

8-10CV2210-N

ORIGINAL

Cause No. _____


In re: Mark Allen, Family of Coker
Relator, Applicant, Petitioner
For Writ of Habeas Corpus

v.

City of Richardson Municipal Court
Judge, and Chief of Police, J.L. Spivey
Responent, Detainer

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United States District Court**Northern District of Texas****Dallas, Texas****Judge** _____

U.S. DISTRICT COURT NORTHERN DISTRICT OF TEXAS FILED <div style="border: 1px solid black; padding: 5px; text-align: center;"> NOV - 3 2010 </div> CLERK, U.S. DISTRICT COURT By <u></u> Deputy
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PETITION FOR THE GREAT WRIT OF HABEAS CORPUS

Comes now Relator, Applicant and Petitioner, Mark Coker, (hereinafter also Coker), before this Honorable United States District Court, on this the 2nd day of November, 2010, by and through his attorney in fact, and filer, Brady Byrum, (hereinafter also Byrum), who has been given personal and direct power of attorney to perform the writing and filing of this Petition for the Great Writ of Habeas Corpus, because the Richardson Municipal Jail does not provide pencils, pens, paper and a Law Library access to any inmate therein for the filing of documents in Court, nor do they provide many other of the required items, services and facility structures required by Texas Laws governing County Jails. **Byrum can be reached at 2802 Cary Dr. Mesquite, Texas 75150, home phone 972-682-4729, cell phone 682-559-0159.**

JURISDICTION

1. This Court has jurisdiction, because there are issues of Substantive, Due Process and Cruel and Unusual Punishment involved in this case, both of which are Federally Protected Rights.

2. Per the Texas Code of Criminal Procedure 11.12, and 11.13, the Texas Legislature has not legislated any prohibition against Byrum preparing and filing this Petition for Coker, as it can be presented by ANY PERSON for him.

Art. 11.12. [124] [172] [162] **WHO MAY PRESENT PETITION.** Either the party for whose relief the writ is intended, or any person for him, may present a petition to the proper authority for the purpose of obtaining relief.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722, eff. Jan. 1, 1966.

Art. 11.13. [125] [173] [163] **APPLICANT.** The word applicant, as used in this Chapter, refers to the person for whose relief the writ is asked, though the petition may be signed and presented by any other person.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722, eff. Jan. 1, 1966.

3. Per the Texas Code of Criminal Procedure, Article 11.43, Coker is presumed to be innocent.

Art. 11.43. [155] [203] [193] **PRESUMPTION OF INNOCENCE.** No presumption of guilt arises from the mere fact that a criminal accusation has been made before a competent authority.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722, eff. Jan. 1, 1966.

4. It is believed that Coker is being ILLEGALLY restrained and deprived of his Federally Protected Liberty, by (a) one or more Richardson Municipal Judge(s), (names unknown at this time to Byrum), and said Judge(s) have either verbally or written-document ordered Coker to be placed in the Richardson Municipal jail, and/or by (b) the Chief of Police of the City of Richardson, and/or by (c) one or more Richardson Police Officers or Jailers (names unknown to Byrum), who are following what they believe to be the lawful verbal or written orders of the Richardson Municipal Court Judge(s).

5. It is believed that Coker is being UNLAWFULLY restrained and deprived of his Liberty in the **Richardson Municipal Jail**, at the physical address of 140 N. Greenville Avenue, Richardson, Texas 75081, telephone number 972-744-4800.

6. Coker moves this Honorable Court for permission to both open and close arguments before the Court.

Art. 11.49. [161] [209] [199] **ORDER OF ARGUMENT.** The applicant shall have the right by himself or counsel to open and conclude the argument upon the trial under habeas corpus.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722, eff. Jan. 1, 1966.

7. The Richardson Municipal Court Judge who has Coker restrained can be reached at the Richardson Municipal Court, located at 2100 East Campbell Road, Richardson, Texas 75081, with a telephone number of 972-744-4500, and a fax of 972-744-5800.

8. Whatever condition or combination of conditions that Coker is being jailed in the Richardson Municipal Jail, (except for a small, narrow group of categories), it is illegal, according to unrepealed State of Texas law, Texas Constitution, the United States Constitution and Federal law, and unoverturned State or Federal caselaw, to wit: (a) **Default in Payment of Fine**, (b) **Contempt**, (c) **Failure to Appear**, (d) **New Class C Offense charge**. Each of these conditions will be addressed in that order, herein. The exceptions mentioned above will also be briefly discussed, and the Court is hereby

moved to inquire into the cause(s) by which Coker is restrained. Herein, we will also examine **PUNISHMENT, JURISDICTION, JUDGMENTS and SENTENCE** to read what the Texas Legislature has already enacted, to see if it is lawful for Coker to be placed in jail for Class C offenses, by any of those functions of law.

DEFAULT IN PAYMENT OF FINE

9. If Coker is being jailed for Default in Payment of one or more Class C Fines, said jail time is an illegal and unlawful restraint of Coker's liberty. The Texas Legislature has already enacted laws that strictly govern the jailing of someone who is in default of payment of a fine.

10. Said law is the Texas Code of Criminal Procedure 43.03, entitled Payment of Fine:

Art. 43.03. PAYMENT OF FINE.

(a) If a **defendant** is sentenced to pay a fine or costs or both and the **defendant defaults in payment**, the court **after a hearing** under Subsection (d) of this article **may order the defendant confined in jail until discharged as provided by law**, may order the **defendant** to discharge the fines and costs in any other manner provided by Article 43.09 of this code, or may waive payment of the fines and costs as provided by Article 43.091. **A certified copy of the judgment, sentence, and order is sufficient to authorize confinement under this subsection...**

11. Most (if not all) Municipal Judges place Class C Defendants in their Municipal Jail under Default in payment of the fine, as is shown above at 43.03(a). However, 43.03(a) is heavily qualified by conditions provided in 43.03(b), (c), (d) and (e), which is all totally ignored by these same Municipal Judges. CCP 43.03(b) reads as follows:

(b) A term of confinement for default in payment of fine or costs or both may not exceed the maximum term of confinement authorized for the offense for which the defendant was sentenced to pay the fine or costs or both. If a court orders a term of confinement for default in payment of fines or costs under this article at a time during which a defendant is serving another term of confinement for default or is serving a term of confinement for conviction of an offense, the term of confinement for default runs concurrently with the other term of confinement, unless the court orders the terms to run consecutively under Article 42.08 of this code.

12. There it is in black and white. A term of confinement for default in payment of fine or costs or both **MAY NOT EXCEED** the maximum term of confinement **AUTHORIZED** for the offense. So where do we find out the maximum term of confinement authorized for Class C offenses? It is found at the Texas Penal Code, Entitled **PUNISHMENTS**, at 12.23, shown next.

Sec. 12.23. CLASS C MISDEMEANOR.

An individual adjudged guilty of a Class C misdemeanor shall be **punished** by a **fine** not to exceed \$500.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1991, 72nd Leg., ch. 108, Sec. 1, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

13. There are no exceptions or exemptions written here in 12.23 for some limited usage of Jail time of any length of days as a punishment for Class C offenses, and this would be the most logical location for the Texas Legislature to place them if they existed.

14. Since there is no jail time legislatively allowed as a punishment for ANY Class C Offense, according to the Texas Penal Code above, then this law, combined with

43.03(b), completely STRIPS the authority for any Municipal or Justice Court Judge from placing anyone in jail for failure to pay the fine for only Class C offenses.

15. But this goes further. Lets go back to CCP 43.03 and read what (c) has to state:

(c) If a defendant is sentenced both to confinement and to pay a fine or costs or both, and he defaults in payment of either, a term of confinement for the default, when combined with the term of confinement already assessed, may not exceed the maximum term of confinement *authorized for the offense for which the defendant was sentenced.*

16. So here again at (c) we can see that because it speaks of confinement as one of the possible punishments, it automatically MEANS that this is ONLY for Felonies and Class A and B misdemeanors, as those are jail-punishable offenses, and that it excludes Class C Offenses.

17. Next we will examine CCP 43.03(d).

(d) A court may not order a defendant confined under Subsection (a) of this article unless the court at a hearing makes a written determination that:

(1) the defendant is not indigent and has failed to make a good faith effort to discharge the fines and costs; or

(2) the defendant is indigent and:

(A) has failed to make a good faith effort to discharge the fines and costs under Article 43.09(f); and

(B) could have discharged the fines and costs under Article 43.09 without experiencing any undue hardship.

18. Upon reading CCP 43.03(d), these following questions come to mind: **No.1.** When Coker was first brought in to the Richardson Jail/Court system in the instant case, did the Richardson Municipal Court Judge conduct a HEARING at that time? **No. 2.** Did the Richardson Municipal Court Judge then make out their WRITTEN DETERMINATION as to why Coker was to be placed in jail and place said written determination into the records of the case, so that they may be accessed as public records? **No. 3.** Or did the Officer merely bring Coker to the Municipal Jail, book him in, fingerprint him, photograph him, and place him in the jail cell to sit out the time at a minimum of \$50.00 per day?

19. Coker herein now moves this Honorable Court to ask these above questions to the Respondent Municipal Judge when he is ordered to appear before this Court and answer them, and to produce all paper documents by which he had Coker jailed.

20. To finish with 43.03, paragraph (e) is the last portion to be examined. Here it is.

(e) This article does **not** apply to a court governed by Chapter 45.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722. Amended by Acts 1971, 62nd Leg., p. 2990, ch. 987, Sec. 2, eff. June 15, 1971; Acts 1973, 63rd Leg., p. 974, ch. 399, Sec. 2(A), eff. Jan. 1, 1974. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 5.04, eff. Sept. 1, 1993; Subsec. (a) amended by Acts 2001, 77th Leg., ch. 1111, Sec. 1, eff. Sept. 1, 2001. Amended by: Acts 2007, 80th Leg., R.S., Ch. 1263, Sec. 9, eff. September 1, 2007.

