

## CASE COMMENTS

### **Constitutional Law**—Supreme Court Avoids Lawfulness of Enemy Combatants' Detention by Resolving Case on Jurisdictional Grounds—*Rumsfeld v. Padilla*, 124 S. Ct. 2711 (2004)

The habeas corpus writ offers a last resort for petitioners seeking to raise their right to be free from wrongful restraints upon their liberty.<sup>1</sup> To avoid dismissal, the petitioner must not only file a habeas petition in the appropriate jurisdiction, but also name the proper respondent—two selections that are not always clear from the outset of the case.<sup>2</sup> In *Rumsfeld v. Padilla*,<sup>3</sup> the Supreme Court of the United States considered whether an enemy combatant, Jose Padilla, properly filed a habeas corpus writ pursuant to 28 U.S.C. § 2241, and whether the President of the United States possesses authority to detain Padilla.<sup>4</sup> The Supreme Court held in a 5-4 decision that the United States District Court for the Southern District of New York (SDNY) did not have jurisdiction over Padilla's habeas petition, and therefore the Court did not reach the merits of Padilla's challenge to the lawfulness of his detention.<sup>5</sup>

Padilla, a United States citizen, changed his name and moved to Egypt after several confrontations with the United States justice system.<sup>6</sup> Years later, Padilla returned to the United States after a trip to Pakistan.<sup>7</sup> Pursuant to a material witness warrant, Federal agents arrested Padilla on May 8, 2002 at Chicago's O'Hare International Airport after President Bush alleged that Padilla maintained direct connections with al Qaeda.<sup>8</sup> At trial, Padilla's court-

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1. 28 U.S.C. § 2241 (2004) (codifying habeas corpus writ); *Schlanger v. Seamans*, 401 U.S. 487, 491 n.5 (1971) (stating historical foundation for habeas petition's use); *Wales v. Whitney*, 114 U.S. 564, 571 (1885) (recognizing habeas writ used only when prisoner actually confined). For a court to sustain a habeas writ, the petitioner must endure more than mere moral restraint. *Wales*, 114 U.S. at 570-74.

2. *See* 28 U.S.C. § 2241 (2004) (defining habeas corpus jurisdiction within courts' respective jurisdictions); *Rasul v. Bush*, 124 S. Ct. 2686, 2695 (2004) (explaining writ acts upon custodian who holds petitioner in custody); *see also* *Braden v. 30th Jud. Cir. Ct. of Ky.*, 410 U.S. 484, 452-53 (1973) (stressing section 2241(a) requires only jurisdiction over custodian, not prisoner); *Carbo v. United States*, 364 U.S. 611, 617 (1961) (recognizing Senate added language to habeas statute limiting jurisdiction for judges issuing writ).

3. 124 S. Ct. 2711 (2004) (5-4 decision).

4. *Id.* at 2715 (setting forth issues of case).

5. *Id.* (explaining Court's narrow holding).

6. *Padilla v. Rumsfeld*, 233 F. Supp. 2d 564, 572 (S.D.N.Y. 2002), *aff'd*, 352 F.3d 695 (2d Cir. 2003), *rev'd*, 124 S. Ct. 2711 (2004).

7. *Padilla v. Rumsfeld*, 352 F.3d 695, 699 (2d Cir. 2003), *rev'd*, 124 S. Ct. 2711 (2004).

8. *Padilla v. Rumsfeld*, 233 F. Supp. 2d 564, 572 (S.D.N.Y. 2002), *aff'd*, 352 F.3d 695 (2d Cir. 2003), *rev'd*, 124 S. Ct. 2711 (2004). Padilla had just returned from a trip to Pakistan when federal agents arrested him. *Padilla v. Rumsfeld*, 352 F.3d 695, 699 (2d Cir. 2003), *rev'd*, 124 S. Ct. 2711 (2004). The government held Padilla pursuant to a warrant granted by a grand jury investigation of the September 11, 2001 terrorist

appointed counsel, Donna Newman, consulted with Padilla, his family, and the Government in an effort to end his confinement.<sup>9</sup> Two weeks later, Newman moved to vacate the material witness warrant for Padilla, prompting the court to schedule a hearing for June 11, 2002.<sup>10</sup>

