

No. (insert Habeas Writ number)

EX PARTE § IN THE ____
§
§ JUDICIAL DISTRICT COURT
§
(insert Applicant's name) § OF (insert name)COUNTY,
TEXAS

PETITION FOR WRIT OF HABEAS CORPUS FOR PERSON
IN NEED OF HOSPITALIZATION BUT LEFT IN JAIL

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Petitioner (*Name of Attorney*), on behalf of _____, Applicant in the above-styled and numbered cause,¹ and by and through his attorney, (*Name of inmate*), moves the Court to grant a writ of habeas corpus ordering the Sheriff of _____ County to transport him to the appropriate state health facility and ordering the facility to receive him for treatment. This petition is brought pursuant to Articles 4.05 and 11.08 of the Texas Code of Criminal Procedure and Section 22.011 of the Texas Government Code, as well as the following constitutional provisions: Article I §§13 and 19 of the Texas Constitution, Article V, §8 of the Texas Constitution, and the Eighth and Fourteenth Amendments to the United States Constitution.

(Insert Applicant's name), a decorated United States Army veteran (*delete if not applicable*), has been found to be incompetent to stand trial, due to his mental disability. To date, none of the law regarding the treatment of incompetent persons has been followed.

¹ This document is a petition for a writ of habeas corpus, filed pursuant to chapter 11 of the Texas Code of Criminal Procedure. Filing fees for the petition are prohibited under Section 11.051 of the Code of Criminal Procedure.

I.

APPLICANT IS UNDER RESTRAINT

_____, is charged with (*insert charge/s*). S/He is illegally restrained in his/her liberty by virtue of his/her confinement in the _____ County Jail despite having been found incompetent to stand trial. His/Her restraint is excessive, oppressive, and detrimental to his/her mental health. This petition for writ of habeas corpus is the appropriate remedy.

II.

APPLICANT'S CONFINEMENT IS ILLEGAL

Pursuant to chapter 46B of the Code of Criminal Procedure, this Court found Applicant incompetent to stand trial on (*insert date and number of days*), as of the date of the filing of this petition. Upon this determination, the Court had two options: release the defendant on bond, or commit him to a mental health facility for a period not to exceed 120 days for examination and treatment with the goal of restoration of competency. Tex. Code Crim. Pro. art. 46B.071 & 46B.073(b). This Court ordered him committed to a (*insert description if needed*) mental health facility.

The commitment process is governed by the Code of Criminal Procedure and the Texas Administrative Code. Under Article 46B.075 of the Code of Criminal Procedure, the Court ordering commitment for restoration is required to “place the defendant in the custody of the sheriff for transportation to the facility ... in which the defendant is to receive treatment

for purposes of competency restoration.” Tex. Code Crim. Pro. art. 46B.075. Once the sheriff transports the defendant to this facility, the state mental health facility “shall admit” the person for treatment. Tex. Admin. Code, tit. 25, part 1, chapter 412, Section 412.177. The facility’s ministerial duty to admit the person delivered for restoration to competency completes the commitment process.

This process is not being followed. The _____ County Sheriff has not transported the person to the appropriate state hospital. No facility has admitted Mr./Ms. _____. Mr./Ms. _____’s ill-treatment is contrary to the rights of a person determined to require hospitalization. These circumstances are offensive to the letter of the law and basic moral decency.

Persons found incompetent to stand trial retain liberty interests in the conditions and circumstances of their confinement, interests protected by the 14th Amendment’s Due Process Clause. *Bell v. Wolfish*, 441 U.S. 520 (1979); *Jackson v. Indiana*, 406 U.S. 715 (1971)(commitment of an incompetent defendant in a state hospital implicates due process protections); *Vitek v. Jones*, 445 U.S. 480, 493-494 (1980)(involuntary transfer of a state prisoner to a mental hospital implicates liberty interests protected by the due process clause); *O’Connor v. Donaldson*, 422 U.S. 563, 580 (1975)(“involuntary commitment to a mental hospital, like involuntary confinement of an individual for any reason, is a deprivation of liberty which the State cannot accomplish without due process of law”); *Oregon Advocacy Ctr. v. Mink*, 322 F.3d 1101, 1120 (9th Cir.2003)(“Pretrial detainees, whether or not they have been declared unfit to proceed, have not been convicted of any crime. Therefore,

constitutional questions regarding the conditions and circumstances of their confinement are properly addressed under the due process clause of the Fourteenth Amendment.”).

In determining whether a substantive right protected by the Due Process Clause has been violated, courts are required to consider the constitutionality of the detention in light of its purpose, and to ask whether the detention is based on “permissible” regulatory goals of the government, and if it is, whether the detention is excessive in relation to those goals. *United States v. Salerno*, 481 U.S. 739, 747 (1987); *Bell*, 441 U.S. at 539 (a pretrial detainee’s due process rights are violated when the restrictions on their liberty are not reasonably related to legitimate government objectives). The seminal, unanimous Supreme Court case on the rights of persons found unfit to proceed made clear that “[a]t the least, due process requires that the nature and duration of commitment bear some reasonable relation to the purpose for which the individual is committed.” *Jackson*, 406 U.S. at 738. Moreover, “holding incapacitated criminal defendants in jail for weeks or months violates their due process rights because the nature and duration of their incarceration bear no reasonable relation to the evaluative and restorative purposes for which courts commit those individuals.” *Mink*, 322 F.3d at 1122. Mr./Mrs. _____’s due process rights are in continuous violation under the circumstances of this case.

