No. 136. E. (525856)

Rec'd 18 3

U. S. Circuit Court

District of Nebraska.

United States et al

Ma-chu-nah-zha, etal.

(Standing Bear)

vs

George Crook, a

Brigadier General U. S. A.

commanding Dept. of the Platte.

Transcript from U. S.

Dist. Court. Dist. of Neb.

FILED

May 13. 1879

Watson B. Smith

Clerk

FRC 525856

R-183

U-10

S-4

N 651

HABEAS CORPUS, DATED APRIL 8, 1879, REQUIRING ME TO TAKE AND HAVE THE BODIES OF MA-CHU-NAH-KHA (STANDING BEAR), TA-KHA-BUT (BUFFALO CHIP), SHAN-GU-E-NE-KHE (YELLOW HORSE), ME-GON-AH-GAE (CRIES FOR WAR), MA-THE-HA-CUH-SHE (LONG RUNNER), WAN-CHU-DUN (CRAZY BEAR), ME-THA-KHIN-GA (LITTLE DUCK), TA-THE-O-DA (BUFFALO TRACK), KA-WIG-I-SHA (TURTLE CREARE), MIN-I-CHUCK (WALK IN THE MUD), TA-DO-MON-E (WALK IN THE WIND), ME-GAH-SIN-DE (COON'S TAIL), E-TUN-KAH (BIG MOUTH), WAH-THI-GA (SWIFT), TA-WAN-GO (BUFFALO COW), MA-SHUD-DA-DE (FEATHER CRAZY), ZE, MON-A (WALKING YELLOW) GO-NIC-AH (GOOD PROVISION) SUSETTE PRIVO, LAURA PRIVO, TA-NIGH-ING-AH (LITTLE BUFFALO WOMAN) KRE-AH-GU-WAH (MIDST OF THE EAGLES), ME-HE-DA-WAH (MIDST OF THE SUN), TA-ZI-ZE (YELLOW SPOTTED BUFFALO) NO-KHA-KHE (GROWN HAIR), AND WA, CANG-WAH, BY ME IMPRISONED AND DETAINED AS IT IS SAID, TOGETHER WITH THE TIME AND CAUSE OF SUCH IMPRISONMENT AND SUCH DETENTION WITHIN TEN DAYS AFTER THE SERVICE THEREOF, AND TO DO AND RECEIVE WHAT SHALL THEN AND THERE BE CONSIDERED CONCERNING THE SAID PERSONS AND TO HAVE THEN AND THERE SAID WRIT; I HAVE THE HONOR RESPECTFULLY TO STATE AND RETURN IN OBEDIENCE TO, AND WITH THE SAID WRIT THAT THE BODIES OF THE AFORESAID PERSONS ARE AS REQUIRED PRODUCED.

THAT THE TIME OF THEIR DETENTION AT FORT OMAHA NEB., IS FROM THE 27TH. MARCH, 1879, AS APPEARS BY THE REPORT OF THE COMMANDING OFFICER, AT THAT POST; COPY OF WHICH AND OF THE SPECIAL ORDERS THEREFORE IS HERETO ATTACHED AND MADE PART OF THIS RETURN WITH LIKE EFFECT AS THOUGH FULLY SET FORTH THEREIN; THAT I AM THE BRIGADIER GENERAL U.S.A. COMMANDING THE MILITARY DEPARTMENT OF THE PLATTE, AND ALL OFFICERS AND SOLDIERS STATIONED THEREIN, AND AS SUCH COMMANDING OFFICER, SUBJECT TO THE ORDERS OF MY MILITARY SUPERIORS; THAT THE CAUSE OF THE DETENTION OF AFORENAMED INDIANS IS THE REQUEST OF THE SECRETARY OF THE INTERIOR AND THE ORDERS OF MY COMMANDING OFFICERS, GENERAL SHERMAN AND LIEUTENANT GENERAL

SHERIDAN, BASED THEREON; WHICH ORDERS WERE TO BE COMMUNICATED AND DIRECTED BY THE 1ST. AND 2ND. ENDORSEMENTS ON THE COPY OF THE LETTER OF HON. C SCHURZ, SECY. OF THE DEPARTMENT OF THE INTERIOR, DATED MARCH 7 1879, AND ADDRESSED TO THE SECRETARY OF WAR, ENCLOSING A COPY OF A TELEGRAM DATED MARCH 4, 1879, ADDRESSED TO THE COMMISSIONER OF INDIAN AFFAIRS AT WASHINGTON, D. C. AND SIGNED JACOB VORE, INDIAN AGENT; COPIES OF WHICH LETTER AND TELEGRAM, AND OF SAID ENDORSEMENTS, ARE ALSO HERETO ATTACHED AND MADE PART OF THIS RETURN; WITH LIKE EFFECT AS THOUGH FULLY SET FORTH HEREIN; WHEREBY IT APPEARS THAT THE HON. SECRETARY OF THE INTERIOR REQUESTED THE SECRETARY OF WAR THAT THE NEAREST MILITARY COMMANDER TO THE OMAHA INDIAN AGENCY MAY BE INSTRUCTED TO DETAIL A SUFFICIENT GUARD TO RETURN THESE PONCAS TO THE AGENCY WHERE THEY BELONG, WHEREFORE THE UNDERSIGNED ASKS TO BE RELEASED FROM SAID WRIT AND THAT SAID INDIANS MAY BE RETURNED TO HIM FOR THE FULFILLMENT OF HIS ORDERS CONCERNING THEM.

GEORGE CROOK,

BRIGADIER GENERAL,

COMMANDING DEPARTMENT OF THE PLATTE.

STATE OF NEBRASKA, }
COUNTY OF DOUGLAS } SS

PERSONALLY APPEARED BEFORE ME, BRIGADIER GENERAL GEORGE CROOK, U. S. ARMY, WHO BEING DULY SWORN, ACCORDING TO LAW, DEPOSES AND SAYS THAT THE STATEMENTS MADE IN THE FOREGOING RETURN ARE TRUE SO FAR AS THEY ARE WITHIN HIS OWN KNOWLEDGE AND AS HE IS OFFICIALLY INFORMED AND BELIEVES OF SUCH FACTS AS ARE STATED AS BASED ON OFFICIAL INFORMATION.

GEORGE CROOK,

BRIGADIER GENERAL,

U. S. ARMY.

SWORN AND SUBSCRIBED THIS 11TH. DAY OF APRIL, 1879, BEFORE ME

(SEAL) WM. R. BOWEN, NOTARY PUBLIC.

SAID RETURN IS ENDORSED IN WORDS AND FIGURES FOLLOWING :

NO. 88 F. UNITED STATES EX REL. MA-CHU-NAH-ZHA ET AL. VS. GEORGE CROOK A BRIGADIER GENERAL U.S.A. RETURN OF GEO CROOK BRIG. GENL. U.S.A. FILED APRIL 12, 1879, WATSON B. SMITH, CLERK, BY E.D. FRANK, DEPUTY.

THEREUPON AFTERWARDS, TO-WIT, ON THE 1ST. DAY OF MAY, 1879, AN ORDER WAS MADE BY THE JUDGE OF SAID COURT AS APPEARS OF RECORD IN WORDS AND FIGURES FOLLOWING, TO-WIT:

UNITED STATES EX REL MA-CHU-NAH-ZHU ET AL.

VS.

GEORGE CROOK A BRIGADIER GENERAL U.S. ARMY.

UPON THE APPLICATION OF THE RESPONDENTS HEREIN, BY G.M. LANSERDON, LEAVE IS HEREBY GRANTED SAID RESPONDENT TO FILE AN AMENDED RETURN HEREIN BY TO MORROW MORNING.

THEREUPON AFTERWARDS, TO-WIT, ON THE 2ND. DAY OF MAY, 1879, AN AMENDED RETURN WAS FILED IN SAID CAE WHICH SAID RETURN IS IN WORDS AND FIGURES FOLLOWING, TO-WIT:

RETURN.

TO THE,

HON. ELMER S. DUNDY,

U.S. DISTRICT JUDGE,

FOR THE DISTRICT OF NEBRASKA.

AS DIRECTED BY YOUR WRIT OF HABEAS CORPUS, DATED APRIL 8, 1879, REQUIRING ME TO TAKE AND HAVE THE BODIES OF MA-CHU-NAH-ZHA (STANDING BEAR), TA-ZHA-HUT (BUFFALO CHIP), SHAN-GU-E-HE-ZHE (YELLOW HORSE), ME-DON-AH-HAZ (CRIES FOR WAR) HA-THE-HA-CUN-SHE (LONG RUNNER), RAUSHU-DUN (CRAZY BEAR), ME, THA-ZHIN-GA (LITTLE DUCK), TA-THE-GA-DA (BUFFALO TRACK) KA-WIG-I-SHA (TURTLE GREASE), NIN-I-CHUCK (WALK IN THE MUD), TA-DE-WON-E (WALK IN THE WIND), ME-GAH-SIN-DE (DOOR'S

TAIL), E-TUN-KAH (BIG MOUTH), WAH-THI-GA (SWIFT), TA-WAN-GO (BUFFALO COW) HA-SHNO-DA-GE (FEATHER CRAZY) EE-NON-A? (WALKING YELLOW) , GO-WOO-AH (GOOD PROVISION), SUSETTE PRIMO, LAURA PRIMO, TA-NIGH-ING-AH (LITTLE BUFFALO WOMAN), KRE-AH-DU-WAH (MIDST OF THE EAGLES), E-HE-DA-WAH (MIDST OF THE SUN), TA-E-I-EI (YELLOW SPOTTED BUFFALO), NO-WHA-SHE (GROW HAIR) AND WA-LANG-WAH, BY ME IMPRISONED AND DETAINED AS IT IS SAID TOGETHER WITH THE TIME AND CAUSE OF SUCH IMPRISONMENT AND SUCH DETENTION WITHIN TEN DAYS AFTER THE SERVICE THEREOF, AND TO DO AND RECEIVE WHAT SHALL THEN AND THERE BE CONSIDERED CONCERNING THE SAID PERSONS AND TO HAVE THEN AND THERE SAID WRIT; I HAVE THE HONOR RESPECTFULLY TO STATE AND RETURN IN OBEDIENCE TO, AND WITH THE SAID WRIT, THAT THE BODIES OF THE AFORESAID PERSONS ARE AS REQUIRED PRODUCED.

