JOHNSON v. EISENTRAGER

SUPREME COURT OF THE UNITED STATES
339 U.S. 763
June 5, 1950
[6 - 3]

This query is not about Bush Administration policy; rather,
it is about a **comparison** of prior wars, prior Presidents and prior Supreme Court Opinions
to this War, this President and this Supreme Court.

Just look at the facts and draw your own conclusions. Enjoy!
Thomas Jefferson: "A Democracy can never be ignorant and free."

OPINION: Justice Jackson...**The ultimate question in this case is one of jurisdiction of civil courts of the United States *vis-a-vis* military authorities in dealing with enemy aliens overseas...**

See if your eyes aren't opened to at least a **more complete understanding of current events.**

Twenty-one German nationals petitioned the District Court of the District of Columbia for writs of *habeas corpus*. They alleged that, prior to May 8, 1945, they were in the service of German armed forces in China. They amended to allege that their employment there was by civilian agencies of the German Government. Their exact affiliation is disputed, and, for our purposes, immaterial. On May

8, 1945, the German High Command executed an act of un-conditional surrender, expressly obligating all forces under German control at once to cease active hostilities. **These prisoners have been convicted of violating laws of war, by engaging in, permitting or ordering continued military activity against the United States after surrender of Germany and before surrender of Japan**. **Their hostile operations consisted principally of collecting and furnishing intelligence concerning American forces and their movements to the Japanese armed forces.** They, with six others who were acquitted, were taken into custody by the United States Army after the Japanese surrender and **were tried and convicted by a Military Commission** constituted by our Commanding General at Nanking by delegation from the Commanding General, United States Forces, China Theatre, pursuant to authority specifically granted by the Joint Chiefs of Staff of the United States. The Commission sat in China, with express consent of the Chinese Government. The proceeding was conducted wholly under American auspices and involved no international participation. After conviction...the prisoners were repatriated to Germany to serve their sentences. Their immediate custodian is...an American Army officer...

The petition prays an order that the prisoners be produced before the District Court, that it may inquire into their confinement and order them discharged from such offenses and confinement. It is claimed that their trial, conviction and imprisonment violate Articles I and III of the Constitution, and the Fifth Amendment thereto, and other provisions of the Constitution and laws of the United States and provisions of the Geneva Convention governing treatment of prisoners of war...

[T]he petition was dismissed on authority of *Ahrens v. Clark, 335 U.S. 188.* The Court of Appeals reversed and...concluded that any person, including an enemy alien, deprived of his liberty anywhere under any purported authority of the United States is entitled to the writ if he can show that extension to his case of any constitutional rights or limitations would show his imprisonment illegal; that, although no statutory jurisdiction of such cases is given, courts must be held to possess it as part of the judicial power of the United States; that where deprivation of liberty by an official act occurs outside the territorial jurisdiction of any District Court, the petition will lie in the District Court which has territorial jurisdiction over officials who have directive power over the immediate jailer.

The obvious importance of these holdings to both judicial administration and military operations impelled us to grant certiorari...

We are cited to no instance where a court, in this or any other country where the writ [of habeas corpus] 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. Nothing in the text of the Constitution extends such a right, nor does anything in our statutes...

Literally nothing would have provided the right to the writ of habeas corpus to any GTMO detainee in 1950 jurisprudence. And, perhaps as important, no United States President ever supported such a right, at least to that point in time.

Modern American law has come a long way since the time when outbreak of war made every enemy national an outlaw, subject to both public and private slaughter, cruelty and plunder. But even by the most magnanimous view, **our law does not abolish inherent distinctions recognized throughout the civilized world between citizens and aliens, nor between aliens of friendly and of enemy allegiance, nor between resident enemy aliens who have submitted themselves to our laws and nonresident enemy aliens who at all times have remained with, and adhered to, enemy governments**.

With the citizen we are now little concerned, except to set his case apart as untouched by this decision and to take measure of the difference between his status and that of all categories of aliens... The years have not destroyed nor diminished the importance of citizenship nor have they sapped the vitality of a citizen's claims upon his government for protection...**It is neither sentimentality nor chauvinism to repeat that "Citizenship is a high privilege."**

The Court is saying that there are degrees of entitlement to the protections afforded by our Constitution. And, enemy combatants outside of our homeland are not high on the list.

