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No. 25296

ABO v. CLARK

Apr., 1946

Cons. no. 25294-5

78/177  
c



IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SOUTHERN DIVISION

ORIGINAL  
FILED

APR 15 1946

IN THE MATTER OF THE APPLICATION

FOR

A WRIT OF HABEAS CORPUS

BY

TADAYASU ABO, ET AL.,

Applicants.

WILLIAM C. CROOK, U. S. DIST. COURT  
San Francisco

CIVIL NO. 25296  
CONS. NO. 25294-S

MOTION TO STRIKE

Respondent Ivan Williams moves to strike from the Petition for Habeas Corpus and the Amendment and Supplement thereto filed herein certain redundant, immaterial and impertinent matter identified below.

I

Exhibit 1 to the Petition as originally filed and Exhibit 2 to the "Supplement and Amendment to Petition \* \* \* " herein, comprise evidentiary matter, are impertinent, immaterial and redundant; and as a result of their inclusion in it, the allegations of the Petition are not simple, concise, and direct, and fail to state a cause of action with sufficient definiteness to permit Respondent properly to plead thereto. For these reasons, the two exhibits described, and all references to or discussions of them, should be stricken from the pleadings.

II

Paragraphs (c), (d), (e), (f), (g), (h), (i), and (j) of the "Supplement and Amendment to Petition \* \* \* " contain allegations evidentiary in character; they and each of them contain matter which is impertinent, immaterial and redundant; and as a result of their inclusion



in it, the allegations of the Petition are not simple, concise, and direct, and do not state a cause of action with sufficient definiteness to permit Respondent properly to plead thereto. For these reasons, all the said paragraphs should be stricken from the pleadings.

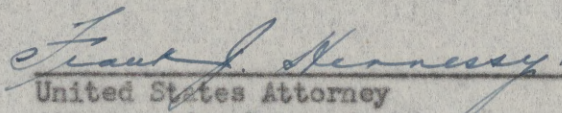
### III

Paragraphs III, IV, V, VI, and VII of the Petition as originally filed contain allegations evidentiary in nature; they, and each of them, contain matter which is impertinent, immaterial and redundant; and as a result of their inclusion in it the allegations of the Petition are not simple, concise, and direct, and do not state a cause of action with sufficient definiteness to permit Respondent properly to plead thereto. For these reasons, all of the said paragraphs should be stricken from the pleadings.

### IV

By reason of the fact that the objectionable matter referred to in paragraphs I through III herein is inextricably confused and intermingled with the allegations of essential fact in the Petition and Supplement and Amendment thereto, the Petition as originally filed and the Supplement and Amendment thereto are themselves rendered impertinent, immaterial and redundant, and fail to meet the required standards: that they be simple, concise, and direct. For these reasons, the Petition as originally filed and the Supplement and Amendment thereto should be, and Respondent moves that they be, stricken.

Respectfully submitted,

  
United States Attorney  
Attorney for Respondent



IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SOUTHERN DIVISION

ORIGINAL  
FILED

APR 15 1946

WILLIAM C. GIBBS, U. S. DIST. COURT  
San Francisco

IN THE MATTER OF THE APPLICATION

FOR

A WRIT OF HABEAS CORPUS

BY

TADAYASU ABO, ET AL.,

Applicants

CIVIL NO. 25296

CONS. NO. 25294-S

POINTS AND AUTHORITIES IN SUPPORT  
OF MOTION TO STRIKE

1. The Federal Rules of Civil Procedure apply to Habeas Corpus proceedings only to the extent that they do not conflict with statutory provisions and do conform to the previous practice in such proceedings. Rule 81(a)(2).

2. There is no statutory provision precluding a motion to strike in such cases. Compare cases in which demurrer to petition have been permitted: *Lo. dispatch case, Chas. Robert case (city)* Backus v. Owe Sam Goon, 235 F. 847 (C.C.A. 9, 1916).

3. The practice in Habeas Corpus is generally stated to be that petitions should conform to the rules of good pleading. 39 C.J.S. 627. And there is ample authority that to plead conclusions, evidentiary matter and redundant or irrelevant material violates such rules. *there* McAllister v. Kuhn, 96 U. S. 87; *damages based on content* Schultz v. Stack-Gibbs Lumber Co., 229 F. 920 (C.C.A. Idaho, 1916); *day for trial* Tabor v. Indianapolis Journal Nwp. Co., 66 F. 423 (C.C. Ind., 1895); *assault* Sovereign Bank of Canada v. Stanley, 176 F. 743 (C.C. N. Y., 1910); Wagenhurst v. Wineland, 22 App. D. C. 356 (1903).