On June 9, 2002, the Government argued *ex parte* to the district court to vacate the warrant against Padilla.<sup>11</sup> In its request, the Government informed the court that the President had ordered Secretary Rumsfeld to detain Padilla after designating him an enemy combatant.<sup>12</sup> Upon completion of the *ex parte* hearing, the Defense Department took Padilla into custody and transferred him to the Consolidated Naval Brig in Charleston, South Carolina.<sup>13</sup> Two days later, the Government and Newman appeared at the scheduled hearing for Padilla's motion to vacate the material witness warrant.<sup>14</sup> At that time, Newman filed a habeas corpus petition on Padilla's behalf.<sup>15</sup>

Seven months after Padilla's arrest, the SDNY determined that Secretary Rumsfeld was the proper respondent to Padilla's petition, that it had jurisdiction over Padilla's habeas corpus claim, and that President Bush possessed authority to detain Padilla.<sup>16</sup> On appeal, however, the Second Circuit

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attacks on the United States. *Id.* Padilla traveled aboard a passenger airliner with his United States passport and carried no weapons or explosives. *Id.*

9. *Padilla v. Rumsfeld*, 352 F.3d 695, 700 (2d Cir. 2003), *rev'd*, 124 S. Ct. 2711 (2004) (addressing Padilla's confinement with government for several weeks to come to resolution). The government opted against filing criminal charges against Padilla. *Padilla v. Rumsfeld*, 233 F. Supp. 2d 564, 572 (S.D.N.Y. 2002), *aff'd*, 352 F.3d 695 (2d Cir. 2003), *rev'd*, 124 S. Ct. 2711 (2004).

10. *Padilla v. Rumsfeld*, 233 F. Supp. 2d 564, 571 (S.D.N.Y. 2002), *aff'd*, 352 F.3d 695 (2d Cir. 2003), *rev'd*, 124 S. Ct. 2711 (2004).

11. *Padilla v. Rumsfeld*, 233 F. Supp. 2d 564, 571 (S.D.N.Y. 2002), *aff'd*, 352 F.3d 695 (2d Cir. 2003), *rev'd*, 124 S. Ct. 2711 (2004). The government vacated its material witness warrant because the President issued an order instructing the Defense Department to take Padilla into custody. *Padilla v. Rumsfeld*, 352 F.3d 695, 700 (2d Cir. 2003), *rev'd*, 124 S. Ct. 2711 (2004).

12. *Padilla v. Rumsfeld*, 352 F.3d 695, 700 (2d Cir. 2003), *rev'd*, 124 S. Ct. 2711 (2004). In his June 9th order to Secretary Rumsfeld, President Bush claimed to possess information that Padilla, after moving to Egypt, traveled to several countries in the Middle East and Southwest Asia and associated with high-ranking al Qaeda members. *Id.* at 700-01. The President also stated there was evidence illustrating Padilla received training in Pakistan and planned to detonate a dirty bomb in the United States. *Id.*

13. *Padilla v. Rumsfeld*, 352 F.3d 695, 700 (2d Cir. 2003), *aff'd*, 352 F.3d 695 (2d Cir. 2003), *rev'd*, 124 S. Ct. 2711 (2004). On Monday, June 10, 2002, the Attorney General publicly announced Padilla's detention by the Defense Department. 124 S. Ct. at 2731 (Stevens, J., dissenting).

14. *Padilla v. Rumsfeld*, 352 F.3d 695, 701 (2d Cir. 2003), *rev'd*, 124 S. Ct. 2711 (2004); *Padilla v. Rumsfeld*, 233 F. Supp. 2d 564, 571 (S.D.N.Y. 2002), *aff'd*, 352 F.3d 695 (2d Cir. 2003), *rev'd*, 124 S. Ct. 2711 (2004).

