UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF NEW YORK

2 Niagara Square Buffalo, NY 14202 (716)551-1705

David J. Mongielo, David E. Mongielo ,
Petitioner

Against

District Attorney Michael J. Violante, Susan D. Mongielo, Judge Mark A. Montour, Attorney General Eric T. Schneiderman, Law Guardian Michele Bergevin ,
Respondents

CASE NO. 155754

DEFAULT JUDGMENT
CORAM IPSO REGE

Default Judgment; Entering a Default: *"When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by Affidavit or otherwise* [under seal]*, the clerk must enter the party's default."* FRCP Rule 55(a); FRCP Rule 58(b)(2); 28 U.S.C. §2243.

DEFAULT JUDGMENT

The Respondents, against whom a judgment for affirmative relief is sought, have failed to plead or otherwise defend as provided by these rules; and, that fact is made to appear by Affidavit. **NOW, THEREFORE, THIS COURT OF RECORD** issues this Default Judgment Coram Ipso Rege to dispose of the matter as law and justice require, to wit:

IT IS ORDERED AND ADJUDGED that Petitioners be released from custody immediately; and, that the respondents, namely **STATE OF NEW YORK, COUNTY OF NIAGARA**, District Attorney Michael J. Violante, Susan D. Mongielo, Judge Mark A. Montour, Attorney General Eric T. Schneiderman, Law Guardian Michele Bergevin shall abate at law all proceedings in and relating to New York State Supreme Court, Case No. **155754**. No damages, costs, or attorneys' fees are awarded.

THE COURT, September 24, 2015

Unified United States Common Law Grand Jury Administrator

Unified United States Common Law Grand Jury:[1]

P.O. Box 59; Valhalla, New York 10595; Phone: (845) 229-0044; Fax: (888) 891-8977; US@uclgj.org

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DEFAULT JUDGMENT
CORAM IPSO REGE[1]
FRCP Rule 55[1]; Rule 58 (b) 2[1]
28 USC 2243

COMES NOW THE ABOVE-ENTITLED COURT OF RECORD, to review the record, summarily determine the facts, and dispose of the matter as law and justice require.[2]

Habeas Corpus has been called "The Great Writ of Liberty". Historically, that is a side issue. In the early days, Habeas Corpus was not connected with the idea of Liberty. It was a useful device in the struggle for control between common law and equity courts. By the middle of the fifteenth century, the issue of Habeas Corpus, together with privilege, was a well-established way to remove a cause from an inferior court where the defendant could show some special connection with one of the central courts, which entitled him to have his case tried there.[3] In the early seventeenth century, The Five Knights' Case[4] involved the clash between the Stuart claims of prerogative and the common law; and, was, in the words of one of the judges, *"the greatest cause that I ever knew in this court"*.[5] Over the centuries the Writ became a viable bulwark between the powers of government and the rights of the people in both England and the United States.

[1] *"The grand jury is an institution separate from the courts over whose functioning the courts do not preside... the grand jury is mentioned in the Bill of Rights, but not in the body of the Constitution. It has not been textually assigned, therefore, to any of the branches described in the first three* (3) *Articles. It is a constitutional fixture in its own right. In fact, the whole theory of its function is that it belongs to no branch of the institutional government, serving as a kind of buffer or referee between the Government and the people... The grand jury's functional independence from the judicial branch is evident, both in the scope of its power to investigate criminal wrongdoing, and in the manner in which that power is exercised. 'Unlike [a] [c]ourt, whose jurisdiction is predicated upon a specific case or controversy, the grand jury 'can investigate merely on suspicion that the law is being violated, or even because it wants assurance that it is not.'"* United States v. John H. Williams; 112 S.Ct. 1735; 504 U.S. 36; 118 L.Ed.2d 352; 1992.
[2] 28 U.S.C. §2243.
[3] De Vine (1456) O. Bridg. 288; Fizherbert, Abridg., sub tit. "Corpus Cum Causa".
[4] Darnel's Case, 3 St. Tr. 1.
[5] Ibid., at 31 per Doderidge J.

