

Robert C. Jordan Jr.  
Box #46604  
Redwood, California, 93960

In The United States District Court  
For The Northern District of California  
Southern Division

Robert Charles Jordan Jr.  
Petitioner

No. 44309

Fitzharris, Warden et, al.  
Respondents

Traverse In Re: Order To Show Cause;  
and Points and Authorities In Opposition  
To The Return of The Respondents

Comes now Robert Charles Jordan Jr., petitioner, and for a traverse to  
return of Respondents to the order to show cause heretofore issued in  
above entitled matter; and said traverse returnable on the 30th day  
November, 1965; State:

I

That petitioner's allegations concerning the conditions of his  
imprisonment do in point of fact present a federal question since  
his allegations are related to the legality of his confinement and a  
determination favorable to petitioner would indeed result in his  
immediate release from custody.

II

Petitioner's allegations that state officials have interfered with his  
Constitutional right of reasonable access to the Courts does state a  
(1)

ground for the issuance of the federal writ of habeas corpus. This  
petition is related to the legality of his confinement and a  
determination favorable to petitioner would result in his immediate  
release from custody.

III

Petitioner, while lawfully committed, is unlawfully restrained  
and illegally confined due to subsequent blatant and gross willful  
violations of the laws of the State of California and the United States  
Federal Government and of petitioner's constitutional rights.

Wherefore, it is prayed that the Order to Show Cause  
issued on October 27, 1965, by this Court be upheld and the  
petition for writ of Habeas Corpus be granted and issued.

Dated: November 26, 1965

Robert Charles Jordan Jr.

Robert Charles Jordan Jr.

Petitioner

P.O. A-46604

In Forma Pauperis

In Propria Persona

## Points and Authorities

### Summary of Respondents Contentions

1. Respondents allegations concerning the conditions of petitioner's confinement are that no federal questions are presented since these conditions are unrelated to the original legality of his confinement and that a favorable ruling would not result in his immediate release from custody if ruled in petitioner's favor.

2. Respondent contends that the actions of the officials in denying (temporarily) petitioner access to the courts does not state grounds for issuance of the Federal writ of habeas corpus. And that these acts are related to the original legality of his confinement and that a ruling favorable to petitioner would not result in his immediate release from custody.

### Summary of Petitioner's Arguments

1. Petitioner's constitutional rights have been repeatedly disregarded and violated by respondents.

2. The acts complained of were and are subsequent to the original commitment and are of such an onerous and unlawful nature as to entitle petitioner to his immediate release under both state and Federal law.

### Argument

(1) "Respondents contentions that the alleged conditions do not present any federal question and are unrelated to the legality of petitioner's confinement are patently invalid and petitioner is entitled to his full and complete immediate release from custody."

The Respondents attempt to justify the acts committed and the conditions imposed and deny that the federal remedy is available to the prisoners no matter what debased and degenerate acts and/or conditions those prisoners may be subjected to. They, respondents,



that the writ of habeas corpus may not be utilized for the purpose of correcting alleged ill-treatment of a petitioner by prison authorities when the prisoner is confined pursuant to a valid commitment (Hodge v Heiney, 165 F. Supp. 726, 729; (D.C. N. D. Cal. N.D. 1958);)

The Respondents, it will be noted, make absolutely no attempt to deny any of the facts of the conditions themselves or to dispute in any manner that petitioner was forced to undergo such treatment and punishment. The respondents state in one breath that these conditions, in fact, violate state laws (Calif. Penal Code Sec. 673, 2652) and at the next deny that he is entitled to habeas corpus.

Petitioner wishes to inform this Honorable Court that petitioner petitioned all of the California legal Courts on habeas corpus and was denied and petitioner also petitioned the California legal Courts for mandamus and was denied.

The California Penal Code, the California State Constitution, and the California Health and Safety Code, all prohibit and enjoin the respondents from imposing the cruel and unusual punishment and treatment inflicted by the Respondents upon petitioner. Yet the respondents regularly impose these conditions and treatment upon petitioner and other prisoners of the State of California. And when these acts are complained of to the California State Courts, upon the mandamus and habeas corpus, any and all petitions are denied. The laws and Statutes are on the book (Law) and Codes but they are completely ignored by both the California prison officials and the California Courts.

Section 2650 of the California Penal Code states: "The person of a prisoner sentenced to imprisonment in the State prison is under the protection of the law; and any injury to his person, not authorized by law, is punishable in the same manner as if he were

"Convicted or sentenced." Section 2652 states: "It shall be unlawful to use in the prisons, any cruel, corporal, or unusual punishment or to inflict any treatment or allow any lack of care whatever which would injure or impair the health of the prisoners, male or female person confined." (Also see Cal. Jur. 2d Prisons and Prisoners # 71) Yet cruel and unusual punishment is inflicted, and mental and unusual treatment, and persons mental and physical health are impaired by the prison officials and condoned by the California Courts.

