

DOWNLOAD PDF AL MAQALEH V. GATES US COURT OF APPEALS, D.C. CIRCUIT

Chapter 1 : Al Maqaleh v. Gates (Amicus Brief) | Brennan Center for Justice

United States Court of Appeals, District of Columbia Circuit. Fadi AL MAQALEH, Detainee and Ahmad Al Maqaleh, as Next Friend of Fadi Al Maqaleh, Appellees v.

Argued September 17, Decided December 24, Olshansky entered an appearance. Lewis argued the cause for appellants, Amanatullah, et al. Katherine Toomey were on brief. Connolly argued the cause for appellants Hamidullah, et al. Murphy and Cori Crider were on brief. Sharon Swingle, Attorney, U. Department of Justice, argued the cause for the appellees. Attorney, and Douglas N. Letter, Attorney, were on brief. In these three appeals, Bagram detainees once again seek access to the writ of habeas corpus. We once again dismiss their petitions for want of jurisdiction. Bagram and its Detainees In the wake of the September 11, attacks on our homeland, the Congress authorized the President to "use all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed, or aided" the attacks. Among the powers conferred on the President was the power to detain enemy combatants "for the duration of the particular conflict in which they were captured. The United States has detained enemy combatants at facilities both within and outside the United States, including Bagram. Al Maqaleh II, F. The current lease agreement between the United States and Afghanistan provides that the United States may occupy and use Bagram "for military purposes. Among those detained at Bagram are the five appellants in this case to whom we refer collectively as the Appellants. Appellant al-Maqaleh is a Yemeni citizen who alleges that the United States captured him outside Afghanistan and transferred him to Bagram in or Appellant al-Bakri is a Yemeni citizen who alleges that the United States captured him in Thailand in and eventually transferred him to Bagram. Appellant al-Najar is a Tunisian citizen who alleges he was captured in Pakistan in and subsequently transferred to Bagram. Appellant Amanatullah is a Pakistani citizen who was captured by British forces in Iraq in or and subsequently transferred to Bagram. Appellant Hamidullah is a Pakistani citizen who alleges that he was captured in the Pakistani border region of South Waziristan in at the age of fourteen and subsequently detained at Bagram. In May , the United States agreed to transfer both "U. The Appellants claim in their briefsâ€”filed after the transfer of the DFIP to Afghan controlâ€”that the United States continues to detain them at "a separate prison facility at Bagram. It provides, in pertinent part, that [n]o court, justice, or judge shall have jurisdiction to hear or consider an application for a writ of habeas corpus filed by or on behalf of an alien detained by the United States who has been determined by the United States to have been properly detained as an enemy combatant or is awaiting such determination. We held that section 7 stripped the court of jurisdiction to consider any habeas petition filed by any alien detained as an enemy combatant outside the United States. The Supreme Court held that the constitutional right to the writ of habeas corpus did not extend to the German prisoners. Our Boumediene decision read Eisentrager to hold that the protections of the Suspension Clause did not extend to aliens held outside the sovereign territory of the United States, including Guantanamo. The Supreme Court reversed. It rejected the "premise that de jure sovereignty is the touchstone of habeas jurisdiction. Instead, construing Eisentrager in light of the Insular Cases [2] and Reid v. It identified at least three factors. Applying the factors to the detainees at Guantanamo, the Supreme Court concluded that the Suspension Clause extended to Guantanamo and therefore the Guantanamo detainees had a constitutional right to challenge the basis of their detention. Because the existing procedures did not afford them an adequate opportunity to challenge their detentions, the Supreme Court held that section 7 of the MCA is an unconstitutional suspension of the writ at Guantanamo. We reversed, holding that significant differences between Bagram and Guantanamo as well as the practical difficulties posed by adjudicating habeas petitions in a war zone barred extension of the Suspension Clause to Bagram. Shortly after our ruling, the Al Maqaleh II Appellants sought rehearing on the basis of new evidence which they claimed undermined our decision. July 23, per curiam. The Appellants then filed amended habeas petitions in district court. They claimed that new evidence indicated that the United States intended to remain at Bagram indefinitely; that obstacles to