21. Please note, that (e) clearly states that this entire article (Chapter 43.03 Payment of Fines) does not even apply to a court **governed by** Chapter 45. So what kinds of Court are governed by Chapter 45? This is what shows on the State of Texas' official website:

CODE OF CRIMINAL PROCEDURE
TITLE 1. CODE OF CRIMINAL PROCEDURE
CHAPTER 45. JUSTICE AND MUNICIPAL COURTS
SUBCHAPTER A. GENERAL PROVISIONS

22. There it is in plain English. **The punishment in jail for default in payment of a fine does not apply to J.P. and Municipal Courts, and yet, likely every, if not every last Municipal Court Judge and Justice of the Peace Court Judge across Texas places people in jail every year for Default in Payment of Fine, in direct violation of the law. The Municipal and Justice Judges become the law-breakers themselves.**

23. The next controlling Texas Statute that governs DEFAULT is the Texas Code of Criminal Procedure 45.048.

Art. 45.048. DISCHARGED FROM JAIL.

(a) **A defendant placed in jail on account of failure to pay the fine and costs** shall be discharged on habeas corpus by showing that the **defendant**:

(1) **is too poor to pay the fine and costs; or**

(2) **has remained in jail a sufficient length of time** to satisfy the fine and costs, at the rate of not less than \$50 for each period of time served, as specified by the convicting court in the judgment in the case.

(b) A convicting court may specify a period of time that is not less than eight hours or more than 24 hours as the period for which a **defendant** who **fails** to pay the fines and costs in the case must remain in jail to satisfy \$50 of the fine and costs.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722. Amended by Acts 1981, 67th Leg., p. 2648, ch. 708, Sec. 3, eff. Aug. 31, 1981. Renumbered from Vernon's Ann.C.C.P. art. 45.53 and amended by Acts 1999, 76th Leg., ch. 1545, Sec. 48, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 872, Sec. 1, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 209, Sec. 65(a), eff. Jan. 1, 2004.

24. Please pay close attention to the wording of this statute. This is not a statute that **ALLOWS** or **GRANTS** placing people in Jail for **ANY LEVEL** Offense. There may be some Municipal and J.P. Judges who believe this statute authorizes them to **put** people in jail for Class C offenses.

25. But this is a **Discharge From** Jail Statute, to be used **after** they have made it there in jail, lawfully, in they first place under 43.03. Because CCP 43.03 only applies to Felonies and Jailable Misdemeanors, due to its qualifying language within, then the Discharge **FROM** the punishment of Jail, also only applies to the same higher offenses, and not to Class C Offenses.

TEXAS CODE OF CRIMINAL PROCEDURE 4.14

26. To lawfully place someone in jail to begin with, there must be a beginning point of law. There must be lawful jurisdiction to do so. The Texas statutes that establish the parameters of that origin can be found first at the Texas Code of Criminal Procedure 4.14, entitled Jurisdiction of Municipal Court. Read it carefully. Search for the jurisdiction for Municipal Courts to put people in jail for Class C offenses.

Art. 4.14. JURISDICTION OF MUNICIPAL COURT.

(a) A municipal court, including a municipal court of record, shall have exclusive original jurisdiction within the territorial limits of the municipality in all **criminal cases** that:

(1) arise under the ordinances of the municipality; **and**

(2) are **punishable by a fine** not to exceed:

(A) \$2,000 in all cases arising under municipal ordinances that

govern fire safety, zoning, or public health and sanitation, including dumping of refuse; or

(B) \$500 in all other cases arising under a municipal ordinance.

(b) The municipal court shall have **concurrent jurisdiction with the justice court** of a precinct in which the municipality is located in all **criminal cases** arising under state law **that**:

(1) arise within the territorial limits of the municipality **and are punishable by fine only**, as defined in Subsection (c) of this article;

or

(2) arise under Chapter 106, Alcoholic Beverage Code, **and do not include confinement as an authorized sanction**.

(c) In this article, an offense which is punishable by "fine only" is defined as an offense that is punishable by **fine and such sanctions**, if any, as authorized by statute **not consisting of confinement in jail or imprisonment**.

(d) The fact that a conviction in a municipal court has as a consequence the imposition of a penalty or sanction by an agency or entity other than the court, such as a denial, suspension, or revocation of a privilege, does not affect the original jurisdiction of the municipal court.

(e) The municipal court has jurisdiction in the forfeiture and final judgment of all bail bonds and personal bonds taken in **criminal cases** of which the court has jurisdiction.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722.

27. All right. Here, not only do we **NOT** find legislatively granted jurisdiction to place people in jail for Class C offenses, but we find **three clear written prohibitions** at (b)(1) and (b)(2) and the third prohibition at (c), **AGAINST** Municipal and J.P. Judges sentencing anyone to jail.

28. By legislative exclusion, and by safely presuming that the collective body of the elected officials in the Texas Legislature had some discussion and fine tuning of the language of the laws passed, the fact that there are **no exceptions or exemptions** listed here, goes to show that they INTENDED to write in the full limits of the Jurisdiction being granted, and that they LEFT OUT those things not granted, and thus, Municipal and Justice Judges have NO JURISDICTION to jail anyone on ONLY Class C offenses.

TEXAS GOVERNMENT CODE 29.003

29. Next, to cover all bases, we must go to the Texas Government Code 29.003 to see what it says. Here is its text. Read it carefully. Search for the jurisdiction for Municipal Courts to put people in jail for Class C offenses.

GOVERNMENT CODE
TITLE 2. JUDICIAL BRANCH
SUBTITLE A. COURTS
CHAPTER 29. MUNICIPAL COURTS
SUBCHAPTER A. GENERAL PROVISIONS
Sec. 29.003. JURISDICTION.

(a) **A municipal court**, including a municipal court of record, **shall have exclusive original jurisdiction** within the municipality's territorial limits and property owned by the municipality located in the municipality's extraterritorial jurisdiction **in all criminal cases that:**

(1) arise under:

(A) the ordinances of the municipality; or

(B) a resolution, rule, or order of a joint board operating an airport under Section 22.074, Transportation Code; **and**

(2) are **punishable by a fine** not to exceed:

(A) \$2,000 in all cases arising under municipal ordinances or resolutions, rules, or orders of a joint board that govern fire safety, zoning, or public health and sanitation, including dumping of refuse; or

(B) \$500 in all other cases arising under a municipal ordinance or a resolution, rule, or order of a joint board.

(b) The municipal court has **concurrent jurisdiction with the justice court** of a precinct in which the municipality is located in **all criminal cases** arising under state law that arise within the municipality's territorial limits or property owned by the municipality located in the municipality's extraterritorial jurisdiction **and that**:

(1) are **punishable only by a fine**, as defined in Subsection (c); or

(2) arise under Chapter 106, Alcoholic Beverage Code, and **do not include confinement as an authorized sanction**.

(c) In this section, an offense which is punishable by "**fine only**" is defined as an offense that is punishable by **fine** and such sanctions, if any, as authorized by statute **not consisting of confinement in jail or imprisonment**.

(d) The fact that a conviction in a municipal court has as a consequence the imposition of a penalty or sanction by an agency or entity other than the court, such as a denial, suspension, or revocation of a privilege, does not affect the original jurisdiction of the municipal court.

(e) The municipal court has jurisdiction in the **forfeiture and final judgment of all bail bonds and personal bonds** taken in criminal cases of which the court has jurisdiction.

(f) This section does not affect the powers given exclusively to a joint board operating an airport under Section 22.074(d), Transportation Code.

(g) A municipal court, including a municipal court of record, shall have exclusive appellate jurisdiction within the municipality's territorial limits in a case arising under Chapter 707, Transportation Code.

*Acts 1985, 69th Leg., ch. 480, Sec. 1, eff. Sept. 1, 1985. Amended by Acts 1987, 70th Leg., ch. 148, Sec. 2.32(a), eff. Sept. 1, 1987; Acts 1987, 70th Leg., ch. 641, Sec. 1, eff. Sept. 1, 1987; Acts 1987, 70th Leg., ch. 680, Sec. 3, eff. Sept. 1, 1987; Acts 1991, 72nd Leg., ch. 108, Sec. 7, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 449, Sec. 2, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 533, Sec. 3, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1013, Sec. 40, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 611, Sec. 1, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 660, Sec. 1, eff. June 18, 1999; Acts 2001, 77th Leg., ch. 1122, Sec. 1, eff. Sept. 1, 2001.
Amended by: Acts 2007, 80th Leg., R.S., Ch. 1149, Sec. 3, eff. September 1, 2007.*

30. Here again, not only do we **NOT** find legislatively granted jurisdiction to place people in jail for any Class C offenses, but we find three, distinct written prohibitions at

(b)(1) "fine ONLY", and two more with explicit language at (b)(2) and (c), AGAINST

Municipal Judges jailing or imprisoning anyone. Again, we find there are **no exceptions or exemptions** written in, just like there is none in the Code of Criminal Procedure 4.14.

TEXAS GOVERNMENT CODE CHAPTER 30

31. Next we will go to the Texas Government Code Chapter 30, at 30.00001 to find that this subchapter covers Municipal Courts of Record.

TITLE 2. JUDICIAL BRANCH

SUBTITLE A. COURTS

CHAPTER 30. MUNICIPAL COURTS OF RECORD

SUBCHAPTER A. GENERAL LAW FOR MUNICIPAL COURTS OF RECORD

Sec. 30.00001. SHORT TITLE; APPLICATION.

(a) This **chapter** may be cited as the Uniform Municipal Courts of Record Act.

