

HABEAS CORPUS

Article XI, section 6(b) of the Federated States of Micronesia Constitution requires that the FSM Supreme Court consider a petition for writ of habeas corpus alleging imprisonment of a petitioner in violation of his rights of due process. In re Iriarte (I), 1 FSM R. 239, 243-44 (Pon. 1983).

The FSM Supreme Court's constitutional jurisdiction to consider writs of habeas corpus is undiminished by the fact that the courts whose actions are under consideration, the Trust Territory High Court and a Community Court, were not contemplated by the Constitution of the Federated States of Micronesia. In re Iriarte (I), 1 FSM R. 239, 244, 246 (Pon. 1983).

In a habeas corpus proceeding, the court must apply due process standards to the actions of the courts which have issued orders of commitment. In re Iriarte (I), 1 FSM R. 239, 249 (Pon. 1983).

Judicial review of a certification of extraditability, although not appealable, is available to an accused in custody by seeking a writ of habeas corpus. In re Extradition of Jano, 6 FSM R. 23, 25 (App. 1993).

4 F.S.M.C. 117 gives both the trial division and the appellate division the powers to issue all writs not inconsistent with law or with the rules of civil procedure. FSM Appellate Rule 22(a) requires petitions for writs of habeas corpus be first brought in the trial division. When the circumstances have been shown to warrant, the appellate division clearly has the authority to suspend the rule. In re Extradition of Jano, 6 FSM R. 31, 32 (App. 1993).

Judicial review of an extradition hearing is by petition for a writ of habeas corpus. In re Extradition of Jano, 6 FSM R. 93, 97 (App. 1993).

The scope of a habeas corpus review of an extradition proceeding is 1) whether the judge had jurisdiction, 2) whether the court had jurisdiction over the extraditee, 3) whether there is an extradition agreement in force, 4) whether the crimes charged fall within the terms of the agreement, and 5) whether there was sufficient evidence to support a finding of extraditability. In re Extradition of Jano, 6 FSM R. 93, 104 (App. 1993).

Because a habeas corpus petition is a civil action (although the proceeding is unique), the clerk will assign the petition a civil action number and enter it on the civil side of the docket. Sangechik v. Cheipot, 10 FSM R. 105, 106 (Chk. 2001).

When the pleadings clearly name a person as the *de facto* keeper of the detention facility where the petitioner is currently incarcerated and the petitioner seeks a writ of habeas corpus directed to that person in that capacity, that person is properly named as the respondent to the petition. Sangechik v. Cheipot, 10 FSM R. 105, 106 (Chk. 2001).

Habeas corpus proceedings are commenced with an order, directed to the person having custody of the person detained, to show cause why the writ should not be issued. Sangechik v. Cheipot, 10 FSM R. 105, 106 (Chk. 2001).

In order to ensure a citizen's right to life and liberty, Chuuk Constitution Article III, § 7 provides that the writ of habeas corpus shall exist in Chuuk and that it may not be suspended,

except by the Governor and only when the public safety requires it in case of war, rebellion, insurrection or invasion. Consideration of the writ must take precedence over all other business of the court, and, if the court determines there is a proper basis, the writ shall issue without delay. In re Paul, 11 FSM R. 273, 277 (Chk. S. Ct. Tr. 2002).

Only under certain limited and severely proscribed circumstances may the Governor suspend the writ of habeas corpus, thereby affecting the rights of detainees to petition the court for their release from unlawful detention. In re Paul, 11 FSM R. 273, 277 (Chk. S. Ct. Tr. 2002).

The Governor may declare a state of emergency and issue appropriate decrees if required to preserve public peace, health or safety at a time of extreme emergency caused by civil disturbance, natural disaster, or immediate threat of war or insurrection. A declaration of emergency may impair civil rights to the extent actually required for the preservation of peace, health or safety. In re Paul, 11 FSM R. 273, 277 (Chk. S. Ct. Tr. 2002).

Article XI, § 12(b) of the Chuuk Constitution clearly provides that citizens' civil rights may be impaired by a declaration of emergency, but that impairment rights may only occur to the extent actually required for the preservation of peace, health or safety, so that when the Governor's declaration of emergency made no reference to the suspension of civil rights, or of the need to do so to preserve peace, health or safety, it was solely addressed to the creation and implementation of emergency response and recovery efforts to Tropical Storm Chata'an. In re Paul, 11 FSM R. 273, 279 (Chk. S. Ct. Tr. 2002).

The writ of habeas corpus, like the civil rights of citizens, may under certain circumstances be suspended by the Governor, but suspension of the writ of habeas corpus may only occur when "the public safety requires it in case of war, rebellion, insurrection or invasion. In re Paul, 11 FSM R. 273, 279 (Chk. S. Ct. Tr. 2002).

In circumstances short of war, rebellion, insurrection or invasion where suspension of the Chuuk citizens' civil rights is warranted require the Governor's clear and unambiguous statement in the declaration of emergency itself, and even if such a clear and unambiguous statement were made, a citizen's continued right to petition for a writ of habeas corpus, except in cases of war, rebellion, insurrection or invasion, would provide a remedy to any improper suspension of civil rights by the declaration of emergency. In re Paul, 11 FSM R. 273, 279 (Chk. S. Ct. Tr. 2002).

A writ of habeas corpus will issue when the Governor's declaration of emergency did not suspend civil rights to due process of law, and when the petitioner's detention without charge and without initial appearance was unlawful and in violation of his right of due process. In re Paul, 11 FSM R. 273, 280 (Chk. S. Ct. Tr. 2002).