CONTENTS

I. SUMMARY

Oliver Wendell Holmes once wrote, *"I long have said there is no such thing as a hard case. I am frightened weekly, but always when you walk up to the lion and lay hold, the hide comes off and the same old donkey of a question of law is underneath."*[6] Duty falls upon this court of record to lay hold of the lion, unhide the underlying question of law, and dispose of the matter as law and justice require.[7]

On September 19, 2015 David J. Mongielo and son David E. Mongielo, People of the United States, filed in the above-entitled court of record a Petition for Writ of Habeas Corpus by a People in State-constructive custody. The Petition invited this court's inquiry into the following:

A. The cause of the restraint
B. The jurisdictional basis of the restraint
C. Prosecutorial vindictiveness
D. Reasonable apprehension of restraint of Liberty
E. Strict compliance with statutory requirements
F. Diminishment of rights
G. Charges of common barratry, maintenance and champerty

The Petition presented issues of both fact and law. It did not appear from the Application that the applicant was not entitled thereto; therefore, this court ordered the respondents to show cause why the Writ should not be granted. Explicit Return instructions were included as part of the Order to Show Cause to enable the respondents to fulfill the Order. All respondents were duly[8] served with the Petition and Order to Show Cause. The record shows that no respondent made any Return; no respondent requested more time to answer; and, no respondent provided any objection to the proceedings.

[6] 1 *Holmes-Pottock Letters* 156.
[7] 28 U.S.C. §2243.
[8] Duly: According to law, in both form and substance. Black's 6th.

ANALYSIS:

II. JURISDICTION OF THIS COURT

It is the duty of any court to determine whether it has jurisdiction even though that question is not raised, in order for the exercise of jurisdiction to constitute a binding Decision that the court has jurisdiction.[9] We fulfill that duty by examining the sovereign power creating the court.

But, first, what is a court? It is the person and suit of the sovereign; the place where the sovereign sojourns with his regal retinue, wherever that may be. Further, a court is 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.[10] The source of the authority is acknowledged by the Preamble of the Constitution for the United States of America.[11] The People of the United States, acting in sovereign capacity, *"ordain*[12] *and establish*[13] *this Constitution for the United States of America."* The Constitution contains nothing that would diminish the sovereign[14] power of the People, and no State may presume to do so.[15]

Further, the United States of America, and each member State, is a Republic,[16] which means that the People may act either directly or through their representatives.[17] Here the sovereign People are acting directly. Beyond ordaining and establishing the Constitution, what are the powers of the People? The People retain all powers to self-determine and exercise rights.[18] The essence of the People's sovereignty distills to this: The decree of the sovereign makes law.[19]

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[9] State ex rel. Missouri Gravel Co. v. Missouri Workmen's Compensation Commission, 113 S.W.2d 1034, 234 Mo.App. 232.
[10] Isbill v. Stovall, Tex.Civ.App., 92 S.W.2d 1067, 1070; Black's 4th, p425.
[11] U.S. CONSTITUTION, PREAMBLE: *"We the people of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America."*
[12] ORDAIN: …to enact a constitution or law. Black's 6th.
[13] ESTABLISH: ...to create, ratify, or confirm... Black's 6th.
[14] ...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 (U.S.) 2 Dall 419, 454, 1 LEd 440, 455, 2 Dall (1793) pp471-472.
[15] Where rights secured by the Constitution are involved, there can be no rule making or legislation which would abrogate them. Miranda v. Arizona, 384 U.S. 436, 491; The State cannot diminish rights of the people. Hertado v. California, 100 U.S. 516; The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people. Constitution for the United States of America, Amendment IX; 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. Constitution for the United States of America, Amendment X.
[16] *"The United States shall guarantee to every State in this Union a Republican Form of Government..."* Constitution for the United States, Article IV, Section 4.
[17] GOVERNMENT: 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 6th.
[18] 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.
[19] 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.

Some have argued that the People have relinquished sovereignty through various contractual devices in which rights were not expressly reserved. However, that cannot hold because rights are unalienable.[20] The People retain all rights of sovereignty at all times.[21] The exercise of sovereignty by the People is further clarified when one considers that the Constitutional government agencies have no genuine sovereign power of their own. All just authority of the Constitutional government agencies is solely that to which the People consent.[22] In the Petition, the petitioner identifies himself as *"a People*[23] *of the United States"*. As such he decrees the law for this court; and, ultimately, for this court as a court of record. This, then, is the sovereign power by which this court is created. The Constitution for the United States of America mandates that: *"The judicial Power*[24] *shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority..."*[25] This is a case in law, i.e., proceeding according to the common law in a court of record. This case arises under the Constitution and the Laws of the United States. It follows that "the judicial power" of [the People of] the United States "shall extend" to this case. Therefore, it is the Grand Jury, as arbiter, that shall be enforcer of the law. We read:

> "*If any of our civil servants shall have transgressed against any of the people in any respect; and, they shall ask us to cause that error to be amended without delay; or, shall have broken some one of the articles of peace or security; and, their transgression shall have been shown to four* (4) *Jurors of the aforesaid twenty five* (25)*; and, if those four* (4) *Jurors are unable to settle the transgression, they shall come to the twenty-five* (25)*, showing to the Grand Jury the error which shall be enforced by the law of the land."* Magna Carta, June 15, A.D. 1215, 61.
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> Justice Powell, in United States v. Calandra, 414 U.S. 338, 343 (1974), stated: *"The institution of the grand jury is deeply rooted in Anglo-American history;* [n3] *In England, the grand jury* [p343] *served for centuries, both as a body of accusers, sworn to discover, and present for trial, persons suspected of criminal wrongdoing; and, as a protector of citizens against arbitrary and oppressive governmental action. In this country, the Founders thought the grand jury so essential to basic liberties, that they provided, in the Fifth Amendment, that federal prosecution for serious crimes can only be instituted by a 'presentment or indictment of a Grand Jury'*. Cf. Costello v. United States, 350 U.S. 359, 361-362 (1956). *The grand*

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[20] UNALIENABLE: Not subject to alienation; the characteristic of those things which cannot be bought, or sold, or transferred from one person to another, such as rivers, and public highways, and certain personal rights; e. g., Liberty. Unalienable: incapable of being aliened; that is, [not capable of being] sold and transferred. Black's 4th. 1891.

[21] RESERVATION OF SOVEREIGNTY: *"*[15](b) *...The Tribe's role as commercial partner with petitioners should not be confused with its role as sovereign. It is one thing to find that the Tribe has agreed to sell the right to use the land and take valuable minerals from it, and quite another to find that the Tribe has abandoned its sovereign powers simply because it has not expressly reserved them through a contract. To presume that a sovereign forever waives the right to exercise one of its powers unless it expressly reserves the right to exercise that power in a commercial agreement, turns the concept of sovereignty on its head."* Merrion et al., dba Merrion & Bayless, et al. v. Jicarilla Apache Tribe et al. 1982.SCT.394.

[22] SOVEREIGN STATE: are cabalistic words, not understood [rejected] by the disciple of Liberty, who has been instructed in our constitutional schools. It is our appropriate phrase when applied to an absolute despotism. The idea of sovereign power [vested] in government of a Republic, is incompatible with the existence, and foundation, of civil Liberty; and, the rights of property. Gaines v. Buford, 31 Ky. (1 Dana) 481, 501.

[23] PEOPLE: …considered as... any portion of the inhabitants of a city or country. Webster's 1828 Dictionary. The word "People" may be either plural or singular in its meaning. The plural of "person" is "persons", not "People".

[24] JUDICIAL POWER: The power to decide and pronounce a judgment; and, carry it into effect between persons and parties who bring a case before court for decision. Power that adjudicates upon, and protects, the rights and interests of persons or property; and, to that end, declares, construes, and applies the law. Black's 6th.

[25] Constitution for the United States of America, Article III, Section 2, Clause 1.

jury's historic functions survive to this day. Its responsibilities determination whether there is probable cause to believe a crime has been committed, and the protection of citizens against unfounded criminal prosecutions. Branzburg v. Hayes, 408 U.S. 665, 686-687 (1972)."

III. EXHAUSTION OF ADMINISTRATIVE PROCEDURE

Ordinarily, exhaustion of state administrative procedures is a requirement before a court of another jurisdiction will review the proceedings of another court. This is founded upon the principle of comity.[26] The courts of the United States, and the courts of the various States, are independent of each other.[27] Federal courts have no supervisory powers over State judicial proceedings, [28] State court systems,[29] or trial judges. [30] Thus, federal courts have no general power to correct errors of law that may occur from time to time in the course of State proceedings.[31]

However, a federal court and a State court are not foreign to each other. They form one system of jurisprudence, which constitutes the law of the land; and, should be considered as courts of the same country, having jurisdiction partly different, and partly concurrent;[32] and, as a matter of comity, one of such courts will not ordinarily determine a controversy of which another of such courts has previously obtained jurisdiction. In cases of apparent conflict between State and federal jurisdiction, the federal courts are the exclusive judges over their jurisdiction in the matter.[33] That being a given, federal intervention is only proper to correct errors of constitutional dimension,[34] which occurs when a State court arbitrarily, or discriminatorily, applies State law.[35] The rule of comity does not go to the extent of relieving federal courts from the duty of proceeding promptly to enforce rights asserted under the federal Constitution;[36] and, all