(b) This **subchapter** applies to:

(1) **each municipality listed** in this chapter; **and**

(2) **each other municipality** in which the governing body of the municipality has created a **municipal court of record** as authorized by Section 30.00003.

(c) If a provision of this subchapter conflicts with a specific provision for a particular municipality, the specific provision controls.

Added by Acts 1987, 70th Leg., ch. 811, Sec. 1, eff. Aug. 31, 1987. Renumbered from Government Code Sec. 30.481 by Acts 1997, 75th Leg., ch. 165, Sec. 8.02, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 691, Sec. 1, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 1127, Sec. 1, eff. Sept. 1, 2003.

32. Now we are going to scroll down to read .00005 to find out what the Texas Law says about the JURISDICTION of MUNICIPAL COURTS OF RECORD.

TEXAS GOVERNMENT CODE 30.00005

Sec. 30.00005. JURISDICTION.

(a) A **municipal court of record** has the jurisdiction provided by general law for municipal courts.

(b) The court has jurisdiction over **criminal cases arising under ordinances** authorized by Sections 215.072, 217.042, 341.903, and 551.002, Local Government Code...

33. Being thorough requires us to hop over and check out those four statutes mentioned there in (b) directly above, to see if there is **any reference to Jail Time being authorized for Class C Offenses. There are none.** As proof to this Court, the titles to those four laws are, in the order they are stated in (b);

- (1) DAIRIES; SLAUGHTERHOUSES, *[within the municipality]*
- (2) NUISANCE, *[within the municipality and within 5000 ft. of city border]*
- (3) AUTHORITY OF HOME-RULE MUNICIPALITY TO POLICE MUNICIPALLY OWNED PROPERTY OUTSIDE MUNICIPALITY, AND
- (4) PROTECTION OF STREAMS AND WATERSHEDS BY HOMERULE MUNICIPALITY.

34. Since these four statutes at 30.00005(b) have nothing to do with Jail for Class C Offenses, it is time to now continue on with 30.00005(c) to find the meat of the law. Here it is.

...(c) The governing body may by ordinance provide that the court has concurrent jurisdiction with a justice court in any precinct in which the municipality is located in criminal cases that arise within the territorial limits of the municipality and are punishable only by fine...

(d) The governing body of a municipality by ordinance may provide that the court has:

- (1) civil jurisdiction for the purpose of enforcing municipal ordinances enacted under Subchapter A, Chapter 214, Local Government Code, or Subchapter E, Chapter 683, Transportation Code;
- (2) concurrent jurisdiction with a district court or a county court at law under Subchapter B, Chapter 54, Local Government Code, within the municipality's territorial limits and property owned by the municipality located in the municipality's extraterritorial jurisdiction for the purpose of enforcing health and safety and nuisance abatement ordinances; and
- (3) authority to issue:

- (A) search warrants **for the purpose of** investigating a **health and safety** or **nuisance** abatement ordinance violation; and
- (B) seizure warrants **for the purpose of** securing, removing, or demolishing the offending property and removing the debris from the premises.

Added by Acts 1987, 70th Leg., ch. 811, Sec. 1, eff. Aug. 31, 1987. Renumbered from Government Code Sec. 30.485 by Acts 1997, 75th Leg., ch. 165, Sec. 8.02, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 691, Sec. 1, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1093, Sec. 1, eff. Sept. 1, 2001. Amended by: Acts 2007, 80th Leg., R.S., Ch. 885, Sec. 3.77(1), eff. April 1, 2009.

35. Here again, not only do we **NOT** find legislatively granted jurisdiction to place people in jail for any Class C offenses, but we find that at (b) this law is limited to **Criminal** Accusations of Ordinance violations, and at (c) the law again specifically limits their punishment to **FINE ONLY**, by legislative omission of any Jail Time authorized and written in the law. It is a distinct written prohibition **AGAINST** Municipal and J.P. Judges jailing or imprisoning anyone for Class C offenses.

CODE OF CRIMINAL PROCEDURE 45.041

36. We have eliminated **PUNISHMENTS** and **JURISDICTION** as being lawful, legislative sources to put people in jail for Class C offenses.

37. Let's see if Municipal Courts and J.P. Courts can place people in jail under "**Judgments**" as found in the Texas Code of Criminal Procedure. Here is its specific text from the 58 pages of text that comes up from the State of Texas website in Chapter 45.

Code of Criminal Procedure Article 45.041. JUDGMENT

(a) The judgment and sentence, in case of conviction in a **criminal** action before a

justice of the peace or municipal court judge, shall be that the **defendant** **pay the amount of the fine and costs to the state.**

(b) The justice or judge may direct the **defendant**:

(1) to **pay**:

(A) the entire **fine and costs** when sentence is pronounced;

(B) the entire **fine and costs** at some later date; or

(C) a specified portion of the **fine and costs** at designated intervals;

(2) if applicable, to make **restitution** to any victim of the offense; **and**

(3) to satisfy **any other sanction authorized by law.**

(b-1) **Restitution made under Subsection (b)(2) may not exceed \$5,000** for an offense under Section 32.41, Penal Code.

(c) The justice or judge shall **credit** the defendant for time served in jail as provided by Article 42.03. The **credit shall be applied to** the amount of the fine and costs at the rate provided by Article 45.048.

(d) All judgments, sentences, and final orders of the justice or judge shall be rendered in open court.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722. Amended by Acts 1971, 62nd Leg., p. 2990, ch. 987, Sec. 5, eff. June 15, 1971. Renumbered from Vernon's Ann.C.C.P. art. 45.50 and amended by Acts 1999, 76th Leg., ch. 1545, Sec. 39, eff. Sept. 1, 1999. Amended by: Acts 2007, 80th Leg., R.S., Ch. 1393, Sec. 2, eff. September 1, 2007.

38. From this text of 45.041(a) and (b)(1)(A) and (b)(1)(B) and (b)(1)(C) and (b)(2) it is clear that the law allows a Judge to ORDER a “**Defendant**” to PAY fines, costs and restitution, and it is further clear that section (b)(3) has a QUALIFIER in the language; “to satisfy any other sanction AUTHORIZED BY LAW.” What are those other laws?

39. Whatever those sanctions authorized by the other laws are, it is clear that it should conform to and be in compliant harmony with the laws above, and against sentencing anyone to jail time for Class C offenses as any kind of lawful punishment.

40. The sanctions allowed at 45.041(b)(3) **cannot** be merely made up in the Judge's mind. It has to be authorized by law, as in lawful, constitutional, and not in conflict with other laws.

41. We have already seen that the Texas Penal Code and Texas Government Code prohibits Jail time for Class C offenses, and now this portion of the Texas Code of Criminal Procedure aligns with the above laws and prohibits Jail for Class C Offenses, by intentional, Legislative OMISSION.

42. If Jail Time for Class C Offenses were allowed, it would surely be listed somewhere in PENALTIES, JURISDICTION or JUDGMENT, and most likely it would be in all three, (just like the fines are repeated in each section), so that the Judges, Prosecutors, Police, Jailers, Defense Lawyers and "Defendants" could all see it and know that it has been enacted into law.

43. Now, there are several more statutes mentioned above in that Texas Code of Criminal Procedure 45.041, and they will have to be examined as well, but first, before we go on, the following must be covered, so that nothing is presumed incorrectly.

CREDIT FOR JAIL TIME

44. There **is** an allowance under 45.041(c) to give CREDIT to a defendant for time that has **already** been served **ed** [*PAST TENSE!*] in jail, as provided by two other articles of the Code.

45. But **giving credit for** jail time already served on a Felony or Jailable Misdemeanor – that is being applied **TOWARDS** a fine in Municipal Court, is not the same as the Municipal Judge **giving** jail time **AS** a punishment for only Class C offenses.

46. When this sub-part, found at C.C.P. 45.041(c), is viewed strictly by itself, it may be possible for some people who have been elected as a J.P. Judge or been appointed as a Municipal Judge, to take a false-cognitive leap and **presume** that if a Municipal or J.P. Court can give CREDIT for jail time, that they could possibly also **give** JAIL TIME as a punishment and sentence, but that thinking would be faulty in light of the many other bodies of law that clearly prohibit it as a penalty or punishment, as we have seen above and will continue to see further below.

47. More light can be shed on this seeming conflict in 45.041(c) when the reader accesses and views **VERNON'S ANNOTATED Texas Penal Code at Chapter 12, Section 23.** There on page 554, (West Pub.) it can be read that the Texas Court of Criminal Appeals **forbids** Municipal Courts and J.P. Courts from giving “time served” as a **sentence** for having been placed in jail **on** Class C offenses.

48. That caselaw is: **Thomas v State**, (App. 6 Dist. 1988) 751 S.W. 2d 601, (pet. disc. rev. refused). It states, “Sentence to time served is unauthorized.”

49. In other words, Municipal and Justice Court Judges cannot **lawfully** sentence people to Jail for Class C Offenses, and then after the time is fully “served” at \$50.00 per day, give them “time served” as the means to release the fine. Yet, this is the exact POLICY, PRACTICE and PROCEDURE that almost every, if not every Municipal and J.P. Court across Texas uses in their jailing for Class C actions, including the City of Richardson.

50. As proof that the City of Richardson violates the law in this manner, the following is provided. Below is the ninth question and answer on the City of Richardson's website:

<http://www.cor.net/Police.aspx?id=4546&terms=jail#detentionhldngfclty>

9. What is “jail credit”?

The City of Richardson assigns a monetary value for time spent in **jail** for a City of Richardson **Class C misdemeanor ticket or warrant**. A municipal judge determines **jail** credit as regulated by state law.

51. Please note they did not state which law, and please note that it states that the value for time is spent in jail FOR a Class C misdemeanor ticket or warrant, not for jailable misdemeanors or felonies.

