Office of the Deputy Assistant Attorney General

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MEMORANDUM FOR WILLIAM J. HAYNES, II
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FROM: Patrick F. Philbin
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RE: *Possible Habeas Jurisdiction over Aliens Held in Guantanamo Bay, Cuba*

This memorandum addresses the question whether a federal district court would properly have jurisdiction to entertain a petition for a writ of habeas corpus filed on behalf of an alien detained at the U.S. naval base at Guantanamo Bay, Cuba ("GBC"). This question has arisen because of proposals to detain al Qaeda and Taliban members at GBC pending possible trial by military commission. If a federal district court were to take jurisdiction over a habeas petition, it could review the constitutionality of the detention and the use of a military commission, the application of certain treaty provisions, and perhaps even the legal status of al Qaeda and Taliban members.

We conclude that the great weight of legal authority indicates that a federal district court could not properly exercise habeas jurisdiction over an alien detained at GBC. Nonetheless, we cannot say with absolute certainty that any such petition would be dismissed for lack of jurisdiction. A detainee could make a non-frivolous argument that jurisdiction does exist over aliens detained at GBC, and we have found no decisions that clearly foreclose the existence of habeas jurisdiction there. On the other hand, it does not appear that any federal court has allowed a habeas petition to proceed from GBC, either. While we believe that the correct answer is that federal courts lack jurisdiction over habeas petitions filed by alien detainees held outside the sovereign territory of the United States, there remains some litigation risk that a district court might reach the opposite result.

I.

The basis for denying jurisdiction to entertain a habeas petition filed by an alien held at GBC rests on *Johnson v. Eisentrager*, 339 U.S. 763 (1950). In that case, the Supreme Court held that federal courts did not have authority to entertain an application for habeas relief filed by an enemy alien who had been seized and held at all relevant times outside the territory of the United

States. *See id.* at 768-78. *Eisentrager* involved several German soldiers who had continued to aid the Japanese in China after Germany had surrendered in April 1945. They were seized, tried by military commission in Nanking, China and subsequently imprisoned in Germany. From there, they filed an application for habeas corpus in the District Court for the District of Columbia, naming as respondents the Secretary of Defense, Secretary of the Army, and the Joint Chiefs of Staff. *Id.* at 766-67. The Court concluded that the federal courts were without power to grant habeas relief because the plaintiffs were beyond the territorial sovereignty of the United States and outside the territorial jurisdiction of any U.S. court. As the Court explained:

> 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.

Id. at 777-78.[1]

The Court seemed to acknowledge tacitly that the habeas application could fall within the literal terms of the federal statute defining the power of federal courts to grant habeas corpus relief. Then, as now, the statute did not expressly restrict the jurisdiction of courts to issue the writ solely to situations where a prisoner was held within the territorial jurisdiction of the court. Instead, the statute states simply that courts may grant the writ "within their respective jurisdictions." *See* 28 U.S.C. § 2241 (1994) ("Writs of habeas corpus may be granted by the Supreme Court, any justice thereof, the district courts and any circuit judge within their respective jurisdictions."). It has been held sufficient for jurisdiction to grant the writ if a person with authority over the custody of the prisoner is within the jurisdiction of the court.[2] The Supreme Court assumed that, "while [the] prisoners are in immediate physical custody of an officer or officers not parties to the proceeding, respondents named in the petition have lawful authority to effect their release." 339 U.S. at 766-67. The Court, however, reasoned that the answer to the court's power did not lie in the statute. Rather, it explained that, for the question before it, "answers stem directly from fundamentals," and that they "cannot be found by casual

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[1] *See also Johnson v. Eisentrager*, 339 U.S. 763, 768 (1950) ("We are cited to no instance where a court, in this or any other country where the writ 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.").