The alien, to whom the United States has been traditionally hospitable, has been accorded a generous and ascending scale of rights as he increases his identity with our society. Mere lawful presence in the country creates an implied assurance of safe conduct and gives him certain rights; they become more extensive and secure when he makes preliminary declaration of intention to become a citizen, and they expand to those of full citizenship upon naturalization. During his probationary residence, this Court has steadily enlarged his right against Executive deportation except upon full and fair hearing. And, at least since 1886, we have extended to the person and property of resident aliens important constitutional guaranties -- such as the due process of law of the Fourteenth Amendment.

But, in extending constitutional protections beyond the citizenry, the Court has been at pains to point out that it was the alien's presence within its territorial jurisdiction that gave the Judiciary power to act. In the pioneer case of *Yick Wo* v. *Hopkins*, the Court said of the Fourteenth Amendment, "These provisions are universal in their application, *to all persons* ***within the territorial jurisdiction***, without regard to any differences of...nationality..." And in *The Japanese Immigrant Case*, the Court held its processes available to "an alien, who has entered the country, and has become subject in all respects to its jurisdiction, and a part of its population, although alleged to be illegally here."

Since most cases involving aliens afford this ground of jurisdiction, and the civil and property rights of immigrants or transients of foreign nationality so nearly approach equivalence to those of citizens, courts in peace time have little occasion to inquire whether litigants before them are alien or citizen.

It is war that exposes the relative vulnerability of the alien's status. The security and protection enjoyed while the nation of his allegiance remains in amity with the United States are greatly impaired when his nation takes up arms against us. While his lot is far more humane and endurable than the experience of our citizens in some enemy lands, it is still not a happy one. But disabilities

this country lays upon the alien who becomes also an enemy are imposed temporarily as an incident of war and not as an incident of alienage...

HISTORY ALERT!

American doctrine as to effect of war upon the status of nationals of belligerents took permanent shape following our first foreign war. Chancellor Kent, after considering the leading authorities of his time, declared the law to be that "...in war, the subjects of each country were enemies to each other, and bound to regard and treat each other as such." If this was ever something of a fiction, it is one validated by the actualities of modern total warfare. Conscription, compulsory service and measures to mobilize every human and material resource and to utilize nationals -- wherever they may be -- in arms, intrigue and sabotage, attest the prophetic realism of what once may have seemed a doctrinaire and artificial principle. With confirmation of recent history, we may reiterate this Court's earlier teaching that in war "every individual of the one nation must acknowledge every individual of the other nation as his own enemy -- because the enemy of his country." And this without regard to his individual sentiments or disposition. The alien enemy is bound by an allegiance which commits him to lose no opportunity to forward the cause of our enemy; hence the United States, assuming him to be faithful to his allegiance, regards him as part of the enemy resources. It therefore takes measures to disable him from commission of hostile acts imputed as his intention because they are a duty to his sovereign.

The United States does not invoke this enemy allegiance only for its own interest, but respects it also when to the enemy's advantage. In World War I our conscription act did not subject the alien enemy to compulsory military service. The Selective Service Act of 1948...exempts aliens who have not formally declared their intention to become citizens from military training, service and registration, if they make application, but if so relieved, they are barred from becoming citizens. Thus the alien enemy status carries important immunities as well as disadvantages. The United States does not ask him to violate his allegiance or to commit treason toward his own country for the sake of ours. This also is the doctrine and the practice of other states comprising our Western Civilization...

Executive power over enemy aliens, undelayed and unhampered by litigation, has been deemed, throughout our history, essential to war-time security. This is in keeping with the practices of the most enlightened of nations and has resulted in treatment of alien enemies more considerate than that which has prevailed among any of our enemies and some of our allies. This statute was enacted or suffered to continue by men who helped found the Republic and formulate the Bill of Rights, and **although it obviously denies enemy aliens the constitutional immunities of citizens, it seems not then to have been supposed that a nation's obligations to its foes could ever be put on a parity with those to its defenders**.

Can you imagine that? The Supreme Court of 1950 says, "Executive power over enemy aliens, undelayed and unhampered by litigation, has been deemed, throughout our history, essential to war-time security." But, President Bush is labeled a tyrant by many for maintaining that tradition, formerly thought to be "essential to war-time security." Some have even likened him to Hitler!

