

OFFICE OF THE CLERK
U.S. Court of Appeals
For the Eighth Circuit
111 South 10th Street
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St. Louis, Missouri 63102
Phone: (314) 244-2400

Dear Clerk of Court,

Enclosed please find two originals and five copies of the "PETITION FOR THE GREAT WRIT OF HABEAS CORPUS" and "WRIT OF HABEAS CORPUS", along with a \$5.00 Postal Money Order. Please record and return a file stamped copy original in the enclosed SASE.

Thank you for your kind assistance.

Respectfully Submitted,

Melinda Sue Harrington, POA
Melinda -Sue:Harrington, POA, *Next Friend*
2450 Elmwood Ave.
Kansas City
Missouri [64127]
July 31, A.D. 2010

United States Court of Appeals
For the Eighth Circuit

PETITION FOR THE GREAT WRIT OF HABEAS CORPUS

The people of Missouri the republic
on the relation of
Denny-Ray:Hardin, sui juris
Petitioner,

Vs Cause No: _____

Rene G. Garcia, Warden
FCI ENGLEWOOD
FEDERAL CORRECTIONAL INSTITUTION
9595 West Quincy Ave
Littleton, Colorado 80123

Robert E. Larsen, Magistrate
US DISTRICT COURT for the Western District of Missouri
Charles Evans Whittaker Courthouse
400 East Ninth Street, Room 6652
Kansas City, Missouri 64106

Brian P. Casey, Asst. US Attorney
Charles Evans Whittaker Courthouse
400 East Ninth Street, Suite 5510
Kansas City, Missouri 64106
(816) 426-3122

Anita L. Burns, Asst.FPD
FEDERAL PUBLIC DEFENDER
818 Grand Avenue, Suite 300
Kansas City, Missouri 64106
(816) 471-8282

Nathan Holmes VanSickle, Special Agent FBI
Federal Bureau of Investigation
1100 Summit
Kansas City, Missouri 64105

Respondents,

PETITION FOR THE GREAT WRIT OF HABEAS CORPUS

The Petition of the people of Missouri the dejure
republic, on the relation of Denny-Ray:Hardin,
Petitioner, against Respondent, Rene G. Garcia, Warden
of FCI ENGLEWOOD, FEDERAL CORRECTIONAL INSTITUTION 9595
West Quincy Ave. Littleton, Colorado 80123. This
Petition is Applicable to any And All Agents,
Successors, Deputies, and/or Assigns of Respondent(s).

1. Petitioner is restrained of his liberty and
unlawfully imprisoned by the Respondent at the
FCI ENGLEWOOD FEDERAL CORRECTIONAL INSTITUTION,
in the city of LITTLETON, STATE OF COLORADO.

Petitioner has been denied contact with his
family and held in solitary confinement at the
FCI ENGLEWOOD FEDERAL CORRECTIONAL INSTITUTION
since June 12, 2010 by order of Warden Rene G.
Garcia, without authority of law; depriving
Denny-Ray:Hardin of his rights; under the color

of law. Petitioner has been restrained by order of Magistrate Robert Larsen of the US DISTRICT COURT FOR THE WESTERN DISTRICT OF MISSOURI without authority of law; without jurisdiction; working in concert with Warden Rene G. Garcia, Brian P. Casey, Anita Burns, Nathan Holmes VanSickle to deprive Denny-Ray: Hardin of his life and liberty under the color of law.

JURISDICTONAL CHALLENGE

2. Petitioner challenges the jurisdiction of the US DISTRICT COURT FOR THE WESTERN DISTRICT OF MISSOURI. The jurisdiction of a court can be challenged at any time even after conviction. See

"Jurisdiction of court may be challenged at any stage of the proceeding, and also may be challenged after conviction and execution of judgment by way of writ of habeas corpus."

