WR-83,689-01
COURT OF CRIMINAL APPEALS
AUSTIN, TEXAS
Transmitted 8/5/2015 9:31:16 AM
Accepted 8/5/2015 9:50:48 AM
ABEL ACOSTA
CLERK

NO. _____

AT THE COURT OF CRIMINAL APPEALS
TEXAS

RECEIVED
COURT OF CRIMINAL APPEALS
8/5/2015
ABEL ACOSTA, CLERK

In Re Karl Schonwalder

Original Proceeding and Emergency Relief
From the 397th District Court of Grayson County

WRIT OF HABEAS CORPUS

Karl Schonwalder
2119 56th St
Lubbock, Tex [79412]
806-438-1976
Unrepresented

I am a private party with no commercial nexus with the state.
I am receiving harm by legal proceedings and am without a remedy at law - requiring "Writ of Habeas" on Constitutional grounds.

Notice for Clerk

Special circumstances apply due to extraordinary circumstances - Relator should not be charged a fee.

Dorsaneo's § 152.04[5][c] How to Commence Original Proceeding - Whether filed in the court of appeals or the Texas Supreme Court, the petition must be accompanied by a filing fee [Tex. R. App. P. 5 (unless excused by statute or rule, party must pay fees set by statute or Texas Supreme Court order)...

28 USC § 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[1] 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.

[1] 28 USC § 1603 Definitions - (a) A "foreign state" ...(b)(2) which is an organ of a foreign state [Organ: constitutional reference to the founders and their property] ...and (3) which is neither a citizen of a State of the United States as defined in 1322 [Territories]...nor created under the laws of any third country. (c) The "United States" includes all territory and waters, continental or insular, subject to the jurisdiction of the United States. (d) A "commercial activity" means either a regular course of commercial conduct or a particular commercial transaction or act. The commercial character of an activity shall be determined by reference to the nature of the course of conduct or particular transaction or act, rather than by reference to its purpose. (e) A "commercial activity carried on in the United States by a foreign state" means commercial activity carried on by such state and having substantial contact with the United States.

*(Any perceived use of your codes is for your reference purposes only, considered as "c.f." and not meant to create any presumption of benefit, legal duty or liability on my part, but to show that your beliefs coincide with my beliefs; all legal presumptions notwithstanding and no process, procedure, fee or otherwise by "Relator" shall be construed to traverse standing. **Any use of the English language** is not meant to be phonetical, or disparaging to Demandant but **has the meaning and intent as given by the Demandant**).*

CLERK'S NOTICE

This record is not to be misconstrued as a pro se filing. If the recipient clerk is unable to process this pleading, please direct it to the proper official. If this case is in an improper jurisdiction, venue, or court, the court will inform "Karl Schonwalder" of such proper jurisdiction, venue or court, and MOVE THE CASE to a court of proper jurisdiction or venue, such that proper and complete remedy may be provided. In the case of any denial of remedy, this court will inform the "Wrongfully Accused" of the proper court and procedure to obtain relief. If the judge finds cause of lack of authority to provide remedy, it shall be documented in writing with a finding of fact and conclusions at law. The Writ of Habeas Corpus being necessary to establish standing for First Amendment Redress, can be done in chambers without oral argument, shall be heard immediately to establish proper standing to obtain complete remedy, whether or not it be after hours, as **the court is always open**.

NOTICE OF FEIGNED ACTION, "ORIGINAL" WRIT OF HABEAS CORPUS[2]

(prerogative writ and not under code) [3],

c.f. **Federal Question [**[4]**]**

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[2] *c.f.* FED RULES OF CIVIL PROC. RULE 17. PROCEDURE IN AN ORIGINAL ACTION. 2. **The form of pleadings and motions prescribed** by **the Federal Rules of Civil Procedure is followed. In other respects, those Rules** and the Federal Rules of Evidence **may be taken as guides.**

[3] Under Demand or Requirement - Not a petition (Exhaustion of State remedies).

[4] *c.f.* 28 USC § 1331.

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#	Description	# Pages

2. IDENTITY OF PARTIES AND COUNSEL

RELATOR:
1. Karl Alan Schonwalder, a man and unrepresented[5]

WRONGDOERS:
2. KEN PAXTON (A.G.)
3. Rick Webber (acting as WHITEWRIGHT POLICE OFFICER)
4. "John Doe" A-Z (acting as WHITEWRIGHT POLICE OFFICER)
5. Steve McCraw, (acting as Director of DPS)
6. Larry Atherton, (acting as Magistration Judge)
7. Donnie Carter, (acting as Assistant D.A.)
8. Brian Gary, (acting as Trial Judge)
9. **(Addresses given under Verification of Service)**

3. STATEMENT OF THE CASE

1. The nature of this underlying proceeding is a suit for freedom of the Relator. Relator is currently being held in the Grayson County Detention Center. Jurisdiction has been challenged in the current proceedings, JUDGE Brian Gary presiding, to no avail. Brian Gary acting under color, has further restricted motions to be filed and denied all motions entered by Relator. Relator has no other remedy available or has exhausted all remedies.

