UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

Melissa Lynn Hanson

Petitioner,

v.

Sheriff Kurt Freitag

And

Sheriff Lon Thiele

Respondents.

Case No. 21-CV-002651-001

Objection

To

Void Order to Show Cause

And

Response to Show Cause

I, Melissa Lynn Hanson, *sui juris*, a woman and one of the People of Minnesota appear in this federal court of record[1] by this document to Object and take Exception to the Order to Show Cause[2] ("Order") on the grounds that the Order issued upon judicial consideration of my Petition for Writ of Habeas Corpus[3] by a non-Article III[4] judicial officer, that the Order denied to me procedural and substantive due process agreeable to the usages and principles according to the course of the common law to abrogate my claim for the common law Habeas Corpus relief invoking the

[1] A **court of record** has four essential elements, two of which are that the judicial tribunal has attributes and exercises functions independently of the person of the magistrate designated generally to hold it and that **it proceeds according to the course of common law.** Black's Law Dictionary, 4th Ed., 425, 426.
[2] Doc. 5.
[3] Doc. 1, as amended by Doc. 3.
[4] Constitution, Article III restricts the exercise of the judicial power of the United States to only those officers of the United States commissioned for the term of good behavior and whose compensation shall not be diminish during the term of office.

guaranteed protections of due process of common law under the federal Constitution against the deprivation of my liberty and property. I further appear and make **DEMAND** for the Writ of Habeas Corpus to **IMMEDIATELY** issue under hand of a judicial officer vested with authority to exercise the judicial power of the United States without further delay. In support, I state:

Statements about the Case

1. My original verified Petition for Writ of Habeas Corpus, Declaratory Judgment, and Equitable Relief ("Petition") with exhibits filed December 13, 2021. Doc. 1.

2. The Amended Petition filed December 14, 2021 to comport with the change in name of the Respondent as legal custodian of my body. Doc. 3.

3. The Petition clearly, unequivocally, and distinctly set forth requests for Habeas Corpus, Declaratory Judgment, and Equitable Relief.

4. The Petition set forth a claim for **immediate** relief from the unlawful restraint of my liberty under the common law Writ of Habeas Corpus for want of State court jurisdiction and for acts inconsistent with due process of common law that obtained the **void** judgment of conviction by trial by jury.

5. Upon information and belief, the Petition put before Magistrate Leo I. Brisbois ("Brisbois") employed by the United States in the position titled United States Magistrate Judge.

6. I did not give consent to have my Petition considered by a magistrate judge.

7. Upon information and belief, Brisbois not seated in any office created by Congress.

8. Upon information and belief, Brisbois not seated in accordance with the Appointments Clause[5].

9. Upon information and belief, Brisbois not commissioned to serve for the term of good behavior.

10. Upon information and belief, Brisbois's compensation for service not protected from diminishment.

11. Upon information and belief, upon ¶¶ 7 through 10, Brisbois not authorized to exercise the judicial power of the United States under Article III on a case at law arising under the Constitution involving one of the People of Minnesota and the state of Minnesota.

12. Upon Supreme Court authority and reasonable belief, relief upon an application for a writ of habeas corpus requires judicial consideration by a judge under the parameters set forth under Article III.

13. Under his hand, Brisbois issued the Order to Show Cause without judicial authority under Article III. Doc. 5.

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[5] Constitution, Article II, § 2, cl 2

14. Upon Supreme Court authority and reasonable belief, the Clerk of Court's assignment of my Petition to Brisbois wholly inconsistent with the Constitution and the laws of the United States.

15. The Order filed on January 14, 2022: thirty (30) days from the filing date of the original petition and one third of the ninety-day period of my sentence to the custody of the law.

16. Brisbois failed to perform a duty of a judge to "**forthwith**[6] **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. See 28 U.S.C. § 2243.

17. Brisbois refused to issue the Writ on the purported ground that I had not exhausted every "claim for relief" in the Petition.

18. Brisbois established an opposition to issuance of the writ properly pleaded in bar **only** by the Respondent in their Answer. See RULES GOVERNING SECTION 2254 CASES IN THE UNITED STATES DISTRICT COURTS, Rule 5(a).

19. Under the usages and principles of common law, only those claims to an **error** of judgment in application of law (upon which the common law writ of error traditionally issued) are subject to exhaustion by appeal to the superior courts of the state before habeas corpus relief.

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[6] **FORTHWITH**. Adverb. Immediately; without delay; directly.

20. Under the usages and principles of common law, claims to **void** judgment of conviction are proper for consideration in the grant of relief under habeas corpus or other collateral attack.

