

State of Arkansas

To the Honorable Benjamin Johnson Judge of
the district Court of the United States, for the district of
Arkansas.

Your Petitioner Jacob West a native of
the state of Virginia & of the United States of America, a white
man & Citizen of the United States, who resided for several
years of his life in the State of Georgia, having always been
amenable to the laws of the U.S. and to no other power, respectfully
represents that he is now unlawfully imprisoned by John

Brown, one of the Sheriffs of the Cherokee Nation under
a charge of conspiracy and having been accessory to the murder of
Isaac Bushyhead, a Cherokee Indian who was killed in said
Nation on the tenth day of August A. D. 1843; Your Petitioner is
held in the custody of said Brown at the Grand Saline, a place
in the Cherokee Nation, on a charge of murder - but as he believes
without any warrant of commitment or other process whatever
& without ^{any} prima facie evidence of his guilt whatever. Neverthe-
= less, the said Brown pretending to act under the Cherokee authori-
= ties, has confined your petitioner in chains, & daily threatens
him with trial & death under the Cherokee Laws.

Your petitioner represents to your honor that such
imprisonment is unlawful & illegal, in this, to wit: That said
offence is alleged to have been committed by your petitioner
a white man & Citizen of the United States, who has no
Cherokee wife, nor is he otherwise a lawful citizen of the Cherokee

Nation, in any wise subject to their laws or jurisdiction.

But that if he is guilty of the crime with which he is charged, he is amenable to the laws of the U.S. by virtue of an act of Congress approved June 30th 1834 entitled "an act to regulate trade and intercourse with the Indian tribes, and to preserve peace on the Frontiers" By virtue of which law and by the act of 1st March 1837 entitled "An act to extend the jurisdiction of the District Court of the United States for the District of Arkansas" exclusive jurisdiction of offences by whites upon Indians and of Indians upon whites, is given to the District Court of the United States; To which jurisdiction of the Courts of the United States your petitioner is ready to submit, and now offers to submit, praying that by it an impartial trial may be had.

Your petitioner further shews that the Cherokees are by treaty with the United States of 29th December 1835 expressly bound by these laws; because it is expressly provided in the 5th article of that treaty "That their laws shall not be inconsistent with the Constitution of the United States, and such acts of Congress as have been or may be passed regulating trade and intercourse with the Indians; And also that they shall not be considered as extending to such citizen & army of the United States as may travel or reside in the Indian Country, by permission according to the laws and regulations of the Government of the same."

Nevertheless your petitioner respectfully represents that the Cherokee authorities unlawfully claim jurisdiction of said alleged offence, and will wish your Honor

promptly interpose, proceed to his trial therefor in their Courts.

Your Petitioner therefore humbly prays your Honor to grant for him a writ of Habeas Corpus to be directed to the District Marshal ~~of~~ for the District of Arkansas, commanding him to take your petitioner into custody, and commanding the said John Brown to bring your petitioner together with the cause of his capture and detention, before your honor, in order that he may be examined and your petitioner farther dealt with as the law directs.

(Signed) Jacob West

1840, Geo W. Paschal

Att^y for petitioner

State of Arkansas.

Before me Benjamin Johnson, Judge of the United States District Court for the District of Arkansas personally appeared Bluford West, and being duly sworn, on oath says that the facts set forth in the foregoing petition are true to the best of his knowledge & belief

Sworn to and subscribed this day of September
A. D. 1840.

0070

(Copy of the Writ prayed)
State of Arkansas.

The United States of America to
John Brown of the Cherokee Nation, and to the district
Marshal of the United States for the district of Arkansas,
Greeting:

Whereas, Jacob West has exhibited to the under-
signed District Judge of the United States for the District
of Arkansas, his petition, wherein he sets forth that he is a
white man, a citizen of the United States, a native of Virginia,
subject only to the laws of the United States, and that he is now
held by John Brown one of the Cherokee Sheriffs, on the
alleged crime of having been accessory to the murder of Isaac
Bushyhead a Cherokee Indian, a prisoner at the Grand
Saline in the Cherokee Nation, threatened with a prosecution
under and by virtue of the Cherokee laws, and the petitioner
claiming the right to be tried by the laws of the United States
within the District of Arkansas, according to the laws and treaties
of the United States, and the petitioner having prayed a writ of
Habeas Corpus in order that the premises may be examined
and him farther dealt with as the law directs.

