them. It is at any rate certain, that congress, which has authorized the courts and judges of the United States to issue writs of habeas corpus in cases within their jurisdiction, can alone suspend their power, and that no state can prevent those courts and judges from exercising their regular functions, which are, however,* ***confined to cases of imprisonment professed to be under the authority of the United States. But the state courts and judges possess the right of determining on the legality of imprisonment under either authority****.*

So, Rawles has explained to us that the federal government can, "*under colour of lawful authority*", imprison a person. And, that only the state court can provide a remedy for such unlawful detention. However, this does not seem to square with Abelman v. Booth [62 U.S. 506 (1858)], however, the context of Abelman does not dispute Rawle's conclusion.

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?

As a final resource of competent legal authority, we will visit **Bouvier's Law Dictionary** [1856], from about the time of the Abelman decision [1858], 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.*
>
> * * *
>
> *5. The habeas corpus act has been substantially incorporated into the jurisprudance of every state in the Union, and the right to the writ has been secured by most of the constitutions of the states, and of the United States. The statute of 31 Car. II. c. 2, provides that the person imprisoned, if he be not a prisoner convict, or in execution of legal process, or committed for treason or felony, plainly expressed in the warrant, or has not neglected wilfully, ...to pray a habeas corpus for his enlargement, may apply by any one in his behalf, ... to a judicial officer for the writ of habeas corpus, and the officer, upon view of the copy of the warrant of commitment, or upon proof of denial of it after due demand, must allow the writ to be directed to the person in whose custody the party is detained, and made returnable immediately before him. And ..., any of the said prisoners may obtain his writ of habeas corpus, by applying to the proper court.*

* * *

*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.***

8. It is proper to consider, 1. When it is to be granted. 2. How it is to be served. 3. What return is to be made to it. 4. The bearing. 5. The effect of the judgment upon it.

*9. - 1. **The writ is to be granted whenever a person is in actual confinement, committed or detained as aforesaid, either for a criminal charge, or, ...under any color or pretence whatsoever**...*

*10. - 2. **The writ may be served by any free person, by leaving it with the person to whom it is directed, or left at the gaol or prison with any of the under officers, under keepers, or deputy of the said officers or keepers**...*

*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.***

12. - 4. When the prisoner is brought, before the judge, his judicial discretion commences, and he acts under no other responsibility than that which belongs to the exercise of ordinary judicial power. The judge or court before whom the prisoner is brought on a habeas corpus, examines the return and Papers, if any, referred to in it, and if no legal cause be shown for the imprisonment or restraint; or if it appear, although legally committed, he has not been prosecuted or tried within the periods required by law, or that, for any other cause, the imprisonment cannot be legally continued, the prisoner is discharged from custody....

* * *

16. The habeas corpus can be suspended only by authority of the legislature. The constitution of the United States provides, that the privilege of the writ of habeas corpus shall not be suspended unless when, in cases of invasion and rebellion, the public safety may require it. Whether this writ ought to be suspended depends on political considerations, of which the legislature, is to decide...

****

Now, let us look in to the matter of jurisdiction. First, we might look at what the Framers of the Constitution, and others of that era, perceived as limitation on jurisdiction. In an Act of Congress, the protection of government property, only on land ceded in accordance with the Constitution, could be protected, by the authority of Congress, with an act imposing penalties for damage or destruction to that property

An Act more effectually to provide for the punishment of certain crimes against the United States, and for other purposes. (March 3, 1825)

> *"That if any person or persons, within any fort, dock-yard, navy-yard, arsenal, armory, or magazine, the site whereof is ceded to,* ***and under the jurisdiction of, the United States****, or on a site of any lighthouse, or other needful building belonging to the United States, the sight whereof is ceded to them [United States},* ***and under their jurisdiction****, as aforesaid, shall, willfully..."*

Article I, Section 8, clause 17 seems to have established severe limits on Congress in such enactments and authority:

> *To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings;*

Moving ahead in time, we come to another momentous decision by Justice Taney (Abelman v. Booth) in **Dred Scott v. Sandford 60 U.S. 393** (1856). In this decision, notwithstanding the subject of the case, rather, with consideration of a rather obscure portion of the decision, we find that Scott had no standing. The Court decided to hear the case, anyway.

