U.S. Department of Justice

Kenneth L. Wainstein
United States Attorney

District of Columbia

Judiciary Center
555 Fourth St., N.W.
Washington, D.C. 20530

STATEMENT OF
THE UNITED STATES ATTORNEY'S OFFICE
by
PATRICIA A. RILEY
SPECIAL COUNSEL TO THE UNITED STATES ATTORNEY

Bill 15-1082, HOME COURT AMENDMENT ACT OF 2004

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Good morning Chairman Patterson and members of the Committee. Thank you for the opportunity to testify on Bill 15-1082, the Home Court Amendment Act of 2004.

For the reasons we discuss below, we strongly oppose Section 2 of the Bill, because it would increase the cost and complexity of habeas proceedings involving D.C. Code offenders housed in federal facilities outside of the District of Columbia and is inconsistent with federal statutes, D.C. statutes enacted by Congress, and opinions of the D.C. Court of Appeals, the United States Court of Appeals for the D.C. Circuit and the Supreme Court. Moreover, the Council does not have the power to enact legislation that affects federal courts and federal agencies and that is extra-territorial in nature. We are less concerned about Sections 3, 4 and 5, but do not think they are necessary since the existing language of Section 23-110 and the Innocence Protection Act makes clear that the appropriate – and only – forum for these post-conviction challenges is the Superior Court of the District of Columbia.

As stated in the preamble, the purpose of this legislation is "to ensure that D.C. prisoners

incarcerated outside of the District of Columbia continue to have access to a home forum for post-conviction relief in the District of Columbia." In assessing this bill, it is vital to recognize that D.C. prisoners incarcerated outside the District of Columbia already have a home forum for attacks upon the validity of their convictions and the legality of their sentences. This legislation seeks to shift the location for litigating other issues that have traditionally (and properly) been litigated in the jurisdiction where the prisoner is confined.

It is important to emphasize two additional points at the outset. This bill seeks to amend D.C. Official Code Section 16-1901, which applies to the United States District Court for the District of Columbia as well as to the Superior Court of the District of Columbia. This bill also seeks to overturn the result of recent litigation in our two courts of appeals. In *Stokes v. United States Parole Commission*, 374 F.3d 1235 (D.C. Cir. 2004), and *Taylor v. Washington*, 808 A.2d 770 (D.C. 2002), the Public Defender Service argued that D.C. prisoners incarcerated outside of the District of Columbia were entitled to file their habeas corpus petitions in the courts of this jurisdiction. Their arguments were rejected by the United States Court of Appeals for the D.C. Circuit and by the D.C. Court of Appeals. This legislation seeks to overturn the holdings of those cases.

It also is instructive to examine the history of habeas corpus in this jurisdiction. Until the late 1940s, all post-conviction remedies in the District of Columbia, as in the federal system, were controlled by the ancient writ of habeas corpus. The phrase habeas corpus means to produce the body or to bring a person before the court. It applies not only to criminal cases, but in any case where a person is in the custody of the government, such as cases where a person is involuntarily committed to an institution for the mentally ill. In essence, the "Great Writ" is used to protect the

constitutional right of personal liberty.

In 1867, "Congress changed the common law rule by extending the writ of habeas corpus to 'all cases where any person may be restrained of his or her liberty in violation of the constitution, or of any treaty or law of the United States.'"[1] This resulted in an increase in federal habeas petitions which became a problem by the late 1930s and early 1940s. Petitions for a writ of habeas corpus historically have been filed in the jurisdiction where the person is confined, and federal prisons were concentrated in a handful of jurisdictions. Federal courts in those districts were being called upon to decide issues – arising out of the conviction or sentencing of prisoners – when the witnesses and the evidence were far removed. As a consequence, in 1942, the Judicial Conference of the United States formed a Committee on Habeas Corpus Procedure.[2] In 1944, this Committee, followed by the Judicial Conference as a whole, recommended a legislative change that would permit federal prisoners to collaterally attack their convictions in the sentencing court.[3] In response, Congress enacted 28 U.S.C. § 2255 in 1946. This federal statute modifies traditional limits on habeas jurisdiction by allowing (and in almost all circumstances requiring) a prisoner to attack his conviction or sentence in the court where he was tried and convicted. According to the Supreme Court, "the sole purpose [of section 2255] was to minimize the difficulties encountered in

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[1] *United States v. Hayman*, 342 U.S. 205, 211 (1952). The discussion in this and the following paragraph is taken from the *Hayman* case.

[2] The Judicial Conference is composed of the chief judges of the judicial circuits and the Chief Justice of the United States.