4. Another rule in Habeas Corpus in the Federal courts is that respondent must deny all substantial allegations of the petition or have them accepted as true, even though such allegations tax the credulity of the court and are seemingly inconsistent or confusing.

*demurrer  
was denied*

*demurrer  
with leave  
defected  
it was  
substituted  
in it*

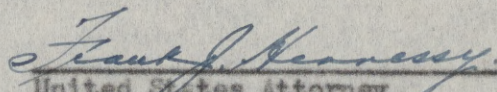
*WB*



Walker v. Johnson, 316 U. S. 101

The allegations of the Petition and Amendment and Supplement thereto filed herein comprise an inextricable confusion of ultimate facts, evidentiary matter, conclusions and irrelevant or redundant assertions which render the drafting of a return which meets the requirements of Walker v. Johnson, supra, substantially impossible. Moreover, in the instant case, by reason of its consolidation with other cases and because of the identity of issues with cases being brought in equity, the necessity for the usual summary treatment of pleadings in Habeas Corpus is obviated; and ample time for the rectification of pleadings is afforded.

It is therefore respectfully submitted that this Court has power to and should order the Petition and Amendment and Supplement thereto stricken in order that pleadings may be drafted which will clarify and make certain the true issue or issues to be presented.

  
United States Attorney  
Attorney for Respondent



*Filed 4/25/46*

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4 Garfield 1218

5 Attorney for Applicants and  
6 Petitioners.

7 IN THE UNITED STATES DISTRICT COURT FOR THE  
8 NORTHERN DISTRICT OF CALIFORNIA  
9 -----

10 In the Matter of the Application )

11 For )

12 A Writ of Habeas Corpus by )

13 TADAYASU ABO, et al., etc., )

14 Applicants, etc. )

No. 25296

Cons. No. 25294-S

15 PETITIONERS' POINTS AND AUTHORITIES IN OPPOSITION TO  
16 RESPONDENT'S MOTION TO STRIKE

17 I

18 PRELIMINARY STATEMENT

19  
20 On Nov. 13, 1945, the Petition was filed herein and an order  
21 to show cause directed to the respondent issued thereon returnable  
22 on Dec. 10th. Thereafter, at the special request and solicitation  
23 of the Department of Justice, three written Stipulations were  
24 entered into on Nov. 23, 1945, Jan. 2, 1946, and Feb. 5, 1946,  
25 making the order to show cause returnable for hearing on the  
26 following dates, to-wit, Jan. 10th, Feb. 11th and March 19, 1946.  
27 These Stipulations were accompanied by Court Orders.

28 On March 14, 1946, the petitioners filed and served their  
29 "Supplement and Amendment to Petition". Thereafter, on March 14,  
30 1946, a written Stipulation was executed and filed herein making  
31 the order to show cause returnable on April 15th and reserving  
32 the right to the respondent to file a motion to strike "Exhibit 2"



1 from the "Supplement and Amendment to Petition" on or by April 8th.  
2 Thereafter, by a similar written Stipulation dated April 3rd the  
3 order to show cause was made returnable on April 22nd and the  
4 respondent reserved a right to file a motion to strike said "Exhibit  
5 2" from the "Supplement and Amendment to Petition" on or by April  
6 15th. These stipulations were accompanied by Court Orders. Each  
7 of these Stipulations was executed at the special request and  
8 solicitation of the Department of Justice. Each of these Stipula-  
9 tions specifically limits and restricts the respondent's motion to  
10 strike to that of endeavoring to strike "Exhibit 2" from the  
11 "Supplement and Amendment to Petition". The respondent is required  
12 by Stipulation and Court Order dated April 22, 1946, to file his  
13 return to the order to show cause on or by May 6, 1946.

14 On April 15, 1946, the respondent belatedly filed a motion  
15 to strike matter contained in the original Petition for the Writ  
16 although the time when such a motion could be interposed, if it  
17 were a proper motion, expired six (6) months ago on December 3,  
18 1945, and no extensions or orders extending time therefor were at  
19 anytime sought or granted by the petitioners or the court. In  
20 addition, the respondent and the Department of Justice have had  
21 two (2) months time to prepare a simple motion to strike Exhibit  
22 2 from the "Supplement and Amendment to Petition". Instead it  
23 has filed a motion to strike out substantially the whole of the  
24 original and supplemental petitions. In filing the same they  
25 have disregarded the elapse of time and have violated the provi-  
26 sions of the said Stipulations and Court Orders which limited such  
27 a motion, if such a motion were proper, to endeavoring to strike  
28 said Exhibit 2 from the "Supplement and Amendment to Petition"  
29 to the exclusion of any other matter therein contained.

