

2005

# Maurice Joseph Gelpi III v. Board of Pardons : Brief of Appellant

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

UTAH COURT OF APPEALS  
BRIEF

MAURICE JOSEPH GELPI<sup>III</sup>  
Plaintiff / Appellant

UTAH  
DOCUMENT  
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DOCKET NO. 20050219

Appeals Case No: 20050219

District Court No: 040920604R

In Board of Pardons;  
At Friel - Warden of USP;  
vs E. Yocom - Salt Lake District Attorney  
Defendant / Appellee.

BRIEF OF APPELLANT

Appeal from a judgment order made by summary judgement, decision to dismiss Appellant's filing a writ of Habeas Corpus on September 30, 2004, wherein the Petitioner challenged his arrest and detention. The Petitioner argued that the Warrant for Arrest issued by the Board of Pardons was not valid as it lacked all stipulated stated States Constitutional Requirements for the legal issuance of an arrest warrant. Petitioner's arguments included that the Board of Pardons and Parole (Board) lacked judicial jurisdiction to issue any warrant; that the issuance and execution of the warrant violated the Due Process Clause of the Fourth Amendment; and that the Board lacked subject matter jurisdiction to continue to imprison the Petitioner.

WINA M. MITCHELL  
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UTAH APPELLATE COURTS

MAY 23 2005

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# IN THE UTAH COURT OF APPEALS

MAURICE JOSEPH GELPI III  
PLAINTIFF / APPELLANT

Utah Board of Pardons;  
Lt. FRIEL - WARDEN of USP;  
and E. Yocom - Salt Lake District Attorney  
DEFENDANT / APPELLEE.

Appeals Case No: 20050219  
District Court NO: 040920604 RN

## JURISDICTIONAL STATEMENT

The Utah Court of Appeals has jurisdiction over this appeal pursuant to Utah Code Ann. § 78-24-3 (1).  
Based on the Court's Minute Entry Ruling, dated January 2005, Third Judicial District Court in and for Salt Lake County, State of Utah, The Honorable J. DENNIS FREDERICK, presided. A copy of the judgement is attached as addendum A.

## STATEMENT OF THE ISSUE, STANDARD OF REVIEW, PRESERVATION

ISSUE(S), Whether the issuance of the Arrest Warrant ordered by Cheryl Hansen who is employed as a member of the Utah Board of Pardons; a position held within the Executive branch of Government, met the United States Constitutional stipulated requirements to order a judicial jurisdictional arrest warrant; was said warrant issued and ordered following Due Process law, and further by arrest warrant not being fixed with oath or affirmation as by law, does this lack of signature under oath or affirmation violate petitioners Constitutional rights?

Appellant(s) Arrest, detention, transfers, extradition,

USUALLY FROM UNITED STATES FURNISHED TO A.S.T. AND I. UTILITIES  
UPON ARRIVAL IN THE STATE OF Utah without being brought  
before a Magistrate as by law: further the immediate  
transfer by A.P. and P. Officers of Appellants person  
directly to Executive Custody at Utah State Prison  
without any type of Judicial Court hearing to challenge  
the legality, and validity of said arrest warrant are  
issues of whether these actions are a direct violation  
Appellants due Process Rights under the United  
States Constitution(s) guarantee to Equal Protection  
under the Law?

Whether the Agreement to Return / Waiver  
Extradition Used was valid or legal as it had  
been used i.e. executed and agreements terms therein  
had been fulfilled on July 19<sup>th</sup>, 2000 when extradition  
stemming from this contract was performed, making  
this contract (Agreement to Return / Waiver of Extradition)  
fulfilled and exhausted, End of Contract. All stipulated  
terms of said agreement had been met.

Finally by not entering into any additional  
agreement by signature on Contract, to amend the  
agreement to Return / Waiver of Extradition, signed  
March 25, 1999, can a previously exhausted  
contract be used more than once after its prior  
total fulfillment of its stipulations and exhaustion  
its entirety?