THAT THE SAID COMPLAINANT STANDING BEAR IS AN INDIAN CHIEF OF THE PONCA TRIBE OF INDIANS; THAT THE OTHER PETITIONERS ARE MEMBERS OF THE SAME TRIBE OF PONCA INDIANS; THAT SAID COMPLAINANTS HAVE NOT DISSOLVED BUT STILL RETAIN THEIR TRIBAL RELATIONS WITH SAID TRIBE OF PONCA INDIANS, AND PAY ALLEGIANCE TO THE TRIBAL HEAD OF SAID PONCA TRIBE OF INDIANS. THAT SAID COMPLAINANTS HAVE NOT ACCEPTED AND ARE NOT PURSUING THE HABITS AND VOCATIONS OF A CIVILIZED LIFE. THAT THESE COMPLAINANTS ARE NOT ILLEGALLY RESTRAINED OF THEIR LIBERTY; BUT WERE ARRESTED ON THE OMAHA RESERVATION WHERE THEY WERE IN VIOLATION OF LAW, AND WERE ARRESTED IN PURSUANCE OF AND UNDER AUTHORITY AS HEREINAFTER SET FORTH FOR THE PURPOSE OF RETURNING THEM TO THE INDIAN AGENCY AND RESERVATION WHERE THEY BELONG, LOCATED IN THE INDIAN TERRITORY.

THAT THE TIME OF THEIR DETENTION AT FORT OMAHA, NEB., IS FROM THE 27TH. MARCH, 1879, AS APPEARS BY THE REPORT OF THE COMMANDING OFFICER, AT THAT FORT, COPY OF WHICH AND OF THE SPECIAL ORDERS THEREFOR IS HERETO ATTACHED AND MADE PART OF THIS RETURN WITH LIKE EFFECT AS THOUGH FULLY

SET FORTH THEREIN; THAT I AM THE BRIGADIER GENERAL U.S.A. COMMANDING THE MILITARY DEPARTMENT OF THE PLATTE, AND ALL OFFICERS AND SOLDIERS STATIONED THEREIN, AND AS SUCH COMMANDING OFFICER, SUBJECT TO THE ORDERS OF MY MILITARY SUPERIORS; THAT THE CAUSE OF THE DETENTION OF AFORE-NAMED INDIANS IS THE REQUEST OF THE SECRETARY OF THE INTERIOR AND THE ORDERS OF MY COMMANDING OFFICERS, GENERAL SHERMAN AND LIEUTENANT General SHERIDAN, BASED THEREON; WHICH ORDERS WERE TO BE COMMUNICATED AND DIRECTED BY THE 1ST. AND 2ND. ENDORSEMENTS ON THE COPY OF THE LETTER OF HON. C. SCHURZ, SEC'Y OF THE DEPARTMENT OF THE INTERIOR, DATED MARCH 7, 1879, AND ADDRESSED TO THE SECRETARY OF WAR, ENCLOSING A COPY OF A TELEGRAM DATED MARCH 4, 1879, ADDRESSED TO THE COMMISSIONER OF INDIAN AFFAIRS AT WASHINGTON, D. C. AND SIGNED JACOB VORE, INDIAN AGENT, COPIES OF WHICH LETTER AND TELEGRAM, AND OF SAID ENDORSEMENTS, ARE ALSO HERETO ATTACHED, AND MADE PART OF THIS RETURN; WITH LIKE EFFECT AS THOUGH FULLY SET FORTH HEREIN; WHEREBY IT APPEARS THAT THE HON. SECRETARY OF THE INTERIOR REQUESTED THE SECRETARY OF WAR, THAT THE NEAREST MILITARY COMMANDER TO THE OMAHA INDIAN AGENCY MAY BE INSTRUCTED TO DETAIL A SUFFICIENT GUARD TO RETURN THESE PONCAS TO THE AGENCY WHERE THEY BELONG.

WHEREFORE THE UNDERSIGNED ASKS TO BE RELEASED FROM SAID WRIT, AND THAT SAID INDIANS MAY BE RETURNED TO HIM FOR THE FULFILLMENT OF HIS ORDERS CONCERNING THEM.

GEORGE CROOK,

BRIGADIER GENERAL,

COMMANDING DEPARTMENT OF THE PLATTE

BY G. M. LAMBERTSON, U. S. DIST. ATTY.

STATE OF NEBRASKA,

COUNTY OF DOUGLAS, } SS.

PERSONALLY APPEARED BEFORE ME, BRIGADIER GENERAL GEORGE CROOK, U. S. ARMY, WHO BEING DULY SWORN, ACCORDING TO LAW DEPOSES AND SAYS THAT

THE STATEMENTS MADE IN THE FOREGOING RETURN ARE TRUE SO FAR AS THEY ARE WITHIN HIS OWN KNOWLEDGE, AND AS HE IS OFFICIALLY INFORMED AND BELIEVES OF SUCH FACTS AS ARE STATED AS BASED ON OFFICIAL INFORMATION.

SWORN AND SUBSCRIBED THIS DAY OF MAY, 1879, BEFORE ME

COPY

HEADQUARTERS, FORT OMAHA, NEB.,

MARCH 28, 1879.

TO THE

ASSISTANT ADJUTANT GENERAL

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DEPARTMENT OF THE PLATTE,

FORT OMAHA, NEB.

SIR :

IN PURSUANCE OF INSTRUCTIONS OF THE 19TH. INST. FROM DEPARTMENT HEADQUARTERS, I HAVE THE HONOR TO REPORT THE ARRIVAL AT THIS POST ON THE 27TH. INST. FROM THE OMAHA INDIAN AGENCY, OF TWENTY-SIX (26) ONCA INDIANS, CONSISTING OF EIGHTY MEN, SEVEN (7) WOMEN, AND ELEVEN (11) CHILDREN. SEVERAL OF THE INDIANS ARE SICK WITH CHILLS AND EVER, AND IT WILL BE NECESSARY FOR THE ENTIRE PARTY TO REMAIN HERE FOR A FEW DAYS SO THAT THEIR PONIES MAY RECUPERATE SUFFICIENTLY TO ENABLE THEM TO PROCEED ON THEIR RETURN TO THE INDIAN TERRITORY.

I AM, SIR.

VERY RESPECTFULLY

YOUR OBEDIENT SERVANT,

SIGNED : JNO. H. KING,

COLONEL 9TH. INFANTRY,

COMMANDING.

OFFICIAL COPY,

R. WILLIAMS, ASST. ADJT GENL.

COPY HEADQUARTERS, FORT OMAHA, NEB.,

MARCH 20TH., 1879.

SPECIAL ORDERS

NO. 33

IN OBEDIENCE TO INSTRUCTIONS FROM HEADQUARTERS DEPARTMENT OF THE PLATTE OF THE 19 INST. 1ST. LIEUT. W.L. CARPENTER 9TH. INFANTRY WITH A GUARD CONSISTING OF

WILL PROCEED WITHOUT DELAY TO THE OMAHA INDIAN AGENCY NEBRASKA, UPON ARRIVAL THEREAT LIEUT. CARPENTER WILL CALL UPON THE AGENT IN CHARGE FOR THE THIRTY(30)PONCAS INDIANS WHO ARE REPORTED TO HAVE RECENTLY ARRIVED AT THAT AGENCY FROM THE INDIAN TERRITORY.

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UPON RECEIVING THESE INDIANS LIEUT. CARPENTER AND THE GUARD WILL BRING THEM TO THIS POST.

THE QUARTERMASTER DEPARTMENT WILL FURNISH THE NECESSARY TRANSPORTATION CONSISTING OF ONE FOUR MULE TEAM AND THREE SADDLE HORSES.

BY ORDER OF COLONEL JOHN H. KING, 9TH. INFANTRY.

SIGNED J.M. LEE,

1ST. LIEUT. AND ADJUTANT 9 INFY. POST.

HEADQUARTERS DEPT. OF THE PLATTE,

ASST. ADJUTANT GENERALS OFFICE

FORT OMAHA NEB., APRIL 11TH., 1879.

OFFICIAL COPY

R. WILLIAMS, ASST. ADJ'T GENERAL.

COPY DEPARTMENT OF THE INTERIOR,

WASHINGTON, MARCH 7TH., 1879.

THE HONORABLE,

THE SECRETARY OF WAR.