52. The “law” that governs and dictates how much time can be spent in jail for non-jailable Class C offenses is DEFAULT 43.03(b) and the Texas Penal Code 12.23.

53. This policy and procedure violates unoverturned Federal caselaw.

“It is a denial of equal protection to limit punishment to payment of a fine for those who are able to pay it but to convert the fine to imprisonment for those who are unable to pay it. Williams v Illinois, 399 U.S. 235 as cited in Tate v Short, 471 S.W. Rep. 2d 404.

THE TEXAS CONSTITUTION

54. Further, the non-payment of a fine is a debt. The Texas Constitution Article 1 Section 18 places conditions upon this issue. It states;

Sec. 18. IMPRISONMENT FOR DEBT.

No person shall ever be imprisoned for debt.

55. By searching to the end of the amendments of the Texas Constitution, it is clear that this Section has not been repealed. It is clear beyond measure. Its clarity comes from its simplicity. Eight words lay it out.

56. But it happens hundreds of thousands of times every year in Texas. A fine is a debt. Whatever anyone says to the contrary is foolish. If it were not a debt, it would not be owed to the State and to the City, through the Court, and there would not be efforts put forth by the Court to enforce payment, by threatening to place you in jail for non-payment, if the fine and court cost were not owed as a debt.

57. This is crystal clear. If Coker is in jail for that debt as the sole element, then he is being unlawfully deprived of his substantive rights of DUE PROCESS, because this portion of the Texas Constitution has not been repealed. Due Process is not only a State of Texas substantive right, but it is a substantive Federally Protected Right.

CHAPTER 42 OF THE TEXAS CODE OF CRIMINAL PROCEDURE

58. We have eliminated PUNISHMENT, JURISDICTION in three places, and JUDGMENT and now we are covering Chapter 42 of the CCP, because it has much to say regarding this matter, starting with the Sentence.

Art. 42.02. SENTENCE.

The sentence is that part of the judgment, or order revoking a suspension of the imposition of a sentence, that orders that the **punishment** be carried into execution in the manner prescribed by law.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722. Amended by Acts 1981, 67th Leg., p. 809, ch. 291, Sec. 112, eff. Sept. 1, 1981; Acts 1993, 73rd Leg., ch. 900, Sec. 5.03, eff. Sept. 1, 1993.

59. Please note that the sentence is the ORDER that the PUNISHMENT be carried into execution. If the PUNISHMENT cannot consist of Jail, (Texas Penal Code 12.23), then the SENTENCE cannot consist of Jail.

CODE OF CRIMINAL PROCEDURE, CHAPTER 42.03

60. The pertinent part, in section 42.03 must be excerpted because Chapter 42 spans approximately 150 pages. Here is CCP 42.03 Section 2(a)(1).

Art. 42.03. PRONOUNCING SENTENCE; TIME; CREDIT FOR TIME SPENT IN JAIL BETWEEN ARREST AND SENTENCE OR PENDING APPEAL.

Sec. 2. (a) In all criminal cases the judge of the court in which the **defendant** is convicted shall give the defendant credit on the **defendant's** sentence for the time that the defendant has spent:

(1) in jail for the case, other than confinement served as a condition of community supervision, from the time of his arrest and confinement until his sentence by the trial court;...”

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722. Amended by Acts 1967, 60th Leg., p. 1743, ch. 659, Sec. 28, eff. Aug. 28, 1967; Acts 1973, 63rd Leg., p. 205, ch. 91, Sec. 1, eff. Aug. 27, 1973; Acts 1977, 65th Leg., p. 1036, ch. 382, Sec. 1, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 2076, ch. 827, Sec. 1, eff. Aug. 29, 1977. Sec. 1 amended by Acts 1981, 67th Leg., p. 809, ch. 291, Sec. 113, eff. Sept. 1, 1981; Sec. 2 amended by Acts 1981, 67th Leg., p. 353, ch. 141, Sec. 1, eff. Sept. 1, 1981; Sec. 5 amended by Acts 1981, 67th Leg., p. 2418, ch. 616, Sec. 1, eff. Aug. 31, 1981; Sec. 5(a) amended by Acts 1983, 68th Leg., p. 4666, ch. 809, Sec. 1, eff. Aug. 29, 1983; Sec. 6 added by Acts 1983, 68th Leg., p. 3792, ch. 586, Sec. 4, eff. Aug. 29, 1983; Sec. 5(b), (d) amended by Acts 1985, 69th Leg., ch. 232, Sec. 13, eff. Sept. 1, 1985; Sec. 4 amended by Acts 1989, 71st Leg., ch. 785, Sec. 4.06, eff. June 15, 1989; Sec. 7 added by Acts 1989, 71st Leg., ch. 848, Sec. 1, eff. June 14, 1989; Acts 1989, 71st Leg., ch. 1040, Sec. 1, eff. Aug. 28, 1989; Sec. 8 added by Acts 1989, 71st Leg., ch. 1040, Sec. 2, eff. Aug. 28, 1989; Sec. 1 amended by Acts 1991, 72nd Leg., ch. 278, Sec. 1, eff. June 5, 1991; Sec. 2(a) amended by Acts 1991, 72nd Leg., 2nd C.S., ch. 10, Sec. 14.01, eff. Oct. 1, 1991; Sec. 7(a), (b), (d) amended by Acts 1991, 72nd Leg., 2nd C.S., ch. 10, Sec. 14.02, eff. Oct. 1, 1991; Sec. 7A amended by Acts 1991, 72nd Leg., ch. 16, Sec. 4.05, eff. Aug. 26, 1991; Acts 1991, 72nd Leg., 2nd C.S., ch. 10, Sec. 14.03, eff. Oct. 1, 1991; Sec. 8(a) amended by Acts 1991, 72nd Leg., 2nd C.S., ch. 10, Sec. 14.04, eff. Oct. 1, 1991; Sec. 8(f) added by Acts 1991, 72nd Leg., 2nd C.S., ch. 10, Sec. 8.02, eff. Dec. 1, 1991; Acts 1991, 72nd Leg., 2nd C.S., ch. 10, Sec. 15.03, eff. Oct. 1, 1991; Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 5.03, eff. Sept. 1, 1993; Sec. 1(b) amended by Acts 1995, 74th Leg., ch. 556, Sec. 1, eff. Sept. 1, 1995; Sec. 8(g) repealed by Acts 2003, 78th Leg., ch. 406, Sec. 2, eff. Sept. 1, 2003. Amended by: Acts 2007, 80th Leg., R.S., Ch. 1205, Sec. 1, eff. September 1, 2007. Acts 2009, 81st Leg., R.S., Ch. 87, Sec. 25.018, eff. September 1, 2009.

61. We must stop here and go cover “community service”, because it was cited here at 42.03(2)(a)(1), making it one of those other “*sanctions authorized by law*” as is stated in the Code of Criminal Procedure 45.041(b)(3), so we are checking for any Jail Time allowance.

62. Chapter 42 at 42.12, entitled Community Supervision, gives the legislated “community service hours” for most levels, and only gives ONE level of Community

Service for ONLY ONE Class C Offense, [of burning trash in the open within 5000 ft. of the city boundary] at sub-part (16)(e) and one alternative sentence at (f), where it states:

(e) A defendant required to perform community service under this section after conviction of an offense under Section 352.082, Local Government Code, shall perform 60 hours of service. The community service must consist of picking up litter in the county in which the defendant resides or working at a recycling facility if a program for performing that type of service is available in the community in which the court is located.

(f) In lieu of requiring a defendant to work a specified number of hours at a community service project or projects under Subsection (a), the judge may order a defendant to make a specified donation to a nonprofit food bank or food pantry in the community in which the defendant resides.

63. The first thing that becomes apparent is that there is NO legislated allowance for **jail time** for a Class C Conviction sentence, and only here at Section 352.082 is there any allowance for community service of sixty hours for the Class C offense of burning refuse, outside the city but within 5000 feet of the boundary.

64. The next thing that we need to focus in on is that the broader allowance at CCP 42.03(b)(5)(B) and (b)(6) which states, “for any other misdemeanor” and from that **LITTLE phrase, one could possibly deduct that Class C offenses might fit here, until the reader then continues to read and finds the qualifying language of “for which the maximum permissible confinement...”**, and this language immediately eliminates the availability for 42.03(b)(5)(B) and 42.03(b)(6) to apply to Class C offenses, because once again, the maximum permissible confinement for Class C’s is ZERO, according to the Texas Penal Code 12.23!

65. The next thing that stands out is the language found at 42.03, Section (2)(a)(1) which states, “the judge ... shall give the defendant credit on the defendant's sentence for the time that the defendant has spent: (1) in jail *for the case*”.

66. That last part that says, “**for the case**” is a qualifier that places a requirement for the Judge over the JAILABLE offense(s) to give credit for the time that the defendant has spent in jail FOR THE CASE. Obviously, if they have been LAWFULLY spending time in jail FOR THE CASE, then it clearly has to be only a Felony or Class A or B misdemeanor.

67. In light of the previously shown laws so far, we can safely deduct that this language at the Code of Criminal Procedure 42.03 clearly applies strictly and only for a Felony or for a Class A or B Misdemeanor, because Class C offenses can have no lawfully sentenced jail time as a punishment to begin with, (Penal Code 12.23), because the Municipal and Justice Courts have no Jurisdiction (Code of Criminal Procedure 4.14, Government Code 29.003, and 30.00005), to sentence people to jail in any lawful Judgment (Code of Criminal Procedure 45.041) based on the SPECIFIC language “for the case” that 42.03(2)(a)(1) contains.

68. Next to be covered is CCP 42.08.

Art. 42.08. CUMULATIVE OR CONCURRENT SENTENCE.