[5] Purported appointment of representation by SCOTT SMITH ATT in error.

4. STATEMENT OF JURISDICTION

1. "Wrongfully Accused" is a visitor at Grayson County Texas with only a technical presence. Wrongdoers are all residents in Texas and the events happened at Grayson County Texas.
1. This court does not have jurisdiction over the Relator because the Relator is not amenable to process issued by the courts of Texas in this instance because:

    a. The Relator is not a resident of Texas and is not required to maintain and does not maintain a registered agent for service in Texas.

    b. The Relator does not now engage and has not engaged in business in Texas or committed any tort, in whole or in pail, within the state.

    c. The Relator does not maintain a place of business in Texas and has no employees, servants, or agents within the slate.

    d. The Relator has no substantial connection with Texas arising from any action or conduct of the Relator purposefully directed toward Texas

    e. The plaintiff's claims do not arise from and are not related to any activity conducted by the Relator in Texas.

    f. The Relator has no continuing and systematic contacts with Texas).

4.1.1 Jurisdiction Deprives Relator of Due Process

2. The assumption of jurisdiction by the court over the Relator and his property would offend traditional notions of fair play and substantial justice, depriving the Relator of due process as protected by the Constitution of the United States of America.
3. For these reasons, the Relator requires that the court require the Respondents to produce the information being used to make their legal determination of jurisdiction and hold a hearing for that purpose and if it is not substantiated, the court accept this notice and discharge the entire proceeding for want of jurisdiction.

5. NOTICE

5.1 Notice of Federal Filing

1. Relator has filed a claim into the United States Court, Eastern District of Texsas, Cause # 4:15-CV-108, which at this time has not been ruled on. However Relator believes that it may be a prerequisite to file this claim in the State court, prior to any remedy available in the United States Court, for exhaustion of remedies.

2. Further, the right is hereby retained to file for removal to federal court within 30 days of summons[6][7] or upon the states election to files any legitimately applicable or justicable charges.

5.2 JUDICIAL NOTICE

2. Judicial notice is hereby given that this state must take judicial notice of the Constitution, common law, Civil law, and statutes of every state, and other jurisdiction if the United States. S*ee* Rule 201 Federal Rules of Evidence.

6. ISSUES PRESENTED

6.1 Demand to Expand the Record or Evidentiary Hearing by a Judge

3. Relator believes that there has been a fatal omission of evidence on the record, not only does he hold this belief but the following federal statutes also hold the same position, and are mentioned thru the supremacy clause for your convenience and any listing of statutes is not meant to be taken as a position held by the Relator. Demand is hereby made to expand the record *c.f.*:

> **[28 USC § 2254 - Rule 7. Expanding the Record**
> (a) ...the judge may direct the parties to expand the record ...
> ... to enable the judge to dispose of some habeas petitions ... without ...an evidentiary hearing. ..., by far the majority require an evidentiary hearing. ...In some instances these hearings were **necessitated by slight omissions in the state record** which might have been cured by the use of an expanded record.
> Authorizing expansion of the record will, hopefully, eliminate some unnecessary hearings. The value of this approach was articulated in Raines v. United States, 423 F.2d 526, 529–530 (4th Cir. 1970):
> Unless it is clear from the pleadings and the files and records that the prisoner is entitled to no relief, the statute makes a hearing mandatory. We think there is a permissible intermediate step that may avoid the necessity for an expensive and time consuming evidentiary hearing... It may instead be perfectly appropriate, depending upon the nature of the allegations, for the district court to proceed by requiring that the record be expanded to include letters, documentary evidence, and, in an appropriate case, even affidavits. United States v. Carlino, 400 F.2d 56 (2nd Cir. 1968); Mirra v. United States, 379 F.2d 782 (2nd Cir. 1967); Accardi v. United States, 379 F.2d 312 (2nd Cir. 1967).
> In Harris v. Nelson, 394 U.S. 286, 300 (1969), the court said:

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[6] [Supremacy clause] F.R.C.P., Rule 4. Summons, Personal Jurisdiction, (1) *In General.* Serving a summons or filing a waiver of service establishes personal jurisdiction over a Relator: (A) **who is subject to the jurisdiction** of a court of general jurisdiction in the state where the district court is located. ...
Notes, Personal Jurisdiction, Purposes of Revision. The general purpose of this revision is to facilitate the service of the summons and complaint. The revised rule explicitly authorizes a means for service of the summons and complaint on any Relator. While the methods of service so authorized always provide appropriate notice to persons against whom claims are made, **effective service** under this rule **does not assure that personal jurisdiction has been established** over the Relator served.

