(June 25, 1948, ch. 646, 62 Stat. 964; May 24, 1949, ch. 139, §112, 63 Stat. 105; Pub. L. 89–590, Sept. 19, 1966, 80 Stat. 811; Pub. L. 109–148, div. A, title X, §1005(e)(1), Dec. 30, 2005, 119 Stat. 2741; Pub. L. 109–163, div. A, title XIV, §1405(e)(1), Jan. 6, 2006, 119 Stat. 3477; Pub. L. 109–366, §7(a), Oct. 17, 2006, 120 Stat. 2635; Pub. L. 110–181, div. A, title X, §1063(f), Jan. 28, 2008, 122 Stat. 323.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on title 28, U.S.C., 1940 ed., §§451, 452, 453 (R.S. §§751, 752, 753; Mar. 3, 1911, ch. 231, §291, 36 Stat. 1167; Feb. 13, 1925, ch. 229, §6, 43 Stat. 940).

Section consolidates sections 451, 452 and 453 of title 28, U.S.C., 1940 ed., with changes in phraseology necessary to effect the consolidation.

Words ''for the purpose of an inquiry into the cause of restraint of liberty'' in section 452 of title 28, U.S.C., 1940 ed., were omitted as merely descriptive of the writ.

Subsection (b) was added to give statutory sanction to orderly and appropriate procedure. A circuit judge who unnecessarily entertains applications which should be addressed to the district court, thereby disqualifies himself to hear such matters on appeal and to that extent limits his usefulness as a judge of the court of appeals. The Supreme Court and Supreme Court Justices should not be burdened with applications for writs cognizable in the district courts.

1949 ACT

This section inserts commas in certain parts of the text of subsection (b) of section 2241 of title 28, U.S.C., for the purpose of proper punctuation.

Editorial Notes

REFERENCES IN TEXT

Section 1005(e) of the Detainee Treatment Act of 2005, referred to in subsec. (e)(2), is section 1005(e) of title X of div. A of Pub. L. 109–148, which is set out as a note under section 801 of Title 10, Armed Forces.

CONSTITUTIONALITY

For information regarding the constitutionality of certain provisions of this section, as added and amended by section 1005(e)(1) of Pub. L. 109–148 and section 7(a) of Pub. L. 109–366, see the Table of Laws Held Unconstitutional in Whole or in Part by the Supreme Court on the Constitution Annotated website, constitution.congress.gov.

AMENDMENTS

2008—Subsec. (e). Pub. L. 110–181 amended directory language of Pub. L. 109–366, §7(a). See 2006 Amendment note below.

2006—Subsec. (e). Pub. L. 109–366, §7(a), as amended by Pub. L. 110–181, added subsec. (e) and struck out both former subsecs. (e) relating to jurisdiction to hear or consider action against United States or its agents relating to detention of alien by Department of Defense at Guantanamo Bay, Cuba.

Subsec. (e). Pub. L. 109–163 added subsec. (e), relating to section 1405 of the Detainee Treatment Act of 2005.

2005—Subsec. (e). Pub. L. 109–148 added subsec. (e), relating to section 1005 of the Detainee Treatment Act of 2005.

1966—Subsec. (d). Pub. L. 89–590 added subsec. (d).

1949—Subsec. (b). Act May 24, 1949, inserted commas after ''Supreme Court'' and ''any justice thereof''.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–366, §7(b), Oct. 17, 2006, 120 Stat. 2636, provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Oct. 17, 2006], and shall apply to all cases, without exception, pending on or after the date of the enactment of this Act which relate to any aspect of the detention, transfer, treatment, trial, or conditions of detention of an alien detained by the United States since September 11, 2001.''

TREATY OBLIGATIONS NOT ESTABLISHING GROUNDS FOR CERTAIN CLAIMS

Pub. L. 109–366, §5, Oct. 17, 2006, 120 Stat. 2631, provided that:

''(a) IN GENERAL.—No person may invoke the Geneva Conventions or any protocols thereto in any habeas corpus or other civil action or proceeding to which the United States, or a current or former officer, employee, member of the Armed Forces, or other agent of the United States is a party as a source of rights in any court of the United States or its States or territories.

''(b) GENEVA CONVENTIONS DEFINED.—In this section, the term 'Geneva Conventions' means—

''(1) the Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, done at Geneva August 12, 1949 (6 UST 3114);

''(2) the Convention for the Amelioration of the Condition of the Wounded, Sick, and Shipwrecked Members of the Armed Forces at Sea, done at Geneva August 12, 1949 (6 UST 3217);

''(3) the Convention Relative to the Treatment of Prisoners of War, done at Geneva August 12, 1949 (6 UST 3316); and

''(4) the Convention Relative to the Protection of Civilian Persons in Time of War, done at Geneva August 12, 1949 (6 UST 3516).''

§2242. Application

Application for a writ of habeas corpus shall be in writing signed and verified by the person for whose relief it is intended or by someone acting in his behalf.

It shall allege 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.

It may be amended or supplemented as provided in the rules of procedure applicable to civil actions.