conducting habeas proceedings were less severe than the Al Maqaleh II court believed; that the United States detained them at Bagram in order to evade the habeas jurisdiction of federal courts; and that the propriety-of-detention determination procedures used at Bagram were inadequate. In a thorough opinion, the district court dismissed the petitions, concluding that the new evidence did not alter the holding of Al Maqaleh II. Appellant Amanatullah raised nearly identical arguments in his petition and they were rejected for largely the same reasons. Appellant Hamidullah argued that his infancy at the time of his capture weighed in favor of extending the writ. The district court rejected this argument as insufficient to overcome the fact that Bagram is situated within a war zone. The Appellants timely appealed. Standard of Review We review de novo the dismissal of a habeas petition for want of jurisdiction. Although we accept the allegations in the petition as true when reviewing a motion to dismiss for lack of jurisdiction, see *Leatherman v. Francis Xavier Parochial Sch.* Our task, therefore, is a modest one: On November 16, , the United States transferred Hamidullah to the custody of the government of Pakistan. After learning of the transfer, we ordered the parties to brief the mootness question. Under Article III of the Constitution, we have authority to adjudicate only live cases or controversies. Obama, two aliens detained as enemy combatants filed habeas petitions challenging their detentions. During the pendency of their petitions, the United States released them to the custody of foreign governments. They argued that their petitions were not moot, however, because they continued to suffer "collateral consequences" arising from their designation as enemy combatants. *Juvenile Male, S. As in Gul*, the Government has submitted a declaration explaining that, when it transferred Hamidullah, it "relinquish[ed] all legal and physical custody and control" over him to the government of Pakistan. The Government therefore contends that he is identically situated to the petitioners in *Gul* and his appeal must be dismissed. Hamidullah contests the Lewis Declaration, arguing that we must remand to the district court to determine whether "the United States has imposed transfer terms and conditions that create[] a form of constructive United States custody after transfer. We think it unwise to decide our jurisdiction when it turns in part on unresolved factual questions. We address each factor in turn. Citizenship and Status We first consider the "citizenship and status" of the Appellants. In *Boumediene*, the petitioners were "aliens designated as enemy combatants and detained" by the United States but they disputed that designation. See *Boumediene, U.* The appellants in *Al Maqaleh II* were identically situated and we held that this prong of the first factor weighed in favor of extending the protection of the Suspension Clause to Bagram. The Appellants now argue, however, that their citizenship and status distinguish them from *Boumediene* and *Al Maqaleh II* such that this prong now supports their argument for extension of the Suspension Clause more strongly than before. Their arguments require us to define the meaning of "citizenship and status" under *Boumediene*. Like the *Boumediene* petitioners and the *Al Maqaleh II* appellees, the Appellants in these appeals are aliens detained as enemy combatants. His specific alien citizenship is not relevant, however, because the only relevant citizenship under *Boumediene* is American citizenship. In *Boumediene* all of the petitioners were "foreign nationals, but none [was] a citizen of a nation [then] at war with the United States. The Court accorded this observation no weight. Instead, it focused on the fact that the "[p]etitioners, like those in *Eisentrager*, [we]re not American citizens. *Al Maqaleh II* also focused exclusively on whether the detainees were U. It elucidated the analytical significance of the "citizenship" prong by referencing the settled authority according U. But the applicability of constitutional protections has never turned on the specific citizenship of an alien; ceteris paribus, a nonresident Briton is no more entitled to invoke the rights of the Constitution than a nonresident Pakistani. We therefore conclude that "citizenship" under *Boumediene* asks only whether the detainee is a U. Because Appellant Amanatullah is an alien, this prong weighs no more in his favor than it did for the detainees in *Boumediene* and *Al Maqaleh II*. In so arguing, the Appellants sorely misread *Boumediene*. The *Boumediene* court had to "determine whether petitioners are barred from seeking the writ or invoking the protections of the Suspension Clause. Similarly, the second prong of the first factor is the "adequacy of the process through which that status determination was made. Appellant Amanatullah separately contends that his "actual status" entitles him to release. His argument is more invective than substance but insofar as we apprehend it, he appears to contend that the Suspension

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Clause must extend to him because the United States has failed to prove that his detention is lawful. Alternatively, he argues that he is at least entitled to jurisdictional discovery in order to ascertain the basis of his detention. Every habeas petition disputes the lawfulness of detention; that dispute is the quintessence of habeas corpus. While we may not assess the lawfulness of detention unless we have jurisdiction, *Steel Co. v. United Mine Workers of Am.* Eliding the lawfulness of detention with the extraterritoriality inquiry would eliminate the need for an independent jurisdictional inquiry and result in universal habeas jurisdiction. We unequivocally reject any argument espousing the universal extraterritorial application of the Suspension Clause. The district court has discretion to allow discovery if it "could produce [facts] that would affect [its] jurisdictional analysis. *Rafidain Bank*, 26 F. Denying discovery in the absence of some "specific indication. *Cheyenne Arapaho Tribes of Okla. v. United States*, F. III discovery permitted in habeas proceedings for good cause shown ; *Bracy v. The district court* therefore did not abuse its discretion in denying discovery on that question. See *United States v. Adequacy of the Process* We next consider "the adequacy of the process through which that status determination was made. This reasoning is the same used by the Court to determine whether the CSRTs violated the Suspension Clause after it decided that the Suspension Clause applied and is thus slightly circularâ€”an alien detained abroad is more likely to have a right under the Suspension Clause if the United States is violating his Suspension Clause right.