> *"That plea denies the right of the plaintiff to sue in a court of the United States, for the reasons therein stated. If the question raised by it is legally before us, and the court should be of opinion that the facts stated in it disqualify the plaintiff from becoming a citizen, in the sense in which that word is used in the Constitution of the United States, then the judgment of the Circuit Court is erroneous, and must be reversed. It is suggested, however, that this plea is not before us; and that as the judgment in the court below on this plea was in favor of the plaintiff, he does not seek to reverse it, or bring it before the court for revision by his writ of error; and also that* ***the defendant waived this defence by pleading over, and thereby admitted the jurisdiction of the court.****"*

Absent a challenge to the Court's jurisdiction, the Court may assume jurisdiction.

Also, in considering jurisdiction, we must also visit **Twining v. State of New Jersey** 211 U.S. 78 (1908). In this case, the decision of the United States Supreme Court had to do with the extent of federal jurisdiction. The jurisdiction was based upon the Fourteenth Amendment to the Constitution.

Albert C. Twining and David C. Cornell were indicted by a Grand Jury, and, convicted of providing "false papers" to a state banking examiner. They were sentenced to prison terms, and Twining appealed the action of the New Jersey Court. He held that the requirement to turn over

papers to the examiner, absent a court order, denied him "due process" under the Fourteenth Amendment.

Since Twining and Cornel were both citizens of New Jersey, and there was no other qualifier for federal intervention, they retained their status as state citizens, dealing with the laws of that state, without "Federal right[s]" being conferred to them.

Justice Moody provided the decision of the court. In summing up the case, he posed the following [at 116]:

> *". . . whether such a law [state law] violates the 14th Amendment, either by abridging the privileges or immunities of citizens of the United States, or by depriving persons of their life, liberty, or property without due process of law. In order to bring themselves within the protection of the Constitution it is incumbent on the defendants to prove two propositions: First, that the exemption from compulsory self- incrimination is guaranteed by the Federal Constitution against impairment by the states; and, second, if it be so guaranteed, that the exemption was in fact impaired in the case at bar.* The first proposition naturally presents itself for earlier consideration. ***If the right here asserted is not a Federal right, that is the end of the case.*** *We have no authority to go further and determine whether the state court has erred in the interpretation and enforcement of its own laws.*

That last point, "If the right here asserted is not a Federal right, that is the end of the case", will lead to the final decision of the Court. Does it also hold that if no right is conferred, that there is an absence of jurisdiction, as well?

Finally, at 115:

> *We do not pass upon the conflict, because, for the reasons given, we think that the exemption from compulsory self-incrimination in the courts of the states* ***is not secured by any part of the Federal Constitution***.

That suggests that there is, without a doubt, a limitation on the jurisdiction of the federal government. If the Constitution does not provide for it, they cannot assume to have jurisdiction.

Now, on to the separation of the judiciary into its dual function. Though Administrative Agencies had been in existence prior to, it wasn't until **Ashwander v Tennessee Valley Authority 297 U.S. 288** (1936) that we find a concise explanation of the "rules" adopted by the United States Supreme Court.

The case involves an effort by shareholders of the Alabama Power Company to annul a contract that was selling large portions of the operation, facilities, and franchises, of the Power Company to the Tennessee Valley Authority, a federal agency.

The outcome was based upon principles (rules?) developed in previous decisions, and the final decision was that the contracts were binding.

Justice Brandeis, in a concurring opinion, gave us the meat that is so necessary to understand what had eroded, over time, the limitations imposed on the federal government by the Constitution. At 346:

The Court developed, for its own governance in the cases confessedly within its jurisdiction, a series of rules under which it has avoided passing upon a large part of all the constitutional questions pressed upon it for decision. They are:

*1. **The Court will not pass upon the constitutionality of legislation in a friendly, nonadversary, proceeding, declining because to decide such questions 'is legitimate only in the last resort, and as a necessity in the determination of real, earnest, and vital controversy between individuals.** It never was the thought that, by means of a friendly suit, a party beaten in the legislature could transfer to the courts an inquiry as to the constitutionality of the legislative act.*

2. The Court will not 'anticipate a question of constitutional law in advance of the necessity of deciding it.' 'It is not the habit of the court to decide questions of a constitutional nature unless absolutely necessary to a decision of the case.'

