

No. _____

**In The
Supreme Court of the United States**

CEDRIC STOKES A/K/A ABDUS SALAAM MUHAMMED,
Petitioner,

v.

UNITED STATES PAROLE COMMISSION,
Respondent.

**On Petition for a Writ of Certiorari to the United States Court of Appeals
for the District of Columbia Circuit**

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Does *Rumsfeld v. Padilla*, 124 S. Ct. 2711 (2004), compel immediate-physical-custodian and district-of-confinement rules for habeas forum selection that are both jurisdictional and so rigid as to “overtake” all previously established exceptions including the “sui generis” exception – first endorsed in *Sanders v. Allen*, 100 F.2d 717 (D.C. Cir. 1938) – which had allowed D.C. Code offenders physically housed outside the District’s boundaries to seek habeas relief locally, on the ground that D.C. prisoner habeas claims present distinctive issues with which the District of Columbia bench and bar are uniquely familiar?

This question, in turn, raises two related subquestions that divided the Court in both *Rumsfeld v. Padilla* and *Rasul v. Bush*, 124 S. Ct. 2686 (2004), and which have already divided the lower courts:

- A. What is the analytic basis of the immediate-physical-custodian and district-of-confinement rules: Are these habeas forum-selection rules jurisdictional, strictly limiting the scope of a court’s power to its territorial borders or are these rules venue based and thus amenable to the creation of different default venue rules for special, clearly-defined categories of habeas petitioners, like D.C. Code offenders?
- B. What are the parameters of the exceptions (that every member of this Court agrees exist) to the immediate-physical-custodian and district-of-confinement rules and do these exceptions accommodate the longstanding practice of allowing D.C. prisoners – who are incarcerated outside of the District because the District does not have a local prison – to file § 2241 petitions in D.C. courts?

LIST OF PARTIES

Pursuant to Rule 14.1(b), Petitioner states that, to counsel's knowledge, the following parties have appeared in the D.C. Circuit in this matter:

Cedric Stokes, a/k/a Abdus Salaam Muhammed (Petitioner/Appellant)

United States Parole Commission (Respondent/Appellees)

District of Columbia (Amicus Curiae for Mr. Stokes)

In the United States District Court for the District of Columbia, a copy of the summons and complaint was served on the warden of the Northeast Ohio Correctional Center, the warden of the D.C. contract facility where Mr. Stokes, a D.C. prisoner, was incarcerated at the time he filed his habeas petition.

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PETITION FOR WRIT OF CERTIORARI

The Petitioner, Cedric Stokes, prays that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia Circuit.

OPINIONS BELOW

The United States District Court for the District of Columbia denied on the merits Mr. Stokes' *pro se* Petition for a Writ of Habeas Corpus, which challenged on *ex post facto* grounds the retroactive application of new District of Columbia parole guidelines to D.C. Code offenders, like Mr. Stokes. *Stokes v. U.S. Parole Comm'n*, 00-CV-3075, 2002 WL 193336 (D.D.C. February 4, 2002) (App. 01-03). The United States Court of Appeals for the District of Columbia Circuit initially affirmed on procedural grounds, *Stokes v. U.S. Parole Comm'n*, 40 Fed.Appx. 610, 2002 WL 1610889 (D.C. Cir. July 19, 2002) (App. 04), but, after Mr. Stokes obtained counsel, the court vacated its opinion and granted rehearing. *Stokes v. U.S. Parole Comm'n*, C.A. 01-5432 (D.C. Cir. May 8, 2003) (App. 05). The D.C. Circuit subsequently held that this Court's June 28, 2004, decision in *Rumsfeld v. Padilla*, 124 S. Ct. 2711 (2004), had overruled the longstanding exception for D.C. prisoners – first set forth in *Sanders v. Allen*, 100 F.2d 717 (D.C. Cir. 1938) – to default forum-selection rules, and thus precluded Mr. Stokes from seeking habeas relief in the District of Columbia because he was not physically present in the District at the time he filed his habeas petition. *Stokes v. U.S. Parole Comm'n*, 374 F.3d 1235 (D.C. Cir. 2004) (App. 06-09).

STATEMENT OF JURISDICTION

The judgment of the United States Court of Appeals for the District of Columbia Circuit was entered on July 16, 2004. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1). Pursuant to Sup. Ct. R. 29.4(a), counsel states that service of this petition has

been made on the Solicitor General and the United States Parole Commission.

STATUTORY PROVISIONS INVOLVED

The statutory provisions at issue are 28 U.S.C. §§ 2241-43 (2002), which are attached at App. 10-14.

STATEMENT OF THE CASE

In 1987, Mr. Stokes was convicted of felony violations of the District of Columbia Code, and a judgment of conviction was entered by the Superior Court for the District of Columbia sentencing him to serve a term of years in the custody of the Attorney General of the United States. D.C. Code § 24-201.26 (2001), *formerly*, D.C. Code § 24-425 (1981). Mr. Stokes, like all D.C. felons convicted in the past century, was sent to serve his sentence outside of the physical boundaries of the District of Columbia.¹ The D.C. Department of Corrections (“DCDC”) – the agency responsible at that time for the confinement of sentenced felons like Mr. Stokes – operated the Lorton Prison Complex and the Occoquan Workhouse (both of which were located in Virginia), *see McCall v. Swain*, 510 F.2d 167, 170 n.4 (D.C. Cir. 1975), but it also maintained contracts with facilities in other states to house D.C. felons. Pursuant to such a contract, Mr. Stokes was incarcerated in 2000 at the Northeast Ohio Correctional Facility, a private facility in Youngstown, Ohio run by the Corrections Corporation of America (“CCA”). *See Contract between District of Columbia Department of Corrections and Corrections*

¹ The District of Columbia has not had a prison within its territorial boundaries for more than a hundred years. The Old Capitol Building – which was located at the intersection of First and A Streets in Northeastern D.C. and which was leased by Congress after the British burned down the Capitol in the War of 1812 – was used as a prison during the Civil War for confederate soldiers and spies, as well as people convicted of more mundane criminal offenses. But the prison was closed after the war, and the building was razed in 1932 to make way for the current Supreme Court Building. *See James M. Goode, Capital Losses: A Cultural History of Washington’s Destroyed Buildings* 290-92 (1st ed. 1979) (App. 65-67).

