FEDERAL COURTS IN THE 21ST CENTURY: CASES AND MATERIALS

Fourth Edition

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Earlier, in Maldonado v. Fasano, 67 F. Supp. 2d 1170 (S.D. Cal. 1999), the district court held it had no jurisdiction to grant habeas corpus relief with regard to a pending deportation proceeding, because such jurisdiction had been specifically abrogated by § 242(b)(9) of the Immigration and Naturalization Act, as amended, which consolidates all Article III review power in the courts of appeals, and permits Article III review only of final orders of deportation. See also Morel v. Immigration and Naturalization Service, 144 F.3d 248 (3d Cir. 1998) (writ of mandamus with regard to interim relief denied).


3. Limits on Habeas Corpus, Prison-Condition Litigation, and Immigrant Cases. The issues discussed in this chapter have been in play with regard to a number of controversial pieces of legislation passed by Congress dealing with curbs on habeas corpus, prisoner-initiated litigation over prison conditions, and immigrant-initiated litigation. While ultimate judicial review in an Article III court is generally not eliminated, access to the courts is limited by procedural barriers or exhaustion requirements.

See the discussion in Chapter 17 on Habeas Corpus for State Prisoners and discussion of military commissions in Chapter 18. See also the Supreme Court’s decision in Reno v. American-Arab Anti-Discrimination Committee and other immigration cases discussed in Note 2 supra.

With regard to litigation challenging prison conditions under the Civil Rights Act, a number of provisions have restricted the right to bring such suits. Thus, 42 U.S.C. § 1997(e)(a) requires the exhaustion of all available administrative remedies before a civil-rights action can be filed. The Supreme Court has held that an administrative remedy that cannot give the relief that the prisoner seeks must be exhausted, as long as the grievance tribunal can take some responsive action. Booth v. Churner, 532 U.S. 731 (2001). In Porter v. Nussle, 534 U.S. 516 (2002), the Court held that the exhaustion requirement applied even to a charge of a single act of misconduct on the part of prison officials; the term “prison conditions” encompasses even such singular acts. And in Woodford v. Ngo, 548 U.S. 81 (2006), the Court held that when the prisoner’s grievance was dismissed because it was not filed in a timely manner under state regulations, he had not “exhausted” his available administrative remedies merely because he had no further remedies left. Most recently, though, the Court unanimously held that failure to exhaust in a PLRA action is an affirmative defense that must be raised by the defendant. Further, the exhaustion requirement can be satisfied even if not all the defendants named in the court complaint had been parties to the administrative proceeding; and, contrary to practice in habeas corpus actions, see infra § 17.04[B], failure to exhaust as to some claims does not require dismissal of the entire action. Jones v. Bock, 549 U.S. 199 (2007). The Act also imposes limits on remedies available in such suits, as by requiring “a prior showing of physical injury” to bring an action “for mental or