## Standard of Review.

This Court will REVERSE A MINUTE ENTRY  
leading to dismiss for summary judgement "when,  
after viewing the evidence and all inferences drawn  
therefrom in a light most favorable to the conclusion  
judgement, (it) find(s) that the evidence to support  
the conclusion of judgement was completely lacking or

AS SO SLIGHT AND UNCONVINCING AS TO MAKE THE  
CONCLUSION OF JUDGEMENT PLAINLY UNREASONABLE AND  
UNJUST.

### PRESERVATION.

THESE ISSUE(S) WERE PRESERVED BELOW.

## Statutory Provisions

### BILL OF RIGHTS

Article the sixth (AMENDMENT IV):

THE RIGHT OF THE PEOPLE TO BE SECURE IN THEIR PERSONS  
... UNREASONABLE SEARCH AND SEIZURES, SHALL NOT BE VIOLATED  
AND NO WARRANTS SHALL ISSUE, BUT UPON PROBABLE CAUSE, SUPPORTED  
OATH OR AFFIRMATION, AND PARTICULARLY DESCRIBING THE PLACE  
TO BE SEARCHED, AND PERSONS OR THINGS TO BE SEIZED.

Article the seventh (AMENDMENT V);

Article the Eighth (AMENDMENT VI);

Article the tenth (AMENDMENT VIII):

EXCESSIVE BAIL SHALL NOT BE REQUIRED, NOR EXCESSIVE  
FINES IMPOSED, NOR CRUEL AND UNUSUAL PUNISHMENTS INFLICTED

## Constitution for the United States of America

Article III.

SECTION. 2.: . . . . THE TRIAL OF ALL CRIMES, . . . ., SHALL  
BE BY JURY; AND SUCH TRIAL SHALL BE HELD IN THE STATE WHERE  
SAID CRIMES SHALL HAVE BEEN COMMITTED; . . . . .



Article VI;

(Additional Amendments to the Constitution)

Article XIV.

Section 1. . . . ., without due process of law; NOR  
ANY to ANY PERSON within its Jurisdiction the equal  
protection of the laws.

## Constitution of the State of Utah

Article I, SEC 3., SEC 5., SEC 7., SEC 8., SEC 9., SEC  
1., SEC 11., SEC 12., SEC 13., SEC 14. SEC 18., etc..

Article V.

Section 1. (Three departments of government)

. . . . . AND NO PERSON charged with the EXERCISE of powers  
properly belonging to ONE of these departments, shall  
EXERCISE ANY functions appertaining to EITHER of the  
others, . . . . .

Article VI.

SEC 26. 4, 5, 6, 7, 11, AND 18, AND 29. .

Article VII.

SEC 5., SEC 12., SEC 13., SEC 18. .

Article VIII.

SEC 1., SEC 4., SEC 5., SEC 7., SEC 8., SEC 9., SEC 13.,  
SEC 17., SEC 19., SEC 22., SEC 25. . .

## INTER-AMERICAN CONVENTION ON EXTRADITION

Article II, (supporting Documents) 1, (A)

Article 14, (provisional Detention and precautionary Measures), 1,

Article 16, (Legal Rights and Assistance)

Article. 17.,  
Article. 20.,  
Article. 23.;

( Title 77. Utah Code of Criminal Procedure )  
Chapter 30. Extradition

NOTE: PLEASE SEE stipulated requirements under the following legal statutes - Emphasis on "Process due"

7-30-3 (Form of demand - what documents presented must show.

7-30-10 (Time to apply for habeas Corpus allowed.)

7-30-11 (Penalty for disobedience of habeas Corpus)

7-30-13 (Fugitives from Justice - Warrant of Arrest.)

7-30-15 (Commitment pending arrest under warrant of Governor.

7-30-23 (Fugitives from this state - Applications for requisition for return  
Process must ~~be~~<sup>MSG</sup> be met under this Statute by law.