SIR:

I HAVE THE HONOR TO TRANSMIT HEREWITH A COPY OF A TELEGRAM, DATED OMAHA, NEBRASKA, MARCH 4TH., 1879, ADDRESSED TO THE COMMISSIONER OF

INDIAN AFFAIRS BY JACOB VORE, U.S. INDIAN AGENT AT OMAHA AGENCY, NEBRASKA AND BY THE COMMISSIONER REFERRED TO THIS DEPARTMENT WITH THE INFORMATION THAT 30 PONCA INDIANS WHO HAVE LEFT THEIR AGENCY IN THE INDIAN TERRITORY WITHOUT PERMISSION, HAVE JUST ARRIVED AT THE FIRST NAMED AGENCY.

IN ACCORDANCE WITH THE DESIRE OF THE COMMISSIONER I RESPECTFULLY REQUEST THAT THE NEAREST MILITARY COMMANDER MAY BE INSTRUCTED TO DETAIL A SUFFICIENT GUARD TO RETURN THESE PONCAS TO THE AGENCY WHERE THEY BELONG

VERY RESPECTFULLY,

[S.O.] C. SCHURZ,

SECRETARY.

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A TRUE COPY.

H.B. BURNHAM,

JUDGE ADVOCATE U.S.A.

COPY TELEGRAM.

DATED OMAHA, NEB., MCH. 4TH., 1879.

TO THE

COMMISSIONER OF INDIANAFFAIRS,

WASHINGTON, D.C.

THE PONCAS HAVE JUST ARRIVED THIRTY IN NUMBER. HAD THEM ARRESTED THEY PROMISE TO REMAIN FOR ORDERS. HAVE NO PLACE TO CONFINETHEM. I AWAIT INSTRUCTIONS.

[S.O.] JACOB VORE,

INDIAN AGENT.

A TRUE COPY.

H.B. BURNHAM,

JUDGE ADVOCATE, U.S.A.

ENDORSEMENTS ON COPY OF LETTER OF THE SECRETARY OF THE INTERIOR DATED MARCH 7, 1879, TO THE SECRETARY OF WAR, TRANSMITTING COPY OF TELEGRAM FROM JACOB VORE, INDIAN AGENT, OMAHA AGENCY OF MARCH 4, 1879, STATING THAT 38 PONCAS HAVE JUST ARRIVED AT THAT AGENCY FROM INDIAN TERRITORY, AND REQUESTS DETAIL OF A GUARD TO RETURN THEM TO THEIR AGENCY.

OFFICIAL COPY REFERRED BY GENERAL SHERMAN MARCH 14, 1879 TO LT. GENL. P. H. SHERIDAN COMD. MIL. DIV. OF MO. , TO COMPLY WITH THE REQUEST OF THE INTERIOR DEPT.

REFERRED BY LT. GENL. SHERIDAN MARCH 17, 1879, TO THE COMMG. GENL. DEPT. OF THE PLATTE, FOR ACTION

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HEADQUARTERS DEPARTMENT OF THE PLATTE,

ASSISTANT ADJUTANT GENERAL'S OFICE

FORT OMAHA, NEB., MARCH 19, 1879

RESPECTFULLY REFERRED TO THE COMMANDING OFFICER, FORT OMAHA, NEB. WHO WILL PLEASE DETAIL AN OFFICER AND A GUARD OF ENLISTED MEN TO PROCEED TO THE OMAHA AGENCY AND RETURN THE INDIANS TO THEIR AGENCY IN THE INDIAN TERRITORY, AS DIRECTED BY THE GENERAL OF THE ARMY.

IF THE INDIANS REFERRED TO CAME MOUNTED, AS THEY PROBABLY DID, THEY WILL GO BACK IN THE SAME MANNER AND IN THIS EVENT IT WILL BE NECESSARY TO PROVIDE HORSES FOR THE DETACHMENT OF TROOPS RETURNING WITH THEM.

BY COMMAND OF BRIGADIER GENERAL CROOK.

(SIGNED) R. WILLIAMS,

ASST. AD'T GENERAL.

HEADQUARTERS DEPARTMENT OF THE PLATTE,

ASSISTANT ADJUTANT GENERAL OFFICE

FORT OMAHA, NEB., APRIL 10, 1879.

OFFICIAL COPY.

R. WILLIAMS

ASST. AD'T GENL.

SAID AMENDED PETITION IS ENDORSED AS FOLLOWS:

NO. 38 F. UNITED STATES EX REL. MA-CHU-NAH-EHA, ET AL. VS. GEORGE CROOK A BRIGADIER GENERAL U.S.ARMY. AMENDED RETURN OF GEO. CROOK BRIG. GEN. U.S.A. FILED MAY 9, 1879, WATSON B. SMITH, CLERK. BY E.D.FRANK DEPTY.

THEREUPON AFTERWARDS, TO-WIT, ON THE SAID 9TH. DAY OF MAY, 1879, A REPLY TO AMENDED RETURN WAS FILED IN SAID CASE, WHICH SAID REPLY IS IN WORDS AND FIGURES FOLLOWING, TO-WIT:

UNITED STATES DISTRICT COURT,

DISTRICT OF NEBRASKA.

UNITED STATES EX REL,

MA-CHU-NAH-EHA, ET AL.

VS.

GEORGE CROOK A BRIGADIER GENERAL OF THE UNITED STATES ARMY.

REPLY TO AMENDED RETURN.

NOW COME THE PETITIONERS, MA-CHU-NAH-EHA ET, AL. AND FOR A REPLY DENY THAT STANDING BEAR IS AN INDIAN CHIEF OF THE PONCA TRIBE OF INDIANS; AND THEY DENY THAT THE OTHER PETITIONERS ARE MEMBERS OF THE PONCA TRIBE OF INDIANS.

THE PETITIONERS DENY THAT THEY STILL RETAIN THEIR TRIBAL RELATIONS WITH THE PONCA TRIBE OF INDIANS, AND THEY DENY THAT THEY PAY ALLEGIANCE TO THE PONCA TRIBE OF INDIANS, BUT AVR THAT THEY HAVE SEVERED ALL THEIR TRIBAL RELATIONS WITH SAID TRIBE. THE PETITIONERS AVER THAT THEY HAVE ADOPTED AND ARE PURSUING THE HABITS OF A CIVILIZED LIFE.

THE PETITIONERS AVER THAT THEY ARE ILLEGALLY RESTRAINED OF THEIR LIBERTY AND DENY THAT THEY RERE UPON THE OMAHA RESERVATION IN VIOLATION OF LAW.

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Witness my hand and the seal of said District Court, at Omaha, this 13th day of May, A.D. 1879.

Watson Smith
Clerk

THE PETITIONERS DENY THAT THEY BELONG TO ANY AGENCY OR RESERVATIONS IN THE INDIAN TERRITORY AND DENY THAT THE PONCA RESERVATION IS IN THE INDIAN TERRITORY.

MA-CHU-NAH-ZHA, ET AL. PETITIONERS

BY A. J. POPPLETON AND

JNO. LOWESTER, THEIR ATTORNEY'S

SAID REPLY IS ENDORSED AS FOLLOWS:

NO. 38 F. U.S. DISTRICT COURT, DISTRICT OF NEBRASKA. UNITED STATES EX REL MA-CHU-NAH-ZHA ET AL. VS. GEORGE CROOK A BRIGADIER GENERAL NITED STATES ARMY. REPLY TO AMENDED RETURN. FILED MAY 8, 1879. WATSON B. SMITH, CLERK BY E.D. FRANK, DEPUTY. A. J. POPPLETON AND JNO L. WEBSTER ATTORNEYS FOR PETITIONERS.

THEREUPON AFTERWARDS, AT THE MAY TERM OF SAID COURT, ON THE 19TH. DAY OF MAY, 1879, THE FOLLOWING PROCEEDINGS WERE HAD IN SAID CASE, AS APPEARS OF RECORD

THE UNITED STATES EX REL MA-CHU-NAH-ZHA
(STANDING BEAR) ET AL.

VS.

GEORGE CROOK, A BRIGADIER GENERAL U.S. ARMY, COMMANDING THE DEPARTMENT OF THE PLATTE.

NOW CAME SAID GEORGE CROOK, A BRIGADIER GENERAL U.S. ARMY, COMMANDING THE DEPARTMENT OF THE PLATTE, AND MADE RETURN OF THE WRIT OF HABEAS CORPUS HERETOFORE ISSUED IN THIS CASE, AND ALSO BROUGHT THE BODIES OF THE SAID MA-CHU-NAH-ZHA (STANDING BEAR) TA-ZHA-BUT (BUFFALO CHIP) SHAN-GU-E-HE-ZHE (YELLOW HORSE) MU-CON-AH-HAZ (CRIED FOR WAR), MA-THE-HA-CUM-SHE (LONG RUNNER) WAN-CHI-CUN (CRAZY BEAR) ME-THA-ZHIN-GA (LITTLE DUCK) LA-THE-GA-GA (BUFFALO TRACK), KA-NIG-I-SHA (TURTLE GREASE) MIN-E-CHUCK (WALK IN THE MUD), TA-DO-MIN-E (WALK IN THE WIND), ME-GAH-SIN-DE (COON'S TAIL) E-TUN-KAH (BIG MOUTH), WA-THI-GA (SWIFT), TA-WAN-DO (BUFFALO COW)

MA-SHUC-CA-DE (FEATHER CRAZY), TE-OSE-A (WALKING YELLOW), OO-MOO-AH (GOOD PROVISION), SUSETTE PRIVO, LAURA PRIVO, TA-PIGH-ING-AH (LITTLE BUFFALO WOMAN), KRE-AH-DU-WAH (MIDST OF THE EAGLES), WE-HE-GA-WAH (MIDST OF THE SUN), TA-ZI-ZI (YELLOW SPOTTED BUFFALO) NO-YHA-ZHE (GROWN HAIR) AND WA-GANG-WAH, PETETIONERS, HEREIN.