30 We contend that the right of the respondent to file a motion  
31 to strike any portion of the original Petition long has expired,  
32 has been waived thereby and is unauthorized. We contend that the



1 present motion made by the respondent violates the consecutive  
2 stipulations for not being confined to an endeavor to strike said  
3 Exhibit 2 from the Supplemental Petition. We further contend that  
4 a motion to strike is not entertainable in habeas corpus cases. For  
5 each of said reasons we resist the said motion, that is, for being  
6 too late, for being in violation of the stipulations and for being  
7 unauthorized in its entirety. (The fact that the petitioners  
8 stipulated that a motion to strike might be filed for the limited  
9 purpose set forth in the stipulations does not lend merit to the  
10 motion and does not confer validity upon it.).

11 II

12 IN HABEAS CORPUS CASES ULTIMATE AND EVIDENTIARY  
13 FACTS MAY BE PLEADED

14 Without waiving our right to have the motion to strike dis-  
15 missed or denied for the reasons asserted in paragraph I hereof  
16 we also contend that there is not and would not have been any  
17 merit to respondent's motion to strike in any event. We assert  
18 that there are no facts alleged in our petition and supplemental  
19 petition except the same be ultimate facts, each and all of which  
20 are highly relevant, material and pertinent to the serious issues  
21 raised thereby.

22 The respondent seems to be unaware that in habeas corpus  
23 proceedings it long has been the recognized practice to plead not  
24 only the ultimate facts but also to plead or to annex or incorpo-  
25 rate all documents supporting them even though such may contain  
26 much immaterial and redundant matter. See Waley v. Johnston,  
27 316 U.S. 101 at 104, 62 S.Ct. 964, where the return contained  
28 copies of docket entries, prior pleadings, transcript of judgment,  
29 notice, commitments papers, etc. as supporting exhibits to the  
30 petition, albeit the actual issue involved could have been alleged  
31 in a simple sentence and the return denying the fact could have  
32



1 been stated in a simple sentence. See also Walker v. Johnston,  
2 312 U.S. 275,279, 61 S.Ct. 574,576, recognizing the same practice  
3 and the right to add not only copies of an indictment, minute  
4 entries, sentence commitment, docket entries, transfer order,  
5 record of commitment but also other purely evidentiary matter  
6 such as affidavits of a United States Attorney, and Assistant U.S.  
7 Attorney and of a Probation Officer. (Note, too, that the only  
8 issue involved therein was the simple question whether or not the  
9 petitioner had been deprived of the assistance of counsel at the  
10 actual commencement of the trial, a fact which could have been  
11 alleged in one simple sentence and have been denied by a shorter  
12 one in the return.). See also, Kwock Jan Fat v. White, 253 U.S.  
13 454,457; 64 L.Ed.1010,1011-1012, where the petition annexed and  
14 incorporated by reference records and testimony in an immigration  
15 matter. The rule also is well established that "Exhibits attached  
16 to, and made a part of, a petition, should be given due effect in  
17 interpreting the petition". See 39 C.J.S. 633, sec. 3, citing  
18 Kwock Jan Fat v. White, supra.

19 The very purpose of pleading and incorporating evidentiary  
20 matter in addition to ultimate facts in habeas corpus proceedings  
21 is to place in issue all the facts, ultimate and evidentiary, so  
22 that if from all these facts so presented by the pleadings, to-wit,  
23 the petition with its order (rule) to show cause and the return  
24 thereto, a court finds that no cause of action is pleaded the  
25 petition may be dismissed and that if a cause of action is pleaded  
26 the writ is to issue, the prisoner to be produced and a hearing  
27 on the merits to ensue. The very purpose to be served is the  
28 prevention of unnecessary trials. If a petition states a cause of  
29 action, however, (the petition and traverse being construed jointly  
30 to form the application for the writ, Walker v. Johnston, supra,  
31 pg. 284) and the return to the order to show cause fails to con-  
32 trovert the allegations of the petition there is no necessity for