STATEMENT OF THE CASE

On September 30<sup>th</sup>, 2004, the Petitioner and Appellant, L. Gelpi filed a Writ of Habeas Corpus, wherein he challenges arrest and detention, arguing that the Warrant for Arrest issued by the Board of Pardons lacks all stipulated Constitutional requirements for any warrant to issue, thus, rendering the warrant used to arrest Mr. Gelpi invalid. Petitioner's arguments include that the Board of Pardons and Parole without the process due threw the Judicial Branch of Government i.e. jurisdiction by a usurpation.



JURISDICTION TO ISSUE ANY KIND OF WARRANT; THAT THE ISSUANCE AND EXECUTION OF THE WARRANT VIOLATES THE DUE PROCESS CLAUSE AND THE FOURTH, FIFTH, EIGHTH, TENTH AND FOURTEENTH AMENDMENTS OF THE UNITED STATES CONSTITUTION. PLAINTIFF FURTHER ARGUES THAT THE BOARD OF PARDONS LACKS SUBJECT MATTER TO CONTINUE TO IMPRISON THE PETITIONER.

PLAINTIFF / APPELLANT HAS SHOWN THAT THE WAIVER OF EXTRADITION AGREEMENT TO RETURN THAT IS BEING USED TO JUSTIFY THE ARREST AND CONTINUED DETAINMENT OF MR GELPI IS INVALID AS IT HAD BEEN ENTERED AND SIGNED 3-25-1999 AND WAS USED 7-19-2000 - THUS FULFILLING THE CONTRACT (AGREEMENT TO RETURN / WAIVER OF EXTRADITION) RENDERING SAID CONTRACT REJECTED AND EXHAUSTED. END OF SIGNATURE AGREEMENT ON CONTRACT. PLAINTIFF / APPELLANT, MR GELPI WAS EXTRADITED FROM CALIFORNIA PAROLE, BROUGHT BACK TO UTAH ON THIS CONTRACT WHERE PAROLE WAS REVOKED AND PLAINTIFF WAS COMMITTED BACK

UTAH STATE PRISON. THE FACTS STAND THAT MR GELPI NEVER SIGNED ANY AGREEMENT TO AMEND THE WAIVER OF EXTRADITION OR WAS THERE ANY ADDITIONAL WAIVER OF EXTRADITION ENTERED OR SIGNED BY MR. GELPI. THE EXTRADITION, ARREST AND CONTINUED DETENTION IS A DIRECT VIOLATION OF PLAINTIFF'S CONSTITUTIONAL RIGHTS, IT IS FURTHER CRUEL AND UNUSUAL PUNISHMENT AND CRIMINAL BY NATURE. EMPHASIS IS PLACED ON THE FACT THAT MR GELPI PAROLE WAS REVOKED WHEN EXTRADITION WAS PERFORMED USING THE WAIVER OF EXTRADITION - MR GELPI WAS THEN IMPRISONED AND ADDITIONAL TIME IN UTAH STATE PRISON THEN WAS GRANTED NEW PAROLE JULY 9th 2002 WITHOUT ENTERING INTO A NEW CONTRACT BY SIGNATURE. AGREEMENT TO RETURN / WAIVER OF EXTRADITION CONTRACT WAS NEVER SIGNED OR REINSTITUTED PRIOR TO MR GELPI BEING GRANTED JULY 9th 2002 THUS MAKING THE RESPONDENTS CLAIMS UNJUSTIFIED AND UNSUPPORTED BY LAW.

THE EVIDENCE PRESENTED WILL REFLECT THE FOLLOWING:

1) THE WARRANT OF ARREST WAS ISSUED AND ORDERED BY CHERYL ANSEN WHO IS EMPLOYED AS A MEMBER OF THE UTAH BOARD OF PARDONS WHICH IS A POSITION HELD WITHIN THE EXECUTIVE BRANCH OF GOVERNMENT.

