

RASUL v. BUSH
FAWZI KHALID ABDULLAH FAHAD AL ODAH v. UNITED STATES

[June 28, 2004]

Stevens, J., delivered the opinion of the Court, in which O'Connor, Souter, Ginsburg, and Breyer, JJ., joined. Kennedy, J., filed an opinion concurring in the judgment. Scalia, J., filed a dissenting opinion, in which Rehnquist, C. J., and Thomas, J., joined.

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....

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.¹ 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.” 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.”

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 11 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, 5 U.S.C.

§§555, 702, 706; the Alien Tort Statute, 28 U.S.C. §1350; and the general federal habeas corpus statute, §§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,’” (quoting *Eisentrager*, 339 U.S., at 777-778), 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.

I . . .

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). The statute traces its ancestry to the first grant of federal court jurisdiction: Section 14 of the Judiciary Act of 1789 authorized federal courts to issue the writ of habeas corpus to prisoners “in custody, under or by colour of the authority of the United States, or committed for trial before some court of the same.” 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.”

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 *Eisentrager*. 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. 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. *Eisentrager v. Forrestal*, 174 F. 2d 961, 963 (CADC 1949).

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*, 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.” But as the dissent noted, if the presence of the petitioner in the territorial jurisdiction of a federal district court were truly a jurisdictional requirement, there could be only one response to that question.

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*. Although the Court of Appeals reversed the District Court, it implicitly conceded that the District

Court lacked jurisdiction under the habeas statute as it had been interpreted in *Ahrens*. The Court of Appeals instead held that petitioners had a constitutional right to habeas corpus secured by the Suspension Clause, U.S. Const., Art. I, §9, cl. 2, reasoning that “if a person has a right to a writ of habeas corpus, he cannot be deprived of the privilege by an omission in a federal jurisdictional statute.” *Eisentrager v. Forrestall*. In essence, the Court of Appeals concluded that the habeas statute, as construed in *Ahrens*, had created an unconstitutional gap that had to be filled by reference to “fundamentals.” In its review of that decision, this Court, like the Court of Appeals, proceeded from the premise that “nothing in our statutes” conferred federal-court jurisdiction, and accordingly evaluated the Court of Appeals’ resort to “fundamentals” on its own terms.

Because subsequent decisions of this Court have filled the statutory gap that had occasioned *Eisentrager*’s resort to “fundamentals,” 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.” *Braden* reasoned that its departure from the rule of *Ahrens* was warranted in light of developments that “had a profound impact on the continuing vitality of that decision.” These developments included, notably, decisions of this Court in cases involving habeas petitioners “confined overseas (and thus outside the territory of any district court),” in which the Court “held, if only implicitly, that the petitioners’ absence from the district does not present a jurisdictional obstacle to the consideration of the claim.” *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. *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....

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. . . .

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.

Justice Kennedy, concurring in the judgment.

The Court is correct, in my view, to conclude that federal courts have jurisdiction to consider challenges to the legality of the detention of foreign nationals held at the Guantanamo Bay Naval Base in Cuba. While I reach the same conclusion, my analysis follows a different course.... In my view, the correct course is to follow the framework of *Eisentrager*.

Eisentrager considered the scope of the right to petition for a writ of habeas corpus against the backdrop of the constitutional command of the separation of powers. The issue before the Court was whether the Judiciary could exercise jurisdiction over the claims of German prisoners held in the Landsberg prison in Germany following the cessation of hostilities in Europe. The Court concluded the petition could not be entertained. The petition was not within the proper realm of the judicial power. It concerned matters within the exclusive province of the Executive, or the Executive and Congress, to determine.

The Court began by noting the "ascending scale of rights" that courts have recognized for individuals depending on their connection to the United States. Citizenship provides a longstanding basis for jurisdiction, the Court noted, and among aliens physical presence within the United States also "gave the Judiciary power to act." This contrasted with the "essential pattern for reasonable Executive constraint of enemy aliens." The place of the detention was also important to the jurisdictional question, the Court noted. Physical presence in the United States "implied protection," whereas in *Eisentrager* "[t]he prisoners at no relevant time were within any territory over which the United States is sovereign." The Court next noted that the prisoners in *Eisentrager* "were actual enemies" of the United States, proven to be so at trial, and thus could not justify "a limited opening of our courts" to distinguish the "many [aliens] of friendly personal

disposition to whom the status of enemy” was unproven. Finally, the Court considered the extent to which jurisdiction would “hamper the war effort and bring aid and comfort to the enemy.” Because the prisoners in *Eisentrager* were proven enemy aliens found and detained outside the United States, and because the existence of jurisdiction would have had a clear harmful effect on the Nation’s military affairs, the matter was appropriately left to the Executive Branch and there was no jurisdiction for the courts to hear the prisoner’s claims.