The resident enemy alien is constitutionally subject to summary arrest, internment and deportation whenever a "declared war" exists. Courts will entertain his plea for freedom from Executive custody only to ascertain the existence of a state of war and whether he is an alien enemy and so subject to the Alien Enemy Act. Once these jurisdictional elements have been determined, courts will not inquire into any other issue as to his internment.

The standing of the enemy alien to maintain any action in the courts of the United States has been often challenged and sometimes denied...Our rule of generous access to the resident enemy alien was first laid down by Chancellor Kent in 1813, when, squarely faced with the plea that an alien enemy could not sue upon a debt contracted before the War of 1812, he reviewed the authorities to that time and broadly declared that "A lawful residence implies protection, and a capacity to sue and be sued. A contrary doctrine would be repugnant to sound policy, no less than to justice and humanity." A unanimous Court recently clarified both the privilege of access to our courts and the limitations upon it. We said: "The ancient rule against suits by resident alien enemies has survived only so far as necessary to prevent use of the courts to accomplish a purpose which might hamper our own war efforts or give aid to the enemy. This may be taken as the sound principle of the common law today."

But the nonresident enemy alien, especially one who has remained in the service of the enemy, does not have even this qualified access to our courts, for he neither has comparable claims upon our institutions nor could his use of them fail to be helpful to the enemy.

Does Guantanamo come to mind?

Our law on this subject first emerged about 1813 when the Supreme Court of the State of New York ...concluded the rule of the common law and the law of nations to be that alien enemies resident in the country of the enemy could not maintain an action in its courts **during the period of hostilities**. This Court has recognized that rule...and followed it...and it continues to be the law throughout this country and in England.

The foregoing demonstrates how much further we must go if we are to invest these enemy aliens, resident, captured and imprisoned abroad, with standing to demand access to our courts.

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.**

Hmmmmmm? Sure sounds like Guantanamo to me.

We have pointed out that the privilege of litigation has been extended to aliens, whether friendly or enemy, only because permitting their presence in the country implied protection. No such basis can be invoked here, for these prisoners at no relevant time were within any territory over which the United States is sovereign, and the scenes of their offense, their capture, their trial and their punishment were all beyond the territorial jurisdiction of any court of the United States.

Another reason for a limited opening of our courts to resident aliens is that among them are many of friendly personal disposition to whom the status of enemy is only one imputed by law. But these prisoners were actual enemies, active in the hostile service of an enemy power. There is no fiction about their enmity. Yet the decision below confers upon them a right to use our courts, free even of the limitation we have imposed upon resident alien enemies, to whom we deny any use of our courts that would hamper our war effort or aid the enemy.

A basic consideration in *habeas corpus* practice is that the prisoner will be produced before the court. This is the crux of the statutory scheme established by the Congress; indeed, it is inherent in the very term "*habeas corpus*." And though production of the prisoner may be dispensed with where it appears on the face of the application that no cause for granting the writ exists, we have consistently adhered to and recognized the general rule. To grant the writ to these prisoners might mean that our army must transport them across the seas for hearing. This would require allocation of 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 a conflict between judicial and military opinion highly comforting to enemies of the United States.**

We wouldn't allow our POW's to sue us in our own civil courts **during war**, would we?
We wouldn't make our commanders defend themselves from POW plaintiffs, would we?
And, divert our attention from the war?
Why, that would give "comfort to the enemy," would it not?
"OF COURSE, WE WOULDN'T DO ANY OF THAT" SAYS THE HIGH COURT
IN 1950!!!
[stay tuned]

Moreover, **we could expect no reciprocity** for placing the litigation weapon in unrestrained enemy hands. The right of judicial refuge from military action, which it is proposed to bestow on the enemy, can purchase no equivalent for benefit of our citizen soldiers. Except in England, whose law appears to be in harmony with the views we have expressed, and other English-speaking peoples in whose practice nothing has been cited to the contrary, the writ of *habeas corpus* is generally unknown.

The High Court in 1950 did not expect Japan or Germany to "reciprocate."
But, surely we could expect reciprocal treatment from al Qaeda, don't you think?
On second thought, that might be a bit difficult.
They aren't a Nation — they have no courts.