2) THE ISSUANCE OF THE ARREST WARRANT ORDERED BY THE BOARD OF PARDONS, WAS NOT VALID BY ANY MEANS, AS IT LACKED STIPULATED REQUIREMENTS BY UNITED STATES CONSTITUTION, WITH, FIFTH AND FOURTEENTH AMENDMENTS.

REQUIREMENTS: ADJUDICATION BY MAGISTRATE, NEUTRAL AND DETACHED FROM LAW ENFORCEMENT, AFFIXED WITH OATH OR AFFIRMATION.

3) THE FAILURE TO BRING MR GELPI, BEFORE A MAGISTRATE, CHALLENGE THE LEGALITY AND VALIDITY OF THE ARREST WARRANT, A DIRECT VIOLATION OF MR GELPI'S CONSTITUTIONAL RIGHTS.

4) THE UNLAWFUL ARREST AND THE DIRECT TRANSPORT TO UTAH STATE PRISON WITHOUT MR GELPI BEING AFFORDED HIS:

- A) CONSTITUTIONAL RIGHT TO A MAGISTRATE HEARING
- B) CONSTITUTIONAL RIGHT TO A BAIL HEARING
- C) CONSTITUTIONAL RIGHT TO A PROBABLE CAUSE HEARING BEFORE A COURT OF RECORD.

5) THAT EVIDENCE WOULD SHOW THAT THE AGREEMENT TO RETURN/ GIVER OF EXTRADITION WAS USED ON JULY 19, 2000, WHEN GELPI WAS EXTRADITED FROM HIS PAROLE IN THE STATE OF CALIFORNIA AND COMMITTED BACK TO UTAH STATE PRISON, MR. GELPI'S ROLE WAS REVOKED THUS, REVEALING THE MARCH 25, 1999.

'AGREEMENT' TO RETURN / WAIVER OF EXTRADITION INVALID AND UNLAWFUL DUE TO ITS PREVIOUS EXECUTION AND EXHAUSTION.

6) That Appellant, MR Gelpi, did not at any time, enter to any signed contract relinquishing his Constitutional rights Equal Protection nor did he Relinquish his Constitutional ght to due process of the Law, nor did Appellant enter to a WAIVER of Extradition / Agreement to Return prior him being granted parole on July 9<sup>th</sup> 2002 from Executive Custodial Custody (U.S.P.) back into the Civil Government Judicial Jurisdiction Protection of the 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 8<sup>th</sup>, 10<sup>th</sup> and 14<sup>th</sup> Amendments.

7) Evidence shows that the Defendants ... have violated and continue to violate MR Gelpi's Constitutional rights to due process and Equal Protection of the Law.

Process due Appellant on May 6<sup>th</sup> 2004, was transport to Salt Lake County Jail where warrant was issued, a hearing before a Magistrate of competent Jurisdiction, a Constitutional ght to a bail hearing, a hearing to challenge the Legality and validity of the Arrest.

These Constitutional rights to due process was not and is not been afforded MR Gelpi, as guaranteed by Equal Protection of the Law, please see listed statutes and United States Constitutional Rights.

8) That Judicial Jurisdiction for alleged parole violations is within the 3<sup>rd</sup> Judicial District Court, State of Utah, be charged by Information by Salt Lake City District Attorney's Office, with a trial by Jury, conviction, and sentence, with commitment to Utah State Prison prior to parole revocation and prior to any transport to Utah State

prison.

This process due Appellant by law, has not happened  
is directly violating all Mr Gelpi's Constitutional Rights  
due Process under the Equal protection guaranteed by  
the United States Constitution.

9) From time of Arrest (April 2<sup>nd</sup>, 2004) no charges,  
nor the alleged parole violations, have been addressed  
adjudicated by a Court of law, that resulted in a  
judicial order to take away Mr Gelpi's liberty rights  
and place him back in State Prison.