3. The Court will not 'formulate a rule of constitutional law broader than is required by the precise facts to which it is to be applied.'

*4. **The Court will not pass upon a constitutional question although properly presented by the record, if there is also present some other ground upon which the case may be disposed of.** This rule has found most varied application. Thus, if a case can be decided on either of two grounds, one involving a constitutional question, the other a question of statutory construction or general law, the Court will decide only the latter. Appeals from the highest court of a state challenging its decision of a question under the Federal Constitution are frequently dismissed because the judgment can be sustained on an independent state ground.*

5. The Court will not pass upon the validity of a statute upon complaint of one who fails to show that he is injured by its operation. Among the many applications of this rule, none is more striking than the denial of the right of challenge to one who lacks a personal or property right. Thus, the challenge by a public official interested only in the performance of his official duty will not be entertained. In Fairchild v. Hughes, the Court affirmed the dismissal of a suit brought by a citizen who sought to have the Nineteenth Amendment declared unconstitutional. In Massachusetts v. Mellon, the challenge of the federal Maternity Act was not entertained although made by the commonwealth on behalf of all its citizens.

*6. **The Court will not pass upon the constitutionality of a statute at the instance of one who has availed himself of its benefits.***

*7. **'When the validity of an act of the Congress is drawn in question, and even if a serious doubt of constitutionality is raised, it is a cardinal principle that this Court will first ascertain whether a construction of the statute is fairly possible by which the question may be avoided.** I am aware that, on several occasions, this Court passed upon important constitutional questions which were presented in stockholders' suits bearing a superficial resemblance to that now before us. But in none of those cases was the question presented under circumstances similar to those at bar. In none, were the plaintiffs preferred stockholders. In some, the Court dealt largely with questions of federal jurisdiction and collusion. In most, the propriety of considering the constitutional question was not challenged by any party. In most, the statute challenged imposed a*

burden upon the corporation and penalties for failure to discharge it; whereas the Tennessee Valley Authority Act (16 U.S.C.A. 831 et seq.) imposed no obligation upon the Alabama Power Company, and under the contract it received a valuable consideration. Among other things, the Authority agreed not to sell outside the area covered by the contract, and thus preserved the corporation against possible serious competition. The effect of this agreement was equivalent to a compromise of a doubtful cause of action. Certainly, the alleged invalidity of the Tennessee Valley Authority Act was not a matter so clear as to make compromise illegitimate. These circumstances present features differentiating the case at bar from all the cases in which stockholders have been held entitled to have this Court pass upon the constitutionality of a statute which the directors had refused to challenge. The cases commonly cited are these:

Given that the United States Supreme Court has found means to circumvent the concept of "judicial review", as established by Justice Marshall in **Marbury v. Madison** [5 US 137 (1803)], and established the principles which would be, for over a century, protecting the citizens from an overreaching government. He made clear what the nature of a government, created and bound by a constitution, was when he said, at 177:

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.***

However, in line with Ashwander Decision, the Congress enacted the **Administrative Procedure Act of 1946.**

The Bill, "Administrative Procedure Act", was submitted by Representative Pat McCarran, Democrat, Nevada, who gave us some insight into its purpose, when he said (from the Congressional Record, March 12, 1946):

"We have set up a fourth order in the tripartite plan of government which was initiated by the founding fathers of our democracy. They set up the executive, the legislative, and the judicial branches; ***but since that time we have set up fourth dimension, if I may so term it, which is now popularly known as administrative in nature.*** *So we have the* ***legislative, the executive, the judicial, and the administrative.****"*

"Perhaps there are reasons for that arrangement. We found that the legislative branch, although it might enact a law, could not very well administer it. So the legislative branch enunciated the legal precepts and ordained that commissions or groups should be established by the executive branch with power to promulgate rules and regulations. These rules and regulations are the very things that impinge upon, curb, or permit the citizen who is touched by the law, as every citizen of this democracy is.