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Chapter 2 : Fadi Maqaleh, et al v. Robert Gates, et al :: Justia Dockets & Filings

United States Court of Appeals FOR THE DISTRICT OF COLUMBIA CIRCUIT Argued January 7, Decided May 21, No. FADI AL MAQALEH, DETAINEE AND AHMAD AL MAQALEH, AS NEXT FRIEND OF FADI AL MAQALEH.

Named the 9 fastest growing education company in the United States. Thank you for your support! Al-Bihani served as a cook and carried a weapon for a group allied with the Taliban known as the 55th Arab Brigade 55th , which fought against the Northern Alliance. Al-Bihani and the rest of the brigade eventually surrendered to Northern Alliance forces. Al-Bihani unsuccessfully petitioned for a writ of habeas corpus and appealed. Rule of Law Alert The rule of law is the black letter law upon which the court rested its decision. To access this section, please start your free trial or log in. Issue Alert The issue section includes the dispositive legal issue in the case phrased as a question. Holding and Reasoning Brown, J. Alert The holding and reasoning section includes: A "yes" or "no" answer to the question framed in the issue section; A summary of the majority or plurality opinion, using the CREAC method; and The procedural disposition e. What to do nextâ€¦ Unlock this case brief with a free no-commitment trial membership of Quimbee. Quimbee is one of the most widely used and trusted sites for law students, serving more than 97, law students since Some law schoolsâ€”such as Yale, Vanderbilt, Berkeley, and the University of Illinoisâ€”even subscribe directly to Quimbee for all their law students. Read our student testimonials. Quimbee is a company hell-bent on one thing: Read more about Quimbee. Written by law professors and practitioners, not other law students. The right amount of information, includes the facts, issues, rule of law, holding and reasoning, and any concurrences and dissents. Access in your classes, works on your mobile and tablet. Massive library of related video lessons and high quality multiple-choice questions. Easy to use, uniform format for every case brief. Written in plain English, not in legalese.

The Brennan Center and co-counsel submitted their amicus brief to the Circuit Court on November 6, Oral Arguments were in January In Detail - On November 6, , the Brennan Center filed a brief amicus curiae in Al Maqaleh v.

Argued December 6, Decided March 14, Remes argued the cause for appellant. With him on the briefs was Zachary Katznelson. Department of Justice, argued the cause for appellees. On the brief were Peter D. Attorney, and Douglas N. Loeb, and Lowell V. Craig Lawrence, Assistant U. In July , with his petition still pending, he sought interim relief barring his transfer to Algeria on the ground that he is likely to be tortured by the government of Algeria and by an extremist organization that has threatened him in the past. Belbacha noticed an appeal and simultaneously asked this court to bar his transfer pending its resolution. After hearing oral argument, this panel temporarily enjoined his transfer in order to preserve our jurisdiction over the appeal. We now remand this matter to the district court for further proceedings. Background Belbacha filed a petition for a writ of habeas corpus in the district court in *United Mine Workers, U.* The MCA, of course, leaves intact the presumptive jurisdiction of the federal courts to inquire into the constitutionality of a jurisdiction-stripping statute. Belbacha does not challenge only his transfer to a country that might torture him; he contests also the basis for his detention as an "enemy combatant. Following the grant of certiorari in *Boumediene*, this court stayed or recalled its mandate in many cases raising the same issues as that case, including some in which the Government proposed to transfer the detainee, and held those cases in abeyance pending the decision of the Supreme Court. Neither this court nor the district court could have held these cases in abeyance unless we thought they presented a substantial jurisdictional question. A decision of this court is binding upon a later panel and upon the district court. We recalled the mandate, Oct. The Government argues also that we should affirm on the basis of the order of a motions panel of this court denying Belbacha a temporary stay pending this appeal, asserting that is the law of the case and precludes the relief Belbacha sought in the district court. An order denying preliminary relief, however, "does not constitute the law of the case," although it can be "persuasive. In any event, the order also directed that this appeal be briefed and argued on an expedited schedule. Although *Boumediene*, F. Section 7 a 2 strips the courts of their "jurisdiction to hear or consider any other action. It does not displace their remedial authority, pursuant to the All Writs Act, to issue an "auxiliary" writ "in aid" of a "jurisdiction already existing," see *Adams, U.* See *United Mine Workers, U.* Our orders in *Rahman v. Preliminary Injunction* In deciding whether to issue a preliminary injunction, the courts consider four factors: *Office of Thrift Supervision*, 58 F. It falls to the district court in the first instance, therefore, to balance the four factors in order to decide whether a preliminary injunction is "necessary or appropriate" in this case. Accordingly this matter is remanded to the district court for further proceedings. Students of federal courts will be surprised to learn that district judges have jurisdiction to issue preliminary injunctions in cases in which they have no jurisdiction to issue permanent injunctions. But I cannot see how this bears on the question before us. The district court has already decided that circuit precedent compelled it to uphold the statute, as indeed it did. It therefore makes no sense to send the case back to the district court so that it may decide whether to issue a temporary injunction in aid of its jurisdiction to decide something it has already correctly decided. This should have been a very simple case. Instead it has been turned into a tangle. All we had to do was issue a stay under the All Writs Act, 28 U. I thus believe we should have simply continued the stay this court issued on December 31, The Supreme Court sustained the statute, including the stay provision, against a constitutional challenge in *Yakus v. United States, U.*