The prisoners rely, however, upon two decisions of this Court to get them over the threshold -- *Ex parte Quirin*[1] and *In re Yamashita.*[2] **Reliance on the *Quirin* case is clearly mistaken**. Those prisoners were in custody in the District of Columbia. One was, or claimed to be, a citizen. **They were tried by a Military Commission sitting in the District of Columbia at a time when civil courts were open and functioning normally**. They were arrested by civil authorities and the prosecution was personally directed by the Attorney General, a civilian prosecutor, for acts committed in the United States. They waived arraignment before a civil court and it was contended that the civil courts thereby acquired jurisdiction and could not be ousted by the Military. None of the places where they were acting, arrested, tried or imprisoned were, it was contended, in a zone of active military operations or under martial law or any other military control, and no circumstances justified transferring them from civil to military jurisdiction. None of these grave grounds for challenging military jurisdiction can be urged in the case now before us.

Nor can the Court's decision in the *Yamashita* case aid the prisoners. This Court refused to receive Yamashita's petition for a writ of *habeas corpus*. For hearing and opinion, it was consolidated with another application for a writ of certiorari to review the refusal of *habeas corpus* by the Supreme Court of the Philippines over whose decisions the statute then gave this Court a right of review. By reason of our sovereignty at that time over these insular possessions, Yamashita stood much as did

[1]Case 2-9 on this website.

[2]Case 2-11 on this website.

Quirin before American courts. Yamashita's offenses were committed on our territory, he was tried within the jurisdiction of our insular courts and he was imprisoned within territory of the United States. None of these heads of jurisdiction can be invoked by these prisoners.

Despite this, the doors of our courts have not been summarily closed upon these prisoners. Three courts have considered their application and have provided their counsel opportunity to advance every argument in their support and to show some reason in the petition why they should not be subject to the **usual disabilities of nonresident enemy aliens**. This is the same preliminary hearing as to sufficiency of application that was extended in *Quirin* [and] *Yamashita...***We arrive at the same conclusion the Court reached in each of those cases...that no right to the writ of *habeas corpus* appears.**

Note: Well, President Bush, certainly nothing I have seen thus far indicates you are on thin ice. *Quirin* and *Yamashita* went your way and it looks like *Eisentrager* will, as well. So far, so good.

The Court of Appeals dispensed with all requirement of territorial jurisdiction based on place of residence, captivity, trial, offense, or confinement. It could not predicate relief upon any intraterritorial contact of these prisoners with our laws or institutions. Instead, it gave our Constitution an extraterritorial application **TO EMBRACE OUR ENEMIES IN ARMS**. Right to the writ, it reasoned, is a subsidiary procedural right that follows from possession of substantive constitutional rights. These prisoners, it considered, are invested with a right of personal liberty by our Constitution and therefore must have the right to the remedial writ. The court stated the steps in its own reasoning as follows: "*First*. The Fifth Amendment, by its terms, applies to 'any person.' *Second*. Action of Government officials in violation of the Constitution is void. This is the ultimate essence of the present controversy. *Third*. A basic and inherent function of the judicial branch of a government built upon a constitution is to set aside void action by government officials, and so to restrict executive action to the confines of the constitution. In our jurisprudence, no Government action which is void under the Constitution is exempt from judicial power. *Fourth*. The writ of habeas corpus is the established, time-honored process in our law for testing the authority of one who deprives another of his liberty, -- 'the best and only sufficient defense of personal freedom...'"

The doctrine that the term "any person" in the Fifth Amendment spreads its protection over alien enemies anywhere in the world engaged in hostilities against us, should be weighed in light of the full text of that Amendment:

> "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

When we analyze the claim prisoners are asserting and the court below sustained, it amounts to a right not to be tried at all for an offense against our armed forces. If the Fifth Amendment protects them from military trial, the Sixth Amendment as clearly prohibits their trial by civil courts. The latter requires in all criminal prosecutions that "the accused" be tried "by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law." And if the Fifth be held to embrace these prisoners because it uses the inclusive term "no person," the Sixth must, for it applies to all "accused." No suggestion is advanced by the court below, or by prisoners, of any constitutional method by which any violations of the laws of war endangering the United States forces could be reached or punished, if it were not by a Military Commission in the theatre where the offense was committed.