[7] RULES OF EVIDENCE, Rule 101 Title and Scope
(b) **Scope.** Except as otherwise provided by statute, these rules govern civil and criminal proceedings (including examining trials before magistrates) in all courts of Texas, except small claims courts.
(c) **Hierarchical Governance in Criminal Proceedings**. Shall be: the Constitution of the United States, those federal statutes that control states under the **supremacy clause**, the Constitution of Texas, the Code of Criminal Procedure and the penal code, civil statutes (municipal law), these rules, and the common law. In consistency removed by reasonable construction.

At any time in the proceedings ... upon cause shown by the petitioner, it may ... authorize such proceedings [evidentiary hearing].

Rule 8. Evidentiary Hearing
(a) ...the judge must review the ... records of state-court proceedings, and any materials submitted under Rule 7 to determine whether an evidentiary hearing is warranted.
(c) ...**The judge must conduct the hearing as soon as practicable...**

In situations in which an evidentiary hearing is not mandatory, the judge may nonetheless decide that an evidentiary hearing is desirable:
The purpose of the test is to indicate the situations in which the holding of an evidentiary hearing is mandatory. In all other cases where the material facts are in dispute, the holding of such a hearing is in the discretion of the district judge. 372 U.S. at 318
...but in unusual cases the court may grant the relief sought without a hearing. This includes immediate release from custody...
Subdivision (b) provides that a magistrate, when so empowered by rule of the district court, may recommend to the district judge that an evidentiary hearing be held or that the petition be dismissed, provided he gives the district judge a sufficiently detailed description of the facts so that the judge may decide whether or not to hold an evidentiary hearing. This provision is not inconsistent with the holding in Wingo v. Wedding, 418 U.S. 461 (1974), that **the Federal Magistrates Act did not change the requirement** of the habeas corpus statute **that federal judges personally conduct habeas evidentiary hearings**, and that consequently a local district court rule was invalid insofar as it authorized a magistrate to hold such hearings.]

There are no facts or evidence on the record by the state that "Wrongfully Accused" is under the particular statutory code in this instance. This "slight omission" is a fatal defect in the state's prosecution. "Wrongfully Accused" has the conviction that no evidence exist and strict proof is demanded thereof. Due to the unusual circumstances of this case, immediate release is proper.

6.2 Color of Law

1. "Wrongfully Accused" is in custody under or by color, in violation of the Constitution of the United States; He, being a citizen of a foreign state and domiciled therein is in custody for an act which depend upon the law of nations [[8]].

6.3 No Probable Cause

4. On or about February 8, 2015 around 12:30 AM "Wrongfully Accused" was traveling from a religious Shabbat meeting, in his private property, whereupon "Wrongfully Accused" was placed under constructive arrest thru the use of emergency procedures by the alleged officers.

[8] *c.f.* 28 USC § 2241 - Power to grant writ.

5. Probable cause given to "Wrongfully Accused" was the non-emergency and purported crime of, "no license plate light" and for having "a dirty plate". Thereupon "papers" were demanded by way of a state issued I.D.

6.4 No Duty to Produce ID

6. "Wrongfully Accused" is charged with not producing "papers" by way of state issued I.D. However, "Wrongfully Accused" is without "state" domicile and is not in use of a commercial motor vehicle [9]. In this instant matter, without a crime committed or probable cause established, there is no duty to produce ID.

6.5 No Commercial Nexus

7. Further, no evidence has been proffered that "Wrongfully Accused's" property was being used in any commercial capacity [10] as dictated by the Tex. Motor Vehicle Code or that he or his property was otherwise subject to said Code.

6.6 No Authority to Regulate

1. There is no authority to regulate "Wrongfully Accused" [11][12][13]. The state has failed to show that the state has a security interest [14] or ownership [15] interest in "Wrongfully Accused's" property?

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[9] Tex Penal Code, § 38.02 Failure to Identify - ...refused to give ...who has lawfully arrested.

[10] TEXAS ADMINISTRATIVE CODE, TITLE 37 PUBLIC SAFETY AND CORRECTIONS, TEXAS DEPARTMENT OF PUBLIC SAFETY. RULE §16.1 **Who Must Be Licensed.** On or after April 1, 1992, **all persons domiciled in Texas**, except those expressly exempt by law, **who operate a commercial motor** vehicle (CMV), **must have a valid commercial driver's license** (CDL) issued by the department.