(a) When the same **defendant** has been convicted in two or more cases, judgment and sentence shall be pronounced in each case in the same manner as if there had

been but one conviction. Except as provided by Sections (b) and (c) of this article, in the discretion of the court, the judgment in the second and subsequent convictions may either be that the sentence imposed or suspended shall begin when the judgment and the sentence imposed or suspended in the preceding conviction has ceased to operate, or that the sentence imposed or suspended shall run concurrently with the other case or cases, and sentence and execution shall be accordingly; provided, however, that the cumulative total of suspended sentences in felony cases shall not exceed 10 years, and **the cumulative total of suspended sentences in misdemeanor cases shall not exceed the maximum period of confinement in jail applicable to the misdemeanor offenses**, though in no event more than three years, including extensions of periods of community supervision under Section 22, Article 42.12, of this code, if none of the offenses are offenses under Chapter 49, Penal Code, or four years, including extensions, if any of the offenses are offenses under Chapter 49, Penal Code.

(c) If a **defendant** has been convicted in two or more cases and the court suspends the imposition of the sentence in one of the cases, the court may not order a sentence of confinement to commence on the completion of a suspended sentence for an offense.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722. Amended by Acts 1985, 69th Leg., ch. 29, Sec. 1, eff. Sept. 1, 1985; Acts 1987, 70th Leg., ch. 513, Sec. 1, eff. Aug. 31, 1987; Subsec. (a) amended by Acts 1989, 71st Leg., ch. 785, Sec. 4.11, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 5.03, eff. Sept. 1, 1993.

69. Here is CCP 42.09. The Defendant in this case is already defined by the Texas Government Code Chapter 71.001(16), shown directly after this.

Art. 42.09. COMMENCEMENT OF SENTENCE; STATUS DURING APPEAL...

Sec. 1. ... a defendant shall be delivered to a jail ...when his sentence is pronounced ... by the court. The defendant's sentence begins to run on the day it is pronounced, but with all credits, if any, allowed by Article 42.03.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722. Amended by Acts 1973, 63rd Leg., p. 206, ch. 91, Sec. 2, eff. Aug. 27, 1973; Acts 1977, 65th Leg., p. 2018, ch. 806, Sec. 1, eff. Aug. 29, 1977. Amended by Acts 1981, 67th Leg., p. 810, ch. 291, Sec. 117, eff. Sept. 1, 1981. Sec. 7 added by Acts 1983, 68th Leg., p. 148, ch. 40, Sec. 1, eff. April 26, 1983; Acts 1983, 68th Leg., p. 4668, ch. 810, Sec. 1, eff. Sept. 1, 1983; Sec. 8 amended by Acts 1985, 69th Leg., ch. 344, Sec. 3, eff. Jan. 1, 1986; Acts 1987, 70th Leg., ch. 1049, Sec. 53, eff. Sept. 1, 1987; Sec. 8(a) amended by Acts 1989, 71st Leg., ch. 785, Sec. 4.12, eff. Sept. 1, 1989; Sec. 8(h) added by Acts 1989, 71st Leg., ch. 33, Sec. 2, eff. April 26, 1989; Sec. 8(a) amended by Acts 1991, 72nd Leg., 2nd C.S., ch. 10, Sec. 11.05, eff. Aug. 29, 1991. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 5.03, eff. Sept. 1, 1993; Sec. 8(a) to (c) amended by Acts 1995, 74th Leg., ch. 321, Sec. 3.001, eff. Sept. 1, 1995; Sec. 8(d) amended by Acts 1995, 74th Leg., ch. 321, Sec. 3.001, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 723, Sec. 1, eff. Sept. 1, 1995; Sec. 8(f), (h), (i) amended by Acts 1995, 74th Leg., ch. 321, Sec. 3.001, eff. Sept. 1, 1995; Sec. 8(a) amended by Acts 1999, 76th Leg., ch. 1188, Sec. 1.42, eff. Sept. 1, 1999; Sec. 8(c) amended by Acts 1999, 76th Leg., ch. 1477, Sec. 29, eff. Sept. 1, 1999; Sec. 9 added by Acts 1999, 76th Leg., ch. 655, Sec. 1, eff. June 18, 1999; Sec. 4 amended by Acts 2001, 77th Leg., ch. 214, Sec. 1, eff. May 22, 2001; Sec. 8(j) added by Acts 2001, 77th

Leg., ch. 453, Sec. 1, eff. June 8, 2001; Sec. 8(a) amended by Acts 2003, 78th Leg., ch. 14, Sec. 1, eff. Sept. 1, 2003. Amended by: Acts 2005, 79th Leg., Ch. 728, Sec. 4.005, eff. September 1, 2005. Acts 2007, 80th Leg., R.S., Ch. 1308, Sec. 4, eff. June 15, 2007. Acts 2009, 81st Leg., R.S., Ch. 87, Sec. 25.023, eff. September 1, 2009. Acts 2009, 81st Leg., R.S., Ch. 87, Sec. 25.024, eff. September 1, 2009. Acts 2009, 81st Leg., R.S., Ch. 980, Sec. 1, eff. September 1, 2009.

70. Nowhere in Chapter 42 is there an allowable condition of Jail for Non-Jailable, Class C Offenses. The language of Chapter 42 is restricted and blocked by all of the previous laws.

71. Now we must cover some legislated definitions found in the Texas Government Code.

TEXAS GOVT. CODE 71.001
TITLE 2. JUDICIAL BRANCH
SUBTITLE F. COURT ADMINISTRATION
CHAPTER 71. TEXAS JUDICIAL COUNCIL
SUBCHAPTER A. GENERAL PROVISIONS
Sec. 71.001. DEFINITIONS.

In this chapter:

- (1) "Assigned counsel program" means a system under which private attorneys, acting as independent contractors & compensated with public funds, are individually appointed to provide legal representation & services to a particular indigent defendant accused of a crime or juvenile offense.
- (2) "Chair" means the chair of the council.
- (3) "Contract defender program" means a system under which private attorneys, acting as independent contractors & compensated with public funds, are engaged to provide legal representation & services to a group of unspecified indigent defendants who appear before a particular court or group of courts.
- (4) "Council" means the Texas Judicial Council.
- (5) "Crime" means:
 - (A) a misdemeanor **punishable by confinement**; or
 - (B) a felony.
- (6) "Defendant" means a person accused of a **crime** or a juvenile offense.
- (7) "Indigent defense support services" means criminal defense services that:

(A) are provided by licensed investigators, experts, or other similar specialists, including forensic experts & mental health experts; &
(B) are reasonable & necessary for appointed counsel to provide adequate representation to indigent defendants.

Acts 1985, 69th Leg., ch. 480, Sec. 1, eff. Sept. 1, 1985. Amended by Acts 1997, 75th Leg., ch. 1408, Sec. 1, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 906, Sec. 12, eff. Jan. 1, 2002. Amended by: Acts 2007, 80th Leg., R.S., Ch. 855, Sec. 1, eff. September 1, 2007.

72. According to the Texas Legislature, a “Defendant” is defined at Texas Government Code, Judicial Branch, Court Administration, at 71.001(6) as someone who has been accused of a “crime”, and a “crime” is defined at Texas Government Code 71.001(5)(A) and (5)(B) combined, as ONLY a Felony or Class A or Class B misdemeanor, because they are the only offenses where a person can be lawfully placed in jail as a punishment.

CONTEMPT OF COURT

73. Unless the Contempt of Court is fresh and in the presence of the Court, the only lawfully allowable Jail time for contempt in Texas is strictly legislated as is shown below. What we find is that if a person is accused of one or more Class C offenses, and they do not waive the Jury portion of the trial, (which would force the court to notify a jury panel for voir dire) and then the ACCUSED do not show for court, without a just and good cause, then they can lawfully be held in jail, in contempt of court. The punishment portion is mentioned therein and is quoted just below it.

CCP Art. 45.026. JURY TRIAL; FAILURE TO APPEAR.

(a) A justice or municipal court may order a party who does not waive a jury trial in a justice or municipal court and who fails to appear for the trial to pay the costs incurred for impaneling the jury.

(b) The justice or municipal court may release a party from the obligation to pay costs under this section **for good cause.**

(c) An order issued by a justice or municipal court under this section **may be enforced by contempt as prescribed by Section 21.002(c), Government Code.**

Added by Acts 1995, 74th Leg., ch. 122, Sec. 1, eff. Sept. 1, 1995. Renumbered from Vernon's Ann.C.C.P. art. 45.251 and amended by Acts 1999, 76th Leg., ch. 1545, Sec. 24, eff. Sept. 1, 1999.

TEXAS GOVERNMENT CODE

Sec. 21.002. CONTEMPT OF COURT.

(a) Except as provided by Subsection (g), a court may punish for contempt.

(b) **The punishment for contempt of a court other than a justice court or municipal court is a fine of not more than \$500 or confinement in the county jail for not more than six months, or both such a fine and confinement in jail.**

(c) **The punishment for contempt of a justice court or municipal court is a fine of not more than \$100 or confinement in the county or city jail for not more than three days, or both such a fine and confinement in jail.**

74. Since this Contempt of Court punishment could consist of either punishment, (3 days in jail) AND a fine, then the conditions of that jail time are governed by the previously shown law, Texas Code of Criminal Procedure 43.03(b) and (c).

75. While it is unknown by Byrum at the time of the filing of this Petition for Habeas Corpus, in behalf of the Applicant, whether or not Coker knowingly waived his rights to a Jury in any previous matter(s) before the Municipal Court, it is believed by Byrum that this is not the case, and hereby moves this Honorable Court to question the Municipal Judge whether said waiver was in effect, and whether or not this is the condition whereby he has Coker placed in the Richardson City Jail, and if so, to produce document evidence to support said position.

FAILURE TO APPEAR

76. The Texas Code of Criminal Procedure 33.03 states:

Art. 33.03. PRESENCE OF DEFENDANT.