[2] *See* Wright, Miller & Cooper, *Federal Practice & Procedure: Jurisdiction 2d* § 4268.1 (1988 & Supp. 2001). Courts have held that *U.S. citizens* held abroad, and therefore outside the territorial jurisdiction of any federal district court, are nevertheless entitled to seek habeas relief. *See Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 495, 498 (1973) ("[N]othing more [is required] than that the court issuing the writ have jurisdiction over the custodian. . . . Where *American citizens* confined overseas (and thus outside the territory of any district court) have sought relief in habeas corpus, we have held, if only implicitly, that the petitioners' absence from the district does not present a jurisdictional obstacle to the consideration of the claim.") (emphasis added); *Kinnell v. Warner*, 356 F. Supp. 779, 780-81 (D. Haw. 1973) ("Petitioner, a member of the United States Navy, is now on the South China Seas aboard the aircraft carrier U.S.S. Enterprise . . . [but his] physical absence from the territorial jurisdiction of this district court does not per se bar this court's jurisdiction over his [habeas] petition."). As this memorandum explains, however, under *Eisentrager* different rules apply to enemy aliens held outside the United States.

reference to statutes or cases." 339 U.S. at 768. In analyzing those "fundamentals," the Court concluded that an alien held outside the United States cannot seek the writ of habeas corpus.

The analysis from *Eisentrager* should apply to bar any habeas application filed by an alien held at GBC. In the critical passage that most nearly summarizes the Court's holding, the *Eisentrager* Court based its conclusion on the fact that the prisoners were seized, tried, and held in territory that was outside the sovereignty of the United States and outside the territorial jurisdiction of any court of the United States. We do not believe that the Court intended to establish a two-part test, distinguishing between "sovereign" territory and territorial "jurisdiction." Instead, we believe that the Court used the latter term interchangeably with the former to explain *why* an alien has no right to a writ of habeas corpus when held outside the sovereign territory of the United States. The same reasoning applies to GBC because it is outside the sovereign territory of the United States.

The United States holds GBC under a lease agreement with Cuba entered into in 1903. *See* Agreement Between the United States of America and the Republic of Cuba for the Lease to the United States of Lands in Cuba for Coaling and Naval Stations, Feb. 16-23, 1903, U.S.-Cuba, T.S. No. 418, 6 Bevans 1113 ("Lease Agreement").[3] That agreement expressly provides that "the United States recognizes the continuance of the ultimate sovereignty of the Republic of Cuba over the" lands and waters subject to the lease. *Id.* art. III. Although the agreement goes on to state that the United States "shall exercise complete jurisdiction and control over and within" the leased areas, it specifically reserves sovereignty to Cuba. *Id.*

The terms of the Lease Agreement are thus definitive on the question of sovereignty and should not be subject to question in the courts. The Supreme Court has acknowledged that "the determination of sovereignty over an area is for the legislative and executive departments" – that is, it is not a question on which the courts should second-guess the political branches. *Vermilya-Brown Co. v. Connell*, 335 U.S. 377, 380 (1948). Indeed, in *Vermilya-Brown* all nine members of the Supreme Court observed that the United States has no sovereignty over GBC. The issue in *Vermilya-Brown Co. v. Connell*, was whether the Fair Labor Standards Act ("FLSA") applied to a United States military base in Bermuda. Five members held that the FLSA applied to "foreign territory under lease for bases," *id.* at 390, while the four dissenters concluded that the FLSA applied only in "any Territory or possession of the United States," *id.* (Jackson, J., dissenting). All nine believed, however, that neither Bermuda nor GBC was subject to the sovereignty of the United States.

At the time when *Vermilya-Brown* was decided, the United States was operating military bases in Bermuda pursuant to a 99-year leasehold. That lease ended in September 1, 1995, when both bases were closed and the land returned to the Government of Bermuda. *See id.* at 378; *see also* www.virtualsources.com/Countries/Europe%20Countries/Bermuda.htm. Based on the

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[3] Further conditions were imposed in a subsequent agreement, among them a promise from the United States not to permit any commercial enterprise to operate on the base. *See* Lease of Certain Areas for Naval Coaling Stations, July 2, 1903, U.S.-Cuba, T.S. No. 426, 6 Bevans 1120. The Lease Agreement does not state a term for the lease, and it was continued by a subsequent agreement stating that it would continue "[u]ntil the two contracting parties agree to the modification or abrogation of the stipulations." Treaty between the United States and Cuba defining their relations, May 29, 1934, U.S.-Cuba, art. III, 48 Stat. 1682, 1683.

terms of that leasehold, the majority noted the State Department's position that "[t]he arrangements under which the [United States'] leased bases [of Bermuda] were acquired from Great Britain did not and were not intended to transfer sovereignty over the leased areas from Great Britain to the United States." 335 U.S. at 380. Accordingly, those five justices concluded "that the leased area is under the sovereignty of Great Britain and that it is not territory of the United States in a political sense, that is, a part of its national domain." *Id.* at 380-81. Moreover, the majority specifically stated that the United States also has "a lease from the Republic of Cuba of an area at Guantanamo Bay for a coaling or naval station," and that "[t]he United States was granted by the Cuban lease substantially the same rights as it has in the Bermuda lease." *Id.* at 383 & n.5 (quoting 1903 US-Cuba agreement).

