



# HABEAS CORPUS RELIEF AFTER THE SUPREME COURT'S DECISION IN LOPEZ V. SMITH

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On December 15, 2005, Ms. Smith was found dead in her home after suffering a massive blow to the head from a fireplace log roller. Her husband, Mr. Smith, was later charged and found guilty of first-degree murder.

Before the end of the trial, the prosecution asked for and received an aiding-and-abetting instruction. This permitted the jury to convict Mr. Smith even if they found that he had not delivered the fatal blow. In its closing arguments, the prosecution stood by the claim that Mr. Smith was the murderer, but added, for the first time, that even if Mr. Smith had not committed the murder himself, he should still be found guilty of murder if the jury found that he aided-and-abetted the actual killer, whoever he may be.

After receiving his conviction, Mr. Smith appealed to the California Court of Appeals alleging that he had not been given adequate notice of the possibility of the aiding-and-abetting instruction. The California Court of Appeals affirmed his conviction and rejected his argument. Mr. Smith then appealed to the California Supreme Court, who denied his petition for review. Having exhausted his state options, Mr. Smith petitioned the United States District Court for the Central District of California. The Magistrate Judge recommended granting the relief and the District Court agreed. The Ninth Circuit affirmed.

The Ninth Circuit held that while Mr. Smith should have been aware that the aiding-and-abetting instruction was possible because, under California law, aiding-and-abetting the crime is part of the same substantive offense as the commission of the crime itself, Mr. Smith's Sixth Amendment right had been violated. This was because the prosecution had tried the case on a single theory before adding the second instruction at the very end of the trial. In reaching this decision, the Ninth Circuit relied on its own precedent which, it claimed, faithfully applied Supreme Court precedent. The Supreme Court of the United States granted certiorari.

In a per curiam decision, the Supreme Court held that the Ninth Circuit improperly used Ninth Circuit precedent to create a more specific rule than the one actually created by the Supreme Court. Under the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), federal courts can only grant habeas corpus relief when a state court decision is contrary to or involves an unreasonable application of, clearly established Federal law, as determined by the Supreme Court. In the present case, the Court found that the Ninth Circuit had supported its ruling with Ninth Circuit cases, not Supreme Court cases. The Supreme Court cases it cited stood for "nothing more than the general proposition that a defendant must have adequate notice of the charges against him." None of the cases mandated when or how the prosecution had to try a case in light of proper notice being given. Before the Court reversed and remanded the case for further proceedings consistent with its opinion, it

concluded by cautioning “the lower courts – and the Ninth Circuit in particular – against framing ... [Supreme Court] precedents at such a high level of generality,” asserting that “circuit precedent cannot refine or sharpen a general principle of Supreme Court jurisprudence into a single legal rule that ... [the Supreme Court] has not announced.”

The writ of habeas corpus has been the primary means to challenge illegal imprisonment since King John signed the Magna Carta in 1215. It is such an established part of American jurisprudence that the Constitution of the United States does not even grant the right. Instead, the Constitution merely states that habeas corpus cannot be suspended unless public safety requires such, implying that habeas corpus is a right innate to all. *United States Constitution Article I, section 9*. However, while the writ of habeas corpus is meant to further the exercise of a fundamental right, the *Lopez* decision may limit its ability to be utilized.

Lawyers are taught to “federalize” their claims on the theory that issues “shot down” in state court could eventually win on habeas relief. However, obtaining this relief appears to now be dependent upon overcoming AEDPA. In other words, to obtain habeas corpus relief, petitioners must now rely solely on Supreme Court precedent, avoiding the utilization of circuit precedent to refine or sharpen a general principle of Supreme Court Jurisprudence. This limitation could very well reduce the number of cases the federal courts hear on habeas corpus relief in the coming years.

*If you or your institution has any questions or concerns regarding related issues, please contact James G. Ryan at [jryan@cullenanddykman.com](mailto:jryan@cullenanddykman.com) or at 516-357-3750.*

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