In all prosecutions for felonies, the defendant must be personally present at the trial, **and he must likewise be present in all cases of misdemeanor when the punishment or any part thereof is imprisonment in jail;** provided, however, that in all cases, when the defendant voluntarily absents himself after pleading to the indictment or information, or after the jury has been selected when trial is before a jury, the trial may proceed to its conclusion. When the record in the appellate court shows that the defendant was present at the commencement, or any portion of the trial, it shall be presumed in the absence of all evidence in the record to the contrary that he was present during the whole trial. Provided, however, that the presence of the defendant shall not be required at the hearing on the motion for new trial in any misdemeanor case.

Acts 1965, 59th Leg., p. 317, ch. 722, Sec. 1, eff. Jan. 1, 1966. Amended by Acts 1979, 66th Leg., p. 1832, ch. 745, Sec. 1, eff. Aug. 27, 1979.

77. Strangely, even the Texas Legislature has not included a requirement to be present at Class C Court, because by language-exclusion used above, they cannot be LAWFULLY punished by jail time when read in light of the Texas Penal Code 12.23. The accused in these Class C cases cannot even plead to the Indictment or Information, because no one can even get the Municipal Courts to require the Prosecution to bother with either of these two documents. Those that try are rebuffed with a claim that Informations are not needed for prosecution, despite no repeal of the Texas Constitution Article 5 Section 12.

78. Moving to the Texas Penal Code 38.10, we find at (e):

Sec. 38.10. BAIL JUMPING AND FAILURE TO APPEAR.

(a) A person lawfully released from custody, with or without bail, on condition

that he subsequently appear commits an offense if he intentionally or knowingly fails to appear in accordance with the terms of his release.

(b) It is a defense to prosecution under this section that the appearance was incident to community supervision, parole, or an intermittent sentence.

(c) It is a defense to prosecution under this section that the actor had a reasonable excuse for his failure to appear in accordance with the terms of his release.

(d) Except as provided in Subsections (e) and (f), an offense under this section is a Class A misdemeanor.

(e) An offense under this section is a Class C misdemeanor if the offense for which the actor's appearance was required is punishable by fine only.

(f) An offense under this section is a felony of the third degree if the offense for which the actor's appearance was required is classified as a felony.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Renumbered from Penal Code Sec. 38.11 and amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

79. So, according to the Texas Legislature, failure to appear in one Class C is just another non-jailable Class C offense, and does not enhance to a Jailable A or B Misdemeanor or Felony, as it does in the case of Failure to Appear for jailable offense charges.

NEW CLASS C CHARGES

80. If Coker is being held in jail solely for one or more new and pending Class C charges, then the Judge's and Police Department's actions are restricted by several caselaws that prohibit being placed in jail.

81. While **Riverside v McLaughlin**, 500 U.S. 44, is a controlling caselaw in regards to how long a person can be held in jail without a hearing, it is modified by **Trezevant v Tampa**, 741 F.2d 336 and **Pulliam v Allen**, 466 U.S. 522 (1984) in regards to Texas

Class C offense allegations, because there are some people who are arrested on charges whereby they cannot be PUNISHED with JAIL TIME if they were to be found guilty of the offenses charged.

TREZEVANT V TAMPA

82. In the case of Trezevant v Tampa, 741 F.2d 336, Mr. Trezevant was pulled over for braking hard to avoid a collision, and instead of ticketing the other driver for almost causing the wreck, the City of Tampa Police Officer Eicholz initially ticketed Mr. Trezevant because his attention was brought to Mr. Trezevant's screeching tires.

DIRECTLY BEFORE A MAGISTRATE

83. When Mr. Trezevant chose to not sign the citation, the Officer converted the "arrest and release" traffic stop into an "arrest and take-in", so that according to Florida law, JUST AS IS HERE IN TEXAS, Mr. Trezevant could be taken directly before a Magistrate, so that he could explain what had just occurred and ask for either immediate release with the charge dropped, immediate release under a Personal Recognizance Bond, or at worse, immediate release with cash bond, which, by the way, Mr. Trezevant had ON HIM AT THAT TIME, if that was necessary.

COUNTY BOOKIN ROOM

84. However, instead of taking Mr. Trezevant through one door in the County Complex directly before the Magistrate as the law required, the Officer took him through another

door in the Complex, to the County Jail Bookin Room and processed him into JAIL, on the Class C, NON-JAILABLE offense.

23 MINUTES = \$25,000.00

85. Please pay particularly close attention to the next part. Mr. Trezevant stayed behind the bars of the County Jail for a total of 23 minutes on that non-jailable charge. He sued and he won \$25,000.00, which is a little over \$1,000.00 per minute.

86. The City tried to defend themselves, since the Magistrate was in the building and Mr. Trezevant would have eventually found himself before the Magistrate for bonding.

87. The County tried to defend themselves by saying they were only doing what the City of Tampa Officer Eicholz wanted, because the Officer brought Mr. Trezevant to the Bookin Room, and that is the County's policy and procedure to not challenge the City Officers. Both lost their arguments and their cases.

MUNICIPALITIES CAN BE HELD LIABLE UNDER 42 USC 1983

88. The court held in paragraph 18 of that Trezevant case;

"In Gilmore v. City of Atlanta, 737 F.2d 894 (11th Cir.1984), this court explained that a municipality may be liable under 42 U.S.C. Sec. 1983 (1982) if unconstitutional action is taken to implement or execute a policy statement, ordinance, regulation or officially adopted and promulgated decision. Gilmore at 901. Liability may also attach where the unconstitutional deprivation is "visited pursuant to government 'custom' even though such custom has not

received formal approval through the body's official decision making channels." Gilmore at 901 (quoting Monell v. Department of Social Services, 436 U.S. 658, at 690-91, 98 S.Ct. 2018 at 2035-36, 56 L.Ed.2d 611, rev'g in part Monroe v. Pape, 365 U.S. 167, 81 S.Ct. 473, 5 L.Ed.2d 492 (1961)). However, the "official policy or custom must be the moving force of the constitutional violation" before civil liability will attach under Sec. 1983. Gilmore, 737 F.2d at 901 (quoting Polk County v. Dodson, 454 U.S. 312, 102 S.Ct. 445, 454, 70 L.Ed.2d 509 (1981))."

89. The next case to be examined is Pulliam v Allen, 466 U.S. 522 (1984). Judge Gladys Pulliam had a few people before her in Culpepper County, Virginia, who were charged with NOTHING MORE than one or more Class C charges each. Those people, when asked, were unable to produce any CASH for bonding out, PRE-TRIAL. She then placed these people into Jail to await trial, because they had no money to bond out with.

JAIL WAS NOT LAWFUL, BUT THAT DID NOT STOP HER

90. So EVEN THOUGH SHE COULD NOT SENTENCE THEM TO JAIL, AFTER CONVICTION, she sent them to jail, Pre-Trial.

THE CRIME VICTIMS SUED AND THE JUDGE LOST

91. The crime victims sued and Judge Pulliam lost. Judge Pulliam appealed, and she lost again. She appealed again and this time the appeal was to ONLY reduce the damage awards, and again, she lost. Her penalty was to pay \$8,000.00 in Attorney Fees to the lawyer of those she unlawfully incarcerated.

92. The Texas Code of Criminal Procedure 17.151 that appears to allow the jailing of those charged with only Class C offenses, up to five days, to await trial. However, this section of the Code of Criminal Procedure, and any other statute that seems to allow jailing for non-jailable Class C offenses is ILLEGAL and UNCONSTITUTIONAL, in light of the Texas Penal Code 12.23 and Trezevant v Tampa (supra) and Pulliam v Allen (supra) as enunciated by the holdings of Bonnett v Vallier, 116 N.W. 885, 136 Wis. 193 (1908).

The general rule is that an unconstitutional statute, though **having the form and name of law**, is in reality no law, **but is wholly void and ineffective for any purpose**, since its unconstitutionality dates from the time of its enactment... **In legal contemplation, it is as inoperative as if it had never been passed...** Since an unconstitutional law is void, the general principles follow that it **imposes no duties, confers no right, creates no office, bestows no power or authority on anyone, affords no protection and justifies no acts performed under it...** A void act cannot be legally consistent with a valid one. An unconstitutional law cannot operate to supersede any existing law. Indeed insofar as a statute runs counter to the **fundamental law of the land**, it is superseded thereby. **No one is bound to obey an unconstitutional law and no courts are bound to enforce it."**

93. Riverside v McLaughlin (supra) is thus, strictly for JAILABLE Misdemeanors and Felony charges, because it has been modified by the Pulliam and Trezevant cases, which are prohibitive of PRE-TRIAL Jail for Class C offenses.

United States Constitution, Bill of Rights, 8th Amendment

94. Here is its complete text of the 8th Amendment to the Constitution of the United States of America:

Excessive bail shall not be required, nor excessive fines imposed, **nor cruel and unusual punishments inflicted.**

95. Now, if the State of Texas were to have a pre-set type and amount of penalties for a particular offense, let's say, assault and battery, classified as a Class A misdemeanor, and the penalty for that offense was a fine and/or jail time, and you got arrested for assault and battery against... say... the favorite niece of the County Sheriff, and you were convicted and were sentenced to 30 days in jail IN the uncle's Jail, and the Sheriff just decided to **APPLY the Death Penalty to you**, the Defendant, that **application** of the Death Penalty **to** you, the Class A convict would be a punishment that is OUTSIDE THE CONFINES OF LAW.

96. Obviously, applying the death penalty to someone who has violated a law where the legislated penalties do not include death as a possible punishment, would be **outside** the confines of law.

97. That application of the Death Penalty would therefore be a CRUEL and UNUSUAL punishment, because it was **not LISTED** in the punishment section of the law as they are codified in Texas. The same goes for Jail Time for Class C Offenses not being listed.