This lack of legal due Process is a blatant disregard  
of Mr Gelpi's Civil rights and the continued detainment from  
April 2<sup>nd</sup> 2004 to date is unlawful, criminal by nature and a  
continual Subjection to cruel and unusual punishment.

### FACTUAL SUMMARY

1) Fact - the Board of Pardons nor any of its members  
or Magistrates, Judges or a Court of Record, nor has  
the Board or its members been empowered to act as  
Judicial Jurisdiction. The authority to issue arrest  
warrants remains exclusively in the legal jurisdiction  
of the Judicial Branch of Government.

2) Fact - the Board of Pardons is not a Court of law in  
any City municipality nor is the Board of Pardons annexed  
to the City or County.

3) Fact - Appellant, Mr Gelpi was in the Civil Government  
jurisdictional Protection of the 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 8<sup>th</sup>, 10<sup>th</sup>, and 14<sup>th</sup>  
Districts.



IN THE CUSTODY OF THE CUSTODIAL EXECUTIVE INSTITUTION  
WHEREFOR APPELLANTS CIVIL RIGHTS TO DUE PROCESS OF LAW  
GUARANTEED BY THE UNITED STATES CONSTITUTION IS VIOLATED,  
S THE PROCESS DUE IS A MAGISTRATE OF CIVIL GOVERNMENT  
NEUTRAL AND DETACHED FROM LAW ENFORCEMENT; TO DETERMINE  
PROBABLE CAUSE THAT A CRIME HAS BEEN COMMITTED, FOR A  
WARRANT OF ARREST TO ISSUE AND FINELY A JUDICIAL DETERMIN-  
ATION OF PROBABLE CAUSE TO DETAIN.

1) FACT - FOURTH AMENDMENT, UNITED STATES CONSTITUTION . . .  
"NO WARRANT SHALL ISSUE BUT UPON PROBABLE CAUSE,  
SUPPORTED BY OATH OR AFFIRMATION. . ."

5) FACT - PAROLE WARRANT ORDERED AND ISSUED BY CHRIS HANSEN  
IS NOT MADE LEGAL BY ORDER OF A MAGISTRATE; THERE WAS  
AN APPLICATION FOR REQUISITION SUBMITTED TO THE COURTS BY THE  
SALT LAKE CITY DISTRICT ATTORNEYS OFFICE THAT RESULTED IN A  
JUDICIAL ORDER TO ARREST MR. GELPI, NOR WAS THERE AN ARREST  
WARRANT ISSUED BY ADJUDICATION BY A JUDGE AFFIXED WITH  
OATH OR AFFIRMATION AS REQUIRED BY UNITED STATES CONSTITUTIONAL  
LAW.

6) FACT - PAROLE AGREEMENT, AGREEMENT TO RETURN / WAIVER  
OF EXTRADITION SIGNED BY APPELLANT, MR. GELPI ON MARCH  
5<sup>TH</sup>, 1999 WAS FULFILLED IN ITS ENTIRETY ON JULY 19, 2000  
WHEN IT WAS USED TO EXTRADITE AND REVOKE MR. GELPI'S  
PAROLE. FURTHER, SIGNATURE CONTRACT ENTERED BY APPELLANT  
ON MARCH 25<sup>TH</sup>, 1999 FALLS EXCLUSIVELY UNDER CIVIL JURISDICTIONAL  
INTRACT LAWS.

7) FACT - APPELLANTS PAROLE AGREEMENTS ENTERED BY SIGNATURE  
ON MARCH 25<sup>TH</sup>, 1999 CONTAINED NO VIOLATION OF DUE PROCESS

## 1 Constitutional guarantee.

8) Fact - From day of Appellants unlawful arrest, MR Gelpi has not been afforded his Constitutional rights to due process, to any type of Judicial proceeding and/or probable cause hearing to address the allegations used to arrest and detain MR. Gelpi. This lack of Judicial proceedings is UNCONSTITUTIONAL as due process must be met.