[U.S. v. Anderson, 60 F.Supp. 649 (D.C.Wash. 1945)]

3. Petitioner is not under the jurisdiction of the US DISTRICT COURT FOR THE WESTERN DISTRICT OF MISSOURI.

Magistrate Robert E. Larsen refused to state his proper jurisdiction. Magistrate Robert E. Larsen in concert with Warden Rene G. Garcia, Brian P. Casey, Anita L. Burns and Nathan Holmes Van Sickle have conspired to kidnap 18 USC 1201(c) the body of Petitioner without authority of law; without lawful jurisdiction. Magistrate Robert E. Larsen has denied

Petitioner his 6th amendment right to choice of counsel by appointing Anita Burns as his Federal Public Defender and denying Petitioner the right to terminate counsel, thus denying Petitioner his right to file documents in his defense. The Respondents have worked in concert to have Petitioner deemed incompetent to stand trial thus committing the act of "Conspiracy of Kidnapping through Fraud." Wherefore since Magistrate Robert E. Larsen has refused to state proper jurisdiction; Denny-Ray:Hardin has been held Since May 10, 2010 as a "Hostage" 18 USC 1203.

4. Rights can be reserved at anytime. See *Miranda v. Arizona* 384 U.S. 436 (1966)

Petitioner Denny-Ray:Hardin has made public record of his reservation of rights **UCC 1-308** and has done so for the court orally and in writing submitted into the record, (See case 4:10-cr-00131-FJG-1) Further he is a natural Citizen of the Republic of Missouri where he resides. Denny-Ray:Hardin is not a UNITED STATES citizen or a **14th amendment** citizen because he has claimed the remedy **15 United States Statute at large, 1868** also known as the expatriation statute. Wherefore he is not subject to US DISTRICT COURT FOR THE WESTERN DISTRICT OF MISSOURI. However the court did not recognize and purposely ignored the remedy **UCC 1-308** as well as his Citizenship. The court in its actions against Denny-Ray:Hardin, a state Citizen, is in violation of

Foreign Sovereign Immunities Act (FSIA) of 1976.
See **USC TITLE 28 > PART IV > CHAPTER 97 > § 1604,**

"Immunity of a foreign state from jurisdiction Subject to existing international agreements to which the United States is a party at the time of enactment of this Act a foreign state shall be immune from the jurisdiction of the courts of the United States and of the States except as provided in sections 1605 to 1607 of this chapter."

5. Further, the US DISTRICT COURT FOR THE WESTERN DISTRICT OF MISSOURI being a possession of the Federal corporation only has jurisdiction within the exterior borders of Missouri and each republic. See the **Buck act 1940**. And **USC TITLE 4** > **CHAPTER 4** > § 110. Same; definitions

(d) The term "State" includes any Territory or possession of the United States.

(e) The term "Federal area" means any lands or premises held or acquired by or for the use of the United States or any department, establishment, or agency, of the United States; and any Federal area, or any part thereof, which is located within the exterior boundaries of any State, shall be deemed to be a Federal area located within such State.

Petitioner, Denny-Ray:Hardin lives in the land of Missouri and not in the exterior borders.

6. The US DISTRICT COURT FOR THE WESTERN DISTRICT OF MISSOURI refused to prove or state its jurisdiction at each time the petitioner requested. See

"The law requires proof of jurisdiction to appear on the record of the administrative agency and all administrative proceedings." *Hagans v Lavine* 415 U. S. 533.

"if the record does not show upon its face the facts necessary to give jurisdiction, they will be presumed not to have existed." *Norman v. Zieber*, 3 Or at 202-03

7. The Petitioner Denny-Ray:Hardin has not ever given consent or entered into a contract with the court or the corporate UNITED STATES OF AMERICA. See

"The state citizen is immune from any and all government attacks and procedure, absent contract." see, *Dred Scott vs. Sanford*, 60 U.S. (19 How.) 393 or as the Supreme Court has stated clearly, "...every man is independent of all laws, except those prescribed by nature. He is not bound by any institutions formed by his fellowmen without his consent."

CRUDEN vs. NEALE, 2 N.C. 338 2 S.E. 70

Alexander v. Bothsworth, 1915. "Party cannot be bound by contract that he has not made or authorized. Free consent is an indispensable element in making valid contracts."

Brady v. U.S., 397 U.S. 742, 748, (1970) "Waivers of Constitutional Rights, not only must they be voluntary, they must be knowingly intelligent acts done with sufficient awareness."

8. Further, the corporate UNITED STATES OF AMERICA cannot impair the obligations of a contract. See

U.S. Constitution - Article 1 Section 10 No State shall..., ...or Law impairing the Obligation of Contracts,...

