FILED

JUN 10 2020

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JASON SINAGWANA NSINANO, AKA Jason Nsinano, Petitioner-Appellant, v. WILLIAM P. BARR, Attorney General, Respondent-Appellee.	No. 18-55582 D.C. No. 5:17-cv-00094-VBF-GJS MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Valerie Baker Fairbank, District Judge, Presiding

Argued and Submitted May 14, 2020
Portland, Oregon

Before: BYBEE and VANDYKE, Circuit Judges, and CHHABRIA,** District Judge.

While detained by immigration authorities, Petitioner Jason Nsinano filed a petition for a writ of habeas corpus under 28 U.S.C. § 2241. The primary relief

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* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The Honorable Vince Chhabria, United States District Judge for the Northern District of California, sitting by designation.

sought by the petition was a law enforcement certification under 8 U.S.C. § 1184(p) that would enable Nsinano to apply for a U-visa. The district court dismissed the petition for lack of subject-matter jurisdiction. Because the parties are familiar with the facts, we do not recite them here except as necessary. We dismiss the appeal.

1. Nsinano argues that, under a liberal construction of his pro se habeas petition, he alleged a due process-based challenge to his prolonged detention without a bond hearing. Assuming that is true, Nsinano's due process claim is moot because he has since been released from immigration custody on bond. *See Abdala v. INS*, 488 F.3d 1061, 1064 (9th Cir. 2007) ("[A] petitioner's release from detention under an order of supervision moot[s] his challenge to the legality of his extended detention." (internal quotation marks omitted)). In other words, Nsinano's due process claim was "fully resolved by release from custody." *Id.* at 1065. His reliance on *Diouf v. Napolitano*, 634 F.3d 1081 (9th Cir. 2011), and *Rodriguez v. Hayes*, 591 F.3d 1105 (9th Cir. 2010), is misplaced because those cases dealt with habeas petitioners who were no longer in custody at the Government's discretion and no legal impediment to redetention existed. *See Diouf*, 634 F.3d at 1084 n.3 (petitioner released pursuant to a preliminary injunction that was subsequently vacated, and Government "elected [not] to

redetain him"); *Rodriguez*, 591 F.3d at 1117 (petitioner released under regulatory provision providing immigration authorities near total discretion to redetain petitioner). Thus, Nsinano's due process claim is moot.

2. As for Nsinano's request for a U-visa certification, we lack jurisdiction to review this issue. We agree that the district court appears to have misinterpreted Nsinano's claim as a challenge to the denial of a U-visa application. Nsinano asked only for a law enforcement certification under 8 U.S.C. § 1184(p). But this misinterpretation is of little import here, for the district court indicated near the end of its order that it would not issue a certification because "[t]he appropriate Court to issue a law enforcement certification is the court that dealt with the underlying criminal case (if one exists) or the agency that investigated the criminal complaint."

A district court's decision not to issue a law enforcement certification is an administrative action, not a judicial one. When faced with a request for a certification, a judge has discretion whether to certify that the requestor "has been helpful, is being helpful, or is likely to be helpful" to an investigation or prosecution of qualifying criminal activity. 8 U.S.C. § 1184(p)(1). If the judge chooses to make that certification, the judge must sign the certification form under penalty of perjury. *See Perez Perez v. Wolf*, 943 F.3d 853, 857–58 (9th Cir. 2019).

Here, the district judge's refusal to perform the administrative act of signing the certification on the grounds she articulated does not result in an appealable decision under 28 U.S.C. § 1291. *See In re Application for Exemption from Elec. Pub. Access Fees by Jennifer Gollan & Shane Shifflett*, 728 F.3d 1033, 1039–40 (9th Cir. 2013) (holding that we lack jurisdiction under 28 U.S.C. § 1291 to review a district court's "administrative or ministerial order").

APPEAL DISMISSED.

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JASON SINAGWANA NSINANO, AKA Jason Nsinano, Petitioner-Appellant, v. WILLIAM P. BARR, Attorney General, Respondent-Appellee.	No. 18-55582 D.C. No. 5:17-cv-00094-VBF-GJS ORDER

Before: BYBEE and VANDYKE, Circuit Judges, and CHHABRIA,* District Judge.

The panel judges have voted to deny Nsinano's petition for panel rehearing.