15. *Padilla v. Rumsfeld*, 233 F. Supp. 2d 564, 571 (S.D.N.Y. 2002); *Padilla v. Rumsfeld*, 352 F.3d 695, 701 (2d Cir. 2003). The Government did not officially inform Newman that it detained Padilla in South Carolina before she filed his habeas petition. 124 S. Ct. at 2732 n.3 (Stevens, J., dissenting).

16. *Padilla v. Rumsfeld*, 233 F. Supp. 2d 564, 578-88 (S.D.N.Y. 2002), *aff'd*, 352 F.3d 695 (2d Cir. 2003), *rev'd*, 124 S. Ct. 2711 (2004). The Government argued the court must dismiss the petition or transfer it to the District of South Carolina because Commander Marr presented the only proper respondent to the petition as Padilla's physical custodian. *Id.* at 578. Conversely, Padilla argued that Secretary Rumsfeld stood as the proper respondent because he was the only person with the power to order Padilla's release. *Id.* at 579-81. With respect to habeas corpus jurisdiction, the Government argued that section 2241(a) requires habeas

partially reversed the lower court's ruling and held that Padilla's detention violated the Constitution.<sup>17</sup> The Second Circuit remanded the case to the district court and instructed it to release Padilla from military custody within thirty days.<sup>18</sup> Reversing the Second Circuit's decision, the Supreme Court held the SDNY lacked jurisdiction over Padilla's habeas petition because neither the prisoner nor the custodian was located in that district.<sup>19</sup> Therefore, the Court ordered that the habeas petition should be dismissed without prejudice.<sup>20</sup>

A habeas corpus petition contains a two-prong analysis.<sup>21</sup> The habeas petitioner must be held in physical custody to satisfy the petition's first prong.<sup>22</sup> The Court expanded the definition of custody for habeas purposes, however, to generally include persons subject to restraints not shared by the general public.<sup>23</sup> When a petitioner successfully establishes that he is in custody, then

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petitioners to be "physically present within the district for the court to grant relief." *Id.* at 583. The district court determined that Secretary Rumsfeld, through his agents, had "purposeful" and "substantial" activities in the district to establish personal jurisdiction. *Id.* at 587.

17. *Padilla v. Rumsfeld*, 352 F.3d 695, 722-24 (2d Cir. 2003) (disagreeing with argument that government retains authority to detain United States citizens not engaged in combat). The Second Circuit, however, disagreed with the district court's holding that the Joint Resolution authorized the President to use military force against United States citizens "seized on U.S. soil and not engaged in combat." *Id.* at 722. The Second Circuit also concluded that the Non-Detention Act was controlling law in this situation, and in order to detain a United States citizen, Congress must enact legislation authorizing the detention. *Id.* at 720.

18. *Padilla v. Rumsfeld*, 352 F.3d 695, 724 (2d Cir. 2003), 124 S. Ct. 2711 (2004). The Second Circuit reiterated that Padilla, a United States citizen, should be afforded the same constitutional protections extended to other citizens. *Id.*

19. 124 S. Ct. at 2724-27 (holding prisoner should name warden as respondent and file petition in district where confined). The Supreme Court did not reach the merits of Padilla's claim—specifically whether his detention was constitutional—because it decided the jurisdictional question against Padilla. *Id.* at 2729 (Kennedy, J., concurring). The Court remanded the case and instructed the district court to dismiss Padilla's habeas petition without prejudice. *Id.* at 2727.

20. *Id.* at 2724-27.

21. See *Wales v. Whitney*, 114 U.S. 564, 571 (1885) (discussing writ's purpose to inquire if petitioner's liberty restrained and restraint's lawfulness); *Ex parte Bollman*, 8 U.S. 75, 95 (1807) (explaining Great Writ's constitutional grant to courts). See generally Diane Marie Amann, *Guantanamo*, 42 COLUM. J. TRANSNAT'L L. 263, 265 (2004) (maintaining courts prefer to analyze enemy combats' situation as ordinary and then apply settled law); Alan Raphael, *The Decisions Regarding Alleged Enemy Combatants Leave Many Questions*, 8 PREVIEW U.S. SUP. CT. CAS. 499 (2004) (advocating social contract that government may not deprive person liberty without due process).