9. Wherefore the US DISTRICT COURT FOR THE WESTERN DISTRICT OF MISSOURI by its silence had committed fraud. See

U.S. v. Tweel, 550 F. 2d. 297, 299, 300 (1977)
Silence can only be equated with fraud when there is a legal and moral duty to speak or when an inquiry left unanswered would be intentionally misleading. We cannot condone this shocking conduct... If that is the case we hope our message is clear. This sort of deception will not be tolerated and if this is routine it should be corrected immediately.

Morrison v. Coddington, 662 P. 2d. 155, 135 Ariz. 480 (1983).

Fraud and deceit may arise from silence where there is a duty to speak the truth, as well as from speaking an untruth.

"Knowing failure to disclose material information necessary to prevent statement from being misleading, or making representation despite knowledge that it has no reasonable basis in fact, are actionable as fraud under law."

Rubinstein v. Collins, 20 F.3d 160, 1990

Ex dolo malo non oritur actio. Out of fraud no action arises; fraud never gives a right of action. No court will lend its aid to a man who founds his cause of action upon an immoral or illegal act. As found in Black's Law Dictionary, Fifth Edition, page 509.

"Fraud destroys the validity of everything into which it enters,"
Nudd v. Burrows, 91 U.S. 426.

"Fraud vitiates everything"
Boyce v. Grundy, 3 Pet. 210

"Fraud vitiates the most solemn contracts, documents and even judgments."
U.S. v. Throckmorton, 98 US 61

10. The US DISTRICT COURT FOR THE WESTERN DISTRICT OF MISSOURI had no authority in its actions, wherefore the judgment of the court against Denny-Ray:Hardin is void. See

Elliot v. Piersol, 1 Pet. 328, 340, 26 U.S. 328, 340 (1828) "if a court is without authority, its judgments and orders are regarded as nullities. They are not voidable, but simply void, and form no bar to a recovery sought, even prior to a reversal in opposition to them. They constitute no justification and all persons concerned in executing such judgments or sentences are considered, in law, as trespassers."

11. Petitioner Denny-Ray:Hardin is a sovereign Citizen. See

State v. Manuel, North Carolina, Vol. 20, Page 121 (1838) The sovereignty has been transferred from one man to the collective body of the people - and he who before was a "subject of the king" is now "a citizen of the State".

"In the United States the People are sovereign and the government cannot sever its relationship to the People by taking away their citizenship." Afroyim v. Rusk, 387 U.S. 253 (1967).

"The People of a State are entitled to all rights which formerly belonged to the King by his

prerogative." Lansing v. Smith, 4 Wendell 9, 20 (1829)

In Europe, the executive is synonymous with the sovereign power of a state...where it is too commonly acquired by force or fraud or both...In America, however the case is widely different. Our government is founded upon Compact. Sovereignty was, and is, in the People. Glass v. The Sloop Betsy, 3 Dall 6. (1794)

REFUSAL OF BAIL/AND OR BOND

12. Further the **US DISTRICT COURT FOR THE WESTERN DISTRICT OF MISSOURI** on May 13, 2010 refused to set bail and or bond denying Denny-Ray:Hardin his rights under the color of law, and subjecting Denny-Ray:Hardin to cruel and unusual punishment. Wherefore the denial of bail/and or bond is in violation of **U.S. Constitution: Eight Amendment Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.**

13. Petitioner, Denny-Ray:Hardin has been denied due process of law as per the **5th amendment**. And further being held not only as a captive but also as a contracted indentured servant by way of the **UCC**.

"Personal liberty, or the Right to enjoyment of life and liberty, is one of the fundamental or natural Rights, which has been protected by its inclusion as a guarantee in the various constitutions, which is not derived from, or dependent on, the U.S. Constitution, which may not be submitted to a vote and may not depend on

the outcome of an election. It is one of the most sacred and valuable Rights, as sacred as the Right to private property ... and is regarded as inalienable." 16 C.J.S., Constitutional Law, Sect.202, p.987

14. Further, all charging instruments named a commercial entity DENNY RAY HARDIN rather than the blood and flesh man Denny-Ray:Hardin. Denny-Ray:Hardin however is being made responsible for the corporate fiction created by the corporate UNITED STATES OF AMERICA.