Corporation of America, dated September 9, 1997 (App. 15-22). Under the terms of this contract, the DCDC retained ultimate custody and control over the release of D.C. prisoners, and the Ohio warden had no authority to release Mr. Stokes or any other D.C. prisoner without the approval of District of Columbia authorities. *Id.* at § H.11.1 (providing that “[n]o DCDC inmate shall be removed from the Contractor’s facility, without prior authorization from DCDC”) (App. 20).

In December of 2000, while still at the DCDC contract facility in Ohio, Mr. Stokes filed a *pro se* habeas petition under 28 U.S.C. § 2241 challenging, on *ex post facto* grounds, the retroactive application of new parole rehearing guidelines for D.C. Code offenders.² Although §2241 petitioners are generally required to seek habeas relief in the district of their confinement, longstanding precedent in the D.C. Circuit permitted D.C. prisoner-petitioners, like Mr. Stokes, to seek habeas relief in their home district notwithstanding their incarceration outside the physical boundaries of D.C., so as to afford them of the expertise of local counsel and local courts, *see Sanders v. Allen*, 100 F.2d 717 (D.C. Cir. 1938); *McCall v. Swain*, 510 F.2d 167. In keeping with that precedent, Mr. Stokes filed his *pro se* petition in the United States District Court for the District of Columbia.

After a somewhat tortured procedural history, the District Court ruled against Mr. Stokes on the merits. *Stokes v. U.S. Parole Comm’n*, No. Civ.A.00-3075, 2002 WL

² These guidelines were issued by the United States Parole Commission (“USPC”), which – after the passage of the National Capital Revitalization and Self-Government Improvement Act of 1997 (“D.C. Revitalization Act”), P.L. 105-33, § 11000 – assumed authority over D.C. Code offenders’ parole determinations. *See* D.C. Code § 24-131 (2002). Although the USPC’s guidelines for D.C. prisoners were patterned on the pre-existing guidelines for United States Code Offenders, they differ from these guidelines in some ways, were adopted pursuant to a different process, and are separately codified. *See* 28 C.F.R. 2.70 *et seq.* (2001).

193336 (D.D.C. Feb. 04, 2002) (App. at 01-03). The District Court then granted Mr. Stokes a Certificate of Appealability on the “precise application of the Constitution’s prohibition against *ex post facto* laws to Parole Commission Regulations.” *Id.* at *2 (App. at 02). Without briefing or argument, however, and without appointing counsel for Mr. Stokes, the D.C. Circuit summarily affirmed the dismissal of Mr. Stokes’ *pro se* Petition on the ground that it did not have jurisdiction over the proper respondent to Mr. Stokes’ petition – the warden of the Ohio contract facility where Mr. Stokes was incarcerated, pursuant to DCDC’s contract with the CCA, at the time he filed the petition. *Stokes v. U.S. Parole Comm’n*, 40 Fed.Appx. 610, 611, 2002 WL 1610889, *1 (D.C. Cir. July 19, 2002) (App. at 04).

Mr. Stokes subsequently obtained undersigned counsel and successfully petitioned for rehearing.³ *Stokes v. U.S. Parole Comm’n*, C.A. 01-5432 (D.C. Cir. May 8, 2003) (App. at 05). The question before the panel on rehearing was whether D.C. prisoners convicted of D.C. Code offenses and raising habeas claims intertwined with D.C. law could properly seek habeas relief in the United States District Court for the District of Columbia pursuant to the longstanding exception – recognized in the *Sanders* line of cases – to the immediate-physical-custodian and district-of-confinement forum-selection rules. Citing, among other authority, the D.C. Circuit’s decisions in *Sanders v. Allen* and *McCall*, Mr. Stokes argued that the D.C. Circuit had for decades struck a careful balance between affording a local forum for habeas relief for D.C. prisoners and

³ In the meantime, in an effort to preserve Mr. Stokes’ rights, counsel filed a Petition for a Writ of Certiorari with this Court. This Petition was withdrawn after the D.C. Circuit granted rehearing and vacated its earlier decision. *See Stokes v. U.S. Parole Comm’n*, No. 01-5432, 2002 WL 31368749 (D.C. Cir. Oct. 21, 2002); *Stokes v. U.S. Parole Comm’n*, 539 U.S. 938 (2003).

redirecting habeas petitions by federal prisoner forum-shoppers with no real connection to the District of Columbia. Mr. Stokes further argued that nothing in the habeas statutes precluded this special choice-of-forum rule for D.C. prisoner-petitioners and that this Court's decision in *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484 (1973) had established that choice-of-forum in habeas was a primarily a question of venue. The District of Columbia filed an amicus brief supporting Mr. Stokes' choice-of-forum arguments. *See* Brief for the District of Columbia as Amicus Curiae Supporting Appellant's Position on Jurisdiction but Taking No Position on the Underlying Merits, dated August 27, 2003 (App. 23-60). Argument was held on December 8, 2003.

