

Briefing of 06-1195

**NAME OF CASE:** *Boumediene v. Bush*

**CITATION:** 553 U.S. 723, 128 S. Ct. 2229

**FACTS:**

At the commencement of the “war on terror” President George W. Bush declared that the U.S. government maintains the authority to try captives before military commissions. By January 2002 Camp X-Ray opened at the United States Naval Base in Guantanamo Bay, Cuba. The Bush Administration declared that since the Naval Base is not on U.S. soil, it’s detainees are not subject to U.S. law and are permitted no rights under the U.S. Constitution. In 2002 Lakhdar Boumediene filed a petition of habeas corpus, alleging a violation of the Constitution’s Due Process Clause. The U.S. District Court sided with the government stating that since the petitioner was an alien detained at an overseas military base, they had no right to a habeas corpus petition. The U.S. Court of Appeals affirmed the District Court decision and denied the petitioners ability to file for a habeas petition. As a result of the 2004 Supreme Court decision *Rasul v. Bush*, which extended the right of habeas corpus to non-citizen detainees held overseas, the United States Congress passed the Military Commissions Act of 2006 (MCA). The Act sought to eliminate federal court jurisdiction to hear habeas corpus petitions by foreign citizens deemed enemy combatants. When appealed to the U.S. Court of Appeals for the second time, the Court sided with the government and upheld the provisions laid out in the MCA.

**ISSUE:**

The first issue brought forth by the petitioner concerned the constitutionality of their indefinite detention at the United States Naval Station located in Guantanamo Bay, Cuba. The petitioner claimed that the detention was in violation of the Suspension Clause of the Constitution. The second issue concerned the constitutionality of the MCA enacted by the United States Congress. Specifically, whether or not the MCA was a suspension of the right to habeas corpus protected under the United States Constitution. The third issue addressed was whether or not the MCA should be interpreted to strip federal courts of jurisdiction over habeas corpus submissions filed by foreign citizens.

**DECISION:**

Reversed and remanded U.S. Court of Appeals decision

**Vote:** (5 to 4), Justice Kennedy wrote the opinion.

## **JUSTIFICATION:**

The court first addressed the issue of whether the right of habeas corpus can be constitutionally suspended to persons designated as enemy combatants under the MCA. The court argued that if Congress was intent on suspending the right of habeas corpus, it must provide a reasonable substitute to allow the detainee an opportunity to demonstrate that their detention was made in error. The court found that Congress's attempt to provide a substitute, the Detainee Treatment Act of 2005 (DTA) §1005(e), was inadequate. Since no adequate substitute for habeas corpus could be identified by the court, it struck down MCA §7, which it ruled, "operates as an unconstitutional suspension of the writ."

The court also addressed whether the writ of habeas corpus and the Suspension Clause of the Constitution could have any extraterritorial application. The court started by distinguishing between de jure and de facto sovereignty as it applies to Guantanamo Bay. The court found that while it accepts Cuba's sovereignty over Guantanamo Bay, in the legal and technical sense, it rejects the notion that de jure sovereignty is the benchmark for habeas jurisdiction. The court points to the doctrine of territorial incorporation, under which the Constitution applies in full. As a result, the Constitutional protections of habeas corpus extended to the prisoners held at Guantanamo Bay naval base.

## **CONCURRING:**

Justice Souter provided a concurring opinion joined by Justice Ginsberg and Justice Breyer. In the concurrence Justice Souter addressed charges made by the dissenters that the Court was veering into territory that could be adequately addressed by the military in due time. Justice Souter claimed that the dissenting Justices failed to adequately appreciate the magnitude of the detainee's lengthy imprisonments. Further, Justice Souter added that the application of the habeas statute is fully consistent with the historical precedents of related nature.

## **DISSENT:**

Justice Scalia provided the first of two dissenting opinions joined by Justice Roberts, Justice Alito and Justice Thomas. Justice Scalia argued that the provisions laid out in the DTA provide an adequate substitute for the protections the writ of habeas guarantees. Therefore, seeing an adequate substitute there is no need for the court to intervene to prescribe more than the DCA allows. Justice Scalia also points out that the Court's majority admits that it cannot sufficiently demonstrate the extension of the writ's protections to aliens abroad and it also concedes that the naval base at Guantanamo Bay lies outside the sovereign territory of the United States. Therefore, the Court's majority is out of bounds.

Chief Justice Roberts provided the second dissenting opinion joined by Justice Scalia, Justice Thomas, and Justice Alito. In the opinion Chief Justice Roberts focused on the determination by the Court's majority that the DTA did not provide an adequate substitute for the protections provided by habeas corpus. Chief Justice Roberts determined that the whole process was misguided and that the process the Court mandates will end up looking a lot like the DTA process it is replacing. It is in the Chief Justice's opinion that the system the political branches constructed adequately protects any constitutional rights enemy combatants possess. Further, all the Court's majority has done is to shift sensitive national security decisions from the elected branches to the federal judicial system.

### **RULE OF LAW:**

The court made clear that the rule of law and the protections of the U.S. Constitution, specifically the right of habeas corpus, extend beyond the geographic bounds of the United States. In its decision the court overturned MCA §7 MCA that stripped the federal courts of jurisdiction over habeas corpus petitions. Further the Court decided that the DTA did not provide an adequate substitute for the protections guaranteed by the writ of habeas corpus. Seeing none the court found the MCA §7 in violation of the Suspension Clause, U.S. Const., Art. I, §9, cl. 2, which provides that "the Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it."

### **EVALUATION:**

The court declared that the reach of the U.S. Constitution is broad and beyond the physical borders of the United States. The majority decision was in part designed to illustrate the resiliency of the document's protections "in extraordinary times." The court also took sole authority over the consideration of future habeas corpus petitions. Authority that was at first taken away by the MCA.

The court's decision also strengthens the system of separation of powers. The Constitution gives authority to both Congress and the President to acquire, dispose and govern territory but not the power to decide when and where its terms apply. If political branches were able to determine when the Constitution should apply and when it should not it would eliminate any type of separation of power and render the court irrelevant.