22. See 28 U.S.C. § 2241 (2004) (codifying habeas relief available only if prisoner in custody under United States authority); see also *McNally v. Hill*, 293 U.S. 131, 140 (1934) (concluding petitioner wrongly used habeas to obtain ruling to request parole); *Stallings v. Splain*, 253 U.S. 339, 343 (1920) (declaring petitioner out on bail not in custody for habeas purposes); *Wales v. Whitney*, 114 U.S. 564, 572 (1885) (holding petitioner not in custody when confined to Washington area to perform duties). See generally 1 RANDY HERTZ & JAMES S. LIEBMAN, *FEDERAL CORPUS PRACTICE AND PROCEDURE* § 8.2 (2004) (defining custody with respect to habeas corpus relief).

23. *Hensley v. Mun. Ct.*, 411 U.S. 345, 351 (1973) (permitting petitioner's use of habeas writ when presently at large due to stay of execution); see, e.g., *Braden v. 30th Jud. Cir. Ct. of Ky.*, 410 U.S. 484, 489 n.4 (1973) (holding petitioner in custody when challenging future custody in another district); *Strait v. Laird*, 406 U.S. 341, 344-46 (1972) (allowing inactive reservist to use habeas writ to end military obligations); *Ex parte Endo*, 323 U.S. 283, 284-85 (1944) (permitting Japanese-American citizen to use habeas petition to challenge mandatory relocation).

the court scrutinizes the lawfulness of the restraint on the petitioner's liberty.<sup>24</sup>

For a court to reach either prong of the analysis, however, the issuing court must possess jurisdiction over the habeas petition.<sup>25</sup> Traditionally, for a court to exercise jurisdiction over a habeas corpus petition, the writ must name the appropriate respondent and the petition must be filed in the district of confinement.<sup>26</sup> The Court tempered this longstanding rule in *Braden v. 30th Judicial Circuit Court of Kentucky*,<sup>27</sup> where it concluded that the immediate custodian rule proved too rigid in circumstances where the habeas petitioner attempted to challenge a detention other than present physical confinement.<sup>28</sup>

The Court has created other exceptions to the immediate custodian rule in order to protect the habeas writ's applicability from the stifling effect of rigidly interpreted jurisdiction rules.<sup>29</sup> These exceptions encompass petitioners who experienced another type of confinement, such as serving a present prison sentence and challenging a future sentence or challenging military obligations that do not allow an individual to leave the military.<sup>30</sup> Overall, the judiciary

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24. See *Ex parte Quirin v. Cox*, 317 U.S. 1, 25 (1942) (determining whether petitioners' detention pursuant to presidential order conflicted with Constitution or congressional laws). The *Quirin* Court explicates the effect of unlawful combatant status on an individual's detention during wartime. *Id.* at 31. An unlawful combatant is subject to trial and punishment by military tribunals. *Id.*; see also, Note, *Developments in the Law—Federal Habeas Corpus*, 83 HARV. L. REV. 1038, 1238 (1970) (discussing habeas challenge to presidential order could raise issues relating to detention's legality); Alejandra Rodriguez, Comment, *Is the War on Terrorism Compromising Civil Liberties? A Discussion of Hamdi and Padilla*, 39 CAL. W. L. REV. 379, 379 (2003) (condemning fact enemy combatants not afforded guarantees in Constitution). *But see Ex parte Milligan*, 71 U.S. (1 Wall.) 2, 115 (1866) (reiterating Congress may authorize President to suspend writ for public safety).

25. See 28 U.S.C. § 2241(a), (d) (2004) (codifying courts' jurisdiction); see, e.g., *Schlanger v. Seamans*, 401 U.S. 487, 491 (1971) (dismissing habeas petition because custodian absent in district where petition filed); *Carbo v. United States*, 364 U.S. 611, 616 (1961) (arguing Congress added "within their respective jurisdictions" to limit judges' jurisdiction over habeas petitions); *Al-Marri v. Rumsfeld*, 360 F.3d 707, 709 (7th Cir. 2004) (holding district where petitioner confined proper jurisdiction to consider petitioner's challenge to present physical confinement).