21. Under the usages and principles of common law, claims to **void** judgment under habeas corpus consideration: violation of fundamental law; want of court jurisdiction; acts or proceedings inconsistent with due process of the common law.

22. Brisbois not only pleaded in bar to the issuance of the Writ on behalf of the Respondent but also further failed to differentiate the nature of the claims that must be exhausted before an Article III judge may consider relief under habeas corpus.

23. The pleading relieved Brisbois from differentiating any claim that may be considered under Habeas Corpus under the authority of the Supreme Court that every claim must have been exhausted through the court of last resort in the state – leveraging on the facts that every "claim" had not been so exhausted in the Petition and fully anticipating the I would not be able to show cause that each claim had been so exhausted.

24. Brisbois's order to show that every claim had been exhausted masked the identity of those claims that he concluded as not exhausted – leaving me no recourse to amend the Petition to include only the exhausted claims under provisions of Fed. R. Civ. Proc. Rule 15(a).

25. The court must conclude that if the Petition sets forth a claim for want of state court personal and/or subject matter jurisdiction or for acts inconsistent with due process of law in obtaining the judgement of conviction, the court must **immediately** issue the Writ of Habeas Corpus.

26. The Petition sets forth specific and enumerated claims collaterally attacking the jurisdiction of the State court and acts inconsistent with due process of law in violation of the Constitution for the United States of America. See **Petition, Counts I through XVI.**

27. Brisbois failed to perform a duty of a judge to "**forthwith**[7] **award the writ or issue an order directing the respondent to show cause why the writ should not be granted**" when it **did** "appear **from the application** that the applicant or person detained" **was** entitled thereto. See 28 U.S.C. § 2243.

28. To the extent that the Petition sets forth claims for Declaratory Judgment and Equitable Relief upon the same set of facts and application of law and further absent a prohibition from seeking the different requests for relief together, Brisbois eviscerated the great purpose of the Writ of Habeas Corpus by legal chicanery[8] and without authority.

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[7] **FORTHWITH**. Adverb. Immediately; without delay; directly.
[8] CHICANERY. The use of sly or evasive language, reasoning, etc. to trick or deceive.

29. Brisbois breached his duty bound by solemn oath of office to support the Constitution for the United States of America in respect of guarding my rights to due process of common law in the deprivation of my liberty and property.

Authority

30. A court, justice or judge entertaining an application for a writ of habeas corpus shall forthwith[9] 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. 28 U.S.C. § 2243.

31. "The Supreme Court and all courts established by Act of Congress may issue all writs **necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law."** 28 U.S.C. § 1651.

32. Supreme Court authority:

[9] **FORTHWITH**. Adverb. Immediately; without delay; directly.

Void Judgment

Void judgments are those rendered by a court which lacked jurisdiction, either of the subject matter or the parties. See *Millken v. Meyer*, 311 U.S. 457 (1940).

"[W]here a Court has jurisdiction, it has a right to decide every question which occurs in the cause; and whether its decision be correct or otherwise, its judgment, until reversed is regarded as binding in every other Court. **But if it act without authority, its judgments and orders are regarded as nullities. They are not voidable, but simply void."** *Wilcox v. Jackson*, 38 U.S. 498, 511 (1839).

"A void judgment is a legal nullity. See Black's Law Dictionary 1822 (3d ed.1933); see also *id.*, at 1709 (9th ed.2009). Although the term "void" describes a result, rather than the conditions that render a judgment unenforceable, it suffices to say that a void judgment [or order] is one so affected by a fundamental infirmity that the infirmity may be raised even after the judgment becomes final. See Restatement (Second) of Judgments 22 (1980); see generally *id.*, § 12." *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 130 S.Ct. 1367, 1377 (2010).

Bode v. Minn. Dept. of Nat. Resources, 594 NW 2d 257, 261 (Minn. App. 1999)(A judgment is void if the issuing court lacked jurisdiction over the subject matter, lacked personal jurisdiction over the parties through a failure of service that has not been waived, or acted in a manner inconsistent with due process);*Bradley v. St. Louis Terminal Warehouse Co.*, 189 F.2d 818, 824 (8th Cir.1951) (A judgment obtained without due process is a nullity and may be attacked directly or collaterally by parties or strangers.); *Bass v. Hoagland*, 172 F.2d 205, 208-209 (5th Cir.1949) (We believe that a judgment, whether in a civil or criminal case, reached without due process of law is without jurisdiction and void), cert. denied 338 U.S. 816, 70 S.Ct. 57, 94 L.Ed. 494 (1949); see 11 Wright and Miller, Federal Practice and Procedure § 2862 at 199-200.