AND UPON THE HEARING OF THE CASE, THE COURT DO FIND THAT THE SAID RELATORS ARE UNLAWFULLY DETAINED BY THE SAID GEORGE CROOK, A BRIGADIER GENERAL U S ARMY, COMMANDING THE DEPARTMENT OF THE PLATTE.

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IT IS THEREFORE ORDERED, THAT THE SAID WA-CHU-NAH-ZHA (STANDING BEAR), TA-ZHA-BUT (BUFFALO CHIP), SHAN-GU-E-HE-ZHE (YELLOW HORSE), WU-DON AH-GAH (CRIES FOR WAR,) WA-THE-HA-CUH-SHE (LONG RUNNER), WAN-CHI-DUN (CRAZY BEAR), WE-THA-ZH N-GA (LITTLE DUCK), LA-THE-GA-GA (BUFFALO TRACK) KA-WIP-I-SHA (TURTLE GREASE), MIN-E-CHUCK (WALK IN THE MUD), TA-DO-WUSH-E (WALK IN THE WIND), WE-GAH-SIN-DE (COON'S TAIL), E-TUN-KAH (BIG MOUTH) WAH-THI-GA (SWIFT), TA-WAN-GO (BUFFALO COW), MA-SHUC-CA-DE (FEATHER CRAZY), TE-MOSE-A (WALKING YELLOW), O-MOO-AH (GOOD PROVISION) SUSETTE PRIVO, LAURA PRIVO, TA-PIGH-ING-AH (LITTLE BUFFALO WOMAN), KRE-AH-DU-WAH (MIDST OF THE EAGLES), WE-HE-GA-WAH (MIDST OF THE SUN), TA-ZI-ZI- (YELLOW SPOTTED BUFFALO) NO-YHA-ZHE (GROWN HAIR) AND WA-GANG-WAH, BE DISCHARGED FROM HIS SAID CUSTODY, AND THAT THE UNITED STATES PAY THE COSTS OF THIS PROCEEDING.

Thereupon said respondent by G. M. Lambertson, Esq. U. S. attorney prayed an appeal to the Circuit Court of the United States for the District of Nebraska which said appeal is hereby allowed by the Court.

ON SAID 12TH. DAY OF MAY, 1879 THE OPINION OF THE HONORABLE ELMER S. DUNDY, JUDGE, WAS FILED IN SAID CASE, WHICH IS IN THE WORDS AND FIGURES FOLLOWING, TO-WIT:

United States ex rel. [illegible]
[illegible] U. S. [illegible] Habeas Corpus.

An Indian is a person within the meaning of the habeas corpus act, and as such is entitled to sue out a writ of habeas corpus in the federal courts, when it is shown that the petitioner is deprived of liberty under color of authority of the United States, or is in custody of an officer in violation of the constitution, or a law of the United States, or in violation of a treaty made in pursuance thereof.

The right of expatriation is a natural, inherent, and inalienable right, and extends to the Indian as well as to the more fortunate white race.

The commissioner of Indian affairs has ample authority for removing from an Indian reservation all persons found thereon without authority of law, or whose presence may be detrimental to the peace and welfare of the Indians.

The military power of the government may be employed to effect such removal. But where the removal is effected, it is the duty of the troops to convey the persons so removed by the most convenient and safe route, to the civil authorities of the judicial district in which the offence may be committed, to be proceeded against in due course of law.

In time of peace no authority, civil or military, exists for transporting Indians from one section of the country to another, without the consent of the Indians, nor to confine them to any particular reservation against their will, and where officers of the government attempt to do this, and arrest and hold Indians who are at peace with the government, for the purpose of removing them to, and confining them on, a reservation in the Indian Territory, they will be released on habeas corpus.

A. J. Poppleton and
John L. Webster,
For the Relators.
G. M. Lambertson, U. S. Att'y,
For the Government.

The facts are fully stated in the opinion of the court.

Dundy, Judge.

During the fifteen years in which I have been engaged in administering the laws of my country, I have never been called upon to hear or decide a case that appealed so strongly to my sympathy as the one now under consideration. On the one side we have a few of the remnants of a once numerous and powerful, but now weak, insignificant, unlettered and generally despised race. On the other, we have the representative of one of the most powerful, most enlightened, and most christianized nations of modern times. On the one side we have the representatives of this wasted race coming into this national tribunal of ours asking for justice and liberty to enable them to adopt our boasted civilization and to pursue the arts of peace, which have made us great and happy as a nation. On the other side we have this magnificent, if not magnanimous, government, resisting this application with the determination of sending these people back to the country which is to them less desirable than perpetual imprisonment in their own native land. But I think it is creditable to the heart and mind of the brave and distinguished officer who is made respondent herein, to say that he has no sort of sympathy in the business in which he is forced by his position to bear a part so conspicuous. And so far as I am individually concerned I think it not improper to say that if the strongest possible sympathy could give the relators title to freedom, they would have been restored to liberty the moment the arguments in their behalf were closed. No examination or further thought would then have been necessary or expedient. But in a country where liberty is regulated by law, something more satisfactory and enduring than mere sympathy must furnish and constitute the rule and basis of judicial action. It follows that this case must be examined and decided on principles of law, and that unless the relators are entitled to their discharge under the constitution or laws of the [U]nited States, or some treaty [made in p]ursuance thereto, they must be [re]manded to the custody of the officer [w]ho caused their arrest, to be returned [to] the Indian Territory, which they [lef]t without the consent of the government.

[O]n the 8th of April, 1879, the re[lator]s, Standing Bear, and twenty-five [oth]ers, during the session of the court held at that time at Lincoln, presented their petition, duly verified, praying for the allowance of a writ of habeas corpus, and their final discharge from custody thereunder.

The petition alleges, in substance that the relators are Indians who have formerly belonged to the Ponca tribe of Indians, now located in the Indian Territory; that they had some time previously withdrawn from the tribe and completely severed their tribal relations therewith, and had adopted the general habits of the whites and were then endeavoring to maintain themselves by their own exertions, and without aid or assistance from the general government; that whilst they were thus engaged, and without being guilty of violating any of the laws of the United States, they were arrested and restrained of their liberty by order of the respondent, George Crook.

The writ was issued and served on the respondent on the 8th day of April, and the distance between the place where the writ was made returnable and the place where the relators were confined being more than twenty miles, ten days were allotted in which to make return.

On the 18th of April the writ was returned, and the authority for the arrest and detention is therein shown. The substance of the return to the writ, and the additional statement since filed, is that the relators are individual members of, and connected with the Ponca tribe of Indians; that they had fled or escaped from a reservation situated someplace within the limits of the Indian Territory; had departed therefrom without permission from the government; and at the request of the secretary of the interior the general of the army had issued an order which required the respondent to arrest and return the relators to their tribe in the Indian territory, and that pursuant to the said order, he had caused the relators to be arrested on the Omaha Indian reservation, and that they were in his custody for the purpose of being returned to the Indian territory.

It is claimed upon the one side and denied upon the other, that the relators had withdrawn, and severed for all time, their connection with the tribe to which they belonged. And upon this point alone was there any testimony produced by either party hereto. The other matters stated in the petition, and the return to the writ, are conceded to be true, so that the questions to be determined are purely questions of law.

On the 8th of March, 1859, a treaty was made by the United States with the Ponca tribe of Indians, by which a certain tract of country north of the Niobrara river, and west of the Missouri was set apart for the permanent home of the said Indians, in which the government agreed to protect [illegible] their good behavior. But just when or how, or why, or under what circumstances the Indians left their reservation in Dakota and went to the Indian Territory does not appear.

The district attorney very earnestly questions the jurisdiction of the court to issue the writ and to hear and determine the case made herein, and has supported his theory with an argument of great ingenuity and much ability, but nevertheless, I am of the opinion that his premises were erroneous and his conclusions therefore wrong and unsound. The great respect I entertain for that officer, and the very able manner in which his views were presented, make it necessary for me to give somewhat at length the reasons which lead me to this conclusion.

The district attorney discussed at length the reasons which led to the origin of the writ of habeas corpus, and the character of, and proceedings and practice in connection therewith in the parent country. It was claimed that the laws of the realm limited the right to sue and this writ to the *free subjects* of the kingdom, and that none others came within the benefits of such beneficent laws. And reasoning from analogy it is claimed that none but American citizens are entitled to sue out this high prerogative writ in any of the federal courts. I have not examined the English laws regulating the suing out of this writ, nor have I thought it necessary so to do. Of this I will only observe that if the laws of England are as they are claimed to be, they will appear at a disadvantage when compared with our own. This only proves that the laws of a limited monarchy are sometimes less wise and humane than the laws of our own good republic—that whilst the parliament of Great Britain was legislating in behalf of the favored few, the congress of the United States was legislating in behalf of all mankind who came within our jurisdiction.