Similarly, the dissent contended that "Bermuda and like bases are not . . . our possessions." *Id.* at 392 (Jackson, J., dissenting). "Guantanamo Naval Base, . . . a leased base in Cuba . . . has been ruled by the Attorney General not to be a possession; it has not been listed by the State Department as among our 'non-self-governing territories,' and the Administrator of the very Act before us has not listed it among our possessions." *Id.* at 405 (Jackson, J., dissenting) (footnotes omitted). The disagreement in the case was not whether the United States exercised sovereignty over GBC -- all agreed that the United States did not -- but rather whether the FLSA applies extraterritorially to include U.S. military bases such as those in Bermuda and GBC. The *Eisentrager* analysis turns, of course, on whether the United States exercises sovereignty over a particular territory.

The *Vermilya-Brown* decision does not stand alone in concluding that the United States does not exercise sovereignty over GBC. More recently, in 1995, the Eleventh Circuit similarly relied on the terms of the Lease Agreement to conclude that GBC is not within the sovereign territory of the United States. See *Cuban American Bar Ass'n, Inc. v. Christopher*, 43 F.3d 1412, 1425 (11th Cir. 1995) ("The district court here erred in concluding that Guantanamo Bay was a 'United States territory.' We disagree that 'control and jurisdiction' is equivalent to sovereignty.") (citations omitted); *id.* (rejecting "the argument that our leased military bases abroad which continue under the sovereignty of foreign nations, hostile or friendly, are 'functional[ly] equivalent' to being land borders or ports of entry of the United States or otherwise within the United States") (alteration in original). And the District of Connecticut has likewise held that "sovereignty over the Guantanamo Bay does not rest with the United States." *Bird v. United States*, 923 F. Supp. 338, 343 (D. Conn. 1996). *See also id.* ("Because the 1903 Lease of Lands Agreement clearly establishes Cuba as the *de jure* sovereign over Guantanamo Bay, this Court need not speculate whether the United States is the *de facto* sovereign over the area.").

The position of GBC stands in sharp contrast to the status of the Philippine Islands in cases arising out of World War II. General Yamashita was tried in the Philippines by a U.S. military commission from October to December of 1945, and the Supreme Court chose to exercise habeas jurisdiction in reviewing the commission's decision. *See Application of Yamashita*, 327 U.S. 1, 5 (1946). At that time, however, the Philippine Islands was an insular possession of the United States, and not a mere U.S. leasehold interest. See *Eisentrager*, 339 U.S. at 780 ("By reason of our sovereignty at that time over these insular possessions, Yamashita stood much as did Quirin before American courts. Yamashita's offenses were committed on our

territory, he was tried within the jurisdiction of our insular courts and thus was imprisoned within territory of the United States."). The United States exercised sovereignty over the Philippines until July 4, 1946, *see generally* 48 U.S.C. ch. 5 (1994), at which time the Philippines became an independent sovereign. The United States retained a military base there – and it was that condition which the *Vermilya-Brown* Court compared to Bermuda and GBC. *See Vermilya-Brown*, 335 U.S. at 384 & n.7. The Court's treatment of the Philippines after July 4, 1946, thus affirms our conclusion that the United States interest in GBC today is markedly different, for *Eisentrager* purposes, than that in the Philippines prior to July 4, 1946.