~Jurisdiction~

"No judicial process, whatever form it may assume, can have any lawful authority outside of the limits of the jurisdiction of the court or judge by whom it is issued; and an attempt to enforce it beyond these boundaries is nothing less than lawless violence." *Ableman v. Booth*, 62 U.S. 506,524 (1859).

"Moreover, courts, including this Court, have an **independent obligation** to determine whether subject-matter jurisdiction exists, **even in the absence of a challenge from any party.** *Ruhrgas AG* v. *Marathon Oil Co.*, 526 U. S. 574, 583 (1999)." *Arbaugh v. y & H Corp.*, 546 US 500, 514 (2006).

"The requirement that jurisdiction be established as a threshold matter . . . is `inflexible and without exception,' " *id.*, at 94-95 (quoting *Mansfield, C. & L. M. R. Co.* v. *Swan*, 111 U. S. 379, 382 (1884)); for "[j]urisdiction is power to declare the law," and "`[w]ithout jurisdiction the court cannot proceed at all in any cause,' " 523 U. S., at 94 (quoting *Ex parte McCardle*, 7 Wall. 506, 514 (1869))." *Ruhrgas Ag v. Marathon Oil Co.*, 526 US 574, 577 (1999).

Historic Office of Habeas Corpus

"We do well to bear in mind the extraordinary prestige of the Great Writ, *habeas corpus ad subjiciendum*, in Anglo-American jurisprudence: "the most celebrated writ in the English law." 3 Blackstone Commentaries 129. It is **"a writ antecedent to statute, and throwing its root deep into the genius of our common law. . . .** It is perhaps the most important writ known to the constitutional law of England, **affording as it does a swift and imperative remedy in all cases of illegal restraint or confinement. It is of immemorial antiquity, an instance of its use occurring in the thirty-third year of Edward I.**" *Fay v. Noia*, 372 US 391, 399-400 (1963).

Application of Habeas Corpus

"We shall not say more concerning the corrective process [petition for writ habeas corpus] afforded to the petitioners than that it **does not seem to us sufficient** to allow a Judge of the United States **to escape the duty of examining the facts for himself when if true as alleged they make the trial [or judgment therefrom] absolutely void.**" *Moore v. Dempsey*, 261 US 86, 92 (1923)

We will not say that they cannot be met, but **it appears to us unavoidable that the District Judge should find whether the facts alleged are true and whether they can be explained so far as to leave the state proceedings undisturbed.**" *Moore v. Dempsey*, 261 US 86, 92 (1923).

"But if it be found that the **court had no jurisdiction to try the petitioner, or that in its proceedings his constitutional rights have been denied, the remedy of habeas corpus is available.**" *Bowen v. Johnston*, 306 US 19, 24 (1939).

"Where a [court] has jurisdiction of the person and the subject matter in a criminal prosecution, the writ of habeas corpus cannot be used as a writ of error." *Bowen v. Johnston*, 306 US 19, 24 (1939).

"Although the remedy extends to federal prisoners held in violation of federal law and not merely of the Federal Constitution, many cases have denied relief upon allegations merely of error of law and not of a substantial constitutional denial. *E. g., Ex parte Parks, supra,* at 20-21; *In re Wight*, 134 U. S. 136, 148; *Harlan v. McGourin*, 218 U. S. 442, 448; *Eagles v. United States ex rel. Samuels*, 329 U. S. 304. **Such decisions are not however authorities against applications which invoke the historic office of the Great Writ to redress detentions in violation of fundamental law.**" *Fay v. Noia*, 372 US 391, 399-400 (1963)

"It is clear, not only from the language of §§ 2241 (c) (3) and 2254 (a), but also from the common-law history of the writ, **that the essence of habeas corpus is an attack by a person in custody upon the legality of that custody, and that the traditional function of the writ is to secure release from illegal custody.** By the end of the 16th century, there were in England several forms of habeas corpus, of which the most important and the only one with which we are here concerned was habeas corpus ad subjiciendum—the writ used to "inquir[e] into illegal detention with a view to an order releasing the petitioner." *Fay v. Noia*, 372 U. S. 391, 399 n. 5 (1963). **Whether the petitioner had been placed in physical confinement** by executive direction alone, or **by order of a court**, or even by private parties, **habeas corpus was the proper means of challenging that confinement and seeking release.**" *Preiser v. Rodriguez*, 411 US 475, 484 (1973). (Internally referenced authority omitted).