On July 1, 2004, in the wake of this Court's decisions in *Rumsfeld v. Padilla*, 124 S. Ct. 2711 (2004), and *Rasul v. Bush*, 124 S. Ct. 2686 (2004), Mr. Stokes submitted a letter to the Court of Appeals pursuant to Rule 28(j) of the Federal Rules of Appellate Procedure. *See* 28(j) Letter from Counsel for Mr. Stokes to Mark J. Langer, dated July 1, 2004 (App. 61-64). Mr. Stokes explained in this letter that, *Padilla* and *Rasul* "[r]ead together, particularly in light of Justice Kennedy's concurrence in *Padilla*, . . . support the choice-of-forum analysis put forward by Mr. Stokes." *Id.* at 1 (App. 61). Mr. Stokes also argued that *Padilla* and *Rasul* "provide[d] further support for a ruling" preserving the "well-established exception" to the immediate custodian and district-of-confinement forum-selection rules that had existed "for more than 60 years" in the District of Columbia under the *Sanders* line of cases. *Id.* at 3 (App. 63).

The Circuit drew the opposite conclusion and, on July 16, 2004, it held that the District Court did not have jurisdiction to hear Mr. Stokes' petition and that Mr. Stokes

should have sought habeas relief in Ohio.⁴ *Stokes v. U.S. Parole Comm’n*, No. 374 F.3d 1235 (D.C. Cir. 2004) (App. 06-09). Broadly interpreting the decision in *Padilla* as mandating a strict jurisdictional rule that, without exception, limits a court’s power in habeas to its territorial borders, the Court of Appeals opinion stated that it was compelled to reject the District Court’s conclusion that Mr. Stokes could properly seek habeas relief in his home district. *Id.* at 1238-39 (App. 08-09). In so doing, the Circuit rejected its own longstanding precedent, reaching back 66 years, that had successfully preserved a local habeas forum for D.C. prisoners incarcerated outside of the District while simultaneously protecting the local federal district courts from being overwhelmed by habeas petitions by federal-prisoner forum-shoppers. *Id.* at 1239 (App. 08-09).

Specifically, the Circuit held that this Court in *Padilla* had “unequivocally rejected th[e] theory” that the district court could rely on modern principles of personal jurisdiction and service of process in order to exercise jurisdiction over the warden of the DCDC contract facility where Mr. Stokes had been incarcerated at the time of filing. 374 F.3d at 1239 (App. 08-09). Instead the Circuit held that under *Padilla* it was now clear that “a district court may not entertain a habeas petition involving present physical custody unless the respondent custodian is within its territorial jurisdiction,” and that any prior decisions by the Circuit suggesting otherwise had been “overtaken” by *Padilla*. *Id.* Similarly, with respect to the argument that Mr. Stokes was not restricted to naming the

⁴ By this time, Mr. Stokes was no longer at the Ohio contract facility. With the passage of the D.C. Revitalization Act in 1997, the responsibility for housing D.C. felons was transferred from DCDC to the Federal Bureau of Prisons; this transfer was completed by December 2001. *See* D.C. Code § 24-101 (2003). Mr. Stokes was initially moved to the Federal Correctional Institution in Memphis, Tennessee. *Stokes v. U.S. Parole Comm’n*, No. 00-CV-3075 (D.C. Cir, Oct. 9, 2001); at the time of the D.C. Circuit’s opinion, Mr. Stokes was incarcerated at a federal prison facility in South Carolina. *See* 374 F.3d at 1237 (App. 07).

warden of the Ohio contract facility where he was incarcerated as the sole respondent to his petition, the D.C. Circuit stated that “[i]f this theory was once viable, it clearly is not after *Padilla*.” 374 F.3d at 1238 (App. 08).

Having determined that the forum-selection rules for § 2241 petitions were inviolable, jurisdictional rules, the Court of Appeals did not assess whether its long-standing exception for D.C. prisoner-petitioners might be one of the “established” exceptions, acknowledged by this Court in *Padilla*, to the default immediate-physical-custodian and district-of-confinement rules. Indeed, the Circuit made no mention of the policy considerations underlying its time-honored, but now repudiated, special exception for D.C. prisoner-petitioners to default forum-selection rules – namely, the recognition that the § 2241 petitions filed by D.C. prisoners regularly raise issues intertwined with D.C. facts and law with which the local bench and bar are uniquely familiar. The lower court also did not acknowledge the legal analysis in the *Padilla* decision that militated in favor of preserving the special choice-of-forum exception for D.C. prisoners, and it did not make any reference to this Court’s decision in *Rasul* – in which the Court endorsed the application of one such exception to default forum-selection rules.⁵

Because Mr. Stokes had already once sought rehearing by the D.C. Circuit, and because the D.C. Circuit had indicated that it believed the decision in *Padilla* to pose an absolute bar to the continued invocation of the special choice-of-forum exception for

⁵ The Circuit noted that, even if D.C. were the proper forum for consideration of Mr. Stokes’ habeas petition, his *ex post facto* claim would fail on the merits under the Circuit’s recent decision in *Fletcher v. District of Columbia*, C.A. 02-5228, 370 F.3d 1223 (D.C. Cir. 2004). 374 F.3d at 1237 n.* (App. 09). A petition for rehearing in *Fletcher* is pending, however; this petition challenges the Circuit’s summary conclusion that parole guidelines are not “laws” for *ex post facto* purposes and questions its failure to apply the controlling precedent – *Garner v. Jones*, 529 U.S. 244 (2000) and *Blair-Bey v. Quick*, 159 F.3d 591, 592 (D.C. Cir. 1998).

D.C. prisoner-petitioners, Mr. Stokes did not seek rehearing by the Circuit en banc. Instead, Mr. Stokes filed a Motion to Stay the Mandate in the Circuit so that he could seek this Court's review of the substantial forum-selection issues raised in his case. The Circuit granted this motion on August 12, 2004. *See Stokes v. U.S. Parole Comm'n*, C.A. 01-5432 (D.C. Cir. August 12, 2004).⁶ This timely petition for certiorari followed.

