

# TAB 6

**Rasul v. Bush**

United States Supreme Court, 2004  
542 U.S. 466

Justice STEVENS delivered the opinion of the Court. These two cases present the narrow but important question whether United States courts lack jurisdiction to consider challenges to the legality of the detention of foreign nationals captured abroad in connection with hostilities and incarcerated at the Guantanamo Bay Naval Base, Cuba.

I . . .

... Acting pursuant to [statutory] authorization [*supra* p. 100], the President sent U.S. Armed Forces into Afghanistan [in late 2001] to wage a military campaign against al Qaeda and the Taliban regime that had supported it.

Petitioners in these cases are 2 Australian citizens and 12 Kuwaiti citizens who were captured abroad during hostilities between the United States and the Taliban. Since early 2002, the U.S. military has held them — along with, according to the Government’s estimate, approximately 640 other non-Americans captured abroad — at the Naval Base at Guantanamo Bay. The United States occupies the Base, which comprises 45 square miles of land and water along the southeast coast of Cuba, pursuant to a 1903 Lease Agreement executed with the newly independent Republic of Cuba in the aftermath of the Spanish-American War. Under the Agreement, “the United States recognizes the continuance of the ultimate sovereignty of the Republic of Cuba over the [leased areas],” while “the Republic of Cuba consents that during the period of the occupation by the United States . . . the United States shall exercise complete jurisdiction and control over and within said areas.”<sup>2</sup> In 1934, the parties entered into a treaty providing that, absent an agreement to modify or abrogate the lease, the lease would remain in effect “[s]o long as the United States of America shall not abandon the . . . naval station of Guantanamo.”<sup>3</sup> . . .

[Petitioners filed various actions in the U.S. District Court for the District of Columbia challenging the legality of their detention and/or seeking to be informed of the charges against them, to be allowed to meet with their families

2. Lease of Lands for Coaling and Naval Stations, Feb. 23, 1903, U.S.-Cuba, Art. III, T.S. No. 418 (hereinafter 1903 Lease Agreement). . . .

3. Treaty Defining Relations with Cuba, May 29, 1934, U. S.-Cuba, Art. III, 48 Stat. 1683, T.S. No. 866 (hereinafter 1934 Treaty).

and with counsel, and to have access to the courts or some other impartial tribunal, and claiming that denial of these rights violated the Constitution, international law, and treaties of the United States.]

Construing all three actions as petitions for writs of habeas corpus, the District Court dismissed them for want of jurisdiction. The court held, in reliance on our opinion in *Johnson v. Eisentrager*, 339 U.S. 763 (1950), that “aliens detained outside the sovereign territory of the United States [may not] invok[e] a petition for a writ of habeas corpus.” 215 F. Supp. 2d 55, 68 (D.D.C. 2002). The Court of Appeals affirmed. . . .

## II

Congress has granted federal district courts, “within their respective jurisdictions,” the authority to hear applications for habeas corpus by any person who claims to be held “in custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. §§2241(a), (c) (3). . . .

Habeas corpus is, however, “a writ antecedent to statute, . . . throwing its root deep into the genius of our common law.” *Williams v. Kaiser*, 323 U.S. 471, 484 n.2 (1945) (internal quotation marks omitted). The writ appeared in English law several centuries ago, became “an integral part of our common-law heritage” by the time the Colonies achieved independence, *Preiser v. Rodriguez*, 411 U.S. 475, 485 (1973), and received explicit recognition in the Constitution, which forbids suspension of “[t]he Privilege of the Writ of Habeas Corpus . . . unless when in Cases of Rebellion or Invasion the public Safety may require it,” Art. I, §9, cl. 2.

As it has evolved over the past two centuries, the habeas statute clearly has expanded habeas corpus “beyond the limits that obtained during the 17th and 18th centuries.” *Swain v. Pressley*, 430 U.S. 372, 380 n.13 (1977). But “[a]t its historical core, the writ of habeas corpus has served as a means of reviewing the legality of Executive detention, and it is in that context that its protections have been strongest.” *INS v. St. Cyr*, 533 U.S. 289, 301 (2001). As Justice Jackson wrote in an opinion respecting the availability of habeas corpus to aliens held in U.S. custody:

“Executive imprisonment has been considered oppressive and lawless since John, at Runnymede, pledged that no free man should be imprisoned, dispossessed, outlawed, or exiled save by the judgment of his peers or by the law of the land. The judges of England developed the writ of habeas corpus largely to preserve these immunities from executive restraint.” *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 218-219 (1953) (dissenting opinion).