GBC is also outside the "territorial jurisdiction of any court of the United States." *Eisentrager*, 339 U.S. 778. The territory of every federal district court is defined by statute. *See* 28 U.S.C. §§ 81-131 (1994); 48 U.S.C. §§ 1424, 1424b, 1821-1826 (1994). GBC is not included within the territory defined for any district. In contrast, other island bases that are considered territories or possessions of the United States are expressly defined within the jurisdiction of specific district courts, even if they are retained largely for military use. *See, e.g.*, 28 U.S.C. § 91 (defining the District of Hawaii to include "the Midway Islands, Wake Island, Johnston Island, . . . Kingman Reef," and other islands).[4]

Finally, the executive branch has repeatedly taken the position under various statutes that GBC is neither part of the United States nor a possession or territory of the United States. For example, this Office has opined that GBC is not part of the "United States" for purposes of the Immigration and Naturalization Act. *See* Memorandum for the Associate Attorney General, from Larry L. Simms, Deputy Assistant Attorney General, Office of Legal Counsel, *Re: Status of Guantanamo Bay* (Oct. 27, 1981). Similarly, in 1929, the Attorney General opined that GBC was not a "possession" of the United States within the meaning of certain tariff acts. *See Customs Duties – Goods Brought into United States Naval Station at Guantanamo Bay, Cuba*, 35 Op. Att'y Gen. 536 (1929). GBC was "a mere governmental outpost beyond our borders" and "a place subject to the use, occupation and control of the United States," without being part of sovereign territory. *Id.* at 541, 540. Although neither of these opinions is directly on point here, because each addresses the status of GBC under a particular statutory definition, they demonstrate that the United States has consistently taken the position that GBC remains foreign territory, not subject to U.S. sovereignty.[5]

II.

[4] For your further information, we have attached a memorandum prepared by this office based on earlier research concerning potential habeas jurisdiction for detainees held at Midway, Wake and Tinian, which have also been considered as possible detention sites.

[5] We note that in one statute, Congress has expressly included GBC within a reference to U.S. territories or possessions. In extending the provisions of the Longshore and Harbor Workers' Compensation Act to military bases, section 1651(a) of title 42, United States Code, provides that the terms of that Act shall apply "upon any lands occupied or used by the United States for military or naval purposes in any Territory or possession outside the continental United States (including the United States Naval Operating Base, Guantanamo Bay, Cuba; and the Canal Zone)." *See also* 42 U.S.C. § 1701(b)(1) (similar provision). By specifically including GBC within the term "Territory or possession" for purposes of extending a particular statutory scheme to military bases Congress in no way undermined the general proposition that GBC is not part of the sovereign territory of the United States. Part of the purpose of the provision was to extend the protection of the Longshore and Harbor Workers' Compensation Act even to bases in foreign nations, and the specific inclusion of GBC in one subsection of the provision cannot be understood as a general statement of the status of the base as a U.S. "possession."

For the reasons outlined above, we believe that the rationale for holding that there is no jurisdiction to entertain a habeas petition from an alien held at GBC is very strong and is the correct result under *Eisentrager*. Nevertheless, we caution that there is a potential ground for uncertainty arising from an arguable imprecision in the Supreme Court's language in *Eisentrager*. As noted above, in a critical passage the Court stated that habeas jurisdiction was not available because the aliens were not within "territory over which the United States is sovereign." 339 U.S. at 778. In the very same sentence, however, the Court also stated that habeas jurisdiction did not exist because the events and detention occurred outside "the territorial jurisdiction" of any federal court. *Id.* If an alien detainee is both outside the United States' sovereign territory and outside the territorial jurisdiction of a federal court, then it is clear that no habeas jurisdiction exists. We have explained above that we believe GBC meets those conditions. A non-frivolous argument might be constructed, however, that GBC, while not part of sovereign territory of the United States, *is* within the territorial jurisdiction of a federal court. In that scenario, the application of *Eisentrager* might not be as clear. This is because "sovereignty" over territory and "jurisdiction" over territory could mean different things. A nation, for example, can retain its sovereignty over its territory, yet at the same time allow another nation to exercise limited jurisdiction within it.

It might be argued that the difference in language in *Eisentrager* must be given meaning, which can only be done if there is a difference between "sovereignty" and "jurisdiction." A court could find that the U.S.-Cuba lease agreement lends itself rather well to this distinction, since it makes clear that the United States exercises "complete jurisdiction and control" over GBC, even though Cuba retains "sovereignty." Lease Agreement, 6 Bevans 1114. Although *Eisentrager* seems to permit aliens to bring habeas petitions only in areas within the sovereign control of the United States, which by the 1903 agreement does not extend to GBC, a court could find that *Eisentrager*'s mention of territorial jurisdiction does not preclude habeas jurisdiction at GBC.

