

# Unified United States Common Law Grand Jury:<sup>1</sup>

P.O. Box 59; Valhalla, New York 10595; Fax: (888) 891-8977;

## UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW HAMPSHIRE

Edward S. McLarnon

Petitioner

Against

Judge Steven McAuliffe; Chief Clerk Theresa A.  
McCafferty; US Attorney, Mark S. Zuckerman;  
Merrimack Sheriff David L Cargill Jr.

Respondents

CASE NO. \_\_\_\_\_ federal district court

**CONTEMPT OF COURT**

**Court of Origin**

New Hampshire District Court, 6th Circuit

CASE No. 1:15-mj-00154-1; 1:15-cr-00212, statutory

## Writ Mandamus Coram Ipso Rege<sup>2</sup>

**CONTEMPT OF COURT**

**THE GREAT WRIT OF LIBERTY** is *“the writ of habeas corpus and subjiciendum, issuing at common law out of courts of Chancery, King’s Bench, Common Pleas, and Exchequer.”* Ex parte Kelly, 123 N.J.Eq. 489, 198 A. 203, 207. *“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.”* Miller v. Monsen, 37 N.W.2d 543, 547, 228 Minn. 400. *“This is the well-known remedy for deliverance from illegal confinement, called by Sir William Blackstone the most celebrated writ in the*

<sup>1</sup> *“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.

<sup>2</sup> KING’S BENCH. The supreme court of common law in England; being so called because the king formerly sat there in person; the style of the court being “Coram Ipso Rege”.

*English law, and the great and efficacious writ in all manner of illegal confinement.”* 3 Bl. Comm. 129.

**US Constitution Article I Section 9**. The privilege of the Writ of Habeas Corpus shall not be suspended.

**28 USC 2243**. Issuance of Writ; Return; Hearing; Decision: A court, justice or judge entertaining an Petition 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 Petition that the Petitioner or person detained is not entitled thereto. The Writ or Order to Show Cause shall be directed to the respondent having custody of the Petitioner detained. It shall be returned within three (3) days unless for good cause additional time, not exceeding twenty (20) days, is requested and granted.

This court of justice 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<sup>3</sup> is applied here.<sup>4</sup> The record shows that: on November 11, 2016, 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; on November 18, 2016, a *Notice of Default* was filed. 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).

On November 18, 2016 the Grand Jury filed a Default and Memorandum of Decision of the Default; and, thereby, the de facto court was ordered to **ABATE AT LAW** all proceedings in and relating to New Hampshire District Court, 6th Circuit, CASE NO. 1:15-mj-00154-1; 1:15-cr-00212, against Petitioner(s).

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<sup>3</sup> 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).

<sup>4</sup> 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.

The above-named de facto Court ignored the Habeas Corpus; continued hearings and/ or performed some other action; and, thereby, unlawfully continues the de facto Court's restraint upon the petitioner(s) which places the respondents in contempt of this court.

This Court is gracing the respondents with an opportunity to amend their error and abate at law immediately all proceedings in and relating to the [New Hampshire District Court, 6th Circuit], CASE NO. [1:15-mj-00154-1; 1:15-cr-00212], against the Petitioner(s).

THE COURT, November 25, 2016

Seal



Grand Jury Administrator