PETITION FOR WRIT OF HABEAS CORPUS AND EMERGENCY RETURN OF CHILD PACKET

Facts and Questions

When is a writ of habeas corpus appropriate? It is used when a child is being wrongfully detained. The court will decide based on the best interests of the child who should have custody. However, a writ of habeas corpus cannot be brought to *modify* custody. The petition for writ of habeas corpus in Georgia is governed by O.C.G.A. § 9-14-2.

Who can bring a petition for writ of habeas corpus? A person who has legal right to custody of the child or children may bring a petition for writ of habeas corpus. However, the court may grant custody to one other than the legal custodian if the legal custodian is proved to be unfit by clear and satisfactory evidence.

What court has jurisdiction to hear a motion for writ of habeas corpus? A superior court has jurisdiction unless a juvenile court order is in effect. The fact that a child is in a foreign jurisdiction at the time the petition is filed does not deprive the court of jurisdiction.

What other laws relate to the wrongful detention of a child? The Georgia Uniform Child Custody Jurisdiction Enforcement Act, which can be found at O.C.G.A. § 19-9-40 *et. seq.*

Are the wishes of a minor over age 14 controlling in this situation? No, although the child's wishes will be considered.

IN THE SUPERIOR COURT OF		
STATE (OF GEORGIA	
,)	
Plaintiff,)	
)	
√.) Civil Action No	
)	
Defendant.)	
	RIT OF HABEAS CORPUS	
AND EMERGENCY MOT	FION FOR RETURN OF CHILD	
		_
The Petitioner,	, brings the st and emergency motion for return of child	iis 4
	st and emergency motion for feturi of chirc	1
upon the following grounds:		
	1.	
	1.	
The Respondent is subject to the juriscopy of this Petition and Writ at	diction of this Court and may be served with	th a
eopy of this retition and write at		·
	2.	
The Petitioner is the legal custodian or	of the minor child(ren),	
age(s)	, by virtue of ε I by the Superior Court of	a fina
County, Civil Action No		
	3.	
	and withholding custody of the minor child	

The Respondent has no cause or justification for withholding the minor child(ren) from the custody and control of the Petitioner.

THEREFORE, Petitioner demands:

(a) That a writ of habeas corpus issue requiring the Respondent to appear and produce the minor child(ren) before this Court and to otherwise show cause why custody should not be restored to the Petitioner.

Respectfully submitted,

Petitioner <i>pro se</i>	 	 		
Address				
Telephone number				

IN THE SUPERIOR COURT OF	COUNTY
STATE OF GEO	RGIA
Plaintiff,) v.) Defendant.)	Civil Action No.
VERIFICATION	ON
Personally appeared before me, the undersigned no State of Georgia to administer oaths,	
who after being duly sworn, deposes and states that	t s/he is the Petitioner in the foregoing
action and that the facts contained in his/her attache	ed Petition for Writ of Habeas
Corpus and Emergency Motion for Return of C	hild are true and correct to the best of
her knowledge, information and belief.	
Plaint	iff pro se
Sworn to and subscribed before me this day of	, 20
Notary Public, State of Georgia	
My Commission Expires:	

IN THE SUPERIOR COURT OFSTATE OF GE	COUNTY
v.)	Civil Action No.
Defendant.	
SUMMO	NS
To the above-named Defendant: You are hereby summoned and required to fi upon	
address is	, an answe
to the complaint which is herewith served upon y summons upon you, exclusive of the day of servi default will be taken against you for the relief de	ice. If you fail to do so, judgment by
Clerk	of Court

IN THE SUPERIOR COURT OF STATE OF O	
v.)	Civil Action No.
Defendant.	
WRIT OF HAB	EAS CORPUS
To: [Respondent]	
You are hereby commanded to produce	the minor child(ren),
alleged to be illegally detained by you, and a division of this Court on at o'clock, M., and show o should not be returned to the Petitioner.	appear before the appropriate nonjury , (year), cause why custody of the minor child(ren)
This day of	, 20
	Superior Courts Judicial Circuit