A district court also might find support in some cases, although (as explained below) we believe that these precedents are not good law. In *Haitian Centers Council, Inc. v. McNary*, 969 F.2d 1326 (2nd Cir. 1992), the Second Circuit stated that "Guantanamo Bay is a military installation that is subject to the *exclusive* control and jurisdiction of the United States." *Id.* at 1342. As a result of the United States' exclusive control, the court concluded that some constitutional rights applied to Haitian refugees held at GBC and that an interest group could file for a preliminary injunction in federal court in New York to vindicate those rights. The court also relied in part on the fact that certain U.S. criminal laws apparently applied to GBC under the definition of the United States' "special maritime and territorial jurisdiction" in section 7 of title 18, United States Code. *See id.* at 1342. That placed GBC, at least in some sense, under U.S. "jurisdiction." Similarly, in *Haitian Centers Council, Inc. v. Sale*, 823 F. Supp. 1028 (E.D.N.Y. 1993), the district court relied on *McNary* to hold that, because "Guantanamo Bay Naval Base . . . is under the complete control and jurisdiction of the United States government," aliens held there must be granted some constitutional protections. *Id.* at 1040.

For a number of reasons, however, we believe that a federal district court would not accept these arguments. First, the best reading of *Eisentrager* indicates that the Court was only

permitting habeas jurisdiction within the sovereign territory of the United States, which does not include GBC. Second, no federal statutes include GBC within the territorial jurisdiction of any federal district court. The fact that the United States can exercise some "jurisdiction" and "control" over the base is not the relevant factor for purposes of the analysis in *Eisentrager*. Presumably the United States similarly exercised considerable "jurisdiction" and "control" over the Landsberg Prison, which was under the command of an American Army general at the time, where the applicants in *Eisentrager* were held. That, however, was not deemed relevant to the Court's analysis.

Third, the *McNary* and *Sale* cases cited above are not persuasive authority for extending habeas jurisdiction to GBC. To begin with, the cases did not address habeas jurisdiction at all and thus never squarely confronted the analysis in *Eisentrager*. Instead, *McNary*, for example, addressed whether the United States, in interdicting Haitian refugees and detaining them at GBC, had violated international treaties and agreements, statutes, and executive orders. In fact, we have not found any case directly addressing habeas jurisdiction over an alien held at GBC. In addition, both *McNary* and *Sale* have been vacated. *McNary* was vacated as moot by the Supreme Court, *see* 509 U.S. 918 (1993), and *Sale* was subsequently vacated by Stipulated Order, *see Cuban American Bar Ass'n*, 43 F.3d at 1424. More importantly, the analysis in *Sale* has also been expressly rejected by the Eleventh Circuit. *See id.* at 1425 ("The district court here erred in [relying on *Sale* and] concluding that Guantanamo Bay was a 'United States territory.' We disagree that 'control and jurisdiction' is equivalent to 'sovereignty.'") (citation omitted). Finally, to the extent the Second Circuit in *McNary* relied on the theory that GBC was within the "special maritime and territorial jurisdiction" of the United States under 18 U.S.C. § 7, it is particularly weak authority for habeas jurisdiction here. Section 7 of title 18 defines places or circumstances where certain criminal laws of the United States shall apply to proscribe conduct. 18 U.S.C. § 7 (1994). The mere fact that U.S. criminal law applies, however, does not bring a place within the territorial jurisdiction of a federal district court. As the Supreme Court explained in *Vermilya-Brown*, a nation may extend its statutes to regulate conduct "on areas under the control, though not within the territorial jurisdiction or sovereignty, of the nation enacting the legislation." 335 U.S. at 381. Laws are frequently applied extraterritorially to conduct occurring *outside* a nation's territorial jurisdiction, but the mere application of law in such a case does not alter the territorial jurisdiction of the courts or their power to grant the writ of habeas corpus. Indeed, the venue provision for cases arising under the special maritime and territorial jurisdiction of the United States expressly acknowledges this distinction. It sets out the venue for crimes that occur "out of the jurisdiction of any particular State or district." 18 U.S.C. § 3238 (1994).