[26] JUDICIAL COMITY: Blacks 4th. *"The principle, in accordance with which, the courts of one State, or jurisdiction, will give effect to the laws and judicial decisions of another; not as a matter of obligation; but, out of deference and respect."* Franzen v. Zimmer, 35 N.Y.S. 612, 90 Hun 103; Stowp v. Bank, C.C.Me., 92 F. 96; Strawn Mercantile Co. v. First Nat. Bank, Tex. Civ.App., 279 S.W. 473, 474; Bobala v. Bobala, 68 Ohio App. 63, 33 N.E.2d 845, 849.
[27] Claflin v. Houseman, N.Y., 3 Otto 130, 93 U.S. 130, 23 L.Ed. 833.
[28] Smith v. Phillips, 102 S.Ct. 940, 455 U.S. 209, 71 L.Ed.2d 78, on remand 552 F.Supp. 653, affirmed 717 F.2d 44, certiorari denied 104 S.Ct. 1287, 465 U.S. 1027, 79 L.Ed.2d 689; Ker v. State of California, Cal., 83 S.Ct. 1623, 374 U.S. 23, 10 L.Ed.2d 726, 24 O.O.2d 201; Burrus V. Young, C.A.7 (Wis.), 808 F.2d 578; Lacy v. Gabriel, C.A.Mass., 732 F.2d 7, certiorari denied 105 S.Ct. 195, 469 U.S. 861, 83 L.Ed.2d 128; Smiths v. McMullen, C.A.Fla., 673 F.2d 1185, certiorari denied 103 S.Ct. 740, 459 U.S. 1110, 74 L.Ed.2d 961.
[29] U.S. ex rel. Gentry v. Circuit Court of Cook County, Municipal Division, First Municipal Dist., C.A.Ill., 586 F.2d 1142.
[30] Harris v. Rivera, N.Y., 102S. Ct. 460, 454 U.S. 339, 70 L.Ed.2d 530.
[31] Buckley Towers Condominium, Inc. v. Buchwald, C.A.Fla., 595 F.2d 253.
[32] Claflin v. Houseman, N.Y., 3 Otto 130, 93 U.S. 130, 23 L.Ed. 833.
[33] Craig v. Logemann, 412 N.W.2d 857, 226 Neb. 587, appeal dismissed 108 S.Ct. 1002, 484 U.S. 1053, 98 L.Ed.2d 969.
[34] Burrus V. Young, C.A.7 (Wis.), 808 F.2d 578; Lacy v. Gabriel, C.A.Mass., 732 F.2d 7, certiorari denied 105 S.Ct. 195, 469 U.S. 861, 83 L.Ed.2d 128; Smiths v. McMullen, C.A.Fla., 673 F.2d 1185, certiorari denied 103 S.Ct. 740, 459 U.S. 1110, 74 L.Ed.2d 961; INCONSISTENT VERDICTS: Court of Appeals erred when it directed State trial judge to provide explanation of apparent inconsistency in his acquittal of codefendant and his conviction of defendant, without first determining whether inexplicably inconsistent verdicts would be unconstitutional. Harris v. Rivera, N.Y., 102 S.Ct. 460, 454 U.S. 339, 70 L.Ed.2d 530.
[35] Jentges v. Milwaukee County Circuit Court, C.A.Wis., 733 F.2d 1238
[36] Everglades Drainage Dist. v. Florida Ranch & Dairy Corp., C.C.A.Fla., 74 F.2d 914, rehearing denied 75 F.2d 1013.

considerations of comity must give way to the duty of a federal court to accord a People of the United States his right to invoke the court's powers and process in the defense or enforcement of his rights.[37]

As to the principle of exhaustion of state remedies; the petitioner is not founding his Petition on the principle embodied in 28 U.S.C. §2254. The basis of petitioner's Petition is addressed in section **V. PETITION** below. However, we will address it here.