Petitioner has a natural, due process right, granted by the creator, and as articulated in numerous historical documents including but not limited to: the original Constitutions for Missouri and/ or the united states of America, Northwest Ordinance, Magna Charta, International Organization Immunities Act dated December 9, 1945, Charter Of The United Nations: June 26, 1945, The Foreign Sovereign Immunities Act, and numerous international treaties, to Habeas Corpus relief for immediate release from unlawful imprisonment. All the above named documents are incorporated herein, in their entirety, by reference.

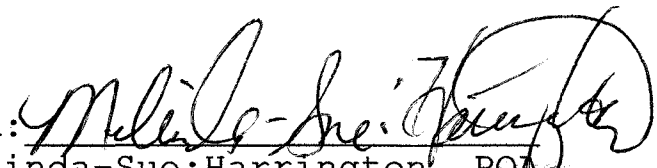
WHEREFORE, your petitioner suggests that this Honorable Court grant the Great Writ of Habeas Corpus, and that he be immediately discharged from the unlawful imprisonment.
Respectfully submitted on behalf of the Petitioner

this 29th day of July, 2010 Year.


**AFFIRMATION OF PETITION BY FIRST HAND
PERSONAL KNOWLEDGE WITNESSES**

We, Melinda-Sue:Harrington, Robert-Eugene:Suppenbach, Idella-Virginia:Suppenbach, Vanessa-Yvonne:Krabbe, Melina-Elise:Smith, James-Walter:Harrington, Anthony:Siranda, Henry:Brimmage, Dave:Lovewell, on behalf of the Petitioner, in and for the above and foregoing, Petition For Writ of Habeas Corpus, imprisoned in the FCI ENGLEWOOD FEDERAL CORRECTIONAL INSTITUTION by the Respondent's, do hereby attest and affirm under the pains and penalties of perjury that the above and foregoing statements are true and correct as We verily believe, to the best of our abilities and knowledge, without purpose to mislead. We reserve the right to amend.

Autograph:


Melinda-Sue:Harrington, POA
Melinda-Sue:Harrington, sui juris
Without prejudice **UCC 1-308**
I/c postal service address
2450 Elmwood Avenue
Kansas City, Missouri 64127

Autograph:


Robert-Eugene:Suppenbach, sui juris
Without prejudice **UCC 1-308**
I/c postal service address
5804 E. 84th Street
Kansas City, Missouri 64138

Autograph: Idella-Virginia Suppenbach
Idella-Virginia:Suppenbach, sui juris
Without prejudice **UCC 1-308**
I/c postal service address
5804 E. 84th Street
Kansas City, Missouri 64138

Autograph: Vanessa-Yvonne Krabbe
Vanessa-Yvonne:Krabbe, sui juris
Without prejudice **UCC 1-308**
I/c postal service address
5720 Cedar
Raytown, Missouri 64133

Autograph: Melina-Elise Smith
Melina-Elise:Smith, sui juris
Without prejudice **UCC 1-308**
I/c postal service address
2450 Elmwood Avenue
Kansas City, Missouri 64127

Autograph: James-Walter Harrington
James-Walter:Harrington, sui juris
Without prejudice **UCC 1-308**
I/c postal service address
18914 Old BB Hwy
Holt, Missouri 64048

Autograph: Anthony Siranda
Anthony:Siranda, sui juris
Without prejudice **UCC 1-308**
I/c postal service address
18914 Old BB Hwy
Holt, Missouri 64048

Autograph: Henry Brimmage
Henry:Brimmage, sui juris
Without prejudice **UCC 1-308**
I/c postal service address
12725 E. 98th St
Kansas City Missouri 64138

Autograph: Dave Lovewell

Dave: Lovewell, sui juris
Without prejudice **UCC 1-308**

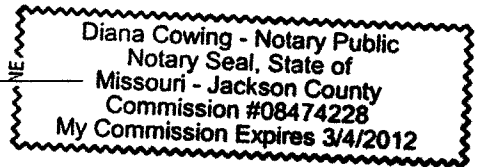
I/c postal service address

7220 NE 1270 Private Rd
Deepwater, Missouri 64740

BEFORE ME, Diana Cowing,

a Notary Public in and for STATE OF, MISSOURI, appeared,
Melinda-Sue:Harrington, Robert-Eugene:Suppenbach, Idella-
Virginia:Suppenbach, Vanessa-Yvonne:Krabbe, Melina-Elise:Smith,
James-Walter:Harrington, Anthony:Siranda, Henry:Brimmage and
Dave:Lovewell known or made known to me and did affirm the truth
of the facts herein stated and placed thier signatures on this
document on the 29 day of July, Anno
Domini Two thousand and ten (2010).

