

INTRODUCTION TO HABEAS PRACTICE

Ngozi Ndulue

University of the District of Columbia David A. Clarke School of Law

Franco Perez

Office of the Federal Public Defender for the District of Puerto Rico

AGENDA

- What is habeas corpus?
- What are some defining features of post-conviction habeas practice?
- How is habeas practice in Puerto Rico unique?
- How do you get started with habeas cases?

WHAT IS HABEAS?

“The Framers viewed freedom from unlawful restraint as a fundamental precept of liberty, and they understood the writ of habeas corpus as a vital instrument to secure that freedom.”

— *Boumediene v. Bush*, 553 U.S. 723, 739 (2008).

Habeas corpus has been characterized as “[a] civil, appellate, collateral, equitable, common law, and statutory procedure.”

—I Federal Habeas Corpus Practice and Procedure § 2.2

NARROWING THE SCOPE

Statutory provisions

- 28 U.S.C. § 2241
- 28 U.S.C. § 2255
- **28 U.S.C. § 2254**

Procedural postures

- Pre-trial
- Transfer mechanism
- Non-conviction related
- **Post-conviction**

THE 28 U.S.C. § 2254 STANDARD

(d) An application for a writ of habeas corpus ... shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim—

- **(1)** resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or
- **(2)** resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

REQUIREMENTS FOR RELIEF

- Custody: 2254(a)
- Exhaustion: 2254(b)(1)
- Timeliness: 2244(d)

CUSTODY REQUIREMENT

- “In custody” – *at time of filing*
- Jurisdictional
- Includes: physical, probation, parole
- Not: monetary fines, restitution

EXHAUSTION - 28 U.S.C. § 2254

(b)(1) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted unless it appears that—

(A) the applicant has exhausted the remedies available in the courts of the State; or

(B)(i) there is an absence of available State corrective process; or

(ii) circumstances exist that render such process ineffective to protect the rights of the applicant.

EXHAUSTION - 28 U.S.C. § 2254

- State court remedies
 - CFI → TA → PR S. Ct.
- Federalizing Claims
- Exceptions:
 - Actual Innocence, Stay, Waiver

TIMELINESS - 28 U.S.C. § 2254(D)

One-year limitations period
from latest of four dates:

TIMELINESS - 28 U.S.C. § 2254

(d)(1)(A) expiration of time for **direct review**

(d)(1)(B) removal of “**impediment**” that had prevented the filing of the petition

(d)(1)(C) recognition of a **new constitutional right**

(d)(1)(D) **factual discovery** giving rise to a new claim

TIMELINESS - 28 U.S.C. § 2254(D)

Statutory Tolling
Equitable Tolling
Actual Innocence

TIMELINESS - 28 U.S.C. § 2254(D)

Statutory Tolling:

One-year clock **pauses** while **properly filed** state PCR is pending.

TIMELINESS - 28 U.S.C. § 2254(D)

Extraordinary Circumstances

+

Diligence

=

Equitable Tolling

TIMELINESS - 28 U.S.C. § 2254(D)

Actual Innocence Gateway:

- New, reliable evidence
- No reasonable juror would convict

HABEAS PRACTICE IN PUERTO RICO

Record and Language Issues:

- PR Courts' Official Language: Spanish
- DPR: English (48 U.S.C. § 864)

HABEAS PRACTICE IN PUERTO RICO

Record and Language Issues:

- **Delays** in obtaining **record** and **certified translations**
- Burden on **respondents** to lodge usable record

Ramos Cruz v. Emanuelli-Hernández, 677 F. Supp. 3d 47 (D.P.R. 2023) (Besosa, J.) (“[T]he respondents shoulder the burden of submitting certified English translations of the relevant transcripts.”); see Habeas Rule 5.

HABEAS PRACTICE IN PUERTO RICO

Morales-Feliciano Conditions

- Civil rights action addressing chronic, unconstitutional conditions in PR prisons.
- Findings: systemic overcrowding, lack of medical care, physical abuse, etc.

HABEAS PRACTICE IN PUERTO RICO

Morales-Feliciano Conditions

- Legal-access barriers = extraordinary circumstances
- Research client's facility (Lexis, docket)
- When visiting client, ask to see facility, prison library, etc.

GETTING STARTED

- Meeting the client
- Reviewing the record
- Investigation
- Drafting

ISSUE SPOTTING: COMMON HABEAS CLAIMS

- Ineffective assistance of counsel (*Strickland*)
- Withholding evidence (*Brady*)
- Presenting false evidence (*Napue*)
- Discrimination in jury selection (*Batson*)
- Judicial bias
- Jury misconduct

HABEAS PRACTICE IN PUERTO RICO: MAJOR CASES

- **Cruz-Berríos v. Borrero,**

No. 14-cv-1232 (ADC/SCC), 2020 WL 12814753

- **Núñez Pérez v. Rolón Suárez,**

No. 19-cv-1555, 618 F. Supp. 3d 49 (D.P.R. 2022) (WGY), aff'd on other grounds sub nom., *Escobar-Pabón*, 133 F.4th 33 (1st Cir. 2025)

- **Ramos-Cruz v. Emanuelli,**

No. 20-cv-1589, 2024 WL 4403699 (FAB)

RESOURCES

- Federal Habeas Corpus Practice and Procedure (available on Lexis)
- [Rules Governing Section 2254 Cases and Section 2255 Proceedings for United States District Courts](#)
- [Federal Habeas Corpus: A Legal Overview](#), Congressional Research Service, Oct. 1, 2024.