Chapter 4 : Al-Bihani v. Obama Case Brief - Quimbee

Respondents in the district court and appellants in this Court are: Robert Gates, Secretary, Department of Defense; and Barack Obama, President of the United States. B. Rulings Under Review.

Citing Case F. Amin Al Bakri, et al. Redha Al-Najar, et al. Robert Gates, et al. Jean Lin, U. The petitioners are all third party nationals who have been held in various facilities at Bagram Airfield in Afghanistan for nine years or more. A year later, the D. Circuit reversed that decision, holding that "the jurisdiction of the courts to afford the right to habeas relief and the protection of the Suspension Clause does not extend to aliens held in Executive detention in the Bagram detention facility in the Afghan theater of war. The court of appeals wrote: A hearing was held on the motions on July 16, Subsequently, petitioners filed additional factual materials with the Court on September 24, Respondents filed a response to these materials on October 12, But given the D. Consistent with the one other district court that has faced this issue, this Court concludes that the answer to that question is no. See Al Maqaleh I, F. Briefly, the United States has designated all three petitioners as enemy combatants and detained them at Bagram Airfield in Afghanistan "Bagram". Fadi al Maqaleh is a citizen of Yemen who claims to have been captured at an unspecified location outside of Afghanistan, although respondents dispute this. Amin al Bakri is also a citizen of Yemen and was captured in Thailand. Redha al-Najar is a citizen of Tunisia who was captured in Pakistan. Each petitioner contests his designation as an enemy combatant and seeks to challenge his detention through a habeas corpus petition. The legal framework governing the scope of habeas corpus jurisdiction is set forth in Boumediene v. The Court explained that "at least three factors are relevant in determining the reach of the Suspension Clause": After weighing these factors, the Supreme Court concluded that detainees held at Guantanamo were entitled to bring habeas corpus petitions in the federal courts. This Court and the D. In applying the test to the facts here, the D. Circuit reached the following conclusions. Al Maqaleh II, F. With respect to the "adequacy of process" factor, the court of appeals found that the petitioners actually had a stronger claim for entitlement to the writ than did the Guantanamo detainees, because the procedural protections then afforded to detainees at Bagram were even weaker than those at Guantanamo. But the court of appeals found that the second factor, "the nature of the sites where apprehension and then detention took place," weighed "heavily in favor" of the respondents. Given those differences, the D. Circuit found that "the United States [may have] de facto sovereignty over Guantanamo" but that "the same simply is not true with respect to Bagram. Hence, the court concluded that the Suspension Clause was far less likely to apply at Bagram. The court stressed that Bagram was located in a "theater of war" where "active hostilities" were still being conducted. The court saw three critical problems with allowing detainees at such a site to bring habeas petitions. Circuit wrote that it did "not ignore the arguments of the detainees that the United States chose the place of detention and might be able to evade judicial review of Executive detention decisions by transferring detainees into active conflict zones, thereby granting the Executive the power to switch the Constitution on or off at will. But, the court of appeals concluded, "that is not what happened here. Explaining its view that manipulation had not occurred, the court wrote: To have made such a deliberate decision to "turn off the Constitution" would have required the military commanders or other Executive officials making the situs determination to anticipate the complex litigation history set forth above and predict the Boumediene decision long before it came down. The court expressed some doubt that such purposeful evasion would even be relevant to the Boumediene test, but concluded that it "need[ed] [to] make no determination on the importance of this possibility, given that it remains only a possibility. A motion to dismiss for lack of subject matter jurisdiction in habeas cases, like jurisdictional motions in other civil cases, is subject to review under the standards of the Federal Rules of Civil Procedure. United States, F. In the alternative, the respondents seek a judgment based on the pleadings pursuant to Fed. Under Rule 12 b 1, those seeking to invoke the jurisdiction of a federal court "bear the burden of establishing that the court has jurisdiction. Francis Xavier Parochial Sch. A court may consider