REASONS FOR GRANTING THE WRIT

Adopting the most restrictive interpretation of the divided opinions in *Rumsfeld v. Padilla*, 124 S. Ct. 2711 (2004) – i.e., as an endorsement of inviolable, jurisdictional forum-selection rules for habeas petitions filed under 28 U.S.C. § 2241 – the court below held that it was constrained to abandon a sensible, established exception to the default immediate-physical-custodian and district-of-confinement rules that had permitted D.C. Code offenders incarcerated outside of the territorial boundaries of the District of Columbia to seek habeas relief in D.C., *see Sanders v. Allen*, 100 F.2d 717 (D.C. Cir. 1938); *McCall v. Swain*, 510 F.2d 167 (D.C. Cir. 1975), and that had been regularly employed by federal courts in the District.⁷ An examination of the majority and concurring opinions in *Padilla*, and the Court's contemporaneous decision in *Rasul v.*

⁶ After staying the mandate, the lower court, pending this Court's review of Mr. Stokes' case, also stayed proceedings in two cases presenting similar forum-selection issues related to D.C. prisoner-petitioners' effort to seek habeas relief in the District of Columbia. *See Garner v. Gaines*, CA 03-5921 (D.C. Cir. Aug. 11, 2004); *McKinney v. U.S. Parole Comm'n*, C.A. 04-5027 (D.C. Cir. Aug. 11, 2004).

⁷ *See, e.g., Cole v. Harrison*, 00-CV-1492, 271 F. Supp. 2d 51 (D.D.C. 2002) (reviewing on the merits habeas petition by D.C. prisoner, who according to the docket, was incarcerated in North Carolina at the time of filing and in Virginia at the time of the decision); *Barnard v. Poteat*, 00-CV-2816, 271 F. Supp. 2d 49 (D.D.C. 2002) (reviewing on the merits habeas petition by D.C. prisoner, who according to the docket, was incarcerated in Pennsylvania at the time of filing); *Allston v. Gaines*, 00-CV-2915, 158 F. Supp. 2d 76 (D.D.C. 2001) (reviewing on the merits habeas petition by D.C. prisoner, who according to the docket, was incarcerated at the Lorton Prison Complex in Virginia).

Bush, 124 S. Ct. 2686 (2004), reveals, however, that this extreme outcome was far from compelled, and that, in fact, these decisions leave open two questions, the resolution of which is a prerequisite to any reasoned assessment of the continued viability of the special *Sanders* exception for D.C. prisoner-petitioners. Specifically, the Court has yet to (1) identify the analytic basis for the immediate-physical-custodian and district-of-confinement default forum-selection rules for § 2241 petitions endorsed in *Padilla*, and (2) define the parameters of the narrow exceptions – one of which was applied in *Rasul* and the existence of which was affirmed by all members of this Court in *Padilla* – to these choice-of-forum rules. These important questions are already dividing the lower courts and have produced unpredictable results far removed from the distinctive “enemy combatant” context in which *Padilla* and *Rasul* arose. The decision below illustrates that leaving these questions open can seriously impede orderly habeas litigation in the lower courts and result in this Court’s decisions having unintended consequences.

The lower court’s broad interpretation of *Padilla* as an inflexible, jurisdictional rule – an interpretation that compelled the rejection of the time-honored exception affording D.C. Code offenders a home forum for habeas relief while turning away federal prisoner forum shoppers with no comparable connection to the District – conflicts with decisions of other federal courts, which have concluded, particularly in light of the result in *Rasul*, that *Padilla* endorses a venue-based choice-of-forum analysis in habeas. *See Hamdi v. Rumsfeld*, 378 F.3d 426 (4th Cir. 2004); *Gherebi v. Bush*, 374 F.3d 727 (9th Cir. 2004); *Batista-Taveras v. Ashcroft*, No. 03-1968, 2004 WL 2149095 (S.D.N.Y. Sept. 23, 2004); *Garcia-Rivas v. Ashcroft*, No. 04-292, 2004 WL 1534156 (S.D.N.Y. July 7,

2004).⁸ In addition, the D.C. Circuit’s reading of *Padilla* as creating an inviolable, jurisdictional rule – a reading that does not make sense as a matter of judicial economy – appears to reach a result that this Court never intended. In fact, every Justice on the Court expressly acknowledged in *Padilla* that the default forum-selection rules in habeas were subject to exception,⁹ and the Court in *Rasul* (a decision that the Circuit ignored in its entirety) found that such an exception was warranted in that case. 124 S. Ct. 2686 (§ 2241 petitions filed by Guantanamo Bay detainees in United States District Court for the District of Columbia and naming President Bush as the respondent not subject to default immediate-physical-custodian and district-of-confinement rules; case remanded for consideration of the merits).¹⁰

This Court’s corrective intervention is needed; unless this Court clarifies both the analytic bases of the default forum-selection rules for §2241 petitions and the parameters of the universally acknowledged exceptions to those rules, *Padilla* will continue to be misread as effectively abolishing sensible, time-tested exceptions to the immediate-

⁸ Other courts – several reviewing *pro se* petitions, *see, e.g., Persaud v. Bureau of Immigration and Customs*, No. 04-282, 2004 WL 1936213 (E.D.N.Y. Aug. 31, 2004) – appear to agree with the D.C. Circuit that the default choice-of-forum rules in habeas are strict jurisdictional rules either not subject to any exceptions, or only subject to the exceptions set forth in 28 U.S.C. § 2241(d) and 28 U.S.C. § 2255. *See, e.g., Kahn v. Ashcroft*, No. 04-3386, 2004 WL 1888749, *1 (E.D.N.Y. Aug. 23, 2004). But these decisions, like the decision below, do not account for *Rasul*.

⁹ *Padilla*, 124 S. Ct. at 2718 (noting that no “recognized” exception applies); *Id.* at 2728 (Kennedy, J., concurring) (noting that in *Padilla* “there is no established exception to the immediate custodian rule or to the rule that the action must be brought in the district with authority over the territory in question”); *Id.* at 2731 (Stevens, J., dissenting) (noting that “all members of this Court agree” that “special circumstances can justify exceptions from the general rule”).