Consistent with the historic purpose of the writ, this Court has recognized the federal courts’ power to review applications for habeas relief in a wide variety of cases involving Executive detention, in wartime as well as in times of peace. The Court has, for example, entertained the habeas petitions of an American citizen who plotted an attack on military installations during the Civil War, *Ex parte Milligan*, 4 Wall. 2 (1866), and of admitted enemy aliens convicted of war crimes during a declared war and held in the United States.

*Ex parte Quirin*, 317 U.S. 1 (1942), and its insular possessions, *In re Yamashita*, 327 U.S. 1 (1946).

The question now before us is whether the habeas statute confers a right to judicial review of the legality of Executive detention of aliens in a territory over which the United States exercises plenary and exclusive jurisdiction, but not “ultimate sovereignty.”

### III

Respondents’ primary submission is that the answer to the jurisdictional question is controlled by our decision in *Eisenstrager*. In that case, we held that a Federal District Court lacked authority to issue a writ of habeas corpus to 21 German citizens who had been captured by U.S. forces in China, tried and convicted of war crimes by an American military commission headquartered in Nanking, and incarcerated in the Landsberg Prison in occupied Germany. . . . [T]his Court summarized the six critical facts in the case:

“We are here confronted with a decision whose basic premise is that these prisoners are entitled, as a constitutional right, to sue in some court of the United States for a writ of *habeas corpus*. To support that assumption we must hold that a prisoner of our military authorities is constitutionally entitled to the writ, even though he (a) is an enemy alien; (b) has never been or resided in the United States; (c) was captured outside of our territory and there held in military custody as a prisoner of war; (d) was tried and convicted by a Military Commission sitting outside the United States; (e) for offenses against laws of war committed outside the United States; (f) and is at all times imprisoned outside the United States.” 39 U.S. at 777.

On this set of facts, the Court concluded, “no right to the writ of *habeas corpus* appears.” *Id.* at 781.

Petitioners in these cases differ from the *Eisenstrager* detainees in important respects: They are not nationals of countries at war with the United States, and they deny that they have engaged in or plotted acts of aggression against the United States; they have never been afforded access to any tribunal, much less charged with and convicted of wrongdoing; and for more than two years they have been imprisoned in territory over which the United States exercises exclusive jurisdiction and control.

Not only are petitioners differently situated from the *Eisenstrager* detainees, but the Court in *Eisenstrager* made quite clear that all six of the facts critical to its disposition were relevant only to the question of the prisoners’ *constitutional* entitlement to habeas corpus. *Id.* at 777. The Court had far less to say on the question of the petitioners’ *statutory* entitlement to habeas review. Its only statement on the subject was a passing reference to the absence of statutory authorization: “Nothing in the text of the Constitution extends such a right, nor does anything in our statutes.” *Id.* at 768. . . .

[Here the Court notes that the *Eisenstrager* Court relied on an earlier decision, *Ahrens v. Clark*, 335 U.S. 188 (1948), holding that the habeas statute did not permit a district court to issue the writ for a detainee outside the court’s territorial jurisdiction.]

... [However,] persons detained outside the territorial jurisdiction of any federal district court no longer need rely on the Constitution as the source of their right to federal habeas review. In *Braden v. 30th Judicial Circuit Court of Ky.*, 410 U.S. 484, 495 (1973), this Court held, contrary to *Ahrens*, that the prisoner's presence within the territorial jurisdiction of the district court is not "an invariable prerequisite" to the exercise of district court jurisdiction under the federal habeas statute. Rather, because "the writ of habeas corpus does not act upon the prisoner who seeks relief, but upon the person who holds him in what is alleged to be unlawful custody," a district court acts "within [its] respective jurisdiction" within the meaning of §2241 as long as "the custodian can be reached by service of process." 410 U.S. at 494-495. . . . *Braden* thus established that *Ahrens* can no longer be viewed as establishing "an inflexible jurisdictional rule," and is strictly relevant only to the question of the appropriate forum, not to whether the claim can be heard at all. 410 U.S. at 499-500.

