

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 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 Congressional Research Service, *The Constitution of the United States of America: Analysis and Interpretation*, Appendix 1, Acts of Congress Held Unconstitutional in Whole or in Part by the Supreme Court of the United States.

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 per-