This is a clear and obvious denial of due process and Equal Protection of the Law. And especially of Equal protection.

And any denial of Equal protection of the law presents a federal question and any denial of due process and equal protection of the law presents a prisoner's Federal Habeas Corpus.

The California State Constitution, Article 1, Section 6, specifically prohibits, and makes illegal, cruel and unusual punishment, (see Section 2652 P.C.) yet petitioner and other prisoners of the State of California have been, and are being, subjected to such. And upon petitioning California legal Courts for remedy and relief (on Mandamus, Writ, and Habeas Corpus) the Courts of California refuse to remedy, in any action whatever, the conditions or acts.

This is a clear discrimination against the prisoners of the State and against them of any protection whatever from the illegal acts of the prison officials. If the prisoners of the State of California are protected by the law and the California State legal Courts refuse to enforce those laws against the prison officials, then a federal question is presented, denial of the Equal protection of the laws; in gross and flagrant violation of the United States Constitution (U.S. Const. Ammt. 14, 1.) and any violation of Constitutional rights of any citizen of the United States empowers the United States Federal Courts to use and

(5)

the great writ of habeas corpus. (See also opinion in *Carson vs Pope*, 365 U.S. 174, 180 (1961))

Under California Statutes a person is entitled to habeas corpus in "a person is unlawfully restrained of his liberty so as to be entitled to the writ of habeas corpus when, though lawfully in custody, he is denied of some right to which, even in his confinement, he is fully entitled under the Constitution or laws, the deprivation may serve to make his imprisonment more onerous than the law allows, or curtails, to a greater extent than the law allows, (permits, in his confinement, his freedom to go when and where he likes" Cal. Jur. 2d Prisons and prisoners § 22. McKin. Dig. [1-4] Prisons and prisoners, § 19; [5, 6] Habeas Corpus, § 38; Am. Jur. Prisons and prisoners §§ 38.

The above refutes the respondents allegation that petitioner is not entitled to release from custody or that federal habeas corpus proceedings have no basis.

The laws of this State and Nation were made to protect all of its citizens thereof, and if a law exists, as in the case at bar, and the law was specifically instituted and enacted for the express purpose of protecting prisoners, and those laws are abused and violated by the officials and the complaints of those abuses and violations ignored and denied remedy by the State legal courts, then by the fact there is good and probable cause that there exists a conspiracy between the California State penal system authorities to discriminate against the rights, and violate the rights, of the persons set forth under the United States Constitution & U.S.C. Const. 8; U.S. Const. Ammt. 14 sec. 1, and under title 18 Code section 241 et. seq. Supra title 42 U.S.C. Sect. 1981 and 1983 supra with the defects acquiescence of the California State Courts. The respondents make no attempt to refute

(6)



deny the reality of petitioners allegations of the conditions or nature thereof, and even concede that the allegations, if true, constitute a violation of state laws and yet contend that those conditions and violations afford no basis for federal habeas corpus, with the complete knowledge that petitions for legal remedy in California legal courts have been denied, both upon habeas corpus and upon mandamus. The respondents' argument is patently irrational and invalid. The State of California legal courts refuse to enforce or uphold the laws protecting prisoners (denial of the Equal Protection of the Law) and petitioners is forced to beg federal affirmation and enforcement of his basic Constitutional liberties and rights and the respondents enter the argument that conditions do indeed break and violate state laws against subjecting petitioners to the alleged conditions, but that the federal courts have no power to remedy such a blatant and almost all but confessed violation and denial of Equal protection of the laws in petitioners case.

The respondents are obviously taking the stand that prisoners have no rights; in citing the Hodge v Heinze thing (case) they attempt to place prisoners into a special category, with no rights or immunities whatever from any and all mistreatment, abuse and degradation seen to be imposed by the prison authorities. The State Courts look the other way and refuse to intervene and the respondents refuse to allow the U.S. Constitution to be applied to prisoners by the federal courts.

However in spite of respondents attitude and contentions and Hodge ruling, the United States Constitution is the Supreme Law of the Land superseding any and all others, and the United States Supreme Court is the interpreter and final arbitrator of the Constitution and the rights guaranteed therein and that.

(7)

most Honorable Court has ruled that a convicted felon is entitled to the full and complete protection of the Fourteenth (14) Amendment to the United States Constitution (McCullum vs Maryland 13 of Supp. 112, 115-117; Gordon vs Harrison 77 Supp. 477, 479; Dowd vs Cook, 340 U. S. 546.)