In Friske v. Collins,[38] the Court's view was that exhaustion was not a "rigid and inflexible" rule; but, could be deviated from in "special circumstances". In addition to the class of "special circumstances" developed in the early history of the exhaustion rule, exhaustion was not required where procedural obstacles make theoretically available processes unavailable; where the available state procedure does not offer swift vindication of the petitioner's rights; and, where vindication of the federal right requires immediate action.[39]

Exhaustion today is a rule rooted in the relationship between the national and State judicial systems. The rule is consistent with the Writ's extraordinary character; but, it must be balanced by another characteristic of the Writ, to wit: its object of *providing "a swift and imperative remedy in all cases of illegal restraint upon personal Liberty."*[40] That is, it *"is not [a rule] defining power but one which relates to the appropriate exercise of power."*[41]

The Court noted that where resort to State remedies has failed to afford a full and fair adjudication of the federal contentions raised, either because the State affords no remedy; or, because in the particular case, the remedy afforded by State laws, proves, in practice, unavailable, or seriously inadequate; a federal court should entertain a Petition for Habeas Corpus; otherwise, a petitioner would be remediless. In such a case, the applicant should proceed in the federal district court before resorting to the Supreme Court by Petition for Habeas Corpus.[42]

> **28 U.S.C. §2243** provides as follows: Issuance of Writ; Return; Hearing; Decision. A court justice or judge, entertaining an application for a Writ of Habeas Corpus, shall forthwith award the Writ; or, issue an Order directing the respondent to show cause why the Writ should not be granted; unless it appears, from the Application, that the applicant, or person detained, is not entitled thereto. The Writ, or Order to Show Cause, shall be directed to the person having custody of the person detained. It shall be returned within three (3) days; unless, for good cause, additional time, not exceeding twenty (20) days, is [be] allowed.

The State has been duly served; and, the State has not made; and, apparently cares not to make a Return. This question of timeliness constitutes a special circumstance justifying deviation from the exhaustion rule. Exhaustion is not required where procedural obstacles make theoretically available processes unavailable; where the available State procedure does not offer swift vindication of the petitioner's rights; and, where

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[37] Carpenter Steel Co. v. Metropolitan-Edison Co., D.C.Pa., 268 F. 980.
[38] 342 U.S. 519 (1952).
[39] Amsterdam, "Federal Removal and Habeas Corpus Jurisdiction," 113 U. Pa. L. Rev. 793, 893-94; Developments, "Federal Habeas Corpus," 83 Harv. L. Rev. 1038, 1097-107. Cf. Markuson v. Boucher, 175 U.S. 189 (1899) with Roberts v. LaVallee, 389 U.S. 40 (1967).
[40] Price v. Johnson, 334 U.S. 266, 283 (1947).
[41] Bowen v. Johnston, 306. U.S. 19, 27 (1939). See Brennan, "Some Aspects of Federalism", 39 N.Y.U.L.Rev. 945, 957-58; Brennan, "Federal Habeas Corpus and State Prisoners", 7 Utah L. Rev. 423, 426.
[42] Ex parte Hawk, 321 U.S. 114, 118; See also Ex parte Abernathy, 320 U.S. 219 (1943); White v. Ragen, 324 U.S. 760 (1945); Wood v. Niersteimer, 328 U.S. 211 (1946).

vindication of the federal right requires immediate action.[43] Until the case is resolved in the district court, the petitioner will be unable to present his claims to the State Supreme Court.[44] This delay, and lack of timeliness, is a further special circumstance. In the interim, the petitioner would be required to lose his Liberty, because of the lack of swift State vindication of his rights.[45]

IV. COMITY

Comity is one court giving full faith and credit to the judicial proceedings of another court, provided that such proceedings do not violate its own rules. Though comity is not mandated, it is encouraged by The Constitution for The United States, Article IV, Section 1.[46] However, comity does not mean that one court involuntarily gives up its jurisdiction to another court. Comity does not mean that one court must respect the improprieties of another court. Comity does not mean that one court must submit to the whim of another court. Further, comity cannot enter the equation when the question before the courts concerns which of the two courts has jurisdiction regarding the vindication of the rights of the petitioner. The protection of the petitioner's rights from encroachment by the State is the innate responsibility of the federal courts.

In the United States, Habeas Corpus exists in two forms: Common Law and Statutory. The petitioner has chosen Habeas Corpus at common law in a court of record. The Constitution for the United States of America acknowledges the Peoples' right to the common law of England as it was in 1789. What is that common law? It does not consist of absolute, fixed and inflexible rules; but, broad and comprehensive principles based on justice, reason, and common sense...[47]

The common law is also the Magna Carta,[48] as authorized by the Confirmatio Cartarum, if the accused so demands.[49] The Confirmatio Cartarum succinctly says, *"...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 judgment in all their points; that is, to wit, the Great Charter as the common law and the Charter of the forest, for the wealth of our realm."*[50] In other words, the King's men must allow the Magna Carta to be pleaded as the common law if the accused so wishes it.