"This is not a Government of man. It is a Government of law; and this law is a thing which, every day from its enactment until the end of time so for is this Government is concerned, will touch every citizen of the Republic.

"Senate bill 7, the purpose of which is to improve the administration of justice by prescribing fair administrative procedure, is a bill of rights for ***the hundreds of thousands of Americans whose affairs are controlled or regulated in one way or***

***another by agencies of the Federal government**. It is designed to provide guarantees of due process in administrative procedure.*

"The subject of the administrative law and procedure is not expressly mentioned in the constitution, and there is no recognizable body of such law, as there is for the courts in the Judicial Code.

"Problems of administrative law and procedure have been increased and aggravated by the continued growth of the Government, particularly in the executive branch.

So, the question arises as to whether the administrative branch of government, "the fourth diomension', extends to all people, or just "*the hundreds of thousands of Americans whose affairs are controlled or regulated in one way or another by agencies of the Federal government*"? Given that the estimated population of the United States in 1946 was over 141 million people, that would mean that less than one percent were among those "hundreds of thousands of Americans".

Later, on May 24 (Congressional Record), Representative John Gwynne of Iowa provides insight into what "rule making" is, when he said:

> "*After a law has been passed by the Congress, before it applies to the individual citizens there are about three steps that must be taken. First, the bureau having charge of enforcement must write rules and regulations to amplify, interpret, or expand the statute that we passed; rulemaking, we call it. Second, there must be some procedure whereby the individual citizen who has some contact with the law can be brought before the bureau and his case adjudicated... Finally, there must be some procedure whereby the individual may appeal to the courts from the action taken by the bureau.*"

"Amplify, interpret, or expand"? Was the intention of the Act to apply only to the hundreds of thousands, who were among that less than one percent?? Or, was the intention to circumvent the Constitution and establish a despotic regime that was no longer bound by the Constitution?

If we assume the latter, that it only applies to those who come under the Administrative Procedure Act of 1946, that leaves cause to wonder whether the remaining 99 percent have fallen under the influence of the Act by other means, or simple inattention.

If we recall what Taney said in Dred Scott v. Sandford, if one fails to challenge jurisdiction, the Court will assume that it has the authority to hear the matter before it. If so, then Habeas Corpus is the only means by which that overreaching government can be challenged as to the constitutionality of a law whereby they have sought to detain someone for a crime that is not within their jurisdiction.

Now, we come to the matter at hand, the detainment of Larry Mikiel Myers. The charges brought by the federal government are those that must be tested as to their constitutionality.

In each of these offenses, the burden falls upon the government to established jurisdictions; *in personam*; subject matter; and, territorial. This must also be in compliance with the Decisions cited above, as to whether they fall within federal or local jurisdiction.

The Charges, with comment:

18 U.S.C. § 371: Conspiracy to commit offense or to defraud United States

> *If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined under this title or imprisoned not more than five years, or both.*
>
> *If, however, the offense, the commission of which is the object of the conspiracy, is a misdemeanor only, the punishment for such conspiracy shall not exceed the maximum punishment provided for such misdemeanor.*

How can that be a crime that is only words (freedom of Speech) and there is no manifestation of a crime (act against a party causing injury, damage, or loss)? Is this not unlike many Hollywood and television movies, radio programs, band books, where a plot is laid out, for whatever purpose, though no action is taken, except words, to actually conduct some act? Where is the constitutional nexus?