[11] TEXAS ADMINISTRATIVE CODE, TITLE 37, PART 1, TEXAS DEPARTMENT OF PUBLIC SAFETY, RULE §1.2, **Mission -** The mission of the Texas Department of Public Safety is: (1) to supervise traffic on rural highways; (2) **to** supervise and **regulate commercial and "for hire" traffic;** (3) to preserve the peace, to investigate crimes, and to arrest criminals; (4) to administer regulatory programs in driver licensing, motor vehicle inspection, and safety responsibility; and (5) to execute programs supplementing and supporting the preceding activities.

[12] "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

[13] "Extra territorium just dicenti non paretur impune.' - "One who exercises jurisdiction out of his territory is not obeyed with impunity." [10 Co. 77; Dig. 2. 1. 20; Story, Confl. Laws ' 539; Broom, Max. 100, 101]

[14] *c.f.* **UCC 201 Definitions.** (37) "Security interest" means an interest in personal property or fixtures which secures payment or performance of an obligation… **Whether a transaction creates a lease or security interest is determined by the facts of each case; …**

[15] TEXAS TRANSPORTATION CODE, Sec. 501.004. APPLICABILITY.
(a) Except as provided by this section, this chapter applies to all motor vehicles, including a motor vehicle **owned by the state** or a political subdivision of the state.

6.7 Law Does not Provide for the Impossible

8. As a non-resident, "Wrongfully Accused" is not eligible to register his private property even if he desired to [16].

6.8 Simulated Legal Process

1. Purported charges are patently false and without merit. Strict proof is demanded thereof.

6.8.1 Failure to Identify

2. "Wrongfully Accused" was not under a lawful arrest and therefore was not required to identify *c.f.*:

> **[TEXAS PENAL CODE, 38.02 FAILURE TO IDENTIFY**
> (a) A person commits an offense if he intentionally refuses to give his name, residence address, or date of birth to a peace officer who has lawfully arrested the person and requested the information.]

6.8.2 Evading Arrest

3. "Wrongfully Accused" was not intentionally fleeing from a person he knew was a police officer *c.f:*.

> **[TEXAS PENAL CODE, 38.04. EVADING ARREST OR DETENTION**
> (a) A person commits an offense if he intentionally flees from a person he knows is a peace officer ... attempting lawfully to arrest or detain him.
> (b) An offense ... is: (1) a state jail felony if: (B) the actor uses a vehicle... [17]]

4. As it was after midnight, with no visibility, "Wrongfully Accused" made specific demand for the unknown assailant to properly identify himself. The purported officer failed to do so. As such, and without probable cause, **there was no lawful authority allowing for an arrest at that time**.

5. The officer, without provocation, then exhibited what appeared to be road rage or perhaps a steroid induced mental lapse of judgment, whereupon the officer did threaten to damage my property and do bodily harm to myself and presumably to my wife. For my safety and for my wife's safety, I utilized my right to defuse the situation and carry on to a well light and populated area, after notifying the alleged officer of my intent to do so (*See* **Justifiable Self-Defense** below)

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[16] 502.040 REGISTRATION REQUIRED; GENERAL RULE. (a) Not more than 30 days after purchasing a vehicle or becoming a resident of this state, the owner of a motor vehicle, trailer, or semitrailer shall apply for the registration of the vehicle for: (1) each registration year in which the vehicle is used or to be used on a public highway...

[17] TEXAS TRANSPORTATION CODE, Sec. 501.004. APPLICABILITY.
(a) Except as provided by this section, this chapter applies to all motor vehicles, ...**owned by the state** or a political subdivision of the state.

6. No evidence has been put forth that any transportation [[18]] by "vehicle" was involved, as defined by the Texas Motor Vehicle Code, "Wrongfully Accused" has the conviction that none exist and strict proof is demanded thereof *c.f.*:

> [501.002 DEFINITIONS. (17) "Motor vehicle" means:
> (A) any motor driven or propelled vehicle **required to be registered** under the laws of this state;]

7. As the charge of "state jail felony" "evasion of arrest" requires the use of a "vehicle", this charge is patently false. "Wrongfully Accused" has the conviction that no evidence exist to the contrary and strict proof is demanded thereof.