98. The same argument of "INAPPLICABLE PUNISHMENT equals CRUEL AND UNUSUAL PUNISHMENT" applies for Class C offenses when JAIL TIME is received, when there is no jail time AUTHORIZED by legislative, jurisdictional grant in the laws of Texas.

99. And in the particular case, where there is one or two mentions of jail time referenced to certain conditions of Class C offenses, when the larger body of law does NOT authorize it, is in no way, some legislative end-run around it, authorizing some unlawful act.

100. In those cases, the disharmonious acts, the non-conforming laws are unconstitutional, and when located and identified, must be disregarded by the Courts until they can be amended or outright repealed to bring the entire body of law into good harmony with the two Constitutions and the overall will of the people.

101. As the historical foundations, the two Constitution's Bill of Rights provide that there shall be no punishment outside the confines of law, otherwise it is cruel and unusual, and there shall be no imprisonment for debt. If one were to use the timeline of American law, these two Constitutional mandates make up the bedrock on which the more recent laws must rest. Furthermore, for any law to be constitutional, it must be in harmony with the Constitutions upon which it rests, otherwise it is no law at all.

102. Therefore, it is safe to deduct that any law that has been able to be passed since the time of the two Constitutions, and these above laws, that so far have strictly prohibited jail time as any available punishment for only Class C offenses, that begins to move the body of law away from this base and structure to pervert the original intent of the founders, would be unconstitutional and out of form with the laws passed prior to it.

103. Texas is a part of the United States of America. The caselaws of America are compiled in a body known as American Jurisprudence, that is available in any really good law library. The following is what American Jurisprudence, (AmJur) says about whether the people of America have to obey unconstitutional laws or not.

* **16AmJur 2nd, Sec. 177:** “An unconstitutional statute, though having the form and name of law, is in reality no law, but wholly null and ineffective for any purpose. It imposes no duty, confers no rights, creates no office, bestows no power or authority on anyone, affords no protection and justifies no acts performed under it. No one is bound to obey an unconstitutional statute, and no courts are bound to enforce it.

* **16AmJur 2nd, Sec. 178: “Constitutional law.** The general rule is that an unconstitutional statute, though having the form and the name of law, is in reality no law, but is wholly void and ineffective for any purpose since unconstitutionality dates from the time of its enactment and not merely from the date of the decision so branding it; an unconstitutional law, in legal contemplation, is as inoperative as if it had never been passed ... **An**

unconstitutional law is void. It imposes no duties, confers no rights, creates no office, bestows no power or authority, affords no protection, and justifies no acts performed under it.

An unconstitutional law cannot repeal or supersede any existing valid law. An unconstitutional statute cannot repeal or in any way effect an existing valid one. The general principles stated above apply to the Constitution **as well as to the laws of the several States**. Moreover, the construction of a statute which brings it in conflict with the Constitution will nullify it as effectually as if it had been enacted in conflict therewith.”

* **16 AmJur 2nd, Sec 178: “Constitutional Law:** The general rule is that an unconstitutional act of the legislature protects no one. It is said that all persons are presumed to know the law, meaning that ignorance of the law excuses no one; if any person acts under an unconstitutional statute, he does so at his own peril and must take the consequences.

104. Where the application of the actions and orders of a Municipal or J.P. Judge causes someone to be jailed for Non-Jailable offenses, a violation of the 8th Amendment occurs, and the provisions found within the 8th Amendment are Federally Protected Rights. It also breaches the 5th Amendment because it deprives the one jailed of DUE PROCESS, which is a substantive, federally protected right.

105. When Federally Protected Rights are violated, it breaches the Federal Felony law codified at 18 USC 242 when the actor acts alone, and when it is with the help and

assistance of even one other human, (police, Sheriff, Constable, Trooper or jailer), it breaches 18 USC 241, both carrying many years in Federal Prison and hefty fines for EACH ACTOR.

106. 18 USC 4, Misprision of Felony, REQUIRES those of us who know of or believe that a violation of Federal Law has occurred to swear out a criminal complaint against the actor and report it to the nearest Federal Judge.

CAPIAS PRO FINE

Art. 43.05. CAPIAS PRO FINE SHALL RECITE.

(a) A capias pro fine issued for the arrest and commitment of a defendant convicted of a misdemeanor or felony, or found in contempt, the penalty for which includes a fine, shall recite the judgment and sentence and command a peace officer to immediately bring the defendant before the court.

(b) A capias pro fine authorizes a peace officer to place the defendant in jail until the business day following the date of the defendant's arrest if the defendant cannot be brought before the court immediately.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722. Amended by Acts 1971, 62nd Leg., p. 2990, ch. 987, Sec. 4, eff. June 15, 1971. Amended by: Acts 2007, 80th Leg., R.S., Ch. 1263, Sec. 11, eff. September 1, 2007.

107. This statute does allow for a person to be arrested for a Misdemenaor Conviction or for Contempt, however it is clear that they must be taken directly before the COURT, not to jail.

108. According to Section (b), when a person has been arrested after the close of business on one day, they may be lawfully held over for the next business day, **HOWEVER, even this Statute** has been overruled by Federal caselaw. These seemingly lawful Capiases have been **OUTLAWED** according to **Crane v Texas**, 759 F.2d 412, and per **Ex Parte Byram**, 662 S.W. 2d 147, because the **POLICY** of the Cities and Counties is to skip over the **STEP TWO, DUE PROCESS** hearing required by law.

CRANE V TEXAS

109. The Federal case of **Crane v State**, 759 F. 2d 412, (5th, 1985) outlawed CAPIASES, for the express reason that issuance of a warrant, immediately after the first **FAILURE TO APPEAR**, bypasses or leaps over the **DUE PROCESS** requirement that a **SECOND NOTICE** be sent to the defendant, so as to give that person a **DUE PROCESS OPPORTUNITY** to appear before a **THIRD PARTY JUDGE**, and explain to that separate court their reason(s) for not appearing the first time in the original court.

110. Coker further relies upon the ruling, **Ex Parte Byram**, 662 S.W. 2d 147, which explains that no traffic warrant arrests are lawful unless the issuing court **FIRST HOLDS A "STEP TWO, DUE PROCESS HEARING"**, to first determine whether or not the defendant had reasonable cause for not showing up for the traffic court date.

SUMMARY

111. Applicant therefore moves this Honorable Court for the issuance and execution of

the Writ of Habeas Corpus to determine under what law or laws, conditions, or circumstances that he is being held in the Richardson Municipal Jail, and an investigation into the reason(s) Coker is being held in Jail.

112. If under examination, it is determined that Coker is being held in jail because of:

DEFAULT in payment of a Class C fine, in violation of the Texas Code of

Criminal Procedure 43.03(b) and (e), or

CONTEMPT of Court, but without just cause, or

FAILURE TO APPEAR, under T.P.C. 38.10(e), or

PUNISHMENT OUTSIDE the confines of T.P.C. 12.23, or

IMPRISONMENT FOR DEBT in violation of the Texas Constitution, or

a SENTENCE outside the confines of law, in violation of the 8th Amendment, or

the Judge is operating outside of JURISDICTION granted by the Texas

Legislature, at C.C.P. 4.14, or the Texas Government Code 29.003 or

30.00005, or

under any JUDGMENT not authorized by CCP Chapter 45, or

any new charge under an Inability to Bond Out, in violation of Pulliam v Allen

(supra) and Trezevant v Tampa, (supra),

any one of which is a deprivation of DUE PROCESS protected by the 5th Amendment,

then both Applicant Coker and we the people of the State of Texas, move this Honorable

Court to ORDER that Coker be INSTANTLY AND PERMANENTLY DISCHARGED,

because each of these above instances are illegal.

DECLARATORY AND INJUNCTIVE RELIEF REQUESTED

113. Coker further moves that this Honorable Court ask the Richardson Municipal Judge if there are any other people similarly situated in the Richardson Jail, and if they are, that they be instantly discharged as well, and that the Richardson Municipal Judge be ordered to **cease and desist** from such illegal and unlawful practices and policies, by Declaratory and Injunctive Relief, as Coker is not in this life solely for himself, but also serves to benefit his brother and fellow creation of YHVH, and when and where they are being unlawfully held, Coker moves that they also be set free indeed.

114. If, on the other hand, upon investigation, it is determined that Coker is being charged with Contempt of Court **with cause** according to the strict guidelines of law (for only 3 days), or if he is being charged with one or more JAILABLE Misdemeanors or Felonies and is merely awaiting transport to the County Jail for booking, we the people and Applicant Coker ask that this Court do nothing but receive Coker's gratitude and appreciation for hearing this Petition and for exercising the oversight powers to ensure that they State Courts are operating within the confines of law and caselaw that governs its actions.

REQUEST FOR IMMEDIATE HEARING

115. Coker moves that this Petition be heard at its earliest point in time, because of the nature of the restraint suspected of being unlawful.

Art. 11.11. [123] [171] [161] EARLY HEARING. The time so appointed shall be

the earliest day which the judge can devote to hearing the cause of the applicant.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722, eff. Jan. 1, 1966.

COPIES OF ORDER OR PROCESS

116. No copies of any order or process have been acquired at the time of the filing of this Petition for Habeas Corpus, therefore none can be tendered to this Court through the hands of Byrum. Applicant Coker has no means by which to acquire a copy and get it into this Court's hands.

117. Coker moves for this Honorable Court to also bring Coker before this Judge for his testimony and evidence.

Art. 11.31. [143] [191] [181] APPLICANT BROUGHT BEFORE JUDGE. The person on whom the writ is served shall bring before the judge the person in his custody, or under his restraint, unless it be made to appear that by reason of sickness he cannot be removed; in which case, another day may be appointed by the judge or court for hearing the cause, and for the production of the person confined; or the application may be heard and decided without the production of the person detained, by the consent of his counsel.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722, eff. Jan. 1, 1966.