18 U.S.C. § 372: Conspiracy to impede or injure officer

> *If two or more persons in any State, Territory, Possession, or District conspire to prevent, by force, intimidation, or threat, any person from accepting or holding any office, trust, or place of confidence under the United States, or from discharging any duties thereof, or to induce by like means any officer of the United States to leave the place, where his duties as an officer are required to be performed, or to injure him in his person or property on account of his lawful discharge of the duties of his office, or while engaged in the lawful discharge thereof, or to injure his property so as to molest, interrupt, hinder, or impede him in the discharge of his official duties, each of such persons shall be fined under this title or imprisoned not more than six years, or both.*

Though there is an implication that if this occurs in a state, it must be valid (a lawful or constitutional enactment), however, the legitimacy of any law enacted must meet the test of constitutionality and the recognition that jurisdictions cannot overlap -- separate and distinct jurisdictions do not allow for the federal government, absent a qualifier, to assume jurisdiction where the state has jurisdiction. As stated in Twinning, "*If the right here asserted is not a Federal right, that is the end of the case.*" Where is the constitutional nexus?

18 U.S.C. § 876: Mailing threatening communications

> *(a) Whoever knowingly deposits in any post office or authorized depository for mail matter, to be sent or delivered by the Postal Service or knowingly causes to be delivered by the Postal Service according to the direction thereon, any communication, with or without a name or designating mark subscribed thereto, addressed to any other person, and containing any demand or request for ransom or reward for the release of any kidnapped person, shall be fined under this title or imprisoned not more than twenty years, or both.*
>
> *(b) Whoever, with intent to extort from any person any money or other thing of value, so deposits, or causes to be delivered, as aforesaid, any communication containing any*

threat to kidnap any person or any threat to injure the person of the addressee or of another, shall be fined under this title or imprisoned not more than twenty years, or both.

(c) Whoever knowingly so deposits or causes to be delivered as aforesaid, any communication with or without a name or designating mark subscribed thereto, addressed to any other person and containing any threat to kidnap any person or any threat to injure the person of the addressee or of another, shall be fined under this title or imprisoned not more than five years, or both. If such a communication is addressed to a United States judge, a Federal law enforcement officer, or an official who is covered by section 1114, the individual shall be fined under this title, imprisoned not more than 10 years, or both.

(d) Whoever, with intent to extort from any person any money or other thing of value, knowingly so deposits or causes to be delivered, as aforesaid, any communication, with or without a name or designating mark subscribed thereto, addressed to any other person and containing any threat to injure the property or reputation of the addressee or of another, or the reputation of a deceased person, or any threat to accuse the addressee or any other person of a crime, shall be fined under this title or imprisoned not more than two years, or both. If such a communication is addressed to a United States judge, a Federal law enforcement officer, or an official who is covered by section 1114, the individual shall be fined under this title, imprisoned not more than 10 years, or both

The Constitution, Art. I, Sec. 8, cl. 7, imposes an obligation on government, to wit

To establish Post Offices and post Roads

As we saw in **In Re Tarble**, the authority to enact laws has to be explicit. There is no presumption that laws can be enacted limiting what could be mailed through the postal system, whether that system is under federal mandate, or under the abrogated responsibility in the current privatized US Postal Service. Any limitation would have to be where such restriction was to prohibit immediate danger to the carriers of the mails. The privacy envisioned by the Framers was such that mail could not be opened. If the mail arrived at its destination without consequence, the mail system, at least, functions as it should. The assumption that those thoughts reduced to writing should be subject to criminal prosecution, because of their content, is absurd, without merit, and without constitutional nexus.

18 U.S.C. § 1503: Influencing or injuring officer or juror generally

(a) Whoever corruptly, or by threats or force, or by any threatening letter or communication, endeavors to influence, intimidate, or impede any grand or petit juror, or officer in or of any court of the United States, or officer who may be serving at any examination or other proceeding before any United States magistrate judge or other committing magistrate, in the discharge of his duty, or injures any such grand or petit juror in his person or property on account of any verdict or indictment assented to by him, or on account of his being or having been such juror, or injures any such officer, magistrate judge, or other committing magistrate in his person or property on account of the performance of his official duties, or corruptly or by threats or force, or by any threatening letter or communication, influences, obstructs, or impedes, or endeavors to influence, obstruct, or impede, the due administration of justice, shall be punished as provided in subsection (b). If the offense under this section occurs in connection with a

trial of a criminal case, and the act in violation of this section involves the threat of physical force or physical force, the maximum term of imprisonment which may be imposed for the offense shall be the higher of that otherwise provided by law or the maximum term that could have been imposed for any offense charged in such case.

