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HABEAS CORPUS-FEDERAL COURTS-NECESSITY OF CONFINEMENT OF PRISONER WITHIN TERRITORIAL JURISDICTION OF THE COURT

Ralph Jay Isackson S.Ed.
University of Michigan Law School

HABEAS CORPUS—FEDERAL COURTS—NECESSITY OF CONFINEMENT OF PRISONER WITHIN TERRITORIAL JURISDICTION OF THE COURT—The Attorney General, respondent, after finding that petitioners, one hundred and twenty Germans, endangered the public peace and safety of the United States by their adherence to an enemy government, issued removal orders for their deportation. Petitioners, while confined at Ellis Island, New York, filed petitions for writs of habeas corpus in the District Court for the District of Columbia challenging the removal orders on the basis that they exceeded statutory authority for their issuance. Respondent moved to dismiss because petitioners were not confined in the District of Columbia. The district court granted the motion and the court of appeals affirmed. On certiorari, *held*, affirmed,[1] three justices dissenting. The district court is limited in its issuance of writs of habeas corpus to persons confined within its territorial jurisdiction. *Ahrens v. Clark*, (U.S. 1948) 68 S.Ct. 1443.

The majority of the Court reached its decision by construing the applicable jurisdictional statutory language, ". . . district courts, within their respective jurisdictions, shall have power to grant writs of habeas corpus . . .,"[2] to demand restraint of the prisoner within the territorial limits of the district court as a prerequisite to issuance of the writ. The legislative history of the statute, the majority believed, indicated that its purpose was to prevent a district judge from bringing before him prisoners held outside his district.[3] Justices Rutledge, Murphy and Black, dissenting, thought the statute was intended to prevent district judges from having power to bring before them custodians located in

[1] The Supreme Court refused the respondent's request to waive the jurisdictional objection, thereby permitting a decision on the merits, holding that the uncured defect in jurisdiction over petitioners prevented the Court from reaching the question of whether respondent was a proper party to waive the objection.

[2] 28 U.S.C. (1946) § 452.

[3] CONG. GLOBE, 39th Cong., 2d sess., 730, 790. See principal case at 1445. The Court also was of the opinion that compelling policy reasons, that is, transportation costs of returning prisoners, chances for escape while in transit, and administrative burdens, demanded a strict construction of the jurisdictional requirement of the statute.

remote districts.[4] Therefore, since respondent was within the territorial jurisdiction of the court to which the petition was presented and could terminate the confinement of petitioners without leaving that jurisdiction, it was argued that the writ should have been issued.[5] Jurisdiction is usually held non-existent when custodian and prisoner are both outside the district.[6] However, most district courts have ruled that presence of the jailer within the district though the prisoner may be elsewhere, or a stipulation by respondents located outside the district waiving production in court of prisoners in their custody, is a sufficient basis for the exercise of jurisdiction.[7] The dissenting justices justified these earlier decisions by looking to the historical purpose of the writ. This purpose was to relieve the prisoner by compelling his custodian, who has both the authority and ability to produce the body, whenever subject to the process of the court, to open the prison doors.[8] If process does run to the custodian,[9] then the district court should be free to use its discretion in refusing to exercise its jurisdiction in those cases where the prisoner may obtain relief in a more convenient forum, but still to preserve the right to issue the writ in cases of extreme hardship.[10] The ruling of the majority of the court in the principal case may seem

[4] CONG. GLOBE, 39th Cong., 2d sess., 730, 790. Principal case at 1451.

[5] Principal case at 1450.

[6] Ex parte Graham, 4 Wash. (C.C. 3d) 211 (1818); Jones v. Biddle, (C.C.A. 8th, 1942) 131 F. (2d) 853; United States v. Schlotfeldt, (C.C.A. 7th, 1943) 136 F. (2d) 935; Burns v. Welch, (App. D.C. 1947) 159 F. (2d) 29.

[7] CHURCH, HABEAS CORPUS, 2d ed., § 109 (1893). United States v. Davis (App. D.C. 1839) 5 Cranch C.C. 622; Ex parte Ng Quong Ming, (D.C. N.Y. 1905) 135 F. 378; Sanders v. Allen, (App. D.C. 1938) 100 F. (2d) 717. Contra, In re Bickley, (D.C. N.Y. 1865) 3 Fed. Cas. 332, and McGowan v. Moody, 22 App. D.C. 148 (1903), which the dissenting judges believed were distinguishable. See principal case at 1451, note 18.

[8] Principal case at 1447, where the dissenting opinion quotes from Judge Cooley's statement in Matter of Samuel W. Jackson, 15 Mich. 416 at 439 (1867), ". . . this writ . . . is directed to, and served upon, not the person confined, but his jailer. It does not reach the former except through the latter. . . . The place of confinement is therefore not important to the relief, if the guilty party is within the reach of process, so that by the power of the court he can be compelled to release his grasp. The difficulty of affording redress is not increased by the confinement being beyond the limits of the state, except as greater distance may affect it. The important question is, where is the power of control exercised?"

[9] Principal case at 1448 and 1452. Although the Attorney General is not the officer in charge of the place of confinement, he has power to end the imprisonment without leaving the District of Columbia. Compare the language of the court in Sanders v. Bennett, (App. D.C. 1945) 148 F. (2d) 19 at 20: "Attorney-General . . . is a supervisory official rather than a jailer . . . the proper person to be served . . . is the warden of the penitentiary in which the prisoner is confined rather than an official in Washington, D.C., who supervises the warden."

[10] Principal case at 1453. Illustrations of typical hardship situations are those instances which may arise when a petitioner cannot find out what district a person is illegally detained in, as may be the case in military detentions; emergency evacuation of groups, with possible loss of personnel records; confinement of persons in areas not subject to the jurisdiction of any district court, that is, detention by United States military authorities in foreign countries.

to be required by a construction of the applicable statutory language, for the jurisdiction of the district courts is territorial unless otherwise stated,[11] and the statute refers only to the power of courts, within their respective jurisdictions, to grant writs. This solves the usual situation, where prisoner and jailer are in the same district. However, it would seem that there is a need for a statute giving district courts discretionary powers to take jurisdiction in the less frequent case, where the jailer can be served with process in a district other than the place of confinement, if relief can be granted there more conveniently.

Ralph Jay Isackson, S.Ed.

[11] Georgia v. Penn. Ry. Co., 324 U.S. 439 at 467-468, 65 S.Ct. 716 (1945).