Nsinano's petition for panel rehearing, filed July 24, 2020, is DENIED.

* The Honorable Vince Chhabria, United States District Judge for the Northern District of California, sitting by designation.

236 F.Supp.3d 1133 (2017)

Jason Sinagwana NSINANO, Petitioner,

v.

Jefferson Beauregard SESSIONS III (Attorney General of the United States), Respondent.

Case No. 5:17-cv-00094-VBF (GJS).

United States District Court, C.D. California.

Signed February 21, 2017.

1135 *1135 Jason Sinagwana Nsinano Adelanto, CA pro se.

Assistant 2241-194 US Attorney LACV, AUSA — Office of US Attorney, Los Angeles, CA, OIL-DCS Trial Attorney, Office of Immigration Litigation District Court Section, Washington, DC, for Respondent.

AMENDED ORDER

Dismissing the Section 2241 Habeas Corpus Petition With Prejudice for Lack of Subject-Matter Jurisdiction;

Directing Entry of Separate Judgment

VALERIE BAKER FAIRBANK, Senior United States District Judge.

Jason Sinagwana Nsinano ("petitioner") is a federal immigration detainee being housed in a privately operated federal prison in Adelanto, California. Proceeding *pro se,* petitioner filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241 ("petition") against the United States Attorney General[1] on January 19, 2017. *See* Case Management/Electronic Case Filing System Document ("Doc") 1. On February 1, 2017, Petitioner filed exhibits in support of the petition (Doc 4). For the reasons that follow, the Court will dismiss this habeas petition with prejudice due to an irremediable lack of subject-matter jurisdiction. The Court will then enter final judgment in favor of the respondent Attorney General accordingly.

Petitioner's removal proceedings are ongoing and Petitioner has applied for asylum in the United States. Petitioner states that he is eligible for "U" nonimmigrant ("U visa") classification because he was the victim of identity theft by another prisoner while being housed at the Adelanto facility. He contends he is qualified for such classification because identify theft is a qualifying crime under 8 U.S.C. § 1101(a)(15)(U). The Petition thus challenges petitioner's continued detention by the
1136 Department of Homeland Security's U.S. Immigrations and Customs Enforcement agency ("ICE") *1136 following the alleged crime. The Petition names as respondent the Attorney General of the United States.

"Federal courts are courts of limited jurisdiction, and parties may not expand that jurisdiction by waiver or consent." *Herklotz v. Parkinson*, 848 F.3d 894, 897, 2017 WL 586466, *2 (9th Cir. 2017) (Berzon, Nguyen, N.D. Ohio D.J. Zouhary) (citing *Matheson v. Progressive Specialty Ins. Co.*, 319 F.3d 1089, 1090 (9th Cir. 2003) (per curiam)). Accordingly, federal subject-matter jurisdiction must exist at the time an action is commenced, *see Morongo Band of Mission Indians v. California State Bd. of Equalization*, 858 F.2d 1376, 1380 (9th Cir. 1988) (internal citations omitted).

Because subject-matter jurisdiction concerns the authority of the court to hear a particular case or controversy, it is a threshold issue that may be raised at any time and by any party. Fed. R. Civ. P. 12(b)(1). Even where neither party contests subject-matter jurisdiction, the Court is bound to raise the issue *sua sponte* if the existence of such jurisdiction is even "questionable", and must dismiss the case if no subject-matter jurisdiction exists. *See* Fed. R. Civ. P. 12(h)(3); *Gilder v. PGA Tour, Inc.*, 936 F.2d 417, 421 (9th Cir. 1991) (internal citation omitted).

Petitioner seeks a U Visa in order to be recognized as a nonimmigrant under 8 U.S.C. § 1101(a)(15)(U). A petitioner may be considered a nonimmigrant under this section where the Secretary of Homeland Security determines that:

(1) "the alien has suffered substantial physical or mental abuse as a result of having been a victim of criminal activity described in [8 U.S.C. § 1101(a)(15)(U)(iii) (referred to as "clause (iii)")]";

(2) "the alien ... possesses information concerning criminal activity described in clause (iii)";

(3) "the alien ... has been helpful ... to a Federal, State, or local law enforcement official, to a Federal, State, or local prosecutor, to a Federal or State judge, to the Service, or to other Federal, State, or local authorities investigating or prosecuting criminal activity described in clause (iii)"; and

(4) "the criminal activity described in clause (iii) violated the laws of the United States...."