Section 751 of the "Revised Statutes" declares that "the supreme court and the circuit and district courts shall have power to issue writs of habeas corpus." Section 752 confers the power to issue writs on the judges of said courts within their jurisdiction, and declares this to be "for the purpose of inquiry into the cause ... restraint of liberty." Section 753 restricts the power, limits the jurisdiction, and defines the cases where the writ may properly issue. That may be done under this section where the prisoner, "is in custody under or by color of authority of the United States * * * or is in custody for an act done or omitted in pursuance of a law of the United States * * * or in custody in violation of the constitution or of a law or treaty of the United States. Thus it will be seen that when a person is in custody or deprived of his liberty, under color of authority of the United States, or in violation of the constitution or laws or treaties of the United States, the federal judges have jurisdiction and the writ can properly issue. I take it that the true construction to be placed upon this act is this: That in all cases where federal officers, civil or military, have the custody and control of a person, claimed to be unlawfully restrained of liberty, that they are thus restrained of liberty under color of authority of the United States, and the federal courts can properly proceed to determine the question of unlawful restraint because no other courts can properly do so. In the other instance, the federal courts and judges can properly issue the writ in all cases where the *person* is alleged to be in custody in violation of the constitution or a law or treaty of the United States. In such a case it is wholly immaterial what officer, state or federal, has custody of the person seeking the relief. These relators may be entitled to the writ in either case. Under the first paragraph they certainly are, that is, if an Indian can be entitled to it at all, because they are in custody of a federal officer under color of authority of the United States, and they may be entitled to the writ under the other paragraph before recited, for the reason, as they allege, that they are restrained of liberty in violation of a provision of their treaty before referred to. Now it must be

This is what the habeas corpus act describes applicants for the writ as "persons" or "parties," who may be entitled thereto. It nowhere describes them as citizens, nor is citizenship in any way or place made a qualification for suing out the writ, and in the absence of express provision or necessary implication, which would require the interpretation contended for by the district attorney, I should not feel justified in giving the words *person* and *party* such a narrow construction. The most natural, and therefore most reasonable way, is to attach the same meaning to words and *phrases* when found in a statute that is attached to them when and where found in general use. If we do so in this instance then the question can not be open to serious doubt. Webster describes a person as "a living soul; a self conscious being; a moral agent; especially a living human being; a man, woman or child; an individual of the human race." This is comprehensive enough, it would seem, to include even an Indian. In describing and defining generic terms, the first section of the revised statutes declares that the word *person* includes co-partnerships and corporations. On the whole it seems to me quite evident that the comprehensive language used in this section is intended to apply to all mankind, as well the relators as the more favored white race. This will be doing no violence to language nor to the spirit or letter of the law, nor to the intention, as it is believed, of the law-making power of the government.

I must hold, then, that *Indians*, and consequently the relators, are *persons*, such as are described by and included within the laws before quoted. It is said, however, that this is the first instance on record in which an Indian has been permitted to sue out and maintain a writ of habeas corpus in a federal court, and *therefore*, the court must be without jurisdiction in the premises. This is a fair argument. I confess I do not know of another instance where this has been done, but I can also say that the occasion for it perhaps has never before been so great. It may be that the Indians think it wiser and better in the end to resort to this peaceful process than it would be to undertake the hopeless task of redressing their own alleged wrongs by force of arms. Returning reason, and the sad experience of others similarly situated has taught them the folly and madness of the arbitrament of the sword. They can readily see that any serious resistance on their part would be the signal for their utter extermination. Have they not then chosen the wiser part, by resorting to the very tribunal created by those they claim have wronged and oppressed them? This however, is not the tribunal of their own choice but it is the only one into which they can lawfully go for deliverance. It cannot therefore be fairly said that because no Indian ever before invoked the aid of this writ in a federal court, that the rightful authority to issue it does not exist. Power and authority rightfully conferred does not necessarily cease to exist in consequence of long non-user. Though much time has elapsed and many generations have passed away since the passage of the original habeas corpus act from which I have quoted, it will not do to say that these Indians cannot avail themselves of its beneficent provisions simply because none of their ancestors ever sought relief thereunder.

Every person who comes within our jurisdiction, whether he be European, Asiatic, African, or "native to the manor born," must obey the laws of the United States. Every one who violates them incurs the penalty provided thereby. When a *person* is charged, in a proper way, with the commission of crime, we do not enquire upon the trial in what country the accused was born, nor to what sovereign or government allegiance is due, nor to what race he belongs. The questions of guilt and innocence only form the subjects of inquiry. An Indian then, especially off from his reservation, is amenable to the criminal laws of the United States the same as all other persons. They being subject to arrest for the violation of our criminal laws and being *persons* such as the law contemplates and includes in the description of parties who may sue out the writ, it would, indeed, be a sad commentary on the justice and impartiality of our laws, to hold that Indians, though natives of our own country, cannot test the validity of an alleged illegal imprisonment in this manner, as well as a subject of a foreign government who may happen to be sojourning in this country, but owing it no sort of allegiance. I cannot doubt that congress intended to give to *every person* who might be unlawfully restrained of liberty under color of authority of the United States the right to the writ and a discharge thereon. I conclude then, that so far as the issuing of the writ is concerned, it was properly issued, and that the relators are within the jurisdiction conferred by the *habeas corpus* act.

A question of much greater importance remains for consideration which when determined, will be decisive of this whole controversy. This relates to the right of the government to arrest and hold the relators for a time for the purpose of being returned to a point in the Indian territory, from which it is alleged the Indians escaped. I am not vain enough to think that I can do full justice to a question like the one under consideration. But as a matter furnishes so much valuable material for discussion, and so much food for reflection, I shall try to present it as viewed from my own standpoint, without reference to consequences or criticisms which, though not specially invited will be sure to follow.

A review of the policy of the government adopted in its dealings with the friendly tribe of Poncas, to which the relators at one time belonged, seems not only appropriate, but almost indispensable to a correct understanding of this controversy. The Ponca Indians have been at peace with the government and have remained the steadfast friends of the whites for many years. They lived peaceably upon the land and in the country they claimed and called their own.

On the 12th of March, 1858, they made a treaty with the United States by which they ceded all claims to lands except the following tract: "Beginning at a point on the Niobrara river and running due north so as to intersect the Ponca river twenty-five miles from its mouth, thence from said point of intersection up and along the Ponca river twenty miles, thence due south to the Niobrara river, and thence down and along said river to the place of beginning, which tract is hereby reserved for the future homes of said Indians." In consideration of this cession the government agreed "to protect the Poncas in the possession of the tract of land reserved for their future homes, and their persons and property thereon, during good behavior on their part." Annuities were to be paid them for thirty years, houses were to be built and schools were to be established and other things were to be done by the government in consideration of said cession. See page 997,12 stat., at large. On the 10th of March, 1865, another treaty was made, and a part of the other reservation was ceded to the government. Other lands, however, were, to some extent substituted therefor, and "by way of rewarding them for their constant fidelity to the government, and citizens thereof, and with a view of returning to the said tribe of Ponca Indians their old burying grounds and corn fields." This treaty also provides for paying $15,000 for spoliations committed on the Indians. See page 635, 14 vol., stat. at large.

On the 29th day of April, 1868, the government made a treaty with the several bands of Sioux Indians, which treaty was ratified by the senate on the 16th of the following February, in and by which the reservations set apart for the Poncas under former treaties were completely absolved. (15 Statutes at large, page 635.) This was done without consultation with, or knowledge or consent on the part of, the Ponca tribe of Indians.

On the 15th of August, 1876, congress passed the general Indian appropriation bill, and in it we find a provision authorizing the secretary of the interior to use $25,000 for the removal of the Poncas to the Indian territory, and providing them a home therein, with consent of the tribe. (See page 192, 19 vol. Statutes at large.)

In the Indian appropriation bill passed by congress on the 27th day of May, 1878, we find a provision authorizing the secretary of the interior to expend the sum of $30,000 for the purpose of removing and locating the Ponca Indians on a new reservation near the Kaw river.

No reference has been made to any other treaties or laws, under which the right to arrest and remove the Indians is claimed to exist.

The Poncas lived upon their reservation in Southern Dakota and cultivated a portion of the same until two or three years ago, when they removed therefrom, but whether by force or otherwise, does not appear. At all events, we find a portion of them, including the relators, located at some point in the Indian territory. *There*, the testimony seems to show, is where the trouble commenced. Standing Bear, the principal witness, states that out of 581 Indians who went from the reservation in Dakota to the Indian territory, 158 died within a year or so, and a great proportion of the others were sick and disabled, caused in a great measure, no doubt, from change of climate, and to save himself and the survivors of his wasted family, and the feeble remnant of his little band of followers, he determined to leave the Indian Territory and return to his old home, where, to use his own language, "he might live and die in peace, and be buried with his fathers." He also states that he informed the agent of their final purpose to leave, never to return, and that he and his followers had finally, fully, and forever severed his and their connection with the Ponca tribe of Indians, and had resolved to disband as a tribe, or band, of Indians, and to cut loose from the government, go to work, become self-sustaining, and adopt the habits and customs of a higher civilization. To accomplish what would seem to be a desirable and laudable purpose all who were able so to do went to work to earn a living. The

Omaha Indians, who speak the same language, and with whom many of the Ponca have long since continued to intermarry, gave them employment and ground to cultivate so as to make them self-sustaining. And it was when at the Omaha reservation and when thus employed, that they were arrested by order of the government for the purpose of being taken back to the Indian Territory. They claim to be unable to see the justice, or reason, or wisdom, or necessity of removing them by force from their own native plains and blood relations to a far off country in which they can see little but new made graves opening for their reception. The land from which they fled in fear has no attractions for them. The love of home and native land was strong enough in the minds of these people to induce them to brave every peril to return and live and die where they had been reared. The bones of the dead son of Standing Bear were not to repose in the land they hoped to be leaving forever, but were carefully preserved and protected, and formed a part of what was to them a melancholy procession homeward. Such instances of parental affection and such love of home and native land may be Asiatic in origin, but it seems to me that they are not unlike christian in principle.

