

RASUL

v.

BUSH

&

AL ODAH

v.

UNITED STATES

\_\_\_ U.S. \_\_\_ (June 28, 2004)

**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

. . . Petitioners in these cases are two Australian citizens and twelve 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 . . . at the Naval Base at Guantanamo Bay. The United States occupies the Base . . . 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."

In 2002, petitioners, through relatives acting as their next friends, filed various actions in the U.S. District Court for the District of Columbia challenging the legality of their detention at the Base. All alleged that none of the petitioners has ever been a combatant against the United States or has ever engaged in any terrorist acts. They also alleged that none has been charged with any wrongdoing, permitted to consult with counsel, or provided access to the courts or any other tribunal.

The two Australians, Mamdouh Habib and David Hicks, each filed a petition for writ of habeas corpus, seeking release from custody, access to counsel, freedom from interrogations, and other relief. Fawzi Khalid Abdullah Fahad Al Odah and the eleven other Kuwaiti detainees filed a complaint seeking to be informed of the charges against them, to be allowed to meet with their families and with counsel, and to have access to the courts or some other impartial tribunal. They claimed that denial of these rights violates the Constitution, international law, and treaties of the United States. Invoking the court's jurisdiction under 28 U.S.C. §§ 1331 and 1350, among other statutory bases, they asserted causes of action under the Administrative Procedure Act; the Alien Tort Statute;

and the general federal habeas corpus statute, 28 U.S.C. §§ 2241-2243.

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." The Court of Appeals affirmed. Reading *Eisentrager* to hold that "the privilege of litigation does not extend to aliens in military custody who have no presence in any territory over which the United States is sovereign," it held that the District Court lacked jurisdiction over petitioners' habeas actions, as well as their remaining federal statutory claims that do not sound in habeas. We granted certiorari and now reverse.

## 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). In 1867, Congress extended the protections of the writ to "all cases where any person may be restrained of his or her liberty in violation of the constitution, or of any treaty or law of the United States."

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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*, and of admitted enemy aliens convicted of war crimes during a declared war and held in the United States, *Ex parte Quirin*, and its insular possessions, *In re Yamashita*.

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 *Eisentrager*. In that case, we held that a Federal District Court lacked authority to issue a writ of habeas corpus to twenty-one 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. The Court of Appeals in *Eisentrager* had found jurisdiction, reasoning that "any person who is deprived of his liberty by officials of the United States, acting under purported authority of that Government, and who can show that his confinement is in violation of a prohibition of the Constitution, has a right to the

writ." In reversing that determination, this 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."

On this set of facts, the Court concluded, "no right to the writ of *habeas corpus* appears." Petitioners in these cases differ from the *Eisentrager* 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 *Eisentrager* detainees, but the Court in *Eisentrager* 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. 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." Reference to the historical context in which *Eisentrager* was decided explains why the opinion devoted so little attention to question of statutory jurisdiction. In 1948, just two months after the *Eisentrager* petitioners filed their petition for habeas corpus in the U.S. District Court for the District of Columbia, this Court issued its decision in *Ahrens v. Clark*, 335 U.S. 188, a case concerning the application of the habeas statute to the petitions of 120 Germans who were then being detained at Ellis Island, New York, for deportation to Germany. The *Ahrens* detainees had also filed their petitions in the U.S. District Court for the District of Columbia, naming the Attorney General as the respondent. Reading the phrase "within their respective jurisdictions" as used in the habeas statute to require the petitioners' presence within the district court's territorial jurisdiction, the Court held that the District of Columbia court lacked jurisdiction to entertain the detainees' claims. *Ahrens* expressly reserved the question "of what process, if any, a person confined in an area not subject to the jurisdiction of any district court may employ to assert federal rights."

When the District Court for the District of Columbia reviewed the German prisoners' habeas application in *Eisentrager*, it thus dismissed their action on the authority of *Ahrens*.

. . . 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." . . . *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.

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. 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. 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. 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.

\* \* \*

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. No party questions the District Court's jurisdiction over petitioners' custodians. 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. . . . As explained above,

*Eisentrager* itself erects no bar to the exercise of federal court jurisdiction over the petitioners' habeas corpus claims. It therefore certainly does not bar the exercise of federal court jurisdiction over claims that merely implicate the "same category of laws listed in the habeas corpus statute." But in any event, nothing in *Eisentrager* 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. The courts of the United States have traditionally been open to nonresident aliens. And indeed, § 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 non-habeas statutory claims.

## VI

. . . 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.*

The Concurring Opinion of Justice Kennedy and the Dissenting Opinion of Justice Scalia, in which The Chief Justice and Justice Thomas joined, are omitted.