Title 8 U.S.C. § 1101(a)(15)(U).

Clause (iii) of Title 8's "U-Visa" provision states that

> the criminal activity referred to in this clause is that involving one or more of the following or any similar activity in violation of Federal, State, or local criminal law: rape; torture; trafficking; incest; domestic violence; sexual assault; abusive sexual contact; prostitution; sexual exploitation; stalking; female genital mutilation; being held hostage; peonage; involuntary servitude; slave trade; kidnapping; abduction; unlawful criminal restraint; false imprisonment; blackmail; extortion; manslaughter; murder; felonious assault; witness tampering; obstruction of justice; perjury; fraud in foreign labor contracting (as defined in section 1351 of Title 18); or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes;....

Id. The DHS's immigration regulations set out the petitioning procedures for a U Visa. *See* 8 C.F.R. § 214.14 subsec. c ("Application procedures for U nonimmigrant status"). The regulations state that U.S. Citizenship and Immigration Services
1137 ("USCIS") has "sole jurisdiction over all *1137 petitions for U nonimmigrant status." 8 C.F.R. § 214.14(c)(1).

The U-Visa regulations also explain that "USCIS will determine, in its sole discretion, the evidentiary value of previously or concurrently submitted evidence...." 8 C.F.R. § 214.14(c)(4) ("Evidentiary standards and burdens of proof"). Thus, U Visas are "committed to USCIS' discretion by law" and "the applicable statutes do not mandate a particular outcome or confer any established or protected interest in the grant of a `U' visa." *See* Catholic Charities CYO v. Chertoff, 622 F.Supp.2d 865, 880 (N.D. Cal. 2008), *aff'd* 368 Fed.Appx. 750 (9th Cir. 2010). Petitioners may appeal a denial of a U Visa to the USCIS Administrative Appeals Office. 8 C.F.R. § 214.14(c)(5)(ii).

A petitioner may not submit an "U" visa application without first obtaining a law enforcement certification from a federal, state, or local law enforcement official, prosecutor, judge, or other federal, state, or local authority investigating the criminal activity described in § 1101(a)(15)(U)(iii), above, stating that the alien "has been helpful, is being helpful, or is likely to be helpful in the investigation or prosecution of" such criminal activity. *See* 8 U.S.C. § 1184(p)(1). The certification may also be provided by a DHS official whose ability to provide such certification is not limited to information concerning immigration violations. *Id.*

Nsinano's petition asks the Court to determine that he is eligible for U non-immigrant status and compel issuance of a law-enforcement certification stating he was the victim of identity theft. The Court does not have jurisdiction to decide this issue or to grant the requested relief.

First, the Court does not have jurisdiction to address the Petition because it challenges an exercise of discretion by the USCIS. *See* United States v. Cisneros-Rodriguez, 813 F.3d 748, 767 (9th Cir. 2015) (referring to "discretionary forms of relief, such as waivers of inadmissibility and U visas"). The Court is not aware of any federal court that has exercised jurisdiction over questions of a Petitioner's eligibility for a U-Visa. *See* Lee v. Holder, 599 F.3d 973, 975-76 (9th Cir. 2010) (holding that USCIS has "sole jurisdiction" over Plaintiff's claims of eligibility for a U-Visa pursuant to 8 C.F.R. § 214.14(c)(1)). In fact, even in cases where the USCIS issued a U-Visa denial, district courts have declined to exercise review under the Administrative Procedures Act ("APA") because the decision whether to issue a U-Visa to an alien is discretionary. *See* Catholic Charities CYO, 622 F.Supp.2d at 880; Mondragon v. U.S., 839 F.Supp.2d 827, 829 (W.D.N.C. 2012).

The Ninth Circuit has declined review of a U Visa denial on the ground that the USCIS has sole jurisdiction over U Visas. *See* Seo v. Holder, 358 Fed.Appx. 884 (9th Cir. 2009) (*citing* Ramirez Sanchez v. Mukasey, 508 F.3d 1254, 1256 (9th Cir. 2007)); *see also* Baiju v. United States Dep't of Labor, 2014 WL 349295, *19 (E.D.N.Y. Jan. 31, 2014) ("The decision to sign a U-Visa certification form is discretionary.") (citing Orosco v. Napolitano, 598 F.3d 222, 226 (5th Cir. 2010) (noting that

satisfaction of statutory prerequisites for U Visa does not automatically entitle an alien to certification)), *appeal dismissed,* No. 14-394 (2d Cir. Apr. 25, 2014).