If addressed to the Supreme Court, a justice thereof or a circuit judge it shall state the reasons for not making application to the district court of the district in which the applicant is held.

(June 25, 1948, ch. 646, 62 Stat. 965.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §454 (R.S. §754).

Words ''or by someone acting in his behalf'' were added. This follows the actual practice of the courts, as set forth in *United States ex rel. Funaro v. Watchorn*, C.C. 1908, 164 F. 152; *Collins v. Traeger*, C.C.A. 1928, 27 F.2d 842, and cases cited.

The third paragraph is new. It was added to conform to existing practice as approved by judicial decisions. See *Dorsey v. Gill* (App.D.C.) 148 F.2d 857, 865, 866. See also *Holiday v. Johnston*, 61 S.Ct. 1015, 313 U.S. 342, 85 L.Ed. 1392.

Changes were made in phraseology.

§2243. Issuance of writ; return; hearing; decision

A court, justice or judge entertaining an application for a writ of habeas corpus shall forthwith award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from

the application that the applicant or person detained is not entitled thereto.

The writ, or order to show cause shall be directed to the person having custody of the person detained. It shall be returned within three days unless for good cause additional time, not exceeding twenty days, is allowed.

The person to whom the writ or order is directed shall make a return certifying the true cause of the detention.

When the writ or order is returned a day shall be set for hearing, not more than five days after the return unless for good cause additional time is allowed.

Unless the application for the writ and the return present only issues of law the person to whom the writ is directed shall be required to produce at the hearing the body of the person detained.

The applicant or the person detained may, under oath, deny any of the facts set forth in the return or allege any other material facts.

The return and all suggestions made against it may be amended, by leave of court, before or after being filed.

The court shall summarily hear and determine the facts, and dispose of the matter as law and justice require.

(June 25, 1948, ch. 646, 62 Stat. 965.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §§ 455, 456, 457, 458, 459, 460, and 461 (R.S. §§ 755–761).

Section consolidates sections 455–461 of title 28, U.S.C., 1940 ed.

The requirement for return within 3 days ''unless for good cause additional time, not exceeding 20 days is allowed'' in the second paragraph, was substituted for the provision of such section 455 which allowed 3 days for return if within 20 miles, 10 days if more than 20 but not more than 100 miles, and 20 days if more than 100 miles distant.

Words ''unless for good cause additional time is allowed'' in the fourth paragraph, were substituted for words ''unless the party petitioning requests a longer time'' in section 459 of title 28, U.S.C., 1940 ed.

The fifth paragraph providing for production of the body of the detained person at the hearing is in conformity with *Walker v. Johnston*, 1941, 61 S.Ct. 574, 312 U.S. 275, 85 L.Ed. 830.

Changes were made in phraseology.

§ 2244. Finality of determination

(a) No circuit or district judge shall be required to entertain an application for a writ of habeas corpus to inquire into the detention of a person pursuant to a judgment of a court of the United States if it appears that the legality of such detention has been determined by a judge or court of the United States on a prior application for a writ of habeas corpus, except as provided in section 2255.

(b)(1) A claim presented in a second or successive habeas corpus application under section 2254 that was presented in a prior application shall be dismissed.

(2) A claim presented in a second or successive habeas corpus application under section 2254 that was not presented in a prior application shall be dismissed unless—

(A) the applicant shows that the claim relies on a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable; or

(B)(i) the factual predicate for the claim could not have been discovered previously through the exercise of due diligence; and

(ii) the facts underlying the claim, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that, but for constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense.

(3)(A) Before a second or successive application permitted by this section is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application.

(B) A motion in the court of appeals for an order authorizing the district court to consider a second or successive application shall be determined by a three-judge panel of the court of appeals.

(C) The court of appeals may authorize the filing of a second or successive application only if it determines that the application makes a prima facie showing that the application satisfies the requirements of this subsection.

(D) The court of appeals shall grant or deny the authorization to file a second or successive application not later than 30 days after the filing of the motion.

(E) The grant or denial of an authorization by a court of appeals to file a second or successive application shall not be appealable and shall not be the subject of a petition for rehearing or for a writ of certiorari.

(4) A district court shall dismiss any claim presented in a second or successive application that the court of appeals has authorized to be filed unless the applicant shows that the claim satisfies the requirements of this section.

(c) In a habeas corpus proceeding brought in behalf of a person in custody pursuant to the judgment of a State court, a prior judgment of the Supreme Court of the United States on an appeal or review by a writ of certiorari at the instance of the prisoner of the decision of such State court, shall be conclusive as to all issues of fact or law with respect to an asserted denial of a Federal right which constitutes ground for discharge in a habeas corpus proceeding, actually adjudicated by the Supreme Court therein, unless the applicant for the writ of habeas corpus shall plead and the court shall find the existence of a material and controlling fact which did not appear in the record of the proceeding in the Supreme Court and the court shall further find that the applicant for the writ of habeas corpus could not have caused such fact to appear in such record by the exercise of reasonable diligence.

(d)(1) A 1-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of—

(A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;