¹⁰ The Circuit’s determination that the *Sanders* exception could not survive *Padilla* did not acknowledge the portions of the *Padilla* opinion referencing the existence of exceptions to the default rule, *see n.9 supra*, and did not refer to the application of one such exception in *Rasul*.

physical-custodian and district-of-confinement rules, like the exception abolished by the lower court here. Mr. Stokes’ case presents a timely, suitable vehicle for providing needed clarification of the law, in a context that is of extreme importance to D.C. prisoners, almost all of whom serve their sentences outside of the territorial boundaries of the District of Columbia. The Court should grant the petition. *See* Sup. Ct. R. 10(a) and (c).

A. This Court should grant the Petition to resolve whether the default immediate-physical-custodian and district-of-confinement rules for habeas petitions filed under 28 U.S.C. § 2241, which generally require petitioners to seek habeas relief in the district of their confinement, are jurisdictional or venue-based rules.

This Court has yet to issue a definitive explanation of the analytic basis of the default forum-selection rules in habeas. As Justice Kennedy explained in his concurring opinion, the Court in *Padilla* had no need to identify the analytical basis for immediate-physical-custodian and district-of-confinement rules because “even under the most permissive interpretation of the habeas statute as a venue provision, the Southern District of New York was not the proper place for this petition.” 124 S. Ct. at 2728. Nonetheless, some language from the majority opinion in *Padilla*, relied on by the court below, can be read as suggesting that that the immediate-physical-custodian and district-of-confinement rules that apply to habeas petitions brought under 28 U.S.C. § 2241 are a function of unusual (in this day and age) territorial limitations on a federal court’s personal jurisdiction – *i.e.*, its power over the litigants in the case.¹¹ By contrast, Justice

¹¹ The majority acknowledged that these supposed territorial limitations applied only to the federal district courts’ personal jurisdiction, not its subject matter jurisdiction, *see Padilla*, 124 S. Ct. at 2717 at n.7, and the balance of the Court likewise did not perceive any bar to subject matter jurisdiction in that case, *see id.* at 2727 (Kennedy, J., concurring) (“These [choice-of-forum] rules, however, are not jurisdictional in the sense

Kennedy’s concurrence in *Padilla* and the majority opinion in *Rasul* seem to disavow any rigid territorial restriction on a federal district court’s power to act when reviewing § 2241 petitions, thus rendering choice-of-forum analysis in habeas essentially a question of proper venue. Justice Kennedy explained in his concurrence that the statutory phrase “respective jurisdictions” “does not of necessity establish that the limitation goes to the power of the court to hear the case.” 124 S. Ct. at 2728. The majority in *Rasul* went further and reaffirmed that (1) “a district court acts ‘within [its] respective jurisdiction’ within the meaning of § 2241 as long as ‘the custodian can be reached by service of process,’” 124 S. Ct. at 2695 (citing *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 494-95 (1973)), and (2) “the location of a collateral attack is best understood as a matter of venue.” *Id.* at n.9 (quotations and citation omitted). The Court accordingly found no jurisdictional bar to the review by the United States District Court for the District of Columbia of habeas petitions filed by detainees held at a U.S. military base in Guantanamo Bay, Cuba.¹² *Id.* at 2699.

Although *Padilla* and *Rasul* were issued on the same day, neither of the majority opinions offered any guidance as to how to reconcile their seemingly dissimilar choice-of-forum analyses. Nor did the Court provide any specific direction as to how the *Padilla* majority’s potentially more rigid construction of § 2241 can be squared with *Rasul*’s

of a limitation on the subject matter jurisdiction.”); *id.* at 2734 (Stevens, J., dissenting) (“It bears emphasis that the question of proper forum to determine the legality of *Padilla*’s incarceration is not one of federal subject-matter jurisdiction”). Thus, although the analytic basis of choice-of-forum analysis is subject to dispute, all members of the Court agree that the subject matter jurisdiction of the habeas courts is not implicated.

¹² Further confusion about the analytic basis of the default single-respondent-immediate-physical-custodian rule discussed in *Padilla* is generated by the fact that, although the named respondent in *Rasul* was President Bush, the Court in *Rasul* stated that “[n]o party questions the District Court’s jurisdiction over petitioner’s custodians.” 124 S. Ct. at 2696.

reaffirmation of the Court's holding in *Braden* that forum selection in habeas is a question of proper venue and not a product of any arbitrary territorial limits on a federal district court's power under 28 U.S.C. § 2241.

As a result, there is already a growing Circuit split regarding how to interpret the *Padilla* and *Rasul* opinions and how to determine proper choice-of-forum in § 2241 cases. The D.C. Circuit attempted to resolve the ambiguities raised by *Padilla* and *Rasul* by disregarding *Rasul* entirely and interpreting *Padilla* as endorsing a strict jurisdictional rule that limits a federal habeas court's power over litigants to its territorial boundaries and that does not tolerate exceptions or even waiver. 373 F.3d at 1238-39. This opinion stands in direct contrast to the Ninth Circuit's interpretation of *Padilla* and *Rasul* as cases endorsing a venue-based choice-of-forum analysis. *See Gherebi*, 374 F.3d 727. In *Gherebi*, the Ninth Circuit reviewed habeas petitions by two detainees held at the U.S. military base in Guantanamo Bay Cuba. The Circuit "d[id] not read either *Padilla* or *Rasul* as precluding us from exercising jurisdiction in this matter." *Id.* at 739. The Circuit then held, however, that "the proper venue for this proceeding is in the District of Columbia." *Id.* Similarly, the Fourth Circuit has suggested that it too reads *Padilla* as endorsing a venue-based choice-of-forum analysis. *See Hamdi*, 378 F.3d at 426 ("In light of the Court's holding in *Rumsfeld v. Padilla*, . . . 124 S. Ct. 2711 . . . we note that any motion with respect to the issue of venue may be addressed to the district court."). Thus far, at least two United States District Court judges have also read the *Padilla* and *Rasul* decisions in this way. *See Batista-Taveras*, 2004 WL 2149095 at *6 (noting that proper forum is a question of venue and citing *Padilla*); *Garcia-Rivas v. Ashcroft*, 2004 WL 1534156 at *2 n.4 ("the majority of the justices held that the issue in *Padilla* was not

whether the Southern District of New York had jurisdiction over the petition (which presumably it did) but whether . . . venue was appropriate”).