1 a hearing on the merits to be had. The petitioner is entitled  
2 to an order discharging him from custody without the writ issuing  
3 inasmuch as the only purpose the writ serves is to transfer the  
4 custody of the prisoner from his jailor to the court. In such a  
5 case, as an alternative, the writ can be issued and the prisoner  
6 be discharged after his production in court without a hearing  
7 being had inasmuch as no factual issues remain to be determined.  
8 The rules have been enunciated by the Supreme Court in Walker  
9 v. Johnston, 312 U.S. 275, 284; 61 S.Ct. 574, 578, as follows:

10 "It will be observed that if, upon the face of  
11 the petition, it appears that the party is not entitled  
12 to the writ, the court may refuse to issue it. Since  
13 the allegations of such petitions are often inconclu-  
14 sive, the practice has grown up of issuing an order to  
15 show cause, which the respondent may answer. By this  
16 procedure the facts on which the opposing parties rely  
17 may be exhibited, and the court may find that no issue  
18 of fact is involved. In this way useless grants of  
19 the writ with consequent production of the prisoner  
20 and of witnesses may be avoided where from undisputed  
21 facts and from incontrovertible facts, such as those  
22 recited in a court record, it appears, as matter of  
23 law, no cause for granting the writ exists. On the  
24 other hand, on the facts admitted, it may appear that,  
25 as matter of law, the prisoner is entitled to the  
26 writ and to a discharge. This practice has long been  
27 followed by this court and by the lower courts".

### 28 III

#### 29 IMMATERIAL MATTER IS DISREGARDED IN HABEAS CORPUS 30 CASES BUT IS NOT SUBJECT TO BEING STRICKEN

31 The rule of law is that in determining the sufficiency of a  
32 petition "The court will disregard irrelevant or immaterial alle-  
33 gations." See 39 Corpus Juris Sec. 629, sec. 80. See Stephenson  
34 v. Daly (DC-Ind.1932), 1 Fed.Supp. 865, where, without passing  
35 upon the propriety of the filing of a motion to strike the court  
36 overruled a motion to strike redundant allegations in a petition  
37 for the reason "that it is not necessary to strike these irrele-  
38 vent charges for even though they are permitted to remain in the  
39 petition, they will be disregarded". See also La Jesse v. Hurlburt,  
40 122 Ore. 680, 260 Pac. 233, where the court disregarded immaterial



1 allegations. In Backus v. Owe Sam Goon, (CCA-9, 1916), 235 Fed.  
2 847, cited by the respondent, a demurrer testing the sufficiency  
3 of a petition was overruled by the district court. The appellate  
4 court opinion made no comment upon the propriety of filing a  
5 general demurrer thereto, consequently, the respondent's view here-  
6 in that it was "permitted" in that case finds no sanction in the  
7 appellate court's opinion. It is obvious, however, under Title  
8 28 USCA, sec. 455, that if a petition states a cause for relief  
9 the writ must issue and that if it fails to do so the writ must  
10 be denied. The petition, however, is to be construed jointly with  
11 the petitioners traverse to a return in order to ascertain whether  
12 these two pleading, which together *form* the application for the  
13 writ, state grounds for discharge, as decided in Walker v. Johnston,  
14 *supra*.

15 Even if the facts alleged "may tax credulity" the respondent's  
16 duty is to file a return admitting or denying those facts whether  
17 they be redundant or not. See Waley v. Johnston, 316 U.S. 101 at  
18 104. A special demurrer does not lie in habeas corpus cases and  
19 a general demurrer will lie in those jurisdiction where recognized  
20 but only for the purpose of testing the sufficiency of a petition.  
21 There is no authority whatever that a motion to strike may be  
22 interposed in habeas corpus cases. Such a motion has no bearing  
23 on the sufficiency of an application for the writ. Attention is  
24 drawn to the fact that not one of the authorities cited in para-  
25 graph 3 of the respondent's Points and Authorities involves habeas  
26 corpus proceedings but relate to trover, contract, libel and  
27 assumpsit cases.