Magna Carta says, *"Henceforth the Writ which is called Praecipe shall not be served on anyone for any holding so as to cause a free man to lose his court."*[51] In this case, the free man's court is the court of record of the petitioner, as above entitled. The Constitution for the United States of America, Article III, Section 2-1,

[43] Amsterdam, "Federal Removal and Habeas Corpus Jurisdiction", 113 U. Pa. L. Rev. 793, 893-94; Developments, "Federal Habeas Corpus", 83 Harv. L. Rev. 1038, 1097-107. Cf.; Markuson v. Boucher, 175 U.S. 189 (1899) with Roberts v. LaVallee, 389 U.S. 40 (1967).
[44] Magistrate's Report (#5), filed March 7, 2003, 6:46am, p3, L3-6.
[45] Amsterdam, "Federal Removal and Habeas Corpus Jurisdiction", 113 U. Pa. L. Rev. 793, 893-94; Developments, "Federal Habeas Corpus", 83 Harv. L. Rev. 1038, 1097-107. Cf.; Markuson v. Boucher, 175 U.S. 189 (1899) with Roberts v. LaVallee, 389 U.S. 40 (1967).
[46] Full Faith and Credit shall be given in each State to the public Acts, Records, and Judicial proceedings of every other State. And, the Congress may, by general Laws, prescribe the Manner in which such Acts, Records, and Proceedings shall be proved, and the Effect thereof. Constitution for the United States of America, Article IV, Section 1.
[47] Miller v. Monsen, 37 N.W.2d 543, 547, 228 Minn. 400.
[48] June 15, 1215, King John I.
[49] November 5, 1297, King Edward I.
[50] Confirmatio Cartarum, Article I, Clause 3.
[51] Magna Carta, Article 34.

says, *"The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States..."* The judicial power is thusly extended to this Habeas Corpus case at law in the above-entitled court of record.

The above-entitled court of record, invoking the extension of the judicial power of the United States upon a case in law, is proceeding according to the common law as sanctioned by the Constitution; and, considering the matter that has arisen under the Constitution and laws of the United States. As stated above, the rule of comity does not go to the extent of relieving federal courts from the duty of proceeding promptly to enforce rights asserted under the federal Constitution;[52] and, all considerations of comity must give way to the duty of a federal court to accord a citizen of the United States his right to invoke the court's powers and process in the defense or enforcement of his rights.[53]

This court accepts the duty obligation to proceed promptly to enforce rights asserted under the federal Constitution. Thus, this court has the subject matter jurisdiction to examine, and act, upon the Petition for Habeas Corpus. Further, the parties were duly served personally with a copy of the Petition and the Writ of Habeas Corpus thus this court has "in personam jurisdiction".

V. PETITION

Title 28 of the United States Code[54] acknowledges that it is not the responsibility of the petitioner to know by what claim or authority the State acts; but, that the petitioner may inquire as to the cause of the restraint. Petitioner has requested an inquiry into the cause of restraint; but, none of the respondents has returned any statement of cause of the restraint. Therefore, this court may presume that there is neither legal nor lawful cause of restraint.

Petitioner has isolated five (5) points upon which he bases his petition:

A. The lack of cause of the restraint
B. The lack of jurisdictional basis of the restraint
C. Prosecutorial vindictiveness
D. Reasonable apprehension of restraint of Liberty
E. Strict compliance with statutory requirements
F. Diminishment of rights

Because the respondents have made no Return, this court must rule solely upon the evidence before it, as provided by the petitioner. Seneca wrote, *"He who decides a case with the other side unheard, though he decide justly, is himself unjust."*[55] Mindful of the wisdom of Seneca, we proceed.

This court has taken judicial notice of the Federal Rules of Civil Procedure, Title 28, United States Code, insofar as it is not repugnant to the common law. F.R.C.P. Rule 55 regarding default[56] is applied here.[57] The

[52] Everglades Drainage Dist. v. Florida Ranch & Dairy Corp., C.C.A.Fla., 74 F.2d 914, rehearing denied 75 F.2d 1013.
[53] Carpenter Steel Co. v. Metropolitan-Edison Co., D.C.Pa., 268 F. 980.
[54] 28 U.S.C. §2242 states in part: Application for a Writ of Habeas Corpus... 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.
[55] Seneca's *Medea*.

record shows that the *Petition* was filed; a *Writ of Habeas Corpus to Show Cause* issued; the *Petition* and *Writ* were duly served upon the respondents; no Return was filed; a *Notice of Default* was filed. So, no claim may be made that the State court was unaware of this court's proceedings; nor, may the respondents claim they were unaware of the consequences for failure to make a Return on the *Writ of Habeas Corpus*. Simply stated; the parties against whom a Judgment for Affirmative Relief is sought, have failed to plead or otherwise defend, as provided by these rules; and, that fact has been brought before the court by Affidavit in accordance with F.R.C.P. Rule 55(a).