8. Further, there is no evidence that "Wrongfully Accused" was acting in the capacity of a person *c.f.*:

> [Sec. 541.001 Persons. In this subtitle:
> (1) "**Operator" means**, as used **in reference to a vehicle** [Used to transport] …**has control**.
> (2) "**Owner" means**, [security interest] as used in reference to a vehicle, a person who has a property interest in or **title to a vehicle**. The term: (A) includes a person entitled to use and possess a vehicle **subject to a security interest**.
> (4) "Person" means an individual [as operator or owner].]

6.9 Justifiable Self-Defense

9. "Wrongfully Accused" is justified in his action of the alleged "Evading Arrest" *c.f.*:

> [PENAL CODE, Sec. 9.31. SELF-DEFENSE.
> (a) Except as provided in Subsection (b), a person is justified in using force against another when and to the degree the actor reasonably believes the force is immediately necessary to protect the actor against the other's use or attempted use of unlawful force. The actor's belief that the force was immediately necessary as described by this subsection is presumed to be reasonable if the actor:
> (1) knew or had reason to believe that the person against whom the force was used:
> (A) unlawfully and with force entered, or was attempting to enter unlawfully and with force, the actor's occupied habitation, vehicle, or place of business or employment;
> (B) unlawfully and with force removed, or was attempting to remove unlawfully and with force, the actor from the actor's habitation, vehicle, or place of business or employment; or
> (C) was committing or attempting to commit aggravated kidnapping, murder, sexual assault, aggravated sexual assault, robbery, or aggravated robbery;
> (2) did not provoke the person against whom the force was used; and
> (3) was not otherwise engaged in criminal activity, other than a Class C misdemeanor that is a violation of a law or ordinance regulating traffic at the time the force was used.
>
> (b) The use of force against another is not justified:
> (2) to resist an arrest ... that the actor knows is being made by a peace officer, ...unless the resistance is justified under Subsection (c);
> (4) if the actor provoked the other's use or attempted use of unlawful force, unless:
> (A) **the actor abandons the encounter, or clearly communicates to the other his intent to do so** reasonably believing he cannot safely abandon the encounter; and
> (B) **the other nevertheless continues or attempts to use unlawful force against the actor**; or
>
> (c) **The use of force to resist an arrest or search is justified:**

[18] **Transportation:** The movement of goods or persons from one place to another, **by a carrier**.

(1) **if, before** the actor offers **any resistance, the peace officer** (or person acting at his direction) uses or **attempts to use greater force than necessary** to make the arrest or search; and
(2) when and to the degree **the actor reasonably believes the force is immediately necessary to protect himself against the peace officer's** (or other person's) use or **attempted use of greater force than necessary.**

(e) **A person who has a right to be present at the location where the force is used, who has not provoked the person against whom the force is used, and who is not engaged in criminal activity at the time the force is used is not required to retreat before using force as described by this section.]**

"Wrongfully Accused" was well within his rights to exercise self-defense by leaving the situation, in the instant matter for the protection himself, third parties and property.

10. After the first attempt to destroy property by the alleged officers, "Wrongfully Accused" thereafter being cornered and forced to stop, did in fact receive damage to property.

6.10 Aggravated Kidnapping

11. "Wrongfully Accused" was further kidnapped at gunpoint, *c.f.*:

[TEXAS PENAL CODE, § 20.04 Aggravated Kidnapping
(a) A person commits an offense if he intentionally or knowingly abducts another person with the intent to:
(1) hold him for ransom or reward;
(3) facilitate the commission of a felony...
(5) terrorize him... or
(6) interfere with the performance of any ...political function.
(b) ...exhibits a deadly weapon during the commission of the offense.]

6.11 Dereliction of Duty

6.11.1 Violation of Objective

12. Alleged traffic stop by municipal officers is not under regulation by ordinance, but rather under the auspices of state law, in furtherance of the policies of the Texas Transportation Code and in alignment with the Texas Department of Public Safety, as such the Officers have failed in their duty [19].

6.11.2 Violation of Nonresident Violator Compact of 1977

13. "Wrongfully Accused" was not taken directly to court for his trial even after demand to do so, and at this time has still not been taken to court for trial, *c.f.*:

[703 NONRESIDENT VIOLATOR COMPACT OF 1977

[19] TEXAS ADMINISTRATIVE CODE, TITLE 37 PUBLIC SAFETY AND CORRECTIONS
PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY, SUBCHAPTER A. OBJECTIVE, MISSION, AND PROGRAM, RULE §1.1 **Broad Objective -** (b) The department works toward the attainment of this objective within existing regulations and in cooperation with other agencies and persons with mutual or related responsibilities. **It seeks to** preserve the peace and to **protect the** persons, **property**, rights, and privileges **of all people in the State of Texas.**

Art. I. FINDINGS, DECLARATION OF POLICY, AND PURPOSE
(a) The party jurisdictions find that:
(1) In most instances, a motorist who is cited for a traffic violation in a jurisdiction other than his home jurisdiction:
(i) Must post collateral or bond to secure appearance for trial at a later date; or
(ii) If unable to post collateral or bond, is taken into custody until the collateral or bond is posted; or
(iii) **Is taken directly to court for his trial to be held.]**

as the officers claim that he is a motorist, to that extent, they or the party jurisdiction, have failed in their duty to take directly to trial.

