

MEMORANDUM OF LAW HABEAS CORPUS

“The privilege of the writ of habeas corpus shall not be suspended.” – Article I §9 Clause 2

The purpose of this memorandum is to clarify the court’s duty concerning the ‘Unalienable Right of Habeas Corpus.’ Whereas every person unlawfully committed, detained, confined or restrained of his Liberty or Property, under any pretense whatsoever, may prosecute a Writ of Habeas Corpus to inquire into the cause of such imprisonment or restraint. And a court, judge or magistrate entertaining an application for a writ of habeas corpus shall forthwith award the writ and issue an order directing the respondent to show-cause why the writ should not be granted. And if none of the respondents return a statement of cause for the restraint, the petitioner must be released. New York State Constitution §4: *“The privilege of a writ or order of habeas corpus shall not be suspended, unless, in case of rebellion or invasion, the public safety requires it.”*

FEDERALIST NO. 84 HAMILTON

“The establishments of the (1) Writ of Habeas Corpus, the (2) Prohibition of Ex-Post-Facto Laws, and of (3) Titles of Nobility, to which we have no corresponding provision in our constitution, are perhaps greater securities to liberty and republicanism than any it contains. The creation of crimes after the commission of the fact, or, in other words, the subjecting of men to punishment for things which, when they were done, were breaches of no law, and the practice of arbitrary imprisonments, have been, in all ages, the favorite and most formidable instruments of tyranny.”

In the United States, habeas corpus exists in two forms; common law and statutory. The Constitution for the United States of America acknowledges the Peoples’ right to the common law of England as it was in 1789. It does not consist of absolute, fixed and inflexible rules, but broad and comprehensive principles based on justice, reason, and common sense.¹

This is the well-known remedy for deliverance from illegal confinement, called by Sir William Blackstone the most celebrated writ in the English law, and the great and efficacious writ in all manner of illegal confinement.² The "Great Writ of Liberty," issuing at common law out of courts of Chancery, King's Bench, Common Pleas, and Exchequer.³

HABEAS CORPUS AD RESPONDENDUM – A writ which is usually employed in civil cases to remove a person out of the custody of one court into that of another, in order that he may be sued and answer the action in the latter.⁴

¹ Miller v. Monsen, 37 N.W.2d 543, 547, 228 Minn. 400.

² 3 Bl. Comm. 129.

³ Ex parte Kelly, 123 N.J.Eq. 489.

⁴ 2 Sell. Pr. 259; 2 Mod. 198; 3 Bl. Comm. 129; 1 Tidd, Pr. 300.

HABEAS CORPUS AD SUBJICIENDUM – A writ directed to the person detaining another, and commanding him to produce the body of the prisoner, (or person detained,) with the day and cause of his caption and detention, ad faciendum, sub jiciendum et recipiendum, to do, submit to, and receive whatsoever the judge or court awarding the writ shall consider in that behalf.⁵

HABEAS CORPUS AD TESTIFICANDUM – At common law, the writ, meaning “you have the body to testify”, used to bring up a prisoner detained in a jail or prison to give evidence before the court.⁶

On June 12, 2008 in the case *BOUMEDIENE ET AL. v. BUSH, PRESIDENT OF THE UNITED STATES, ET AL.* No. 06–1195 the United States Supreme Court declared Section 7 of the Military Commissions Act of 2006 unconstitutional because it purported to abolish the writ of habeas corpus.

28 USC §2242 demands that every person unlawfully committed, detained, confined or restrained of his Liberty or Property, under any pretense whatsoever, may prosecute a Writ of Habeas Corpus to inquire into the cause of such imprisonment or restraint. In *Brown v. Vasquez*,⁷ the court observed that the Supreme Court has “recognized the fact that [t]he writ of habeas corpus is the fundamental instrument for safeguarding individual freedom against arbitrary and lawless state action.” “Therefore, the writ must be administered with the initiative and flexibility essential to insure that miscarriages of justice within its reach are surfaced and corrected.