26. See *Wales v. Whitney*, 114 U.S. 564, 574 (1885) (setting forth immediate custodian rule for jurisdictional purposes); see also *al-Marri v. Rumsfeld*, 360 F.3d 707, 711 (7th Cir. 2004) (noting challenge to present physical confinement leaves one proper respondent: immediate custodian); *Hogan v. Hanks*, 97 F.3d 189, 190 (7th Cir. 1996) (reiterating petitioner's collateral attack on confinement leaves one proper respondent: prison warden). *But see Henderson v. INS*, 157 F.3d 106, 128 (2d Cir. 1998) (reserving question whether Attorney General stands as proper respondent in alien habeas cases).

27. 410 U.S. 484 (1973).

28. *Braden v. 30th Jud. Cir. Ct. of Ky.*, 410 U.S. 484, 497-500 (1973) (holding petitioner may name person or entity with legal control over him as respondent); see also *supra* note 23 (citing decisions allowing petitioners to name individual other than immediate custodian as respondent).

29. See *Rasul v. Bush*, 124 S. Ct. 2686, 2697 (2004) (stressing power to issue writs impeded if dependent upon formal notions of territorial sovereignty); see, e.g., *Braden v. 30th Jud. Cir. Ct. of Ky.*, 410 U.S. 484, 499 (1973) (cautioning slavish application of jurisdictional rule undermines purpose of "within courts respective jurisdictions"); *Schlanger v. Seamans*, 401 U.S. 487, 491 n.5 (1971) (stressing habeas writ remedy does not entail static, narrow, or formalistic application); *Ex parte Endo*, 323 U.S. 283, 307 (1944) (concluding habeas petition's jurisdiction not defeated once petition filed in proper court).

30. See *supra* note 23 (discussing challenges to situations other than present physical confinement); see also 28 U.S.C. § 2241(d) (2004) (allowing petitioners to file habeas writs where confined or in district where convicted and sentenced).

has tried to maintain fluidity when applying precedent to habeas petitions, thereby expanding habeas corpus law.<sup>31</sup>

In *Rumsfeld v. Padilla*,<sup>32</sup> the Supreme Court considered whether the SDNY had jurisdiction over Padilla's habeas petition pursuant to 28 U.S.C. § 2241.<sup>33</sup> The Court applied the immediate custodian rule because it determined there was no basis to make an exception to the rule.<sup>34</sup> After examining previous exceptions to the immediate custodian rule, the Court determined that in those cases it was justified because the habeas petitioners did not challenge a present physical confinement, like Padilla did.<sup>35</sup> The Court next interpreted section 2241 and precedent requiring the court issuing the writ to possess jurisdiction over the immediate custodian during instances when a petitioner challenges her present physical confinement.<sup>36</sup> The Court concluded that Padilla's petition fell within the well-established immediate custodian rule, and therefore held the SDNY lacked jurisdiction over Padilla's immediate custodian, Commander Marr.<sup>37</sup>

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31. See Demjanjuk v. Meese, 784 F.2d 1114, 1116 (D.C. Cir. 1986) (suggesting judicial options to ensure hearing of petition if petitioner entitled to habeas writ); A. Christopher Bryant & Carl Tobias, *Civil Liberties in a Time of Terror: Quirin Revisited*, 2003 WIS. L. REV. 309, 349 (2003) (illustrating expansion of habeas corpus use since 1942). The authors noted that habeas corpus writs are now used to remedy serious errors in the criminal justice system, regardless of whether such errors undermine the committing court's jurisdiction over the offense or the offender. Bryant & Tobias, *supra*, at 349; see also *supra* note 29 (highlighting writ's function over form).

32. 124 S. Ct. 2711 (2004).

33. *Id.* at 2724 (deciding whether Padilla named proper respondent and whether court had jurisdiction over respondent).

