

IN THE
SUPREME COURT
OF THE
STATE OF COLORADO.

IN RE MARY JONES.

APPLICATION FOR ORIGINAL WRIT OF
HABEAS CORPUS.

HORACE N. HAWKINS,
Attorney for Petitioner.

Smith-Brooks Press, Denver

Mary Harris Jones Papers
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Comes the above-named Mary Jones and, petitioning the Supreme Court of the State of Colorado for a writ of habeas corpus, alleges and states:

First—That petitioner is a citizen of the United States, is eighty-two years of age, and has resided in the United States for seventy-eight years.

Second—That heretofore, to-wit, on the 26th day of October, 1913, Elias M. Ammons, as Governor of the State of Colorado, issued an order to John Chase, as Brigadier General and Adjutant General of the National Guard of the State of Colorado (who has

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ever since occupied and now occupies said position), directing the said Chase to order out and assume command of the National Guard of Colorado, and to proceed with said National Guard to the County of Las Animas, to restore peace and good order and to suppress lawlessness in said county.

Third—That upon the issuance of said order the said Chase went to the said County of Las Animas with several hundred of the members of the State National Guard, and he has ever since been, and now is, in the said county with the said militia.

Fourth—That at the time the said Chase with said militia arrived in the said county of Las Animas, the District Court of the Third Judicial District was in session at Trinidad, in said county, the same being the September term of said District Court. That the said court continued in session until the January term of said court convened, to-wit, on January 12, 1914; and said court has since been in session and engaged in the trial of criminal and civil cases, and the said term of court is now open. That the district attorney of said judicial district has been at all times in attendance upon said court, and engaged in performing his official duties. That the County Court, the municipal courts, and the justice of the peace courts in said county have also been, at all times herein mentioned, and now are, engaged in the performance of their duties, and that none of said courts have been obstructed in the performance of its duties at any time since the said 26th day of October, save and except as obstructed by the said John Chase, as hereinafter mentioned. That the process and judgments of said courts are now, and have been at all times

herein mentioned, respected and obeyed throughout said county, save and except as they have been set at naught by the said Chase, as hereinafter related. That upon the 23rd day of December, 1913, the said District Court impaneled a grand jury at Trinidad, and said grand jury has ever since been in session, except for occasional recesses taken by it. That said grand jury has at no time been obstructed in the performance of its duties. That a number of indictments have been returned by said grand jury, and these indictments have been taken up on applications for bail, and the court has granted or refused bail, as to the court seemed proper. That the said district attorney has filed in said District Court from time to time, ever since said 26th day of October, 1913, informations charging criminal offenses, and said court has in such cases heard applications for bail, and denied or granted the same, as to the court seemed proper. That the sheriff of said county has been, at all times since said 26th day of October, 1913, in attendance on the courts of said county, and engaged in service of process, both civil and criminal, and he is in no way obstructed in the performance of his duty, save and except by the said Chase, as hereinafter related. That there are in said county numbers of deputy sheriffs, constables, and policemen, and said peace officers are in no way obstructed in performing their duties, save and except by the said Chase, as is hereinafter related. That there is not now, nor has there been at any time, any insurrection, or rebellion, or invasion of any kind in said county, and none has ever been either proclaimed or declared to exist at any time by the Governor of the State of Colorado, nor

has the said Governor in any way proclaimed or declared that "martial law" exists in said county, or that the will of the military is supreme, or that the courts have been in any way suspended or their functions suspended; nor has said Governor in any way proclaimed or declared that the courts are unable to perform their functions. And petitioner further states that the legislature of the State of Colorado has never in any way suspended, or attempted to suspend, the writ of habeas corpus or the privilege of such writ.

Fifth—That, upon the arrival of said Chase with said National Guard in Trinidad, he at once claimed and pretended, and has ever since claimed and is now claiming and pretending, that he, as the commander of said troops, was and is superior to all the civil authorities and courts of said county, notwithstanding the constitution of the State of Colorado provides and requires that the militia shall always be in strict subordination to the civil authorities. That, in violation of the Constitution of the State of Colorado and the Constitution of the United States, the said Chase, immediately upon his arrival with said troops in Las Animas County, set up, and has ever since maintained, and is now maintaining, in said county a military dictatorship and despotism, and he openly announces that he, as military commander, as aforesaid, is superior to all civil authority, and is supreme in power, and has the power even to take human life, should he desire to do so. That, pursuant to his said theory that a military dictatorship exists in said county, and that he is the military dictator, he, as commanding officer, as aforesaid, upon his arrival in Trinidad,

delivered to the district attorney of said judicial district a notice in writing, which is in words and figures as follows, to-wit:

"HEADQUARTERS,
MILITARY DISTRICT OF COLORADO.
Trinidad, Colorado.