In addition, the Second Circuit has subsequently repudiated the cursory analysis in *McNary*, which essentially assumed that 18 U.S.C. § 7 applied to GBC. Instead, the Second Circuit has held that the statute has no extraterritorial application. *See United States v. Gatlin*, 216 F.3d 207, 214 (2nd Cir. 2000). After holding that § 7 had no territorial application for the case before it, the *Gatlin* Court noted that "the United States base at Guantanamo Bay is technically outside the territorial boundaries of the United States" and declined to express a view on "whether our *dictum* in *McNary* was correct." *Id.* at 214 n.8.[6] *McNary*'s reliance on 18

[6] Although the Second Circuit has held that 18 U.S.C. § 7 does not apply extraterritorially, we caution against relying too heavily on that rationale. This office has opined that GBC is within the special maritime and territorial

U.S.C. § 7 to demonstrate a form of jurisdiction over GBC is thus particularly unreliable authority here.

Fourth, and perhaps most importantly, a federal district court ought to be reluctant to extend habeas jurisdiction to GBC, when not clearly called for by statute, if doing so would interfere with matters solely within the discretion of the political branches of government. Detention and trial of al Qaeda and Taliban members is undertaken pursuant to the President's Commander in Chief and foreign affairs powers. Without a clear statement from Congress extending jurisdiction to GBC, a court should defer to the executive branch's activities and decisions prosecuting the war in Afghanistan.[7]

III.

You have also asked us about the potential legal exposure if a detainee successfully convinces a federal district court to exercise habeas jurisdiction. There is little doubt that such a result could interfere with the operation of the system that has been developed to address the detainment and trial of enemy aliens. First, a habeas petition would allow a detainee to challenge the legality of his status and treatment under international treaties, such as the Geneva Conventions and the International Covenant on Civil and Political Rights. *See* 28 U.S.C. § 2241(c)(4). Thus, a court could review, in part, the question whether and what international law norms may or may not apply to the conduct of the war in Afghanistan, both by the United States and its enemies. Second, a detainee could challenge the use of military commissions and the validity of any charges brought as violation of the laws of war under both international and domestic law. *See* 28 U.S.C. § 2241(c)(3). Third, although the Supreme Court in *Ex parte Quirin*, 317 U.S. 1 (1942) foreclosed habeas review of the procedures used by military commissions, a petitioner could argue that subsequent developments in the law of habeas corpus require the federal courts to review the constitutionality of military commission procedures today. Fourth, a petitioner might even be able to question the constitutional authority of the President to use force in Afghanistan and the legality of Congress's statutory authorization in place of a declaration of war.

Finally, you have asked about the rights that an enemy alien habeas petitioner would enjoy as a litigant in federal court, assuming that the court has found jurisdiction to exist. We are aware of no basis on which a federal court would grant different litigant rights to a habeas petitioner simply because he is an enemy alien, other than to deny him habeas jurisdiction in the first place.

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jurisdiction of the United States under that provision. *See Installation of Slot Machines on U.S. Naval Base, Guantanamo Bay*, 6 Op. O.L.C. 236 (1982). We do not believe it is necessary to revisit that opinion here because, as outlined in text, whether or not GBC comes within 18 U.S.C. § 7 is irrelevant for the question of habeas jurisdiction. In addition, we note that criminal prosecutions have been brought on the assumption that 18 U.S.C. § 7 applies to GBC, although the issue does not appear to have been litigated. *See, e.g., United States v. Lee*, 906 F.2d 117, 117 & n.1 (1990).

[7] This point draws further support from the fact that, where Congress has intended to include GBC in any provisions extending the reach of U.S. law, it has done so expressly. *See, e.g.*, 42 U.S.C. § 1651(a)(2). Congress has shown that it will be express about extending U.S. law to GBC when it intends that result. Particularly where a judicial construction extending jurisdiction or the substantive reach of U.S. law would potentially interfere with the President's foreign affairs and commander-in-chief powers, such a clear statement should be required.

CONCLUSION

For the foregoing reasons, we conclude that a district court cannot properly entertain an application for a writ of habeas corpus by an enemy alien detained at Guantanamo Bay Naval Base, Cuba. Because the issue has not yet been definitively resolved by the courts, however, we caution that there is some possibility that a district court would entertain such an application.

Please let us know if we can be of any further assistance.