

## Sec. 2—Powers, Duties of the President

## Cl. 1—Commander-In-Chiefship

tory grounds.<sup>227</sup> However, the Court did find that the government may not detain the petitioner indefinitely for purposes of interrogation, and must afford him the opportunity to offer evidence that he is not an enemy combatant.<sup>228</sup>

In *Rasul v. Bush*,<sup>229</sup> the Court rejected an Executive Branch argument that foreign prisoners being held at Guantanamo Bay were outside of federal court jurisdiction. The Court distinguished earlier case law arising during World War II that denied *habeas corpus* petitions from German citizens who had been captured and tried overseas by United States military tribunals.<sup>230</sup> In *Rasul*, the Court noted that the Guantanamo petitioners were not citizens of a country at war with the United States,<sup>231</sup> had not been afforded any form of tribunal, and were being held in a territory over which the United States exercised exclusive jurisdiction and control.<sup>232</sup> In addition, the Court found that statutory grounds existed for the extension of *habeas corpus* to these prisoners.<sup>233</sup>

In response to *Rasul*, Congress amended the *habeas* statute to eliminate all federal *habeas* jurisdiction over detainees, whether its

<sup>227</sup> 542 U.S. 507 (2004). There was no opinion of the Court. Justice O'Connor, joined by Chief Justice Rehnquist, Justice Kennedy and Justice Breyer, avoided ruling on the Executive Branch argument that such detentions could be authorized by its Article II powers alone, and relied instead on the "Authorization for Use of Military Force" passed by Congress. Justice Thomas also found that the Executive Branch had the power to detain the petitioner, although his dissenting opinion found that such detentions were authorized by Article II. Justice Souter, joined by Justice Ginsberg, rejected the argument that the Congress had authorized such detentions, while Justice Scalia, joined with Justice Stevens, denied that such congressional authorization was possible without a suspension of the writ of *habeas corpus*.

<sup>228</sup> At a minimum, the petitioner must be given notice of the asserted factual basis for holding him, must be given a fair chance to rebut that evidence before a neutral decisionmaker, and must be allowed to consult an attorney. 542 U.S. at 533, 539.

<sup>229</sup> 542 U.S. 466 (2004).

<sup>230</sup> *Johnson v. Eisentrager*, 339 U.S. 763, 789 (1950).

<sup>231</sup> The petitioners were Australians and Kuwaitis.

<sup>232</sup> *Rasul v. Bush*, 542 U.S. at 467.

<sup>233</sup> The Court found that 28 U.S.C. § 2241, which had previously been construed to require the presence of a petitioner in a district court's jurisdiction, was now satisfied by the presence of a jailor-custodian. See *Braden v. 30th Judicial Circuit Court*, 410 U.S. 484 (1973). Another "enemy combatant" case, this one involving an American citizen arrested on American soil, was remanded after the Court found that a federal court's *habeas* jurisdiction under 28 U.S.C. § 2241 was limited to jurisdiction over the immediate custodian of a petitioner. *Rumsfeld v. Padilla*, 542 U.S. 426 (2004) (federal court's jurisdiction over Secretary of Defense Rumsfeld not sufficient to satisfy presence requirement under 28 U.S.C. § 2241). In *Munaf v. Geren*, 128 S. Ct. 2207 (2008), the Court held that the federal *habeas* statute, 28 U.S.C. § 2241, applied to American citizens held by the Multinational Force—Iraq, an international coalition force operating in Iraq and composed of 26 different nations, including the United States. The Court concluded that the *habeas* statute extends to American citizens held overseas by American forces operating subject to an American chain of command, even when those forces are acting as part of a multinational coalition.