Further clarification from this Court is needed. If the immediate-physical-custodian and district-of-confinement default rules are venue based, it appears likely that the anomalous situation of D.C. prisoner-petitioners justifies a departure from the otherwise strong presumption that the habeas petitioner must file in the district of confinement and name his immediate physical custodian as the respondent. Accordingly, Mr. Stokes would not be jurisdictionally barred from seeking habeas relief in the District of Columbia, and the lower court would not have to discard its longstanding *Sanders* exception for D.C. prisoner-petitioners. *See McCall*, 510 F.2d at 177 (special exception for D.C. prisoners is compelled by “traditional venue considerations”). At least three strong arguments can be made for why this Court should hold that the immediate-physical-custodian and district-of-confinement rules are venue rules, not rules that restrict a habeas court’s personal jurisdiction.

First, the habeas statutes themselves, as interpreted by the Court in *Padilla*, support a conclusion that the default choice-of-forum rules for § 2241 petitions are venue based. As the *Padilla* majority held, the statutory language “indicates,” but does not explicitly require in every case, that there is a single proper respondent to a habeas petition.¹³ 124 S. Ct. at 2717; *id.* at 2719 n.9 (acknowledging exceptions). Likewise, as

¹³ As the *Padilla* majority observed, the single-proper-respondent-immediate-physical-custodian rule was derived from the singular reference to “the person” who has custody of the petitioner in both 28 U.S.C. § 2242 (requiring habeas petitioner to state “the facts concerning the applicant’s commitment or detention, the name of the person who has custody over him and by virtue of what claim or authority, if known”) and 28 U.S.C. § 2243 (requiring habeas court to direct the writ “to the person having custody of the person detained”). *See* 124 S. Ct. at 2717. But the *Padilla* majority did not hold that the

the *Padilla* majority held, the statutory language “confirms the general rule,” but does not require in every case, that a district court’s discretion to hear these petitions is limited to the territorial boundaries of the court’s district.¹⁴ *Id.* at 2723; *id.* at 2719 n.9 (acknowledging exceptions). In short, the habeas statutes clearly informed the creation of the default habeas choice-of-forum rules, but – as in so many other cases where Congress and the Courts have worked in tandem to create functional rules for the administration of habeas cases, *see McCleskey v. Zant*, 499 U.S. 467, 489 (1991) (discussing the “complex and evolving body of equitable principles [in habeas] informed and controlled by historical usage, statutory developments, and judicial decisions”) – also allowed for the creation of exceptions to the default rules.¹⁵ *See Padilla*, 124 S. Ct. at 2728 (Kennedy, J., concurring) (“forum location rules for habeas petitioners are based on the habeas statutes and the cases interpreting them”).

Second, this Court’s precedent strongly suggests that default forum-selection rules in habeas are venue based. More than thirty years ago, this Court in *Braden* endorsed the

statute strictly required adherence to the immediate-physical-custodian rule in every case, and, indeed, 1 U.S.C. § 1, which provides that “words importing the singular include and apply to several persons, parties or things,” would have precluded such an interpretation of the habeas statutes.

¹⁴ As the *Padilla* majority noted, the statute authorizes a federal district court to issue a writ “within its respective jurisdiction.” 28 U.S.C. § 2241(a). Jurisdiction was once understood to be territorially bounded, *but see International Shoe Co. v. Washington*, 326 U.S. 310 (1945), but the *Padilla* majority did not hold that § 2241 limited a federal district court’s power in every case to its territorially boundaries, nor could it have given the Court’s contemporaneous decision in *Rasul*.

¹⁵ The very existence of these exceptions, *see* n.9, *supra*, of course, only reinforces the character of these choice-of-forum rules as rules of venue not jurisdiction. *See Ahrens v. Clark*, 335 U.S. 188, 209 (1948) (Rutledge, J. dissenting) (observing that exceptions to jurisdictional choice-of-forum rules should not be possible “if the absence of the body detained from the territorial jurisdiction of the jailer creates a total and irremediable void in the Court’s capacity to act, what lawyers call jurisdiction in the fundamental sense”).

use of “traditional principles of venue” to determine the proper choice-of-forum in all habeas cases and rejected the use of the “inflexible jurisdictional rule,” previously endorsed by the Court in *Ahrens v. Clark*, 335 U.S. 188 (1948). *Braden*, 410 U.S. at 500.¹⁶ The six members of the *Rasul* majority reaffirmed the *Braden* Court’s determination that choice-of-forum in habeas is a function of venue, not arbitrary territorial limits on a district court’s power to act. 124 S. Ct. at 2695; *see also id.* at n.9. Even this Court’s decision in *Padilla* can be read as an endorsement by the majority of the Court of a venue-based choice-of-forum analysis. The concurrence in *Padilla*, authored by Justice Kennedy and joined by Justice O’Connor (who were in the majority in *Rasul*), clearly distanced itself from the jurisdictionally-infused analysis of the majority, and expressly left open “the precise question of how best to characterize the statutory direction respecting where the action must be filed.” 124 S. Ct. at 2728 (Kennedy, J., concurring). Indeed, the *Padilla* concurrence ultimately analyzed the case in venue terms, concluding that “even under the most permissive interpretation of the habeas statute as a venue provision, the Southern District of New York was not the proper place for this petition.” *Id.*