VI. FINDINGS OF FACT

THEREFORE, BASED UPON THE RECORD BEFORE THIS COURT:

THE COURT FINDS THAT:

(1) David J. Mongielo and son David E. Mongielo are People as contemplated in the Preamble of the Constitution for the United States of America.

(2) This above-entitled court is a court of record.

(3) All respondents were duly served; and, court personnel were apprised of the petitioner's claims and the Writ; all respondents had full Notice and fair opportunity to argue their cause; and, respondents did not argue their cause.

(4) The respondents have not presented any legal or lawful cause of the restraint of David J. Mongielo and son David E. Mongielo.

(5) The respondents have not presented any jurisdictional basis for the restraint of David J. Mongielo and son David E. Mongielo. The court of the respondents did not fulfill the duty to determine whether it has jurisdiction in order for the exercise of jurisdiction to constitute a binding Decision.

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[56] Federal Rules of Civil Procedure, Rule 55. Default: (a) Entry. When a party against whom a Judgment for Affirmative Relief is sought, has failed to plead, or otherwise defend, as provided by these rules; and, that fact is made to appear [has been brought before the court] by Affidavit or otherwise, the clerk shall enter the party's Default. (b) Judgment: Judgment by Default may be entered as follows: (1) By the Clerk: When the plaintiff's claim against a defendant is for a sum certain, or for a sum which can, by computation, be made certain, the clerk, upon request of the plaintiff, and upon Affidavit of the amount due, shall enter Judgment for that amount and costs, against the defendant, if the defendant has been defaulted for failure to appear, and is not an infant or incompetent person. (2) By the Court: In all other cases, the party entitled to a Judgment by Default, shall apply to the court therefor; but, no Judgment by Default shall be entered against an infant, or incompetent person, unless represented in the action by a general guardian, committee, conservator, or other such representative, who has appeared therein. If the party against whom Judgment by Default is sought, has appeared in the action, the party, or, if appearing by representative, the party's representative, shall be served with written Notice of the Application for Judgment at least three (3) days prior to the Hearing on such Application. If, in order to enable the court to enter Judgment; or, to carry it into effect; it is necessary to take an account, or to determine the amount of damages, or to establish the truth of any averment by evidence, or to make an investigation of any other matter; the court may conduct such Hearings; or, Order such references, as it deems necessary and proper; and, shall accord a right of trial by jury to the parties, when, and as required, by any statute of the United States. (c) Setting Aside Default: For good cause shown, the court may set aside an Entry of Default; and, if a Judgment by Default has been entered, may likewise set it aside, in accordance with Rule 60(b).

[57] Courts of record have an inherent power, independently of statutes, to make rules for the transaction of business. 1 Pet. 604, 3 Serg. & R. Penn. 253; 8 id. 336, 2 Mo. 98.

(6) The respondents have not presented any evidence to prove the absence of prosecutorial vindictiveness by the respondents against David J. Mongielo and son David E. Mongielo.

(7) David J. Mongielo and son David E. Mongielo has a reasonable apprehension of future restraint of Liberty arising from the same facts.

(8) Strict compliance with statutory requirements was not met by the respondents.

(9) David J. Mongielo and son David E. Mongielo has suffered an unlawful and illegal diminishment of rights.

VII. CONCLUSIONS OF LAW

FURTHER, THE COURT CONCLUDES THAT:

(1) This above entitled court, has the sovereign authority to proceed as a court of record with jurisdiction to act in the instant case and subject matter.

(2) Because all respondents were duly served; and, court personnel were apprised of the petitioner's *Petition* and *Writ*; and, because all respondents had full Notice and fair opportunity to argue their cause; and, did not so do; and, because none of the aforementioned persons made a Return, Objection, or Motion, the above-entitled court has acquired "in personam jurisdiction" of each of the respondents.

(3) Because the respondents have not presented any legal or lawful cause of, or any jurisdictional basis for the restraint of David J. Mongielo and son David E. Mongielo, the respondents do not have any legal or lawful cause against or jurisdiction over David J. Mongielo and son David E. Mongielo.