9) Fact - The State of Utah recognizes the United States Constitution as the Supreme law of the land, and further recognizes that no state may create and/or enforce laws that abridge the United States Constitutional laws. Thus, recognizing by its own admittance that Federal Constitutional warrant issuing requirements stand firm and must be followed to the letter or "NO WARRANT SHALL ISSUE".

10) Fact - NO charges were filed in 3rd District Court or any court in the State of Utah that addressed or resulted in a Judicial Order to take MR. Gelpi's rights or place him back in Utah State Prison.

11) Fact - Appellant, MR. Gelpi, by the letter of the law has not been unlawfully arrested, subjected to unlawful imprisonment, and continued denial of his Constitutional rights Equal Protection, representation by a competent counsel, hearing before a Magistrate and a bail hearing.

MR Gelpi believes the cruel and unusual punishment is being subjected to is inflict criminal by nature,



12) Fact - Utah Code of Criminal Procedure 77-27-2 (2)(a) states that the Board members term is 5 years, and that time Board members can hold or act in no other position in Government. Thus, the Board has violated its statute by acting as a Judicial Magistrate or a jurisdictional court of law when it issued this unlawful arrest warrant. Further the Board members; Michael Abbott, Cheryl Hansen, Donald E. Blanchard and Curtis Garver, have been making and issuing orders as all time Board of Pardons members from August 13<sup>th</sup>, 1997, date on my case alone. Thus, violating and abusing its own State law statutes. In turn these actions have and are repeatedly violating Mr Gelpi's rights under the United States Constitution.

3) Fact - The waiver of Extradition the Respondents / Defendants are using to argue there justification for the arrest and direct transportation to Utah State Prison is and is, invalid due to its legal execution and exhaustion said contract on July 19<sup>th</sup> 2000, making this contract null and void.

14) Fact - The Appellant did not enter into any signed contract of Agreement to Return / Waiver of Extradition or before his release on Parole July 9<sup>th</sup>, 2002, making the Defendants claim that Plaintiff and Appellant's signing waiver of Extradition meritless due to its prior use and fulfillment of its entirety.

5) Fact - The Plaintiff and Appellant is demanding his

## Claim for Relief

1. The unlawful arrest of Appellant on April 2<sup>nd</sup>, 2004, by order of Cheryl Hansen, Acting as a Board of Pardons member

1). The unlawful issuance of arrest warrant without following United States Constitutional due process laws.

2). The unlawful arrest and transport directly to Utah State Prison without Appellants being afforded his Constitutional rights to due process and Equal protection of the law.

3). The direct indifference ~~to meet~~<sup>MSG</sup> United States Constitutional arrest warrant stipulated requirements:  
- Adjudication by detached Magistrate, Affixed with Oath or Affirmation - violates Appellants rights.

4). The direct violation of Appellants rights to a Magistrate hearing, bail hearing, probable cause hearing and the legal right to a Court of Record with the representation and assistance of Competent Counsel, from date of arrest to present date.

5). By not acting to ensure Appellants rights were afforded him and by not further ensuring that legal due process procedures were properly executed and by leaving Mr Gelpi in Utah State Prison without honoring his Equal Protection rights under the Constitution, the Defendants are directly responsible by law for these criminal acts.

6). Any and all other claims relevant to statement of facts to be determined when and if Appellant is able to receive some consistent form of legal representation.