From Commanding General, Military District of Colorado.

To J. J. Hendrick, District Attorney,
Third Judicial District of the State of Colorado.

Subject: Military Prisoners.

1. You are hereby notified that all persons arrested, incarcerated and held as military prisoners, in the counties of Las Animas and Huerfano, State of Colorado, are to be held subject to the order of the Commanding General, Military District of Colorado, in regard to their confinement, trial and final disposition of their cases, which notice you are respectfully requested to observe until further notice from the commanding general, Military District of Colorado.

(Signed) JOHN CHASE,
Brigadier General Adjutant Generals Dept."

That said Chase also gave to the other civil authorities in said county a similar notice. That he openly proclaims that the people of Las Animas County occupy the position and status of the people of the

southern states of the Union during the time of the rebellion of 1861, and that Las Animas County has the same status as a country which is being conquered or subjugated by an invading army, and that the will of the "military commander" in Las Animas County is the supreme and only law. That, acting on said theory, the said Chase has pursued and is pursuing a course of military despotism unparalleled in the history of the country. That he has seized and is seizing and detaining people at his pleasure, without warrant or writ, and is confining them for unreasonable periods of time in prison, regardless of, and in defiance of, the law of the land. That it is the custom of the military authorities, when people are arrested, to hold them *incommunicado*, and said Chase has denied and is denying to prisoners the right of counsel. That, in violation of law, and in violation of the dictates of common humanity, torture and threats have been indulged in by the military authorities, in order to make their prisoners confess to alleged crimes, and to make them implicate others in crime. That, in one instance, a prisoner—to-wit, Andrew Colnar—was set digging a grave, with the statement that he would be shot at daylight, and would have to dig his own grave, and said prisoner was kept at said work until he, in terror, fell unconscious. That other prisoners have been kept awake for numbers of nights in succession by being prodded with bayonets, and by having water thrown over them, and half-starved, in order to make them confess to alleged crimes. That helpless prisoners confined in jail, subject alone to the will of the military authorities, have had revolvers drawn upon them, and have

been vilely threatened to be killed unless they confessed to crimes. That said Chase has recruited within the ranks of his militia a number of desperate characters, and they, while occupying the position of militiamen, have committed crimes in Las Animas County. That, when an arrest is made by the civil authorities of such militiamen, said Chase has, by threats and by use of force, compelled the release of said militiamen, and has threatened the civil authorities who sought to punish crime. That he claims and exercises the right in said county, by virtue of his military position, to suppress free speech, and to arrest people who dare to criticise the lawless conduct of a militiaman. That a few days since, he allowed one of his subordinates, speaking for him, and in his presence, to say, unrebuked, in public: "It is a matter of supreme indifference to General Chase whether men arrested and held by him are guilty or innocent of crime." That he and his subordinates have, with sabres and guns, struck, cut, and beaten unoffending women in the streets of Trinidad, and trampled upon them with his cavalry. That, to carry out his idea of a military dictatorship, he heads orders given by him, as hereinbefore shown, "Military District of Colorado," and signs himself as "Commanding General of the Military District of Colorado." That, claiming that his jurisdiction extends throughout the State of Colorado, he has sent details of soldiers into places remote from Trinidad, and has arrested and transported to Trinidad people from outside of Las Animas County, and has then confined them in loathsome cells, and there held them at his will and pleasure, without allowing them to communicate with their

friends or counsel. That on the 21st day of November, 1913, he, by an official proclamation which he caused to be published in all of the newspapers, established an alleged court, which he declared was for the trial of civilians in said county, and which alleged court he proclaimed was to be governed by the same rules as are used in court-martial trials. That so oppressive has become the conduct of said military dictator in said county that there is a grave necessity that something be done by this court which will secure to the citizens their constitutional rights, and compel the military to stay within lawful and legal bounds. That the said Chase is the same John Chase who some years since invaded the court-room of the District Court of Teller County, with a file of armed soldiers, and who, in the presence of the court, seized and removed from the court-room, in violation of the order of the court, a prisoner who had been by the court ordered, upon a writ of habeas corpus, to be set at liberty.