6.12 Non-Statutory Habeas Corpus

1. "Wrongfully Accused" is under actual custody at Grayson County Detention Center; however, even if freed any requirement to answer the simulated legal process [[20]] would create a constructive custody [[21]] in which exceptional circumstances warrant the exercise of the Court's discretionary powers, and that adequate relief cannot be obtained in any other form or from any other court. "Wrongfully Accused" has not been afforded an Administrative Hearing under the APA, there is an absence of a remedy from state corrective process, remedy has been otherwise barred, or they are ineffective to protect the inherent rights of "Wrongfully Accused", or otherwise come within the provisions of violations of the Constitution.
2. The Original Habeas is a matter of right and is not discretionary, the "Wrongfully Accused" has no commercial nexus with the state, the acts preformed by the Wrongdoers are under color and are in violation of the Constitution or laws or treaties of the United States [[22]] and there is an absence of available State corrective process, for these reasons habeas is required. No fee should be charged, any payment of a fee is not meant to create any joinder or loss of "Wrongfully Accused's" rights as

[20] Tex. Code. Crim Proc. § 13.27 Simulating Legal Process.
[21] "[i]t [habeas corpus] is not now and never has been a static, narrow, formalistic remedy; its scope has grown to achieve its grand purpose—the protection of individuals against erosion of their right to be free from wrongful restraints upon their liberty." * * * "[B]esides physical imprisonment, there are other restraints on a man's liberty, restraints not shared by the public generally, which have been thought sufficient in the English-speaking world to support the issuance of habeas corpus." 398 F.2d at 710–711
[22] *c.f.* 28 U. S. C. § 1651, § 2241, §2254(b).

"Wrongfully Accused" is not making an application under the code [23] and any use of FRN's are to be deemed as lawfully redeemed [24].

6.12.1 Conviction Final

1. The current proceedings are in fact a contested case, relating to the original adjudication thru summary process by the officer, given in the form of a ticket, *c.f.*:

> **[OFFICE OF THE ATTORNEY GENERAL**
> **ADMINISTRATIVE LAW HANDBOOK 2014**
> **Adjudication [pg 4]**
> **Procedural Requirements Governing Contested Cases**
> **Adjudication** generally **occurs when an agency ...assesses an administrative penalty**, or otherwise takes agency action affecting a person or an entity's legal interest.]

Otherwise the "Wrongfully Accused" has not received an adjudication, at which point we have to ask, why he is incarcerated. If so, demand is hereby made to immediately hold an adjudicative hearing as per the Administrative Law Handbook and the APA, *c.f.*:

> **[OFFICE OF THE ATTORNEY GENERAL**
> **ADMINISTRATIVE LAW HANDBOOK 2014**
> **The Administrative Procedure Act [pg 2]**
> The Administrative Procedure Act (APA) governs two basic types of agency action: adjudication and rulemaking. **Adjudication occurs** when the "legal rights, duties, or privileges of a party are to be determined by a state agency **after an opportunity for adjudicative hearing."]**

6.12.2 Denial of Access to the Courts

2. "Wrongfully Accused" has been adjudicated as evidenced by the "assessment of a penalty" in the form of summary process or traffic ticket and "agency action affecting a person or an entities legal interest" as evidenced by the arrest. Therefore, as a contested case with a final conviction, demand is made for an "Original" Habeas (*c.f.* 28 § 2254).

6.12.3 Objection to Court Acting as Agency

1. Otherwise "Wrongfully Accused" has not been given formal notice and an opportunity to respond, unless the ticket is the formal notice and court is acting as the Agency, *c.f.:*

> **[OFFICE OF THE ATTORNEY GENERAL**

[23] Apply: To make a formal request or petition, to a court or officer, for the granting of some favor, or of some rule or order, which is within his or their power or discretion. - To apply for a pardon. When used with statutes in describing the class of persons, within its scope; as that the statute only "**applies to transactions in interstate commerce**". Black's Law 6th.

[24] Title 12, Sec 411.

ADMINISTRATIVE LAW HANDBOOK 2014
Licensee's Opportunity to Respond [pg 5]
The minimum legal requirements for notice and opportunity to show compliance are met by the agency's formal notice of hearing to the licensee.]