Although those cases did not involve a habeas petition, the Ninth Circuit recognized prior to the dissolution of the Immigration and Naturalization Service ("INS") and before the USCIS adopted many of its functions, that "[h]abeas is available to claim that the INS somehow failed to exercise discretion in accordance with federal law or did so in an
1138 unconstitutional manner" *1138 but it "is not available to claim that the INS simply came to an unwise, yet lawful, conclusion when it did exercise its discretion." Gutierrez-Chavez v. INS, 298 F.3d 824, 828 (9th Cir. 2002).

Declining habeas review of a U Visa denial "is consistent with the fact that `review of discretionary determinations was not traditionally available in habeas proceedings.'" *Geminiano-Martinez v. Beers,* 2013 WL 6844717, *4 (D. Nev. Dec. 13, 2013) (Mirandu Du, J.) (quoting Negrete v. Holder, 567 F.3d 419, 422 (9th Cir. 2009) (citing Ramadan v. Gonzales, 479 F.3d 646, 654 (9th Cir. 2007))), *appeal dismissed,* No. 14-15264 (9th Cir. Dec. 9, 2014). *See also* INS v. St. Cyr, 533 U.S. 289, 307-308, 121 S.Ct. 2271, 2283, 150 L.Ed.2d 347 (2001) (noting the "strong tradition in habeas corpus law ... that subjects the legally erroneous failure to exercise discretion, unlike a substantively unwise exercise of discretion, to inquiry on the writ") (citing Neuman, "Jurisdiction and the Rule of Law After the 1996 Immigration Act", 113 HARVARD L. REV. 1963, 1991 (2000)) (internal quotation marks omitted).

Today's determination that the Court lacks jurisdiction to review the discretionary decision on a U-Visa application "is also consistent with the immigration code itself, which contains a jurisdictional bar against review of decisions `the authority for which is specified under this title to be in the discretion of the Attorney General or the Secretary of Homeland Security.'" *Geminiano-Martinez,* 2013 WL 6844717 at *3 (quoting 8 U. S. C. section 1252(a)(2)(B)(ii)). *See also generally* Bonilla v. Lynch, 840 F.3d 575, 587 (9th Cir. 2016) ("[The] IIRIRA [statute] stripped courts of jurisdiction to review most discretionary decisions or actions of the Attorney General and Secretary of Homeland Security, the authority for which was specified under a particular statutory subchapter. The REAL ID Act of 2005 clarified, however, that courts were not precluded from reviewing `constitutional claims or questions of law raised upon a petition for review.'") (citing 8 U. S. C. sections 1252(a)(2)(B)(ii) and 1252(a)(2)(D)).[2]

Accordingly, the Court does not have jurisdiction to review Petitioner's eligibility for a U-Visa and must therefore dismiss the section 2241 habeas petition.

DISMISSAL MUST BE *WITH* PREJUDICE, i.e. Without Leave to Amend

"[D]ismissal without leave to amend is proper where it is clear that the `deficiencies of the complaint could not be cured by amendment.'" *Pollender v. United States,* 2012 WL 1535231, *4 (C.D. Cal. Feb. 24, 2012) (Patrick J. Walsh, M.J.) (quoting
1139 Cato v. United States, 70 F.3d 1103, 1106-1107 (9th Cir. 1995)), *R & R* *1139 *adopted,* 2012 WL 1535206 (C.D. Cal. Apr. 30, 2012) (J. Spencer Letts, J.).