The Court of Appeals has cited no authority whatever for holding that the Fifth Amendment confers rights upon all persons, whatever their nationality, wherever they are located and whatever their offenses, except to quote extensively from a dissenting opinion in *In re Yamashita*. The holding of the Court in that case is, of course, to the contrary.

If this Amendment invests enemy aliens in unlawful hostile action against us with immunity from military trial, it puts them in a more protected position than our own soldiers. American citizens conscripted into the military service are thereby stripped of their Fifth Amendment rights and as members of the military establishment are subject to its discipline, including military trials for offenses against aliens or Americans. Can there be any doubt that our foes would also have been excepted, but for the assumption "any person" would never be read to include those in arms against us? **It would be a paradox indeed if what the Amendment denied to Americans it guaranteed to enemies.** And, of course, it cannot be claimed that such shelter is due them as a matter of comity for any reciprocal rights conferred by enemy governments on American soldiers.

The decision below would extend coverage of our Constitution to nonresident alien enemies denied to resident alien enemies. The latter are entitled only to judicial hearing to determine what the petition of these prisoners admits: that they are really alien enemies. When that appears, those resident here may be deprived of liberty by Executive action without hearing. While this is preventive rather than punitive detention, no reason is apparent why an alien enemy charged with having committed a crime should have greater immunities from Executive action than one who it is only feared might at some future time commit a hostile act.

If the Fifth Amendment confers its rights on all the world except Americans engaged in defending it, the same must be true of the companion civil-rights Amendments, for none of them is limited by its express terms, territorially or as to persons. Such a construction would mean that during military occupation irreconcilable enemy elements, guerrilla fighters, and "werewolves" could require the American Judiciary to assure them freedoms of speech, press, and assembly as in the First Amendment, right to bear arms as in the Second, security against "unreasonable" searches and seizures as in the Fourth, as well as rights to jury trial as in the Fifth and Sixth Amendments.

Such extraterritorial application of organic law would have been so significant an innovation

in the practice of governments that, if intended or apprehended, it could scarcely have failed to excite contemporary comment. Not one word can be cited. No decision of this Court supports such a view. None of the learned commentators on our Constitution has even hinted at it. The practice of every modern government is opposed to it.

We hold that the Constitution does not confer a right of personal security or an immunity from military trial and punishment upon an alien enemy engaged in the hostile service of a government at war with the United States...

The petition specifies four reasons why conviction by the Military Commission was in excess of its jurisdiction: two based on the Geneva Convention of July 27, 1929...and two apparently designed to raise constitutional questions. The constitutional contentions are that "the detention of the prisoners as convicted war criminals is illegal and in violation of Articles I and III of the Constitution of the United States and of the Fifth Amendment thereto, and of other provisions of said Constitution and laws of the United States..., in that:

> "(a) There being no charge of an offense against the laws of war by the prisoners, the Military Commission was without jurisdiction.
>
> "(b) In the absence of hostilities, martial law, or American military occupation of China, and in view of treaties between the United States and China dated February 4, 1943, and May 4, 1943, and between Germany and China, dated May 18, 1921, the Military Commission was without jurisdiction."

The petition does not particularize, and neither does the court below, the specific respects in which it is claimed acts of the Military were [not within its power.]

The jurisdiction of military authorities, during or following hostilities, to punish those guilty of offenses against the laws of war is long-established. By the Treaty of Versailles, "The German Government recognizes the right of the Allied and Associated Powers to bring before military tribunals persons accused of having committed acts in violation of the laws and customs of war." This Court has characterized as "well-established" the "power of the military to exercise jurisdiction over members of the armed forces, those directly connected with such forces, or enemy belligerents, prisoners of war, or others charged with violating the laws of war." And we have held in the *Quirin* and *Yamashita* cases that the Military Commission is a lawful tribunal to adjudge enemy offenses against the laws of war.

It is not for us to say whether these prisoners were or were not guilty of a war crime, or whether if we were to retry the case we would agree to the findings of fact or the application of the laws of war made by the Military Commission. The petition shows that these prisoners were formally accused of violating the laws of war and fully informed of particulars of these charges. As we observed in the *Yamashita* case, "If the military tribunals have lawful authority to hear, decide and condemn, their action is not subject to judicial review merely because they have made a wrong decision on

disputed facts. Correction of their errors of decision is not for the courts but for the military authorities which are alone authorized to review their decisions." "We consider here only the lawful power of the commission to try the petitioner for the offense charged."