What is here stated in this connection is mainly for the purpose of showing that the relators did all they could to separate themselves from their tribe and to sever their tribal relations, for the purpose of becoming self-sustaining and living without support from the government. This being so, presents the question as to whether or not an Indian can withdraw from his tribe, sever his tribal relation therewith, and terminate his allegiance thereto, for the purpose of making an independent living and adopting our own civilization.

If Indian tribes are to be regarded and treated as separate but dependent nations, there can be no serious difficulty about the question. If they are not to be regarded and treated as separate, dependent nations, then no allegiance is owing from an individual Indian to his tribe, and he could therefore withdraw therefrom at any time. The question of expatriation has engaged the attention of our government from the time of its very foundation. Many heated discussions have been carried on between our own and foreign governments on this great question, until diplomacy has triumphantly secured the right to every person found within our jurisdiction. This right has always been claimed and admitted by our government and it is now no longer an open question. It can make but little difference then whether we accord to the Indian tribes a national character or not, as in either case I think the individual Indian possesses the clear and God-given right to withdraw from his tribe and forever live away from it, as though it had no further existence. If the right of expatriation was open to doubt in this country down to the year 1868, certainly since that time no sort of question as to the right can now exist, the 27th of July, of that year, congress passed an act, now appearing as sec. 1999, of the revised statutes, which declares that:

"Whereas, the right of expatriation is a natural and inherent right of all people, indispensable to the enjoyment of the rights of life, liberty and the pursuit of happiness; and, whereas, in the recognition of this principle the government has freely received emigrants from all nations, and invested them with the rights of citizenship. * * * Therefore any declaration, instruction, opinion, order or decision of any officer of the United States which denies, restricts, impairs or questions the right of expatriation, is declared inconsistent with the fundamental principles of the republic." This declaration must forever settle the question until it is reversed by other legislation upon the same subject. This is, however, only reaffirming in the most solemn and authoritative manner a principle well settled and understood in this country for many years past.

In most, if not all, instances in which treaties have been made with the several Indian tribes, where reservations have been set apart for their occupancy, the government has either reserved the right or bound itself to protect the Indians thereon. Many of the treaties expressly prohibit white persons being on the reservations unless specially authorized by the treaties or acts of congress for the purpose of carrying out treaty stipulations.

Laws passed for the government of the Indian country and for the purpose of regulating trade and intercourse with the Indian tribes, confer upon certain officers of the government almost unlimited power over the persons who go upon the reservations without lawful authority. Sec. 2149 of the revised statutes, authorizes and requires the commissioner of Indian affairs, with the approval of the secretary of the interior, to remove from any "tribal reservation" any person being therein without authority of law, or whose presence within the limits of the reservation may, in the judgment of the commissioner, be detrimental to the peace and welfare of the Indians; the authority here conferred upon the commissioner fully justifies him in causing to be removed from Indian reservations all persons thereon in violation of law, or whose presence thereon may be detrimental to the peace and welfare of the Indians upon the reservations. This applies as well to an Indian as to a white person, and manifestly for the same reason, the object of the law being to prevent unwarranted interference between the Indians and the agent representing the government. Whether such an extensive discretionary power is wisely vested in the commissioner of Indian affairs or not need not be questioned. It is enough to know that the power rightfully exists, and where existing, the exercise of the power must be upheld. If, then, the commissioner has the right to cause the expulsion from the Omaha Indian reservation of all persons thereon who are there in violation of law, or whose presence may be detrimental to the peace and welfare of the Indians, then he must of necessity be authorized to use the necessary force to accomplish his purpose. Where, then, is he to look for this necessary force? The military arm of the government is the most natural and most potent force to be used on such occasions, and section 2150 of the revised statutes specially authorizes the use of the army for this service. The army, then, it seems, is the proper force to employ when intruders and trespassers who go upon the reservations are to be ejected therefrom.

The first sub-division of the Revised Statutes last referred to provides that "The military forces of the United States may be employed in such manner and under such regulations as the president may direct:

"First. In the apprehension of every person who may be in the Indian country in violation of law, and in conveying him immediately from the Indian country, by the nearest convenient and safe route, to the civil authority of the territory or judicial district in which such person shall be found, to be proceeded against in due course of law; * * * This is the authority under which the military can be lawfully employed to remove intruders from an Indian reservation. What may be done by the troops in such cases is here fully and clearly stated, and it is this authority, it is believed, under which the respondent acted.

All Indian reservations held under treaty stipulations with the government must be deemed and taken to be a part of the Indian country, within the meaning of our laws on that subject. The relators were found upon

the Omaha Indian reservation, that being a part of the Indian country, and not being a part of the Omaha tribe of Indians, they were there without lawful authority, and if the commissioner of Indian affairs deemed their presence detrimental to the peace and welfare of the Omaha Indians, he had lawful warrant to remove them from the reservation, and to employ the necessary military force to effect this object in safety. General Crook had the rightful authority to remove the relators from the reservation, and must stand justified in removing them therefrom. But when the troops are thus employed they must exercise the authority in the manner provided by the section of the law just read. This law makes it the duty of the troops to convey the parties arrested by the nearest convenient and safe route *to the civil authority of the territory or judicial district in which such person shall be found, to be proceeded against in due course of law.* The duty of the military authorities as here very clearly and sharply defined, and no one can be justified in departing therefrom, especially in time of peace. As General Crook had the right to arrest and remove the relators from the Omaha Indian reservation, it follows from what has been stated that the law required him to convey them to this city and turn them over to the marshal and United States attorney to be proceeded against in due course of law. Then proceedings could be instituted against them in either the circuit or district court, and if the relators had incurred a penalty under the law, punishment would follow. Otherwise they would be discharged from custody. But this course was not pursued in this case, neither was it intended to observe the laws in that regard, for General Crook's orders, emanating from higher authority, expressly required him to apprehend the relators and remove them by force to the Indian Territory, from which it is alleged they escaped. But in what General Crook has done in the premises no fault can be imputed to him. He was simply obeying the orders of his superior officers as a good soldier ought to do, but the orders, as we think, lack the necessary authority of law, and are therefore not binding on the relators.

I think I have shown pretty clearly the rightful authority vested in the commissioner of Indian affairs in cases like the one under consideration—that he may call on the troops to assist in carrying out his lawful orders, and just how and for what purpose the authority is vested in him to remove trespassers and intruders from the Indian country.

I have searched in vain for the semblance of any authority justifying the commissioner in attempting to remove by force any Indians, whether belonging to a tribe or not, to any place, or for any other purpose than what has been stated. Certainly, without some specific authority found in an act of congress, or in a treaty with the Ponca tribe of Indians, he could not lawfully force the relators back in the Indian territory to remain and die of their misery against their will. In the absence of all treaty stipulations or laws of the United States authorizing such removal, I must consider that no such arbitrary authority exists. It is true, if the relators are to be regarded as a part of the great nation of Ponca Indians, the government might, in time of war, remove them to any place of safety so long as the war should last, but perhaps no longer unless they were charged with the commission of some crime. This is a war power merely, and exists in time of war only. Every nation exercises the right to arrest and detain an alien enemy, during the existence of a war, and all subjects or citizens of the hostile nations are subject to be dealt with under this rule. But it is not claimed that the Ponca tribe of Indians are at war with the United States so that this war power might be used against them. In fact they are amongst the most peaceable and friendly of all the Indian tribes, and have at times received from the government unmistakable and substantial recognition of their long-continued friendship for the whites. In time of peace the war power remains in abeyance and must be subservient to the civil authority of the government until something occurs to justify its exercise. No fact exists, and nothing has occurred, so far as the relators are concerned, to make it necessary or lawful to exercise such an authority over them. If they could be removed to the Indian territory by force, and kept there in the same way, I can see no good reason why they might not be taken and kept by force in the penitentiary at Lincoln, or Leavenworth or Jefferson City, or any other place which the commander of the forces might, in his judgment, see proper to designate. I cannot think, and will not believe, that any such arbitrary authority exists in this country, and until the highest judicial tribunal in this land shall otherwise determine I shall not be convinced that my conclusions are erroneous.

I have not thought it necessary to consider the question of citizenship so ably presented on both sides and therefore express no opinion thereon.

[redacted]

The reasoning advanced in support of my views, leads me to conclude:

First. That an *Indian* is a person within the meaning of the laws of the United States, and has therefore the right to sue out a writ of habeas corpus in a federal court or before a federal judge, in all cases where he may be confined, or in custody under color of authority of the United States, or where he is restrained of liberty in violation of the constitution or laws of the United States.

Second. That General George Crook, the respondent, being the commander of the military department of the Platte, has the custody of the relators under color of authority of the United States, and in violation of the laws thereof.

Third. That no rightful authority exists for removing by force any of the relators to the Indian Territory, as the respondent has been directed to do.

Fourth. That the Indians possess the inherent right of expatriation as well as the more fortunate white race, and have the inalienable right to "life, liberty and the pursuit of happiness," so long as they obey the laws and do not trespass on forbidden ground. And

Fifth. Being restrained of liberty under color of authority of the United States, and in violation of the laws thereof, the relators must be discharged from custody, and it is so ordered.