Third, a determination that default forum-selection rules in habeas are venue based would further the practical administration of habeas cases. Inflexible jurisdictional choice-of-forum rules based on territorial boundaries lead to illogical and unfair results – as demonstrated in this case. The default forum-selection rules endorsed in *Padilla*, which require, as a general matter, a habeas petitioner to seek relief in the district of his

¹⁶ *See Rasul*, 124 S. Ct. at 2695 n.9 (confirming that *Braden* overruled *Ahrens*); *Braden*, 410 U.S. at 502 (Rehnquist, J., dissenting) (“Today, the Court overrules *Ahrens v. Clark*”).

confinement, are obviously necessary to prevent forum shopping. But more than six decades ago, the D.C. Circuit both reaffirmed the importance of preventing forum shopping and recognized that it was necessary and feasible to create a local habeas forum for D.C. Code offenders. *Sanders v. Allen*, 100 F.2d at 719; *see also Sanders v. Bennett*, 148 F.2d 19, 20 (D.C. Cir. 1945). In this small group of distinctive cases, the Circuit determined that concerns about forum shopping were minimal and were far outweighed by concerns about judicial economy and fairness. *See Sanders v. Bennett*, 148 F.2d at 20 (special exception for D.C. prisoners is “based on common-sense administration of justice”). D.C. is today, as it was more than a half century ago, still the most convenient, efficient, and fair forum for habeas relief for these distinctively situated § 2241 petitioners. The habeas claims of D.C. prisoner-petitioners frequently present issues intertwined with facts and law with which the District of Columbia bench and bar are uniquely familiar. Similarly, records, witnesses, and counsel are frequently all located in D.C. In light of all of these considerations, forcing D.C. prisoners to seek habeas relief outside of the District would effectively compromise their access to the writ. In recognition of this fact, the District of Columbia government filed an amicus brief in support of Mr. Stokes’ in the Circuit below in an effort to preserve the rights of its citizens.¹⁷

¹⁷ It is hard to see why, as a purely practical matter, the United States has continued to demand abolition of the *Sanders* exception. Although there are United States Attorney’s Offices available to represent the government’s interests any particular district, the District of Columbia office is obviously the only one with any expertise on issues of local District of Columbia law. Indeed, this reality was highlighted in the argument of this case before the D.C. Circuit, when the government acknowledged that, if habeas cases involving D.C. prisoners were transferred to other districts, Assistant United States Attorneys in Washington would, because of their expertise in litigating these issues,

In sum, this Court must clarify the analytic basis of default forum-selection rules. Moreover, if the Court concludes that these rules are venue based, reversal of the lower court's decision will likely be required.

B. This Court should also grant the Petition to clarify the parameters of the universally acknowledged exceptions to the immediate-physical-custodian and district-of-confinement rules.

In addition to providing the Court with an opportunity to clarify whether the forum-selection principles discussed in *Padilla* are jurisdictional rules or venue rules, granting review in Mr. Stokes' case will also allow the Court to provide much needed guidance on whether and when a particular class of habeas cases falls within an exception to the immediate-physical-custodian and district-of-confinement forum-selection rules. *Padilla* and *Rasul* both endorsed the continued existence of exceptions to the immediate-physical-custodian and district-of-confinement rules: Every opinion in *Padilla* – the majority, the concurrence and the dissent – agreed that the immediate-physical-custodian and district-of-confinement rules are subject to “recognized” and “established” exceptions, *see* n.9 *supra*, and *Rasul* applied one of these exceptions in holding that § 2241 permits a habeas petitioner to seek relief in a federal court physically located thousands of miles away from his place of confinement. 124 S. Ct. at 2699.

Despite *Rasul*'s and *Padilla*'s acknowledgement of exceptions to the immediate-physical-custodian and district-of-confinement rules, and despite a post-*Padilla* and *Rasul* submission from Mr. Stokes seeking to have the Court of Appeals invoke the “established” exception that has long existed for D.C. prisoners, the D.C. Circuit seemed

likely continue to participate in the litigation in whatever judicial district the petition was heard.

to read *Padilla* as “overtaking” all such exceptions. 374 F.3d at 1238-39 (App. 08-09).¹⁸ Thus, without any meaningful analysis of whether the *Sanders* line of cases might fall within one of the established exceptions recognized by *Padilla*, and without taking this Court’s decision in *Rasul* into account at all, the D.C. Circuit simply concluded that the *Sanders* line of cases was “inconsistent with the Supreme Court’s recent decision in *Padilla* and ha[d] thus been overruled.” *Id.* at 1239 n.* (App. 09). The fact that *Padilla* is susceptible to such a reading highlights the need for this Court to reaffirm, on the most basic level, that some exceptions to the immediate-physical-custodian and district-of-confinement rules survive *Padilla*. Furthermore, the fractured decisions in *Padilla* and the apparent confusion as to the relationship between *Padilla* and *Rasul* illustrate that substantial additional guidance is needed on the parameters of these exceptions.

The opinions in *Padilla* provide several clues about what this guidance should look like. First, all of the opinions in *Padilla* suggest that any exception to the general habeas forum-selection rules must be narrowly cabined in a way that deters forum shopping by habeas petitioners. Thus, even if the Court ultimately determines that the immediate-physical-custodian and district-of-confinement rules are venue rules of some sort, “[t]his does not mean that habeas petitions [will be] governed by venue rules and venue considerations that apply to other sorts of civil lawsuits.” *Padilla*, 124 S. Ct. at 2728 (Kennedy, J., concurring). Instead, as Justice Stevens made clear in his dissent, “[a]ll members of this Court agree that the immediate custodian rule should control in the ordinary case and that habeas petitioners should not be permitted to engage in forum shopping.” *Id.* at 2731 (Stevens, J., dissenting); *see also id.* at 2725 (majority opinion)

¹⁸ As noted above, the lower court did not cite to *Rasul* in its decision.

(primary purpose of habeas forum-selection rules is to prevent “rampant forum shopping”).