"Wrongfully Accused" objects to the court acting as the Agency and demands due process adjudication by the agency as per the APA.

6.12.4 Fraud Upon the Court

1. **NOTIFICATION IS HEREIN GIVEN** to the magistrates of this court, of wrongdoing or fraud upon the court by way of the simulated process/wrongful arrest [25] and the requirement of remedy [26].

6.12.5 Denial of counsel

2. "Wrongfully Accused" is denied assistance of counsel of his choice, *c.f.*:

> **[18 U.S. Code § 3006A - Adequate representation of Relators**
> (a) Choice of Plan.— ... Representation ...shall include counsel and investigative, expert, and other services necessary for adequate representation. Each plan shall provide the following:
> (1) Representation shall be provided for any financially eligible person who—
> **(H) is entitled to appointment of counsel under the sixth amendment to the Constitution;]**

"Wrongfully Accused" did appoint assistance of counsel, upon the first day of incarceration, said counsel was denied access to the jail for want of a "License". At this time "Wrongfully Accused" is still being denied access to his required counsel at the jail.

6.12.6 Fundamental Error - Not Amenable to Process

1. "Wrongfully Accused" has no contacts with forum state of any continuous, systematic or substantial nature and any purported presence, being merely technical. Objection is not waived by contract, general appearance or otherwise, thereby constitutional due process is denied and fraud and constructive fraud is commenced.
2. Cause of action did not arise out of the nonresident's mere technical presence with Texas [27][28] and is without notions of fair play and substantial justice. The Wrongdoers have failed to take "Wrongfully

[25] *see also* misprision of a felony.
[26] [*c.f. judicial notice]* - Whenever a judge acts where he/she does not have jurisdiction to act, the judge is engaged in an act or acts of treason. *U.S. v. Will*, 449 U.S. 200, 216, 101 S.Ct. 471, 66 .Ed.2d 392, 406 (1980); *Cohens v. Virginia*, 19 U.S. (6 Wheat) 264, 404, 5 L.Ed 257 (1821) Any judge or attorney who does not report such judges for treason as required by law may themselves be guilty of misprison of treason, 18 U.S.C. Section 2382.

Accused" directly to a magistrate [29], to reach the burden to plead sufficient allegations [30], recognize demure, or allow for an examination hearing for that purpose and "by raising the jurisdiction issue in federal court, the nonresident Relator places the burden on the plaintiff to prove in personam jurisdiction" [31].

6.13 In the Alternative - Administrative Remedies Not Exhausted

1. If by some strange notion that fair play and substantial justice is deemed to be held in the mind, then, alternatively to the above conditions, Constitutional due process has been withheld by denial of exhaustion of administrative remedies.

6.13.1 Or (Declaratory Judgment)

1. Alternatively as related to the above condition, the primary jurisdiction doctrine of administrative remedies does not apply when the issue to be decided is inherently judicial in nature and it is alleged that the rule, or its threatened application, interferes with or impairs, or threatens to interfere with or impair, the legal rights or privileges of the "Wrongfully Accused", nor is it a prerequisite for a declaratory judgment concerning the validity or applicability of an agency rule, and may be relaxed when the administrative remedies are inadequate, or when the agency's action is unconstitutional, beyond its jurisdiction, or clearly illegal, or if only constitutional challenges to statute is made, or purely questions of law [32]. Therefore demand is made for the court to give declaratory notice, as to the rights and duties of the parties thru Declaratory Judgment, or as may be necessary to notify the

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[27] Whether the exercise of a state court's extraterritorial jurisdiction satisfies the requirements of the Due Process Clause **depends on the relationship among the Relator, the forum, and the litigation, rather than the** mutually exclusive sovereignty of the states or the **mere presence of property in the forum** [International Shoe Co. v. Washington, 326 U.S. 310, 316, 66 S. Ct. 154, 90 L. Ed. 95 (1945); Shaffer v. Heitner, 433 U.S. 186, 212, 97 S. Ct. 2569, 53 L. Ed. 2d 683 (1977)].

[28] We therefore conclude that **all assertions of state court jurisdiction must be evaluated** according to the standards set forth in International Shoe and its progeny [Shaffer v. Heitner, 433 U.S. 186, 212, 97 S. Ct. 2569, 53 L. Ed. 2d 683 (1977)].

[29] COURTS OF THE UNITED STATES -.Equity Jurisdiction of the Circuit Courts. 102. By the Act of August 23, 1842, it is enacted, 5, " That the district courts, as courts of admiralty, and the circuit courts, as courts of equity, **shall be deemed always open** for the purpose of filing libels, bills, petitions, answers, pleas, and other pleadings, and for...other proceedings whatever... [Bouvier's 1856]

[30] Am. Type Culture Collection, Inc. v. Coleman, 83 S.W.3d 801, 807 (Tex. 2002).