PLEAD BEFORE THE HONORABLE ELMER S. DUNDY, JUDGE OF THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEBRASKA, AT THE TERM OF MAY, 1879.

Folio 1.

BE IT REMEMBERED THAT ON THE 5TH. DAY OF APRIL, A.D. 1879, A PETITION WAS FILED IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEBRASKA, WHICH SAID PETITION IS IN WORDS AND FIGURES FOLLOWING TO-WIT:

IN THE DISTRICT COURT OF THE UNITED STATES,

FOR THE DISTRICT OF NEBRASKA.

THE UNITED STATES EX REL.
MA-CHU, NAH-ZHA (STANDING BEAR)

VS.

GEORGE CROOK, A BRIGADIER GENERAL
OF THE ARMY OF THE UNITED STATES,
AND COMMANDER OF THE DEPARTMENT
OF THE PLATTE.

IN THE MATTER OF THE APPLICATION OF MA-CHU-NAH-ZHA STANDING BEAR ET AL. FOR A WRIT OF HABEAS CORPUS.

TO THE HONORABLE ELMER S. DUNDY, JUDGE OF THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEBRASKA.

THE PETITION OF MA-CHU-NAH-ZHA (STANDING BEAR) TA-ZHA-OUT (BUFFALO CHIP), CHAN-GU-E-HE-ZHE (YELLOW HORSE), ME-DON-AH-GAE (CRIES FOR WAR), WAITHE, HA-CUN-SHE (LONG RUNNER), WAN-CHU-DUN (CRAZY BEAR), ME-THA-ZHIN-GA (LITTLE DUCK), TA-THE-GA-O (BUFFALO TRACK), KA-WIG-I-SHA (TURTLE GREASE), WIN-I-CHUCK (WALK IN THE MUD), TA DO-MON-E (WALK IN THE WIND), ME-GAH-GIN-DE (COON'S TAIL), E-TUN-KAH (BIG BUTH) WAH-THI-GA (SWIFT), TA-WAN-DO (BUFFALO COW), WA-SHUD-DA-DE (FEATHER CRAZY), EC-MON-A (WALKING YELLOW), DO-HOO-AH (GOOD PROVISION), SUSETTE PRIMO, LAURA PRIMO, TA-NIGH-ING AH

AH (LITTLE BUFFALO WOMAN), KRE-AH-DU-WAH (MIDST OF THE EAGLES), ME, HE-DA-WAH (MIDST OF THE SUN,) XA-XI-XI (YELLOW SPOTTED BUFFALO), NO-XHA-XHE (GROWN HAIR), AND WA-GANG-WAH, WHO RESPECTFULLY SHOW UNTO YOUR HONOR THAT THEY, EACH, AND ALL OF THEM ARE PRISONERS UNLAWFULLY IMPRISONED, DETAINED, CONFINED AND INCUSTODY, AND ARE RESTRAINED OF THEIR LIBERTY UNDER AND BY COLOR OF THE ALLEGED AUTHORITY OF THE UNITED STATES BY GEORGE CROOK, A BRIGADIER GENERAL OF THE ARMY OF THE UNITED STATES, AND COMMANDING THE DEPARTMENT OF THE PLATTE, AND ARE SO IMPRISONED, DETAINED, CONFINED, AND IN CUSTODY, AND RESTRAINED OF THEIR LIBERTY BY SAID GEORGE CROOK AT FORT OMAHA ON A MILITARY RESERVATION, UNDER THE SOLE AND EXCLUSIVE JURISDICTION OF THE UNITED STATES, AND LOCATED WITHIN THE TERRITORY OF THE DISTRICT OF NEBRASKA;

THAT SAID IMPRISONMENT, DETENTION, CONFINEMENT, AND RESTRAINT BY SAID GEORGE CROOK AS AFORESAID, ARE SO DONE BY HIM UNDER AND BY VIRTUE OF SOME ORDER OR DIRECTION OF THE UNITED STATES OR SOME DEPARTMENT THEREOF, AND WHICH ORDER OR DIRECTION IS NOT MORE PARTICULARLY KNOWN TO THESE COMPLAINANTS, WHEREBY THEY ARE UNABLE TO MORE PARTICULARLY SET THE SAME FORTH, SAVE THAT THESE COMPLAINANTS ARE INFORMED AND BELIEVE THAT SAID ORDER OR DIRECTION IS TO THE EFFECT, THAT THESE COMPLAINANTS BE TAKEN AS SUCH PRISONERS TO THE INDIAN TERRITORY.

THESE COMPLAINANTS FURTHER REPRESENT THAT THEY ARE INDIANS, AND OF THE NATIONALITY OF THE PONCA TRIBE OF INDIANS, BUT THAT FOR A CONSIDERABLE TIME BEFORE, AND AT THE TIME OF THEIR ARREST AND IMPRISONMENT, AS IS HEREIN MORE FULLY SET FORTH, THEY WERE SEPARATED FROM THE PONCA TRIBE OF INDIANS, AND HAD BEEN AND WERE SEPARATED FROM THEIR TRIBAL RELATIONS TO SAID PONCA TRIBE OF INDIANS AND THAT SO MANY OF SAID PONCA TRIBE OF INDIANS AS MAINTAIN THEIR TRIBALRELATIONS ARE LOCATED IN THE INDIANS TERRITORY.

THAT YOUR COMPLAINANTS AT THE TIME OF THEIR ARREST AND IMPRISONMENT, WERE LAWFULLY AND PEACEABLY RESIDING ON THE OMAHA RESERVATION, A TRACT OF LAND SET APART BY THE UNITED STATES TO THE OMAHA TRIBE OF INDIANS, AND WITHIN THE TERRITORY OF THE DISTRICT OF NEBRASKA, AND WERE SO RESIDING THERE BY THE CONSENT OF SAID OMAHA TRIBE OF INDIANS, AND ON LANDS SET APART TO YOUR COMPLAINANTS BY SAID OMAHA TRIBE OF INDIANS.

THAT YOUR COMPLAINANTS HAVE MADE GREAT ADVANCEMENTS IN CIVILIZATION, AND AT THE TIME OF THE ARREST AND IMPRISONMENT OF YOUR COMPLAINANTS, SOME OF THEM WERE ACTUALLY ENGAGED IN AGRICULTURE, AND OTHERS WERE MAKING PREPARATIONS FOR IMMEDIATE AGRICULTURAL LABORS, AND WERE SUPPORTING THEMSELVES BY THEIR OWN LABOR, AND NO ONE OF THESE COMPLAINANTS WAS RECEIVING OR ASKING SUPPORT OF THE GOVERNMENT OF THE UNITED STATES.

THAT YOUR COMPLAINANTS WERE NOT VIOLATING, AND ARE NOT GUILTY OF ANY VIOLATION OF ANY LAW OF THE UNITED STATES, CIVIL OR MILITARY, OR OF ANY TREATY OF THE UNITED STATES, FOR WHICH SAID ARREST AND IMPRISONMENT WERE MADE.

THAT WHILE YOUR COMPLAINANTS WERE SO PEACEABLY AND LAWFULLY RESIDING ON SAID OMAHA RESERVATION, AS AFORESAID, THEY WERE EACH, AND ALL UNLAWFULLY IMPRISONED, DETAINED, CONFINED, AND RESTRAINED OF THEIR LIBERTY BY SAID GEORGE CROOK AS SUCH BRIGADIER GENERAL COMMANDING THE DEPARTMENT OF THE PLATTE, AND AS SUCH PRISONERS WERE TRANSPORTED FROM THEIR SAID RESIDENCE AT THE OMAHA RESERVATION TO FORT OMAHA, WHERE THEY ARE NOW STILL UNLAWFULLY IMPRISONED, DETAINED, CONFINED AND RESTRAINED OF THEIR LIBERTY BY SAID GEORGE CROOK AS AFORESAID.

WHEREFORE THESE COMPLAINANTS SAY THAT THEIR SAID IMPRISONMENT AND DETENTION IS WHOLLY ILLEGAL, AND THEY DEMAND THAT A WRIT OF HABEAS CORPUS BE GRANTED DIRECTED TO THE SAID GEORGE H. CROOK A BRIGADIER GENERAL

OF THE ARMY OF THE UNITED STATES COMMANDING THE DEPARTMENT OF THE PLATTE COMMANDING HIM TO HAVE THE BODIES OF NA-CHU-NAH-EHA (STANDING BEAR), TA-EHA-BUT (BUFFALO CHIP), SHAN-GU-E-HE-EHE (YELLOW HORSE), NE-DON-AH-GAE (CRIES FOR WAR), WA-THE-HA-CUH-SHE (LONG RUNNER), WAH-CHU-DUN (CRAZY BEAR), ME-THA-EHUNG-GA (LITTLE DUCK), TA-THE-GA-DA (BUFFALO TRACK), TA-BIG-I-SHA (TURTLE GREASE), MIN-I-CHUCK (WALK IN THE MUD), TA-DO-MON-E (WALK IN THE WIND), ME-GAH-SIN-DE (COON'S TAIL), E-TUN-KAH (BIG MOUTH), WAH-THI-GA (SWIFT), TA-WAN-DO (BUFFALO COW), WA-SHUO-DA-DE (FEATHER CRAZY)-ZE-MON-A (WALKING YELLOW), DO-MOO-AH (GOOD PROVISION), SUSETTE PRIMO, LAURA PRIMO, TA-NIGH-ING-AH (LITTLE BUFFALO WOMAN), KRE-AH-DU-WAH (MIDST OF THE EAGLES), ME, HE-DA-WAH (MIDST OF THE SUN), EE-EI-EI (YELLOW SPOTTED BUFFALO), WO-EHA-EHI (GROWN HAIR,) AND WAH-GANG-WAH BEFORE YOUR HONOR AT A TIME AND PLACE THEREIN TO BE SPECIFIED, TO DO AND RECEIVE WHAT SHALL THEN AND THERE BE CONSIDERED BY YOUR HONOR CONCERNINGTHEM, TOGETHER WITH THE TIME AND CAUSE OF THEIR DETENTION, AND SAID WRIT, AND THAT THE COMPLAINANTS MAY THEN BE RESTORED TO LIBERTY.