That there is a basis in conventional and long-established law by which conduct ascribed to them might amount to a violation seems beyond question...It being within the jurisdiction of a Military Commission to try the prisoners, it was for it to determine whether the laws of war applied and whether an offense against them had been committed...

Among powers granted to Congress by the Constitution is power to provide for the common defense, to declare war, to raise and support armies, to provide and maintain a navy, and to make rules for the government and regulation of the land and naval forces. Art. I, §8, Const. It also gives power to make rules concerning captures on land and water which this Court has construed as an independent substantive power. Indeed, out of seventeen specific paragraphs of congressional power, eight of them are devoted in whole or in part to specification of powers connected with warfare. The first of the enumerated powers of the **President** is that he shall be **Commander-in-Chief of the Army and Navy** of the United States. Art. II, §2, Const. And, OF COURSE, **grant of war power includes all that is necessary and proper for carrying these powers into execution**.

✪ ✪ ✪ ✪ **OF COURSE!** ✪ ✪ ✪ ✪

Certainly it is not the function of the Judiciary to entertain private litigation -- even by a citizen -- which challenges the legality, the wisdom, or the propriety of the Commander-in-Chief in sending our armed forces abroad or to any particular region.

✪ ✪ ✪ ✪ **CERTAINLY NOT!** ✪ ✪ ✪ ✪
✪ ✪ ✪ ✪ **WHOEVER HEARD OF SUCH A SILLY NOTION!** ✪ ✪ ✪ ✪

China appears to have fully consented to the trial within her territories and, if China had complaint at the presence of American forces there, China's grievance does not become these prisoners' right. [That issue]...involves a challenge to conduct of diplomatic and foreign affairs, for which the **President is exclusively responsible**.

These prisoners do not assert, and could not, that anything in the Geneva Convention makes them immune from prosecution or punishment for war crimes. Article 75 thereof expressly provides that **a prisoner of war may be detained until the end of such proceedings and, if necessary, until the expiration of the punishment**.

The petition, however, makes two claims in the nature of procedural irregularities said to deprive the Military Commission of jurisdiction. One is that the United States was obliged to give the protecting power of Germany notice of the trial, as specified in Article 60 of the Convention. This claim the

Court has twice considered and twice rejected, holding that such notice is required only of proceedings for disciplinary offenses committed during captivity and not in case of war crimes committed before capture. *Ex parte Quirin; Ex parte Yamashita.*

The other claim is that they were denied trial "by the same courts and according to the same procedure as in the case of persons belonging to the armed forces of the detaining Power," required by Article 63 of the Convention. It may be noted that no prejudicial disparity is pointed out as between the Commission that tried prisoners and those that would try an offending soldier of the American forces of like rank. By a parity of reasoning with that in the foregoing decisions, this Article also refers to those, and only to those, proceedings for disciplinary offenses during captivity. Neither applies to a trial for war crimes.

We are unable to find that the petition alleges any fact showing lack of jurisdiction in the military authorities to accuse, try and condemn these prisoners or that they acted in excess of their lawful powers.

The District Court dismissed this petition on authority of *Ahrens v. Clark.* The Court of Appeals considered only questions which it regarded as reserved in that decision and in *Ex parte Endo, 323 U.S. 283.* Those cases dealt with persons both residing and detained within the United States and whose capacity and standing to invoke the process of federal courts somewhere was unquestioned. The issue was where.

Since in the present application we find no basis for invoking federal judicial power in any district, we need not debate as to where, if the case were otherwise, the petition should be filed.

...[J]udgment of the Court of Appeals is reversed...[J]udgment of the District Court dismissing the petition is affirmed.

DISSENT: Justice Black/Douglas/Burton...Not only is United States citizenship a "high privilege," it is a priceless treasure. For that citizenship is enriched beyond price by our goal of equal justice under law -- equal justice not for citizens alone, but for all persons coming within the ambit of our power. This ideal gave birth to the constitutional provision for an independent judiciary with authority to check abuses of executive power and to issue writs of habeas corpus liberating persons illegally imprisoned...I agree with the Court of Appeals...