The penological purpose for keeping Mr./Ms. _____ in jail expired at the time s/he was found incompetent to stand trial. Under Texas law, Mr./Ms. _____ is supposed to be in a hospital for “examination and treatment toward the specific objective of attaining

competency to stand trial.” Tex. Code of Crim. Pro. art. 46B.073(b). None of the laws governing incompetency has been followed.

The Texas Supreme Court and the Fifth Circuit have both indicated that if the purpose of the commitment is to secure treatment, and treatment is not provided, then the nature of the commitment bears no reasonable relation to its purpose and the state violates that person’s right to due process. *Wyatt v. Aderholt*, 503 F.2d 1305, 1312 (5th Cir.1974); *TXMHMR v. Petty*, 848 S.W.2d 680, 685 (Tex.1992)(the purpose of involuntary commitment is to provide appropriate therapy[;] [w]hen the State negligently fails to pursue the goals, as here, liability may attach”), *reversed on other grounds, University of Texas Med. Branch v. York*, 871 S.W.2d. 175 (Tex. 1994). Any person found incompetent to stand trial cannot not be held in a state hospital for more than reasonable period of time necessary to determine whether there was a substantial probability that he would attain that capacity in the foreseeable future. *Jackson*, 406 U.S. at 738-39. If due process requires that the commitment of an incompetent defendant in a state hospital be only for a reasonable period of time to determine whether they have attained competency, then confinement of an incompetent defendant in a county jail, after it has been determined that competency restoration services are required and are not being provided, necessarily violates due process as well.

THEREFORE, it is respectfully requested that this Court conduct a hearing as soon as practicable, take judicial notice of its prior proceedings and findings of incompetency, and

upon conclusion thereof issue a writ of habeas corpus ordering Applicant's immediate release, or alternatively, ordering Applicant's immediate transfer to a mental health facility or outpatient treatment program that can provide competency restoration treatment, in accordance with law.

PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, Petitioner prays that this Court issue a writ of habeas corpus and order _____ to be released or transported to an appropriate hospital operated by the Texas Department of State Health Services, and any other such relief that law and equity affords.

So moved and prayed that the writ of habeas corpus be issued. Executed this day, *(insert date)*.

NAME OF FILING ATTORNEY
ADDRESS:
PHONE NUMBERS:
FAX NUMBER:
EMAIL ADDRESS:
STATE BAR NO. _____
Petitioner for *(insert Applicant's name)*,

NAME OF SECOND FILING
ATTORNEY
ADDRESS:
PHONE NUMBERS:
FAX NUMBER:
STATE BAR NO.
Attorney for *(insert Applicant's name)*,

CERTIFICATE OF SERVICE: This *Application for Writ of Habeas Corpus for Person Ordered into Hospitalization but Left in Jail* has been electronically delivered to *(insert recipient's name)*, assistant district attorney for the _____ County District Attorney's office on this day, *(insert date)*.

No. _____

EX PARTE

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IN THE _____

JUDICIAL DISTRICT COURT

(INSERT APPLICANT'S NAME)

OF _____ COUNTY, TEXAS

ORDER ISSUING WRIT AND GRANTING RELIEF

On this day, *(insert date)*, came on to be heard the *Petition for Writ of Habeas Corpus for Person Ordered into Hospitalization but Left in Jail* on behalf of Applicant, _____, and the Court having considered the same finds that the Writ should be issued and Applicant entitled to the relief sought. Accordingly, this Court orders that the _____ County Sheriff transport _____, to the appropriate hospital operated by the Texas Department of State Health Services, and that this order and a *second* writ of commitment be immediately faxed to Superintendents James E. Smith, Superintendent of the North Texas State Hospital, Vernon Campus, at (940) 553-2500; and Brenda Slaton, Superintendent of the Rusk State Hospital at (903) 683-7101.

JUDGE PRESIDING

No.

EX PARTE

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IN THE _____

JUDICIAL DISTRICT COURT

(insert Applicant's name)

OF _____ COUNTY, TEXAS

SECOND WRIT OF CRIMINAL COMMITMENT

To the Sheriff of _____ County and the Superintendents of the maximum security hospitals operated by the Texas Department of State Health Services:

On (insert date of incompetency determination), this Court previously determined that _____, is incompetent to stand trial, and ordered him to be transported to the appropriate hospital operated by the Texas Department of State Health Services. He has remained in confined in jail since the original order.

_____ counsel filed a *Petition for Writ of Habeas Corpus*, complaining that he is illegally confined in jail. This petition has been granted. The Court orders the Sheriff of _____ County to transport _____, to the appropriate hospital operated by the Texas Department of State Health Services.

The Court further orders the Superintendent of the North Texas State Hospital or Rusk State Hospital admit _____, upon his arrival to this facility.

The Court orders that this *Second Writ of Criminal Commitment* be immediately faxed to the North Texas State Hospital at (940) 553-2500 and the Rusk State Hospital at (903) 683-7101.

JUDGE PRESIDING

DATE: (insert filing date).