Diana Cowing
Notary Public STATE OF, MISSOURI



My Commission expires 3/4/2012.

ATTACHMENT "A"

The law of this case is decreed as follows:

JUDICIAL COGNIZANCE. Judicial notice, or knowledge upon which a judge is bound to act without having it proved in evidence. [Black's Law Dictionary, 5th Edition, page 760.]

...at the Revolution, the sovereignty devolved on the people; and they are truly the sovereigns of the country, but they are sovereigns without subjects...with none to govern but themselves..... [CHISHOLM v. GEORGIA (US) 2 Dall 419, 454, 1 L Ed 440, 455 @DALL (1793) pp471-472.]

The very meaning of 'sovereignty' is that the decree of the sovereign makes law. [American Banana Co. v. United Fruit Co., 29 S.Ct. 511, 513, 213 U.S. 347, 53 L.Ed. 826, 19 Ann.Cas. 1047.]

The people of this State, as the successors of its former sovereign, are entitled to all the rights which formerly belonged to the King by his prerogative. [Lansing v. Smith, 4 Wend. 9 (N.Y.) (1829), 21 Am.Dec. 89 10C Const. Law Sec. 298; 18 C Em.Dom. Sec. 3, 228; 37 C Nav.Wat. Sec. 219; Nuls Sec. 167; 48 C Wharves Sec. 3, 7.]

A consequence of this prerogative is the legal ubiquity of the king. His majesty in the eye of the law is always present in all his courts, though he cannot personally distribute justice. (Fortesc.c.8. 2Inst.186) His judges are the mirror by which the king's image is reflected. 1 Blackstone's Commentaries, 270, Chapter 7, Section 379.

Ignorantia juris sui non praejudicat juri. Ignorance of one's right does not prejudice the right. See Black's Law Dictionary, page: 873, 5th, Ed. (1979)

The assertion of federal rights, when plainly and reasonably made, is not to be defeated under the name of local practice. [Davis v. Wechsler, 263 US 22, 24.]

Where rights secured by the Constitution are involved, there can be no rule making or legislation which would abrogate them. [Miranda v. Arizona, 384 US 436, 491.]

There can be no sanction or penalty imposed upon one because of this exercise of constitutional rights. [Sherer v. Cullen, 481 F 946.]

Republican government. One in which the powers of sovereignty are vested in the people and are exercised by the people, either directly, or through representatives chosen by the people, to whom those powers are specially delegated. [In re Duncan, 139 U.S. 449, 11 S.Ct. 573, 35 L.Ed. 219; Minor v. Happersett, 88 U.S. (21 Wall.) 162, 22 L.Ed. 627." Black's Law Dictionary, Fifth Edition, p. 626.]

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby; any Thing in the Constitution or Laws of any State to the Contrary notwithstanding. [Constitution for the United States of America, Article VI, Clause 2.]

Amendment IX. The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Article X. The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

COURT. The person and suit of the sovereign; the place where the sovereign sojourns with his regal retinue, wherever that may be. [Black's Law Dictionary, 5th Edition, page 318.]

COURT. An agency of the sovereign created by it directly or indirectly under its authority, consisting of one or more officers, established and maintained for the purpose of hearing and determining issues of law and fact regarding legal rights and alleged violations thereof, and of applying the sanctions of the law, authorized to exercise its powers in the course of law at times and places previously determined by lawful authority. [Isbill v. Stovall, Tex.Civ.App., 92 S.W.2d 1067, 1070; Black's Law Dictionary, 4th Edition, page 425]

COURT OF RECORD. To be a court of record a court must have four characteristics, and may have a fifth. They are:

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

B. Proceeding according to the course of common law [Jones v. Jones, 188 Mo.App. 220, 175 S.W. 227, 229; Ex parte Gladhill, 8 Metc. Mass., 171, per Shaw, C.J. See, also, Ledwith v. Rosalsky, 244 N.Y. 406, 155 N.E.