28 There is neither rule, precedent nor authority for the enter-  
29 tainment of a motion to strike in habeas corpus cases. Although  
30 the provisions of neither Rule 8(e) nor 12(f) R.C.P. are violated  
31 in the petitioners' pleadings it must be noted that these rules  
32 have no application to habeas corpus cases but are limited to



1 actions at law and suits in equity. Even a formal demurrer is  
2 unnecessary and improper in habeas corpus proceedings except in  
3 those jurisdictions where its limited purpose is to test the  
4 sufficiency of a petition. See Kwock Jan Fat v. White, 253 U.S.  
5 454,455; 64 L.Ed.1010,1011, where a general demurrer to a petition  
6 had been sustained and the case was reversed by the Supreme Court.  
7 And see, 29 Corpus Juris. p. 147, sec. 161, where the rules are  
8 set forth as follows:

9 "In view of the function of a petition  
10 for the writ of habeas corpus, in a case heard  
11 upon petition and notice, or order to show cause,  
12 a formal demurrer is generally regarded as un-  
13 necessary and improper, (Horn v. Mitchell, 223  
14 Fed. 549,550, affirm. 232 Fed. 819, appeal dism.  
15 243 U.S. 247) ----- But in some jurisdictions,  
16 before the writ is issued, the sufficiency of the  
17 petition may be tested by demurrer ----".

#### 18 IV

#### 19 FACTS OF DURESS ARE PLEADABLE

20 The petition is based upon petitioners' claim of right to be  
21 released from detention and to set aside the renunciations because  
22 of fraud, duress, undue influence and menace practiced upon them  
23 by governmental agencies and individuals while they were interned  
24 unlawfully. Consequently, the relief they seek is equitable in  
25 its nature - relief from duress. Relief in habeas corpus necessari-  
26 ly must include all the relief that equity can afford in such a  
27 case and consequently, what is properly pleadable in a bill in  
28 equity or is annexed thereto or incorporated therein by reference  
29 must be pleadable, annexable or incorporable in habeas corpus plead-  
30 ings. It is settled that in equity:

31 "A bill must set forth a copy or aver the terms  
32 of an instrument vital to plaintiff's demand. The  
proper practice is to state the substance of the  
instrument relied on and to attach it or a copy to  
the pleadings." See 30 C.J.S. 660, sec. 202.

"The general rule is that instruments properly  
referred to and exhibited become for all purposes  
of pleading a part of the bill, and, consequently,



1 in determining the sufficiency of the bill on  
2 demurrer or otherwise, an exhibit will be consi-  
3 dered with the averments in the bill itself and  
4 may be used in aid thereof." See 30 C.J.S. 661-  
5 662, sec. 202.

6 Meticulous observance of the rules of pleading is not essen-  
7 tial in habeas corpus proceedings. All that is required is that  
8 it state facts for relief with reasonable definiteness and certain-  
9 ty. See 39 Corpus Juris Sec. pg.626, Sec. 80, reading as follows:-

10 "Except as provided by statute, a very informal  
11 application may serve as a petition for the writ. The  
12 petition ought not to be scrutinized with technical  
13 nicety. (Holiday v. Johnston, 313 U.S.342,350; 61 S.Ct.  
14 1015,1017). It should be liberally construed; and the  
15 right to habeas corpus and, in a proper case, to  
16 discharge from custody should not depend on the  
17 meticulous observance of the rules of pleading. (Jung  
18 Woon Kay v. Carr, CCA-9,1937, 88 Fed.2d.297). However,  
19 the averments of the petition are not to be taken as  
20 imputing what they do not say, legal definiteness and  
21 certainty is required, and the general rules of good  
22 pleading, as far as applicable, should be observed.---  
23 Facts, as distinguished from mere conclusions, must  
24 be stated."

25 V

26 EXHIBIT 2 IS PROPERLY PLEADED.

27 The facts relating to the cause of petitioners' detention  
28 are set forth in the pleadings. The ordinary rules of pleading  
29 require that where fraud, duress, undue influence or mistake is  
30 relied upon as the basis for relief that the facts and circumstances  
31 shall be pleaded with particularity. St. Louis, etc.R.Co. v.  
32 Johnston, 133 U.S. 566, 577; Anastasopoulos v. Steger (CCA-7, 1927),  
16 Fed. 2d. 32; Fogg v. Blair, 139 U.S. 118, 126; 49 C.J. 43, sec.  
16(7); and compare Rule 9(b) R.C.P. "A mere averment of mistake,  
accident, undue influence, or duress, without setting out facts  
justifying the averment, is a conclusion of law". Murphy v. Mitchell,  
249 Fed. 499; 49 C.J. 61-62, Sec. 39(14). See also, 49 C.J. 95-97,  
Sec.90(3), and cases there cited. In equity facts of an evidentiary  
nature necessarily must be pleaded under the rule stated in 49 C.J.