## Prayer for Relief

wherefore the Appellant prays for relief as follows:

- 1). That the Court enter Judgement declaring the Acts of the Defendants were unjust and violate the rights of Mr. MAURICE JOSEPH Gelpi<sup>III</sup>, under the 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 8<sup>th</sup>, 10<sup>th</sup>, and 14<sup>th</sup> Amendments of the United States Constitution.
- 2). That the Court enter Judgement declaring the Acts of the Defendants ~~did~~ violated the 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 8<sup>th</sup>, 10<sup>th</sup> and 14<sup>th</sup>, Amendments of the United States Constitution.
- 3) That the Court award compensatory damages for lost wages, property etc., in the sum the Court and / or Jury deems appropriate.
- 4) That the Court award general damages of \$2,000,000 (Two million dollars) to the Plaintiff / Appellant.
- 5) That the Court award punitive damages of \$2,000,000 (Two million dollars) to the Plaintiff / Appellant.
- 6) That the Court grant other further relief to Mr. Gelpi as the Jury and Court deems appropriate.
- 7) That the Court Order that all arrest warrants shall be issued only by a Magistrate of the Judicial branch of government affixed with Oath or Affirmation as by stipulated United States Constitutional requirements.

## Summary of Argument

Warrant to Arrest was not made legal by United States Constitutional requirements. Extradition Waiver / Agreement to return was invalid and unlawful due to its

CONTENTENCE AND PRIOR EXECUTION AND EXHAUSTION. THE DEFENDANTS / APPELLEE HAVE FAILED TO PROVE THEIR CLAIM, THAT IS, THAT PLAINTIFF / APPELLANT, RELINQUISHED HIS RIGHTS TO DUE PROCESS AND EQUAL PROTECTION BY THE SIGNATURE ENTERED ON 3, 25, 1999 — TO THE DOCUMENT TITLED WAIVER OF EXTRADITION / AGREEMENT TO RETURN AS SAID DOCUMENT WAS RENDERED NULL AND VOID BY ITS CONTRACTED FULFILLMENT WHEN IT WAS USED JULY 19<sup>TH</sup> 2000 — AGREEMENT ENTERED, CONTRACT EXECUTED, END OF CONTRACT.

NO FURTHER AGREEMENT TO RETURN / WAIVER OF EXTRADITION WAS ENTERED PRIOR TO NEW PROSECUTION JULY 9<sup>TH</sup> 2002.

DEFENDANTS CAUSED PLAINTIFF'S ARREST, AND 14 MONTHS OF UNLAWFUL DETAINMENT WITH OUT PROCESS DUE HIM BY UNITED STATES CONSTITUTIONAL RIGHTS GUARANTEES.

THEREFORE, PLAINTIFF / APPELLANT MUST BE RELEASED AND COMPENSATED IMMEDIATELY, PRIOR CASE DISMISSAL MUST BE EVERSED AND ALL RELIEF GRANTED AS MR GELPI IS INTITLED TO THIS BY LAW.

## Argument

THE DEFENDANTS / APPELLEE HAVE FAILED TO PRESENT SUFFICIENT EVIDENCE TO SUPPORT THEIR UNLAWFUL JUSTIFICATION FOR THE ACTIONS WHICH CAUSED THE ARREST AND CONTINUAL DETAINMENT OF MR GELPI, THE DEFENDANTS CLAIMS ARE NOT MADE LEGAL BY ANY MEANS AS THERE ONE AND ONLY ARGUMENT IS THE ENTERING BY SIGNATURE OF AGREEMENT TO RETURN / WAIVER OF EXTRADITION DATED MARCH 25<sup>TH</sup>, 1999 — THE FACT THAT THIS CONTRACT WAS PREVIOUSLY EXECUTED AND EXHAUSTED UPON ITS CONTRACTUAL FULFILLMENT ON JULY 19<sup>TH</sup> 2000 RENDERED SAID CONTRACT LEGALLY NULL AND VOID THUS MAKING THE RESPONDENTS CLAIMS



Plaintiff and Appellants objections to 3<sup>rd</sup> District Courts  
idea, prepared by the Respondents for the Appellee is  
not the Judge overlooked or misapprehended the fact,  
there was no waiver of Constitutional rights to due process  
- Equal protection of the Law. The signing of said  
contract was done under the understanding that this  
agreement was for the sole purpose of bringing Mr Gelpi  
to ~~the~~<sup>msb</sup> to the Jurisdiction of the State of Utah upon  
if necessary judicial proceedings stemming from any  
alleged crime or parole violation Allegation. This agreement  
was never signed under any means with the knowledge  
that Mr Gelpi would not be afforded his Constitutional  
rights. The simple wording of said Contract does  
not state any Relinquishments of rights.