(b) The punishment for an offense under this section is -

*(1) **in the case of a killing**, the punishment provided in sections 1111 and 1112;*

*(2) **in the case of an attempted killing**, or a case in which the offense was committed against a petit juror and in which a class A or B felony was charged, imprisonment for not more than 20 years, a fine under this title, or both; and*

(3) in any other case, imprisonment for not more than 10 years, a fine under this title, or both.

The very wording of the Statute provides insight into the intention of the statue. It is to prohibit real acts that would influence a jury, not merely words. It states, in (b) (1) and (b) (2), that "*in the case of a killing*", and, "*in the case of an attempted killing*". Surely, only a threat to life, which minimally, would have to be beyond the very words in a letter, would have to be shown to provide substance to the crime. Perhaps, in this instance, a nexus can be demonstrated, since the integrity of the Judicial Process is at stake, though absent the elements of proof of the ability, the means, and, the intention, to commit the act, leaves the constitutional nexus deficient.

CONCLUSION

That the right and obligation, for this Court to issue the Writ of Habeas Corpus *ad subjiciendum*, surely exists, especially under the circumstance of the instant case.

That the burden of proof of the constitutionality of the charges lies squarely with the federal government.

That absent sufficient proof that the charges (statues) meet the test of constitutionality, and that all three jurisdictions (personam, subject matter, territorial) are met, without question, there can be no alternative other than freeing Larry Mikiel Myers from unlawful detention, to the extent that this Court has jurisdiction.

That those who have participated in the unlawful detention should received the full force of law (historical) so as to discourage future efforts to unlawfully detain and refuse to answer a return a Habeas Corpus; and the reduce the burden upon this Court to deal with flagrant violations of the United States Constitution.

That those who unlawfully detained Larry Mikiel Myers return to him all property that was taken upon his arrest; taken from him after arrest, and all property acquired after arrest, be returned to him immediately.

That he be returned to the location from whence his Liberty was denied, without cost or obligation.

Certificate of Service

I HEREBY CERTIFY that a copy hereof has been furnished by mail priority mail to the persons listed below this 9th day of May, 2012

Russell Washburn, Warden
Citrus County Detention Facility
2604 West Woodland Ridge Drive
Lecanto. Florida 33461

Judge Steven Merryday
United States District Court for the Middle District of Florida
Sam M. Gibbons U.S. Courthouse
801 North Florida Ave.
Tampa, Florida 33602

Sheriff Bob Gualtieri
Pinellas County
10750 Ulmerton Road
Largo, Florida 33778

John Ley, Clerk of Court
U.S. Court of Appeals for the 11th Circuit
56 Forsyth St. N.W.
Atlanta, Georgia 30303

Petitioner

_____

Dated: May 9, 2012

Gary Hunt

25370 Second Avenue

Los Molinos, California 96055

Phone: (530) 384-0375

Email: hunt@outpost-of-freedom.com

Exhibit 11

United States Court of Appeals

Eleventh Circuit
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

John Ley
Clerk of the Court

May 10, 2012

Mr. Gary Hunt
25370 Second Avenue
Los Molinos, CA 96055

RE: Habeas Corpus Demand for Larry Meyers

Dear Mr. Hunt:

This court is in receipt of your letter Demanding a Habeas Corpus for Larry Meyers. Please note that this court has limited jurisdiction. Only cases first filed and finally decided in a US District Court may be appealed and reviewed by this court. A petition for writ of habeas corpus should be filed in the district court pursuant to FRAP 22.

Sincerely,

John Ley, Clerk

By: _____
Deputy Clerk

Exhibit 12

Gary Hunt
25370 Second Avenue
Los Molinos, California 96055

May 21, 2012

John Ley, Clerk of Court
U.S. Court of Appeals for the 11th Circuit
56 Forsyth St. N.W.
Atlanta, Georgia 30303

RE: Habeas Corpus Demand for Larry Myers

Dear Clerk Ley;

I am in receipt of your letter of May 10, 2012. I note that it came nearly three months after you were served with the Demand for Habeas Corpus.