Sixth—That on the 4th day of January, 1914, this petitioner, who is an aged woman—to-wit, of the age of eighty-two years—went to Trinidad, in said county, on a lawful and peaceful mission, and, while there, was unarmed, and was guilty of no crime, wrongdoing, or illegality of any kind. Yet the said Chase, in pursuance of his said claim of military right, wantonly and wilfully caused a body of his soldiers to seize and imprison her, and, after detaining her as a prisoner for some time, he caused said soldiers to deport her from said county. That, although the courts of Las Animas County were, at the time, open and transacting business, and able and willing to

commit to jail and punish anyone guilty of wrongdoing, the said Chase, knowing that this petitioner was guiltless of wrong, refused to carry her before any court, but forcibly sent her out of the county. That on the 12th day of January, 1914, petitioner again went to the city of Trinidad on a peaceable and lawful mission, and, upon arriving at said city, she was at once seized by a file of soldiers, acting under orders of said Chase, and she has ever since been detained, and is now forcibly detained, in Trinidad, and illegally and unlawfully deprived of her liberty, and kept in close and solitary confinement by said Chase. That at the time of her arrest the said District Court was in session at Trinidad, and on her way to prison she was carried by the doors of said court-house, where the judge of said court was at the time engaged in calling the criminal docket and in setting criminal cases for trial. That said Chase refused at the said time of petitioner's arrest, and has ever since refused, and now refuses, to take petitioner before any court, or to make any charge of any kind against her. That she was and is guiltless of any crime or wrongdoing or illegal conduct of any kind. That she stands ready and willing to meet in any court any charge that can be brought against her, and is anxious for an opportunity to do so. That she was arrested without any warrant of any kind ever having been issued against her, and no warrant of any kind has been since issued for her arrest. That no complaint of any kind has been lodged or filed against her anywhere. That no commitment, or judicial writ, or process, or other writ, or process of any kind, has been issued against her, and she has not been committed or

detained for any criminal, or supposed criminal, matter. That she is held solely and simply by the said Chase, and is held on the theory that he, as commander of the troops in said Las Animas County, has the right to deprive any person of his or her life or liberty, as he chooses, and she is held and deprived of her liberty solely on what the said Chase terms "military authority." That the said Chase, in making said arrest, and in detaining and imprisoning petitioner, is, and was, acting wantonly and without probable cause, and without any cause whatever. That said Chase does not believe, and does not even claim to believe, that petitioner is guilty of any crime or any illegal conduct, but he is detaining her simply because he claims the "military" right to deprive anyone of his or her liberty, regardless of the question of guilt or innocence. That no investigation of any kind or character is being made by the said Chase, or anyone, as to this petitioner, and no investigation is even being pretended being made as to her. That the said Chase simply announces, and he does so announce, that he intends to hold petitioner until he chooses to release her. That she is denied, in her prison, communication with the outside world, save and except that her attorney has been permitted to see her upon a few occasions. That she has been rendered ill, and is now ill, as a result of her illegal confinement. That letters passing through the United States mail, and addressed to petitioner, are illegally and unlawfully intercepted, opened, read, and retained by said Chase. That peaceable assemblages of women and children, formed to express sympathy for her, have been charged upon by said Chase and his horsemen, and have been ridden

down by said Chase and his soldiers with drawn sabres, and severe wounds inflicted upon those who thus tried to express their sympathy with petitioner.

Seventh—That it is impossible for petitioner to secure her release from the illegal detention hereinbefore mentioned, save and except through this court taking original jurisdiction and issuing a writ of habeas corpus. That no relief whatever can be secured by an application for a writ of habeas corpus to the courts of Las Animas County. That a few days since, in the District Court of Las Animas County, one James Davis, one Robert McGuire, one Antonio Lamont, and one Albert Hill, four prisoners, who have for a long period of time been detained and held prisoners by the said Chase, applied for writs of habeas corpus. That said writs were issued by the court, and the said Chase brought said prisoners into court, with numbers of soldiers who openly displayed their swords, revolvers, guns, and bayonets, it being intended thereby to overawe the court, and the people who attended upon the sessions of said court, and the court officers. That said Chase made return to said writs that he held said four prisoners as a "military necessity," and that he had the right to do so, and that, when the alleged "military necessity" had passed, he would turn said prisoners over to the civil authorities. That the sufficiency of said return to said writs was challenged by the petitioners who had applied for said writs of habeas corpus, and said parties in their reply to said return offered to prove that they were, and at all times had been, innocent of any wrongdoing, or lawlessness, or illegal conduct of any kind, and offered to prove that said Chase had no reasonable