Mr Gelpi agreed to return to the State of Utah,  
be afforded a Magistrate hearing by a Court of competent  
jurisdiction, to determine the Legality of his detention.  
At no time did Appellant waive these rights but rather,  
Mr. Gelpi waived his right to oppose extradition so that  
he may have his day in Court.

After approximately 14 months the arrest warrant has  
never been addressed, the waiver of Extradition used  
as been challenged with no results - Mr Gelpi has  
not been afforded his rights and never has the Allegation  
or the issuance of arrest warrant been made valid or  
legal by a Magistrate ruling or a probable cause determi-  
nation. This lack of Constitutional Due Process is a direct  
and continual violation of Mr Gelpi's rights.

Respondents continue to mislead the Court, by informing  
the Court the waiver in question was an agreement  
to return to custody and further that it was still active  
when it was in fact exhausted by prior fulfillment and

NEVER WAS IT AMENDED OR REINSTATED BY SIGNATURE.  
Appellant is confident the Court will find no legal  
judicial Jurisdictional order for an arrest Warrant for  
parole violation Allegations, and will find no Judicial  
able cause determination stemming from same said  
Allegations of parole violations. Finally the Appellant is  
confident the Court will find no Judicial order for  
Mr Gelpi to be returned to prison.

Appellant has attempted throughout his entire unlawful  
arrest and 14 months of detainment to EXERCISE his rights  
guaranteed by the United States Constitution by seeking  
relief from the Courts however 3<sup>rd</sup> District Court  
State of Utah has ignored both State and Federal  
Due Process Rights guaranteed by Equal Protection to the  
Petitioner / Appellant, Mr Gelpi. This unconstitutional  
actions being forced upon Mr. Gelpi is cruel and  
unusual Punishment, Criminal by Nature and ~~is~~<sup>is</sup> a direct  
continual violation of Appellants 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 8<sup>th</sup>, 10<sup>th</sup> and 14<sup>th</sup>  
Constitutional Rights.

Plaintiff and Appellant is respectfully requesting  
the reversal of Judgement order on this case, to be  
released immediately and granted or awarded relief sought.  
Because the Respondents for the Defendants / Appellee,  
have failed to prove the legal standings of their argument  
and by the invalid Contract used to justify arrest and  
detainment, the Evidence and Information provided by  
Appellant proves every element beyond a reasonable doubt  
that the previous Judgement must be reversed as a  
matter of law.



## Conclusion

Based on the foregoing, MR Gelpi respectfully requests  
is Court to REVERSE the 3<sup>rd</sup> District Courts decision  
in Summary Judgement and grant all relief sought  
by Appellant.

Submitted this 15<sup>th</sup> day of May, 2005.

signature: MR MAURICE JOSEPH GELPI<sup>III</sup>  
Attorney Pro SE.

## CERTIFICATE OF SERVICE

I, MAURICE JOSEPH GELPI<sup>III</sup>, hereby certify that I have used to be delivered the original of the foregoing, the Utah Court of Appeals, 450 South State, 5<sup>th</sup> Floor, P.O. Box 140230, Salt Lake City, Utah, 84114-0230 and copy to the Utah Attorney General's Office, 160 East 900 South 6<sup>th</sup> Floor, P.O. Box 140854, Salt Lake City, Utah 84114-0854, this 15<sup>th</sup> day of May, 2005.

signature: MR MAURICE JOSEPH GELPI<sup>III</sup>  
Attorney Pro Se