

**APPLICATION FOR A WRIT OF HABEAS CORPUS
IN BEHALF OF
MARY E. SURRATT.**

WASHINGTON, D. C., JULY 7, 1865.

To the Hon. Andrew Wylie, one of the Justices of the Supreme Court in the District of Columbia:

The petition of Mary E. Surratt, by her counsel F. A. Aiken and John W. Clampitt, most respectfully represents unto your Honor, that on or about the 17th day of April, A. D. 1865, your petitioner was arrested by the military authorities of the United States, under the charge of complicity with the murder of Abraham Lincoln, late President of the United States, and has ever since that time been and is now confined on said charge, under and by virtue of the said military power of the United States, and is in the special custody of Major-General W. S. Hancock, commanding Middle Military Division; that since her said arrest your petitioner has been tried, against her solemn protest, by a Military Commission, unlawfully and without warrant, convened by the Secretary of War, as will appear from paragraph 9, Special Orders, No. 211, dated War Department, Adjutant-General's Office, Washington, May the 6th, 1865, and by said Commission, notwithstanding her formal plea to the jurisdiction of the said Commission, is now unlawfully and unjustifiably detained in custody and sentenced to be hanged on to-morrow, July 7th, 1865, between the hours of 10 A. M. and 2 P. M.; your petitioner shows unto your Honor that at the time and of the commission of the said offense she was a private citizen of the United States, and in no manner connected with the military authority of same, and that said offense was committed within the District of Columbia, said District of Columbia being at the time within the lines of the armies of the United States, and not enemy's territory, or under the control of a military commander for the trial of civil causes. But, on the contrary, your petitioner alleges that the said crime was an offense simply against the peace of the United States, properly and solely cognizable under the Constitution and laws of the United States, by the Criminal Court of this district, and which said court was and is now open for the trial of such crimes and offenses. Wherefore, inasmuch as the said crime was only an offense against the peace of the United States, and not an act of war; inasmuch as your petitioner was a private citizen of the same, and not subject to military jurisdiction, or in any wise amenable to military law; inasmuch as said District was the peaceable territory of the United States, and that all crimes committed within such territory are, under the

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Constitution and laws of the United States, to be tried only before its criminal tribunals, with the right of public trial by jury; inasmuch as said Commission was a Military Commission, organized and governed by the laws of military court-martial, and unlawfully convened without warrant or authority, and when she had not the right of public trial by jury as guaranteed to her by the Constitution and laws of the United States, that, therefore, her detention and sentence are so without warrant against positive law and unjustifiable: wherefore she prays your Honor to grant unto her the United States' most gracious writ of *habeas corpus*, commanding the said Major-General W. S. Hancock to produce before your Honor the body of your said petitioner, with the cause and day of her said detention, to abide, etc., and she will ever pray.

MARY E. SURRETT.

By FREDERICK A. AIKEN, JOHN W. CLAMPITT.

Indorsed.—Let the writ issue as prayed, returnable before the Criminal Court of the District of Columbia, now sitting, at the hour of 10 o'clock A. M., this 7th day of July, 1865.

ANDREW WYLIE,

A Justice of the Supreme Court of the District of Columbia.

JULY 7TH, 1865.

At half-past 11 o'clock on the morning of the 7th of July, Major-General Hancock, accompanied by Attorney-General Speed, appeared before Judge Wylie in obedience to the writ, and made the following return:

Headquarters Middle Military Division,

Washington, D. C., July 7, 1865.

To Hon. Andrew Wylie, Justice of the Supreme Court of the District of Columbia:

I hereby acknowledge the service of the writ hereto attached and return the same, and respectfully say that the body of Mary E. Surratt is in my possession, under and by virtue of an order of Andrew Johnson, President of the United States and Commander-in-chief of the Army and Navy, for the purposes in said order expressed, a copy of which is hereto attached and made part of this return; and that I do not produce said body by reason of the order of the President of the United States, indorsed upon said writ, to which reference is hereby respectfully made, dated July 7th, 1865.

W. S. HANCOCK,

Maj.-Gen. U.S. Cols., Commanding Middle Dis.

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THE PRESIDENT'S INDORSEMENT.

EXECUTIVE OFFICE, JULY 7, 1865, 10 A. M.

To Major-General W. S. Hancock, Commander, etc.:

I, Andrew Johnson, President of the United States, do hereby declare that the writ of *habeas corpus* has been heretofore suspended in such cases as this, and direct that you proceed to execute the order heretofore given upon the judgment of the Military Commission, and you will give this order in return to the writ.

ANDREW JOHNSON, President.

The Court ruled that it yielded to the suspension of the writ of *habeas corpus* by the President of the United States.

The sentences were duly carried into execution.