688, 689] [Black's Law Dictionary, 4th Ed., 425, 426]

C. Its acts and judicial proceedings are enrolled, or recorded, for a perpetual memory and testimony. [3 Bl. Comm. 24; 3 Steph. Comm. 383; The Thomas Fletcher, C.C.Ga., 24 F. 481; Ex parte Thistleton, 52 Cal 225; Erwin v. U.S., D.C.Ga., 37 F. 488, 2 L.R.A. 229; Heininger v. Davis, 96 Ohio St. 205, 117 N.E. 229, 231]

D. Has power to fine or imprison for contempt. [3 Bl. Comm. 24; 3 Steph. Comm. 383; The Thomas Fletcher, C.C.Ga., 24 F. 481; Ex parte Thistleton, 52 Cal 225; Erwin v. U.S., D.C.Ga., 37 F. 488, 2 L.R.A. 229; Heininger v. Davis, 96 Ohio St. 205, 117 N.E. 229, 231.] [Black's Law Dictionary, 4th Ed., 425, 426]

E. Generally possesses a seal. [3 Bl. Comm. 24; 3 Steph. Comm. 383; The Thomas Fletcher, C.C.Ga., 24 F. 481; Ex parte Thistleton, 52 Cal 225; Erwin v. U.S., D.C.Ga., 37 F. 488, 2 L.R.A. 229; Heininger v. Davis, 96 Ohio St. 205, 117 N.E. 229, 231.] [Black's Law Dictionary, 4th Ed., 425, 426]

...our justices, sheriffs, mayors, and other ministers, which under us have the laws of our land to guide, shall allow the said charters pleaded before them in judgement in all their points, that is to wit, the Great Charter as the common law.... [Confirmatio Cartarum, November 5, 1297" "Sources of Our Liberties" Edited by Richard L. Perry, American Bar Foundation.]

"Henceforth the writ which is called Praeceptum shall not be served on any one for any holding so as to cause a free man to lose his court." Magna Carta, Article 34.

AUTHORITY TO GRANT WRIT [28 USC Sec. 2241]

(a) Writs of habeas corpus may be granted by the Supreme Court, any justice thereof, the district courts and any circuit judge within their respective jurisdictions. The order of a circuit judge shall be entered in the records of the district court of the district wherein the restraint complained of is had.

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

(c) The writ of habeas corpus shall not extend to a prisoner unless -

(1) He is in custody under or by color of the authority of the United States or is committed for trial before some court thereof; or

(2) He is in custody for an act done or omitted in pursuance of an Act of Congress, or an order, process, judgment or decree of a court or judge of the United States; or

(3) He is in custody in violation of the Constitution or laws or treaties of the United States; or

(4) He, being a citizen of a foreign state and domiciled therein is in custody for an act done or omitted under any alleged right, title, authority, privilege, protection, or exemption claimed under the commission, order or sanction of any foreign state, or under color thereof, the validity and effect of which depend upon the law of nations; or

(5) It is necessary to bring him into court to testify or for trial.

(d) Where an application for a writ of habeas corpus is made by a person in custody under the judgment and sentence of a State court of a State which contains two or more Federal judicial districts, the application may be filed in the district court for the district wherein such person is in custody or in the district court for the district within which the State court was held which convicted and sentenced him and each of such district courts shall have concurrent jurisdiction to entertain the application. The district court for the district wherein such an application is filed in the exercise of its discretion and in furtherance of justice may transfer the application to the other district court for hearing and determination.

APPLICATION FOR WRIT [28 USC Sec. 2242]

Application for a writ of habeas corpus shall be in writing signed and verified by the person for whose relief it is intended or by someone acting in his behalf.

It shall allege the facts concerning the applicant's commitment or detention, the name of the person who has custody over him and by virtue of what claim or authority, if known.

It may be amended or supplemented as provided in the rules of procedure applicable to civil actions.

If addressed to the Supreme Court, a justice thereof or a circuit judge it shall state the reasons for not making application to the district court of the district in which the applicant is held.