material other than the allegations in the habeas petition in determining whether it has jurisdiction to hear the case, so long as it still accepts the factual allegations in the habeas petition as true. See *Jerome Stevens Pharmaceuticals, Inc.* Circuit, that their habeas petitions should be reassessed for several reasons. Each of these arguments will be addressed in turn. Moreover, Cuba "effectively ha[d] no rights as a sovereign" at Guantanamo Bay unless and until the United States agreed to change the terms of its lease agreement or chose to abandon the base. In this case, the D. Petitioners offer the following new evidence that they argue shows that the D. Since late or early , the United States has held both Afghan and non-Afghan detainees at Bagram. The United States has recently begun transferring custody of Afghan detainees to the Afghan government. Petitioners conclude that the lack of specific plans to transfer non-Afghan detainees shows that the United States has the same sort of permanent control over non-Afghan detainees at Bagram that it has over detainees at Guantanamo Bay. To determine whether the information about the recent transfers of Afghan detainees undermines the rationale of the D. If, for example, the court of appeals based its opinion on specific representations about plans to cede custody of non-Afghan detainees within a certain time frame, or to transfer custody of non-Afghan detainees before transferring custody of Afghan detainees, this new information could be quite important. Respondents offered only vague assertions that the United States did not intend to maintain control over Bagram indefinitely. The only factual material referenced in support of these claims was the lease for the base at Bagram Airfield, which "obligate[s] [the United States] to leave [Bagram] when it determines that the facility is no longer needed for military purposes. Respondents alluded to the possibility of transferring detainees to the Afghan government, but provided absolutely no specifics. Circuit concluded that the nature of the detention site "weigh[ed] heavily in favor of the United States" and specifically found that "there is no indication of any intent to occupy the base with permanence. Respondents make the same general statements of intent to eventually leave Bagram that they made before the D. Circuit; indeed, the first section of their brief is entitled "The United States has no intention to remain at Bagram permanently. MTD at 8; see also *id.* And as far as the record reveals, there has been no change to the terms of the lease that obligates the United States to leave Bagram "when it determines that the facility is no longer needed for military purposes. William Lietzau, the Deputy Assistant Secretary of Defense for Detainee Policy, explains in his declaration that the Combined Joint Interagency Task Force "Task Force" has already begun transferring some detention facilities to the Afghan government and will continue doing so based on "operational conditions, Afghan judicial capacity, and [whether the Afghan government is] fully trained, equipped, and able to detain insurgents securely and to perform its detention, prosecution, and incarceration responsibilities in accordance with international obligations and Afghan law. Lietzau further explains that the Task Force is planning construction of "additional detainee housing capacity adjacent to DFIP," *id.* But, critically, Lietzau declares that "U. Forces will eventually transition this additional detention capacity to the [Afghan government], consistent with the conditions-based approach discussed above. The United States does not intend to continue to use the DFIP to detain any person pursuant to the Authorization for the Use of Military Force, as informed by the law of war, beyond the cessation of hostilities with the Taliban, al Qaida, and associated forces. The United States has no interest in holding detainees longer than necessary. Hence, petitioners must resort to the argument that the transfer of some detainees to the Afghan government makes it less likely that other detainees will someday be transferred, even though the United States continues to reaffirm its goal of transferring custody of all detainees. Indeed, one could convincingly argue that the opposite is true. At the time this case was argued in the court of appeals, it would have been reasonable to wonder how committed the United States was to its amorphous goal of eventually ceding custody of detainees to another government. That the United States has now transferred custody of numerous detainees to the Afghan government, however, demonstrates the sincerity of those representations. In addition, the capacity the Afghan government is building to house and prosecute Afghan detainees may make it more likely that non-Afghan detainees can eventually be transferred to the Afghan government, if not to other countries. Circuit; indeed, if anything, it may be stronger. The parties dispute how involved the United States is in these trials. The United States describes them as "purely