Consistent with this principle, "[d]ismissal of claims for which [a statute] strips subject-matter jurisdiction, must be with prejudice, because there is nothing petitioner could do to `rectify' the statutorily mandated lack of jurisdiction." *Mackenzie v. Holder,* No. ED CV 13-08217-VBF-JC, 2013 WL 8291434, *5 (C.D. Cal. Nov. 27, 2013) (Valerie Baker Fairbank, J.) (applying 8 U.S.C. section 1252(g)'s jurisdiction-stripping provision) (citing *Yongping Zhou v. Holder,* 2013 WL 3923446, *4 n.2 (C.D. Cal. July 26, 2013) (dismissing complaint with prejudice "because there [would be] no action which plaintiff could take, by amending the complaint or otherwise, to remedy the lack of subject-matter jurisdiction") (citing, *inter alia,* Phillips v. United States, 2011 WL 5599933, *1 (D.D.C. Nov. 3, 2011) ("[T]he Court, finding it impossible to overcome the jurisdictional barrier, will dismiss this action with prejudice."))) (footnote 9 omitted), *Mackenzie judgment entered,* 2013 WL 12066014 (C.D. Cal. Nov. 27, 2013). *See, e.g.,* Sakamoto v. Kennedy, 298 F.2d 608, 610 (9th Cir. 1961) ("[T]he district court entered judgment dismissing the action with prejudice upon the ground, among others, of lack of jurisdiction. We conclude the ruling was right. [A] court is powerless to entertain an action for declaratory relief when the result would be to partially review an Executive decision under the Trading with the Enemy Act.") (footnote 5 omitted). *Accord* Ardalan v. McHugh, 2013 WL 6212710, *11 (N.D. Cal. Nov. 27, 2013) (Lucy Koh, J.) ("This claim is also dismissed with prejudice as there is nothing Ardalan can do to remedy the jurisdictional defect with the claim.").[3]

Moreover, with regard to the relief requested, the record does not reveal whether there has been an investigation or prosecution of the alleged criminal violation at issue here. Petitioner states that he reported the crime to "investigative agencies including [sic] United States Postal Inspection Service (USPIS), and detention center officials." [Petition at 3;

Exhibits at 1-15.] Petitioner also filed a "`Grievance' complaint with the Detention Center." [*Id.*] However, there is no evidence before the Court suggesting that the alleged wrongdoer was prosecuted for identity theft. The appropriate Court to issue a law enforcement certification is the court that dealt with the underlying criminal case (if one exists) or the agency that investigated the criminal complaint. In addition, the Court is dubious that identity theft is a "qualifying criminal activity" under 8 U.S.C. § 1101(a)(15)(U)(iii). *See In Re: Petitioner,* 2011 WL 9082141 (U.S. Citizenship Immigration Serv. Admin. Appeals Office Nov. 2, 2011) (finding that Petitioner's certification indicating that he was the victim of identity theft was insufficient to demonstrate that he was the victim of a qualifying crime.)

Accordingly, after substituting Jeff Sessions for Loretta Lynch as USAG, the Court will dismiss this action with prejudice for lack of subject-matter jurisdiction.

ORDER

The Clerk of Court SHALL TERMINATE "Loretta E. Lynch" as respondent.

1140 *1140 The Clerk of Court SHALL ADD "Jefferson Beauregard Sessions (United States Attorney General)" as respondent.

The section 2241 habeas corpus petition is DISMISSED WITH PREJUDICE for lack of subject-matter jurisdiction.

Judgment shall be entered consistent with this Order. As required by Fed. R. Civ. P. 58(a), judgment will be entered as a separate document.

This case SHALL BE TERMINATED (JS-6).

IT IS SO ORDERED.

[1] The complaint was filed January 19, 2017 and named as respondent Loretta Lynch, who was then the Attorney General. Following President Donald John Trump's inauguration on January 20, 2017, the U.S. Senate confirmed his nominee Jeff Sessions as Attorney General on February 8; Sessions was sworn in on February 9, 2017. *See* Washington Times website, http://www.washingtontimes.com/news/2017/feb/8/jeff-sessions-confirmed-attorney-general-after-bit/(Feb. 8, 2017), retrieved Feb. 16, 2017; *see also* Chicago Tribune website, http://www.chicagotribune.com/news/nationworld/politics/ct-new-attorney-general-dana-boente-20170130-story.html (Jan. 30, 2017), retrieved February 17, 2017 (U.S. Attorney Dana Boente served as President Trump's Acting Attorney General from January 30, 2017 through Feb. 8, 2017).