1 43, Sec.16(7) as follows:

2 "Moreover the rule must be taken with the  
3 qualification that facts essential to show a  
4 cause of action, and therefore necessary to be  
5 pleaded, are often evidentiary in character, as  
in the case of facts constituting fraud, which,  
to comply with the rule against pleading conclusions of law, must be alleged ..."

6 If the facts of duress must be alleged in equity cases to avoid  
7 pleading mere conclusions of law it is obvious that the facts of  
8 duress likewise must be averred in habeas corpus cases.

10 VI

11 EXHIBIT 2 IS PROPERLY ANNEXED AS AN EXHIBIT.

12 The right to incorporate documents and to annex them as  
13 exhibits to pleadings is recognized. (See Rule 10c R.C.P.).  
14 Exhibit 2, the "Fortas letter" annexed to the "Supplement and Amend-  
15 ment Petition" is an official record and is properly pleadable  
16 according to its legal effect and is also properly annexed under  
17 the rule announced in 49 Corpus Juris 80, sec. 72, which reads as  
18 follows:

19 "Where interpretation of public records is  
20 involved and their legal effect is to be judged,  
21 good pleading requires either that the records be  
22 set forth at length in the body of the pleadings  
or that copies of them should be filed." Newport  
v. Lang, 155 Ky.776, 160, S.W. 499,500.

23 The reason for the rule, as announced in the Newport case, is that  
24 unless this is done "the courts will be left to the interpretation  
25 of such records which are contained in the conclusions reached  
26 by the pleader or his attorneys."

27 It is also/<sup>a</sup>settled rule of law that where "a judicial inter-  
28 pretation" of an instrument is required the instrument must be  
29 pleaded or annexed to the pleading. Edgar v. Emerson, 235 Mo. 552,  
30 139 S.W. 122; 49 Corpus Juris 80 sec. 72. The "Fortas letter" is  
31 an official finding and judgment that the renunciations were the  
32 result of the duress therein mentioned. It has not been published



1 in an official report form although it is an official public record,  
2 consequently, necessity requires that it be pleaded that it be  
3 brought to light. It is a document which is vital to the claim  
4 of relief the petitioners seek. It is the foundation of that claim.  
5 It is an official record. It requires a judicial interpretation.  
6 In the prayer to the petition a declaration of petitioners' rights  
7 are sought. A declaration of those rights involves and requires  
8 a judicial interpretation of the "Fortas letter".

9  
10 VII

11 CONCLUSION

12 Exhibit 2 which is annexed to the "Supplement and Amendment  
13 to the Petition" and which we have referred to as the "Fortas  
14 letter" sets forth a finding and judgment of the Department of the  
15 Interior to whose charge the petitioners were committed when the  
16 renunciations mentioned in the petition were made. That finding  
17 and judgment is conclusive on the facts that the duress therein  
18 mentioned caused each renunciation as therein stated. Its recitals  
19 are absolutely true and are incontrovertible. Inasmuch as the  
20 facts it recites cannot be disputed by the respondent it is obvious  
21 that the respondent dares not deny them and, consequently, cannot  
22 prepare a return to the order to show cause. Being thus precluded  
23 from denying the allegations of the petition and not daring to  
24 file a return traversing its allegations the Department of Justice  
25 belatedly, long after its time has elapsed, and in violation of  
26 the Stipulations aforesaid, now files an unauthorized motion to  
27 strike substantially the whole of petitioners' pleadings. It hopes  
28 by this method to delay the grant of a motion for judgment on the  
29 pleadings and for summary judgment discharging petitioners from  
30 custody which is to be filed herein by the petitioners so soon as  
31 respondent's return is filed.



1 For the foregoing reasons petitioners respectfully submit that  
2 the respondent's motion to strike comes too late, is violative of  
3 the aforesaid stipulations and court orders, is unauthorized and  
4 is wholly without merit and that the court has jurisdiction only  
5 to dismiss or to deny said motion.  
6

7  
8 Wayne M. Collins,  
9 1721 Mills Tower,  
10 San Francisco, 4, Calif.  
11 Garfield 1218.  
12 Attorney for Petitioners.

13  
14 -----  
15  
16 Receipt of a copy of the foregoing Points and Authorities  
17 is hereby admitted this \_\_\_\_ day of April, 1946.  
18

19 TOM C. CLARK, Attorney General.  
20 FRANK J. HENNESSY, U.S. Attorney.

21 By: \_\_\_\_\_  
22 Assistant U.S. Attorney.

23  
24 Attorneys for Respondent.  
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