Afghanrun," Resp. MTD at 17, but petitioners disagree. In their habeas petitions, they state that "the U. Quoting a Boston Globe article, petitioners explain that courts are composed of Afghan "judges, prosecutors, and forensic experts," but that Americans "mentor[]" them. In their briefing, petitioners adopt the formulation that the United States "facilitat[es]" trials run by the Afghan government. That the Afghan government has chosen to conduct criminal trials of detainees does not indicate that there are no practical obstacles to the United States doing so. Again, it is helpful to recall the specific concerns expressed by the D. First, the court thought that ordering military commanders to participate in habeas adjudications would "divert A trial system run primarily by the Afghan government obviously requires many fewer U. The Afghan government, not the United States, is providing the "judges, prosecutors, and forensic experts" who conduct the criminal trials; the United States provides only "mentor[ing]," which surely "divert[s]" less "effort[] and attention" from the battlefield than would full-blown habeas litigation conducted here. The court of appeals also expressed concerns about the difficulties of litigating the petitions of detainees held in a "theater of war. Again, the fact that the Afghan government has decided that it can conduct criminal trials on its own soil does not necessarily prove that a court in the United States could oversee litigation centered at Bagram or in the United States. The security concerns may be different depending on which government is in charge of the litigation; it is quite plausible, for instance, that trials run by the Afghan government would produce less hostility and fewer security issues than litigation in Afghanistan orchestrated by the United States. Finally, the court of appeals worried that conducting habeas adjudications of detainees held at Bagram would result in "a conflict between judicial and military opinion highly comforting to enemies of the United States. That issue is not present, however, when the Afghan government tries its own citizens with United States consent. Circuit clearly found that these practical obstacles weighed "overwhelmingly" against the petitioners, and petitioners have not undermined the rationale for that conclusion. Executive manipulation Petitioners also offer evidence that the United States has chosen to keep detainees at Bagram specifically in order to avoid habeas jurisdiction. Even if this is true, it is unclear whether such purposeful evasion of habeas jurisdiction would affect the jurisdictional analysis. The court of appeals also found, however, that executive manipulation "is not what happened here. It therefore declined to decide how purposeful evasion of jurisdiction might affect the Boumediene test, if at all. Petitioners now argue that purposeful evasion is exactly what happened here, and that the D. In support of their argument, petitioners cite newspaper articles, government memoranda, two declarations from former government officials, and other materials.

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Chapter 5 : Belbacha v. Bush, D.C. Circuit, US Court of Appeals Cases, Federal Courts, COURT CASE

*Does the constitutional writ of habeas corpus extend to Afghanistan? In www.nxgvision.com, a unanimous panel of the U.S. Court of Appeals for the D.C. Circuit held that a federal district court had no jurisdiction to consider habeas petitions from noncitizens detained at Bagram Air Base. 1 Al Maqaleh is the latest in a series of cases involving the constitutional rights of aliens held abroad by the U.S. military, and flows directly from the landmark case of *Boumediene v.**

Citing Case F. Decided May 21, Department of Justice, argued the cause for appellants. With him on the briefs were Beth S. Letter and Robert M. Tina Monshipour Foster argued the cause for appellees. With her on the brief were Barbara J. Olshansky and Ramzi Kassem. Walter Dellinger and Matthew Shors were on the brief for amici curiae Non-Governmental Organizations in support of appellees. Smith and Emily Berman were on the brief for amicus curiae Retired Military Officers in support of appellees. Three detainees at Bagram Air Force Base in Afghanistan petitioned the district court for habeas corpus relief from their confinement by the United States military. The court therefore denied the motion to dismiss but certified the three habeas cases for interlocutory appeal under 28 U. Pursuant to that certification, the government filed a petition to this court for interlocutory appeal. We granted the petition and now consider the jurisdictional question. Upon review, and applying the Supreme Court decision in *Boumediene*, we determine that the district court did not have jurisdiction to consider the petitions for habeas corpus. We therefore reverse the order of the district court and order that the petitions be dismissed. Redha Al-Najar is a Tunisian citizen who alleges he was captured in Pakistan in Amin Al-Bakri is a Yemeni citizen who alleges he was captured in Thailand in Both Al-Najar and Al-Bakri allege they were first held in some other unknown location before being moved to Bagram. The Agreement refers to Afghanistan as the "host nation" and the United States "as the lessee. Afghanistan remains a theater of active military combat. The United States and coalition forces conduct "an ongoing military campaign against al Qaeda, the Taliban regime, and their affiliates and supporters in Afghanistan. Bagram has been subject to repeated attacks from the Taliban and al Qaeda, including a March suicide bombing striking the gates of the facility, and Taliban rocket attacks in June of resulting in death and injury to United States service members and other personnel. While the United States provides overall security to Bagram, numerous other nations have compounds on the base. Some of the other nations control access to their respective compounds. The Litigation Appellees in this action, three detainees at Bagram, filed habeas petitions against the President of the United States and the Secretary of Defense in the district court. The district court consolidated these three cases and a fourth case, not a part of these proceedings, for argument. After the change in presidential administrations on January 22, , the court invited the government to express any change in its position on the jurisdictional question. The government informed the district court that it "adheres to its previously articulated position. We accepted the case for interlocutory review, *In re Gates*, No. July 30, , bringing the jurisdictional issue before us in the present appeal. The Legal Framework While we will discuss specific points of law in more detail below, for a full understanding, we must first set forth some of the legal history underlying the controversy over the availability of the writ of habeas corpus and the constitutional protections it effectuates to noncitizens of the United States held beyond the sovereign territory of the United States. The Supreme Court first addressed this issue in *Johnson v. Eisentrager* 21 German nationals petitioned the district court for writs of habeas corpus. The *Eisentrager* petitioners had been convicted by a military commission in China of "engaging in, permitting or ordering continued military activity against the United States after surrender of Germany and before surrender of Japan. Because, during that period, the United States and Germany were no longer at war, hostile acts against the United States by German citizens were violations of the law of war. None ever entered the United States, nor were any held in the United States. Petitioners sought habeas relief, alleging that their confinement was in violation of the Constitution and laws of the United States and the Geneva Convention. The district court held that under *Ahrens v.* The court dismissed the writ. The Court of Appeals read *Ahrens* as having left open the