Accordingly, the Court substitutes Sessions as respondent in place of Lynch. *See, e.g., Shimisany v. Thompson,* 2017 WL 592160, *1 (D.N.J. Feb. 14, 2017) ("Lori Scialabba (Acting Director, U.S. Citizenship and Immigration Services), John F. Kelly (Secretary, Department of Homeland Security), and Jeff Sessions (Attorney General of the United States) are hereby substituted for Defendants Rodriguez, Johnson, and Lynch.").

[2] *Cf., e.g., Rivera-Mancia v. Lynch,* 656 Fed. Appx. 862, 863 (9th Cir. 2016) (Schroeder, Canby, Callahan) ("We lack jurisdiction to review the agency's discretionary decision to deny a waiver [of inadmissibility] under former INA section 212(c).") (citing Vargas-Hernandez v. Gonzales, 497 F.3d 919, 923 (9th Cir. 2007) (citing 8 U.S.C. section 1252(a)(2)(B)(ii)));

Llacuna v. Lynch, 637 Fed.Appx. 343, 343 (9th Cir. 2016) (Silverman, Tallman, D.J. Lasnik) ("Pursuant to INA section 242(a)(2)(B)(ii), we lack jurisdiction to review the BIA's discretionary denial of Vasquez's fraud waiver application. Vasquez fails to present a colorable constitutional claim or legal question to preserve judicial review of the agency's discretionary waiver determination under INA section 237(a)(1)(H), which is an `act of grace' rendered pursuant to the Attorney General's `unfettered discretion.' * * * Instead, Vasquez takes issue with how the agency weighed the relevant evidence, a matter over which we lack jurisdiction.") (citations omitted).

[3] *Cf. Twilleager v. Pacific Maritime Ass'n,* 2005 WL 1502886, *2 (D. Or. June 23, 2005) (Haggerty, C.J.) ("Because any further amendments that could arguably assert proper jurisdiction and relate back to plaintiff's original federal filing would be dismissed for failure to exhaust administrative remedies, plaintiff's ... Complaint must be dismissed *with prejudice.*") (italics added).

Article III, Section 2, Clause 1 of the Constitution states:

The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—between a State and Citizens of another State;—between Citizens of different States;—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

The Due Process Clause in the Fifth Amendment to the United States Constitution provides:

> No person shall ... be deprived of life, liberty, or property, without due process of law.

The Equal Protection Clause of Section 1 of the Fourteenth Amendment provides:

> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

28 U.S. Code § 2241. Power to grant writ

(a) 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. The order of a circuit judge shall be entered in the records of the district court of the district wherein the restraint complained of is had.

(b) The Supreme Court, any justice thereof, and any circuit judge may decline to entertain an application for a writ of habeas corpus and may transfer the application for hearing and determination to the district court having jurisdiction to entertain it.

(c) The writ of habeas corpus shall not extend to a prisoner unless-

(1) He is in custody under or by color of the authority of the United States or is committed for trial before some court thereof; or

(2) He is in custody for an act done or omitted in pursuance of an Act of Congress, or an order, process, judgment or decree of a court or judge of the United States; or

(3) He is in custody in violation of the Constitution or laws or treaties of the United States; or

(4) He, being a citizen of a foreign state and domiciled therein is in custody for an act done or omitted under any alleged right, title, authority, privilege, protection, or exemption claimed under

the commission, order or sanction of any foreign state, or under color thereof, the validity and effect of which depend upon the law of nations; or

(5) It is necessary to bring him into court to testify or for trial.

(d) Where an application for a writ of habeas corpus is made by a person in custody under the judgment and sentence of a State court of a State which contains two or more Federal judicial districts, the application may be filed in the district court for the district wherein such person is in custody or in the district court for the district within which the State court was held which convicted and sentenced him and each of such district courts shall have concurrent jurisdiction to entertain the application. The district court for the district wherein such an application is filed in the exercise of its discretion and in furtherance of justice may transfer the application to the other district court for hearing and determination.

(e)(1) No 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.

(2) Except as provided in paragraphs (2) and (3) of section 1005(e) of the Detainee Treatment Act of 2005 (10 U.S.C. 801 note), no court, justice, or judge

shall have jurisdiction to hear or consider any other action against the United States or its agents relating to any aspect of the detention, transfer, treatment, trial, or conditions of confinement of an alien who is or was detained by the United States and has been determined by the United States to have been properly detained as an enemy combatant or is awaiting such determination.