Kosrae State Code, Title 6, Chapter 34, states the prompt timeframe in which habeas corpus petitions must be considered. Sigrah v. Noda, 14 FSM R. 295, 297-98 (Kos. S. Ct. Tr. 2006).

The Kosrae State Court has jurisdiction to hear a petition for a writ of habeas corpus while the prisoner's appeal is pending. Sigrah v. Noda, 14 FSM R. 295, 298 (Kos. S. Ct. Tr. 2006).

The requirements for issuance of a writ of habeas corpus under Kosrae State Code § 6.3401, have not been satisfied when there has been no evidence presented to the court that

the prisoner is being unlawfully imprisoned at the Kosrae state jail. Sigrah v. Noda, 14 FSM R. 295, 298 (Kos. S. Ct. Tr. 2006).

A writ of habeas corpus may be issued upon a finding that there is an unlawful restraint of the prisoner's liberty. Sigrah v. Noda, 14 FSM R. 295, 298 (Kos. S. Ct. Tr. 2006).

Under 4 F.S.M.C. 117, the FSM Supreme Court has the power to issue all writs and other process as may be necessary for the due administration of justice and, under 6 F.S.M.C. 1503, the court may grant a writ of habeas corpus to inquire into the cause of imprisonment or restraint of a person, who has applied or who has had an application made on his behalf, and who is unlawfully imprisoned or restrained of his liberty under any pretense whatsoever. In re Mefy, 16 FSM R. 401, 403 (Chk. 2009).

An applicant for a writ of habeas corpus should name as the respondent the person who has custody over him. In re Mefy, 16 FSM R. 401, 403 (Chk. 2009).

Since habeas corpus proceedings are commenced with an order, directed to the person having custody of the person detained, to show cause why the writ should not be issued, an application is deficient when it does not name a respondent. In re Mefy, 16 FSM R. 401, 403 (Chk. 2009).

When the issues raised in an application for a writ of habeas corpus are moot because the applicants have already been granted the relief sought – release from jail – any consideration or relief would thus be ineffectual. No justiciable case or dispute is presented when events subsequent to a case's filing make the issues presented moot. Since the FSM Supreme Court lacks jurisdiction to consider moot cases or issues, it must dismiss a moot application because, when the court lacks jurisdiction over a case, it should not remain lifelessly on the docket however harmless that may seem. In re Mefy, 16 FSM R. 401, 403 (Chk. 2009).

To the extent that the issues that the applicants for a writ of habeas corpus seek to raise in a moot application are significant and relevant to other issues to be raised and considered in a criminal case, they should be raised for consideration in that case in the proper manner or in a civil suit for damages. In re Mefy, 16 FSM R. 401, 403-04 (Chk. 2009).

A writ of habeas corpus may be used in situations involving an individual incarcerated without probable cause. In re Anzures, 18 FSM R. 316, 320 (Kos. 2012).

The FSM Supreme Court has the power to issue all writs and must consider a petition for a writ of habeas corpus alleging imprisonment of the petitioner in violation of his rights under the FSM Constitution. In re Anzures, 18 FSM R. 316, 321 (Kos. 2012).

In the absence of any statutory restrictions, the FSM Supreme Court will, under the proper circumstances, consider applications for a writ of habeas corpus on the grounds that a person is in custody in violation of the FSM Constitution. The overriding purpose of such a writ is to protect an individual's right to be free from wrongful intrusions and restraints upon their liberty. In re Anzures, 18 FSM R. 316, 322 (Kos. 2012).

In considering a pretrial petition for a writ of habeas corpus, the FSM Supreme Court will consider that the evidence for probable cause need not be sufficient to support a conviction and that the trial court is the most appropriate place to determine whether probable cause exists. In

re Anzures, 18 FSM R. 316, 324 (Kos. 2012).

In order to accord respect to a Kosrae State Court criminal proceeding, the FSM Supreme Court will abstain from granting a petitioner's application for a writ habeas corpus when the petitioner is currently the subject of an ongoing criminal proceeding in the Kosrae State Court that has not reached final adjudication; when those proceedings afford the petitioner an opportunity to raise his constitutional claims; when the State has an important interest in protecting the public through criminal prosecutions; and when pre-conviction habeas corpus relief is being sought; when the state court remedies have not been fully exhausted; and when no extraordinary circumstances have been presented. In re Anzures, 18 FSM R. 316, 324-25 (Kos. 2012).

6 F.S.M.C. 906 gives the court authority to stay the execution of a sentence pending appellate review, but nothing in 6 F.S.M.C. 906 specifically authorizes the court to grant a stay pending the review of a writ of habeas corpus petition, and there is no authority in Titles 4 and 6 of the 2014 FSM Code or the FSM Rules to stay execution of sentence pending a habeas corpus proceeding. FSM v. Wolphagen, 22 FSM R. 237, 238 (Pon. 2019).

Regardless of whether the issued writ of habeas corpus is a final order, the court may entertain FSM Civil Rule 59 and 60 motions while the matter is subject to an appeal and, if it determines such motion(s) shall prevail, it must so indicate in the record for the appellate court's consideration. Timsina v. FSM, 22 FSM R. 383, 386 (Pon. 2019).

The respondents' motion for reconsideration will be denied when there is no compelling new legal authority on which to vacate the court's grant of petitioners' motion for a writ of habeas corpus, and when there has been no executive or legislative action to address the issue of refugees that may arrive in the FSM, because the court retains the authority, on a case-by-case basis, to address alleged FSM Constitutional violations with respect to the government's treatment of refugees. Timsina v. FSM, 22 FSM R. 383, 388 (Pon. 2019).