The decision in *Eisentrager* indicates that there is a realm of political authority over military affairs where the judicial power may not enter. The existence of this realm acknowledges the power of the President as Commander in Chief, and the joint role of the President and the Congress, in the conduct of military affairs. A faithful application of *Eisentrager*, then, requires an initial inquiry into the general circumstances of the detention to determine whether the Court has the authority to entertain the petition and to grant relief after considering all of the facts presented. A necessary corollary of *Eisentrager* is that there are circumstances in which the courts maintain the power and the responsibility to protect persons from unlawful detention even where military affairs are implicated. See also *Ex parte Milligan*, 4 Wall. 2 (1866).

The facts here are distinguishable from those in *Eisentrager* in two critical ways, leading to the conclusion that a federal court may entertain the petitions. First, Guantanamo Bay is in every practical respect a United States territory, and it is one far removed from any hostilities. The opinion of the Court well explains the history of its possession by the United States. In a formal sense, the United States leases the Bay; the 1903 lease agreement states that Cuba retains “ultimate sovereignty” over it. At the same time, this lease is no ordinary lease. Its term is indefinite and at the discretion of the United States. What matters is the unchallenged and indefinite control that the United States has long exercised over Guantanamo Bay. From a practical perspective, the indefinite lease of Guantanamo Bay has produced a place that belongs to the United States, extending the “implied protection” of the United States to it.

The second critical set of facts is that the detainees at Guantanamo Bay are being held indefinitely, and without benefit of any legal proceeding to determine their status. In *Eisentrager*, the prisoners were tried and convicted by a military commission of violating the laws of war and were sentenced to prison terms. Having already been subject to procedures establishing their status, they could not justify “a limited opening of our courts” to show that they were “of friendly personal disposition” and not enemy aliens.

Indefinite detention without trial or other proceeding presents altogether different considerations. It allows friends and foes alike to remain in detention. It suggests a weaker case of military necessity and much greater alignment with the traditional function of habeas corpus. Perhaps, where detainees are taken from a zone of hostilities, detention without proceedings or trial would be justified by military necessity for a matter of weeks; but as the period of detention stretches from months to years, the case for continued detention to meet military exigencies becomes weaker.

In light of the status of Guantanamo Bay and the indefinite pretrial detention of the detainees, I would hold that federal court jurisdiction is permitted in these cases. This approach would avoid creating automatic statutory authority to adjudicate the claims of persons located outside the United States, and remains true to the reasoning of *Eisentrager*. For these reasons, I concur in the judgment of the Court.

Justice Scalia, with whom The Chief Justice and Justice Thomas join, dissenting.

The Court today holds that the habeas statute extends to aliens detained by the United States military overseas, outside the sovereign borders of the United States and beyond the territorial jurisdictions of all its courts. This is not only a novel holding; it contradicts a half-century-old precedent on which the military undoubtedly relied, *Johnson v. Eisentrager*, 339 U.S. 763 (1950). The Court's contention that *Eisentrager* was somehow negated by *Braden v. 30th Judicial Circuit Court of Ky.*, 410 U.S. 484 (1973)—a decision that dealt with a different issue and did not so much as mention *Eisentrager*—is implausible in the extreme. This is an irresponsible overturning of settled law in a matter of extreme importance to our forces currently in the field. I would leave it to Congress to change §2241, and dissent from the Court's unprecedented holding.

I

As we have repeatedly said: “Federal courts are courts of limited jurisdiction. They possess only that power authorized by Constitution and statute, which is not to be expanded by judicial decree. It is to be presumed that a cause lies outside this limited jurisdiction” *Kokkonen v. Guardian Life Ins. Co. of America*, 511 U.S. 375, 377 (1994) (citations omitted). The petitioners do not argue that the Constitution independently requires jurisdiction here.¹ Accordingly, this case turns on the words of §2241, a text the Court today largely ignores. Even a cursory reading of the habeas statute shows that it presupposes a federal district court with territorial jurisdiction over the detainee. . . . Section 2241(a) states: “Writs of habeas corpus may be granted by the Supreme Court, any justice thereof, the district courts and any circuit judge *within their respective jurisdictions.*” (Emphasis added)