governing questions of the controversy before it, and held that since "[t]he right to habeas corpus is an inherent common law right," *Eisentrager v. The United States*. The court reasoned that as "Congress could not effectuate by omission that which it could not accomplish by affirmative action," if the existing jurisdictional act had the effect of depriving a person entitled to the writ of his substantive right, the act would be unconstitutional, and therefore the court must construe it "if possible to avoid that result. The court ruled that the district court that had jurisdiction over the superior officers of the immediate jailer would have jurisdiction to hear the petition and grant or deny the writ. The Secretary of Defense became the relevant official. He sought certiorari from the Supreme Court. The Supreme Court granted review and reversed. By way of introduction to its reasoning, the Court noted that "[w]e are cited to no instance where a court, in this or any other country where the writ is known, has issued it on behalf of an alien enemy who, at no relevant time and in no stage of his captivity, has been within its territorial jurisdiction. The Court went on to hold that the writ was unavailable to the enemy aliens beyond the sovereign territory of the United States. The Court did not end its discussion with the language concerning sovereignty, however. It noted that trial of the writ "would hamper the war effort and bring aid and comfort to the enemy. The Court further noted that such trial would constitute "effective fettering of a field commander," by allowing "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. The *Eisentrager* case remained the governing precedent concerning the jurisdiction of United States courts over habeas petitions on behalf of aliens held outside the sovereign territory of the United States until the Court revisited the question in *Rasul v. The United States*. In *Rasul* the petitioners were aliens not from enemy nations who were captured abroad during hostilities between the United States and the Taliban. The United States transported them to the naval base at Guantanamo Bay, Cuba, which the United States holds under a lease agreement specifying that: Thus, the habeas corpus petitioners were foreign nationals, not from nations currently in a state of war with the United States, taken by the United States military, and transported to locations outside the sovereign territory of the United States. Relying on *Eisentrager*, the district court dismissed the case for lack of jurisdiction. In *Al Odah v. United States*, F. The detainees petitioned for certiorari to the Supreme Court. The Supreme Court granted review. The Supreme Court, while not overruling *Eisentrager*, explained that the lower courts had misinterpreted the earlier Supreme Court decision. The *Rasul* Court stated that the consolidated cases before it "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. More specifically, the *Rasul* Court opined that the *Eisentrager* Court was construing the effect of *Ahrens v. United States*. The posture of the petitions before the *Eisentrager* Court was that the Court of Appeals had concluded that the *Ahrens* decision created a "statutory gap" which the Court of Appeals in *Eisentrager* had seen as an unconstitutional gap to be filled by reference to "fundamentals. The Supreme Court in *Eisentrager* agreed that the *Ahrens* decision controlled as to statutory jurisdiction but did not agree with the Court of Appeals that the gap was unconstitutional. The *Rasul* Court treated the *Ahrens* analysis as being essential to the decision in *Eisentrager*, and held that *Ahrens* has been overruled by *Braden v. The United States*. The *Rasul* Court then held that the habeas statute did extend geographically to the base at which the petitioners were held in Guantanamo. Finally, the Court concluded that [w]hat is presently at stake is The Court "[a]nswer[ed] that question in the affirmative, Among other things, that Act added a new provision to the Habeas Act which provided that: Except as provided in section of the [DTA] 3 , no court, justice, or judge shall have jurisdiction to hear or consider " 1 an application for a writ of habeas corpus filed by or on behalf of an alien detained by the Department of Defense at Guantanamo Bay, Cuba; or 2 any other action against the United States or its agents relating to any aspect of the detention by the Department of Defense of an alien at Guantanamo Bay, Cuba, who A is currently in military custody; or B has been determined by the United States Court of Appeals for the District of Columbia Circuit In June of , the Supreme Court decided *Hamdan v. The United States*. That Act, among many other things, included a further amendment to the habeas statute. The new amendment reads: Congress went on to