"**The original view of a habeas corpus attack upon detention under a judicial order was a limited one. The relevant inquiry was confined to determining simply whether or not the committing court had been possessed of jurisdiction.** *E. g., Ex parte Kearney*, 7 Wheat. 38 (1822); *Ex parte Watkins*, 3 Pet. 193 (1830). But, over the years, the **writ of habeas corpus evolved as a remedy available to effect discharge from any confinement contrary to the Constitution or fundamental law, even though imposed pursuant to conviction by a court of competent jurisdiction.** See *Ex parte Lange*, 18 Wall. 163 (1874); *Ex parte Siebold*, 100 U. S. 371 (1880); *Ex parte Wilson*, 114 U. S. 417 (1885); *Moore* v. *Dempsey*, 261 U. S. 86 (1923); *Johnson* v. *Zerbst*, 304 U. S. 458 (1938); and *Waley* v. *Johnston*, 316 U. S. 101 (1942). See also *Fay* v. *Noia*, *supra*, at 405-409, and cases cited at 409 n. 17. Thus, whether the **petitioner's challenge to his custody is that the statute under which he stands convicted is unconstitutional**, as in *Ex parte Siebold*, *supra;* that he has been imprisoned prior to trial on account of a defective indictment against him, as in *Ex parte Royall*, 117 U. S. 241 (1886); that he is unlawfully confined in the wrong institution, as in *In re Bonner*, 151 U. S. 242 (1894), and *Humphrey* v. *Cady*, 405 U. S. 504 (1972); that **he was denied his constitutional rights at trial**, as in *Johnson* v. *Zerbst*, *supra;* that his guilty plea was invalid, as in *Von Moltke* v. *Gillies*, 332 U. S. 708 (1948); that he is being unlawfully detained by the Executive or the military, as in *Parisi* v. *Davidson*, 405

U. S. 34 (1972); or that his parole was unlawfully revoked, causing him to be reincarcerated in prison, as in *Morrissey* v. *Brewer*, 408 U. S. 471 (1972)—**in each case his grievance is that he is being unlawfully subjected to physical restraint, and in each case habeas corpus has been accepted as the specific instrument to obtain release from such confinement.**" *Preiser v. Rodriguez*, 411 US 475, 485-486(1973). (Internally referenced authority omitted).

SHOWING OF CAUSE TO ISSUE WRIT

33. Paragraphs 1 through 32 incorporated herein by reference as fully restated.

Notwithstanding the void Order to Show Cause and the pleading by Brisbois in bar to the issuance of the Writ, Brisbois did not elucidate by order to show cause for habeas corpus consideration under the provision excepting circumstances that exist that render state remedies ineffective or inadequate to protect the rights of the applicant at 28 U.S.C. § 2254(b)(1)(B)(ii).

Inadequate State Remedy

34. I was sentenced upon final judgment of misdemeanor convictions to 90 days in jail.

35. A state writ of habeas corpus is not available to persons detained by virtue of final judgment. See Minn. Stat., Chapter 589.

36. An Appeal of a final judgment of a misdemeanor conviction from State court is governed by Minn. R. Crim. Proc. Rule 28.

37. A defendant may appeal as a matter of right from any adverse judgment. § 28.02, Subd. 1(1).

38. The Petition established that circumstances exist of judicial bias in the appellate and supreme courts of the state abrogating procedural and substantive due process rights prior to judgment. See Petition, ¶¶13-18.

39. Upon practical reasoning, the time for me to prosecute relief under § 28.02, Subd. 1(1) and its appellate procedures would exceed the period of detention and therefore inadequate against the irreparable and ongoing harm to me in the loss of my liberty.

WHEREFORE: Upon the foregoing, the Order to Show Cause violated my procedural and substantive rights to due process and as such void. I make **DEMAND** for the Writ of Habeas Corpus to **IMMEDIATELY** issue under hand of a judicial officer vested with authority to exercise the judicial power of the United States without further delay.

Dated on this 7TH day of February, 2022:

Melissa Lynn Hanson

VERIFICATION

I declare under penalty of perjury under the laws of Minnesota that I have read the foregoing document and to the best of my knowledge and belief the factual statements and declarations made therein are true and correct and made in good faith and will testify to the same in open court upon any dispute of fact established by sworn testimony of any person having personal knowledge of the facts if called to do so; excepting as to those matters therein stated upon information and belief and as to those matters, I verily believe the same to be true.

Executed on this 7th day of February, 2022:

Melissa Lynn Hanson, *sui juris*