cause, or any cause of any kind, to believe that they were guilty of any wrong-doing, and that he did not so believe, but that he was holding them wilfully, wantonly, and wickedly. And they there offered to prove that the said courts of Las Animas County had been at all times open, and able, ready, and willing to perform their legal duties. That the said Chase objected before said court to the said petitioners being permitted to introduce any evidence of any kind, and he, through his representative who appeared for him—to-wit, a subordinate officer of said Chase—made the announcement in open court, hereinbefore quoted, that it was a matter of supreme indifference to General Chase whether the prisoners were guilty or innocent, and that the said Chase's power and right extended even to the taking of human life, if he so desired. That the said District Court, Hon. A. W. McHendrie presiding, sustained the objections of the said John Chase, and refused to permit said petitioners to introduce any evidence of any kind on any subject. Said petitioners were thus prevented from showing their innocence, and prevented from showing that they were being wilfully and wantonly held by the said Chase. That the said judge of the District Court, upon the said return made by the said Chase, refused to order any of said petitioners set at liberty, but dismissed their writ of habeas corpus. That the said petitioners pleaded in vain to said judge to hear any charges that might be made against them, and to commit them to prison or discharge them, as the evidence might warrant. The said petitioners are now held *incommunicado* by said Chase, and deprived of their liberty, and robbed of their constitutional rights,

and denied access to their counsel, although they are, as petitioner verily believes, and as they offered to prove, guiltless of any wrong-doing whatsoever. That the District Court of Las Animas County announces that its ruling will be the same in other cases, should writs of habeas corpus be applied for, and should the same return be made by the said Chase, and that it would be a useless and vain thing for this petitioner to appeal to said court for a writ of habeas corpus. Such an application, if made by her, would only result in great and unnecessary expense, and in great and unnecessary delay in petitioner being set at liberty. That the said Chase announces that, if petitioner should make an application for writ of habeas corpus, he would make the same return in her case as made in the other cases just mentioned; and no relief whatever can be obtained by this petitioner save and except through this court taking original jurisdiction and issuing its writ of habeas corpus, commanding the production of petitioner before this court.

Eighth—That the said Chase openly announces that he has a right to pursue the course he is following, as hereinbefore stated, by virtue of the majority opinion handed down by the Supreme Court of Colorado in 1905, in the case of "In re Moyer," which is reported in 35 Colo., at page 159, and that the said judge of the District Court of Las Animas County, in refusing to order the release of the said Davis and others, as hereinbefore mentioned, based his decision upon the same majority opinion. That petitioner alleges that, as she is advised and informed by her attorney, and as she verily believes, the said majority opinion in the case of "In re Moyer" was not a cor-

rect, but was an incorrect decision, and one which violated the law, and set at naught the constitutional rights of the citizens. She further alleges that, as she is informed by her counsel, and verily believes, the dissenting opinion of Mr. Justice Steele, in said case, which is found in 35 Colo., at page 170, correctly states the law, and should now be declared to be the law of the land. She calls attention to the fact that, on page 172 of said 35th Colo. report, Mr. Justice Steele declares with reference to said majority opinion as follows:

"It establishes a precedent that is so repugnant to my notions of civil liberty, so antagonistic to my ideas of a republican form of government, and so shocking to my sense of propriety and justice, that I cannot properly characterize it."

Mr. Justice Steele further remarks, in said opinion, that the Constitution had been unnecessarily assailed and rudely violated by said majority opinion, and that "this court has removed the landmarks which our fathers have set." He further states (p. 207), with reference to said majority opinion:

"The court has not construed the constitution, it has ignored it; and the result is that it has made greater inroads on the constitution than it intended, and that not one of the guarantees of personal liberty can now be enforced."