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explicitly state: The amendment made by subsection a shall take effect on the date of the enactment of this Act, and shall apply to all cases, without exception, pending on or after the date of the enactment of this Act which relate to any aspect of the detention, transfer, treatment, trial, or conditions of detention of an alien detained by the United States since September 11, This clearer statement of congressional intent to strip the courts of habeas jurisdiction set the stage for an inevitable determination of the constitutionality of such a stripping in light of the Suspension Clause, U. That case came to us in *Boumediene v. A*. A divided panel held that the statute was constitutional. In *Boumediene*, we reasoned that the *Rasul* decision had not overruled *Eisentrager*, and therefore the earlier case remained precedentially binding upon us. We read *Eisentrager* as holding that constitutional habeas rights did not extend to any aliens who had never been in or brought into the sovereign territory of the United States. The Supreme Court in *Boumediene v. The Court* therefore faced the constitutional questions whether petitioners are barred from seeking the writ or invoking the protections of the Suspension Clause either because of their status, In a thorough and detailed opinion, the Court undertook its inquiry into the constitutional questions on two levels. Second, it explored the more general question of extension of constitutional rights and the concomitant constitutional restrictions on governmental power exercised extraterritorially and with respect to noncitizens. In so doing, the Court set forth a "broad historical narrative of the writ [of habeas corpus] and its function. In explaining this proposition, the Court explored the series of opinions known as the "Insular Cases," in which the Court had "addressed whether the Constitution, by its own force, applies in any territory that is not a state. United States, U. The *Boumediene* Court recalled the practical doctrine drawn from the Insular Cases and applied in such later decisions as *Reid v. More* directly pertinent to the issue before us today, the Court stated that "nothing in *Eisentrager* says that de jure sovereignty is or has ever been the only relevant consideration in determining the geographic reach of the Constitution or of habeas corpus. The Court explained that such a holding would have been inconsistent with the Insular Cases and *Reid*. Seeing no need to create such a conflict between its holdings, the Court found what it called "a common thread uniting the Insular Cases, *Eisentrager*, and *Reid*: Applying the "common thread" to the question of the jurisdiction of United States courts to consider habeas petitions from detainees in Guantanamo, the Court concluded that "at least three factors are relevant in determining the reach of the Suspension Clause. Those three factors, which we must apply today in answering the same question as to detainees at Bagram, are: Applying these factors to the detainees at Guantanamo, the Court held that the petitioners had the protection of the Suspension Clause. Application to the Bagram Petitioners Our duty, as explained above, is to determine the reach of the right to habeas corpus and therefore of the Suspension Clause to the factual context underlying the petitions we consider in the present appeal. This is not an easy task, as illustrated by the thorough and careful opinion of the district court. At the outset, we note that each of the parties has asserted both an extreme understanding of the law after *Boumediene* and a more nuanced set of arguments upon which each relies in anticipation of the possible rejection of the bright-line arguments. The United States would like us to hold that the *Boumediene* analysis has no application beyond territories that are, like Guantanamo, outside the de jure sovereignty of the United States but are subject to its de facto sovereignty.

Chapter 6 : MAQALEH v. GATES | www.nxgvision.com2d 10 () | a44 | www.nxgvision.com

Gates, www.nxgvision.com2d , (D.D.C) ("*Al Maqaleh I*"). A year later, the D.C. Circuit reversed that decision, holding that "the jurisdiction of the courts to afford the right to habeas relief and the protection of the Suspension Clause does not extend to aliens held in Executive detention in the Bagram detention facility in the Afghan.

Chapter 7 : Al Maqaleh v. Hagel | D.C. Cir. | Judgment | Law | CaseMine

Appeal from the United States District Court. for the District of Columbia (No. cv) Tina Monshipour Foster argued the

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cause for appellants Fadi Al Maqaleh, et al., in Nos. , et al. Golnaz - Fakhimi, Ramzi Kassem, Hope Metcalf and Sylvia Royce were on brief. Barbara J. Olshansky entered an appearance.

Chapter 8 : Maqaleh v. Hagel

Petitioner - Appellee: Fadi Al Maqaleh, Detainee and Ahmad Al Maqaleh, as Next Friend of Fadi Al Maqaleh Defendant - Appellant: Robert M. Gates, Secretary, United States Department of Defense Respondent - Appellant: John Doe, Custodian of Petitioner and John Doe 2, Custodian of Petitioner, Respondents sued in their official capacity.