NA-CHU-NA-EHA (STANDING BEAR) HIS X MARK

TA-EHA-BUT (BUFFALO CHIP) HIS X MARK

WA-CHU-DUN (CRAZY BEAR) HIS X MARK

SHUN-GU-EHE-EHE (YELLOW HORSE) HIS X MARK

NA-CHEN-AH-GAE (CRIES FOR WAR) HIS X MARK

WA-THE-HA-CUH-SHE (LONG RUNNER) HIS X MARK

ME-THA-EHUN-GA (LITTLE DUCK) HIS X MARK

TA-THE-GA-DA (BUFFALO TRACK) HIS X MARK

A. J. POPPLETON AND JNO. L. WEBSTER,

ATTY'S FOR PETITIONERS.

UNITED STATES OF AMERICA,
DISTRICT OF NEBRASKA,
DOUGLAS COUNTY, } SS.

MA-CHU-NAH-ZHA (STANDING BEAR), TA-ZHA-BUT (BUFFALO CHIP), SHAN-GU-ZHE-ZHE (YELLOW HORSE), MU-DON-AH-GAE (CRIES FOR WAR), MA-THE-HA-CUN-SHE (LONG RUNNER), MAN-CH-DUN (CRAZY BEAR), ME-THA-ZHIN-GA (LITTLE DUCK), TA-THE-GA-DA (BUFFALO TRACK), KA-BIG-I-SHA (TURTLE GREASE), MIN-I-GHUCK (WALK IN THE MUD), TA-DO-MON-E (WALK IN THE WIND), ME-GAH-SIN-DE (COON'S TAIL), E-TUN-KA (BIG MOUTH), MA-THI-GA (SWIFT), TA-WAN-GO (BUFFALO COW), MO-SHUD-DA-DE (FEATHER CRAZY), EE- ON-A (WALKING YELLOW), DO-MOO-AH (GOOD PROVISION), SUSETTE PRIMO, LAURA PRIMO, TA-NIGH-I G-AH (LITTLE BUFFALO WOMAN), KRE-AH-CU-RAH (MIDST OF THE EAGLES), ME-HE-DA-WAH (MIDST OF THE SUN), ZA-ZI-ZI (YELLOW SPOTTED BUFFALO), NO-ZHA-ZHE (GROWN HAIR) AND WA-DANG-WAH, BEING FIRST DULY SEVERALLY SWORN ACCORDING TO LAW SAY THE FACTS STATED IN THE FOREGOING COMPLAINT ARE TRUE

MA-CHA-HA-ZHA (STANDING BEAR) HIS X MARK

TA-ZHA-BUT (BUFFALO CHIP) HIS X MARK

NA-CUN-AH-GAE (CRIES FOR WAR) HIS X MARK

SCHUN-GU-ZHE-ZHE (YELLOW HORSE) HIS X MARK

MA-CHU-DUN (CRAZY BEAR) HIS X MARK

MA-THE-ZHIN-GA (LITTLE DUCK) HIS X MARK

MA-THE-HA-CUN-SHE (LONG RUNNER) HIS X MARK

TA-THE-GA-DA- (BUFFALO TRACK) HIS X MARK

SUBSCRIBED IN MY PRESENCE AND SWORN TO BEFORE ME THIS 4TH. DAY OF APRIL, A.D. 1879.

[SEAL] HOWER STULL, NOTARY PUBLIC.

SAID PETITION IS ENDORSED AS FOLLOWS:

NO. 38 F. U.S.DISTRICT COURT DISTRICT OF NEBRASKA. UNITED STATES EX REL MA-CHU-NAH-ZHA- ET AL. VS. GEORGE CROOK A BRIGADIER GENERAL OF THE U.S.ARMY COMMANDING THE DEPARTMENT OF THE PLATTE. FILED APRIL 8, 1879. WATSON B. SMITH, CLERK. A.J.POPPLETON AND L.WEBSTER.

THEREUPON AFTERWARDS, ON SAID 8TH. DAY OF APRIL, AT THE JANUARY ADJOURNED TERM OF SAID COURT THE FOLLOWING AMONG OTHER PROCEEDINGS WERE HAD AND DONE, AS APPEARS OF RECORD ON FOLIO 297 JOURNAL D OF SAID COURT

THE UNITED STATES EX REL.

MA-CHU-NAH-ZHA, (STANDING BEAR) ET AL

VS.

GEORGE CROOK A BRIGADIER GENERAL

U.S.A. COMMANDING THE DEPARTMENT

OF THE PLATTE

THIS DAY CAME (MA-CHU-NA-ZHA (STANDING BEAR), TA-ZHA-BUT (BUFFALO CHIP), SHAN-GIN-E-HE-ZHE (YELLOW HORSE), WO-DON-AH-GAE (CRIES FOR WAR) MA-THE-HA-CUH-SHE (LONG RUNNER), WAN-OHI-DUN (CRAZY BEAR) ME-THA-ZHIN-GA (BUFFALO TRACK), KA-BIG-I-SHA (TURTLE GREASE), MIN-E-CHUCK (WALK IN THE MUD), TA-DO-MUN-E (WALK IN THE WIND), ME-GAH-SIN-DE (COON'S TAIL) E-TUN-KAH (BIG MOUTH), WAH-THI-GA (SWIFT), TA-WAN-GO (BUFFALO COW), MA-CHUD-DA-DE (WEATHER CRAZY), TE NUGE-A (WALKING YELLOW), GO-MOG-AH (GOOD PROVISION) SUSETTE PRIMO, LAURA PRIMO, TA-BIGH-ING-AH (LITTLE BUFFALO WOMAN), KRE-AH-GU-PAH (MIDST OF THE EAGLES), ME-HE-DA-WAH (MIDST OF THE SUN), TA-ZI-ZI (YELLOW SPOTTED BUFFALO), WO-ZHA-ZHE (GROWN HAIR) AND WA-GANG-WAH, BY THEIR ATTORNEY'S MESSRS A.J.POPPLETON AND J.L.WEBSTER AND MADE APPLICATION FOR A WRIT OF HABEAS CORPUS, AND IT BEING MADE TO APPEAR TO THE COURT THAT THE SAID PETITIONERS ARE DETAINED WITHOUT ANY LEGAL AUTHORITY. IT IS THEREFORE ORDERED THAT A WRIT OF HABEAS CORPUS BE ALLOWED TO ISSUE ON BEHALF OF THE SAID PETITIONERS DIRECTED TO

GEORGE CROOK, A BRIGADIER GENERAL OF THE UNITED STATES, COMMANDING THE DEPARTMENT OF THE PLATTE, RETURNABLE WITHIN TEN DAYS FROM THE DATE OF THE SERVICE OF SAID WRIT UPON HIM.

THEREUPON ON SAID 8TH. DAY OF APRIL, 1879, A WRIT OF HABEAS CORPUS WAS ISSUED AND ON THE 18TH. DAY OF APRIL, 1879, A COPY THEREOF WAS RETURNED BY THE MARSHAL WITH HIS RETURN OF SERVICE ATTACHED THERETO, IN WORDS AND FIGURES FOLLOWING, TO-WIT:

DISTRICT OF NEBRASKA, ss.

I HEREBY CERTIFY AND RETURN, THAT ON THE 8TH. DAY OF APRIL, 1879 I RECEIVED THE ORIGINAL OF THIS WRIT AND ON THE 8TH. DAY OF APRIL-1879 I SERVED THE SAME UPON THE WITHIN NAMED GEORGE CROOK, A BRIGADIER GENERAL OF THE ARMY OF THE UNITED STATES COMMANDING &C IN DOUGLAS COUNTY, STATE AND DISTRICT OF NEBRASKA, BY DELIVERING TO AND LEAVING WITH HIM SAID ORIGINAL WRIT.

WILLIAM DAILY,

UNITED STATES MARSHAL FOR THE DISTRICT OF NEBRASKA.

BY ELLIS L. BIERBOWER,

DEPUTY UNITED STATES MARSHAL.

THEREUPON AFTERWARDS, TO-WIT, ON THE SAID 18TH. DAY OF APRIL, 1879 THE RETURN OF GEO. CROOK BRIG. GENL. U.S.A. WAS FILED IN SAID CASE, WHICH SAID RETURN IS IN WORDS AND FIGURES FOLLOWING, TO-WIT:

RETURN.

TO THE

HON. ELMER S. DUNDY,

U.S. DISTRICT JUDGE,

FOR THE DISTRICT OF NEBRASKA.

AS DIRECTED BY YOUR WRIT OF