[3] Appeals that are taken from a conviction to the various levels of appellate courts up to and including the Supreme Court of the United States are considered "direct attacks" on a conviction. Challenges to convictions in the trial court that involve matters outside of the record, such as ineffective assistance of counsel, prosecutorial error, or denial of the right to counsel, are considered to be "collateral attacks." See *Hayman*, supra, 342 U.S. at 211-212 and n.12.

habeas corpus hearings by affording the same rights in another and more convenient forum." *Hayman*, 342 U.S. at 219. To demonstrate the need for legislation like section 2255, the Court pointed specifically to a case involving a defendant who was incarcerated in California and was required to file his habeas petition there, "although the federal officers involved were stationed in Texas and the facts occurred in Texas." *Id.* at 213.

As part of the 1970 District of Columbia Court Reform and Criminal Procedure Act, Congress adopted the language of section 2255 almost word for word in enacting D.C. Code § 23-110.[4] Thus, a defendant who wishes to collaterally attack his conviction or sentence can file a motion in Superior Court under D.C. Code § 23-110 regardless of where he is incarcerated.[5] As a result of these statutes, attacks upon the conviction and sentence are brought in the "home court" forum, even if the prisoner is confined far away. However, habeas petitions still must be brought in the jurisdiction where the prisoner is confined.

Other post-conviction remedies that can be filed in Superior Court, regardless of where a D.C. Code offender is incarcerated, include motions for a new trial based on newly discovered evidence pursuant to Rule 33 of the Superior Court Rules of Criminal Procedure, and motions for a new trial based on new evidence of actual innocence pursuant to the Innocence Protection Act, D.C. Official Code § 22-4135. Thus, for issues pertaining to his or her conviction and sentence, a D.C. Code offender already has a "home court" in the District of Columbia.

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[4] The exceptions are the courts named. Congress later enacted some limitations to section 2255 that the Council has not incorporated into the District's statute.

[5] Both section 2255 and section 23-110 prohibit an application for a writ of habeas corpus if a prisoner has not filed for relief under these provisions unless "the remedy is inadequate or ineffective to test the legality of [the prisoner's] detention." D.C. Code § 23-110(g); 28 U.S.C. § 2255.

Moreover, all post-conviction matters relating to persons serving a sentence in D.C. Jail, and all post-conviction matters relating to probation in the District of Columbia, are also adjudicated in the District of Columbia. So, for all of these matters, a person has a "home court" in the District of Columbia as well.

What has not been – and cannot be – brought in either the United States District Court for the District of Columbia or the Superior Court of the District of Columbia is a petition seeking a writ of habeas corpus arising out of post-conviction matters occurring in the jurisdiction where the person is incarcerated, including challenges to the place of confinement, prison discipline, parole decisions, and the impact of detainers. Bringing these cases back to the District of Columbia would foster exactly the inefficiencies in judicial administration that led the Judicial Conference in 1944 to recommend that Congress create a "home court" for litigating issues pertaining to the sentence and conviction. As a matter of policy, it does not make sense to litigate in either Superior Court or the United States District Court for the District of Columbia claims based on facts that occurred in another jurisdiction and that challenge the action of federal officers who are stationed in another jurisdiction.

As matter of practicality, neither the Superior Court of the District of Columbia nor the United States District Court for the District of Columbia has jurisdiction over custodians in other jurisdictions. "Because '[a] writ of habeas corpus does not act upon the prisoner who seeks relief, but upon the person who holds him in ... custody,' *Braden v. 30th Judicial Cir. Ct. of Ky.*, 410 U.S. 484, 494 (1973), a court may issue the writ only if it has jurisdiction over that person." *Stokes v. U.S. Parole Comm'n*, 374 F.3d 1235, 1237-1238 (D.C. Cir. 2004) (construing 28 U.S.C. § 2241), citing *Rumsfeld v. Padilla*, 542 U.S. ----, ----, 124 S. Ct. 2711, 2717, 2721 (2004).

If Bill 15-1082 were enacted, it would create a conflict between federal law and local law and federal law would take precedence. Under federal law, "a district court may issue the writ only to one who is within its district. . . .[I]n habeas cases involving 'present physical confinement, jurisdiction lies in only one district: the district of confinement.' *Padilla,* 542 U.S. at ----, 124 S. Ct. 2722. This is necessarily so because in such cases 'the immediate custodian and the prisoner reside in the same district.' *Id.* at 2723. Therefore, a district court may not entertain a habeas petition involving present physical custody unless the respondent custodian is within its territorial jurisdiction." *Stokes v. U.S. Parole Comm'n*, supra, 374 F.3d at1239-1240. If federal law prohibits a United States District Court from entertaining such cases, a state or local jurisdiction cannot override it. In this, the Council of the District of Columbia stands in no different position than the legislature of any other state which cannot alter or expand or reduce the jurisdiction of federal courts. If this were not clear from general principles of federal pre-emption, Congress was explicit in the Home Rule Act. Pursuant to D.C. Official Code § 1-206.02(a)(8), the Council does not have the authority to "[e]nact any act or regulation relating to the United States District Court for the District of Columbia or any other court of the United States in the District other than the District courts." Moreover, the Council cannot "[e]nact any act, or enact any act to amend or repeal any Act of Congress . . .which is not restricted in its application exclusively in or to the District." D.C. Official Code § 1-206.02(a)(3). To the extent that the Bill seeks to alter the power of the United States District Court (and it clearly does), the Council cannot enact it. To the extent that the Bill seeks to reach beyond the borders of the District of Columbia to bring federal officials and issues here, it is not restricted exclusively in or to the District, and the Council cannot enact it.