34. *Id.* at 2721 (declaring Padilla's detention not unique departure from immediate custodian rule). Justice Stevens' argument centered on Secretary Rumsfeld's actions and how those actions would impact the freedom of United States citizens. *Id.* at 2733; see also Joseph Kubler, Note, *U.S. Citizens as Enemy Combatants; Indication of a Roll-Back of Civil Liberties or a Sign of Our Jurisprudential Evolution?*, 18 ST. JOHN'S J. LEGAL COMMENT. 631, 631 (2004) (stressing United States citizens likely to experience increase in restrictions on personal freedom unlike ever before); Rodriguez, *supra* note 24, at 379 (articulating constitutional protections not afforded to enemy combatants, such as indefinite detention and right to counsel). *But see* 124 S. Ct. at 2732-33 (Stevens, J., dissenting) (disagreeing with majority regarding its characterization of Padilla's detention as ordinary).

35. See 124 S. Ct. at 2719 (observing exceptions apply in limited circumstances); see also *supra* note 23 (summarizing cases where exceptions to immediate custodian rule apply). *But see* Amann, *supra* note 21, at 288 (distinguishing precedents rendered during era of Second World War from holdings concerning war on terrorism); see also Peter Margulies, *Judging Terror in the "Zone of Twilight": Exigency, Institutional Equity, and Procedure After September 11*, 84 B.U. L. REV. 383, 394 (2004) (developing situation post-September 11 where government makes categorical judgments).

36. See 124 S. Ct. at 2722 (examining statutory interpretation and precedent to establish jurisdiction for Padilla's habeas writ); see also *supra* note 25 (reviewing Supreme Court's interpretation of "within their respective jurisdictions"). *But see* 124 S. Ct. at 2733 (Stevens, J., dissenting) (arguing courts should focus individual possessing power to produce prisoner instead of rigid jurisdictional rule).

37. 124 S. Ct. at 2727 (holding SDNY had no jurisdiction over Padilla's claim). The majority reasoned that Padilla's confinement was not unique, and thus lacked any basis for making an exception in his case. *Id.* at 2721-22. *But see id.* at 2732 (Steven, J., dissenting) (pointing to Government's ex parte hearing removing Padilla and exceptional circumstances surrounding his petition); see also Amann, *supra* note 21, at 288 (describing enemy combatants' unique situation).

Although the Court correctly restated section 2241 jurisdiction precedent, it failed to reach the lawfulness of Padilla's detention because it narrowly applied the precedent.<sup>38</sup> Dissenting Justice Stevens accurately identified Secretary Rumsfeld's unique role in Padilla's detention as a basis for the Court to look beyond current precedent and create an exception.<sup>39</sup> Although the dissent acknowledged the immediate custodian rule's application to present physical confinement challenges, the dissent argued that Padilla's detention raised extraordinary constitutional issues that permitted this Court to determine the legality of Padilla's detention.<sup>40</sup> Due to the majority's narrow definition of the issues in this case, it avoided reaching the merits and decided the case on straightforward jurisdictional grounds.<sup>41</sup>

The majority determined there was no reason to stray from precedent and carve out an exception to the immediate custodian rule because Padilla was challenging his present physical confinement and Commander Marr was his immediate custodian.<sup>42</sup> On the other hand, if the dissenters' argument had prevailed, courts, attorneys, and petitioners would experience difficulty determining which forum to litigate particular habeas petitions.<sup>43</sup> Thus, the dissenting opinion departs from existing law by suggesting that the Court create an exception for a factual scenario that readily fits into well-established law.<sup>44</sup>

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38. 124 S. Ct. at 2731-33 (Stevens, J., dissenting) (raising Government's ex parte hearing and effects on Padilla's habeas petition); see *Henderson v. INS*, 157 F.3d 106, 126 (2d Cir. 1998) (analyzing Attorney General as proper respondent because unique situation with immigration matters); see also Rodriguez, *supra* note 24, at 394 (criticizing Government's rationale for invading citizens' rights during war on terror).

39. 124 S. Ct. at 2732 (Stevens, J., dissenting) (condemning majority's view of Padilla's situation as ordinary); see *Henderson v. INS*, 157 F.3d 106, 126-28 (2d Cir. 1998) (summarizing arguments for and against Attorney General as respondent in alien habeas cases); see also *supra* note 29 (cautioning unjust results if habeas jurisdiction applied rigidly).