He further declares (p. 209) that the said majority opinion simply annuls the bill of rights. Again, at page 214, Mr. Justice Steele says:

"I can find no middle ground to stand upon; and I most certainly cannot assent to the novel doctrine announced by this court. If one may be restrained of his liberty without charge being preferred against him, every other guarantee of the constitution may be denied him. * * * The constitutional privileges are not, in the nature of things, separable. It was intended by our fathers that all should be inviolable except one, and that to be suspended by the legislature only in case of great emergency. Martial law exists or it does not exist. When it exists, there is no civil law. Martial law and civil law cannot exist together. If the civil law can enforce one guarantee, it can enforce all. If the civil law is overthrown, it is powerless to enforce any right. When martial law does not prevail, unless the privilege of the writ of habeas corpus is suspended, every right guaranteed by the constitution is enforceable; and the constitution is violated, rudely violated, when one is deprived of liberty without due process of law.

Habeas corpus is the proper remedy to release from arbitrary arrest and, unless its privileges have been suspended, one is not subject to arrest on suspicion merely, and detention beyond the time fixed by statute for return to the writ. As the privilege of

the writ has not been suspended, as the courts are open, as martial law does not prevail, and as no charge has been preferred against the petitioner, he should be discharged.

The greatness of this country consists in being able to protect, by the shield of its constitution, the humble and the exalted, the pure and the wicked. We gave the wretches Guiteau, Prendergast and Czolgosz trials by due form of law, and by so doing we strengthened the nation at home and abroad. Had we departed from the principles declared by our fathers, we should have lessened the liberty of every citizen and imperiled the title to all property.

When we deny to one, however wicked, a right plainly guaranteed by the constitution, we take that same right from everyone. When we say to Moyer, 'You must stay in prison because if we discharge you, you may commit a crime,' we say that to every other citizen. When we say to one governor, 'You have unlimited and arbitrary power,' we clothe future governors with that same power. We cannot change the constitution to meet conditions. We cannot deny liberty to-day, and grant it to-morrow; we cannot grant it to those theretofore above suspicion, and deny it to those suspected of crime: for the constitution is for all men—for the favorite at Court; for the countryman at

plow'—at all times, and under all circumstances.

We cannot sow the dragon's teeth, and harvest peace and repose; we cannot sow the wind, and gather the restful calm.

Our fathers came here as exiles from a tyrant king. Their birthright of liberty was denied them by a horde of petty tyrants that infested the land—sent by the king to loot, to plunder and to oppress. Arbitrary arrests were made; and judges, aspiring to the smile of the prince, refused by 'pitiful evasions' the writ of habeas corpus. Our people were banished; they were denied trial by jury; they were deported for trial for pretended offenses; and they finally resolved to suffer wrong no more, and pledged their lives, their property and their sacred honor to secure the blessings of liberty for themselves and for us, their children. But if the law is as this court has declared, then our vaunted priceless heritage is a sham, and our fathers stood 'between their loved homes and the war's desolation' in vain."

Petitioner states that, as she is informed and believes, there is an imperative necessity, in order that the constitutional rights of citizens be protected, that this court assume jurisdiction and overrule the majority opinion in said Moyer decision. That said majority opinion stands as a precedent for unlawful, tyrannical, and violent conduct on the part of the military officials. That it exalts the military author-

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ity above the civil authority, in violation of the provision of the Constitution which declares that the contrary shall be the rule, and no relief can be obtained from arbitrary and tyrannical military oppression in Colorado until said decision is overruled.

Wherefore, your petitioner prays that this court issue a writ of habeas corpus, directed to the said John Chase, as Brigadier General and Adjutant General of the Colorado National Guard, ordering and directing that the said Chase bring before this court, at some speedy date, your petitioner, and that he be ordered to set her at liberty, and that she be granted such other and further relief as to the court shall seem meet and proper, including costs of this cause, and that the court overrule the opinion handed down in the Moyer case by Mr. Justice Gabbert, and that the dissenting opinion in said cause of the late Chief Justice Robert W. Steele be declared to be the law of the land.

HORACE N. HAWKINS,
Attorney for Petitioner.

State of Colorado, Las Animas County, ss.

Mary Jones, first being duly sworn, upon oath deposes that she is the petitioner above named; that she has read the foregoing petition, and knows the contents thereof, and that the statements therein made are true of her own knowledge, except those which are therein alleged to be made upon information and belief, and, as to those, that she believes them to be true.

MARY JONES.

Subscribed and sworn to before me this 11th day of February, A. D. 1914.

My commission expires September 10, 1917.

[Notary's
Seal.]

LEON V. GRISWOLD,
Notary Public.

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