(4) Because the respondents have not presented any evidence to prove the absence of prosecutorial vindictiveness by the respondents against David J. Mongielo and son David E. Mongielo, and because the burden of proof is upon the respondents when evidence of prosecutorial vindictiveness has been presented, as a matter of law the respondents have committed prosecutorial vindictiveness against David J. Mongielo and son David E. Mongielo.

(5) Strict compliance with statutory requirements were not met by the respondents, David J. Mongielo and son David E. Mongielo was denied due process, there is a reasonable probability that he will be denied due process, and there is a reasonable probability that David J. Mongielo and son David E. Mongielo will be subjected to future restraint of Liberty arising from the same facts.

(6) Because David J. Mongielo and son David E. Mongielo has suffered an unlawful and illegal diminishment of rights David J. Mongielo and son David E. Mongielo will very likely continue to be subjected to further unlawful and illegal diminishment of rights if not immediately released.

(7) It has become clear to this Grand Jury Investigative Body that the Court has taken advantage through undue influence[58] of its victims by manipulating peoples' free will for money and is thereby guilty of

[58] **UNDUE INFLUENCE:** Any improper or wrongful constraint, machination, or urgency of persuasion whereby the will of a person is overpowered and he is induced to do or forbear an act which he would not do or would do if left to act freely. Powell v. Betchel, 340 Ill. 330, 172 N.E. 765, 768. Influence which deprives person influenced of free agency or destroys freedom of his will and

common barratry[59], maintenance[60] and champerty[61]. Since this problem has been found in many courts in America we have concluded the courts guilty of racketeering.

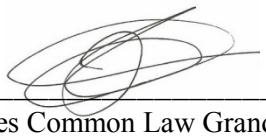
VIII. CONCLUSION SUMMARY

The respondents, namely STATE OF NEW YORK, COUNTY OF NIAGARA, District Attorney Michael J. Violante, Susan D. Mongielo, Judge Mark A. Montour, Attorney General Eric T. Schneiderman, Law Guardian Michele Bergevin , by their Default (their failure to Return the Writ of Habeas Corpus), have failed to prove their jurisdiction; therefore they each and all of them shall *abate at law* all proceedings in and relating to SUPREME COURT OF NEW YORK , COUNTY OF NIAGARA, de facto Case No. 155754 .

None of the Respondents is an infant or incompetent. None of the Respondents has appeared in the proceedings.

Default Judgment to be entered by this court in accordance with Federal Rules of Civil Procedure, Rule 55(b)(2). Petitioner, if not already released, is to be released straightway. No damages are awarded; no costs are awarded; no attorneys' fees are awarded.

THE COURT, September 25, 2015



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renders it more the will of another than his own. Conner v. Brown, Del., 3 A.2d 64, 71, 9 W.W.Harr. 529; In re Velladao's Estate, 31 Cal.App.2d 355, 88 P.2d 187, 190.

[59] **BARRATRY:** In criminal law. Also spelled "Barretry." The offense of frequently exciting and stirring up quarrels and suits, either at law or otherwise. 4 Bla.Com. 134; State v. Batson, 220 N.C. 411, 17 S.E.2d 511, 512, 513.; "Common barratry is the practice of exciting groundless judicial proceedings." Pen.Code Cal. § 158; Lucas v. Pico, 55 Cal. 128; Corn. v. McCulloch, 15 Mass. 229; Ex parte McCloskey, 82 Tex.Cr.R. 531, 199 S.W. 1101, 1102.

[60] **MAINTENANCE:** consists in maintaining, supporting, or promoting the litigation of another.; "Act of maintaining, keeping up, supporting; livelihood; means of sustenance." Federal Land Bank of St. Louis v. Miller, 184 Ark. 415, 42 S.W.2d 564, 566.

[61] **CHAMPERTY:** is a bargain to divide the proceeds of litigation between the owner of the liquidated claim and a party supporting or enforcing the litigation. Draper v. Lebec, 219 Ind. 362, 37 N.E.2d 952, 956.; A bargain by a stranger with a party to a suit, by which such third person undertakes to carry on the litigation at his own cost and risk, in consideration of receiving, if successful, a part of the proceeds or subject sought to be recovered. Small v. Mott, 22 Wend., N.Y., 405; Gilman v. Jones, 87 Ala. 691, 5 So. 785, 7 So. 48, 4 L.R.A. 113; Jamison Coal & Coke Co. v. Goltra, C.C.A.Mo., 143 F.2d 889, 895, 154 A.L.R. 1191.; The purchase of an interest in a thing in dispute, with the object of maintaining and taking part in the litigation. 7 Bing. 378.