Second, the multiple opinions in *Padilla* suggest that any “exceptions” to the general habeas forum-selection rules will likely need to find some historical or traditional basis in habeas corpus doctrine. Both the majority opinion in *Padilla* and the concurrence placed great weight on the fact that Mr. Padilla could not articulate any historical exception to the immediate-physical-custodian or district-of-confinement rules that would have allowed him to file his petition in the Southern District of New York. 124 S. Ct. at 2718 (relying on absence of “recognized or proposed” exception to the immediate custodian rule); *Id.* at 2728 (relying on absence of “established” exception) (Kennedy, J., concurring). Thus, it seems probable that the nature and scope of “exceptions” to the immediate-physical-custodian and district-of-confinement rules cannot be determined in a vacuum but must, like most habeas doctrines, be determined with reference to the “complex and evolving body of equitable principles informed and controlled by historical usage, statutory developments, and judicial decisions.” *See McCleskey*, 499 U.S. at 489; *see also Padilla*, 124 S. Ct. at 2728 (Kennedy, J., concurring) (“forum location rules for habeas petitioners are based on the habeas statutes and the cases interpreting them.”).

Third, the majority and concurring opinions in *Padilla* strongly suggest that any exceptions to the general forum-selection rules cannot be determined on an *ad hoc* basis but rather may only be established for particular classes of distinctive habeas cases. Thus, the majority opinion in *Padilla* rejected any forum-selection rule that would “consign” the district courts to “making *ad hoc* determinations as to whether the

circumstances of a given case are ‘exceptional,’ ‘special’ or ‘unusual’ enough to require departure from the jurisdictional rules this Court has consistently applied.” 124 S. Ct. at 2727. Similarly, the concurring opinion stressed the need for confining any forum-selection exceptions to clearly-defined classes of cases such as “non-physical custody,” “dual custody, and “removal of the prisoner from the territory of a district after a petition has been filed.” *Id.* at 2729.

Fourth, *Padilla* suggests that new exceptions to the general forum-selection rules may also be justified by concerns about compromising fairness and/or judicial efficiency in a class of particular cases. 124 S. Ct. at 2728 (Kennedy, J., concurring) (acknowledging the “need to consider some further exception to protect the integrity of the writ or the rights of the person detained”). For example, the concurrence in *Padilla* proposed an exception to the default rule that a § 2241 petitioner be required to file in the district of confinement, if the government is acting in such a way as “to make it difficult for [the petitioner’s] lawyer to know where the habeas petition should be filed,” because the government is withholding information about the petitioner’s whereabouts or is keeping the petitioner in transit. *Id.* at 2729; *see also id.* at 2718 n.7 (majority acknowledges possibility of exception for alien detainees).

The D.C. Circuit’s failure to encompass any of these principles in its analysis demonstrates both why additional guidance on this issue is imperative and why, if such guidance is provided, Mr. Stokes is likely to prevail. The *Sanders* exception seems to meet all of the criteria identified by the *Padilla* opinion as necessary to the continued viability of an exception to the general habeas forum-selection rules. For example, the *Sanders* exception is a simple one that was designed precisely to avoid the sort of forum

shopping concerns that seemed to animate the decision in *Padilla* – the exception not only directs D.C. prisoners to file their claims in a single United States District Court but also expressly forbids United States Code Offenders from flooding the D.C. Courts on the basis of this exception. *See Sanders v. Allen*, 100 F.2d at 719 (expressly noting that special exception for D.C. prisoners exists because their circumstances are “sui generis and . . . in no way analogous” those of U.S. Code offenders); *see also Sanders v. Bennett*, 148 F.2d at 19 (application of special exception for D.C. prisoners to federal prisoners generally would be “without justification in convenience or logic”). The *Sanders* exception similarly applies only to a small, easily-identifiable class of petitioners whose cases are most efficiently resolved in the only forum that possesses a bench and bar with the sort of local law expertise required to effectively litigated cases brought by D.C. Code offenders.¹⁹ And, perhaps most importantly, the *Sanders* exception is both “recognized” and “established,” having been first endorsed by the D.C. Circuit more than six decades ago. *See Padilla*, 124 S. Ct. at 2718, 2728.

The lower court’s failure to consider any of these factors resulted in the abolition of a sensible, time-tested exception to the immediate-physical-custodian and district-of-confinement rules – an exception that had been reaffirmed by the Circuit, *see McCall*, 510 F.2d at 176-77, and that was regularly employed at the District Court level. *See n.7 supra*. This ruling is likely to be of substantial significance for D.C. prisoners who,

¹⁹ This established exception has few analogues, but it is most similar to the one created by the Third Circuit for habeas petitioners convicted in United States territories, like the Virgin Islands. Prior to this Court’s decision in *Padilla* and *Rasul*, the Third Circuit held, relying on *Braden*, that habeas petitioners convicted under the Virgin Islands Code provisions could seek habeas relief in the United States District Court for the Virgin Islands, notwithstanding the fact that they were incarcerated in BOP facilities. *See Callwood v. Enos*, 230 F.3d 627, 633 n.6 (3rd Cir. 2000).

unlike most state prisoners,²⁰ serve their sentences extraterritorially in BOP facilities (or private facilities with which BOP has a contract) all across the country. Because such a ruling is fundamentally inconsistent with the decisions in *Padilla* and *Rasul*, and because the Circuit's ruling highlights the need to clarify the parameters of the exceptions to the immediate-physical-custodian and district-of-confinement rules, the Court should grant the Petition.

CONCLUSION

For the reasons set forth above, Petitioner respectfully requests that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia Circuit.

Respectfully submitted,

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²⁰ State prisoners who are incarcerated outside their home state are still assured a home forum for habeas relief because 28 U.S.C. § 2241(d) expressly authorizes them to seek habeas relief in the district in which the state court of conviction is located.