Art. 11.36. [148] [196] [186] APPLICANT MAY BE BROUGHT BEFORE COURT. In case of disobedience of the writ of habeas corpus, the person for whose relief it is intended may also be brought before the court or judge having competent authority, by an order for that purpose, issued to any peace officer or other proper person specially named.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722, eff. Jan. 1, 1966.

118. Coker shall attempt to serve, either by hand delivery or by Certified Mail, by and through one or more competent witnesses, a copy of this Petition for the Great Writ of

Habeas Corpus to the Dallas County District Attorney, so that he or some Assistant in his stead can defend the State in this issue.

Art. 11.39. [151] [199] [189] **WHO SHALL REPRESENT THE STATE.** If neither the county nor the district attorney be present, the judge may appoint some qualified practicing attorney to represent the State, who shall be paid the same fee allowed district attorneys for like services.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722, eff. Jan. 1, 1966.

119. Coker moves for Discharge if it is determined that he has been held unlawfully.

Art. 11.40. [152] [200] [190] **PRISONER DISCHARGED.** The judge or court before whom a person is brought by writ of habeas corpus shall examine the writ and the papers attached to it; and if no legal cause be shown for the imprisonment or restraint, or if it appear that the imprisonment or restraint, though at first legal, cannot for any cause be lawfully prolonged, the applicant shall be discharged.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722, eff. Jan. 1, 1966.

Art. 11.44. [156] [204] [194] **ACTION OF COURT UPON EXAMINATION.** The judge or court, after having examined the return and all documents attached, and heard the testimony offered on both sides, shall, according to the facts and circumstances of the case, proceed either to remand the party into custody, admit him to bail or discharge him; provided, that no DEFENDANT shall be discharged after indictment without bail.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722, eff. Jan. 1, 1966.

PRAYER

120. Coker prays for the Writ of Habeas Corpus, and that it be issued **immediately**.

ARREST

121. Coker moves for the arrest of the Municipal Judge who ordered the Jailing of Coker, or any other Detainer if the Respondent fails to either release Coker, or fails to respond to the Habeas Corpus, or if this Honorable Court determines that the Municipal

Court Judge(s) or other Detainer(s) have acted outside the confines of ANY law.

Art. 11.17. [129] [177] [167] JUDGE MAY ISSUE WARRANT OF ARREST.

Whenever it appears by satisfactory evidence to any judge authorized to issue such writ that any one is held in illegal confinement or custody, and there is good reason to believe that he will be carried out of the State, or suffer some irreparable injury before he can obtain relief in the usual course of law, or whenever the writ of habeas corpus has been issued and disregarded, the said judge may issue a warrant to any peace officer, or to any person specially named by said judge, directing him to take and bring such person before such judge, to be dealt with according to law.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722, eff. Jan. 1, 1966.

Art. 11.18. [130] [178] [168] MAY ARREST DETAINER. Where it appears by the proof offered, under circumstances mentioned in the preceding Article, that the person charged with having illegal custody of the prisoner is, by such act, guilty of an offense against the law, the judge may, in the warrant, order that he be arrested and brought before him; and upon examination, he may be committed, discharged, or held to bail, as the law and the nature of the case may require.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722, eff. Jan. 1, 1966.

Art. 11.34. [146] [194] [184] DISOBEYING WRIT. When service has been made upon a person charged with the illegal custody of another, if he refuses to obey the writ and make the return required by law, or, if he refuses to receive the writ, or conceals himself, the court or judge issuing the writ shall issue a warrant directed to any officer or other suitable person willing to execute the same, commanding him to arrest the person charged with the illegal custody or detention of another, and bring him before such court or judge. When such person has been arrested and brought before the court or judge, if he still refuses to return the writ, or does not produce the person in his custody, he shall be committed to jail and remain there until he is willing to obey the writ of habeas corpus, and until he pays all the costs of the proceeding.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722, eff. Jan. 1, 1966.

Art. 11.35. [147] [195] [185] FURTHER PENALTY FOR DISOBEYING WRIT. Any person disobeying the writ of habeas corpus shall also be liable to a civil action at the suit of the party detained, and shall pay in such suit fifty dollars for each day of illegal detention and restraint, after service of the writ. It shall be deemed that a person has disobeyed the writ who detains a prisoner a longer time than three days after service thereof, unless where further time is allowed in the

writ for making the return thereto.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722, eff. Jan. 1, 1966.

Art. 11.47. [159] [207] [197] **MAY SUMMON MAGISTRATE.** To ascertain the grounds on which an informal or void warrant has been issued, the judge or court may cause to be summoned the magistrate who issued the warrant, and may, by an order, require him to bring with him all the papers and proceedings touching the matter. The attendance of such magistrate and the production of such papers may be enforced by warrant of arrest.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722, eff. Jan. 1, 1966.

Art. 11.61. [173] [221] [211] **REFUSAL TO OBEY WRIT.** Any one having another in his custody, or under his power, control or restraint who refuses to obey a writ of habeas corpus, or who evades the service of the same, or places the person illegally detained under the control of another, removes him, or in any other manner attempts to evade the operation of the writ, shall be dealt with as provided in Article 11.34 of this Code.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722, eff. Jan. 1, 1966.

Art. 11.62. [174] [222] [212] **REFUSAL TO GIVE COPY OF PROCESS.** Any jailer, sheriff or other officer who has a prisoner in his custody and refuses, upon demand, to furnish a copy of the process under which he holds the person, is guilty of an offense, and shall be dealt with as provided in Article 11.34 of this Code for refusal to return the writ therein required.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722, eff. Jan. 1, 1966.

122. Coker moves for this Court to ORDER the Officer charged with the Execution of the Warrant to Bring the Richardson Municipal Judge to this United States District Court, and have him bring all papers and documents touching this issue.

Art. 11.19. [131] [179] [169] **PROCEEDINGS UNDER THE WARRANT.** The officer charged with the execution of the warrant shall bring the persons therein mentioned before the judge or court issuing the same, who shall inquire into the cause of the imprisonment or restraint, and make an order thereon, as in cases of habeas corpus, either remanding into custody, discharging or admitting to bail the party so imprisoned or restrained.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722, eff. Jan. 1, 1966.

123. Coker declares that this Petition for Habeas Corpus is to show that there is no lawful right in the person exercising powers and/or that the powers exercised was and is in a manner or degree not sanctioned by law.

Art. 11.23. SCOPE OF WRIT. The writ of habeas corpus is intended to be applicable to all such cases of confinement and restraint, where there is no lawful right in the person exercising the power, or where, though the power in fact exists, it is exercised in a manner or degree not sanctioned by law.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722, eff. Jan. 1, 1966.


124. Coker will seek to have all parties served with this Petition for Habeas Corpus by and through any competent witness.

Art. 11.26. [138] [186] [176] WHO MAY SERVE WRIT. The service of the writ may be made by any person competent to testify.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722, eff. Jan. 1, 1966.

AFFIRMATION

125. Coker affirms all of the contents of this Petition is true and complete, to the best of his knowledge, belief and understanding, under 28 USC 1746(1).

 for Mark Allen; Family of Coker
Brady Byrum, for Mark Allen; Family of Coker

SERVICE AND RETURN

Art. 11.28. [140] [188] [178] **RETURN UNDER OATH.** The return of a writ of habeas corpus, under the provisions of the preceding Article, if made by any person other than an officer, shall be under oath.

Acts 1965, 59th Leg., vol. 2, p. 317, ch. 722, eff. Jan. 1, 1966.

OATH

I, _____, affirm that I faithfully served the City of Richardson Municipal Court and/or the Richardson City Police Department and Jail with at least two copies of this above Petition for Habeas Corpus, on this the _____ day of November, 2010, by either hand delivery by a competent witness, or by Certified Mail.

x _____

Cause No. _____

In re: Mark Allen, Family of Coker	§	United States District Court
Relator, Applicant, Petitioner	§	
For Writ of Habeas Corpus	§	Northern District of Texas
	§	
	§	Dallas, Texas
	§	
	§	Judge _____

ORDER GRANTING PETITIONER'S HABEAS CORPUS

On This Day came to be considered Coker's Petition for Habeas Corpus, in the above-styled and numbered cause of action. The Court having considered all of the facts, law, caselaw, evidence and arguments supported by Sworn Affidavit: it is of the Opinion of the Court that to preserve Due Process, it Hereby Finds that Good Cause Exists to grant such Petition.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED, that Coker's Petition for Habeas Corpus shall be and is hereby Granted in all things under the Federal Habeas Rules and that either

(1) Coker be discharged entirely and permanently on all issues,

OR

(2) both Coker and the Richardson Municipal Judge are to appear before this Honorable Court INSTANTLY, and the Municipal Judge is to produce and bring with him all papers touching this issue, prepared to testify under oath how and why his jailing of Applicant Coker is not outside the confines of law.

IT IS SO ORDERED.

SIGNED THIS _____ DAY OF November, 2010.

BY: _____
PRESIDING JUDGE

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Mark Allen: Family of Coker

(b) County of Residence of First Listed Plaintiff unknown
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number) in fact: 972-682-4729
Brady Byrum 2802 Cary Dr. Mesquite TX 75150

DEFENDANTS

City of Richardson Texas

County of Residence of First Listed Defendant Dallas County
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

3-10CV2210-N

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|----------------------------|----------------------------|---|----------------------------|---------------------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input checked="" type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party <input type="checkbox"/> 26 USC 7609 BY NOV - 3 2010	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS		
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input checked="" type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Brief description of cause:

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☐ No

VIII. RELATED CASE(S) (See instructions)

PENDING OR CLOSED:

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD *in fact.*

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____