Along with that Demand was included notices provided to Sheriff Gualtieri and Judge Merryday, U.S. District Court, as well as information regarding the service prior to the date of the trial.

It is thereby apparent that the District Court refused (suspended) Habeas Corpus by its failure to answer and return.

You received, on May 11, the Motion for Habeas Corpus filed with the Florida Supreme Court. You will find that this Motion details the reason for filing with that Court as well as an explanation as to why it is filed under Common Law rather through any appellate or administrative procedures. It is a Habeas Corpus ad subjiciendum and is fundamental to the Constitution, therefore cannot be subject to Appellate Procedure, as this would detract from the purpose of the sacred writ.

I do appreciate the time you have taken to offer the advice contained in your letter, however, it is not on point to the Demand and is irrelevant to this matter.

With due respect for the Constitutions,
I remain,
Respectfully,

Gary Hunt

Exhibit 13

Supreme Court of Florida

Office of the Clerk
500 South Duval Street
Tallahassee, Florida 32399-1925

THOMAS D. HALL
CLERK
SUSAN DAVIS MORLEY
CHIEF DEPUTY CLERK

PHONE NUMBER: (850) 488-0125
www.floridasupremecourt.org

May 30, 2012

Gary Hunt
25370 Second Avenue
Los Molinos, California 96055

Re: Larry Mikiel Myers

Dear Mr. Hunt:

In response to your filing received May 14, 2012, and related question, please be advised that analysis of your pleading would constitute legal advice. However, we are able to clarify that the pleading is deficient because it concerns a party prosecuted in federal court and currently incarcerated in a federal facility. As such, it must be filed in a federal court. We are returning it to you for that purpose.

Most cordially,

Thomas D. Hall

TDH/wm

Florida Supreme Court

Gary Hunt, on behalf of, and, Larry Mikiel Myers

Petitioners,

vs.

Russell Washburn, Warden; Corrections Corporation of America: Citrus County Detention Facility

Sheriff Bob Gualtieri, Pinellas County

Judge Steven Merryday,
U. S. District Court for the Middle District of Florida

John Ley, Clerk of Court,
U.S. Court of Appeals for the 11th Circuit

Respondents,

Case No. _____

USDC: 8:96-Cr-64-T-23TBM

MOTION FOR HABEAS CORPUS

STATEMENT OF FACTS

This Habeas Corpus is filed under the Common Law, as any statutory or administrative laws would dilute the intent of the Framers of both state and federal Constitutions.

Larry Mikiel Myers is a citizen of Florida.

August 18, 2011, Larry Mikiel Myers was booked into the Pinellas County, Florida, Jail.

Prior to January 27, 2012, Larry Mikiel Myers attempted service of his Demand for Habeas Corpus to at least two corrections officers (gaolers), who refused to accept service.

On January 27, 2012, Larry Mikiel Myers mailed, through the jail system, his Demand for Habeas Corpus to Sheriff Bob Gualtieri.

From February 6 through February 9, 2012, Larry Mikiel Myers stood trial in the United States District Court for the Middle District of Florida, Judge Steven Merryday presiding,

Exhibit 14

Power of Attorney - Specific

I, Larry Mikiel Myers, on this 12th day of March, 2012, do hereby grant Specific Power of Attorney to Gary Hunt to speak on my behalf, and, to act as if he were me, regarding all matters, directly, or indirectly, related to a Demand for Habeas Corpus, with all federal and/or state judiciaries, agencies, personnel, and any other agents or private persons under contract to said state and/or federal entities.

So Help Me God

Larry Mikiel Myers (SEAL) March 12, 2012

Larry Mikiel Myers date

Witnesses:

We hereby acknowledge that we know Larry Mikiel; Myers to be the person he says he is, and that he has affirmed that he has signed this document freely and of his own will.

Witness signature printed name date

Witness signature printed name date