The Court asserts, however, that the decisions of this Court have placed a gloss on the phrase “within their respective jurisdictions” in §2241 which allows jurisdiction in this case. That is not so. In fact, the only case in point holds just the opposite (and just what the statute plainly says). That case is *Eisentrager*

Eisentrager's directly-on-point statutory holding makes it exceedingly difficult for the Court to reach the result it desires today. To do so neatly and cleanly, it must either argue that our decision in *Braden* overruled *Eisentrager*, or admit that it is overruling *Eisentrager*. The former course would not pass the laugh test, inasmuch as *Braden* dealt with a detainee held within the territorial jurisdiction of a district court, and never mentioned *Eisentrager*. And the latter course would require the Court to explain why our almost categorical rule of stare decisis in statutory cases should be set aside in order to complicate the present war, and, having set it aside, to explain why the habeas statute does not mean what it plainly says. So instead the Court tries an oblique course: “*Braden*,” it claims, “overruled the statutory predicate to *Eisentrager*'s holding,” by which it means the statutory analysis of *Ahrens*. Even assuming, for the moment, that *Braden* overruled some aspect of *Ahrens*, inasmuch as *Ahrens* did not pass upon any of the statutory issues decided by *Eisentrager*, it is hard to see how any of that case's “statutory predicate” could have been impaired. . . .

The reality is this: Today's opinion, and today's opinion alone, overrules *Eisentrager*; today's opinion, and today's opinion alone, extends the habeas statute, for the first time, to aliens held beyond the sovereign territory of the United States and beyond the territorial jurisdiction of its courts. No reasons are given for this result; no acknowledgment of its consequences made. By spurious reliance on *Braden* the Court evades explaining why stare decisis can be disregarded, and why *Eisentrager* was wrong. Normally, we consider the interests of those who have relied on our decisions. Today, the Court springs a trap on the Executive, subjecting Guantanamo Bay to

the oversight of the federal courts even though it has never before been thought to be within their jurisdiction—and thus making it a foolish place to have housed alien wartime detainees.

II

In abandoning the venerable statutory line drawn in *Eisentrager*, the Court boldly extends the scope of the habeas statute to the four corners of the earth. Part III of its opinion asserts that *Braden* stands for the proposition that “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.’” Endorsement of that proposition is repeated in Part IV. (“Section 2241, by its terms, requires nothing more [than the District Court’s jurisdiction over petitioners’ custodians]”).

The consequence of this holding, as applied to aliens outside the country, is breathtaking. It permits an alien captured in a foreign theater of active combat to bring a §2241 petition against the Secretary of Defense. Over the course of the last century, the United States has held millions of alien prisoners abroad. . . . A great many of these prisoners would no doubt have complained about the circumstances of their capture and the terms of their confinement. The military is currently detaining over 600 prisoners at Guantanamo Bay alone; each detainee undoubtedly has complaints—real or contrived—about those terms and circumstances. The Court’s unheralded expansion of federal-court jurisdiction is not even mitigated by a comforting assurance that the legion of ensuing claims will be easily resolved on the merits. To the contrary, the Court says that the “[p]etitioners’ allegations . . . unquestionably describe ‘custody in violation of the Constitution or laws or treaties of the United States.’” From this point forward, federal courts will entertain petitions from these prisoners, and others like them around the world, challenging actions and events far away, and forcing the courts to oversee one aspect of the Executive’s conduct of a foreign war.

Today’s carefree Court disregards, without a word of acknowledgment, the dire warning of a more circumspect Court in *Eisentrager*:

To grant the writ to these prisoners might mean that our army must transport them across the seas for hearing. This would require allocation for shipping space, guarding personnel, billeting and rations. It might also require transportation for whatever witnesses the prisoners desired to call as well as transportation for those necessary to defend legality of the sentence. The writ, since it is held to be a matter of right, would be equally available to enemies during active hostilities as in the present twilight between war and peace. Such trials would hamper the war effort and bring aid and comfort to the enemy. They would diminish the prestige of our commanders, not only with enemies but with wavering neutrals. It would be difficult to devise more effective fettering of a field commander than to allow the very enemies he is ordered to reduce to submission to call him to account in his own civil courts and divert his efforts and attention from the military offensive abroad to the legal defensive at home. Nor is it unlikely that the result of such enemy litigiousness would be conflict between judicial and military opinion highly comforting to enemies of the United States.

These results should not be brought about lightly, and certainly not without a textual basis in the statute and on the strength of nothing more than a decision dealing with an Alabama prisoner’s ability to seek habeas in Kentucky.