The failure and refusal of the California State Legal Courts to enforce laws protecting prisoners from unlawful and illegal acts and to respond to the submission of complaints in habeas corpus, Mandamus (or injunction) in itself is a deliberate violation of the Due Process and Equal Protection of the Laws clause of the U. S. Constitution which is obligatory upon all of the States of the U. S. and empowers and places jurisdiction upon the Federal Courts as a question of Federal Law. The California State Constitution, the California Penal Code and the California Health and Safety Code all prohibit, enjoin, and forbid the acts, deeds, and conclusions that were imposed upon petitioner and the refusal of the California State Courts to act and enforce those laws and codes and Statutes on the receipt of the complaints of petitioner were a clear and explicit denial and violation of the Equal Protection Clause of the U. S. Constitution. Such a clear violation of the United States Constitution is the just and proper concern and province of the United States Courts and does indeed present a just valid federal question, the respondents' dissensions aside, and notwithstanding.

## II

(2) Petitioner is not at all sure of the rule upon the second point, denial of access to the Courts. However petitioner files to the U. S. Constitution against the argument advanced, "the writ (of) Habeas Corpus

However also the respondents attempt to deny that access to



Court was denied and cited a long list of actions brought by petitioners in the Courts. The list is accurate. However the said complainant is the period of July 9<sup>th</sup> - 20<sup>th</sup> 1965, and for the period access to the Court was denied in all manners and petitioners refused.

Most of the latter petitions were mandamus and/or habeas corpus petitions seeking state relief in the same case as at bar (1965) were not allowed to be prepared or submitted until the termination of the complainant of conditions and acts.

Petitioner cited all of his legal support in this last matter in original petition and hours of no further authorities in support of his action. (also see attached sheet marked "exhibit A")

### Conclusion

For the foregoing and herein reasons, it is respectfully submitted that the order to show cause heretofore issued on October 27, 1965, should be upheld and the writ of habeas corpus petitioned for should be issued and granted.

### Prayer

Now therefore, in view of the facts and truths set forth in the petitioners motion and brief and petition in habeas corpus and the establishing of "prima facie" causes and care for the issuance of the sought (petitioned for writ of habeas corpus, and otherwise, the rules in petitioners contentions are true and correct until otherwise proven at hearing where both oral and written arguments are presented before most Honorable Court.

Dated this 26<sup>th</sup> Day of November, 1965

Robert Charles Jordan Jr.  
A-46604  
Saladad, California

## Petitioner's Note and Prayer to the Court

Petitioner earlier submitted a traverse to this Honorable Court without benefit of Respondent's return due to the fact that petitioner has been confined by employees under respondent that notarization is not obtainable at the Prison on the days of Fridays and Saturdays. Thursday being Holiday petitioner was preforced to submit his motion upon the day of Monday in order to meet the Court deadline of submission prior to November 11, 1965.

Petitioner was given a copy of respondent's return Wednesday night as return has raised an entirely different point then petitioner was being petitioned felt and feels that this point is prejudicial and discriminatory on its very face and wishes to enter a argument against it. The Respondent made no attempt whatever to refute the facts set forth in the case complaint or to deny in any manner that the conditions exist and are lawful and illegal. Instead they hope through technical trickery and gymnastics to avoid any remedy. This action, as set forth herein, has turned into a federal question by forfeiture by the State of California. Petitioner Prays that this most Honorable Court will accept this motion and traverse. The Respondent could afford petitioner with the wages of a Notary Public but decline to do so. Petitioner is by law entitled to present all of his actions and prosecute the same to the full extent of his power and ability and the denial of Notary service by Respondent, rather the lack of affording such service should not be allowed to deny petitioner his right and/or opportunity to present his action, and traverse respondent's return, by virtue of that denial or lack.

Petitioner prays that this most Honorable Court will accept this case and motion as good and just and in proper order with petitioners stipulation and declaration under penalty of perjury that all matters contained are true and correct. As this information, and the certification, are written in petitioner's own handwriting and

As a whole or same being handwritten, it would serve as a clear and indisputable evidence of perjury should any facts be challenged as such in perjury proceedings brought against petitioner. As this is the main purpose of the notarization the purpose would be well served in this case. The Legal Correctional Counselor is a competent witness of the notarification by petitioner, being an employee of the State of California and the Respondents and therefore of a trustworthy and good moral Character and he also should serve and meet the requirements of verification.

Petitioner prays that the most Honorable Court will accept this Affidavit and rule it just and proper and consider it as a whole part, as a. addendum, to the traverse filed (submitted) upon November 24<sup>th</sup>, 1965, and as a valid and constructive and just, and worthy of consideration as proper litigation of petitioner's action and cause in his habeas corpus writ and petition.

Further We Sath Naught

Dated: November 26, 1965

Robert Charles Jordan Jr.  
Robert Charles Jordan Jr. (Attorney)  
P.O. Box A-46604  
Solodad, California 93960  
In Forma Pauperis  
In Propria Persona



August, 1952. In re Henry W. Robinson on Habeas Corpus, # 113  
2d 626, 246 P.2d 982.