Because *Braden* overruled the statutory predicate to *Eisentrager's* holding, *Eisentrager* plainly does not preclude the exercise of §2241 jurisdiction over petitioners' claims.

#### IV

Putting *Eisentrager* and *Ahrens* to one side, respondents contend that we can discern a limit on §2241 through application of the "longstanding principle of American law" that congressional legislation is presumed not to have extraterritorial application unless such intent is clearly manifested. *EEOC v. Arabian American Oil Co.*, 499 U.S. 244, 248 (1991). Whatever traction the presumption against extraterritoriality might have in other contexts, it certainly has no application to the operation of the habeas statute with respect to persons detained within "the territorial jurisdiction" of the United States. *Foley Bros., Inc. v. Filardo*, 336 U.S. 281, 285 (1949). By the express terms of its agreements with Cuba, the United States exercises "complete jurisdiction and control" over the Guantanamo Bay Naval Base, and may continue to exercise such control permanently if it so chooses. 1903 Lease Agreement, Art. III; 1934 Treaty, Art. III. Respondents themselves concede that the habeas statute would create federal-court jurisdiction over the claims of an American citizen held at the base. Considering that the statute draws no distinction between Americans and aliens held in federal custody, there is little reason to think that Congress intended the geographical coverage of the statute to vary depending on the detainee's citizenship. Aliens held at the base, no less than American citizens, are entitled to invoke the federal courts' authority under §2241.

Application of the habeas statute to persons detained at the base is consistent with the historical reach of the writ of habeas corpus. At common law, courts exercised habeas jurisdiction over the claims of aliens detained within sovereign territory of the realm, as well as the claims of persons detained in the so-called "exempt jurisdictions," where ordinary writs did not run, and all other dominions under the sovereign's control. . . .

In the end, the answer to the question presented is clear. Petitioners contend that they are being held in federal custody in violation of the laws of

the United States.<sup>15</sup> No party questions the District Court's jurisdiction over petitioners' custodians. Cf. *Braden*, 410 U.S. at 495. Section 2241, by its terms, requires nothing more. We therefore hold that §2241 confers on the District Court jurisdiction to hear petitioners' habeas corpus challenges to the legality of their detention at the Guantanamo Bay Naval Base.

## V

In addition to invoking the District Court's jurisdiction under §2241, the *Al Odah* petitioners' complaint invoked the court's jurisdiction under 28 U.S.C. §1331, the federal question statute, as well as §1350, the Alien Tort Statute. The Court of Appeals, again relying on *Eisenstrager*, held that the District Court correctly dismissed the claims founded on §1331 and §1350 for lack of jurisdiction, even to the extent that these claims "deal only with conditions of confinement and do not sound in habeas," because petitioners lack the "privilege of litigation" in U.S. courts. 321 F.3d at 1144 (internal quotation marks omitted). . . .

. . . But . . . nothing in *Eisenstrager* or in any of our other cases categorically excludes aliens detained in military custody outside the United States from the "privilege of litigation" in U.S. courts. 321 F.3d at 1139. The courts of the United States have traditionally been open to nonresident aliens. And indeed, 28 U.S.C. §1350 explicitly confers the privilege of suing for an actionable "tort . . . committed in violation of the law of nations or a treaty of the United States" on aliens alone. The fact that petitioners in these cases are being held in military custody is immaterial to the question of the District Court's jurisdiction over their nonhabeas statutory claims.

## VI

Whether and what further proceedings may become necessary after respondents make their response to the merits of petitioners' claims are matters that we need not address now. What is presently at stake is only whether the federal courts have jurisdiction to determine the legality of the Executive's potentially indefinite detention of individuals who claim to be wholly innocent of wrongdoing. Answering that question in the affirmative, we reverse the judgment of the Court of Appeals and remand for the District Court to consider in the first instance the merits of petitioners' claims.

*It is so ordered.*

15. Petitioners' allegations — that, although they have engaged neither in combat nor in acts of terrorism against the United States, they have been held in Executive detention for more than two years in territory subject to the long-term, exclusive jurisdiction and control of the United States, without access to counsel and without being charged with any wrongdoing — unquestionably describe "custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. §2241(c)(3).