The Home Rule Act also did not vest "in the District government any greater authority ...

over any federal agency, than was vested in the Commissioners prior to January 2, 1975." D.C. Code § 1-206.02(b). On January 1, 1975, the District did not have authority over the Federal Bureau of Prisons or the United States Parole Commission, the two federal agencies that are most likely to be affected by this legislation. Thus, the District cannot exert such authority now.

This limitation on the power of the District government (including the Superior Court) is recognized in D.C. Official Code § 16-1901(b), which provides that "[p]etitions for writs directed to Federal officers and employees shall be filed in the United States District Court for the District of Columbia." Bill 15-1082 does not purport to amend this portion of the statute. Yet, almost all D.C. prisoners are now in the custody of federal officials and those prisoners must file their petitions in the United States District Court. Thus, this bill will have little impact unless it changes the jurisdictional limits that apply in the United States District Court. However, that is something this body cannot do.

Nor would it be sound policy to create a favored class of federal prisoners who have special habeas remedies that other federal prisoners do not enjoy. In this regard, both the Bureau of Prisons and the United States Parole Commission have been working to eliminate any disparity between U.S. Code and D.C. Code offenders so that neither group believes that the other is receiving a benefit to which it is not entitled. Fairness is a prized value in prison culture and should be promoted, not discouraged.

Finally, we assume that D.C. Code offenders would still be able to invoke traditional habeas remedies and file petitions in the district where they are confined. Giving them a second "home court" would likely result in forum shopping, duplicative litigation, and the possibility of inconsistent results.

To reiterate, D.C. prisoners already have a home court forum for collateral attacks upon the validity of their convictions and the legality of their sentences. The primary claims that would be affected by this proposed legislation, then, would relate to the execution of a D.C. sentence, such as claims concerning sentence calculation, parole eligibility, and postponement or revocation of parole. We have not heard any justification for why these claims require a local forum. Litigating claims about the appropriate placement for a prisoner in Ohio, prison discipline in a West Virginia facility, or the basis for denial of parole for a prisoner in Pennsylvania would be much more complicated and expensive in the District of Columbia than in the jurisdictions where the action at issue occurred and the prisoner resides. There is no reason to think that federal judges in these other jurisdictions are not as fair and as competent as judges in the District of Columbia – as decisions granting relief to D.C. prisoners demonstrate. Since they are applying federal law, neither the judges nor the prisoner would be at a disadvantage for want of knowledge of a particular aspect of District of Columbia law.

Accordingly, we oppose the proposed changes to D.C. Official Code § 16-1901 in Section 2 of Bill 15-1082. We take no position with respect to the proposed changes to D.C. Official Code §§ 22-4133 and 4135 and § 23-110 in Sections 3, 4 and 5 of Bill 15-1082. Since the explicit purpose of D.C. Code § 23-110 was to ensure that collateral attacks on convictions or sentences were heard in the District of Columbia, amending this section seems wholly unnecessary.

When we worked on the Innocence Protection Act, codified at D.C. Official Code §§ 22-4131 et seq., no one contemplated that these cases would be heard anywhere other than in the District of Columbia since all of the evidence, witnesses, and records (to the extent they were preserved) are located here. The language of the Act makes clear that the Superior Court is the court

– and the only court -- in which to apply for relief. D.C. Official Code § 22-4133(a) reads:

> A person in custody pursuant to the judgment of the Superior Court of the District of Columbia for a crime of violence may, at any time after conviction or adjudication as a delinquent, apply to the court for DNA testing.

Similarly, D.C. Official Code § 22-4135 reads

> A person convicted of a criminal offense in the Superior Court of the District of Columbia may move the court to vacate the conviction or to grant a new trial on grounds of actual innocence based on new evidence.

Grammatically, the only court to which "the court" can refer is the Superior Court of the District of Columbia. There is really no room for confusion. As a matter of policy, a case involving post-conviction issues is returned to the same judge who heard the original matter, if he or she is still sitting as a judge, and to another judge of the Superior Court if the trial or plea judge is no longer sitting. The additional words make the sentences, well, wordier and do not add any meaning that is not already there. If the Council is intent on these changes, we do not oppose them, but we would advise against it.

We appreciate the opportunity to testify and ask that this testimony be made a part of the record. We would be pleased to answer any questions you may have.