

### 03-334 RASUL v. BUSH

Ruling below: CA DC, 321 F.3d 1134.

#### QUESTIONS PRESENTED:

Petitioners are citizens of Great Britain and Australia. Seized abroad in apparent connection with the United States' "War on Terrorism," they have been incarcerated in Guantanamo Bay, Cuba, without charges or proof of wrongdoing, and with no opportunity to establish their innocence, for over 18 months. The Government claims it may hold Petitioners under these conditions indefinitely, and that no court has jurisdiction to review the cause for their detention. The courts below agreed. In this context, the case presents the following questions:

~~I. In *Johnson v. Eisentrager*, 339 U.S. 763 (1950), the Court held that enemy aliens who had been convicted by a lawful military commission of violating the laws of war in China, and who had never been under the exclusive control of the United States, could not obtain further review of their convictions in federal court. Did the courts below err in extending *Johnson* to deny Petitioners a judicial forum in which to question the factual basis for their detention or its legality under the Constitution and international law?~~

~~II. Did the courts below err in holding categorically that the Constitution gives "no constitutional rights, under the due process clause or otherwise," to foreign nationals who are subjected to injurious action by the Government of the United States unless they have set foot within territory over which the United States has "ultimate sovereignty" (as distinguished from exclusive jurisdiction and control)?~~

~~III. Does the Due Process clause of the Fifth Amendment permit the United States to detain foreign nationals indefinitely, in solitary confinement, without charges and without recourse to any legal process, so long as they are held outside the "ultimate sovereignty" of the United States, even when they are held in territory over which the United States has exclusive jurisdiction and control?~~

### 03-343 AL ODAH v. UNITED STATES

Ruling below: CA DC, 321 F.3d 1134.

#### THE QUESTIONS PRESENTED FOR REVIEW:

~~1. Did the Court of Appeals err in extending this Court's decision in *Johnson v. Eisentrager*, 339 U.S. 763 (1950), to create a rigid rule barring any United States court from ever, in any circumstance, considering a claim made by a foreign national held in U.S. custody outside U.S. sovereign territory?~~

~~2. Did the Court of Appeals err in holding categorically that the Constitution gives "no constitutional rights, under the due process clause or otherwise," to foreign nationals who are subjected to injurious action by the U.S. Government unless they have set foot physically within territory over which the United States has technical sovereignty (as distinguished from exclusive jurisdiction and control)?~~

~~3. Consistently with the Constitution, federal statutes, regulations and treaties, and international law, may U.S. officials imprison citizens of friendly nations indefinitely without charges, without access to their families or counsel, and without even a hearing to determine whether any basis exists for their detentions, after transporting them forcibly thousands of miles to an area under the exclusive jurisdiction and control of the United States?~~

~~4. May U.S. government officials evade judicial examination of their actions in detaining people incommunicado, and escape the reach of the Constitution and of federal law, simply by electing to confine their prisoners in an area technically outside U.S. sovereign territory although within its exclusive jurisdiction and control?~~

CERT. GRANTED: 11/10/03  
Consolidated for one hour oral argument.

Limited to the following 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.