The writ of habeas corpus serves as an important check on the manner in which state courts pay respect to federal constitutional rights. The writ is “the fundamental instrument for safeguarding individual freedom against arbitrary and lawless state action.”⁸ A Writ Habeas Corpus must be prosecuted if the petitioner shows in his petition that the court ordering the detention or imprisonment made one or more of the following legal and factual errors.

- 1) Respondents gathered a biased statutory jury; a jury not under common law; a jury under a court not of record, i.e., not at law; a jury which has no power to fine or imprison thereby jurisdiction was fraudulently acquired.
- 2) There was no sworn documentary evidence from a competent fact witness.
- 3) Petitioner is being unconstitutionally held by a court “not of record” as required and defined under Article VI clause 2.
- 4) Court is proceeding under statutes and jurisdictions unknown and “not under the law of the land” a/k/a common law.

⁵ 3 Bl. Comm. 131; 3 Steph. Comm. 695.

⁶ *Hottle v. District Court in and for Clinton County*, 233 Iowa 904, 11 N.W.2d 30, 34; 3 Bl. Comm. 130; 2 Tidd, Pr. 809. *Ex parte Marmaduke*, 91 Mo. 250, 4 S.W. 91, 60 Am.Rep. 250.

⁷ 952 F.2d 1164, 1166 (9th Cir. 1991), cert. denied, 112 S.Ct. 1778 (1992)

⁸ *Harris v. Nelson*, 394 U.S. 286, 290-91 (1969).

- 5) Courts Jurisdiction was not stated.
- 6) Petitioner was denied due process.
- 7) Petitioner is a victim of barratry, maintenance and champerty.⁹
- 8) Custodians have engaged in prosecutorial vindictiveness therefore, the burden is upon respondents to rebut presumption

TITLE 28 OF THE UNITED STATES CODE 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. If a petitioner requests an inquiry into the cause of restraint, but none of the respondents return a statement of cause of the restraint, the court must presume that there is no lawful cause of restraint.

On a petition for a writ of habeas corpus, the standard of review for a claim of prosecutorial misconduct, like the standard of review for a claim of judicial misconduct, is ‘the narrow one of due process, and not the broad exercise of supervisory power.’¹⁰ “The relevant question is whether the prosecutor's comments ‘so infected the trial with unfairness as to make the resulting conviction a denial of due process.’”¹¹

28 USC §2243 - ISSUANCE OF WRIT; RETURN; HEARING; DECISION: A court, justice or judge entertaining an application for a writ of habeas corpus shall forthwith award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled thereto.

- The writ or order to show cause shall be directed to the person having custody of the person detained.
- It shall be returned within three days unless for good cause additional time, not exceeding twenty days, is allowed.
- The person to whom the writ or order is directed shall make a return certifying the true cause of the detention.
- When the writ or order is returned, a day shall be set for hearing, not more than five days after the return unless for good cause additional time is allowed.
- 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.

⁹ A court system such as Family Court that has become a deceitful web of psychological destructive forces, motivated by money (RICO), taking advantage of family’s vulnerability that are going through traumatic events or unexpected circumstances; as the court proceeds without due process, usurping the will of its victims under the color of law, extorting money directly from its victims and through the fraudulent unconstitutional cestui que accounts.

¹⁰ Darden v. Wainwright, 477 U.S. 168, 181 (1986) (quoting Donnelly v. DeChristoforo, 416 U.S. 637, 642 (1974)).

¹¹ Id. (quoting Donnelly, 416 U.S. at 643).

- 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.

CONCLUSION: The Writ Habeas Corpus is an unalienable right that 'NO' judge may deny. The petition need only allege a violation of due process. And, if none of the respondents return a statement of cause for the restraint, the petitioner must be released. The right of Habeas Corpus is defended in Federalist No. 84 Hamilton, secured by the United States Constitution Article I Section 9 Clause 2, the New York State Constitution §4 and its prosecution is demanded by 28U.S.C. §2242.