I

Prisoners and Prisoners - Right of prisoner to make judicial

review - ; designation by prisoner of petition relating to judgment of

action under which he is imprisoned as one in lieu of mandamus to not

Attorney factor in deciding whether he is entitled to file it in the

of to which it is addressed, as against the objection that such petition

is not action and writ might have been suspended by reason of Pen Code

770. - Right of prisoner to make judicial review. - ; when a

petition addresses a petition relating to the judgment under which he is imprisoned

court, he is entitled to hear that petition filed in such court, and any

action which is interrupted to prevent such filing is revivable.

30, 327 Ad - Right of prisoner to make judicial review. - ; determination

matter of petition which prisoner addresses to a court, the right to be granted,

the right thereof is upon the right to seek it, as questions which cannot

be decided by any person other than the court itself, but must be

decided by the court and the court alone.

II

770. Habeas Corpus - Prerequisite of prisoner to file in court. -

prisoner so unconstitutionally imprisoned by his liberty as not to be entitled to the

of habeas corpus action, though brought in custody, he is deprived

of his right to such, even in the confinement, he is lawfully entitled

in the Constitution or laws, the deprivation which he is to make

imprisonment more onerous than the laws allow, or restrict, to a

extent than the laws provide even in the confinement, his freedom

is not to be taken and under his habeas.

[ Exhibit A ]

{ Ex 'bit 17 continued }

6] Std. - Privileges of a person rightfully in custody - ; a prisoner ~~may~~ serving a sentence under a judgment of conviction has right to have his so-called petition for a writ of mandate awarded to the Court to which it is addressed for filing, and of interference with that right to that extent unlawfully strains him of his liberty and entitles him to the writ of Habeas Corpus.

17 See Cal. Jur. Prisons and prisoners, § 22 Am. Jur. Prisons & prisoners, §§ 38

McKen. Dig. References: [1-4] Prisons and Prisoners, § 19; 5-6. ] Habeas Corpus; [5] see Cal. Jur. Habeas Corpus § 6.

III

"Habeas Corpus will be granted if the defendant was for any reason deprived of Due Process of Law"

Brown v Allen, 344 U.S. 443 (1953)

7 Monroe vs Pope, 365, U.S. 174, 180 (1961)

7 United States Constitutional Amendment 8; "Cruel and unusual punishment."

7 United States Constitutional Amendment 14, Section 1; "Due process of law and Equal Protection of the Laws"

7 U.S. Constitutional Article 4, Sec. 2; "Privileges + immunities"

7 U.S. Const. Article 6, Sec. 2; "The Supreme Law"

California Constitutional Article 1, Sec. 1; "Cruel and unusual punishment."

7 U.S. Const. Art. 1, Sec. 9; Calif. Const. Art. 1, Sec. 5; re: Suspension of Habeas Corpus.

Dated November 26, 1965

Robert Jordan Jr.

STATE OF CALIFORNIA,

County of Monterey  
On this 21 day of Nov

} ss.

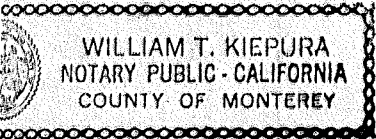
in the year one thousand nine hundred and sixty six

before me, W. T. Kiepura, a Notary Public,  
State of California, duly commissioned and sworn, personally appeared

Robert Charles Jordan Jr. A 46661

known to me to be the person whose name is subscribed to the within instrument  
and acknowledged to me that he executed the same.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my official seal  
in the County of Monterey the day and year in this  
certificate first above written.



W. T. Kiepura

Notary Public, State of California

W. T. KIEPURA

My Commission Expires My Commission Expires Sept. 28, 1969



ORIGINAL  
FILED

44309

1 State of California )  
2 County of Monterey )

NOV 30 1965

SS: VERIFICATION

3 CLERK, U. S. DIST. COURT

4 I, Robert Charles Jordan, Jr., being first duly sworn deposes  
5 and say:

6 That he is the petitioner in the above and foregoing entitled  
7 matter; that he has prepared and read the foregoing petition and  
8 knows the contents thereof; that the same is true of his own knowledge,  
9 except as to those matters which are therein stated on his information  
10 or belief, and as to those matters that he believes it to be true.

11 I declare under penalty of perjury that the foregoing is true and  
12 correct.

13 Dated this 24 day of November, 1965.

14  
15 By: Robert C. Jordan Petitioner  
16 Robert Charles Jordan, Jr.  
17 P.O. Box A-146604  
18 Soledad, California  
19  
20  
21

22 NOTARY \_\_\_\_\_ X  
23  
24  
25  
26  
27  
28  
29  
30  
31