These are therefore to command you the said
John Brown to bring forthwith before me (at the City of
Little Rock in the State of Arkansas) Judge of the District
Court as aforesaid, the said Jacob West ^{together} with the cause of his
caption and detention, and you the District Marshal of the

United States for said District or any of his lawful
deputies are hereby commanded to take charge of said
Jacob West and him securely keep and bring before me,
in order that he may be farther dealt with as the law
directs. This neither of you will omit under the penalties
of fine and imprisonment, and have ~~with~~ you with said
West, this writ, together with your actings & doings &c
Given under my hand at Little Rock this
day of September A. D. 1843.

Jacob West Ex parte

Argument of Gen. W. Paschal

I beg leave to call attention to the following points;

1 The District Judge in vacation has power to grant the writ by virtue of the 14th section of the Judiciary act, approved Sept 24th 1789. See Story's Laws 1789 Chapter 20. Sec: 14

This writ may be issued in all cases where it may be necessary to carry out the jurisdiction of the United States Court, and is given -
- given "according to the usages & principles of law."

That the U. S. district Court has jurisdiction there can be no doubt; It is expressly given by the several statutes and treaties quoted in the petition. The petition is verified by affidavit, & shows the petitioner to be a white man, and the offence to have been committed within the Indian Country.

According to the principles and usages of the English Law this writ of Habeas Corpus might run anywhere within the jurisdiction of the Courts of the Kingdom. ^{even from the high seas} See Sec's 11 & 12 of 31st Charles 2nd passed A. D. 1678 and the writ shall not be denied by a judge under a penalty. See ib: sec: 10

The right to grant the writ by a Judge in vacation existed even before the Judiciary act already referred to. The question of the right of a Judge to grant the writ in vacation was settled by the 12 Judges of England in 1757 in answer to the questions propounded to them. See Prince's Digest. (

) appendix p. 921 2nd Edition.

That the Prisoner is confined by the Cherokee authorities can make

no difference. Their power as an independent nation was expressly denied in the case of Cherokee Nation vs Georgia O. Peters Rep. . A dunt this right to try any citizen whom they may find in their country, and we at once subject citizens of the United States travelling in the Indian Country to the greatest dangers.

They have jurisdiction of their own citizens; But the jurisdiction of the United States extends to "offences by whites upon Indians and of Indians upon whites" "or whites upon whites". An offender cannot be subject to two jurisdictions.

As to the right of the Marshal to execute the writ, it is derived from the Judiciary act, which makes his jurisdiction coextensive with the power of the Court.

Your power to detain the prisoner until he is tried in your Court will of course not be questioned.

The application is made with the confident belief that by granting it the most serious consequences will be averted to the Cherokees and conflict with the United States prevented.

Most respectfully submitted
1894, Gen. W. Paschal

Hon. Benj^r Johnson
District Judge U.S.
Little Rock Ark^e

Little Rock Sept^r 25th 1843.

Dr Sir

I have received the application of Jacob West, for a writ of Habeas Corpus and have duly considered the same. From the testimony of his son Bluford West, it appears that Jacob West has for more than thirty years, lived with the Cherokee tribe of Indians, has had an Indian wife, who is now deceased, and that he has resided with said tribe up to the present time. Under these circumstances I am of opinion that he is amenable to the laws of the Cherokee tribe of Indians and subject to their jurisdiction as fully as a native Indian. He has made himself one of them and is to be regarded as an Indian.

This question I have heretofore determined upon solemn argument, and I entertain no doubt of its correctness. I am therefore constrained to overrule the application for the writ.

With great respect

Your Obedt Servt

12921

P. D. Johnson

District Judge

Judge Geo W. Paschal