[31] Product Promotions, Inc. v. Cousteau, 495 F.2d483, 489-491 (5th Cir. [Tex.] 1974)].

[32] Dorsaneo, Texas litigation Guide §424.01[2], Administrative Proceedings, Direct Judicial Proceedings.

agencies (Department of Public Safety and Whitewright Police Department) of the rights and duties of the parties for future reference as it relates to the substantive rights of "Wrongfully Accused" [33].

6.14 In the Alternative - Court Not Vested With Jurisdiction

2. In further alternate than the foregoing issues, the record reflects that an information was not proffered, to vest the court with jurisdiction, or to determine a defense, or make a plea to the charge, further violating constitutional due process.

7. DEMAND FOR RELIEF

WHEREFORE, the court did consider the matter and hereby directs the following:

1. **Direct GRAYSON COUNTY SHERIFF**, J. Keith Gary and/or SERGEANT, James Woodson (Grayson County Detention Center) to free "Wrongfully Accused" immediately.
2. **Direct Jason Wall** (WHITEWRIGHT POLICE CHIEF) to return stolen property to "Wrongfully Accused" (84' Red 4 door Mercedes 190D).

3. **Emergency and permanent injunction** on all wrongdoers and state actors from further collection and future harassment in their regulatory scheme;

4. **Declaratory notification** to the agencies of the State of Texas et. al, as to the duties of the agencies officers (as it relates to "Wrongfully Accused"), with a requirement for all state agencies to update, correct and/or purge their records as it pertains to "Wrongfully Accused" - written on "Wrongfully Accused" behalf;

5. **Sanctions** against wrongdoing officers, acting under color for:
   i. Submitting false, libelous, unwarranted, and baseless informations.
   ii. Attempting to abuse the court for political rather than legitimate Constitutional purposes.
   iii. Establishing a religion by attempting to proceed without any evidence whatsoever.
   iv. Aggravated kidnapping the "Wrongfully Accused", uncompensated time responding to baseless charges, and thereby forcing him to make his private dealings into a public record in order to defend himself from libel.
   v. Disciplinary action against purported officers for misuse of emergency procedures and for all reasons shown above.

6. All other relief that "Wrongfully Accused" shows is equitable and just for compensation and cost [34]; and

7. All other relief that may be available.

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[33] *See also* 28 USC § 2202 Further relief.

[34] In any proceeding under the Uniform Declaratory Judgments Act, the trial court is authorized to award **costs** and "reasonable and necessary" attorney's fees that are "equitable and just". [Dorsaneo, Texas Litigation Guide § 45.06[1]].

8. VERIFICATION

IN WITNESS OF THIS AGREEMENT, the undersigned states that all herein be true, to the best of my knowledge and ability, executed from *without* the "United States"; *c.f.* definition in 28 U.S.C. §1603(c), §1746(1) and 26 U.S.C. §7701(a)(10)(26)(31) as of the 3rd day of August 2015.

/s/
Karl Schonwalder by
Scott Odam POA

9. VERIFICATION OF SERVICE

This is to verify that a copy of the above-entitled and numbered claim has been served on all parties listed below, delivering a true copy to them thru the courts electronic filing system, or mailed where necessary as follows:

*****EX PARTE******

KEN PAXTON (A.G.) [35],
300 W. 15th
Austin, TX 78701

Rick Webber
507 W. Grand Ave
Whitewright, Texas 75491

Jason Wall [acting as WHITEWRIGHT POLICE CHIEF]
507 W. Grand Ave.,
Whitewright, Texas 75491

John Doe A-Z (acting as WHITEWRIGHT POLICE OFFICER)
507 W. Grand Ave.,
Whitewright, Texas 75491

Steve McCraw, (acting as Director of DPS)
Texas Department of Public Safety
5805 N. Lamar Blvd.
Austin, TX 78752-4431

Larry Atherton, (acting as Magistration Judge, J.P. #1)
200 S. Crockett
Sherman, TX 75090

Donnie Carter, (acting as Assistant D.A.)

[35] Only substantial compliance... [Failure to notice in *alternative* declaratory judgment] does not constitute fundamental error. Dorsaneo, Texas Litigation Guide § 45.05[3].

200 S. Crockett
Sherman, TX 75090

Brian Gary, (acting as Trial Judge, 397th District Court)
200 S. Crockett
Sherman, TX 75090

_____
Karl Schonwalder