III

Part IV of the Court's opinion, dealing with the status of Guantanamo Bay, is a puzzlement. The Court might have made an effort (a vain one, as I shall discuss) to distinguish *Eisentrager* on the basis of a difference between the status of Landsberg Prison in Germany and Guantanamo Bay Naval Base. But Part III flatly rejected such an approach, holding that the place of detention of an alien has no bearing on the statutory availability of habeas relief, but "is strictly relevant only to the question of the appropriate forum." That rejection is repeated at the end of Part IV: "In the end, the answer to the question presented is clear. . . . No party questions the District Court's jurisdiction over petitioners' custodians. . . . Section 2241, by its terms, requires nothing more." Once that has been said, the status of Guantanamo Bay is entirely irrelevant to the issue here. The habeas statute is (according to the Court) being applied domestically, to "petitioners' custodians," and the doctrine that statutes are presumed to have no extraterritorial effect simply has no application.

Nevertheless, the Court spends most of Part IV rejecting respondents' invocation of that doctrine on the peculiar ground that it has no application to Guantanamo Bay. Of course if the Court is right about that, not only §2241 but presumably all United States law applies there—including, for example, the federal cause of action recognized in *Bivens v. Six Unknown Fed. Narcotics Agents*, 403 U.S. 388 (1971), which would allow prisoners to sue their captors for damages. Fortunately, however, the Court's irrelevant discussion also happens to be wrong.

The Court gives only two reasons why the presumption against extraterritorial effect does not apply to Guantanamo Bay. First, the Court says (without any further elaboration) that "the United States exercises 'complete jurisdiction and control' over the Guantanamo Bay Naval Base [under the terms of a 1903 lease agreement], and may continue to exercise such control permanently if it so chooses [under the terms of a 1934 Treaty]." But that lease agreement explicitly recognized "the continuance of the ultimate sovereignty of the Republic of Cuba over the [leased areas. . . and the Executive Branch—whose head is "exclusively responsible" for the "conduct of diplomatic and foreign affairs," —affirms that the lease and treaty do not render Guantanamo Bay the sovereign territory of the United States. . . .

The Court does not explain how "complete jurisdiction and control" without sovereignty causes an enclave to be part of the United States for purposes of its domestic laws. Since "jurisdiction and control" obtained through a lease is no different in effect from "jurisdiction and control" acquired by lawful force of arms, parts of Afghanistan and Iraq should logically be regarded as subject to our domestic laws. Indeed, if "jurisdiction and control" rather than sovereignty were the test, so should the Landsberg Prison in Germany, where the United States held the *Eisentrager* detainees.

The second and last reason the Court gives for the proposition that domestic law applies to Guantanamo Bay is the Solicitor General's concession that there would be habeas jurisdiction over a United States citizen in Guantanamo Bay.

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.

But the reason the Solicitor General conceded there would be jurisdiction over a detainee who was a United States citizen had nothing to do with the special status of Guantanamo Bay:

“Our answer to that question, Justice Souter, is that citizens of the United States, because of their constitutional circumstances, may have greater rights with respect to the scope and reach of the Habeas Statute as the Court has or would interpret it.” And that position—the position that United States citizens throughout the world may be entitled to habeas corpus rights—is precisely the position that this Court adopted in *Eisentrager*, even while holding that aliens abroad did not have habeas corpus rights. Quite obviously, the Court’s second reason has no force whatever. . . .

Departure from our rule of stare decisis in statutory cases is always extraordinary; it ought to be unthinkable when the departure has a potentially harmful effect upon the Nation’s conduct of a war. The Commander in Chief and his subordinates had every reason to expect that the internment of combatants at Guantanamo Bay would not have the consequence of bringing the cumbersome machinery of our domestic courts into military affairs. Congress is in session. If it wished to change federal judges’ habeas jurisdiction from what this Court had previously held that to be, it could have done so. And it could have done so by intelligent revision of the statute, instead of by today’s clumsy, countertextual reinterpretation that confers upon wartime prisoners greater habeas rights than domestic detainees. The latter must challenge their present physical confinement in the district of their confinement, see *Rumsfeld v. Padilla*, ante, whereas under today’s strange holding Guantanamo Bay detainees can petition in any of the 94 federal judicial districts. The fact that extraterritorially located detainees lack the district of detention that the statute requires has been converted from a factor that precludes their ability to bring a petition at all into a factor that frees them to petition wherever they wish—and, as a result, to forum shop. For this Court to create such a monstrous scheme in time of war, and in frustration of our military commanders’ reliance upon clearly stated prior law, is judicial adventurism of the worst sort. I dissent.