40. 124 S. Ct. at 2732-33 (Stevens, J., dissenting) (expressing concern at majority's narrow review of issues in Padilla's case); see Rodriguez, *supra* note 24, at 379 (articulating constitutional protections not afforded to enemy combatants). Compare *supra* note 23 (citing cases showing habeas writ's flexibility in unique situations), with *supra* note 25 (listing decisions applying immediate custodian rule). But see *infra* note 42 (opining Padilla's jurisdictional issues not unique).

41. 124 S. Ct. at 2717 (announcing two questions Court will address to resolve Padilla's case). The majority discarded the dissent's allegations that the Government engaged in misconduct when it filed an ex parte hearing, and determined that the allegations lacked any basis whatsoever. *Id.* at 2725-26. But see *id.* at 2732 (Stevens, J., dissenting) (raising Government misconduct allegations with respect to ex parte hearing).

42. 124 S. Ct. at 2721-22 (stressing Padilla's case contains "unique facts" but Padilla's detention not unique to justify exception); see *supra* note 26 and accompanying text (clarifying immediate custodian rule's application).

43. 124 S. Ct. at 2725 (advocating for judicial efficiency and restricting petitioners from forum shopping). Justice Kennedy, in his concurring opinion, agreed that exceptions to the immediate custodian rule and territorial jurisdiction rules only apply during challenges to nonphysical custody. *Id.* at 2729 (Kennedy, J., concurring). But see *supra* note 39 (demonstrating Padilla's case anything but ordinary); see also Margulies, *supra* note 35, at 384-88 (discussing problems caused by courts' deferential approach to national emergencies).

44. 124 S. Ct. at 2726-27 (declaring *Padilla* holding does not deviate from precedent). Justice Rehnquist pointed out that the dissent failed to cite any case law to support its proposition that the majority had deviated from the longstanding immediate custodian and district of confinement rules when dealing with a challenge to present physical confinement. *Id.*

In line with existing law, the Court's opinion reaffirmed the immediate custodian rule in cases where petitioners challenge present physical confinement.<sup>45</sup> The Court's decision not only preserved precedent, but also afforded Congress the opportunity to correct or otherwise change the Court's interpretation of 28 U.S.C. § 2241 jurisdiction if it does not agree with the statute's implementation.<sup>46</sup> As the dissent set forth, this case raised imperative issues for our country and the rights of its citizens.<sup>47</sup> Parties should nevertheless argue these issues in courts with jurisdiction over such claims.<sup>48</sup>

The Supreme Court has faced several new constitutional issues that have arisen from September 11th and the nation's subsequent war on terror. Here, a prisoner's petition raised habeas corpus jurisdictional issues as well as questions concerning the lawfulness of enemy combatants' detention. The Supreme Court avoided determining the legality of the Padilla's detention by denying the SDNY jurisdiction over Padilla's claim. While the Court's opinion seems to reveal its apprehension towards addressing issues concerning enemy combatants, the fact remains that it has only postponed the inevitable and will eventually have to address constitutional issues surrounding the fallout of September 11, 2001.

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45. 124 S. Ct. at 2729 (Kennedy, J., concurring) (deferring question of lawfulness of Padilla's detention to court with proper jurisdiction); *see supra* note 43 (reiterating exception to jurisdiction not applicable here). *But see supra* note 40 (criticizing majority's narrow review of Padilla's situation).

46. 124 S. Ct. at 2725-27 (delineating dissent's argument that habeas jurisdiction properly based on hypothetical situation); *see id.* at 2727 (illustrating Congress made exception for section 2254 petitioners to name warden or chief state penal officer). *But see id.* at 2731 (Stevens, J., dissenting) (arguing if Government notified Newman of Padilla's detention then jurisdiction properly in New York).

47. *See infra* note 48 (illustrating disagreement between dissent and majority's argument regarding issues raised).

48. 124 S. Ct. at 2727 (suggesting cases of inconceivable importance should not permit courts to bend jurisdictional rules). *But see id.* at 2735 (Stevens, J., dissenting) (condemning majority for not recognizing profound importance of issues in this case).