ISSUANCE OF WRIT; RETURN; HEARING; DECISION [28 USC Sec. 2243]

A court, justice or judge entertaining an application for a writ of habeas corpus shall forthwith award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled thereto.

The writ, or order to show cause shall be directed to the person having custody of the person detained. It shall be returned within three days unless for good cause additional time, not exceeding twenty days, is allowed.

The person to whom the writ or order is directed shall make a return certifying the true cause of the detention.

When the writ or order is returned a day shall be set for hearing, not more than five days after the return unless for good cause additional time is allowed.

Unless the application for the writ and the return present only issues of law the person to whom the writ is directed shall be required to produce at the hearing the body of the person detained.

The applicant or the person detained may, under oath, deny any of the facts set forth in the return or allege any other material facts.

The return and all suggestions made against it may be amended, by leave of court, before or after being filed.

The court shall summarily hear and determine the facts, and dispose of the matter as law and justice require.

Application for a writ of habeas corpus shall be in writing signed and verified by the person for whose relief it is intended or by someone acting in his behalf. [28 USC Sec. 2242]

Constraint by Reasonable Apprehension of Force. To justify issuance of the writ of habeas corpus, constraint need not consist of actual physical force. Conduct inducing a reasonable apprehension of force may be sufficient to restrain one of his/her liberty (In re Rider (1920) 50 alApp 797, 802, 195 P. 965).

Every person unlawfully imprisoned or restrained of his/her liberty, under any pretense whatever, may prosecute a writ of habeas corpus to inquire into the cause of the imprisonment or restraint (Pen C Sec. 1473(a)).

Constructive Custody. The availability of the writ of habeas corpus does not depend on the actual detention of petitioner in prison. It is also available where petitioner is constructively in custody and subject to restraint (In re Petersen (1958) 51 Cal2d 177, 181, 331 P2d 24).

Unlawful Restraint Within Lawful Custody. The writ of habeas corpus may be sought by one lawfully in custody for the purpose of vindicating rights to which he/she is entitled even in confinement. (In re Allison (1967) 66 Cal2d 282, 285 57 CalRptr 593, 425 P2d 193).

Petitioner as normally bearing burden of proving facts on which claim for relief is based, but if possibility that increased or additional charges violating due process supporting charge of prosecutorial vindictiveness is at issue, petitioner as only needing to demonstrate facts giving rise to presumption of vindictiveness at which time, even on habeas corpus, burden shifts to people to rebut presumption. In re Bower (1985) 38 Cal3d 865, 872, 215 CalRptr 267, 700 P2d 1269.

Strict Compliance with Statutory Prerequisites. Where a person is committed pursuant to a statutory civil commitment proceeding which is in the nature of a special civil proceeding unknown at common law, jurisdiction to enter an order of commitment depends on strict compliance with each of the statutory prerequisites or maintenance of the proceeding, and the requirement of the statute must be at least substantially, if not strictly, followed in order to give the court hearing the proceedings jurisdiction. The lack of jurisdiction entitles the petitioner to relief by writ of habeas corpus. (In re Raner (1963) 59 Cal2d 635, 639, 30 CalRptr 814, 301 P2d 638).

Broad Meaning of Jurisdiction on Habeas Corpus. For purposes of the writ of habeas corpus, as for purposes of prohibition or certiorari, the term "jurisdiction" is not limited to its fundamental meaning, and in such proceedings judicial acts may be restrained or annulled if they are determined to be in excess of the court's powers as defined by constitutional provision,

statute, or rules developed by courts (In re Zerbe (1964) 60 Cal2d 666, 667-668, 36 CalRptr 286, 388 P2d 192).

"No person shall...be deprived of life, liberty, or property, without due process of law;..." U.S. Constitution, Amendment V.

"No officer can acquire jurisdiction by deciding he has it. The officer, whether judicial or ministerial, decides at his own peril." Middleton v. Low (1866), 30 C. 596, citing Prosser v. Secor (1849), 5 Barb. (N.Y) 607, 608.

Barratry: The offense of frequently exciting and stirring up quarrels and suits, either at law or otherwise. [State v. Batson, 220 N.C. 411, 17 S.E.2d 511, 512, 513. Black's Law Dictionary, p150]