

TOPIC 1: DETENTION AND TRIAL OF SUSPECTED TERRORISTS

Case

Summary

Al Odah v. United States, 321 F.3d 1124 (D.C. Cir. 2003).

Aliens being detained by the United States government at the U.S. Naval Base at Guantanamo Bay, Cuba, brought actions contesting legality and conditions of their confinement. The United States District Court for the District of Columbia, Colleen Kollar-Kotelly, J., 215 F.Supp.2d 55, dismissed for lack of jurisdiction, and appeal was taken. The Court of Appeals, Randolph, Circuit Judge, held that privilege of litigation did not extend to aliens in military custody outside of United States territory. Affirmed.

Coalition of Lawyers, Clergy and Professors v. Bush, 310 F.3d 1153 (9th Cir. 2002).

Coalition of professionals filed petition for writ of habeas corpus, alleging that detention in Cuba of terrorist combatants captured by the United States in Afghanistan was unconstitutional and in violation of laws and treaties of the United States. The United States District Court for the Central District of California, A. Howard Matz, J., 189 F.Supp.2d 1036, dismissed petition. Coalition appealed. The Court of Appeals, Wardlaw, Circuit Judge, held that: (1) detainees were not being held incommunicado, for purposes of coalition's assertion of next-friend standing; (2) coalition lacked next-friend standing to file petition on detainees' behalf; (3) coalition lacked third-party standing to file petition on detainees' behalf; and (4) district court could not reach questions as to whether jurisdiction was lacking because no custodian was within court's territorial jurisdiction and whether any district court was precluded from asserting jurisdiction over petition. Affirmed in part and vacated in part. Berzon, Circuit Judge, concurred in the result and filed a separate opinion. Noonan, Circuit Judge, dissented from order requiring each side to bear its own costs.

Hamdi v. Rumsfeld, 296 F.3d 278 (4th Cir. 2002) (Hamdi I).

Father of military detainee, an American citizen who was captured as an alleged enemy combatant during military operations in Afghanistan, petitioned, as detainee's next friend, for writ of habeas corpus. The United States District Court for the Eastern District of Virginia, Robert G. Doumar, J., appointed counsel and ordered government to allow counsel unmonitored access to detainee. Government appealed. The Court of Appeals, Wilkinson, Chief Judge, held that: (1) district court failed to extend proper deference to decisions of President and Congress relating to sensitive matters of foreign policy, national security, or military affairs; (2) court failed to address questions relating to detainee's status as an alleged enemy combatant; but (3) dismissal of petition was not appropriate. Reversed and remanded.

Hamdi v. Rumsfeld, 316 F.3d 450 (4th Cir. Jan. 8, 2003), reh'g denied, — F.3d —, 2003 WL 21540768 (4th Cir. July 7, 2003) (Hamdi II).

Father of military detainee, an American citizen who was captured as an alleged enemy combatant during military operations in Afghanistan, petitioned, as detainee's next friend, for writ of habeas corpus. The United States District Court for the Eastern District of Virginia, Robert G. Doumar, J., appointed counsel and ordered government to allow counsel unmonitored access to detainee. Government appealed. The Court of Appeals, 296 F.3d 278, reversed and remanded. On remand, the United States District Court for the Eastern District of Virginia, Robert G. Doumar, Senior District Judge, ordered production of additional material regarding detainee's status, and government petitioned for interlocutory review. The Court of Appeals held that: (1) detention was authorized by Congress; (2) detainee did not have right under Geneva Convention to formal hearing to determine his status as enemy belligerent; (3) district court's order impermissibly conflicted with constitutional war-making powers of President and Congress; and (4) government's affidavit was sufficient to establish that detention conformed with legitimate exercise of the President's war powers. Reversed and remanded with directions.

United States v. Moussaoui, 333 F.3d 509 (4th Cir.), reh'g denied, — F.3d —, 2003 WL 21649917 (4th Cir. 2003).

In proceedings in a capital case, against an admitted member of al-Qaeda terrorist organization, indicted for being a part of planned 9/11 terrorist attacks, the United States District Court for the Eastern District of Virginia, Leonie M. Brinkema, J., ordered government to produce an enemy combatant witness for deposition. Government appealed and petitioned for writ of mandamus. The Court of Appeals, Wilkins, Chief Judge, held that (1) Court of Appeals lacked jurisdiction to hear appeal, and (2) government was not entitled to mandamus relief. Dismissed.